

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:      Joseph J. Simons, Chairman  
                          Noah Joshua Phillips  
                          Rohit Chopra  
                          Rebecca Kelly Slaughter  
                          Christine S. Wilson



In the Matter of

RAG-stiftung,  
a public-private foundation;

Evonik Industries AG,  
a public company;

Evonik Corporation,  
a public company;

Evonik International Holding B.V.,  
a public company;

One Equity Partners Secondary Fund,  
L.P.,  
a private company;

One Equity Partners V, L.P.,  
a private company;

Lexington Capital Partners VII (AIV I),  
L.P.,  
a private company;

PeroxyChem Holding Company LLC,  
a private company;

PeroxyChem Holdings, L.P.,  
a private company;

PeroxyChem Holdings LLC,  
a private company;

PeroxyChem LLC  
a private company;

and

PeroxyChem Cooperatief U.A.  
a private company.

Docket No. 9384

**ANSWER AND DEFENSES OF RESPONDENTS ONE EQUITY PARTNERS  
SECONDARY FUND, L.P., ONE EQUITY PARTNERS V, L.P., LEXINGTON CAPITAL  
PARTNERS VIII (AIV I), L.P., PEROXYCHEM HOLDING COMPANY LLC,  
PEROXYCHEM HOLDINGS, L.P., PEROXYCHEM HOLDINGS LLC,  
PEROXYCHEM LLC, AND PEROXYCHEM COOPERATIEF U.A.**

Pursuant to Rule 3.12 of the Federal Trade Commission’s (“Commission”) Rules of Practice for Adjudicative Proceedings, Respondents One Equity Partners Secondary Fund, L.P. and One Equity Partners V, L.P., (collectively, “One Equity Partners”), Lexington Capital Partners VIII (AIV I), L.P., and PeroxyChem Holding Company LLC, PeroxyChem Holdings, L.P., PeroxyChem Holdings LLC, PeroxyChem LLC, and PeroxyChem Cooperatief U.A., (collectively, “PeroxyChem”), by and through its attorneys, hereby answer the Administrative Complaint (the “Complaint”) filed by the Commission in relation to Evonik’s proposed acquisition of PeroxyChem LLC (the “Acquisition”) as follows.

Except to the extent specifically admitted herein, PeroxyChem denies each and every allegation contained in the Complaint, including all allegations contained in headings or otherwise not contained in one of the Complaint’s 57 numbered paragraphs.

**RESPONSES TO SPECIFIC ALLEGATIONS OF THE COMPLAINT**

The preamble to the Complaint characterizes this action and asserts legal conclusions to which no response is required. To the extent that a response is deemed necessary, PeroxyChem denies the allegations in the preamble to the Complaint.

PeroxyChem responds to the numbered paragraphs of the Complaint as follows:

1.     PeroxyChem admits that PeroxyChem and Evonik are two hydrogen peroxide producers in North America. PeroxyChem admits that hydrogen peroxide is used for oxidation, sterilization, and bleaching, among a number of other end uses. PeroxyChem admits the allegations in the third sentence of Paragraph 1. PeroxyChem also admits the fourth sentence of

Paragraph 1 insofar as it pertains to standard grade hydrogen peroxide. PeroxyChem admits that electronics-grade hydrogen peroxide is a specialty grade that requires additional purification capabilities versus standard grade hydrogen peroxide, that electronics-grade hydrogen peroxide purification methods vary by hydrogen peroxide producer, and that not all hydrogen peroxide producers are capable of producing electronics-grade hydrogen peroxide. PeroxyChem states that – just like electronics grade hydrogen peroxide – other specialty grades of hydrogen peroxide that PeroxyChem produces that are included in Plaintiff’s alleged relevant product market, such as food grade and water treatment grade, also require additional purification capabilities versus standard grade hydrogen peroxide, that specialty grade hydrogen peroxide purification methods vary by hydrogen peroxide producer, and that not all hydrogen peroxide producers are capable of producing specialty grades. PeroxyChem denies the remainder of Paragraph 1.

