

1. Proposed Class Counsel filed the Preliminary Approval Motion on July 10, 2023. The Preliminary Approval Motion attached as exhibits, among other things, a Proposed Order Granting Preliminary Approval of Settlement Agreement (the “Proposed Preliminary Approval Order”) (ECF No. 4-1) and a Class Action Settlement Agreement (the “DuPont Entities Settlement Agreement”) (ECF No. 4-2.)

2. After filing of the Preliminary Approval Motion, the Sovereigns requested additional time to communicate issues that they sought clarification upon, and if such items could not be adequately addressed, for additional time to respond to Plaintiffs’ Preliminary Approval Motion (ECF No. 14), which the Court granted (ECF No. 15).

3. Proposed Class Counsel, the DuPont Entities, and the Sovereigns have met and conferred about the issues raised by the Sovereigns concerning the DuPont Entities Settlement Agreement. Those discussions have resulted in the agreements set forth herein.

4. Proposed Class Counsel and the DuPont Entities have agreed to the clarifications and modifications of the DuPont Entities Settlement Agreement and the Proposed Preliminary Approval Order reflected in the attached redlines at Ex. A and Ex. B, respectively.

5. The Sovereigns have agreed that, with these clarifications and modifications, they do not oppose the Preliminary Approval Motion [2:23-cv-03230-RMG, ECF 3; 2:18-mn-2873, ECF No. 3393]. A short summary of the clarifications and modifications set forth in the attached redlines follows:

6. The parties agreed to revise the definition of Releasing Persons. Ex. A, ¶ 2.45.²

² Capitalized terms shall have the same meaning as set forth in the DuPont Entities Settlement Agreement and accompanying exhibits.

7. The parties agreed to extend the deadline for Requests for Exclusion to 90 days. Ex. A, ¶ 9.7.2. *See also* Ex. B. at 2 (revising the Order Granting Preliminary Approval of Settlement Agreement).

8. The parties agreed to amend the provision regarding Protection Against Claims-Over. Ex. A, ¶¶ 12.7.1, 12.7.5.

9. The parties agreed to a modification to the section of the Proposed Preliminary Approval Order regarding the Stay Order and Injunction. Ex. B at 3.

10. In addition, as part of this agreement, Proposed Class Counsel have confirmed to the Sovereigns that they have always intended to establish a settlement-specific website with information that will allow Class Members to derive a good faith estimate of what they may receive under the DuPont Entities Settlement Agreement if they participate in it, which is in process. This reference material is a good faith estimate only and not the actual settlement awards because allocations depend on data that is not publicly available, the extent of participation rates among Class Members is unknown, and the full extent of Impacted Water Sources is unknown. These factors are unknowable until all Claims Forms have been submitted and processed; however, the reference material will nonetheless prove useful in providing a good faith estimate and will be available on the settlement-specific website.

Accordingly, the parties and the Sovereigns respectfully request that the Court consider the attached clarifications and modifications as part of the proposed DuPont Entities Settlement Agreement and the Proposed Preliminary Approval Order.

Dated: August 7, 2023

Respectfully submitted,

/s/ Michael A. London

Michael A. London
Douglas and London PC
59 Maiden Lane, 6th Floor
New York, NY 10038
212-566-7500
212-566-7501 (fax)
mlondon@douglasandlondon.com

/s/ Paul J. Napoli

Paul J. Napoli
Napoli Shkolnik
1302 Avenida Ponce de León
San Juan, Puerto Rico 00907
Tel: (833) 271-4502
Fax: (646) 843-7603
pnapoli@nsprlaw.com

/s/ Scott Summy

Scott Summy
Baron & Budd, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219
214-521-3605
ssummy@baronbudd.com

/s/ Elizabeth A. Fegan

Elizabeth A. Fegan
Fegan Scott LLC
150 S. Wacker Drive, 24h Floor
Chicago, IL 60606
312-741-1019
beth@feganscott.com

Proposed Class Counsel

CONSENTED TO BY:

By: /s/ Graham W. Meli
Jeffrey M. Wintner
Graham W. Meli
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019

Counsel for The Chemours Company and The Chemours Company FC, LLC

By: /s/ Kevin T. Van Wart, P.C.
Kevin T. Van Wart, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654

Counsel for DuPont de Nemours, Inc.

By: /s/ Michael T. Reynolds
Michael T. Reynolds
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 1001

Counsel for Corteva, Inc., and E.I. DuPont de Nemours and Company n/k/a EIDP, Inc.

