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Kim Windle James

Kim Windle James, Clerk
Chattooga County, Georgia

IN THE STATE COURT OF CHATTOOGA COUNTY
STATE OF GEORGIA

THE TOWN OF LYERLY, GEORGIA,)

Plaintiff,)

vs.)

Case Number: 24SCA4052

3M COMPANY; DAIKIN AMERICA,)

INC., E.I. DUPONT DE NEMOURS AND)

COMPANY; DUPONT DE NEMOURS,)

INC.; CORTEVA, INC.; EIDP, INC.)

THE CHEMOURS COMPANY;)

THE CHEMOURS COMPANY FC, LLC;)

MOHAWK INDUSTRIES, INC;)

MOHAWK CARPET, LLC.; ALADDIN)

MANUFACTURING CORPORATION;)

Defendants.)

FIRST AMENDED COMPLAINT

Plaintiff the Town of Lyerly, Georgia brings this action against the above-captioned Defendants and sets forth in detail the parties, facts, legal claims, and damages with particularity, as follows:

STATEMENT OF THE CASE

1. This case arises out of the manufacture, sale, use, and discharge of per- and poly-fluoroalkyl substances (“PFAS”)¹ in commercial applications. This case does not arise out of the

¹ As used herein, “PFAS” refers to all perfluorinated compounds, perfluorochemicals, polyfluorochemicals, perfluoroalkyl substances, polyfluoroalkyl substances, related chemicals that degrade to PFAS, and any precursors to PFAS, including but not limited to, perfluorooctanoic acid (“PFOA”), perfluorooctane sulfonate (“PFOS”), GenX, HFPO-DA, NtFOSAA, NMeFOSAA, PFBS, PFDA, PFDoA, PFHpA, PFHxS, PFNA, PFTTrDA, PFTA, PFUnA, 11Cl0PF3OUdS, 9Cl-PF3ONS, ADONA, PFPeS, PFHpS, 4:2 FTS (1H, 1H, 2H, 2H,-perfluorohexane sulfonic acid), 6:2 FTS (1H, 1H, 2H, 2H,-perfluorohexane sulfonic acid), 8:2 FTS (1H, 1H, 2H, 2H,-perfluorohexane sulfonic acid), PFBA, PFPeA, PFMBA, PFMPA, PFEESA, PTFE, and NFDHA.

use or discharge of Aqueous Film-Forming Foam (“AFFF”) or any products used by, supplied to, or manufactured to the specifications of the federal government.

2. For decades, some of the world’s largest chemical companies have manufactured PFAS, a family of synthetic chemicals valued for their ability to repel oil and water and resist staining. Because of these commercially valuable chemical properties, a number of industries, including carpet, textiles, paper, metal plating and finishing, electronics, and more, have purchased and used PFAS in their manufacturing processes.

3. The same chemical properties that make PFAS so valuable to these industries are also what makes PFAS dangerous. PFAS are known by the Environmental Protection Agency (“EPA”) and industrial users to be persistent in the environment, bio-accumulative in humans and animals, and toxic (referred to in the chemical industry as “PBT”).

4. It is because of their environment persistence and bio-accumulative nature that PFAS are commonly referred to as “forever chemicals.”

5. Conventional drinking water systems are incapable of removing these “forever chemicals” from water. As a result, PFAS pass through conventional drinking water systems into the environment and eventually the bloodstreams of the general public.

6. The EPA has found that PFAS are likely to cause an array of adverse health and environmental effects, including but not limited to, low birth weight in children, miscarriage, and cancer. The current scientific consensus is that there is no safe level of PFAS in drinking water.

7. The Defendants in this case, which belong to a variety of different industries, have all caused or contributed to these toxic chemicals invading the Plaintiff’s drinking water.

8. The PFAS Manufacturer Defendants created and sold these chemicals to industries throughout the State of Georgia, with full knowledge of their products’ pernicious effects and

likelihood of causing pollution to Plaintiff's water supply. Rather than making efforts to warn or prevent this pollution, these Defendants actively concealed and withheld information from regulatory agencies, customers, and the general public, all the while causing these chemicals to continuously damage Plaintiff.

