

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THE VALSPAR CORPORATION, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 1:14-cv-00527-RGA
)	
E. I. DU PONT DE NEMOURS AND)	
COMPANY,)	
)	
Defendant.)	

**DEFENDANT E. I. DU PONT DE NEMOURS AND COMPANY’S
ANSWER TO PLAINTIFFS’ COMPLAINT**

Defendant E. I. du Pont de Nemours & Co. (“DuPont”) hereby answers the Complaint filed by Plaintiffs The Valspar Corporation and Valspar Sourcing, Inc. (collectively, “Valspar”).

For its answer to Valspar’s Complaint, DuPont states as follows. All allegations not expressly and specifically admitted are hereby expressly and specifically denied.

1. DuPont admits that it manufactures and supplies titanium dioxide in the United States, but denies that it entered into any conspiracy with other defendants in related actions, other titanium dioxide producers, or anyone else.¹ DuPont denies the remaining allegations of Paragraph 1.

¹ Plaintiffs’ claims against DuPont were severed and transferred from a case initiated in the District of Minnesota, Court File No. 13-3214. *See* Dkt. No. 100. Although DuPont is the only defendant in the case before this Court, for the purposes of this Answer, DuPont will respond as though the term “Defendants” in the Complaint collectively refers to the four defendants in the original action in the District of Minnesota: DuPont, Huntsman International, LLC (“Huntsman”), Kronos Worldwide, Inc. (“Kronos”), and Millennium Inorganic Chemicals, Inc. (“Millennium”), now Cristal USA Inc. DuPont will also refer to the case against Kronos and Millennium remaining in the District of Minnesota, Court File No. 13-3214, and the case against Huntsman that was severed and transferred to the Southern District of Texas, Dkt. No. 4:14-cv-1130, as “related actions.”

2. DuPont admits that one form of titanium dioxide is a dry chemical powder that may be used in coatings such as paint, cosmetics, plastics, and paper industries, among other uses. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 regarding other defendants in related actions. DuPont denies the remaining allegations of Paragraph 2.

3. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3.

4. DuPont denies the allegations of Paragraph 4.

5. DuPont denies the allegations of Paragraph 5.

6. DuPont denies the allegations of Paragraph 6.

7. DuPont denies the allegations of Paragraph 7.

8. DuPont admits that Valspar purports to bring an action, but lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 regarding why Valspar brought this action. DuPont denies the remaining allegations of Paragraph 8, and specifically denies that it engaged in any unlawful or anticompetitive behavior and that Valspar suffered economic or other damages.

9. DuPont admits that Plaintiffs opted out of the class action captioned *Haley Paint Co. v. E. I. du Pont de Nemours & Co., et al.*, 1:10-cv-00318 RDB and venued in the United States District Court for the District of Maryland. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 regarding Plaintiffs' status with respect to the putative action captioned *Los Gatos Mercantile, Inc. d/b/a Los Gatos Ace Hardware, et al. v. E. I. du Pont de Nemours & Co., et al.*, and venued in the United States District Court for the Northern District of California.

10. DuPont admits that Valspar purports to bring an action as described in Paragraph 10, but denies that it has violated the antitrust laws or any other laws. The remaining allegations in Paragraph 10 set forth legal conclusions to which no response is required. To the extent a response is required, DuPont denies these allegations.

11. Paragraph 11 sets forth legal conclusions to which no response is required. To the extent a response is required, DuPont denies the allegations of Paragraph 11.

12. DuPont admits that Valspar purchased titanium dioxide directly from DuPont, but denies that Plaintiff The Valspar Corporation has suffered any injury as a result of DuPont's conduct, let alone an injury that the antitrust laws were intended to prevent. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 12.

13. DuPont admits that Valspar purchased titanium dioxide from DuPont, but denies that Plaintiff Valspar Sourcing, Inc. has suffered any injury as a result of DuPont's conduct, let alone an injury that the antitrust laws were intended to prevent. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 13.

14. DuPont admits that it is a Delaware corporation with its principal place of business in Wilmington, Delaware. DuPont admits that, during the time period alleged in the Complaint, DuPont manufactured titanium dioxide products and sold them both in and outside of the United States. DuPont admits that it is the world's largest manufacturer of titanium dioxide. DuPont admits that it has manufacturing plants in Delaware, Tennessee, Florida, and Mississippi. DuPont admits that it has conducted business in Delaware. DuPont admits that it has sold titanium dioxide to Valspar. DuPont denies the remaining allegations of Paragraph 14.

15. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15.

16. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16.

17. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17.

18. DuPont denies the allegations of Paragraph 18.

19. DuPont denies the allegations of Paragraph 19.

20. DuPont denies that it entered into any conspiracy with other defendants in related actions, other titanium dioxide producers, or anyone else, including National Titanium Dioxide Company Limited. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 20.