2. PeroxyChem admits that it competes vigorously for customers against all North American hydrogen peroxide suppliers. PeroxyChem denies the remainder of Paragraph 2, except to the extent it contains legal conclusions to which no response is necessary, and specifically denies that the FTC’s alleged “Pacific Northwest” and “Southern and Central United States” markets on which the allegations of Paragraph 2 are based constitute properly defined relevant geographic markets and that the FTC’s alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly-defined relevant product market.

3. PeroxyChem lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 3 pertaining to Evonik and other suppliers, and on that basis denies these allegations. PeroxyChem states the hydrogen peroxide industry is highly competitive and customers are free to select an alternative supplier, and therefore no supplier can

control sales. PeroxyChem states further that the parties proposed a divestiture of PeroxyChem's Prince George Plant in Western Canada to the Commission in May 2019, and that the parties have a signed divestiture agreement, contingent on closing the Acquisition. The proposed divestiture of the Prince George plant fully addresses any proffered or potential anticompetitive effects in the alleged Pacific Northwest geographic market.

4. PeroxyChem states that the Horizontal Merger Guidelines speak for themselves. PeroxyChem specifically denies that the Merger Guidelines are vested with the authority to determine the legality of any acquisition, presumptively or otherwise. PeroxyChem denies the remainder of Paragraph 4, except to the extent that it contains legal conclusions to which no response is necessary.

5. PeroxyChem denies the allegations in Paragraph 5, except to the extent it states legal conclusions to which no response is necessary. PeroxyChem states that the hydrogen peroxide industry is highly competitive and will remain so post-merger. There is nothing about the Acquisition that would make coordination meaningfully more likely. PeroxyChem states that Plaintiff's allegation of a "long history of price-fixing" in the hydrogen peroxide industry mischaracterizes a single investigation into alleged conduct that ended about twenty years ago when the industry differed significantly from what it is today. PeroxyChem states further that neither it nor its predecessor was fined for alleged price-fixing, nor were any of its employees indicted let alone pled guilty.

6. PeroxyChem admits that competition between and among all of the hydrogen peroxide suppliers benefits customers. PeroxyChem denies the remainder of Paragraph 6, except to the extent it states legal conclusions to which no response is necessary.

7. PeroxyChem admits that building a new hydrogen peroxide requires a significant monetary investment in time and money, but denies that this is a barrier to entry or expansion. PeroxyChem specifically denies that expansion or repositioning by other firms is difficult or unlikely, and, indeed, is contradicted by competing hydrogen peroxide producer Solvay's recent significant expansion of its Longview, Washington plant in 2016. PeroxyChem denies the remainder of Paragraph 7, except to the extent it states legal conclusions to which no response is necessary.

8. PeroxyChem denies the allegations in Paragraph 8, except to the extent it states legal conclusions to which no response is necessary.

9. Paragraph 9 states legal conclusions to which no response is required.

10. Paragraph 10 contains legal conclusions to which no response is required. To the extent a response is deemed necessary, PeroxyChem denies the allegations in Paragraph 10.

11. PeroxyChem lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 11, and on that basis denies these allegations.

12. PeroxyChem admits the allegations in Paragraph 12.

13. PeroxyChem denies the allegations in Paragraph 13, except to admit that pursuant to an Agreement and Plan of Merger dated November 7, 2018, Evonik proposes to acquire 100% of the non-corporate interests of PeroxyChem Holding Company LLC, 99% of the non-corporate interests of PeroxyChem Coöperatief U.A., and 100% of the non-corporate interest of PeroxyChem Holdings LLC for \$625 million.

14. PeroxyChem denies the allegations in Paragraph 14, except to the extent it states legal conclusions to which no response is necessary. PeroxyChem specifically denies that the FTC's alleged "Pacific Northwest" and "Southern and Central United States" markets constitute

properly defined relevant geographic markets, and specifically denies that the FTC's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly-defined relevant product market.

