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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON by and through Ellen
F. Rosenblum, Attorney General for the
STATE OF OREGON,

Plaintiff,

v.

MONSANTO COMPANY; SOLUTIA,
INC.; PHARMACIA LLC; and DOES 1 -
10,

Defendants.

Case No. _____

COMPLAINT (Public Nuisance; Purpresture;
Trespass; Equitable Indemnity; Unjust
Enrichment)

NOT SUBJECT TO MANDATORY
ARBITRATION

ORS 20.140 (State fees deferred at filing)

JURY TRIAL DEMANDED

Plaintiff State of Oregon (“the State”), by and through its Attorney General,
Ellen F. Rosenblum, files this Complaint against Defendants Monsanto Company, Solutia, Inc.,
Pharmacia LLC, and Does 1 to 10, inclusive (collectively, “Defendants” or “Monsanto”), and
alleges as follows:

INTRODUCTION

1.

The State of Oregon brings this action to protect the health, safety, and welfare of its
people and its natural environment.

2.

Oregon is a special place, home to a rich natural landscape and an abundance of natural
resources. Forests blanket nearly half of the state, providing critical habitat to wildlife such as
the bald eagle, black bear, elk, wolf, and beaver. A total of 110,994 miles of river flow within
the State’s borders, almost 2,000 of which are designated as Wild & Scenic under the

1 National Wild & Scenic Rivers System. Oregon's rivers and streams are home to a wide
2 diversity of fish, including salmon, steelhead, trout, sturgeon, and dozens of other native species.
3 Along Oregon's coast are vibrant marine waters and estuaries that teem with life; seals, otters,
4 and whales use these waters alongside sharks, halibut, and tuna. Dungeness crab, oysters, and
5 other shellfish thrive on the seafloor. These ecosystems are vital to the history, identity, and
6 sustainability of the State, including its tribal communities, and they serve critical roles in the
7 State's economy. Many Oregon jobs depend on fishing, sustainable timber production, and the
8 production of wholesome agriculture products. Oregonians, from the high desert to the ocean
9 shores, have a right to use and enjoy these resources for commerce, sustenance, recreation,
10 tourism, aesthetic enjoyment, and quiet solitude. Oregon would not be Oregon without this
11 remarkable natural environment.

12 3.

13 Unfortunately, many of Oregon's natural resources and environments are contaminated
14 with polychlorinated biphenyls, highly toxic chemicals known more commonly as "PCBs."
15 PCBs do not occur naturally, yet today they persist throughout Oregon's waterways, upland
16 areas, soils, sediments, aquatic life, marine mammals, and birds. PCBs cause a wide range of
17 systemic toxic effects in humans and animals and can seriously impair the endocrine, neurologic,
18 and reproductive systems. PCBs have caused harm to eagles, osprey, and other birds, as well as
19 various fish species across Oregon.

20 4.

21 This PCB contamination throughout Oregon is a result of the actions of one company:
22 Monsanto. Between 1929 and 1977, Monsanto was the only company in the United States to
23 manufacture PCBs for widespread commercial use. Monsanto distributed PCBs widely,
24 including throughout Oregon, for use in a broad array of products ranging from electrical
25 equipment to lighting ballasts, from paint to caulking.

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5.

Despite knowing as early as 1937 that PCBs were toxic to humans and animals and that PCBs could escape into and contaminate the environment, Monsanto manufactured and sold PCBs until they were finally banned under federal law.¹ Even when Monsanto had overwhelming evidence of the hazards that PCBs create, Monsanto continued to flood the country with these toxic materials. Monsanto's own internal documents show that it was not interested in protecting people or the environment; rather, its only concern was in protecting its balance sheet.

6.

As public concerns about PCBs began to grow in the 1960s, Monsanto did not alert its customers or the public of its knowledge of the dangers of PCBs. Instead, Monsanto assembled an internal team and tasked it with deflecting criticism of both PCBs and the company itself. The team was told that Monsanto "can't afford to lose one dollar of business" from its PCB sales. Despite knowing that millions of pounds of highly toxic PCBs were being released into the environment every year, Monsanto worked to hide the dangerous and persistent effects of the hazardous chemicals because "selfishly too much Monsanto profit" would be lost if the company told the truth. Monsanto concealed from consumers, the State of Oregon, the U.S. Government, and the public its knowledge of the remarkably harmful effects of PCBs and Monsanto's role in introducing these toxins to the surrounding environment, deciding instead that its financial bottom line—and, later, its corporate reputation—were more important than the health and well-being of humans and the environment.

¹ Toxic Substances Control Act, 15 U.S.C. § 2605(e)(3)(A) (eff. Jan. 1, 1977) ("[N]o person may manufacture any polychlorinated biphenyl after two years after the effective date of this Act.").

1 7.

2 Today, Oregon bears the burden of Monsanto's decision to place profit above all else.
3 The toxic legacy that Monsanto left Oregonians lives on, as PCBs persist in Oregon's lands,
4 rivers, and waterways, in its sediments, soils, and in the bodies of animals and humans. It has
5 caused harm to aquatic, marine, and avian species, and poses ongoing risks to the health of the
6 people of the State of Oregon.

7 8.

8 The State has incurred significant cleanup costs associated with the investigation and
9 remediation of sites contaminated with PCBs, and it will continue to incur such costs long into
10 the future. The presence of Monsanto's PCBs in Oregon's waterways and sediments, on
11 Oregon's land, and throughout Oregon's natural environment has had significant adverse impacts
12 on the availability of Oregon's natural resources for recreational, commercial, cultural, and
13 aesthetic uses, and their presence will continue to have such adverse impacts as long as they
14 persist in Oregon's natural environment.

15 9.

16 The State brings this action in its sovereign capacity as trustee for all natural resources
17 within its borders, which it holds and protects for the benefit of all Oregonians. Those natural
18 resources include the beds and banks of every river within the State; all waters within the State
19 from all sources of water supply;² and all fish, wildlife, and fish and wildlife habitat areas
20 throughout the State. The State also brings this action in its capacity as owner of certain lands
21 within its borders that have been contaminated by PCBs and for reimbursement of the costs it has
22 incurred, and likely will incur in the future, to investigate and clean up PCB contamination
23 throughout the State. Through this action, the State seeks to recover damages from Monsanto for
24

25 ² ORS 537.110 ("All water within the state from all sources of water supply belongs to the
26 public."); *Schnitzer Inv. Corp. v. Certain Underwriters at Lloyd's of London*, 341 Or 128, 132,
137 P3d 1282 (2006) (recognizing state ownership of water).

1 the costs that the State has incurred, and will continue to incur, to remediate the widespread
2 damage caused by the presence of Monsanto’s PCBs on Oregon’s lands, in Oregon’s waters, and
3 throughout Oregon’s natural environment.

4 **PARTIES**

5 10.

6 The State holds in trust for the public the bed and banks, and waters between the bed and
7 banks, of all waterways within the State. By virtue of its public trust responsibilities, all such
8 lands are to be preserved for public use in navigation, fishing, and recreation. The State is also
9 the trustee of all natural resources—including land, water, wildlife, and habitat areas—within its
10 borders. As trustee, the State holds these natural resources in trust for all Oregonians—
11 preserving, protecting, and making them available to all Oregonians to use and enjoy for
12 recreational, commercial, cultural, and aesthetic purposes.

13 11.

14 The State brings this action by and through its Attorney General, Ellen F. Rosenblum,
15 who is authorized under Oregon law, including pursuant to ORS 180.060(1)(d), to bring the
16 claims asserted herein on her own behalf, on behalf of the affected State agencies and entities,
17 and for the benefit of the people of Oregon.

18 12.

19 Defendant Monsanto Company (“Monsanto”) is a Delaware corporation with its principal
20 place of business in St. Louis, Missouri.

21 13.

22 Defendant Solutia Inc. (“Solutia”) is a Delaware corporation with its headquarters and
23 principal place of business in St. Louis, Missouri. Solutia, Inc. is a wholly owned subsidiary of
24 Eastman Chemical Company.

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14.

Defendant Pharmacia LLC (“Pharmacia”), formerly known as “Pharmacia Corporation” and successor to the Monsanto Chemicals Company, is a Delaware limited liability company with its principal place of business in Peapack, New Jersey. Pharmacia LLC is a wholly owned subsidiary of Pfizer, Inc.

15.

During the period between 1929 and 1977, the original Monsanto Company (“Original Monsanto”) owned and operated an agricultural products business, a pharmaceutical and nutrition business, and a chemical products business. As part of its chemical products business, Original Monsanto began manufacturing PCBs in the 1930s. It continued manufacturing PCBs until 1977, shortly before the manufacture and sale of PCBs in the United States was prohibited by federal law.

16.

Beginning in approximately 1977, Original Monsanto underwent a series of corporate transactions that caused its businesses to spin off into three separate entities. The corporation now known as Monsanto operates Original Monsanto’s agricultural products business.

17.

Defendant Solutia now operates Original Monsanto’s chemical products business. Solutia was organized for the purpose of owning and operating the chemical products business, and therefore has assumed all operations, assets, and liabilities of that business.

18.

Defendant Pharmacia now operates Original Monsanto’s pharmaceutical business.

19.

All Defendants have entered into agreements to share or apportion liabilities, and/or to indemnify one or more other entities, for claims arising from Original Monsanto’s chemical products business, including claims arising from Original Monsanto’s manufacture and sale of

1 PCBs. Monsanto, Solutia, and Pharmacia are otherwise jointly and severally liable to third
2 parties such as Oregon for the liabilities resulting from the acts and omissions of Original
3 Monsanto as a matter of law.

4 20.

5 Throughout this Complaint, and for the purposes of this litigation, Monsanto, Solutia, and
6 Pharmacia collectively will be referred to as “Defendants” or “Monsanto.”

7 **JURISDICTION AND VENUE**

8 21.

9 This Court has personal jurisdiction over the parties in this action pursuant to Oregon
10 Rules of Civil Procedure 4C, 4D, and 4F. The claims arise out of acts and omissions attributable
11 to Defendants that occurred in and outside Oregon. The properties that are the subject of the
12 State’s claims for relief are located in Oregon. The State’s claims for relief arise out of its
13 ownership, use, or possession of those properties. The State’s claims for relief also arise out of
14 its role as trustee of public trust resources, including fish and wildlife.

15 22.

16 Venue is proper in this Court pursuant to ORS 14.040. Some of the properties that are
17 the subject of the State’s claims are situated in Multnomah County.