21. DuPont denies that it entered into any conspiracy with other defendants in related actions, other titanium dioxide producers, or anyone else, including Lyondell Chemical Company. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 21.

22. DuPont denies that it entered into any conspiracy with other defendants in related actions, other titanium dioxide producers, or anyone else, including Tronox, Inc. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22.

23. DuPont denies that it entered into any conspiracy with other defendants in related actions, other titanium dioxide producers, or anyone else, including International Business

Management Associates, Inc. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23.

24. DuPont denies that it entered into any conspiracy with other defendants in related actions, other titanium dioxide producers, or anyone else, including Mr. Fisher. DuPont denies that Mr. Fisher has been an actor and perpetuator of the sharing of nonpublic, commercially-sensitive information concerning titanium dioxide between DuPont and any other defendant in related actions, other titanium producers, or anyone else. DuPont denies that Mr. Fisher has been an agent and co-conspirator of DuPont. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 24.

25. Paragraph 25 sets forth a conclusory statement about the meaning of the Complaint's allegations to which no response is required. To the extent a response is required, DuPont denies the allegations.

26. DuPont denies the allegations of Paragraph 26.

27. DuPont denies the allegations of Paragraph 27.

28. DuPont admits that one form of titanium dioxide is a dry chemical powder that may be used as a white pigment for providing whiteness, brightness, and masking of colors to many products, including paints and other coatings. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 28.

29. DuPont admits that titanium dioxide has certain optical qualities. DuPont admits that certain titanium dioxide products are consumed by customers in the paint, coatings, plastics, and paper industries. DuPont admits that titanium dioxide products have a range of applications. DuPont admits that titanium dioxide is nonflammable and nontoxic. DuPont lacks knowledge or

information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 29.

30. DuPont admits that certain titanium dioxide products feature excellent masking or pacifying ability, great resistance to other chemicals and to ultraviolet degradation, and very good heat stability. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30 regarding all titanium dioxide products and white pigments. DuPont denies the remaining allegations of Paragraph 30.

31. DuPont admits that titanium may be found along with iron in mineral oxides such as ilmenite and rutile. DuPont admits that ilmenite and rutile may be used in the manufacture of titanium dioxide products, and that titanium dioxide is often sold in powder form. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 31.

32. DuPont admits that titanium dioxide products may be made by two processes, sulfate and chloride, and that either process can produce two crystal structures, anatase and rutile. DuPont admits that the sulphate process produces titanium dioxide by reacting ilmenite with concentrated sulfuric acid. DuPont admits that the chloride process produces titanium dioxide by reacting rutile with chlorine gas, converting rutile to titanium tetrachloride via chlorination when in the presence of petroleum coke, and oxidizing the titanium tetrachloride.

33. DuPont admits that the chloride process produces fewer waste products than the sulfate process, and that DuPont operates chloride process plants. DuPont admits that although both the sulphate and chloride processes create the rutile crystal form of titanium dioxide, only the sulphate process produces the anatase form, which is less durable than rutile. DuPont denies that it entered into any conspiracy with other defendants in related actions, other titanium dioxide

producers, or anyone else. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 33.

34. DuPont admits that certain titanium dioxide products are sold in rutile grades worldwide and are sold in various forms, including powder, ultrafine powder, and water slurry. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 34.

35. DuPont denies the allegations of Paragraph 35.

36. DuPont admits that it makes and sells rutile titanium dioxide to customers in the paint, coatings, and plastic industries. DuPont admits that it does not sell anatase. DuPont admits that rutile titanium dioxide has a higher refractive index and is more durable than anatase. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 36.

37. DuPont denies the allegations of Paragraph 37.

38. DuPont admits that it owns and uses proprietary technologies in manufacturing titanium dioxide. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 regarding the costs and time to build a new “greenfield” plant and the advantages and technologies possessed by other defendants in related actions. DuPont denies the remaining allegations of Paragraph 38.

39. DuPont denies the allegations of Paragraph 39.

40. DuPont admits that Paragraph 40 quotes an article purporting to quote Ian Edwards, but DuPont states that the article is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of

Paragraph 40 regarding the entire titanium dioxide industry and other entities. DuPont denies the remaining allegations of Paragraph 40.

41. DuPont admits that it has a titanium dioxide plant in DeLisle, Mississippi, which, due to Hurricane Katrina, was shut down from August 2005 until production began a phased-in restart in January 2006. DuPont denies that its domestic and global market shares remained stable during any relevant period alleged in the complaint. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 41.