By: /s/ Curtis Cox
STATE OF ARIZONA
KRISTIN K. MAYES
Arizona Attorney General
State of Arizona
Curtis Cox
Assistant Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
Telephone: (602) 542-7781
Environmental@azag.gov

Attorneys for the State of Arizona

By: /s/ Nicholas G. Campins

**THE PEOPLE OF THE STATE OF CALIFORNIA
ROB BONTA**

Attorney General of California

EDWARD H. OCHOA (SBN 144842)
Senior Assistant Attorney General
JEREMY M. BROWN (SBN 269159)
Supervising Deputy Attorney General
NICHOLAS G. CAMPINS (SBN 238022)
BRENDAN J. HUGHES (SBN 333690)
Deputy Attorneys General
1515 Clay Street, 20th Floor
Oakland, CA 94612
Telephone: (510) 879-0801
Fax: (510) 622-2270
Email: Nicholas.Campins@doj.ca.gov

Attorneys for the People of the State of California, ex rel. Rob Bonta, Attorney General of California

By: /s/ Heather Kelly

**STATE OF COLORADO
PHILIP J. WEISER**

ATTORNEY GENERAL

PHILIP J. WEISER, Attorney General
LESLIE EATON
HEATHER KELLY
CARRIE NOTEBOOM
First Assistant Attorneys General
Ralph L. Carr Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203
Telephone: (720) 508-6000
FAX: (720) 508-6040

Attorneys for the State of Colorado

By: /s/ Matthew I. Levine

**STATE OF CONNECTICUT
WILLIAM TONG**

Attorney General

Matthew I. Levine
Deputy Associate Attorney General
Christopher Kelly
Assistant Attorney General
165 Capitol Avenue
Hartford, CT 06106
Telephone: 860-808-5052
Email: Matthew.Levine@ct.gov
Christopher.Kelly@ct.gov

Attorneys for the State of Connecticut

By: /s/ Wesley Rosenfeld

DISTRICT OF COLUMBIA

BRIAN L. SCHWALB

Attorney General for the District of Columbia

JENNIFER C. JONES

Deputy Attorney General

Public Advocacy Division

ARGATONIA D. WEATHERINGTON

Chief, Social Justice Section

WESLEY ROSENFELD

Assistant Attorney General

LAUREN CULLUM

Special Assistant Attorney General

Office of the Attorney General for the District of Columbia

400 Sixth Street NW, 10th Floor

Washington, D.C. 20001

Tel: 202.368.2569

wesley.rosenfeld1@dc.gov

lauren.cullum@dc.gov

EDELSON PC

JIMMY ROCK

1255 Union St NE, 7th Floor

Washington, D.C. 20002

Tel: 202.270.4777

jrock@edelson.com

Attorneys for the District of Columbia

By: /s/ Wade H. Hargrove III

STATE OF HAWAII

ANNE E. LOPEZ

Attorney General

WADE H. HARGROVE, III

Deputy Attorney General

465 S. King Street, #200

Honolulu, Hawaii 96813

(808) 587-3050

Wade.H.Hargrove@hawaii.gov

Attorneys for the State of Hawaii

By: /s/ Matthew F. Pawa

STATE OF MAINE

AARON M. FREY

ATTORNEY GENERAL

Matthew F. Pawa

Benjamin A. Krass

Seeger Weiss LLP

1280 Centre Street, Suite 230

Newton Centre, MA 02459

(617) 641-9550

MPawa@seegerweiss.com

BKrass@seegerweiss.com

Scott Boak

Robert Martin

Assistant Attorneys General

6 State House Station

Augusta, Maine 04333

(207) 626-8566

(207) 626-8897

Scott.Boak@maine.gov

Robert.Martin@maine.gov

Kyle J. McGee

Viola Vetter

Jason H. Wilson

Grant & Eisenhofer, P.A.

