

SUPREME COURT OF THE STATE OF NEW YORK  
DUTCHESS COUNTY

-----X  
COUNTY OF DUTCHESS, individually and on behalf of  
all others similarly situated,

*Plaintiff,*

*-against -*

3M COMPANY, f/k/a Minnesota Mining and  
Manufacturing Co., BUCKEYE FIRE EQUIPMENT  
COMPANY, CHEMGUARD, INC., TYCO FIRE  
PRODUCTS L.P., and NATIONAL FOAM, INC.,

*Defendants.*  
-----X

Index No. \_\_\_\_\_/2018

**SUMMONS**

Plaintiff designates DUTCHESS  
County as the place of trial

The basis of venue is Plaintiff's  
place of business:

22 Market St.  
Poughkeepsie, NY 12601  
United States of America

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon the Plaintiff's attorneys an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
October 12, 2018

Yours, etc.,  
Napoli Shkolnik PLLC



Tate J. Kunkle, Esq.  
Paul J. Napoli, Esq.  
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(212) 397-1000  
*Attorneys for Plaintiff and Putative Class*

To:

3M COMPANY (f/k/a Minnesota Mining and Manufacturing, Co)  
c/o Corporation Service Company  
251 Little Falls Drive  
Wilmington, DE 19808

BUCKEYE FIRE PROTECTION COMPANY  
110 Kings Rd  
Kings Mountain, NC 28086

CHEMGUARD, INC.  
One Stanton Street  
Marinette, WI 54143

TYCO FIRE PRODUCTS L.P.  
One Stanton Street  
Marinette, WI 54143

NATIONAL FOAM, INC.  
144 Junny Road  
Angier, North Carolina 27501

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**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

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Plaintiff, the COUNTY OF DUTCHESS (the "County"), by and through their undersigned counsel, hereby files this Class Action Complaint, individually, and on behalf of all other Community Public Water Suppliers, Noncommunity Public Water Suppliers, and private water suppliers, similarly situated, and alleges as follows:

**I. NATURE OF THE CASE**

1. This action arises from the foreseeable contamination of public water supplies by the use of Defendants' aqueous film-forming foam ("AFFF") that contained per- and poly-fluoroalkyl substances ("PFAS"), including perfluorooctane sulfonate ("PFOS") and perfluorooctanoic acid ("PFOA").

2. Plaintiff, and all other Community Public Water Suppliers, Noncommunity Public Water Suppliers, and private water suppliers (collectively "Public Water Suppliers" or "PWS") similarly situated, are now forced to incur significant costs for the design, construction, operation

and maintenance of treatment systems to clean the water of the toxic and carcinogenic chemicals that are contained in Defendants' AFFF.

3. In addition to treating the water to remove the PFOA and/or PFOS, Plaintiff and all other PWS similarly situated are forced to incur additional expenses such as obtaining new water sources, and extending and/or modifying the existing water distribution system in order to provide a reliable source of clean safe water to the citizens of the State of New York.

4. Plaintiff and all others similarly situated will also incur additional costs to sample their water for PFOS and PFOA for the next fifty (50) years that they otherwise would not have to incur.

5. Defendants designed, manufactured, marketed, and sold AFFF to municipal airports, chemical plants, fire departments, fire training centers, and other industrial facilities knowing it would be discharged into the environment and inevitably contaminate surface water and groundwater drinking supplies throughout the State of New York.

6. AFFF is a product that has been used to extinguish fires involving fuel or other flammable liquids.

7. Defendants knew or should have known that their AFFF containing PFOS and PFOS posed a foreseeable threat to sensitive receptors such as public water suppliers because PFOS and PFOS does not biodegrade, moves easily in water, and is expensive to treat.

8. Nevertheless, the Defendants marketed and sold AFFF with the knowledge that PFOS and/or PFOA would be released into the environment in firefighting training exercises and in firefighting emergencies.

9. Human exposure to PFOA is associated with an increased risk of kidney and testicular cancer, ulcerative colitis, and other conditions. Human exposure to PFOA and PFOS is

associated with an increased risk of immune system effects, changes in liver enzymes and thyroid hormones, low birthweight, and other adverse health conditions.