42. DuPont denies the allegations of Paragraph 42.

43. DuPont denies the allegations of Paragraph 43.

44. DuPont denies the allegations of Paragraph 44.

45. DuPont denies the allegations of Paragraph 45.

46. DuPont denies the allegations of Paragraph 46.

47. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 47.

48. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 48.

49. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 49.

50. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 50.

51. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51.

52. DuPont denies the allegations of Paragraph 52.

53. DuPont admits that it has, on occasion, produced and sold certain raw materials to some of the other defendants in related actions. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 53 regarding other defendants in related actions and their affiliates, except that it denies that it cross-licenses with Kronos patents used to make titanium dioxide products. DuPont denies the remaining allegations of Paragraph 53.

54. DuPont denies the allegations of Paragraph 54.

55. DuPont denies the allegations of Paragraph 55.

56. DuPont denies the allegations of Paragraph 56.

57. DuPont admits that Robert Louw wrote an article in the July 2004 issue of TZ Minerals International's *TiO2 Review*, but states that the article is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 57 regarding other entities. DuPont denies the remaining allegations of Paragraph 57.

58. DuPont admits that certain public sources include information about certain publically announced price increases, but denies that those sources contain information regarding specific customer pricing or the extent of implementation of any announced price increase. DuPont denies the remaining allegations of Paragraph 58.

59. DuPont admits that it has given its customers notice of planned price increases through various means, including customer letters. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59 regarding other entities. DuPont denies the remaining allegations of Paragraph 59.

60. DuPont denies the allegations of Paragraph 60.

61. DuPont denies the allegations of Paragraph 61.

62. DuPont admits that it is a member of the American Chemistry Council. DuPont admits that it has attended conferences and meetings of the American Chemistry Council. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 62 regarding other defendants in related actions and all association events. DuPont denies the remaining allegations of Paragraph 62.

63. DuPont admits that it is a member of the Titanium Dioxide Manufacturers Association and the Titanium Dioxide Stewardship Council. DuPont admits that, from time to time, some of its employees have attended conferences and meetings of the IntertechPira Titanium Dioxide and the Industrial Minerals International Congress. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 63 regarding other entities and all association events. DuPont denies the remaining allegations of Paragraph 63.

64. DuPont denies the allegations of Paragraph 64.

65. DuPont denies the allegations of Paragraph 65.

66. DuPont admits that a meeting of the Titanium Dioxide Manufacturers Association took place in Finland on or about January 24, 2002, but denies that it attended that meeting. DuPont admits that, in 2002, it unilaterally announced price increases, effective on a certain date or as contracts allow, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the

effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 66.

67. DuPont admits that some of its customers purchase titanium dioxide under contracts that contain price protection clauses and that, for some customers, the effective date of a price increase is contractually governed. DuPont admits that some of its customers require individualized negotiations before any changes in price can be implemented. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 67.

68. DuPont admits that, in 2002, it unilaterally announced price increases, effective on a certain date or as contracts allow, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 68 regarding other entities. DuPont denies the remaining allegations of Paragraph 68.

69. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 69 regarding the existence and timing of the events and functions identified, but denies that it ever used any such events to discuss the pricing of titanium dioxide with any of the defendants in related actions or any other manufacturer of titanium dioxide. DuPont denies the remaining allegations of Paragraph 69.

70. DuPont admits that, from February 3-5, 2003, a Titanium Dioxide Conference was held in Miami, Florida. DuPont admits that DuPont's former Global Business Director, Ian Edwards, attended this conference and gave a keynote address. DuPont admits that, in 2003, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 70.

71. DuPont admits that, in 2003, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 71.

72. DuPont admits that, in 2004, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the

effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 72.

73. DuPont admits that, from March 2-4, 2005, a Titanium Dioxide Conference was held in Cannes, France. DuPont admits that DuPont's former Vice President, Sam Severance, attended this conference and gave a keynote presentation. DuPont admits that, in 2004 and 2005, it unilaterally announced price increases, effective on certain dates or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 73.

74. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 74.

75. DuPont admits that an Intertech Titanium Dioxide Conference took place in Fort Lauderdale, Florida, on February 12-14, 2007. DuPont admits that DuPont's former Vice President attended this conference. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 75.

76. DuPont admits that an Industrial Minerals International Congress Exhibition was held in Athens, Greece, from March 30, 2008 to April 2, 2008. DuPont admits that one or more of its employees attended this conference. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 76.

77. DuPont denies the allegations of Paragraph 77.

78. DuPont admits that Paragraph 78 purports to quote the July 2004 issue of TZ Minerals International's *TiO2 Review*, but states that the article is the best evidence of its contents.

79. DuPont admits that, in 2004, it unilaterally announced price increases, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage.

DuPont denies the remaining allegations of Paragraph 79.