18 23.

19 The State has standing to bring this action as an owner and trustee of land and water and
20 as trustee of certain natural resources described above and throughout this Complaint.

21 24.

22 The State also brings this action in its *parens patriae* capacity and thereby acts on behalf
23 of all Oregonians affected by the presence of PCBs in Oregon’s environment. The State has a
24 quasi-sovereign interest in the well-being, health, and comfort of all Oregonians who have been
25 injured and continue to be threatened by the persistence of Monsanto’s PCBs throughout the
26 State’s lands and natural environment. Such injuries include harm to Oregon businesses,

1 increased risk of harm to human health, increased risk of harm to the vitality of Oregon's fish
2 and wildlife species, and decreased availability of Oregon's natural resources for commercial,
3 recreational, tourist, cultural, and aesthetic purposes.

4 25.

5 The State also has a proprietary interest in the land and resources it owns, controls, or
6 holds in trust. The persistence of Monsanto's PCBs in and on lands owned, controlled, or held in
7 trust by the State has caused injury to, and has threatened, the State's proprietary interests. The
8 State has suffered injuries to those interests including, but not limited to, monetary damages that
9 it has incurred as trustee of land in the Portland Harbor, costs that it has incurred remediating
10 buildings and other property contaminated with PCBs, and diminished property value of its
11 buildings and land as a result of PCB contamination. In addition, the State has incurred cleanup
12 and remediation costs at other properties in the State. The State anticipates that it will incur
13 significant additional costs to clean up and remediate additional lands that it owns, controls, or
14 holds in trust that are contaminated by Monsanto's PCBs.

15 26.

16 Only this Court has subject matter jurisdiction over Plaintiff's claims. To the extent that
17 Defendants allegedly acted or failed to act at the direction of the United States or any agency
18 thereof, or any officer (or any person acting under that officer) of the United States or any
19 agency thereof, in an official or individual capacity, for or relating to any act under color of such
20 office, Plaintiff does not seek relief for damages caused by such actions or failures to act. To the
21 extent that Defendants allegedly acted or failed to act pursuant to any federal regulation or
22 specification, Plaintiff likewise does not seek relief for any damages caused by such actions or
23 failures to act. Plaintiff does not seek relief for damages caused by actions or failures to act in
24 connection with any government contract deemed necessary for the national defense, and
25 Plaintiff does not seek relief for damages to any federal enclave. Plaintiff does not, by this

26

1 Complaint, pursue any form of relief that arises under federal law or otherwise serves as a basis
2 for federal jurisdiction.

3 **GENERAL ALLEGATIONS**

4 **A. PCBs Are Toxic Chemicals That Persist in the Natural Environment.**

5 27.

6 Polychlorinated biphenyls (“PCBs”) are a group of human-made organic compounds
7 formed by the addition of between 1 and 10 chlorine atoms to the aromatic hydrocarbon
8 “biphenyl.” In each molecule of PCB, the number and location of chlorine atoms determines the
9 compound’s physical and chemical properties. Currently, 209 unique chemical configurations of
10 PCBs have been identified; these configurations are known as “congeners.”

11 28.

12 Based on their chemical composition, PCBs fall within the family of chemical
13 compounds known generally as “chlorinated hydrocarbons.” Other chlorinated hydrocarbons
14 include dioxins (for example, Agent Orange), DDT, Chlordane, Aldrin, and similar pesticides.

15 29.

16 PCBs are not naturally occurring substances. There are no known natural sources of
17 PCBs in the environment.

18 30.

19 The physical properties of each PCB congener vary depending on the congener’s degree
20 of chlorination. Most congeners are colorless or slightly yellow, odorless, crystalline
21 compounds.³ Others, however, may be liquid mixtures with varying degrees of viscosity.⁴

22

23

24 ³ International Agency for Research on Cancer (IARC), *Polychlorinated Biphenyls and*
25 *Polybrominated Biphenyls*, in IARC Monographs on the Evaluation of Carcinogenic Risks to
Humans, Vol. 107, 51 (2016) (hereinafter *IARC Monograph*).

26 ⁴ *Id.*

1 Commercially, PCBs generally were manufactured and produced as complex mixtures of PCB
2 congeners, not as single PCB compounds.⁵

3 31.

4 Commercial manufacture and production of PCBs began in the late 1920s. Since the
5 onset of their commercial production in the United States by Original Monsanto, PCBs were
6 used extensively for industrial and commercial purposes, as well as in consumer products.⁶
7 PCBs are fire resistant because of their high flash points, minimally water soluble, chemically
8 stable, and possess excellent dielectric properties. Because PCBs are chemically inert, they do
9 not easily degrade; neither do they react to acids, alkalis, or oxidants. The half-life associated
10 with PCBs can be decades-long;⁷ thus, they will persist in the natural environment for centuries
11 if they are not remediated.

12 32.

13 PCBs are also lipophilic, which causes them to accumulate in lipid-rich tissues and
14 substances, such as the fatty tissues of wildlife, birds, fish, and other animal life.⁸

15 33.

16 PCBs are highly toxic chemicals that adversely impact human health and the
17 environment. For humans, PCB exposure can cause serious liver damage, depressed immune
18 system function, skin conditions such as acne and rashes, significant irritation of and harm to the
19 nose and lungs, gastrointestinal discomfort, changes in the blood and liver, depression, fatigue,
20 and learning capacity impairment.⁹ The Environmental Protection Agency (“EPA”) has also

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22 ⁵ *Id.* at 53.

23 ⁶ *Id.* at 71.

24 ⁷ Agency for Toxic Substances & Disease Registry (“ATSDR”), U.S. Dep’t of Health &
Human Servs., *Toxicology Profile for Polychlorinated Biphenyls* 326–28 (Nov. 2000)
(hereinafter *ATSDR Toxicology Profile*).

25 ⁸ *IARC Monograph* at 431.

26 ⁹ *See generally ATSDR Toxicology Profile* at 90–283.

1 concluded that PCBs are probable human carcinogens. Children are particularly susceptible to
2 harm by PCB exposure, and they can be exposed to PCBs both prenatally and through breast
3 milk. Because of their physiology and behavior, children may also be particularly vulnerable to
4 altered development due to PCBs.¹⁰

5 34.

6 In 1996, EPA reassessed PCB carcinogenicity based on data related to Aroclors 1016,
7 1242, 1254, and 1260.¹¹ EPA’s reassessment was peer-reviewed by 15 experts, all of whom
8 agreed that PCBs are probable human carcinogens. EPA also confirmed in its reassessment what
9 scientists had established years earlier—that PCBs are associated with serious non-cancer health
10 effects, including harm to the human and animal immune, reproductive, nervous, and endocrine
11 systems.¹²

12 35.

13 PCBs are toxic to a number of species, including fish, mammals, pinnipeds (*e.g.*, seals
14 and sea lions), and birds. Because PCB transport patterns show a gradual redistribution toward
15 the marine environment, fish-eating marine mammals are potentially the most sensitive wildlife
16 receptors to PCB exposure. Studies show that PCB accumulation impairs fish and wildlife
17 reproduction because of increased embryotoxicity and decreased egg viability and hatchability,

18

19 ¹⁰ *Id.* at 381 (“Younger children may be particularly vulnerable to PCBs because, compared
20 to adults, they are growing more rapidly and generally have lower and distinct profiles of
21 biotransformation enzymes, as well as much smaller fat depots for sequestering the lipophilic
22 PCBs.”); *id.* at 7 (“Children . . . may accidentally eat some PCBs through hand-to-mouth
23 behavior, such as by putting dirty hands or other soil/dirt covered objects in their mouths, or
24 eating without washing their hands. Some children also eat dirt on purpose; this behavior is
25 called pica. Children could also be exposed by playing with old appliances or electrical devices
26 that contain PCBs.”)

23 ¹¹ “Aroclor” is the trade name associated with PCBs manufactured and distributed by
24 Monsanto. As described in further paragraphs of this Complaint, Monsanto assigned each
25 Aroclor congener mixture a numerical identifier (*e.g.*, 1016, 1242, 1254, or 1260), which
generally was assigned based on the mixture’s chlorine content.

26 ¹² See Environmental Protection Agency, *PCBs: Cancer Dose-Response Assessment and
Application to Environmental Mixtures* (Sept. 1996).

1 due, in part, to thinning egg shell thickness. PCBs also can cause neurological impairment in
2 wildlife, including disruptions to the nervous system and changes in behavior, as well as
3 endocrine-related impairments and dermal/ocular effects. Moreover, studies of minks and
4 certain bird species have shown that PCB contamination correlates to population decline and
5 reproductive impairment, particularly in fish-eating species.¹³

6 **B. Monsanto Caused Hundreds of Millions of Pounds of PCBs to Enter and**
7 **Contaminate the Natural Environment.**

8 36.

9 Commercial production of PCBs in the United States began in 1929 by Swann Research,
10 Inc., in Anniston, Alabama, the corporate predecessor to Original Monsanto. Swann Research
11 manufactured and distributed PCBs under the trade name “Aroclor,” which Original Monsanto
12 later trademarked.

13 37.

14 PCB manufacturers in other countries used different trade names for PCBs that they
15 produced.

16 38.

17 Monsanto assigned each Aroclor congener mixture a unique number (*e.g.*, Aroclor 1221,
18 Aroclor 1232, Aroclor 1242), the last two digits of which generally referred to the amount of
19 chlorine in the mixture.

20 39.

21 Original Monsanto purchased Swann Research in 1935, in part because of the high profits
22 that Swann Research was generating through the manufacture, sale, and distribution of PCBs and
23 PCB-containing materials.

24

25

26 ¹³ See, *e.g.*, *ATSDR Toxicology Profile* at 285–95.

1 40.

2 Original Monsanto—and its corporate predecessor Swann Research—was the only
3 manufacturer in the United States that intentionally produced and distributed PCBs for
4 widespread commercial use between 1930 and 1979.

5 41.

6 Original Monsanto distributed PCBs to its customers on a widespread basis. Its annual
7 production peaked in 1970, when Monsanto produced a total volume of 39,000 metric tons of
8 PCBs. Between 1957 and 1971, Monsanto produced 12 different types of Aroclor, each with a
9 different chlorine content ranging from 21 to 68 percent. Between 1930 and 1977, Monsanto
10 produced a total of 641,246 metric tons of PCBs in the United States. Monsanto produced PCBs
11 at two plant locations: Anniston, Alabama, and Sauget, Illinois.