123 Justison Street

Wilmington, DE 19801

(302) 622-7000

kmcgee@gelaw.com

vvetter@gelaw.com

jwilson@gelaw.com

Attorneys for the State of Maine

By: /s/ Patricia V. Tipon

STATE OF MARYLAND

ANTHONY G. BROWN

Attorney General of Maryland

PATRICIA V. TIPON

Attorney No. 0806170244

JULIE KUSPA

Attorney No. 0912160009

MATTHEW ZIMMERMAN

Attorney No. 8005010219

Assistant Attorneys General

Office of the Attorney General

1800 Washington Boulevard, Suite 6048

Baltimore, Maryland 21230

patricia.tipon@maryland.gov

matthew.zimmerman@maryland.gov

julie.kuspa@maryland.gov

(410) 537-3061

(410) 537-3943 (facsimile)

ADAM D. SNYDER

Attorney No. 9706250439

Assistant Attorney General

Office of the Attorney General

301 West Preston Street, Suite 1101

Baltimore, Maryland 21201

adam.snyder1@maryland.gov

(410) 767-1409

Attorneys for the State of Maryland

By: /s/ Nancy E. Harper

COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL

ATTORNEY GENERAL

Nancy E. Harper

Assistant Attorney General and Chief, Environmental Protection Division

Louis Dundin

Assistant Attorney General and Deputy Chief, Environmental Protection Division

I. Andrew Goldberg

Jillian Riley

Assistant Attorneys General

Office of the Attorney General

One Ashburton Place, 18th Floor

Boston, Massachusetts 02108

(617) 727-2200

betsy.harper@mass.gov

louis.dundin@mass.gov

andy.goldberg@mass.gov

jillian.riley@mass.gov

Attorneys for the Commonwealth of Massachusetts

By: /s/ Peter N. Surdo

**STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL**

Peter N. Surdo
Special Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street
Suite 1400
St. Paul, Minnesota 55101
peter.surdo@ag.state.mn.us
Phone: (651) 757-1061

Attorneys for the State of Minnesota

By: /s/ Christopher G. Aslin

**STATE OF NEW HAMPSHIRE
JOHN M. FORMELLA,
ATTORNEY GENERAL**

Christopher G. Aslin, NH Bar #18285
Senior Assistant Attorney General
Environmental Protection Bureau
NEW HAMPSHIRE DEPT. OF JUSTICE
33 Capitol Street
Concord, NH 03301
Tel: (603) 271-3650
christopher.g.aslin@doj.nh.gov

Attorneys for the State of New Hampshire

By: /s/ Gwen Farley

**STATE OF NEW JERSEY
MATTHEW J. PLATKIN**

Attorney General
GWEN FARLEY
Deputy Attorney General
Division of Law
Environmental Enforcement &
Environmental Justice Section
Hughes Justice Complex
25 Market Street, 7th Floor
P.O. Box 093
Trenton, NJ 08625-0093
Telephone: (609) 376-2740
Gwen.Farley@law.njoag.gov

Attorneys for the State of New Jersey

By: /s/ William Grantham
STATE OF NEW MEXICO
RAÚL TORREZ
ATTORNEY GENERAL

William Grantham
Assistant Attorney General
408 Galisteo Street
Santa Fe, NM 87501
wgrantham@nmag.gov
Phone: (505) 717-3520

Attorneys for the State of New Mexico

By: /s/ Muhammad Umair Khan
STATE OF NEW YORK
LETITIA JAMES
ATTORNEY GENERAL

Muhammad Umair Khan
Senior Advisor & Special Counsel
Umair.Khan@ag.ny.gov
Philip Bein
Mihir Desai
Assistant Attorneys General
Philip.Bein@ag.ny.gov
Mihir.Desai@ag.ny.gov
Office of the New York Attorney General
28 Liberty St.
New York, NY 10005
(212) 416-6685

Attorneys for the State of New York

By: /s/ Keisha Blaise
OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
Keisha Blaise

Assistant Attorney General
keisha_blaise@cnmioag.org
Hon. Juan A. Sablan Memorial Bid., Fl. 2
Caller Box 10007, Capitol Hill
Saipan, MP 96950
Telephone: (670) 237-7500

Attorneys for the Commonwealth of the Northern Mariana Islands

By: /s/ Kyle J. McGee

**STATE OF OHIO
ATTORNEY GENERAL DAVE YOST**

Kyle J. McGee
Viola Vetter
Jason Wilson
Grant & Eisenhofer P.A.
123 Justison Street
Wilmington, Delaware 19801
Tel.: (302) 622-7000
kmcgee@gelaw.com
vvetter@gelaw.com
jwilson@gelaw.com

Attorneys for the State of Ohio

By: /s/ James A. Donahue, III

**COMMONWEALTH OF PENNSYLVANIA
MICHELLE A. HENRY
ATTORNEY GENERAL**

James A. Donahue, III
First Deputy Attorney General
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, PA 17120
717-787-3391
jdonahue@attorneygeneral.gov