15. PeroxyChem admits that hydrogen peroxide can be used as an oxidizing agent with diverse uses, including various grades appropriate for end uses such as bleaching pulp, chemical synthesis, and sterilizing food packaging, among many others including electronics. PeroxyChem admits that the primary use of standard grade hydrogen peroxide produced in North America is for bleaching in the pulp and paper industry. PeroxyChem denies the remainder of Paragraph 15, except to the extent it states legal conclusions to which no response is necessary.

16. PeroxyChem admits that the FTC has excluded electronics-grade hydrogen peroxide from its alleged product market definition, but specifically denies that the FTC's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly-defined relevant product market. PeroxyChem admits the second sentence of Paragraph

16. PeroxyChem admits that electronics-grade hydrogen peroxide is a specialty grade that requires additional purification capabilities versus standard grade hydrogen peroxide, that electronics-grade hydrogen peroxide purification methods vary by hydrogen peroxide producer, and that not all hydrogen peroxide producers are capable of producing electronics-grade hydrogen peroxide. PeroxyChem states that – just like electronics grade hydrogen peroxide – other specialty grades of hydrogen peroxide that PeroxyChem produces that are included in Plaintiff's alleged relevant product market, such as food grade and water treatment grade, also require additional purification capabilities versus standard grade hydrogen peroxide, that specialty grade hydrogen peroxide purification methods vary by hydrogen peroxide producer, and that not all hydrogen peroxide producers are capable of producing specialty grades.

PeroxyChem admits that other standard and specialty grades of hydrogen peroxide are not a substitute for electronics-grade hydrogen peroxide, and states further that standard grade hydrogen peroxide is not a substitute for specialty grades and that specialty grades of hydrogen peroxide also are not substitutes for each other. PeroxyChem denies the remainder of Paragraph 16, except to the extent it states legal conclusions to which no response is necessary.

17. PeroxyChem denies the allegations in the first sentence of Paragraph 25. As to the second sentence of Paragraph 17, PeroxyChem admits that the primary raw materials used to manufacture the various grades of hydrogen peroxide are natural gas and hydrogen. As to the third sentence of Paragraph 17, PeroxyChem admits that crude hydrogen peroxide is produced via a three-step process of hydrogenation, oxidation, and extraction. As to the fourth sentence of Paragraph 17, PeroxyChem admits that various grades of hydrogen peroxide are made from crude hydrogen peroxide via dilution, filtration, and stabilization processes designed to meet end-use specific criteria. PeroxyChem denies the remainder of Paragraph 17.

18. This paragraph asserts a legal conclusion to which no response is required. To the extent a response is required, PeroxyChem admits that pulp and paper customers purchase the majority of standard grade hydrogen peroxide in North America, and denies the remainder of the allegations in Paragraph 18.

19. PeroxyChem admits that it competes with all the other suppliers of hydrogen peroxide in North America. PeroxyChem denies the remainder of Paragraph 19, except to the extent it states legal conclusions to which no response is necessary.

20. PeroxyChem denies the allegations in Paragraph 20, except to the extent it states legal conclusions to which no response is necessary. PeroxyChem specifically denies that the

FTC's alleged "Pacific Northwest" and "Southern and Central United States" markets constitute properly defined relevant geographic markets.

21. PeroxyChem admits the first sentence of Paragraph 21. PeroxyChem states that phrases "high transportation costs" and "relative to the value of the product itself" are vague and ambiguous, and that transportation costs and their relationship to the value of the product varies greatly across mode of transport, distance, the customer's storage infrastructure, product type, customer type, and end use application, among many other factors, and on that basis denies the allegations in the second sentence. PeroxyChem admits that there are numerous factors that determine transportation costs, but all else equal, it is often more cost-effective to transport hydrogen peroxide over a shorter distance. PeroxyChem admits that it uses terminals in connection with the transport of hydrogen peroxide. PeroxyChem denies the remainder of Paragraph 21 as they pertain to PeroxyChem. PeroxyChem lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations as they pertain to other hydrogen peroxide producers, and on that basis denies them.