12 42.

13 Monsanto developed, produced, and marketed PCBs for use in a wide range of
14 commercial and industrial applications. PCBs were advertised and predominantly used as
15 components of dielectric fluids—materials used for electrical insulation—in capacitors,
16 transformers, and other electrical systems. Indeed, during the 1960s, dielectric fluid in
17 capacitors and transformers accounted for 50 to 60 percent of the sales of PCBs in the
18 United States. Other uses included, to name only a few, hydraulic systems, heat transfer and
19 cooling systems, sealants and flame-retardant coatings, inks, adhesives, rubber products,
20 plasticizers, carbonless copy paper, and paints.

21 43.

22 PCBs enter the natural environment in a variety of ways. Many applications in which
23 they were used—*e.g.*, coolants, flame retardants, plasticizers, paint—are known as “open
24 applications” and allow the chemicals to enter the natural environment simply through use of the
25 PCB-containing material. Even where PCBs were used in “closed applications,” for example in
26 capacitors and transformers, PCBs nevertheless escaped from these systems through leaks,

1 maintenance, or by volatilizing into the air. And, because Monsanto did not tell the public of the
2 dangers of PCBs, PCB-containing materials routinely were disposed of without regard to where
3 the PCBs ultimately would end up. For example, companies often left old transformers filled
4 with PCB-containing oils on the ground outside or in junk yards, allowing PCB-containing oil to
5 drain onto the ground. As a result, hundreds of millions of pounds of PCBs have entered the
6 natural environment, causing widespread contamination.

7 **C. Monsanto’s PCBs Persist in Humans and in Wildlife and Throughout the**
8 **Natural Environment.**

9 44.

10 PCBs are now found worldwide at measurable levels throughout the environment,
11 including in soils and sediments, water, fish, and wildlife.¹⁴

12 45.

13 Once released into the environment, PCBs can migrate significant distances, transported
14 by water or through the air. Because they are water insoluble, PCBs tend to fall through the
15 water column when they reach a waterway, ultimately binding to sediments or other particulates.
16 There, they either persist for centuries or are transported downstream with sediment. PCBs also
17 migrate through the air, either in the vapor phase or bound to particulates.

18 46.

19 PCBs enter the food chain when plants or animals ingest them. The impact of PCBs on
20 animals is magnified through a process known as “bioaccumulation.” Because PCBs are
21 lipophilic, they tend to accumulate in animals’ fatty tissues rather than be excreted by the
22 animals’ bodies. Bioaccumulation starts when a small animal—perhaps an insect—ingests
23 materials containing PCBs. When a fish eats thousands of such insects over its lifetime, the
24 PCBs in the insects accumulate in the fish’s fatty tissues. Over the life of the fish, the

25 _____
26 ¹⁴ *IARC Monograph at 74.*

1 concentration of PCBs in its tissues can reach significant levels. And, when a predator—*e.g.*, an
2 eagle, whale, or human—eats PCB-contaminated fish, the concentration of PCBs will increase
3 yet again. Seals, whales, and eagles may eat thousands of fish over their lifetimes, and all the
4 PCBs in those fish will remain in the predators’ fatty tissues. So intense are the effects of this
5 bioaccumulation process that the remains of some orca whales have been treated as hazardous
6 waste when they wash up on shore.

7 47.

8 After they enter the natural environment, PCBs also undergo a process known as
9 “weathering.” During the weathering process, a PCB compound goes through physical or
10 chemical changes due to natural processes such as bacterial action, accumulative and metabolic
11 processes in higher biological organisms, or exposure to ultraviolet radiation. As a result of
12 those changes, PCB congener patterns found in humans and in wildlife often are different from,
13 and sometimes more harmful or concentrated than, a congener pattern found in commercially
14 produced PCB-containing materials.

15 48.

16 Human beings are exposed to PCBs through ingestion, inhalation, or direct contact with
17 PCBs or PCB-containing materials and food. Humans may inhale PCBs that are emitted into the
18 air, or they may be exposed through consumption of PCB-contaminated food or beverages. They
19 may also absorb PCBs upon direct physical contact—for example, through direct contact with
20 contaminated sediment at a swimming beach. Because PCBs bioaccumulate in fish and other
21 wildlife species and in domestic animals, humans often are exposed through the consumption of
22 PCB-contaminated fish and other food products.

23 49.

24 PCBs are transported through soil, sediment, air, and water. Because they attach so
25 readily to particulate matter, they often are transported to remote areas far from the location of
26 their initial release.

1 **D. Monsanto Has Known Since 1937 That PCBs Are Toxic.**

2 50.

3 Today, it is commonly known that PCBs are some of the most toxic and persistent
4 chemicals in our environment. Monsanto, however, has known that since at least 1937. And by
5 at least the 1950s, if not earlier, Monsanto had overwhelming evidence that PCBs escaped into
6 the environment—even from closed systems—where they would persist indefinitely.
7 Nevertheless, Monsanto continued to produce, market, and distribute these dangerous substances
8 for decades, despite knowing they could cause serious and significant harm to the environment
9 and to humans.

10 51.

11 Ample evidence shows that Monsanto knew of the dangers of PCBs very early on. For
12 example, an internal Monsanto memorandum dated October 11, 1937, explained the toxic effects
13 that Aroclors have on humans and animals:¹⁵

14 **October 11, 1937.**

15
16
17
18 **Experimental work in animals shows that
19 prolonged exposure to Aroclor vapors e-
20 volved at high temperatures or by repeated
21 oral ingestion will lead to systemic toxic
22 effects.**

23 **Repeated bodily contact with the liquid
24 Aroclors may lead to an acne-form skin
25 eruption.**

26

¹⁵ “Experimental work in animals shows that prolonged exposure to Aroclor vapors evolved at high temperatures or by repeated oral ingestion will lead to systemic toxic effects. . . . Repeated bodily contact with the liquid Aroclors may lead to an acne-form skin eruption.”

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52.

The very next year, Dr. Cecil Drinker of the Harvard School of Public Health presented Monsanto with the findings of his research, which further explained the toxic effects of PCBs and demonstrated that PCB exposure resulted in permanent liver damage in test animals.¹⁶ Despite learning of the serious effects of PCB-exposure through this and other sources, Monsanto nevertheless continued to produce PCBs without providing any warnings to the public or its customers.

53.

On the rare occasions when its customers sought information about the hazards of PCBs, Monsanto minimized and dismissed those risks. For example, in December 1947, in response to an inquiry from a customer, the Celanese Corporation of America, Monsanto directed the Celanese Corporation to Drinker’s publications and noted that, according to that research, “Aroclor 1268 is almost non-toxic” but “[t]he vapors of other Aroclors studied are toxic and should be avoided.”

¹⁶ Cecil K. Drinker, *Report to the Monsanto Chemical Company* (Sept. 15, 1938), http://www.chemicalindustryarchives.org/search/pdfs/anniston/19380915_545.pdf.

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54.

Similarly, in 1949, Monsanto developed its own statement regarding the risks of Aroclor that it would give to inquiring clients and customers.¹⁷ That statement read,¹⁸

"TOXICITY - Prolonged exposure to AROCLOR vapours will lead to systemic toxic effects. However, this is not significant except at high temperatures and then normal draught ventilation will remove any risk. Acne-form skin eruptions may arise from continued bodily contact with liquid AROCLORS, but normal precautions and, if necessary, suitable garments provide adequate protection. Toxic effects will follow considerable oral ingestion, but this hazard is unlikely to be encountered".

55.

But, throughout that time, Monsanto knew PCBs were toxic. For example, an internal memorandum from Elmer P. Wheeler, Monsanto's Manager of Environmental Health, to Mr. E. Mather, Monsanto's Chief Chemist, dated September 1, 1953, made clear that Monsanto knew that "Aroclors cannot be considered nontoxic."

56.

In 1955, Mather authored an internal report summarizing the "Process for the Production of Aroclors, Pyranols, etc. at the Anniston and at the Wm. G. Krummrich Plant." Attached to that report was an article authored by Robert M. Brown, Chief of the Industrial Hygiene Section of the City of St. Louis Department of Public Welfare, entitled "On the Toxicity of the 'Aroclors'" and published in *The Chemical Analyst* in September 1947. That article explains,

¹⁷ Interoffice Memorandum on Aroclor Toxicity from M.N. Strachan to J.R. Barrett (Aug. 30, 1949), http://www.chemicalindustryarchives.org/search/pdfs/anniston/19490830_161.pdf.

¹⁸ "TOXICITY—Prolonged exposure to AROCLOR vapours will lead to systemic toxic effects. . . . Acne-form skin eruptions may arise from continued bodily contact with liquid AROCLORS, but normal precautions and, if necessary, suitable garments provide adequate protection. Toxic effects will follow considerable oral ingestion, but this hazard is unlikely to be encountered."

1 There is need . . . to give warning [about PCBs]. For the toxicity of these
2 compounds has been repeatedly demonstrated, both from the standpoint of their
3 absorption from the inspired air, as well as from their effects in producing a
4 serious and disfiguring dermatitis when allowed to remain in contact with the
5 skin.

6 57.

7 Remarkably, and notwithstanding the abundance of research demonstrating that PCBs
8 have systemic toxic effects, Monsanto's Medical Director, Emmet Kelly, recommended to
9 Monsanto that it need not conduct any additional toxicity testing of the chemical. The company
10 worried more about possible legal implications than any harm to humans or the environment:

11 MCC's position can be summarized in this fashion. We know
12 Aroclors are toxic but the actual limit has not been pre-
13 cisely defined. It does not make too much difference, it
14 seems to me, because our main worry is what will happen if
15 an individual develops any type of liver disease and gives
16 a history of Aroclor exposure. I am sure the juries would
17 not pay a great deal of attention to MACs.

18 We, therefore, review every new Aroclor use from this point
19 of view. If it is an industrial application where we can
20 get air concentrations and have some reasonable expectation
21 that the air concentrations will stay the same, we are much
22 more liberal in the use of Aroclor. If, however, it is
23 distributed to householders where it can be used in almost
24 any shape and form and we are never able to know how much
25 of the concentration they are exposed to, we are much more
26 strict. No amount of toxicity testing will obviate this
27 last dilemma and therefore I do not believe any more test-
28 ing would be justified.

29 Let's see what our discussions with Dr. Newman and yourself
30 bring out.

31 58.