10. The County brings this action to recover damages incurred and to be incurred by the County in investigating, monitoring, remediating, and otherwise responding to the PFOA/PFOS water contamination to stem the threat to public health and the environment caused by defendants' AFFF products.

## **II. THE PARTIES**

11. The County brings this action representative of itself as a supplier of public water on the premises described herein and all Community Public Water Suppliers and Noncommunity Public Water Suppliers (collectively “PWS”), that sustained detections of PFOA/PFOS in its water, and sustained or will sustain financial damages as a result.

12. Community Public Water Supplier is defined as a public water system which serves at least five service connections used by year-round residents or regularly serves at least 25 year-round residents.<sup>1</sup>

13. Noncommunity Public Water Supplier is defined as a public water system that is not a community water system.<sup>2</sup>

14. In carrying out its powers, purposes, and duties, Plaintiff is acting in all respects for the benefit of all PWS that sustained detectable amounts of PFOA/PFOS in its water supply at any time, and sustained financial damages as a result.

15. Similar to many counties and municipalities across the State, Plaintiff owns and operates a local municipal airport called the Hudson Valley Regional Airport (the “Airport”).

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<sup>1</sup> 10 NYCRR Section 5-1.1 (n)

<sup>2</sup> 10 NYCRR Section 5-1.1 (bm)

16. Plaintiff County of Dutchess has created the Dutchess County Water and Wastewater Authority (the “Authority”) under the NY Public Authorities Law. The Authority currently owns and operates thirteen water systems, six sewer systems, and one water transmission system located within ten different municipalities, collectively serving over 5,500 residential and commercial customers.

17. Defendants' AFFF products containing PFOA and PFOS, in unchanged form, were discharged into the environment through the foreseeable training and use of the AFFF at the Airport.

18. The PFOA and PFOS contamination has been found in noncommunity water systems in the vicinity of the Airport as well as community water systems, and private wells.

19. Defendants' AFFF products containing PFOA and PFOS contaminated the groundwater supply from which Plaintiff draws water for its customers.

20. Consequently, Plaintiff has incurred and will incur expenses in treating the contaminated water and infrastructure modifications to ensure each residential and commercial property is served clean and safe water.

21. Plaintiff will also incur future sampling costs for PFOA and PFOS for the next fifty (50) years.

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

23. Beginning before 1970 and until at least 2002, 3M manufactured, distributed, and sold AFFF containing PFOS. 3M was the only company that manufactured or sold AFFF containing PFOS.

24. 3M manufactured and/or distributed and/or sold AFFF foam containing PFOS which was used at the Airport.

25. Defendant Tyco Fire Products LP (“Tyco”) is a limited partnership formed in the State of Delaware with its principal place of business at One Stanton Street, Marinette, Wisconsin 54143. Tyco is an indirect subsidiary ultimately wholly owned by Johnson Controls International plc, an Irish public limited company listed on the New York Stock Exchange [NYSE: JCI]. Tyco is the successor in interest of The Ansul Company (“Ansul”), having acquired Ansul in 1990. (Ansul and Tyco (as the successor in interest to Ansul), will hereinafter be collectively referred to as “Tyco/Ansul.”)

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

27. Tyco/Ansul manufactured and/or distributed and/or sold AFFF foam containing PFOA which was used at the Airport.

28. Defendant Chemguard, Inc. (“Chemguard”) is a Wisconsin corporation with its principal place of business at One Stanton Street, Marinette, Wisconsin 54143.

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

30. Chemguard manufactured and/or distributed and/or sold AFFF foam containing PFOA which was used at the Airport.

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

32. Buckeye manufactured, distributed and/or sold AFFF containing PFOA which was used at the Airport.

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

34. At all times relevant, National Foam designed, manufactured, and sold AFFF used in training operations and for emergency fire-fighting situations including at the Airport.

### **III. JURISDICTION AND VENUE**

35. Defendants are subject to the jurisdiction of this Court pursuant to New York Civil Practice Laws and Rules 301 and/or 302.

36. This Court is the proper venue for this case pursuant to CPLR §503 because a substantial part of the events or omissions giving rise to claim occurred in the County of Dutchess.

37. This Court has personal jurisdiction over defendants as they do business in New York such that it is reasonably foreseeable that they would be subject to the jurisdiction of the Courts of this State.