22. PeroxyChem denies the allegations in Paragraph 22 that relate to PeroxyChem. PeroxyChem lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations relating to Evonik or other hydrogen peroxide suppliers, and therefore denies these allegations.

23. PeroxyChem admits that it individually negotiates prices with many of its customers and that customer location is one factor, among many, that can affect the negotiated price. PeroxyChem denies the remainder of the allegations in Paragraph 23 that relate to PeroxyChem. PeroxyChem lacks knowledge or information sufficient to form a belief about the

truth or falsity of the allegations relating to Evonik or other hydrogen peroxide suppliers, and therefore denies these allegations.

24. PeroxyChem lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24, but notes that many customers of different grades of hydrogen peroxide can and have purchased from producers outside of the artificial “Pacific Northwest” and “Southern and Central United States” markets alleged by the FTC. PeroxyChem specifically denies that the FTC’s alleged “Pacific Northwest” and “Southern and Central United States” markets on which the allegations of Paragraph 24 are based constitute properly defined relevant geographic markets.

25. PeroxyChem admits that it has hydrogen peroxide production plants in Bayport, Texas and Prince George, British Columbia, Canada. PeroxyChem further admits that Evonik has hydrogen peroxide production plants in Mobile, Alabama; Gibbons, Alberta, Canada; and Maitland, Ontario, Canada. PeroxyChem denies the remainder of Paragraph 25.

26. PeroxyChem denies the allegations in Paragraph 26 and specifically denies that the FTC’s alleged “Pacific Northwest” and “Southern and Central United States” markets on which the allegations of Paragraph 26 are based constitute properly defined relevant geographic markets.

27. PeroxyChem denies the allegations in Paragraph 27 and specifically denies that the FTC’s alleged “Pacific Northwest” and “Southern and Central United States” markets on which the allegations of Paragraph 27 are based constitute properly defined relevant geographic markets.

28. PeroxyChem denies the allegations in Paragraph 28, except to the extent it states legal conclusions to which no response is necessary.

29. PeroxyChem denies the allegations in Paragraph 29 and specifically denies that the FTC's alleged "Pacific Northwest" markets on which the allegations of Paragraph 29 are based constitutes a properly defined relevant geographic market. PeroxyChem also denies the allegations in the second sentence of Paragraph 29 on the grounds that following the proposed divestiture of the Prince George plant, Evonik's market share will remain unchanged.

30. PeroxyChem admits that it competes with Solvay, Arkema, and Nouryon in the purported Southern and Central United States geographic market as defined in the Complaint, and elsewhere. PeroxyChem lacks knowledge or information sufficient to form a belief about the truth or falsity of the remainder of the allegations in Paragraph 30, and on that basis denies these allegations. PeroxyChem specifically denies that the FTC's alleged "Southern and Central United States" market on which the allegations of Paragraph 30 are based constitutes a properly defined relevant geographic market.

31. Paragraph 31 contains characterizations of the Merger Guidelines and court opinions, which speak for themselves and to which no response is required. To the extent a response is deemed necessary, PeroxyChem denies the allegations of Paragraph 31 and specifically denies that the Merger Guidelines are vested with the authority to determine the legality of any acquisition, presumptively or otherwise.

32. PeroxyChem denies the allegations in Paragraph 32, except to the extent it states legal conclusions to which no response is necessary.

33. PeroxyChem denies the allegations in Paragraph 33, except to the extent it states legal conclusions to which no response is necessary. PeroxyChem further denies the allegations in Paragraph 33 on the grounds that concentration in the alleged Pacific Northwest market will remain unchanged following the divestiture of the Prince George plant.

34. PeroxyChem denies the allegations in Paragraph 34, except to the extent it states legal conclusions to which no response is necessary.