32 Monsanto's disregard for human life and the environment, however, did not stop the most
33 sophisticated consumers from conducting their own independent research on the hazards of
34 PCBs. For example, the U.S. Navy rejected the use of PCBs in its submarines because it
35 concluded that PCBs were too dangerous. The Navy reached that conclusion after conducting its
36

1 own independent testing of PCBs, which revealed that “[t]he inhalation of 10 milligrams of [the
2 PCB] Pydraul 150 per cubic meter or approximately 2 tenths of a part of the Aroclor component
3 per million for 24 hours a day for 50 days caused, statistically, definite liver damage.” Monsanto
4 tried to change the Navy’s mind, but the Navy ultimately decided that PCBs simply “would not
5 be suitable for use in submarines.”¹⁹ The Navy informed Monsanto that it “would not accept
6 Pydraul 150 and probably no other fluid containing chlorine or chlorinated diphenyls.”²⁰

7 59.

8 Since practically the beginning of its commercial production of PCBs, Monsanto was
9 well aware of PCBs’ toxic effects. It knew that prolonged exposure to PCBs would lead to
10 systemic toxic effects in both humans and animals. It knew that those systemic toxic effects
11 could be caused either by inhalation of PCB vapors or direct contact with PCBs or PCB-
12 containing materials. It declined to conduct its own independent testing. Others, however, did
13 conduct testing, and their research demonstrated that exposure to PCBs, even at relatively low
14 concentrations, was harmful to the health of both humans and the environment.

15 **E. Monsanto Also Knew, Since at Least the 1950s, That PCBs Escaped Into the**
16 **Environment, Where They Would Persist and Destroy the Natural**
17 **Environment.**

17 60.

18 Throughout the 1940s and 1950s, scientists continued to report to Monsanto on the
19 widespread, harmful effects of PCBs. Dr. Kelly continued to find himself in the position of
20 having to explain, primarily to consumers of Monsanto products, that use of or exposure to
21 Monsanto’s PCBs may have caused the harm that customer reported.²¹ Yet Monsanto continued
22 to increase the volume of PCBs it produced and sold.

23 ¹⁹ Memorandum from Elmer P. Wheeler to Philip L. Slayton on Toxicity of Pydraul 150
24 (Sept. 25, 1957), [http://www.chemicalindustryarchives.org/search/pdfs/anniston/
19570925_500.pdf](http://www.chemicalindustryarchives.org/search/pdfs/anniston/19570925_500.pdf).

25 ²⁰ *Id.*

26 ²¹ *See, e.g.*, Memorandum from R. Emmet Kelly to Richard Davis on Aroclor Exposure at
Hexagon Laboratories (Feb. 2, 1961), <http://www.chemicalindustryarchives.org/search/pdfs/>

1
2 Meanwhile, public awareness of the harmful effects of chlorinated hydrocarbons—at the
3 time, primarily DDT—also increased. Detailed accounts of the toxic effects of DDT on the
4 environment became more accessible to the public, triggering widespread concern for the
5 continued use of chlorinated hydrocarbons more generally. In 1962, for instance, Rachel Carson
6 authored *Silent Spring*, which was then known as the most thorough explanation, and effective
7 denunciation, of industry practice with respect to the use and misuse of chlorinated
8 hydrocarbons:

9
10 In the less than two decades of their use, [dangerous chemicals] have been
11 so thoroughly distributed throughout the animate and inanimate world that
12 they occur virtually everywhere. They have been recovered from most of
13 the major river systems and even from streams of groundwater flowing
14 unseen through the earth. Residues of these chemicals linger in soil to
15 which they may have been applied a dozen years before. They have
16 entered and lodged in the bodies of fish, birds, reptiles, and domestic and
17 wild animals so universally that scientists carrying on animal experience
18 find it almost impossible to locate subjects free from such
19 contamination. They have been found in fish in remote mountain lakes, in
20 earthworms burrowing in the soil, in the eggs of birds—and in man
21 himself.

22 *Silent Spring* focused primarily on industry’s use of DDT and other insecticide sprays
23 made of chlorinated hydrocarbons, but during the 1960s the scientific research on the

24 anniston/19610202_587.pdf (“Yesterday, Mr. Allen of the subject company called and stated he
25 had two employees nauseated from exposure to a leak in a heat transfer unit that used Aroclor
26 1248.”); Letter from Jack T. Garrett to S. Facini on Pydraul Exposure (Aug. 29, 1960),
27 http://www.chemicalindustryarchives.org/search/pdfs/anniston/19600929_176.pdf (“I would not
28 expect [PCBs] to be very toxic to aquatic life. On the other hand, this is a surmise on my part
29 since we have no tests on aquatic animals.”); Memorandum from R. Emmet Kelly to O.F. Heasel
30 on Pydraul Exposure (June 23, 1959), [http://www.chemicalindustryarchives.org/search/
31 pdfs/anniston/19590623_175.pdf](http://www.chemicalindustryarchives.org/search/pdfs/anniston/19590623_175.pdf) (“I think [they] are being overcautious in this matter, but I
32 certainly can’t give Pydraul an absolutely clean bill of health”); Letter from Joseph P. Allen
33 to Emmet Kelly on Aroclor Exposure at Hexagon Laboratories (Feb. 14, 1961),
34 http://www.chemicalindustryarchives.org/search/pdfs/anniston/19610214_177.pdf (noting, in a
35 letter to Kelly, that “two . . . plant personnel were exposed to hot Arochlor (1248) vapors
36 generated by a broken pipe connection [and] the two men developed symptoms of Hepatitis and
37 were confined to a hospital for approximately two weeks”).

1 environmental and ecological effects of PCBs was also becoming more widely known. As a
2 result, both the scientific community and Monsanto were becoming increasingly aware that
3 PCBs were just as poisonous as, if not more poisonous than, DDT.

4 63.

5 In 1966, an article summarizing the findings of Swedish researcher Soren Jensen was
6 published in an article in the Swedish daily paper, *Dagens Nyheter*. The article described
7 Jensen's findings:

8 [PCB] is found in salmon and in pike. It is found in sea eagle living on fish. It is
9 found on the surface of the needles of the fir trees, it is in the air. It is found in
the hair of a [five-month-old] baby

10 The scientists working with biocides have [found that] a group of poisons,
11 Polychlorinated Biphenols (for short PCB) . . . are closely related to, and equally
poisonous as, DDT.

12 PCB is broken down considerably slower than DDT and gives rise to damage of
13 liver and skin. PCB is not used as a[n] herbicide. It is not manufactured in
Sweden but is supposed to [be] used by the industry to quite some extent. . . .

14 Research Asst. S. Jensen has tested 200 fishes and a number of birds. He has
15 taken several samples of air and has reached the conclusion that PCB is equally
16 common in Nature as chlorinated hydrocarbons of the type of DDT, DDE, and
Lindane. . . .

17 Monsanto circulated the article internally and, shortly thereafter, visited Jensen at the Stockholm
18 University to "discus[s his] programme of work." Based on that discussion, Monsanto
19 concluded that "there is no doubt that the chemical which is the subject of [Jensen's]
20 investigation and the news release, is chlorinated diphenyl i.e. Aroclor."²²

21

22

23

24

25

26 ²² Memorandum from D. Wood to G.R. Buchanan on Soren Jensen Research (Jan. 26,
1967), http://www.chemicalindustryarchives.org/search/pdfs/anniston/19670126_183.pdf

1 Brussels, Belgium

2 26th January, 1967

3 SWEDEN, AROCLOR

4 DW:gb

5 G. R. Buchanan - St. Louis

cc P. G. Benignus - St. Louis
D. S. Cameron - Brussels
Dr. D. V. N. Hardy - London
Dr. R. Emmet Kelly - St. Louis
A.A. Steenrod - St. Louis

Handwritten: ~~W. H. ... - Bus~~

6 We recently sent you a translation of a Swedish newspaper
7 article referring to the identification in nature of
8 polychlorinated biphenols. Because some of the uses claimed
9 for the materials fall in line with the uses of our own
10 chlorinated diphenyls, we made a point, during our recent
11 visit, to Sweden, of visiting the research institute involved
12 and discussing their particular programme of work.

13 **To eliminate any earlier confusion that there may have been,
14 I should like to emphasise that there is no doubt that the
15 chemical which is the subject of the investigation and the
16 news release, is chlorinated diphenyl i.e. Aroclor.**

17 64.

18 Monsanto's own research, conducted in the waterways adjacent to its Anniston
19 manufacturing facility, demonstrated the seemingly limitless potential of PCBs for
20 environmental destruction. In a study of bluegills caged in various locations, the results were
21 dramatic:

22 A branch of Snow Creek originating in the Monsanto Plant and flowing east . . .
23 Result: All 25 fish lost equilibrium and turn on their sides in 10 seconds and all
24 were dead in 3 1/2 minutes.

25 Snow Creek at a point where it is crossed by the Highway 21-Highway 78 cut-off
26 . . . Result: 10 fish were down after 1 hour and 40 minutes; all were down in 2
hours and 25 minutes. All were dead in 2 hours and 35 minutes.

27
28 Anniston Sewage Treatment Plan - near the out-flow to Choccolocco
29 Creek. . . Result: All 25 fish were dead when the first check was made after 23.5
30 hours. Their condition suggested that they had died several hours earlier.²³

23 _____
24 ²³ Letter from Denzel Ferguson to L.C. Fuhrmeister on Caging Experiments (Nov. 2, 1966),
25 http://www.chemicalindustryarchives.org/search/pdfs/anniston/19661102_291.pdf
26

As Monsanto became more and more concerned about threats of negative publicity to its PCB business,²⁴ the reality of the toxic effects associated with the persistence of PCBs in the natural environment grew increasingly evident. Monsanto received reports of significant fish kills in waterways adjacent to its manufacturing plants. A 1968 study of Snow Creek, a waterway adjacent to Monsanto's Anniston plant, characterized the creek as "a potential source of future legal problems":²⁵

A FINAL REPORT
 Investigations of Certain Pesticide-Wildlife
 Relationships in the Choccolocco Creek Drainage

A Contract Between the
 Monsanto Chemical Company and
 Mississippi State University
 (September 1, 1966 through August 31, 1967)

²⁴ Memorandum from R. Emmet Kelly to D. Wood on Response to Aroclor Reports (Feb. 10, 1967), http://www.chemicalindustryarchives.org/search/pdfs/anniston/19670210_586.pdf ("We are very worried about what is liable to happen in the states when the various technical and lay news media pick up the subject. This is especially critical at this time because air pollution is getting a tremendous amount of publicity in the United States.").