38. Plaintiff and the Class Members bring causes of action based solely on and arising under New York law. The claims of Plaintiff are for violations of New York law that occurred exclusively in the State of New York.

### **IV. FACTUAL ALLEGATIONS**



**A. Background of PFOA and PFOS and The Known Risk to Water Supplies.**

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

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

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

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

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

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

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

46. Second, in humans and other mammals, PFOA and PFOS can bioaccumulate by crossing the placenta from mother to fetus and by passing to infants through breast milk.

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

48. Exposure to PFOA and PFOS can be toxic and may pose serious health risks to humans and to animals. Human health effects associated with PFOA exposure include kidney and testicular cancer, thyroid disease, high cholesterol, ulcerative colitis, liver damage, and pregnancy-induced hypertension (also known as preeclampsia). Human health effects associated with PFOS exposure include immune system effects, changes in liver enzymes and thyroid hormones, low birthweight, high uric acid, and high cholesterol. In laboratory testing on animals, PFOA and PFOS have caused the growth of tumors, changed hormone levels, and affected the function of the liver, thyroid, pancreas, and immune system.

**B. Duty of Water Suppliers To Provide Clean and Safe Water**

49. New York State Public Health Law (“PHL”) Section 225, Part 5, Subpart 5-1, requires public water purveyors to undertake specific actions when any deleterious changes in the raw water quality have occurred.

50. Specifically, New York State PHL Section 225 Subpart 5-1.12(a):

Whenever the supplier of water determines or is advised by the State that one or more of the MCLs set forth in this Subpart are or may be exceeded; or that effectiveness of treatment processes diminishes to the extent that a violation of the treatment techniques or MCLs set forth in this Subpart may occur; or that any

deleterious changes in raw water quality have occurred; or that a change in the character of the watershed or aquifer has been observed which may affect water quality; or that any combination of the preceding exists, the supplier of water shall notify the State and do the following:

- (1) undertake a study to determine the cause or causes of such conditions, independent of known or anticipated treatment technology;
- (2) modify existing or install treatment to comply, to the extent practicable, with sections 5-1.30, 5-1.50, 5-1.51 and 5-1.60 of this Subpart;
- (3) initiate water sampling as needed to delineate the extent and nature of the cause of;
- (4) investigate all or part of the watershed or aquifer to verify any existing or potential changes in the character of the sources of water supply; and
- (5) submit a written report to the State within 30 days of the onset of the foregoing conditions summarizing the findings outlined in paragraphs (1) through (4) of this subdivision.

**C. Defendants' Development of AFFF Products Containing PFOA and/or PFOS**

51. In the 1940s, 3M began using a process called electrochemical fluorination to create carbon-fluorine bonds, which are key components of PFOA and PFOS. 3M soon discovered that these types of substances have strong surfactant properties, meaning that they reduce the surface tension between a liquid and another liquid or solid. This reduced surface tension enabled 3M to develop a myriad of products that resist heat, stains, oil, and water. These products included older forms of Scotch Gard, which contained PFOS and when applied to fabric, furniture, and carpets protected against liquids and stains.

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

53. AFFF does not have the same problems that water alone does in extinguishing flammable liquid fires. AFFF concentrate containing PFOA or PFOS forms foam when it is mixed with water and ejected from a nozzle. That foam is then sprayed so that it coats the fire, blocking the supply of oxygen feeding the fire and creating a cooling effect and evaporation

barrier to extinguish the vapors on fire. A film also forms to smother the fire after the foam has dissipated.

**D. Defendants' Knowledge of the Threats to Public Health and the Environment Posed by PFOA and PFOS**

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

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

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

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

58. A 1978 study by 3M showed that PFOA reduced the survival rate of fathead minnow fish eggs.

59. Other studies by 3M in 1978 showed that PFOS and PFOA are toxic to rats, and that PFOS is toxic to monkeys. In one study in 1978, all monkeys died within the first few days of being given food contaminated with PFOS.

60. Studies by 3M after the 1970s also showed adverse effects from exposure to PFOA and PFOS.

61. In a 1983 study, for example, 3M found that PFOS caused the growth of cancerous tumors in rats.

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

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

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

65. 3M did not comply with its duty under TSCA, and in April 2006 it agreed to pay EPA a penalty of more than \$1.5 million for its failure to disclose studies regarding PFOA or PFOS and other per-fluoroalkyl substances dating back decades, among other things.