35. PeroxyChem denies the allegations in Paragraph 35.

36. PeroxyChem denies the allegations in Paragraph 36.

37. PeroxyChem denies the allegations in Paragraph 37.

38. PeroxyChem states that the phrases “the industry has a history of price fixing” and “substantial fines and settlements” are vague, ambiguous, and misleading, and on that basis denies the first sentence of Paragraph 38. PeroxyChem admits that in the past there have been guilty pleas, private litigation, and fines and settlements relating to one investigation into alleged conduct from about twenty years ago. PeroxyChem lacks information sufficient to form a belief about the truth or falsity of the allegations in the third sentence, and on that basis denies these allegations. PeroxyChem states that the quoted Solvay plea agreement relates to conduct that allegedly took place over a period of less than three and a half years and ended about twenty years ago, and that neither PeroxyChem nor its predecessor FMC, nor any of their employees, were charged with any crime in the referenced criminal antitrust investigation. PeroxyChem denies the remainder of Paragraph 38.

39. PeroxyChem admits that, like all businesses in a highly competitive industry, it attempts to gather competitive intelligence about its competitors from customers, distributors, and others throughout the industry in order to be as competitive as possible, and that the quality and accuracy of that information is variable and imperfect. PeroxyChem denies the remainder of the allegations of Paragraph 39 as they pertain to it. PeroxyChem lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations as they pertain to other producers.

40. PeroxyChem admits that the major costs to produce hydrogen peroxide include natural gas and electricity. PeroxyChem further admits that, like all businesses in a highly competitive industry, it may factor in estimates of competitors' transportation costs in order to be as competitive as possible, and that those estimates can sometimes inform PeroxyChem's bidding depending on the circumstances. PeroxyChem admits that on occasion certain customers selectively tell it a competitor's price where the customer feels that doing so is to its advantage. PeroxyChem denies the remainder of the allegations of Paragraph 40 as they pertain to it. PeroxyChem lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations as they pertain to other producers.

41. PeroxyChem denies the allegations in Paragraph 41.

42. PeroxyChem denies the allegations in Paragraph 42.

43. PeroxyChem admits that customers benefit from competition between hydrogen peroxide suppliers, but denies that Evonik and PeroxyChem are particularly close competitors as compared to other producers or that they otherwise have any special role in disciplining the price of one another. PeroxyChem denies the remainder of Paragraph 43.

44. PeroxyChem admits that customers benefit from competition between hydrogen peroxide suppliers, but denies that Evonik and PeroxyChem are particularly close competitors as compared to other producers or that they otherwise have any special role in disciplining the price of one another. PeroxyChem admits that, like all businesses in a highly competitive industry, it sometimes attempts to respond to competitors' pricing by offering lower prices or better terms in certain circumstances depending on a number of different factors. PeroxyChem denies the remainder of the allegations in Paragraph 44 as it relates to PeroxyChem. PeroxyChem lacks

information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 44 as it relates to Evonik, and on that basis denies these allegations.

45. PeroxyChem denies the allegations in Paragraph 45.

46. PeroxyChem admits that Solvay is a competing hydrogen peroxide producer.

PeroxyChem lacks knowledge or information sufficient to form a belief about the truth or falsity of the remainder of the allegations in Paragraph 46, and on that basis denies these allegations.

PeroxyChem further denies the allegations in Paragraph 46 on the grounds that the divestiture of the Prince George plant will fully replace any alleged lost competition in the alleged Pacific Northwest market.

47. PeroxyChem admits that Solvay, Arkema, and Nouryon are competing hydrogen peroxide producers. PeroxyChem denies the remainder of Paragraph 47 and specifically denies that the FTC's alleged "Pacific Northwest" and "Southern and Central United States" markets on which the allegations of Paragraph 47 are based constitute properly defined relevant geographic markets and that the FTC's alleged hydrogen peroxide market, excluding electronics-grade hydrogen peroxide, constitutes a properly-defined relevant product market

48. PeroxyChem denies the allegations in Paragraph 48.

49. PeroxyChem denies the allegations in Paragraph 49.

50. PeroxyChem admits that Solvay significantly expanded production at its Longview, Washington hydrogen peroxide production plant in 2016 and states that this expansion intensified competition in an already highly competitive industry. PeroxyChem lacks information sufficient to form a belief about the truth or falsity of the allegations in the second sentence as to whether other suppliers have increased capacity in the last decade, and on that

basis denies these allegations. PeroxyChem denies the remainder of the allegations in Paragraph 50, except to the extent it states legal conclusions to which no response is necessary.