Attorneys for the Commonwealth of Pennsylvania

By: /s/ Guarionex Díaz Martínez

**FOR THE COMMONWEALTH OF PUERTO RICO
DOMINGO EMANUELLI HERNÁNDEZ
SECRETARY OF JUSTICE
DEPARTMENT OF JUSTICE OF PUERTO RICO
GUARIONEX DÍAZ MARTÍNEZ**

Assistant Secretary
Department of Justice
PO Box 9020192
San Juan, PR 00902-0192
Tel. 787.721.2900
gdiaz@justicia.pr.gov

EDELSON PC
JIMMY ROCK
1255 Union St NE, 7th Floor
Washington, D.C. 20002
Tel: 202.270.4777
jrock@edelson.com

Attorneys for the Commonwealth of Puerto Rico

By: /s/ Alison Hoffman

STATE OF RHODE ISLAND

**PETER F. NERONHA
ATTORNEY GENERAL**

ADI GOLDSTEIN (Bar No. 6701)
MIRIAM WEIZENBAUM (Bar No. 5182)
SARAH W. RICE (Bar No. 10588)
ALISON HOFFMAN (Bar No. 9811)
DEPARTMENT OF THE ATTORNEY GENERAL
150 South Main Street
Providence, RI 02903
Tel. (401) 274-4400
agoldstein@riag.gov
mweizenbaum@riag.gov
srice@riag.gov
ahoffman@riag.gov

Attorneys for the State of Rhode Island

By: /s/ Sohnia Hong

STATE OF TENNESSEE

**JONATHAN SKRMETTI (BPR No. 31551)
ATTORNEY GENERAL AND REPORTER**

Sohnia W. Hong (BPR No. 17415)
Deputy Attorney General
Amanda E. Callihan (BPR No. 035960)
Senior Assistant Attorney General
Office of the Tennessee Attorney General
Environmental Division
P.O. Box 20207
Nashville, Tennessee 37202
Sohnia.Hong@ag.tn.gov
Amanda.Callihan@ag.tn.gov

Attorneys for the State of Tennessee

By: /s/ Katie B. Hobson

STATE OF TEXAS

ANGELA COLMENERO

PROVISIONAL ATTORNEY GENERAL

KATIE B. HOBSON

Assistant Attorney General

State Bar No. 24082680

BRITTANY WRIGHT

Assistant Attorney General

State Bar No. 24130011

KELLIE E. BILLINGS-RAY

Deputy Chief

State Bar No. 24042447

Environmental Protection Division

P. O. Box 12548, MC-066

Austin, Texas 78711-2548

Tel: (512) 463-2012

Katie.Hobson@oag.texas.gov

Brittany.Wright@oag.texas.gov

Kellie.Billings-Ray@oag.texas.gov

Attorneys for the State of Texas

By: /s/ Laura B. Murphy

**STATE OF VERMONT
CHARITY R. CLARK
ATTORNEY GENERAL**

Laura B. Murphy
Assistant Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-3186
laura.murphy@vermont.gov

Matthew F. Pawa
Benjamin A. Krass
Seeger Weiss LLP
1280 Centre Street, Suite 230
Newton Centre, MA 02459
(617) 641-9550
MPawa@seegerweiss.com
BKrass@seegerweiss.com

Kyle J. McGee
Viola Vetter
Jason H. Wilson
Grant & Eisenhofer, P.A.
123 Justison Street
Wilmington, DE 19801
(302) 622-7000
kmcgee@gelaw.com
vvetter@gelaw.com
jwilson@gelaw.com
Attorneys for the State of Vermont

By: /s/ Bradley J. Motl

**STATE OF WISCONSIN
JOSHUA L. KAUL**

Attorney General of Wisconsin
BRADLEY J. MOTL
Assistant Attorney General
State Bar #1074743
SARAH C. GEERS
Assistant Attorney General
State Bar #1066948
Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-0505 (Motl)
(608) 266-3067 (Geers)
(608) 267-2778 (Fax)
motlbj@doj.state.wi.us
geerssc@doj.state.wi.us

Attorneys for the State of Wisconsin

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with this Court's CM/ECF on this 7th day of August 2023 and was thus served electronically upon counsel of record.