²⁵ Monsanto Chemical Company, Investigations of Certain Pesticide-Wildlife Relationships in the Choccolocco Creek Drainage (Sept. 1, 1966—Aug. 31, 1967), http://www.chemicalindustryarchives.org/search/pdfs/anniston/19670831_186.pdf.

1 3. Snow Creek is a potential source of future legal problems. The
2 stream does not support life and contains many materials that
3 accumulate in water, fish, and muds downstream. Although there
4 is no evidence that these materials are harmful to fish, their
5 presence constitutes damaging evidence of pollution. The argument
6 that these compounds impart undesirable palatability qualities to
7 Choccolocco Creek fish would be very convincing and probably easy
8 to prove.

9 66.

10 In December 1968, Richard Risebrough, a researcher at the Institute of Marine Resources
11 and the University of California-Berkeley, published a report entitled *Chlorinated Hydrocarbons*
12 *in Marine Ecosystems* that identified chlorinated hydrocarbons generally as “the most abundant
13 synthetic pollutants present in the global environment.” The article reported significant
14 concentrations of PCBs in the bodies and eggs of peregrine falcons and 34 other bird species.
15 The report linked PCBs to the rapid decline in peregrine falcon populations in the United States.
16 Internally, Monsanto employees acknowledged that “Risebrough has found PCBs along with
17 chlorinated pesticides in a number of species of fish and birds along the California coast as well
18 as in waters off Baja California and Central America.”²⁶

19 67.

20 By January of the following year, Monsanto employees recognized the need to respond,
21 if only internally. In a memo dated January 23, 1969, and designated as “C-O-N-F-I-D-E-N-T-I-
22 A-L,” Monsanto’s Paul Hodges, an official in its St. Louis General Offices, noted the need for
23 Monsanto to begin to “protect” itself:
24

25 ²⁶ Memorandum from Elmer P. Wheeler to W.H. Richard on Polychlorinated Biphenyls in
26 the Environment (Oct. 21, 1968), http://www.chemicalindustryarchives.org/search/pdfs/anniston/19681021_305.pdf.

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Monsanto

FROM: NAME & LOCATION: P. B. Hodges - General Offices

H. B. [unclear]
Return to Kuhn

DATE January 23, 1969

SUBJECT AROCLORS IN PLANT EFFLUENT

REFERENCE

TO : Messrs.
E. G. Wright - ANNISTON
C. F. Buckley - KRUMMRICH

cc Messrs.
W. R. Richard - WRICH
W. A. Kuhn - WKUHN
D. B. Hosmer - DHOSM
E. S. Tucker - S. 2ND ST.
E. A. Wheeler - EWHEE
G. L. Bratsch - KRUMMRICH
W. B. Papageorge - ANNISTON
D. W. Jackson - KRUMMRICH
B. R. Williams
J. C. Landwehr - ANNISTON
W. Taffee

C-O-N-F-I-D-E-N-T-I-A-L

With the likelihood that the attention now being focused on presence of aroclors in natural waters will draw attention to any aroclor being sewerred in our production plant outfalls, we should begin to protect ourselves. Since the problem, if only action preparatory to actual clean up. Please arrange for the following:

68.

Monsanto therefore formed an "Aroclor Ad Hoc Committee," and tasked that committee with preparing recommendations for actions that Monsanto could take to improve its reputation and salvage its bottom line, notwithstanding the now publicly known damage resulting worldwide from PCBs. The committee's charge was to develop a plan that would:

1. Permit continued sales and profits of Aroclors and Terphenyls.
2. Permit continued development of uses and sales.
3. Protect [the] image of Organic Division and of the Corporation.²⁷

69.

Monsanto's Aroclor Ad Hoc Committee first met on September 5, 1969. At that meeting, the committee acknowledged that PCBs had been found in fish, oysters, shrimp, birds, and in and "[a]long coastlines of industrialized areas such as Great Britain, Sweden, Rhine River,

²⁷ Confidential Minutes of Aroclor "Ad Hoc" Committee First Meeting (Sept. 5, 1969), http://www.chemicalindustryarchives.org/search/pdfs/anniston/19690905_200.pdf.

1 low countries, Lake Michigan, Pensacola Bay, and in Western wild life.” The committee was
2 aware that PCBs “may be a global contaminant.” Moreover, the committee knew that ordinary
3 usage of Monsanto’s own PCB-containing materials was a cause of the environmental problem:

4 8. Environmental Contamination by Customers:

5 Our in-plant problems are very small vs. problems of
6 dealing with environmental contamination by customers.
7 **In one application alone (highway paints), one million
8 lbs/year are used. Through abrasion and leaching we
9 can assume that nearly all of this Aroclor winds up in
10 the environment.**

11 70.

12 The Aroclor Ad Hoc Committee issued a confidential report on October 2, 1969. In that
13 report, the Committee explained its overall findings:

14 The committee believes there is little probability that any action that can be taken
15 will prevent the growing incrimination of specific polychlorinated biphenyls (the
16 higher chlorinated—e.g. Aroclors 1254 and 1260) as nearly global environmental
17 contaminants leading to contamination of human food (particularly fish), the
18 killing of some marine species (shrimp), and the possible extinction of several
19 species of fish eating birds.

20 Secondly, the committee believes that there is no practical course of action
21 that can so effectively police the uses of these products as to prevent
22 environmental contamination. There are, however, a number of actions which
23 must be undertaken to prolong the manufacture, sale and use of these particular
24 Aroclors as well as to protect the continued use of other members of the Aroclor
25 series.

26 (Emphasis added.)

71.

On September 9, 1969, Monsanto employee W.R. Richard, who was a member of the
Aroclor Ad Hoc Committee, wrote an interoffice memorandum entitled “Defense of Aroclor,” in
which he acknowledged that “[w]ater [p]ollution seems to be [the] first issue” with Aroclor:
“Aroclor product is refractive, will settle out on solids—sewerage sludge—river bottoms, and
apparently has a long life.” He noted that Aroclors 1254 and 1260 had been found in shrimp
along Florida’s Gulf Coast; in the San Francisco Bay, where it was reported to thin egg shells in

1 birds; and in the Great Lakes. Richard also acknowledged that the company could not defend
2 itself entirely:

3 We can't defend vs. everything. Some animals or fish or insects will be harmed.
4 Aroclor degradation rate will be slow. Tough to defend against. Higher
5 chlorination compounds will be worse [than] lower chlorine compounds.
6 Therefore we will have to restrict uses and clean-up as much as we can, starting
7 immediately.

8 72.

9 On January 29, 1970, Wheeler, Monsanto's Manager of Environmental Health, circulated
10 laboratory reports discussing results of animal studies. He noted,²⁸

11 **Our interpretation is that the PCB's are exhibiting
12 a greater degree of toxicity in this chronic study
13 than we had anticipated. Secondly, although there
14 are variations depending on species of animals, the
15 PCB's are about the same as DDT in mammals.**

16 73.

17 Rather than take steps to correct the impact that Monsanto's poisonous materials were
18 likely to have on the natural environment, Monsanto opted instead to take steps that would
19 continue to improve Monsanto's reputation and bottom line. Although Wheeler recognized that
20 ignoring the environmental havoc that the PCBs would wreak worldwide was "unacceptable
21 from a legal, moral, and customer public relations and company policy viewpoint," he ultimately
22 concluded that Monsanto's profits were more important: "[T]here is too much customer/market
23 need and selfishly too much Monsanto profit to go out" to take any action to the contrary.

24

25

26 ²⁸ "Our interpretation is that the PCB's are exhibiting a greater degree of toxicity in this
chronic study than we had anticipated. Secondly, although there are variations depending on
species of animals, the PCB's are about the same as DDT in mammals."

1 74.

2 In an interoffice memorandum circulated on February 16, 1970, and entitled "Pollution
3 Letter," Monsanto provided talking points for its employees when discussing the dangers of
4 PCBs with inquiring customers: "We (your customer and Monsanto) are not interested in using a
5 product which may present a problem to our environment." But the memorandum also
6 acknowledged that Monsanto "will continue to make" PCBs; "[w]e can't afford to lose one
7 dollar of business," and admonished employees not to take any product back: "We want to avoid
8 any situation where a customer wants to return fluid. . . . We would prefer that the customer use
9 up his current inventory and purchase [new fluids] when available. He will then top off with the
10 new fluid and eventually all Aroclor 1254 and 1260 will be out of his system. We don't want to
11 take fluid back." (Emphasis in original.)

12 75.

13 In 1970, the year after Monsanto formed the Aroclor Ad Hoc Committee, and despite
14 Monsanto's knowledge of the global nature of PCB contamination, PCB production in the
15 United States peaked at 85 million pounds.

16 76.

17 Growing awareness of the ubiquity of PCBs led the U.S. Government to conduct an
18 investigation of PCBs' health and environmental effects and any resulting contamination of food
19 and other products. In May 1972, an interdepartmental government task force published a report
20 confirming that PCBs were highly persistent, could bioaccumulate to relatively high levels, and
21 could have serious adverse effects on human health.²⁹

22
23
24
25 ²⁹ Participating agencies included, among others, EPA and the Departments of Agriculture;
26 Commerce; Health, Education, and Welfare; and the Interior. *See generally* Interdepartmental
Task Force on PCBs, *Polychlorinated Biphenyls and the Environment* (May 1972).

1 77.

2 After that report, environmental sampling and studies suggested that PCBs were a “more
3 serious and continuing environmental and health threat than had been originally realized.”³⁰ To
4 address these concerns, EPA undertook a study to assess PCB levels in the environment on a
5 nationwide basis. That study revealed widespread occurrence of PCBs in bottom sediments in
6 several states; in fish and birds; in lakes and rivers; in the Atlantic Ocean, the Pacific Ocean, and
7 the Gulf of Mexico; in sewage treatment facilities; in a variety of foods, including milk, poultry,
8 eggs, fish, meat, and grains; and in human milk, blood, hair, and tissues.

9 78.