80. DuPont denies the allegations of Paragraph 80.

81. DuPont denies the allegations of Paragraph 81.

82. DuPont denies the allegations of Paragraph 82.

83. DuPont admits that, in 2005, it unilaterally announced price increases, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage.

DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 83.

84. DuPont admits that, in November 2005, it announced a project agreement with the city of Dongying, China, which was a step toward the construction of a plant in Dongying with an initial annual capacity of 200,000 tons of titanium dioxide. DuPont further admits that, in 2005 and subsequent years, it unilaterally announced price increases, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 84 regarding other entities and purported statements made by an unidentified “industry analyst.” DuPont denies the remaining allegations of Paragraph 84.

85. DuPont denies that it had discussions with other defendants in related actions regarding capacity. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 85.

86. DuPont admits that, at various times during the time period alleged in the Complaint, it announced price increases in the United States or North America in cents per pound for certain products, and that the price increases were effective on certain dates or as permitted by contract. DuPont admits that, at various times, it announced regional price increases at or near the same time as each other. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 86 regarding other entities. DuPont denies the remaining allegations of Paragraph 86.

87. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 87 regarding other entities. DuPont denies the remaining allegations of Paragraph 87.

88. DuPont admits that a meeting of the Titanium Dioxide Manufacturers Association took place in Finland on or about January 24, 2002, but denies that it attended that meeting. DuPont admits that, in 2002, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 88 regarding other entities. DuPont denies the remaining allegations of Paragraph 88.

89. DuPont admits that, on or about February 11, 2002, a chemical and oil industry news service published an article entitled “TiO₂ Producers Seek Large Price Increases As Profitability Hovers Near Break-Even Point,” but DuPont states that the article is the best evidence of its contents.

90. DuPont admits that, in 2002, it unilaterally announced price increases, effective on certain dates or permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage.

DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 90.

91. DuPont admits that, in 2003, it unilaterally announced price increases, effective on certain dates or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage.

DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 91.

92. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 92.

93. DuPont admits that, in 2004, it unilaterally announced price increases, effective on certain dates or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage.

DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 93.

94. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 94.

95. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 95 regarding statements made by an unidentified “industry analyst” in an unidentified article.

96. DuPont admits that, in 2004 and 2005, it unilaterally announced price increases, effective on certain dates or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 96.

97. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 97.

98. DuPont admits that, in 2005 and 2006, it unilaterally announced price increases, effective on certain dates or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 98 regarding other entities. DuPont denies the remaining allegations of Paragraph 98.

99. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 99.

100. DuPont admits that, in 2007, it unilaterally announced price increases, effective on certain dates or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 100.

101. DuPont admits that, in 2008, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, and energy cost related surcharges for certain titanium dioxide products, but states that its announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent that announced price increase and surcharge were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 101.

102. DuPont admits that, in 2008, it unilaterally announced price increases, effective on certain dates or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to

avoid the effect of announced price increases by exercising significant bargaining leverage.

DuPont admits that an article dated January 7, 2008, purported to quote Tronox's CEO, but states that the article is the best evidence of its contents. DuPont denies that it engaged in unlawful conduct to increase prices, or otherwise entered into any conspiracy with other defendants in related actions, other titanium dioxide producers, or anyone else. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 102.

103. DuPont admits that Paragraph 103 quotes a Kronos announcement, but states that the announcement is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 103.

104. DuPont admits that, in 2008, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, and an energy cost related surcharge for certain titanium dioxide products, but states that its announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent that announced price increase and surcharge were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage.

105. DuPont admits that Paragraph 105 quotes a Tronox press release and a PRNewswire article, but DuPont states that the press release and the article are the best evidence of their contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 105.

106. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 106.

107. DuPont admits that Paragraph 107 quotes a Huntsman announcement, but DuPont states that the announcement is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 107 regarding other entities. DuPont denies the remaining allegations of Paragraph 107.

108. DuPont admits that Paragraph 108 quotes a Millennium announcement, but DuPont states that the announcement is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 108.

109. DuPont admits that, in 2008, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont denies the remaining allegations of Paragraph 109.

110. DuPont admits that Paragraph 110 quotes a Tronox announcement, but DuPont states that the announcement is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 110.

111. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 111.

112. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 112.

113. DuPont admits that, in 2008, it unilaterally announced an energy surcharge for certain titanium dioxide products, but states that its announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced surcharge was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced surcharges by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 113.

114. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 114.

115. DuPont admits that, in 2008, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 115.

116. DuPont states that its price increase announcement is the best evidence of its contents, including the reason for the price increase. DuPont denies the remaining allegations of Paragraph 116 attributed to it. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 116.