66. On information and belief, all defendants knew or should have known that in its intended and/or common use, AFFF containing PFOA or PFOS would very likely injure and/or threaten public health and the environment. On information and belief, this knowledge was

accessible to all defendants. For example, in 1970 a well-established firefighting trade association was alerted to the toxic effects on fish of a chemical compound related to PFOS. On information and belief, at least the following defendants are and/or were members of this trade association: 3M, Tyco/Ansul, Chemguard, and National Foam/Angus.

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

**E. Evolving Understanding of the Levels of Acceptably Safe Exposure to PFOA/S**

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

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

70. Beginning in 2009, EPA issued health advisories about the levels of exposure to PFOA and PFOS in drinking water that it believed were protective of public health. As described on EPA's website, "health advisories are non-enforceable and non-regulatory and provide technical information to states [,] agencies and other health officials on health effects, analytical methodologies, and treatment technologies associated with drinking water contamination."

*Drinking Water Health Advisories for PFOA and PFOS, What's A Health Advisory*, available at <https://www.epa.gov/ground-water-and-drinking-water/drinking-waterhealth-advisories-pfoa-and-pfos> (last visited June 5, 2018).

71. The recommendations in EPA's health advisories evolved as EPA learned more about PFOA and PFOS. New York followed these changing advisories in implementing its own approach to investigating contamination from PFOA and PFOS.

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

73. In January 2016, the New York Department of Environmental Conservation ("DEC") issued a rule designating one form of PFOA a "hazardous substance" under New York law. That designation enabled the State to use monies in the State Superfund program to respond to contamination from PFOA. As DEC and the New York State Department of Health ("DOH") continued to evaluate the scientific data, they determined that PFOS also met the definition of a hazardous substance under New York law. In April 2016, DEC issued a second rule designating both PFOA and PFOS as hazardous substances.

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

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

**F. The Use of Defendants’ AFFF Products Containing PFOA/S in New York**

76. Defendants’ AFFF products containing PFOA/S have been used for decades throughout New York at civilian airports and other facilities.

77. On information and belief, defendants manufactured and sold AFFF products containing PFOA and PFOS that were used and discharged at the Hudson Valley Regional Airport, as well as other airports and facilities across the State.

78. Pursuant to Federal Aviation Administration (“FAA”) regulations, airport staff were required to perform a AFFF foam test twice a year. During these tests, typically one or two buckets of foam (about 5-10 gallons) were discharged to get a reading of the percentage of the mix coming out of each nozzle.

79. Due to the Defendants’ failure to warn and advise the user that the AFFF should not be permitted to enter the soil, water, or groundwater, the AFFF was left to enter into the soil or simply washed off the tarmac.

80. Defendants failed to warn the end user that AFFF permeates through the ground to the groundwater.

81. Defendants further failed to warn the end user that the AFFF soaks into the concrete or asphalt tarmac to slowly release PFOA and PFOS into the subsurface and groundwater over decades.

82. Sampling results of surface water, groundwater, and soil, at or near these sites demonstrate the presence of elevated concentrations of PFOA and PFOS, which were components in defendants’ AFFF products.



83. On information and belief, defendants did not provide adequate warnings regarding the public health and environmental hazards associated with their AFFF products containing PFOA and PFOS. Nor did defendants provide adequate instructions about how to avoid or mitigate such hazards.

84. The normal, intended, and foreseeable manner of storage and use of defendants' AFFF products resulted in the discharge of PFOA and PFOS into the environment and drinking water supplies of the State.

#### **V. CLASS ACTION ALLEGATIONS**

85. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully stated herein.