10 At the same time, Monsanto continued to promote the use and sale of Aroclor and other
11 PCB compounds. In a 1960 brochure, Monsanto promoted the use of Aroclors in transformers
12 and capacitors, utility transmission lines, home appliances, electric motors, fluorescent light
13 ballasts, wire and cable coatings, impregnants for insulation, dielectric sealants, chemical
14 processing vessels, food cookers, potato chip fryers, drying ovens, thermostats, furnaces, and
15 vacuum diffusion pumps. According to the brochure, Aroclors also could be used as a
16 component of any of the following: automotive transmission and industrial cutting oils;
17 insecticides; natural waxes used in dental casting, aircraft parts, and jewelry; abrasives;
18 specialized lubricants; adhesives; moisture-proof, tack, masonry, and other coatings; printing
19 inks; papers; mastics; sealant; caulking compounds; plasticizers; resin; paints, varnishes, and
20 lacquers; railway tank and gondola cars; and wood and metal maritime equipment.

21 79.

22 A 1961 company brochure explained that Monsanto’s Aroclors were being used in a wide
23 variety of common household items, including in “lacquers for women’s shoes”; as “a wax for
24

25 _____
26 ³⁰ Environmental Protection Agency Office of Toxic Substances, *Review of PCB Levels in
the Environment*, at 1 (Jan. 1976).

1 the flame proofing of Christmas trees”; as floor wax; as an adhesive for bookbinding, leather,
2 and shoes; and as invisible marking ink used to make chenille rugs and spreads.

3 80.

4 During the entirety of the 1960s, and probably before, Monsanto knew that its Aroclors
5 were being used in a variety of industrial, commercial, household, and consumer goods. Indeed,
6 Monsanto encouraged these uses by affirmatively urging salesmen to market products for these
7 and other applications.

8 81.

9 A few years later, in 1970, Monsanto tried to distance itself from the variety of
10 applications of Aroclors that it proudly espoused a few years earlier. In a press release, the
11 company claimed, “What should be emphasized . . . is that PCB was developed over 40 years
12 ago primarily for use as a coolant in electrical transformers and capacitors. It is also used in
13 commercial heating and cooling systems. It is not a ‘household’ item.” Yet, in 1970, Monsanto
14 was still marketing and selling Aroclor as a compound for use in common household items.

15 **F. Monsanto Concealed the Harmful Effects of PCBs From Consumers and**
16 **Government Entities.**

17 82.

18 While the scientific community and Monsanto knew that PCBs were toxic and becoming
19 a global contaminant, Monsanto repeatedly misrepresented those facts, telling consumers, the
20 public, and government entities the exact opposite—that the compounds were not toxic and that
21 the company would not expect to find PCBs in the environment in a widespread manner.

22 83.

23 For example, in a March 24, 1969, letter to Los Angeles County Air Pollution Control
24 District, Monsanto advised that the Aroclor compounds “are not particularly toxic by oral
25 ingestion or skin absorption.” Addressing reports of PCBs found along the West Coast,
26 Monsanto claimed ignorance as to their origin, explaining that “very little [Aroclor] would

1 normally be expected either in the air or in the liquid discharges from a using industry.” A
2 similar Monsanto letter to the Regional Water Quality Control Board explained that PCBs are
3 associated with “no special health problems” and “no problems associated with the
4 environment.”

5 84.

6 In May 1969, Wheeler spoke with a representative of the National Air Pollution Control
7 Administration, who promised to relay to Congress the message that Monsanto “cannot conceive
8 how the PCBs can be getting into the environment in a widespread fashion.” This is the same
9 Wheeler who, only seven months later, circulated internally to Monsanto executives laboratory
10 reports showing that PCBs were as toxic as DDT in mammals.

11 85.

12 Monsanto delivered the same message to the New Jersey Department of Conservation in
13 July 1969, claiming first that, “[b]ased on available data, manufacturing and use experience, we
14 do not believe the PCBs to be seriously toxic.” The letter then reiterated Monsanto’s position
15 regarding environmental contamination: “We are unable at this time to conceive of how the
16 PCBs can become wide spread in the environment. It is certain that no applications to our
17 knowledge have been made where the PCBs would be broadcast in the same fashion as the
18 chlorinated hydrocarbon pesticides have been.”

19 **G. Land, Waters, and Natural Resources Owned or Held in Trust by the State**
20 **of Oregon Have Been Impaired by PCB Contamination.**

21 86.

22 The State of Oregon, by and through the Department of State Lands (DSL), owns or
23 holds in trust for the benefit of the public approximately 2.8 million acres of land, as well as the
24 waters of all navigable or tidally influenced rivers, waterways, and lakes within the State. The
25 remaining surface and groundwater, from all sources of supply and prior to capture, is also held
26

1 in trust by the State for the benefit of the public. The State, as trustee, holds title to such waters
2 subject to the public's right to use the water for various beneficial purposes.

3 87.

4 In its capacity as trustee of all natural resources situated within its borders, the State has
5 the authority to protect and preserve, for the benefit of the public, those natural resources,
6 including public waters, from impairment and harm.

7 88.

8 As a result of Monsanto's manufacture, sale, and distribution of PCBs throughout the
9 United States, including in Oregon, Monsanto's PCBs continue to persist throughout Oregon's
10 natural environment.

11 89.

12 Pursuant to its authority under state law, the State has investigated, monitored, and
13 detected the presence of PCBs on its lands, in its waters, and in various wildlife species and other
14 public trust resources within its borders.

15 90.

16 State-owned waters in which PCBs are known to persist include but are not limited to:

- 17 a. Portland Harbor,
- 18 b. Lower Columbia River,
- 19 c. Middle Columbia River,
- 20 d. Coos Bay,
- 21 e. Columbia Slough,
- 22 f. Johnson Creek,
- 23 g. Coffee Lake Creek,
- 24 h. Mill Creek,
- 25 i. Pringle Creek,
- 26 j. Willamette River,

- 1 k. Tualatin River,
- 2 l. Upper and Lower John Day Rivers,
- 3 m. Middle Fourth Lake, and
- 4 n. Muddy Creek.

5 The Portland Harbor

6 91.

7 The area of the lower Willamette River immediately upstream of its confluence with the
8 Columbia River generally is known as the “Portland Harbor.” In December 2000, EPA, pursuant
9 to its authority under the federal Comprehensive Environmental Response, Compensation, and
10 Liability Act (“CERCLA”), identified the Portland Harbor area as a “Superfund Site” and placed
11 it on the National Priorities List.

12 92.

13 The Portland Harbor Superfund Site includes an approximate 10-mile stretch of the
14 Willamette River, between river mile (RM) 1.9 and RM 11.8.³¹ The upstream end of the
15 Portland Harbor Superfund Site is currently located near the Broadway Bridge in downtown
16 Portland. The Superfund Site area is approximately 2,190 acres and includes both in-river and
17 upland areas.

18 93.

19 The presence of PCBs in the lower Willamette River, the lower Columbia River,
20 Multnomah Channel, and the sediments of those waterways, was a significant factor in EPA’s
21 decision to place the Portland Harbor on the National Priorities List and require potentially
22 responsible parties to remediate PCB-related contamination.

23

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26 ³¹ Measured from confluence of the Willamette River with the Columbia River.

1 94.

2 The Portland Harbor is characterized by its wide variety of commercial, industrial,
3 residential, recreational, and agricultural uses. Its waterfront land and harbor uses generally
4 consist or consisted of ship building; wood products manufacturing and treating; metal recycling,
5 production, and fabrication; manufactured gas production; electrical production and distribution;
6 fuel storage; asphalt manufacturing; marine operations; and rail.

7 95.

8 Many of the industrial landowners and users along the Portland Harbor waterfront
9 handled, used, and disposed of Monsanto's PCBs or PCB-containing materials. Transformers
10 used in wood products manufacturing and treatment operations, for instance, contained PCBs
11 that were released into the natural environment. Ancillary operations associated with metal
12 recycling, production, and fabrications were known to cause releases of PCBs used in hydraulic
13 fluids and other products. Industrial uses relating to electrical production and distribution
14 resulted in the handling and disposal of dielectric fluids containing PCBs. PCBs are also known
15 contaminants associated with steel mills, smelters, foundries, and railyards, all of which are
16 significant components of the Portland Harbor industrial landscape.

17 96.

18 Four categories of entities are jointly and severally liable to clean up and remediate a
19 contaminated site: the current owners or operators of the site, the owners or operators of the site
20 at the time the hazardous materials were disposed of at the site, anyone who generated hazardous
21 waste that was disposed of at the site or who arranged to dispose of hazardous material at the
22 site, and anyone who transported hazardous material to the site.³² Together, these parties are
23 known as "potentially responsible parties" ("PRPs").

24
25 _____
26 ³² See Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a) (2016).

1 97.

2 The State, by and through DSL, holds the bed and banks of the lower Willamette River,
3 the Columbia River, and Multnomah Channel, including the Portland Harbor Superfund Site, in
4 trust for the people of Oregon. As a result, EPA has identified the State of Oregon as a PRP in
5 the Portland Harbor.³³ As a PRP, the State, through DSL, faces significant potential liability for
6 cleanup costs in the Portland Harbor, and has already spent millions of dollars in defense and
7 investigation costs related to the presence of PCBs in the Portland Harbor.

8 98.

9 EPA has also identified the State of Oregon, by and through its Department of
10 Transportation (ODOT), as a PRP in the Portland Harbor. As a PRP, the State, through ODOT,
11 faces significant potential liability for cleanup costs in the Portland Harbor, and has already spent
12 millions of dollars in defense costs related to the presence of PCBs in the Portland Harbor.

13 Other State-Owned Waterways

14 99.

15 The State has also investigated, monitored, and detected the presence of PCBs in certain
16 other state-owned waterways at concentrations that are hazardous to human health and the
17 environment. Those waterways include, but are not limited to, the following:

- 18 a. The Lower Columbia River, between RM 0 and RM 142, contains elevated levels
19 of PCBs. Levels of PCBs in excess of health criteria have been measured in
20 various species of fish, and the Oregon Health Authority has issued fish
21 consumption advisories pertaining to all resident fish in the one-mile section of
22 the waterway between Bonneville Dam at Bradford Island and Ruckel Creek, and
23 a crayfish and clam advisory for the pool behind Bonneville Dam, due to elevated
24

25 ³³ EPA Region 10, Portland Harbor Superfund Site, List of Potentially Responsible Parties,
26 *available at* https://www3.epa.gov/region10/pdf/ph/uplands/gnl_address_list_september_2014.pdf (last visited Dec. 6, 2017).

1 PCB levels. Studies have also shown that the reproductive patterns of the bald
2 eagle have been impaired in areas along the Lower Columbia River as a result of
3 PCB contamination.