9. The PFAS User Defendants purchased PFAS from the PFAS Manufacturer Defendants and used PFAS and products containing or degrading into PFAS in their industrial processes. These Defendants have continuously caused and permitted PFAS-contaminated waste to be discharged into the environment and surrounding areas from where Plaintiff collects its drinking water. These Defendants do not have authorization to discharge PFAS, and they knew or should have known that their use and discharge of PFAS would pollute Plaintiff's water and cause Plaintiff injury.

10. All of these Defendants have known for years—sometimes decades—that PFAS should not be discharged via wastewater, stormwater, or groundwater to wastewater treatment plants or the environment.

11. Nevertheless, the Defendants have jointly and continuously caused these “forever chemicals” to enter the Plaintiff's drinking water.

12. Now, because of the PFAS pollution that Defendants have caused, Plaintiff must find a way to remove these harmful chemicals from its water in order to meet its obligations as a public water provider, to comply with federal regulations and guidelines, and most importantly, to protect human health and the environment.

13. The Defendants have known or should have known that the Plaintiff, like most public water systems, does not have the treatment technology necessary to remove PFAS from raw

water. Therefore, Plaintiff will be required to upgrade to costly and sophisticated new treatment technologies in order to remove Defendants' PFAS from its drinking water.

JURISDICTION AND VENUE

14. Jurisdiction is proper in this Court pursuant to Article 6, § 3, ¶ 1 of the Georgia Constitution and Georgia Code Ann. §§ 9-10-91 and 15-7-4(a)(2).

15. The wrongful acts perpetrated by the Defendants which form the basis of this Complaint, including the ongoing and continuing trespass and the creation of an ongoing and continuing nuisance, occurred and is occurring in Chattooga County and has injured and will continue to injure the Plaintiff in Chattooga County within the applicable statutes of limitations. The Defendants, jointly and severally, have caused ongoing and continuing damages to Plaintiff within the applicable statutes of limitations.

16. Venue is proper in this Court pursuant to O.C.G.A. § 14-2-510(b)(3) because Plaintiff's causes of action originated in Chattooga County and because at least one of the Defendants has an office and transacts business in Chattooga County.

17. Venue is proper in this Court as to any Defendants that do not have an office in Chattooga County because Defendants are joint tortfeasors and joint trespassers with the Defendant(s) that has/have an office and transact business in Chattooga County.

18. This lawsuit is brought under the laws of the State of Georgia. Plaintiff asserts no federal causes of action, invokes no federal statutes and seeks no relief that is based on any federal statute or laws. Any federal claims are expressly disclaimed.

19. Complete diversity does not exist between Plaintiff and all Defendants.

20. Plaintiff expressly disclaims any cause of action or damages arising from or associated with any legal or factual claim based on alleged “MilSpec AFFF” as well as any potential claims arguably arising from any federal enclaves.

21. Upon information and belief, none of Plaintiff’s claims arise out of the manufacture or use of AFFF and, therefore, AFFF has not caused or contributed to its damages or the claims asserted in this lawsuit.

NO CLASS ACTION PARTICIPATION

22. Several Defendants in this case have been sued in other cases involving allegations of PFAS pollution to public water systems. In 2023, 3M and DuPont settled nationwide, multi-district, class-action claims related to the contamination of public water supplies with PFAS for approximately \$10 billion and \$1 billion, respectively. *See In re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn-2873-RMG (D.S.C.) (“*AFFF Litigation*”).

23. Prospective class members in the *AFFF Litigation* had the option of “opting out” of the 3M and DuPont settlements in order to pursue individual lawsuits against 3M and DuPont. Plaintiff validly and timely exercised its right to “opt out” of the *AFFF Litigation* Class Action Settlements with 3M and DuPont to pursue its claims in this lawsuit. Plaintiff has received confirmation from the Notice Administrator overseeing these settlements that Plaintiff’s opt-out was in fact “compliant.”

24. On February 26, 2024 and March 29, 2024, Judge Richard Gergel, the United States District Court Judge for the District of South Carolina overseeing the *AFFF Litigation*, entered orders of final approval on the DuPont and 3M settlements, respectively. At no time has 3M, DuPont, or any other party raised objections to Plaintiff’s decision to opt-out from the settlements.