86. Plaintiffs and the Class bring this action and seek to certify and maintain it as a class action pursuant to Article 9 of the New York Civil Practice Law and Rules, Section 901, on behalf of themselves and on behalf of all other PWS similarly situated as members of the proposed Classes and seek to certify and maintain it as a class action, subject to amendment and additional discovery as follows:

- a. All Community Public Water Suppliers, defined herein, that have detectable amounts of PFOA and/or PFOS in its water supply and have incurred or will incur financial damages as a result of contamination from AFFF (the "Community Public Water Suppliers Impacted Class").
- b. All Noncommunity Public Water Suppliers, defined herein, that have detectable amounts of PFOA and/or PFOS in its water supply and have incurred or will incur financial damages as a result of contamination from AFFF (the "Noncommunity Public Water Suppliers Impacted Class").
- c. All private water suppliers that have detectable amounts of PFOA and/or PFOS in its water supply and have incurred or will incur financial damages as a result of contamination from AFFF (the "Private Water Suppliers Impacted Class").
- d. All PWS that will conduct sampling in the future to ensure their water supply is free of PFOA and/or PFOS (the "Monitoring Class").

87. Plaintiff is a member of the proposed Noncommunity Public Water Suppliers Impacted Class it seeks to represent. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements.

88. Excluded from the Classes are:

- a. Defendants, including any entity or division in which Defendants have a controlling interest, along with their legal representative, employees, officers, directors, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates;
- b. the Judge to whom this case is assigned, the Judge's staff, and the Judge's immediate family who may have an ownership interest in a PWS;
- c. any class counsel or their immediate family members who may have an ownership interest in a PWS;
- d. PWS that have PFOA and/or PFOS contamination from sources other than AFFF; and
- e. Individuals with private wells that are contaminated with PFOA and/or PFOS.

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

**A. Numerosity and Ascertainability**

90. This action meets the numerosity requirement given that the number of impacted PWS, upon information and belief, has reached the hundreds, and the number of PWS that require water monitoring is in the thousands, making individual joinder of Class Members' respective claims impracticable. While the exact number of class members is not yet known, a precise number can be ascertained from the State of New York, DEC and/or the DOH, through the public records, and/or through other appropriate discovery.

91. The resolution of the claims of the class members in a single action will provide substantial benefits to all parties and the Court. It is expected that the class members will number in the thousands.

92. Class Members can be notified of the pendency of this action by Court-approved notice methods.

**B. Typicality**

93. Pursuant to the New York Civil Practice Law and Rules Section 901, Plaintiff's claims are typical of the claims of class members, and arise from the same course of conduct by Defendants.

94. Plaintiff's water supply, like all Class Members, have been damaged by Defendants' misconduct in that they have incurred damages related to the introduction of PFOA and PFOS into the water supply from the use of AFFF.

95. Furthermore, the factual bases of Defendants' actions and misconduct are common to all Class Members and represent a common thread of misconduct resulting in common injury to all Class Members. The relief Plaintiff seeks is typical of the relief sought for absent Class Members. Furthermore, the factual bases of Defendants' actions and misconduct are common to all Class Members and represent a common thread of misconduct resulting in common injury to all Class Members.

**C. Adequacy of Representation**

96. Proposed Class Representative will serve as a fair and adequate Class Representative as their interests, as well as the interests of their counsel, do not conflict with the interest of other Members of the Class they seek to represent. Further, Class Representative has retained counsel competent and well experienced in class action litigation and environmental tort litigation.

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

**D. Predominance of Common Issues**

98. There are numerous questions of law and fact common to Plaintiff and Class Members that predominate over any question affecting only individual Class Members, making it appropriate to bring this action under CPLR §901. The answers to these common questions will advance resolution of the litigation as to all Class Members. These common legal and factual issues include the following:

- a. Whether Defendants engaged in the conduct alleged herein;
- b. Whether Defendants knew or should have known that their manufacture of AFFF containing PFOA and PFOS was unreasonably dangerous;
- c. Whether Defendants knew or should have known that their AFFF contained persistent, stable and mobile chemicals that were likely to contaminate groundwater water supplies;
- d. Whether Defendants failed to sufficiently warn users of the potential for harm that resulted from the foreseeable use of their products;
- e. Whether Defendants became aware of health and environmental harm caused by PFOA and PFOS in their AFFF products and failed to warn users and Plaintiff and the Class of same;
- f. The extent to which Defendants knew about the PFOA and PFOS contamination in the water around facilities that used and/or trained with AFFF;
- g. Whether the Defendants owed a duty to the Plaintiff and the Class to refrain from the actions that caused the contamination of the drinking water with PFOA and PFOS;
- h. Whether Defendants made unlawful and misleading representations or material omissions with respect to the health and environmental impacts of PFOA and PFOS;

- i. Whether Plaintiff and Class Members are entitled to damages and other monetary relief, including but not limited to punitive damages, and if so, in what amount;
- j. Whether the members of the Class have sustained damages and the proper measure of damages; and
- k. Whether Defendants are strictly liable to Plaintiff and the Class for their actions.