4 b. The Middle Columbia River, between RM 142 and RM 287.1, contains elevated
5 levels of PCBs. Levels of PCBs in excess of health criteria have been measured
6 in various species of fish, and the Oregon Health Authority has issued fish
7 consumption advisories pertaining to all resident fish in the section of the
8 waterway between Ruckel Creek and McNary Dam as a result of PCB
9 contamination.

10 c. Coos Bay, between RM 7.8 and 12.3, contains elevated levels of PCBs. PCB
11 concentrations throughout Coos Bay exceed guideline values.

12 d. The Clackamas River, between RM 0 and 22.9, contains elevated levels of PCBs.
13 PCB concentrations throughout the Clackamas River exceed guideline values.

14 e. Columbia Slough, between RM 0 and 8.5, contains elevated levels of PCBs.
15 Levels of PCBs in excess of health criteria have been measured in various species
16 of fish, and the Oregon Health Authority has issued fish consumption advisories
17 pertaining to all resident fish in the waterway as a result of PCB contamination.

18 f. Johnson Creek, between RM 0 and 23.7, contains elevated levels of PCBs.
19 Studies performed by the Oregon Department of Environmental Quality (DEQ)
20 show that levels of PCBs are steadily increasing.

21 g. Coffee Lake Creek, between RM 0 and 5, contains elevated levels of PCBs. PCB
22 concentrations throughout Coffee Lake Creek exceed guideline values.

23 h. Mill Creek, between RM 0 and 25.7, contains elevated levels of PCBs. PCB
24 concentrations throughout Mill Creek exceed guideline values.

25 i. Pringle Creek, between RM 0 and 6.2, and its tributary between RM 0 and 2.8,
26 both contain elevated levels of PCBs. PCB concentrations throughout both

1 reaches exceed guideline values. The waters of Pringle Creek and its tributary
2 provide aquatic and wildlife habitat and are used for fishing, recreation, and
3 drinking water consumption.

4 j. The Willamette River, between RM 0 and 72, contains elevated levels of PCBs.
5 PCB concentrations throughout the reach exceed guideline values. Levels of
6 PCBs in excess of health criteria have been measured in various species of fish.
7 The waters of the Willamette River provide aquatic and wildlife habitat and are
8 used for fishing, recreation, and drinking water consumption.

9 k. Middle Fourth Lake, in the Upper Willamette watershed, contains elevated levels
10 of PCBs. The waters of Middle Fourth Lake provide aquatic and wildlife habitat
11 and are used for fishing, recreation, and drinking water consumption. The lake is
12 also known as a resource for anadromous fish passage.

13 l. Muddy Creek, between RM 0 and 56.2, and in its tributary between RM 0 and
14 1.2, both contain elevated levels of PCBs. PCB concentrations throughout both
15 reaches exceed guideline values. The waters of Muddy Creek and its tributary
16 provide habitat for local aquatic life and other animals.

17 100.

18 The waters described above, among others, constitute essential habitat for various species
19 of fish, birds, invertebrates, reptiles, mammals, and plants. The presence of PCBs in those
20 waters has caused the contamination of, and in some cases injury to or destruction of, fish,
21 wildlife, and fish and wildlife habitat throughout Oregon.

22 Orphan Sites

23 101.

24 “Orphan Sites” are properties not owned by the State that have been contaminated by a
25 release of hazardous substances posing serious threats to human health or the environment and
26 for which no responsible party is currently known or able to pay remediation costs, or for other

1 reasons called for DEQ to take action before identifying a responsible party. Oregon law permits
2 DEQ to undertake any removal or remedial actions necessary to protect public health, safety,
3 welfare, and the environment, and authorizes the State, by and through DEQ, to take any action
4 necessary to conduct such removal or remedial actions and to carry out the policies and
5 provisions of Oregon's environmental laws.

6 102.

7 Pursuant to that authority, DEQ has conducted PCB-related removal and/or remediation
8 activities, including but not limited to monitoring, testing, investigating, sampling, planning,
9 engineering, design, construction, maintenance, or enforcement, at the following designated
10 Orphan Sites:

- 11 a. Orphan Site No. 88, designated as Nuway Oil Company and located in
12 Multnomah County;
- 13 b. Orphan Site No. 139, designated as NW Pipe & Casing Parcels A & B and
14 located in Clackamas County;
- 15 c. Orphan Site No. 178, designated as the UPRR Albina Yard and located in
16 Multnomah County;
- 17 d. Orphan Site No. 277, designated as the University of Portland River Campus and
18 located in Multnomah County;
- 19 e. Orphan Site No. 764, designated as Black Dog Slough and located in Linn
20 County;
- 21 f. Orphan Site No. 1370, designated as the Astoria Plywood Corporation and
22 located in Clatsop County;
- 23 g. Orphan Site No. 1383, designated as Stantosh Landfill and located in Columbia
24 County;
- 25 h. Orphan Site No. 1703, designated as Burns Air Force Station and located in
26 Harney County;

- 1 i. Orphan Site No. 1906, designated as Mid-Coast Marine and located in Coos
2 County;
- 3 j. Orphan Site No. 2082, designated as Hoy's Marine and located in Lincoln
4 County;
- 5 k. Orphan Site No. 2251, designated as Killingsworth Fast Disposal Landfill and
6 located in Multnomah County;
- 7 l. Orphan Site No. 2352, designated as Marine Finance Company and located in
8 Multnomah County;
- 9 m. Orphan Site No. 2382, designated as Merrill Auto Wrecking, Inc. and located in
10 Tillamook County; and
- 11 n. Orphan Site No. 3314, designated as B&M Equipment and located in Malheur
12 County.

13 103.

14 The State has incurred significant remediation costs associated with cleanup activities on
15 designated Orphan Sites. The State anticipates that it will incur additional remedial action costs
16 as necessary to complete the recommended remediation activities on the designated Orphan
17 Sites.

18 Other State-Owned Lands and Public Trust Resources

19 104.

20 In addition to the Orphan Sites described above, the State, primarily through DSL and
21 ODOT, owns various other properties throughout the State, many of which have been impacted
22 by the presence of Monsanto's PCBs. Those properties include, but are not limited to, upland
23 properties nearby or adjacent to waterways contaminated by PCBs and public rights-of-way
24 along roadways owned and managed by ODOT.

25

26

1 105.

2 Additionally, Monsanto's PCBs have been detected in the tissues of various fish and
3 wildlife species throughout Oregon. Among those include fish species sampled from the
4 following watershed areas: Alsea, Applegate, Clackamas, Coast Fork Willamette, Coos,
5 Coquille, Donner and Blitzen, Little Deschutes, Lost, Lower Columbia, Lower Crooked, Lower
6 Deschutes, Lower John Day, Lower Rogue, Lower Willamette, McKenzie, Middle Columbia-
7 Hood, Middle Columbia-Lake Wallula, Middle Fork Willamette, Middle Owyhee, Middle
8 Rogue, Middle Snake-Payette, Middle Snake-Succor, Middle Willamette, Necanicum, Nehalem,
9 North Santiam, Siletz-Yaquina, Siuslaw, Sixes, South Umpqua, Tualatin, Umatilla, Umpqua,
10 Upper Crooked, Upper Deschutes, Upper John Day, Upper Klamath Lake, Upper Willamette,
11 Wilson-Trask-Nestucca, and Yamhill.

12 106.

13 Through the process of bioaccumulation, the concentrations of Monsanto's PCBs in the
14 fish species described above will only continue to increase. And, when other Oregon
15 predators—*e.g.*, an eagle or other bird, whale, or human—eats any of the fish species in the
16 Oregon watersheds listed above, the concentration of PCBs will increase yet again. The PCBs
17 will remain in the predators' fatty tissues and will cause significant adverse effects to their health
18 and to their surrounding environment.

19 **FIRST CLAIM FOR RELIEF**
20 **(Public Nuisance)**

21 107.

22 Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set
23 forth herein.

1 108.

2 Defendants' production and use of PCBs in the various chemical and industrial
3 applications described above caused the continuous presence of PCBs on lands and in waters
4 owned, controlled, or held in trust by the State.

5 109.

6 The continuous presence of PCBs on lands and in waters that Plaintiff owns or holds in
7 trust for the benefit of the public presents significant risks to the health of humans, fish, wildlife,
8 and the environment in the State of Oregon and constitutes an unreasonable and unnatural
9 interference with the use of such lands and waters, which is contrary to the public policy of this
10 state.

11 110.

12 The continuous presence of PCBs on lands and in rivers, waterways, and lakes that
13 Plaintiff owns or holds in trust for the benefit of the public constitutes a *per se* public nuisance.

14 111.

15 The continuous presence of PCBs on lands and in rivers, waterways, and lakes that the
16 State owns or holds in trust for the benefit of the public substantially, continuously, and
17 unreasonably interferes with interests and rights of the general public to be free from injury to
18 public health, safety, and welfare. It further interferes with the interests of the general public in
19 the preservation of Oregon's natural resources—including fish, wildlife, and habitat—which the
20 State is obligated to hold in trust for the benefit of, and for use by, members of the general
21 public. As alleged above, Oregon has also incurred significant costs at Orphan Sites and
22 elsewhere in abating the nuisance caused by Defendants.

23 112.

24 As early as 1937, Defendants knew, should have known, or were reckless in not knowing
25 that once the PCBs that it had produced were released into the environment, such interferences
26 with the interests of the general public were substantially certain to occur.

1 113.

2 Defendants' internal communications about the toxic and carcinogenic properties of
3 PCBs make clear that Defendants understood that, once PCBs were released into the
4 environment, it was highly probable that the PCBs would remain in the environment and present
5 serious risks to the health of humans, wildlife, and the environment. Defendants continued,
6 however, to release PCBs into the environment without informing the general public of those
7 toxic and carcinogenic properties.

8 114.

9 By way of their decisions to release PCBs into the environment on a widespread basis
10 without informing the general public of the risks that PCBs presented to the health of humans,
11 fish, wildlife, and the environment, Defendants engaged in ultrahazardous conduct and acted in a
12 manner that was consciously indifferent to the health, safety, and welfare of the general public
13 and the natural environment.

14 115.

15 As a result of Defendants' conduct, Plaintiff has incurred damages and is entitled to
16 compensation therefor. Plaintiff also seeks abatement of the nuisance caused by Defendants that
17 has not yet been cleaned up or remediated. Plaintiff further intends to amend this Complaint to
18 seek punitive damages pursuant to ORS 31.725.