PARTIES

I. Plaintiff

25. Plaintiff the Town of Lyerly, Georgia (hereinafter “Plaintiff” or “Lyerly”), located in Chattooga County is a municipal corporation organized under the laws of the State of Georgia, which operates various departments to enhance the health, safety, and general well-being of its citizens.

26. Plaintiff’s water department provides drinking water to the citizens of Chattooga County, among its other responsibilities. Plaintiff owns and operates multiple wells that draw water from the Conasauga Aquifer. Plaintiff owns these wells and the property surrounding the wells and enjoys rights to the water from these wells, as well as property rights over the water which it draws, treats, and sells to its customers.

27. Plaintiff’s conventional water treatment facilities are incapable of removing or treating Defendants’ PFAS to levels deemed safe by the federal government.

28. Plaintiff has been and continues to be damaged due to the negligent, willful, and wanton conduct of the Defendants as a result of the continuous nuisance and trespass caused by Defendants’ past and present manufacture, use, purchase, sale, supply, discharge, and/or release of PFAS.

29. As a direct and proximate result of Defendants’ conduct, Plaintiff has suffered, and will continue to suffer, substantial economic and consequential damage, including but not limited to: past and future expenses associated with the testing and monitoring of PFAS contamination levels in Plaintiff’s raw water and drinking water; past and future expenses associated with testing, monitoring, and installing temporary emergency filtration and pumping systems; pilot program costs associated with permanent filtration systems capable of removing Defendants’ PFAS from

Plaintiff's drinking water; past and future costs associated with the purchase, installation, and operation of permanent filtration systems capable of removing Defendants' PFAS from Plaintiff's drinking water; costs associated with remediating Plaintiff's existing treatment and pumping facilities; damage to goodwill and reputation; and lost revenue and sales. In addition, Plaintiff seeks past, present, and future engineering, operating, and maintenance costs.

30. Plaintiff seeks compensatory and punitive damages to the fullest extent allowed by Georgia law. Plaintiff seeks compensatory damages for filtration equipment, piping, and adequate permanent facilities necessary to operate filtering systems sufficient to remove all PFAS from drinking water.

II. Defendants

A. PFAS Manufacturers

31. Defendant 3M Company ("3M") is a foreign corporation organized under the law of the State of Delaware and authorized to transact business in the State of Georgia. Through its manufacture and use of PFAS and related products, 3M is causing and contributing to a nuisance, trespass, and injury to Plaintiff in Chattooga County.

32. Defendant Daikin America, Inc. ("Daikin") is a foreign corporation organized under the laws of the State of Delaware and does business in the State of Georgia. Through its manufacture and use of PFAS and related products, Daikin is causing and contributing to a nuisance, trespass, and injury to Plaintiff in Chattooga County.

33. Defendant E.I. du Pont de Nemours and Company is a foreign corporation organized under the laws of the State of Delaware and authorized to transact business in the State of Georgia.

34. Defendant DuPont de Nemours, Inc. is a foreign corporation organized under the laws of the State of Delaware and doing business in the State of Georgia.

35. Defendant Corteva, Inc. is a foreign corporation organized under the laws of the State of Delaware and authorized to transact business in the State of Georgia.

36. Defendant EIDP, Inc. is a foreign corporation organized under the laws of the State of Delaware and authorized to transact business in the State of Georgia.

37. Defendants E.I. du Pont de Nemours and Company, Dupont de Nemours, Inc., Corteva, Inc. and EIDP, Inc. are hereinafter collectively referred to as “DuPont.” Through its manufacture and use of PFAS and related products, DuPont is causing and contributing to a nuisance, trespass, and injury to Plaintiff in Chattooga County.

38. Defendant The Chemours Company (“Chemours”) is a foreign corporation organized under the laws of the State of Delaware and authorized to transact business in the State of Georgia.

39. Defendant The Chemours Company FC, LLC is a foreign corporation organized under the laws of the State of Delaware and authorized to transact business in the State of Georgia.