**E. Superiority**

99. The class action mechanism is superior to any other available means of the fair and efficient adjudication of this case. Further, no unusual difficulties are likely to be encountered in the management of this class action. Given the number of PWS' impacted by Defendants' conduct and those that will require above-and-beyond monitoring, it is impracticable for Plaintiff and the Classes to individually litigate their respective claims for Defendants' complained of conduct as to do so would risk inconsistent or contradictory judgments and increase delays and expense to both parties and the court system. Therefore, the class action mechanism presents considerably less management challenges and provides the efficiency of a single adjudication and comprehensive oversight by a single court.

**VI. CAUSES OF ACTION**

**COUNT I**

**PUBLIC NUISANCE**

100. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully stated herein.

101. The use of AFFF containing PFOS and/or PFOA at the Airport has contaminated drinking water, the environment, soil, property, and the County's natural resources, thus causing a public nuisance.

102. Defendants participated in the creation and/or maintenance of this public nuisance through, among other things, their marketing and sale of inherently defective AFFF products and without providing adequate product instructions or warnings about the risks to drinking water, the environment, property, public health, and natural resources posed by the PFOA and PFOS in their products.

103. Defendants are strictly, jointly, and severally liable to the County and Class Members for all resulting damages, including the costs incurred and to be incurred in responding to the contamination to the water supply from AFFF containing PFOA and/or PFOS, including but not limit capital costs expended on treatment systems along with piping and other modifications to the supply system, past and future operation and maintenance of the treatment system, engineering costs and sampling costs.

104. On information and belief, defendants knew or should have known that their AFFF products would result in a public nuisance.

105. On information and belief, defendants' conduct involved wanton, willful, and/or a conscious and reckless disregard for the health, safety, property, and rights of others. The Court should award the County punitive damages in an amount sufficient to deter and punish such conduct.

## COUNT II

### **STRICT PRODUCTS LIABILITY FOR DEFECTIVE DESIGN**

106. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully stated herein.

107. Defendants have strict duties not to market products with defective designs, that is, products that are not reasonably safe when used in a foreseeable manner.

108. Defendants breached these duties by marketing inherently defective AFFF products containing PFOA and PFOS.

109. AFFF products containing PFOA and/or PFOS are not reasonably safe because the substantial likelihood of harm to drinking water, public health, and the environment from their use outweighs their utility.

110. AFFF products containing PFOA and/or PFOS are not reasonably safe because it is feasible to design them in a safer and cost-effective manner: without PFOA and/or PFOS or with additional features or procedures to eliminate or minimize the likelihood of harm from PFOA and PFOS.

111. As a proximate result of Defendants' marketing of defectively designed AFFF products containing PFOA and PFOS, these products were purchased or otherwise acquired and stored and used at the Airport in a foreseeable manner, resulting in contamination of the drinking water supply.

112. Defendants are strictly, jointly, and severally liable to the County and Class Members for all resulting damages, including the costs incurred and to be incurred in responding to the contamination to the water supply from PFOA and/or PFOS, including but not limit capital costs expended on treatment systems along with piping and other modifications to the supply system, past and future operation and maintenance of the treatment system, engineering costs and sampling costs.

113. On information and belief, defendants knew or should have known that their products would result in damages to the County and Class Members and/or their water supplies.

114. On information and belief, Defendants' conduct involved actual malice or wanton, willful, and reckless disregard for the health, safety, property, and rights of others. The Court

should award the County punitive damages in an amount sufficient to deter and punish such conduct.

### COUNT III

#### **STRICT PRODUCTS LIABILITY FOR FAILURE TO WARN**

115. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully stated herein.

116. Defendants have strict duties not to manufacture, sell, and distribute products without adequate warnings about latent dangers resulting from the foreseeable manner of storage and use of their products of which they knew or should have known.