117. DuPont admits that, from late May 2008 to early September 2008, it unilaterally announced at least three separate titanium dioxide price increases and at least two energy

surcharges, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases and surcharges were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont admits that ilmenite and rutile titanium ore are raw materials for making titanium dioxide. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 117.

118. DuPont admits that it has, on occasion, unilaterally announced titanium dioxide price increases. As to the price increase announcements listed for DuPont in the table in Paragraph 118, DuPont states that the price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont denies that it “coordinated” price increase announcements or otherwise entered into a conspiracy with other defendants in related actions, other titanium dioxide producers, or anyone else. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 118.

119. DuPont denies the allegations of Paragraph 119.

120. DuPont admits that, in 2007 and 2008, it unilaterally announced price increases for certain titanium dioxide products in different regions, but states that its price increase announcements are the best evidence of their contents. DuPont further states that determining whether and to what extent those announced price increases were implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the

effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 120 regarding other defendants in related actions. DuPont denies the remaining allegations of Paragraph 120.

121. DuPont admits that it received \$142 million in insurance proceeds that were primarily related to damage from Hurricane Katrina in 2005. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 121 regarding other entities. DuPont denies the remaining allegations of Paragraph 121.

122. DuPont denies the allegations of Paragraph 122.

123. DuPont admits that Paragraph 123 quotes a Millennium presentation, but DuPont states that the presentation is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 123.

124. DuPont admits that Paragraph 124 quotes correspondence purportedly from David Vercollone of Millennium, but DuPont states that the correspondence is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 124.

125. DuPont admits that a titanium dioxide conference was held in Miami, Florida in February 2003. DuPont admits that DuPont's former Global Business Director, Ian Edwards, attended and presented at this conference. DuPont admits that Paragraph 125 quotes a presentation purportedly from Millennium's former employee Bruce Zwicker and an email purportedly from Ian Edwards, but DuPont states that the presentation and the email are the best evidence of their contents.

126. DuPont admits that Paragraph 126 quotes an email purportedly from Millennium's John Hall, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 126.

127. DuPont admits that Paragraph 127 quotes an email purportedly from Dave Young of DuPont, but DuPont states that the email is the best evidence of its contents. DuPont denies the remaining allegations of Paragraph 127.

128. DuPont admits that Paragraph 128 quotes a document purportedly drafted by Connie Hubbard of DuPont, but DuPont states that the document is the best evidence of its contents. DuPont admits that, in 2002, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage.

129. DuPont admits that Paragraph 129 quotes an email purportedly from Millennium's Gary Cianfichi, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 129.

130. DuPont admits that Paragraph 130 quotes an email purportedly from Millennium's Tim Edwards, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 130.

131. DuPont admits that Paragraph 131 quotes an email purportedly from Millennium's Gary Cianfichi, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 131.

132. DuPont admits that it has a titanium dioxide plant in DeLisle, Mississippi, which, due to Hurricane Katrina, was shut down in August 2005. DuPont admits that Paragraph 132 quotes an email purportedly from Tronox's Robert Gibney, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 132.

133. DuPont admits that Paragraph 133 quotes emails purportedly from Ian Edwards and Connie Hubbard, both of DuPont, but DuPont states that the emails are the best evidence of their contents.

134. DuPont admits that Paragraph 134 quotes an email purportedly from Millennium's Michael Card, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 134.

135. DuPont admits that Paragraph 135 quotes a document purportedly written by Millennium's Jim Clover, but DuPont states that the document is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 135.

136. DuPont admits that Paragraph 136 quotes an email purportedly from Huntsman's Mike Quinn, but DuPont states that the email is the best evidence of its contents. DuPont lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 136.

137. DuPont admits that, in 2008, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 137.

138. DuPont admits that Paragraph 138 quotes an email purportedly from Joe Maas of Kronos, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 138.

139. DuPont admits that an IntertechPera TiO₂ conference was held in March 2009. DuPont admits that the former vice president and general manager of DuPont's Titanium Technologies, Richard C. Olson, attended and gave a key note address at this conference. DuPont admits that Paragraph 139 quotes DuPont's website, but DuPont states that the website is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 139 regarding other entities. DuPont denies the remaining allegations of Paragraph 139.

140. DuPont admits that, in 2009, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that

its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 140 regarding other entities.

141. DuPont admits that a TZMI mineral conference was held in October 2009. DuPont admits that at least one representative from DuPont attended this conference. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 141.

142. DuPont admits that Paragraph 142 quotes an email purportedly from Joe Maas of Kronos, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 142.

143. DuPont admits that, in 2010, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 143 regarding other entities. DuPont denies the remaining allegations of Paragraph 143.

144. DuPont admits that the 20th Industrial Minerals International Congress & Exhibition was held in March 2010. DuPont admits that at least one representative from DuPont registered to attend this event. DuPont admits that, in 2010, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 144 regarding other entities. DuPont denies the remaining allegations of Paragraph 144.