/s/ Michael A. London

Michael A. London
Douglas and London PC
59 Maiden Lane, 6th Floor
New York, NY 10038
212-566-7500
212-566-7501 (fax)
mlondon@douglasandlondon.com

Exhibit A: Redlines to Settlement Agreement

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2. DEFINITIONS

2.45. “Releasing Persons” means (a) Settlement Class Members; (b) each of their past, present, or future, direct or indirect, predecessors, successors (including successors by merger or acquisition), departments, agencies, divisions, districts, parents, subsidiaries, affiliates, boards, owners, or operators, other than a State; (c) any past, present, or future officer, director, employee, trustee, board member, shareholder, representative, agent, servant, insurer, attorney, subrogee, predecessor, successor, or assignee of any of the above, individually or in their official, corporate, or personal capacity; (d) any Person, other than a State or the federal government, ~~anyone~~ in privity with or acting on behalf of any of the foregoing, including in a representative or derivative capacity; (e) any Person, other than a State or the federal government, that is legally responsible for funding (by statute, regulation, other law, or contract) a Settlement Class Member or has authority to bring a Claim on behalf of a Settlement Class Member, or to seek recovery for harm to a Public Water System within the Settlement Class or the ability of such system to provide safe or compliant Drinking Water; and (f) any Person, other than a State or the federal government, seeking recovery on behalf of a Settlement Class Member or seeking recovery for harm to a Public Water System within the Settlement Class or the Public Water System’s ability to provide safe or compliant Drinking Water.

...

9. APPROVAL AND NOTICE

...

9.7.2 All Requests for Exclusion must be filed and served on such schedule as the Court may direct. In seeking Preliminary Approval, the Parties will request that the deadline for submission of Requests for Exclusion shall be set on a date no less than ninety ~~sixty~~ ~~(90~~~~60)~~ calendar days after commencement of dissemination of the Notice. Requests for Exclusion submitted by any Settlement Class Member to incorrect locations shall not be valid.

...

12. RELEASE, COVENANT NOT TO SUE, AND DISMISSAL

12.7. Protection Against Claims-Over.

12.7.1. The Order Granting Final Approval will specify that the Settlement is a good-faith settlement that bars any Claim by any Non-Released Person against any Released Person for contribution, indemnification, or otherwise seeking to recover ~~all or a portion of~~ any amounts paid by or awarded against that Non-Released Person to any ~~Settlement Class Member or~~ Releasing Person by way of settlement, judgment, or otherwise (a “Claim-Over”) on any Claim that would be a Released Claim were such Non-Released Person a Settling Defendant, to the extent that a good-faith settlement (or release thereunder) has such an effect under applicable law.

...

[12.7.5 The protection against claims-over provided in Section 12.7 shall not apply to Claims brought by a State.](#)

Exhibit B: Redlines to Proposed Preliminary Approval Order

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V. PROCEDURE FOR REQUESTS FOR EXCLUSION AND OBJECTIONS

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15. Any Settlement Class Member wishing to opt out of the Settlement Class and Settlement must submit a written Request for Exclusion to the Notice Administrator, and serve a copy of such written request on Class Counsel and Settling Defendants' Counsel at the addresses set forth in the Notice. Such written request must be received by the Notice Administrator no later than the date ~~ninety~~^{sixty} (90~~60~~) calendar days following the commencement of the Notice Plan (as described in Paragraph 13 of this Order), which is the last day of the opt out period. The last day of the opt out period is _____, 2023.

....

VII. STAY ORDER AND INJUNCTION

28. All litigation in any forum brought by or on behalf of a Releasing Person and that asserts a Released Claim, and all Claims and proceedings therein, are hereby stayed as to the Released Persons, except as to proceedings that may be necessary to implement the Settlement. All Releasing Persons are enjoined from filing or prosecuting any Claim in any forum or jurisdiction (whether federal, state, or otherwise) against any of the Released Persons, and any such filings are stayed; provided, however, that this Paragraph shall not apply to any Person who files a timely and valid Request for Exclusion beginning as of the date such Request for Exclusion becomes effective. [This Paragraph also shall not apply to any lawsuits brought by a State in any forum or jurisdiction.](#) The provisions of this Paragraph will remain in effect until the earlier of (i) the Effective Date, in which case such provisions shall be superseded by the provisions of the Order Granting Final Approval, and (ii) the termination of the Settlement Agreement in accordance with its terms. This Order is entered pursuant to the Court's Rule 23(e) findings set forth above, in aid of its jurisdiction over the members of the proposed Settlement Class and the settlement approval process under Rule 23(e).