19 **SECOND CLAIM FOR RELIEF**
20 **(Purpresture)**

21 116.

22 Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set
23 forth herein.

1 117.

2 Defendants' production and use of PCBs in the various chemical and industrial
3 applications described above have resulted in the continuous presence of PCBs on lands and in
4 waters to which Plaintiff holds title as described in this Complaint.

5 118.

6 The continuous presence of PCBs on lands and in waters to which Plaintiff holds title
7 constitutes an encroachment on public rights by appropriation for private use, in violation of the
8 proprietary ownership interest that the State holds in those lands and waters.

9 119.

10 The presence of those PCBs on lands and in waters to which Plaintiff holds title interferes
11 with public navigation by, for example, increasing the costs of dredging, and interferes with the
12 public use and enjoyment of lands and waterways held by the State by limiting fishing,
13 swimming, and other uses of those lands and waterways.

14 120.

15 The continuous presence of PCBs on and in waters to which Plaintiff holds title is a direct
16 result of and is caused by Defendants' manufacture and sale of PCBs, and that presence
17 constitutes a purpresture.

18 121.

19 As a result of Defendants' conduct, Plaintiff has incurred damages and is entitled to
20 compensation therefor. Plaintiff also seeks abatement of PCB-related contamination on all lands
21 and in all waters to which Plaintiff holds title. Plaintiff further intends to amend this Complaint
22 to seek punitive damages pursuant to ORS 31.725.

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**THIRD CLAIM FOR RELIEF
(Trespass)**

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122.

Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

123.

Defendants’ production and use of PCBs in the various chemical and industrial applications described above has resulted in the continuous presence of PCBs on lands, in waters, and in other public trust resources that Plaintiff owns, possesses, controls, or holds in trust for the benefit of the public.

124.

The presence of PCBs on Plaintiff’s property—including land, waters, and other public trust resources—interferes with Plaintiff’s interest in the exclusive possession of that property and thereby constitutes a trespass. Defendants’ conduct allowed or caused that interference to occur. Their conduct was and is negligent, reckless, intentional, and/or abnormally dangerous. Defendants had no license or other authorization to enter onto or leave contaminants on property that Plaintiff possesses. Any compliance by Defendants with applicable laws or permit conditions does not excuse Defendants’ interference.

125.

As early as 1937, Defendants knew that once the PCBs that it produced were released into the environment, they were likely to remain in, and be transported throughout, the environment on a widespread basis. Thus, as early as 1937, Defendants knew, should have known, or were reckless in not knowing, that Defendants’ decision to continue to release PCBs into the environment would likely result in interferences with the interests that Plaintiff has in the exclusive possession of its property.

1 126.

2 The interference that Defendants' conduct has caused with Plaintiff's exclusive
3 possession of property that Plaintiff owns, possesses, controls, or holds in trust for the benefit of
4 the public is a continuing interference that, since at least the 1960s, Defendants have known of or
5 have allowed to persist.

6 127.

7 By way of their decisions to release PCBs into the environment on a widespread basis
8 without informing the general public of the risks that PCBs present to the health of humans, fish,
9 wildlife, and the environment, Defendants engaged in ultrahazardous conduct.

10 128.

11 As a result of Defendants' conduct, Plaintiff has incurred damages and is entitled to
12 compensation therefor. Plaintiff further intends to amend this Complaint to seek punitive
13 damages pursuant to ORS 31.725.

14 **FOURTH CLAIM FOR RELIEF**
15 **(Equitable Indemnity)**

16 129.

17 Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set
18 forth herein.

19 130.

20 Oregon law provides the State, by and through DEQ, the authority to undertake remedial
21 action when necessary or appropriate to abate hazards to the public health, safety, welfare, and
22 the environment. Pursuant to that authority, the State may use funds available from the
23 Hazardous Substance Remedial Action Fund ("the Fund") when remedial action is necessary at
24 Orphan Sites—*i.e.*, sites not owned by the State for which the party responsible for the
25 contamination is unknown, unwilling, or unable to undertake the recommended remedial action.
26

1 The purpose of the Fund, and the purpose of any remedial action paid for by the Fund, are to
2 protect public health, safety, welfare, or the environment.

3 131.

4 Plaintiff has incurred significant costs to monitor, investigate, and remediate the
5 existence of PCBs at designated Orphan Sites. Given the number of Orphan Sites contaminated
6 by PCBs and for which the State may assume responsibility in the immediate future, Plaintiff
7 anticipates that it will incur significant additional remedial action costs.

8 132.

9 Plaintiff, through DEQ, has also incurred costs associated with its roles as lead agency for
10 source control actions at various Portland Harbor upland sites and as support agency for EPA's
11 in-water cleanup in areas throughout the Portland Harbor. A portion of those costs will not be
12 reimbursed to Plaintiff by other responsible parties or by EPA. Additionally, Plaintiff, through
13 DSL and ODOT, has received general notice letters identifying DSL and ODOT as PRPs in the
14 Portland Harbor. As PRPs, DSL and ODOT potentially will incur a share of liability for
15 remedial action costs associated with PCB contamination in areas throughout the Harbor.

16 133.

17 Plaintiff, though DEQ, has incurred additional costs to develop and administer its toxic
18 monitoring program and to develop Total Maximum Daily Load (TMDL) estimates for certain
19 waterways known to be contaminated by Monsanto's PCBs, among other regulatory costs related
20 to PCBs.

21 134.

22 Defendants, not Plaintiff, are responsible for the presence of PCBs, and the
23 contamination, trespass, and nuisance resulting therefrom, on each of the designated
24 Orphan Sites and in other areas throughout the State for which Plaintiff has incurred or will incur
25 remedial action, toxic monitoring, or other costs. Plaintiff did not contribute in any way to the
26 presence of PCBs on any properties within its borders, or to the contamination, trespass, or

1 nuisance resulting therefrom. Accordingly, Defendants, and not Plaintiff, are liable for
2 associated damages arising from the presence of Defendants' PCBs on any of those properties.

3 135.

4 As a result, as between Defendants and Plaintiff, Defendants should ultimately be
5 responsible for the payment of remedial action costs, including costs to monitor, investigate, and
6 clean up PCB contamination in the areas described above.

7 **FIFTH CLAIM FOR RELIEF**
8 **(Unjust Enrichment)**

9 136.

10 Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set
11 forth herein.

12 137.

13 Under the laws of Oregon, Monsanto owed a duty to Plaintiff and to the public to prevent
14 its PCBs from interfering with the use and/or possession of property it does not own and from
15 causing harm to human health and the environment.

16 138.

17 Defendants' production and use of PCBs in the various chemical and industrial
18 applications described above have resulted in the continuous presence of PCBs on lands and in
19 waters that Plaintiff owns, possesses, controls, or holds in trust for the benefit of the public,
20 including but not limited to State-owned lands, State-owned waterways, and Orphan Sites.

21 139.

22 The presence of Defendants' PCBs on lands and in waters that Plaintiff owns, possesses,
23 controls, or holds in trust for the benefit of the public poses an ongoing, serious threat to
24 Oregon's public health, safety, welfare, and the environment. As described above, Defendants'
25 PCBs already have caused, and will continue to cause, significant damage to, among other
26 resources, Oregon's fish and wildlife and habitat areas.

1 140.

2 Because of the damage that PCBs have caused to the natural environment, and in order to
3 abate continuing hazards that PCBs pose to public health, safety, welfare, and the environment,
4 Plaintiff has undertaken remedial actions to monitor, investigate, and remove the PCBs in
5 contaminated areas. As a result, Plaintiff has incurred significant remedial action costs. Based
6 on information gathered through toxic monitoring and investigation, Plaintiff anticipates that it
7 will incur additional remedial action and other costs to monitor, investigate, and abate continuing
8 hazards to public health, safety, welfare, and the environment.

9 141.

10 By way of Plaintiff having undertaken remedial actions necessary to abate the hazard
11 created by Defendants' PCBs, certain economic benefits, including but not limited to the
12 following, have been conferred upon or acquired by Defendants:

- 13 a. Reduction in the costs Defendants would have incurred, or in the future will incur, to
14 monitor and investigate the existence of and damages caused by the presence of PCBs
15 in Oregon's natural environment;
- 16 b. Reduction in the costs that Defendants would have incurred, or in the future will
17 incur, to remediate the damages caused by the presence of PCBs in the natural
18 environment, including damages to Oregon's lands, waters, fish, wildlife, and habitat
19 areas;
- 20 c. Other and further economic benefits relating to the existence of Monsanto's PCBs in
21 Oregon's natural environment, the retention of which by Monsanto would be unjust.

22 142.

23 Given its duty and otherwise legally enforceable obligation to prevent its PCBs from
24 interfering with the use and/or possession of property it does not own and from causing harm to
25 human health and the environment, Defendants' retention of the benefits described above,
26 without compensation therefor, would be unjust.

1 143.

2 As a result, and to prevent Defendants from being unjustly enriched by its retaining the
3 economic benefits described above, Plaintiff seeks restitution.

4 **NOTICE OF INTENT TO AMEND**

5 144.

6 Plaintiff will serve on Defendants a notice demanding compensation for the value of the
7 fish, wildlife, and fish and wildlife habitat injured or destroyed and the cost of restoring wildlife
8 production in the affected areas described above. If Defendant fails to satisfy Plaintiff's demand
9 within 60 days of service thereof, Plaintiff intends to amend this Complaint to seek relief
10 pursuant to ORS 468B.060.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for:

- 13 1. An order to abate the public nuisance caused by the continuous presence of PCBs
14 on lands and in waters that the State owns, possesses, controls, or holds in trust
15 for the benefit of the public; an order to remove and remediate PCB-related
16 contamination on all lands and in all waters that the State owns, possesses,
17 controls, or holds in trust for the benefit of the public; an order of restitution in an
18 amount be proven at trial; and/or an award of damages in an amount to be proven
19 at trial, but not less than \$100 million;
- 20 2. Prejudgment interest on all claims as provided by law;
- 21 3. Post-judgment interest on all claims as provided by law;
- 22 4. Attorneys' fees and litigation costs as provided by law; and
- 23 5. For other such relief as this Court deems just and proper.

24 **JURY DEMAND**

25 Plaintiff hereby demands a trial by jury.


26

1 DATED January 4, 2018.

2 Respectfully submitted,

3 ELLEN F. ROSENBLUM
4 Attorney General

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