145. DuPont admits that Paragraph 145 quotes an email chain purportedly between Millennium's Dave Murrer and a colleague, but DuPont states that the email chain is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 145.

146. DuPont admits that TMZI's Annual Asia in Focus Congress was held in Hong Kong on or about November 3-5, 2010. DuPont admits that at least one representative from DuPont attended and spoke at this event. DuPont admits that, in 2010, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising

significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 146 regarding other entities. DuPont denies the remaining allegations of Paragraph 146.

147. DuPont denies the allegations of Paragraph 147.

148. DuPont admits that Paragraph 148 quotes an email purportedly from Joe Maas of Kronos, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 148.

149. DuPont admits that Paragraph 149 quotes an email purportedly from Millennium's Gary Cianfichi, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 149.

150. DuPont admits that Paragraph 150 quotes a report purportedly by Jim Fisher, but DuPont states that the report is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 150.

151. DuPont admits that Paragraph 151 quotes a document purportedly written by Connie Hubbard, but DuPont states that the document is the best evidence of its contents. DuPont denies the remaining allegations of Paragraph 151.

152. DuPont admits that Paragraph 152 quotes an email purportedly from Joe Maas of Kronos, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 152.

153. DuPont admits that it has occasionally sold titanium dioxide to and entered into contracts with other manufacturers of titanium dioxide for the purchase and sale of raw materials for the making of titanium dioxide. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 153 regarding other defendants in related actions. DuPont denies the remaining allegations of Paragraph 153.

154. DuPont admits that Paragraph 154 quotes a monthly report purportedly produced by Huntsman, but DuPont states that the report is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 154.

155. DuPont admits that, in 2007, it sold titanium dioxide to Millennium. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 155 regarding other defendants in related actions. DuPont denies the remaining allegations of Paragraph 155.

156. DuPont admits that Paragraph 156 quotes an email purportedly from Millennium's John Hall, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 156.

157. DuPont denies the allegations of Paragraph 157.

158. DuPont denies the allegations of Paragraph 158.

159. DuPont denies the allegations of Paragraph 159.

160. DuPont denies the allegations of Paragraph 160.

161. Paragraph 161 sets forth legal conclusions to which DuPont is not required to respond. To the extent that a response is required, DuPont denies the allegations of Paragraph 161.

162. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 162.

163. Paragraph 163 sets forth legal conclusions to which DuPont is not required to respond. To the extent that a response is required, DuPont denies the allegations of Paragraph 163.

164. Paragraph 164 sets forth legal conclusions to which DuPont is not required to respond. To the extent that a response is required, DuPont denies the allegations of Paragraph 164.

165. DuPont denies the allegations of Paragraph 165.

166. DuPont denies the allegations of Paragraph 166.

167. DuPont denies the allegations of Paragraph 167.

168. DuPont denies the allegations of Paragraph 168.

169. DuPont denies the allegations of Paragraph 169.

170. DuPont denies the allegations of Paragraph 170.

171. DuPont admits that Paragraph 171 quotes a memorandum purportedly from Millennium's Gary Cianfichi, but DuPont states that the email is the best evidence of its contents. DuPont denies the remaining allegations of Paragraph 171.

172. DuPont admits that Paragraph 172 quotes an email purportedly from Ian Edwards of DuPont, but DuPont states that the email is the best evidence of its contents.

173. DuPont admits that Paragraph 173 quotes an email purportedly from Peter O'Sullivan of DuPont, but DuPont states that the email is the best evidence of its contents.

174. DuPont admits that Paragraph 174 quotes correspondence purportedly from a Millennium employee, but DuPont states that the correspondence is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 174.

175. DuPont admits that Paragraph 175 quotes an email purportedly from Millennium's Gary Cianfichi, but DuPont states that the email is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 175.

176. DuPont denies the allegations of Paragraph 176.

177. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence and the various justifications for price increases referenced in the second sentence of Paragraph 177. DuPont denies the remaining allegations of Paragraph 177.

178. DuPont admits that Paragraph 178 quotes an article that purportedly quotes a Huntsman employee, but DuPont states that the article is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 178 regarding other entities. DuPont denies the remaining allegations of Paragraph 178.

179. DuPont admits that Paragraph 179 quotes a Millennium announcement, but DuPont states that the announcement is the best evidence of its contents. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations

of Paragraph 179 regarding other entities. DuPont denies the remaining allegations of Paragraph 179.

180. DuPont admits in 2007, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 180 regarding other entities. DuPont denies the remaining allegations of Paragraph 180.