117. On information and belief, Defendants breached these duties by failing to warn about latent dangers to drinking water supplies from storing and using AFFF containing PFOA and/or PFOS, because Defendants knew or should have known that such dangers would result from the foreseeable manner of storage and use of this product. On information and belief, defendants failed to warn about the existence and nature of the latent dangers, the magnitude of those dangers, and how to prevent or minimize those dangers.

118. As a proximate result of Defendants' marketing of AFFF containing PFOA and/or PFOS without adequate warnings about latent dangers, these products were purchased or otherwise acquired, stored, and used at the Airport in a foreseeable manner, resulting in avoidable contamination of the drinking water supply.

119. Defendants are strictly, jointly, and severally liable to the County and Class Members for all resulting damages, including the costs incurred and to be incurred in responding to the contamination to the water supply from PFOA and/or PFOS, including but not limit to capital costs expended on treatment systems along with piping and other modifications to the



supply system, past and future operation and maintenance of the treatment system, engineering costs and sampling costs.

120. On information and belief, Defendants knew or should have known that their products would result in substantial damage to the County and Class Members' water supplies.

121. On information and belief, Defendants' conduct involved actual malice or wanton, willful, and reckless disregard for the health, safety, property, and rights of others. The Court should award the County punitive damages in an amount sufficient to deter and punish such conduct.

#### **COUNT IV**

#### **NEGLIGENCE**

122. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully stated herein.

123. As commercial manufacturers, sellers, distributors, suppliers, marketers, and/or designers of AFFF products containing PFOA and/or PFOS, Defendants owed a duty of care to Plaintiff and the Classes not to place into the stream of commerce a product that was in a defective condition and unreasonably dangerous to drinking water supplies.

124. Defendants breached this duty by negligently designing, formulating, manufacturing, distributing, selling, supplying, and/or marketing such unreasonably dangerous products into the stream of commerce, including to Plaintiff and Class Members, even when they knew or should have known about the dangers AFFF products containing PFOA and/or PFOS posed to drinking water supplies.

125. As a direct and proximate result of Defendants' acts and omissions as alleged herein, Plaintiff and the Classes have incurred, is incurring, and will continue to incur damages

related to AFFF products containing PFOA and/or PFOS and the contamination of its water supply in an amount to be proven at trial.

126. Defendants knew it was substantially certain that their acts and omissions described above would cause injury and damage by, including AFFF products containing PFOA and/or PFOS, contaminating drinking water supplies.

127. Defendants committed each of the above-described acts and omission knowingly, willfully, and with oppression, fraud, and/or malice. Such conduct was performed to promote sales of AFFF products containing PFOA and/or PFOS, in conscious disregard to the probable dangerous consequences of that conduct and its reasonably foreseeable impacts on PWS such as Plaintiff. Therefore, Plaintiff and the Classes request an award of punitive damages in an amount sufficient to punish these Defendants and that fairly reflects the aggravating circumstances alleged herein.

128. Defendants are jointly and severally liable for all such damages, and Plaintiff and Class Members are entitled to recover all such damages and other relief as set forth below.

## **COUNT V**

### **TRESPASS**

129. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully stated herein.

130. Defendants' intentional acts and/or omissions caused the toxic and hazardous chemicals PFOS and PFOA to be distributed to airports, fire training centers and other facilities that inevitably entered and contaminated the drinking water supply of Plaintiff and Class Members.

131. Defendants' PFOA and PFOS have contaminated Plaintiff's and the Class Members' soil, groundwater supply and the public water supply system and its piping.

132. Defendants' intentional acts and omissions caused the toxic substances PFOA and PFOS to enter and trespass upon the land and property of Plaintiff and the Class Members without consent and interfere with exclusive possession and/or right of possession, resulting in a non-permissive entry onto Plaintiff and the Class Members' land.

133. Upon information and belief, Defendants' affirmatively, voluntarily and intentionally failed to act in a manner that would have prevented the migration of the contaminants into Plaintiff and the Class Members' water supplies.

134. At the time of the above-described affirmative, voluntary and intentional acts and omissions, Defendants knew or should have reasonably known that PFOA and PFOS would pass through the water supply system and contaminate Plaintiff and the Class Members' water supplies.