40. The Chemours Company and The Chemours Company FC, LLC are hereinafter collectively referred to as “Chemours.” Through its manufacture and use of PFAS and related products, Chemours is causing and contributing to a nuisance, trespass, and injury to Plaintiff in Chattooga County.

41. The PFAS Manufacturers have operated in the past, and/or are currently operating, manufacturing facilities related to PFAS and products that contain or degrade into PFAS. The PFAS Manufacturers use PFAS as part of their manufacturing processes or otherwise supply PFAS or products that contain or degrade into PFAS to various industries.

42. PFAS, and products that contain or degrade into PFAS, are manufactured and sold by the PFAS Manufacturers to the PFAS Users. These products are subsequently discharged both directly and indirectly into the environment and surrounding areas from where Plaintiff collects its drinking water in Chattooga County. Defendants' discharges of PFAS have infiltrated the groundwater where Plaintiff obtains its drinking water. As a direct result, Plaintiff's water supply has been contaminated.

43. The PFAS Manufacturers have known for years that PFAS are harmful to human health and resistant to degradation or filtration by conventional treatment systems. The PFAS Manufacturers had full knowledge that the PFAS they manufactured and supplied to industrial users would invade the environment and surrounding areas from where Plaintiff collects its drinking water via wastewater effluent and other discharges and ultimately contaminate the Plaintiff's drinking water supply.

44. The PFAS Manufacturers have caused and contributed, and are still causing and contributing to, a continuous nuisance and trespass through their past and present manufacture, use, purchase, sale, supply, discharge, and/or release of PFAS and products that contain or degrade into PFAS.

B. PFAS Users

45. Defendant Mohawk Industries, Inc. ("Mohawk Industries") is a corporation whose principal place of business is located in Calhoun, Georgia. Mohawk Industries is a citizen of the State of Georgia. Mohawk Industries is registered to do business in the state of Georgia and regularly transacts business in Chattooga County, Georgia.

46. Defendant Mohawk Carpet, LLC ("Mohawk Carpet") is a limited liability company whose principal place of business is located in Calhoun, Georgia. Mohawk Carpet is a citizen of

the State of Georgia. Mohawk Carpet is registered to do business in the state of Georgia and regularly transacts business in Chattooga County, Georgia.

47. Defendant Aladdin Manufacturing Corporation (“Aladdin”) is corporation whose principal place of business is located in Calhoun, Georgia. Aladdin is a citizen of the State of Georgia. Aladdin is registered to do business in the State of Georgia and regularly transacts business in Chattooga County, Georgia.

48. Defendants Mohawk Industries, Mohawk Carpet and Aladdin are hereinafter collectively referred to as “Mohawk.”

49. Mohawk formerly operated a carpet manufacturing plant at 5081 Highway 114, Lyerly, GA 30730 in Chattooga County (the “Lyerly Plant”) and currently operates a plant at 106 John Bankston Dr, Summerville, GA 30747 in Chattooga County (the “Summerville Plant”).

50. Through their manufacture and use of products containing and/or degrading into PFAS, the PFAS Users are causing and contributing to a nuisance, trespass, and injury to Plaintiff in Chattooga County.

51. The PFAS Users have in the past and/or currently own and/or operate manufacturing facilities related to the carpet, flooring, textile, and paper industries, which have in the past and/or currently use PFAS in their manufacturing processes. These facilities are located above and/or adjacent to the groundwater source(s) where Plaintiff collects its drinking water.

52. Industrial wastewater discharged in the past and/or currently from the PFAS Users’ manufacturing facilities contains high levels of PFAS, which have invaded the environment and groundwater source(s) where Plaintiff collects its drinking water and ultimately contaminate Plaintiff’s drinking water supply. In addition to discharging PFAS in industrial wastewater, the

PFAS Users have also discharged PFAS by way of releases, leaks, and spills into stormwater drains which feed into local creeks, waterways, streams, rivers and groundwater.

53. The PFAS Users knew or should have known that PFAS are harmful to human health and the environment, and that their PFAS-contaminated waste streams would invade and persist in the environment, groundwater and Plaintiff's drinking water supply. The PFAS Users have known or should have known that the release of PFAS into the environment through wastewater, stormwater, and other discharges is prohibited by the PFAS Users' operative permits and applicable state and local laws and regulations.