181. DuPont admits that, in 2008, it unilaterally announced a price increase, effective on a certain date or as permitted by contract, for certain titanium dioxide products, but states that its price increase announcement is the best evidence of its contents. DuPont further states that determining whether and to what extent that announced price increase was implemented requires a customer-specific analysis because customers, including Valspar, were often able to avoid the effect of announced price increases by exercising significant bargaining leverage. DuPont denies that it ever provided false, misleading, or pretextual reasons for announced price increases of its titanium dioxide products, and denies that it ever “led” industry price increases. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 181.

182. DuPont states that its price increase announcements are the best evidence of their contents. DuPont admits that Paragraph 182 quotes an article published in Paint and Coatings

Industry magazine on or about October 1, 2004 and a statement purportedly by Huntsman Tioxide, but DuPont states that the article and the statement are the best evidence of their contents. DuPont denies that it ever provided false, misleading, or pretextual reasons for announced price increases of its titanium dioxide products. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 182.

183. DuPont denies that it ever provided false, misleading, or pretextual reasons for announced price increases of its titanium dioxide products. DuPont denies that it entered into a conspiracy with other defendants in related actions, other titanium dioxide producers, or anyone else. DuPont lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 183.

184. DuPont denies the allegations of Paragraph 184.

185. Paragraph 185 sets forth legal conclusions to which DuPont is not required to respond. To the extent that a response is required, DuPont denies the allegations of Paragraph 185.

186. DuPont incorporates by reference its responses to all of the above allegations as if fully set forth herein.

187. DuPont denies the allegations of Paragraph 187.

188. DuPont denies the allegations of Paragraph 188.

189. DuPont denies the allegations of Paragraph 189.

190. DuPont denies the allegations of Paragraph 190.

191. DuPont denies the allegations of Paragraph 191.

192. DuPont denies the allegations of Paragraph 192.

193. Valspar voluntarily withdrew Count II as set forth in a court order. Dkt. No. 79.

To the extent a response is required, DuPont incorporates by reference its responses to all of the above allegations as if fully set forth herein.

194. Valspar voluntarily withdrew Count II as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 194.

195. Valspar voluntarily withdrew Count II as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 195.

196. Valspar voluntarily withdrew Count II as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 196.

197. Valspar voluntarily withdrew Count II as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 197.

198. Valspar voluntarily withdrew Count II as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 198.

199. Valspar voluntarily withdrew Count II as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 199.

200. Valspar voluntarily withdrew Count II as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 200.

201. Valspar voluntarily withdrew Count II as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 201.

202. Valspar voluntarily withdrew Count II as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 202.

203. Valspar voluntarily withdrew Count III as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont incorporates by reference its responses to all of the above allegations as if fully set forth herein.

204. Valspar voluntarily withdrew Count III as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 204.

205. Valspar voluntarily withdrew Count III as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 205.

206. Valspar voluntarily withdrew Count III as set forth in a court order. Dkt. No. 79.

To the extent that a response is required, DuPont denies the allegations of Paragraph 206.

With respect to the “Prayer For Relief” following Paragraph 206, DuPont denies the factual allegations and denies that Valspar is entitled to any of the relief it requests.

AFFIRMATIVE DEFENSES AND OTHER DEFENSES

DuPont alleges the following separate and distinct defenses, and reserves the right to assert additional affirmative and other defenses as they are discovered or otherwise become available:

1. Valspar fails to state a claim upon which relief can be granted. First, Valspar’s allegation that some of the alleged co-conspirators’ price increase announcements were in some instances similar to one another only describes lawful parallel conduct; any similarities in pricing reflect reasoned, prudent, and unilateral decisions of the defendants in related actions in a competitive industry with relatively few manufacturers. Second, the alleged co-conspirators did not act in parallel, but rather announced price increases on different days with different effective dates. Third, Valspar’s allegations of “opportunities to collude” at trade events attended by some of the alleged co-conspirators fail to transform the alleged co-conspirators’ legitimate conduct

into a conspiracy, and are deficient in detailing the specific time, place, or persons involved in the alleged conspiracy. Valspar fails to allege that the alleged co-conspirators attended the same trade industry events. Valspar fails to allege that the alleged co-conspirators reached any illegal agreement at events they attended. And where they do place certain alleged co-conspirators at an industry event, Valspar fails to connect the alleged co-conspirators' price increase announcements with any agreement, understanding, or even discussion among the alleged co-conspirators. Fourth, the alleged structure and attributes of the titanium dioxide industry do not demonstrate collusion, but instead comport with unilateral behavior and lawful, parallel pricing.

2. Valspar lacks standing to bring these claims. Valspar has not suffered any injury as a result of DuPont's conduct, let alone an injury that the antitrust laws were intended to prevent; any "injury" from increased prices in the titanium dioxide industry resulted from competition and legitimate business conduct. DuPont's conduct—from unilaterally announcing price increases to attending industry events—was proper and procompetitive.