51. PeroxyChem lacks knowledge or information sufficient to form a belief as to the truth of the allegations as to “other industrial chemical producers” in Paragraph 51, and on that basis denies those allegations.

52. PeroxyChem lacks knowledge or information sufficient to form a belief as to the truth of the allegations the first sentence of Paragraph 52 as they relate to other competitors or customers, and on that basis denies the allegations of Paragraph 52 except to admit that PeroxyChem has not observed significant imports of hydrogen peroxide into North America.

53. PeroxyChem denies the allegations in Paragraph 53.

54. Paragraph 54 incorporates by reference the allegations in Paragraphs 1 through 53 of the Complaint; PeroxyChem’s response to Paragraph 54 likewise incorporates PeroxyChem’s responses to the allegations contained in Paragraphs 1 through 53.

55. Paragraph 55 contains legal conclusions to which no response is required. To the extent a response is deemed necessary, PeroxyChem denies the allegations in Paragraph 55.

56. Paragraph 56 incorporates by reference the allegations in Paragraphs 1 through 53 of the Complaint; PeroxyChem’s response to Paragraph 56 likewise incorporates PeroxyChem’s responses to the allegations contained in Paragraphs 1 through 53.

57. Paragraph 57 contains legal conclusions to which no response is required. To the extent a response is deemed necessary, PeroxyChem denies the allegations in Paragraph 57.

## **AFFIRMATIVE DEFENSES**

The inclusion of any defense within this section does not constitute an admission that PeroxyChem bears the burden of proof on each or any of the issues, nor does it excuse Plaintiff's counsel from establishing each element of its purported claims.

### **First Defense**

The Complaint fails to state a claim on which relief can be granted.

### **Second Defense**

The relief sought in the Complaint is not in the public interest and the equities favor consummation of the Acquisition.

### **Third Defense**

The Complaint fails to allege a plausible relevant product market.

### **Fourth Defense**

The Complaint fails to allege a plausible relevant geographic market.

### **Fifth Defense**

The Complaint fails to allege any plausible harm to competition.

### **Sixth Defense**

The benefits of the Acquisition significantly outweigh any alleged anticompetitive effects.

### **Seventh Defense**

The proposed divestiture of the Prince George plant fully addresses any proffered anticompetitive effects in the alleged Pacific Northwest geographic market and ensures that there will be no harm to competition or consumers.

### **Additional Defenses**

PeroxyChem reserves the right to assert any other available defenses.

WHEREFORE, having fully answered the Complaint, PeroxyChem respectfully requests that the Commission (i) deny the Complaint's contemplated relief; (ii) dismiss the Complaint in its entirety with prejudice; (iii) award to PeroxyChem its costs of suit, including expert fees and reasonable attorney fees, as may be allowed by law; and (iv) award to PeroxyChem such other and further relief as the Commission deems just and appropriate.

Dated: August 20, 2019

Respectfully submitted,

/s/ Mike Cowie

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 20, 2019, I filed the foregoing documents using the FTC's E-Filing System, which will send notification of such filing to:

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission,  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via email:

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*Complaint Counsel*

Dated: August 20, 2019

By: /s/ Brian Rafkin  
Brian Rafkin

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: August 20, 2019

By:    /s/ Brian Rafkin  
Brian Rafkin

Notice of Electronic Service

I hereby certify that on August 20, 2019, I filed an electronic copy of the foregoing Respondent PeroxyChem's Answer and Defenses to Complaint, with:

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
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I hereby certify that on August 20, 2019, I served via E-Service an electronic copy of the foregoing Respondent PeroxyChem's Answer and Defenses to Complaint, upon:

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