54. The PFAS Users have caused and contributed, and are still causing and contributing, to a continuous nuisance and trespass through their past and present manufacture, use, purchase, sale, supply, discharge, and/or release of PFAS and products containing or degrading into PFAS.

FACTUAL ALLEGATIONS

I. Defendants Have Known for Decades That "Long-Chain" PFAS are a Threat to Human Health and the Environment.

55. PFAS are man-made, synthetic chemicals used to impart oil-, water-, and stain-resistance to various products, including carpet, paper, and textiles. The same chemical properties that provide enhanced soil-resistant attributes also make PFAS resistant to degradation and persistent in the environment.

56. PFAS are known to the EPA and the Defendants as "forever chemicals" because these man-made chemicals persist in the environment for extremely long periods and do not degrade like other chemicals. PFAS accumulate in the human body through the process of bioaccumulation. In fish and mammals, PFAS accumulate, build, and increase though

biomagnification. PFAS also migrate through surface water and groundwater, allowing PFAS compounds to travel long distances while causing extensive contamination.

57. Since PFAS do not degrade naturally and are synthetic “forever chemicals,” PFAS released into the environment ten (10), twenty (20), or thirty (30) years ago will remain present and will continue causing pollution that is a threat to public health, unless removed by very specific filtration methods.

58. Although there are thousands of chemical substances that fall under the PFAS umbrella, the two most notorious PFAS chemicals are perfluorooctane sulfonate (“PFOS”) and perfluorooctanoic acid (“PFOA”).

59. PFOS and PFOA are considered “long-chain” PFAS (sometimes referred to as “C-8” chemistries), because they contain eight (8) fluorinated carbon atoms. Defendants knew that, because of the strong carbon-fluorine bond, PFOS and PFOA do not degrade naturally in the environment.

60. According to the EPA, 3M was the sole manufacturer of PFOS in the United States and the principal manufacturer of PFOS worldwide. Upon information and belief, 3M supplied PFOS and/or products containing or degrading into PFOS to the PFAS Users for use in their manufacturing processes.

61. DuPont, Daikin, and 3M all manufactured PFOA and/or products containing or degrading into PFOA. Upon information and belief, DuPont, Daikin, and 3M supplied PFOA and/or products containing or degrading into PFOA to the PFAS Users for use in their manufacturing processes.

62. 3M and DuPont began studying the toxicity of PFOS and PFOA as early as the 1950s and 1960s.

63. By the 1970s, 3M and DuPont were aware that their products persisted indefinitely in the environment. 3M also learned during this time that PFOS was present in the blood of its employees and the general public.

64. In the 1970s and 1980s, 3M began conducting animal studies to determine the possible carcinogenicity of PFAS chemicals. One such study, an investigation into the effects of PFOS on rhesus monkeys, had to be aborted prior to the conclusion of the study “[b]ecause of unexpected early mortalities in all monkeys at all levels” of PFOS dosage. In 1978, a 3M interoffice correspondence concluded that “[r]ecent animal studies have shown that FC-95 [PFOS] is more toxic than was previously believed.”

65. By the 1980s and 1990s, 3M and DuPont were fully aware that PFOS and PFOA were toxic and persistent in the environment and that conventional treatment methods were ineffective at removing these pollutants. Nevertheless, the two companies actively hid their findings from regulators and the general public. In 1988, a 3M internal memo raised concerns that 3M had “perpetuate[d] the myth that these fluorochemical surfactants are biodegradable.”

66. In 1997, 3M prepared a Material Safety Data Sheet (MSDS) for a product containing PFAS. The MSDS contained the following warning:

**CANCER:
WARNING: Contains a chemical which can cause cancer. (3825-26-1)
(1983 and 1993 studies conducted jointly by 3M and DuPont).**

67. This warning was removed from subsequent MSDSs.

68. In the late 1990s, 3M began a comprehensive, multi-city investigation into the extent of its PFAS pollution. It found an unending cycle of pollution in which PFAS Manufacturers and PFAS Users each play a role in continuing the invasion of PFAS in surface- and groundwater, wastewater, and ultimately, drinking water.