3. Valspar's claims are barred in whole or in part by the four-year statute of limitations applicable to federal antitrust claims, 15 U.S.C. § 15(b). Valspar had actual knowledge or reason to know of the bases of its claims—that, *inter alia*, since 2002, the alleged co-conspirators announced price increases of titanium dioxide products, certain market conditions existed when the alleged co-conspirators made the announcements, and the alleged co-conspirators attended various trade association meetings and industry conferences—more than four years before Valspar filed this action.

4. Valspar's claims are barred in whole or in part by the equitable doctrines of laches and waiver. Central to Valspar's claims is the sequencing of trade association and industry meetings, some of which Valspar alleges DuPont employees attended, and the alleged co-

conspirators' price increase announcements. Valspar knew, or had reason to know, the occurrence of these events as early as 2002, but inexplicably or inexcusably delayed in filing this action for almost eight years. As a result, DuPont has been prejudiced in its ability to properly defend this action in that necessary witnesses may no longer be available, documents may no longer exist, and the damages for which DuPont may be liable are increased due to the passage of time. In addition, in delaying to bringing their claims for an unreasonable length of time, coupled with their knowledge of the facts giving rise to their claims, Valspar acquiesced to the alleged co-conspirators' conduct or otherwise relinquished their rights.

5. The Complaint fails to allege fraudulent concealment with sufficient specificity. Valspar does not set forth the who, what, where, and when of the alleged fraud. Valspar alleges that the alleged co-conspirators secretly met to discuss prices, customers, and markets, and agreed at meetings and in conversations not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in furtherance of their illegal scheme. But Valspar does not allege who met, who agreed to the alleged arrangement, and when or where those meetings and conversations occurred.

6. Valspar's claims are barred in whole or in part by a failure to mitigate its damages. The facts underlying Valspar's allegations have been publicly available for years, and Valspar unreasonably delayed in bringing suit. In addition, to the extent that Valspar did not purchase from the lowest-priced titanium dioxide supplier, it has failed to mitigate any purported damages.

7. Valspar's claims are barred in whole or in part by the equitable doctrine of estoppel. Valspar purchased titanium dioxide from DuPont at prices that were the result of individual negotiations that included more than just price. Those negotiations were voluntary,

and DuPont reasonably relied on the agreement that resulted from those negotiations. Valspar should be estopped from challenging only the price component of that agreement.

8. Valspar's claims are subject to valid, binding and enforceable mandatory arbitration provisions.

WHEREFORE, Defendant DuPont respectfully requests that the Court (1) dismiss the Complaint with prejudice and enter judgment in favor of DuPont; (2) award DuPont its costs, expenses, and attorneys' fees; and (4) award other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Defendant DuPont hereby demands a trial by jury on all triable issues.

POTTER ANDERSON & CORROON LLP

Shari Ross Lahlou
Lucy Grace D. Noyola
(*Pro hac vice* forthcoming)
CROWELL & MORING LLP
1001 Pennsylvania Avenue N.W.
Washington, DC 20004
(202) 624-2500 – Telephone
slahlou@crowell.com
lnoyola@crowell.com

By: /s/ Kathleen Furey McDonough
Kathleen Furey McDonough (No. 2395)
John A. Sensing (No. 5232)
Hercules Plaza, Sixth Floor
1313 North Market Street
P.O. Box 951
Wilmington, DE 19801
(302) 984-6000 – Telephone
kmcdonough@potteranderson.com
jsensing@potteranderson.com

Dated: May 16, 2014

Attorneys for Defendant E. I. du Pont de Nemours and Company

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Kathleen Furey McDonough, hereby certify that on May 16, 2014, the attached document was filed with the Clerk of the Court using CM/ECF; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

BY ELECTRONIC AND U.S. MAIL

Richard Ihrig, Esq.
James M. Lockhart, Esq.
James P. McCarthy, Esq.
John C. Ekman, Esq.
Jessica L. Meyer, Esq.
LINDQUIST & VENNUM LLP
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2274
rihrig@lindquist.com
jlockhart@lindquist.com
jmccarthy@lindquist.com
jekman@lindquist.com
jmeyer@lindquist.com

Attorneys for Plaintiffs

/s/ Kathleen Furey McDonough _____

Kathleen Furey McDonough (No. 2395)
POTTER ANDERSON & CORROON LLP
Hercules Plaza, Sixth Floor
1313 North Market Street
P.O. Box 951
Wilmington, Delaware 19801
(302) 984-6000 – Telephone
kmcdonough@potteranderson.com

*Attorneys for Defendant E. I. du Pont
de Nemours and Company*