135. The intentional actions by the Defendants resulted in the immediate and continued trespass, injury and damage to Plaintiff and the Class Members, their water supply and/or properties from the introduction of PFOS and PFOA into soil, groundwater supply and the public water supply system of Plaintiff and the Class Members.

136. As a direct result of the foregoing trespass by Defendants, Plaintiff and the Class Members have suffered damages including, but not limited to: capital costs expended on treatment systems along with piping and other modifications to the supply system, past and future operation and maintenance of the treatment system, engineering costs and sampling costs.

#### **COUNT VI**

#### **MARKET SHARE LIABILITY, ALTERNATIVE LIABILITY, CONCERT OF ACTION, ENTERPRISE LIABILITY**

137. Plaintiff realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully stated herein.

138. Defendants in this action are manufacturers that control a substantial share of the market for AFFF products containing PFOA and/or PFOS in the United States and are jointly responsible for the contamination of Plaintiff and Class Members' groundwater supply and for causing the damages and injuries complained of in this Complaint.

139. Market share liability attaches to all Defendants and the liability of each should be assigned according to its percentage of the market for AFFF products containing PFOA and/or PFOS at issue in this Complaint.

140. PFOA and PFOS are fungible; it is impossible to identify the exact Defendant who manufactured any given batch of PFOA/S found free in the groundwater, and, each of these Defendants participated in a state-wide and national market for PFOA and/or PFOS during the relevant time.

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

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

## **VII. DAMAGES**

### **PUNITIVE DAMAGES**

143. Plaintiff and the Classes hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

144. Defendants engaged in willful, wanton, malicious, and or/reckless conduct that caused the foregoing damage upon Plaintiff and the Class Members, disregarding their protected rights.

145. Defendants' willful, wanton, malicious, and/or reckless conduct includes but is not limited to Defendants' failure to take all reasonable measures to ensure PFOA and PFOS would not be released into the environment and inevitably contaminate the drinking water supply of Plaintiff and the Class Members.

146. Defendants have caused great harm to the water supplies of Plaintiffs and the Class Members and demonstrated an outrageous conscious disregard for their rights and their customers' safety with implied malice, warranting the imposition of punitive damages.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs and the Classes demand judgment against Defendants, and request the following relief from the Court:

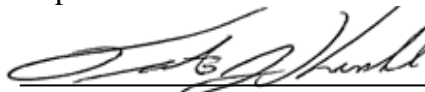
- A) An award certifying the following Classes of PWS: (i) the Community Public Water Suppliers Impacted Class; (ii) the Noncommunity Public Water Suppliers Impacted Class; and (iii) the Monitoring Class, designating Plaintiff as the named representative and designating the undersigned as Class Counsel;
- B) A declaration that Defendants acted with negligence, gross negligence, and/or willful, wanton, and careless disregard for the water supplies of Plaintiff and members of the Classes;
- C) An award to Plaintiff and the Class Members of general, compensatory, exemplary, consequential, nominal, and punitive damages;
- D) An order for an award of attorney fees and costs, as provided by law;
- E) An award of pre-judgment and post-judgment interest as provided by law, and
- F) An order for all such other relief the Court deems just and proper

**JURY DEMAND**

Plaintiff and the Class Members demand a trial by jury of all claims asserted in this  
Complaint.

Dated: New York, New York  
October 12, 2018

Yours, etc.,  
Napoli Shkolnik PLLC



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*Attorneys for Plaintiff and the Putative Class*

**VERIFICATION**

I, **Tate J. Kunkle**, am an attorney duly admitted to practice law in the Courts of this State, and I affirm the following under penalties of perjury:

I am the attorney for the Plaintiff in the above entitled-action. I have read the foregoing **CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL** and know the contents thereof, and upon information and belief, affirmant believes after an inquiry reasonable under the circumstances the matters alleged herein to be true, and that the contentions herein are not frivolous, as that term is defined in 22 NYCRR § 130-1.1(c).

The reason this verification is made by affirmant and not by the Plaintiff is that the Plaintiff herein resides in a County other than the County in which I maintain my office.

The source of affirmant's information and the grounds of his belief are communications, papers, reports and investigations contained in the file maintained by this office.

Dated: New York, New York  
October 12, 2018



Tate J. Kunkle, Esq.