69. 3M also concluded during this investigation that reverse osmosis is the only treatment method capable of removing all PFAS.

70. In 1999, Richard Purdy, one of 3M's lead scientists on the multi-city study, resigned from his position due to his "profound disappointment in 3M's handling of the environmental risks associated with the manufacture and use of perfluorinated sulfonates (PFOS) . . . and its precursors."

71. Mr. Purdy's letter, which was also sent to a representative of the EPA, further stated that PFOS "is the most insidious pollutant since PCB" and "more stable than many rocks."

72. Following Mr. Purdy's letter, the EPA began an investigation into PFOS after receiving data that "PFOS was persistent, unexpectedly toxic, and bioaccumulative (PBT)." Federal Register/Vol. 68, 2003.

73. During its subsequent investigation of 3M, the EPA disclosed that "following negotiations with EPA, 3M . . . announced that it will voluntarily phase out perfluorooctanyl sulfonate ("PFOS") chemistry." The EPA determined that PFOS was toxic and accumulated to a high degree in humans and animals. The EPA's preliminary risk assessment found unacceptable margins of exposure for workers and possibly the general population exposed to PFOS.

74. The EPA concluded that "PFOS represents an unacceptable technology that should be eliminated to protect human health and the environment from potentially severe long-term consequences." Shortly thereafter, the EPA expanded its investigation to perfluorooctanoic acid (PFOA), stating "EPA was concerned in part because 3M had also found PFOA in human blood during the studies on PFOS."

75. After 3M announced that it was withdrawing PFOS and PFOA from the market in 2000, DuPont and Daikin continued to manufacture and/or use PFOA with full knowledge that the

substances had been withdrawn by 3M due to environmental and potential health risks to the public.

76. Upon information and belief, the PFAS Users continued to purchase, use, and discharge PFOA and products containing or degrading into PFOA with full knowledge that the substances had been withdrawn by 3M due to environmental and potential health risks to the public.

77. By 2006, the majority of an EPA Science Advisory Board expert committee had recommended that PFOA be considered “likely to be carcinogenic to humans.” Similarly, an independent C-8 Science Panel identified kidney cancer and testicular cancer as having a “probable link” to PFOA exposure, based on epidemiological and other data in the Mid-Ohio Valley.

78. Despite the growing awareness that PFOA was just as persistent, bio-accumulative, and toxic as PFOS, DuPont and Daikin continued to manufacture and supply PFOA and products containing and/or degrading into PFOA until at least 2015.

79. All of the Defendants have known that PFOS and PFOA are toxic, persistent, and bioaccumulative.

80. All of the Defendants have known or should have known that the ordinary usage of products containing or degrading to PFAS in manufacturing processes will cause PFAS to discharge into the environment via industrial wastewater effluent, stormwater runoff or other discharges.

81. All of the Defendants have known that permits and/or state and local laws and regulations prevent the discharge of PFAS into conventional wastewater treatment plants incapable of removing or treating PFAS.

82. All of the Defendants have known that conventional drinking water treatment systems are incapable of removing PFOS and PFOA from water supplies.

83. Nevertheless, the Defendants in this case supplied, used, purchased, and/or accepted PFOS and PFOA, and/or products containing or degrading into PFOS and PFOA, without using adequate care to prevent the contamination of Plaintiff's water supply.

84. PFAS manufactured, used, and discharged by the Defendants are still present at dangerously high levels in Plaintiff's drinking water supply. Some of these Defendants are still discharging wastewater, leachate, stormwater and/or other types of discharges containing PFAS into the Plaintiff's water supply.

II. "Short-Chain" PFAS

85. After 3M phased out "long-chain" PFAS, it began selling "short-chain" PFAS compounds (sometimes referred to as "C-6" and "C-4" chemistries), and/or products that contained or degraded into "short-chain" PFAS, to the PFAS Users. DuPont and Daikin eventually converted to "short-chain" PFAS as well.

86. In or around 2015, DuPont spun off its Performance Chemicals business line into a new company, Chemours, which continued selling and marketing "short-chain" PFAS, including but not limited to HFPO-DA (or "Gen-X").

87. The "short-chain" PFAS compounds sold and/or used by the PFAS Manufacturers included and/or degraded into PFBS, PFBA, PFHxA, PFHxS, PFNA, PFPeA, Gen-X, and more.

88. Defendants knew or should have known that that these "short-chain" PFAS compounds were just as toxic, persistent, and bioaccumulative as their "long-chain" predecessors. Defendants also knew or should have known that conventional drinking water treatment systems are incapable of removing "short-chain" PFAS from water supplies. Nevertheless, Defendants

supplied, used, purchased, and/or accepted “short-chain” PFAS, and/or products containing or degrading into “short-chain” PFAS, without using adequate care to prevent the contamination of Plaintiff’s water supply.

89. Upon information and belief, Defendants continue to supply, use, purchase, accept, and/or discharge “short-chain” PFAS, and/or products containing or degrading into “short-chain” PFAS, without using adequate care to prevent the contamination of Plaintiff’s water supply, to this day.

III. PFAS Regulations

90. In 2009, the U.S. Environmental Protection Agency (“EPA”) issued a Provisional Health Advisory for drinking water setting advisory levels of 400 parts per trillion (“ppt”) for PFOA and 200 ppt for PFOS in drinking water.

91. In May of 2016, EPA published a Lifetime Health Advisory for drinking water setting the levels at 70 ppt *combined* for PFOA and PFOS. This Health Advisory was based on “studies of the effects of PFOA and PFOS on laboratory animals” and “epidemiological studies to human populations” which “indicate that exposure to PFOA and PFOS over certain levels may result in adverse health effects, including developmental effects to fetuses during pregnancy or to breastfed infants (e.g., low birth weight, accelerated puberty, skeletal variations), cancer (e.g., testicular, kidney), liver effects (e.g., tissue damage), immune effects (e.g., antibody production and immunity), thyroid effects and other effects (e.g., cholesterol changes).”

92. In 2022, EPA updated the 2016 Health Advisory for PFOS and PFOA in drinking water, dramatically lowering the recommended limits to .02 ppt for PFOS and .004 ppt for PFOA. The EPA also set levels for two “short-chain” PFAS: PFBS and Gen-X.

93. In March 2023, EPA proposed a National Primary Drinking Water Regulation (“NPDWR”) to establish legally enforceable Maximum Contaminant Levels (“MCLs”) for six PFAS in drinking water: PFOA, PFOS, PFBS, PFNA, PFHxS, and Gen-X.

94. On April 10, 2024, EPA announced the final, enforceable NPDWR for these six PFAS.

95. Under the NPDWR, public water systems, like Plaintiff’s, will be required to monitor and report concentrations of PFAS in their drinking water. The NPDWR will also require public water systems to provide drinking water with no more than 4 ppt PFOS, 4 ppt PFOA, 10 ppt PFHxS, 10 ppt PFNA, or 10 ppt Gen-X.

96. Moreover, the NPDWR will require that public water systems, like Plaintiff’s, remove PFBS, PFNA, PFHxS, and Gen-X from their drinking water pursuant to a Hazard Index. Under this Hazard Index, *combined* concentrations of these compounds can constitute a violation even where each *individual* compound is lower than the MCL. By way of example, drinking water with 9 ppt Gen-X, 100 ppt PFBS, 4 ppt PFNA, and 3 ppt PFHxS would constitute a violation of the Hazard Index even though each individual concentration is below the MCL.

97. In announcing these MCLs, EPA stated that it “expects that over many years the final rule will prevent PFAS exposure in drinking water for approximately 100 million people, prevent thousands of deaths, and reduce tens of thousands of serious PFAS-attributable illnesses.” Pursuant to the NPDWR, EPA also established “health-based” Maximum Contaminant Level Goals (“MCLGs”) for PFOA and PFOS at zero ppt.

98. The EPA explained the decision-making process behind the MCLGs: “Following a systematic review of available human epidemiological and animal toxicity studies, EPA has

determined that PFOA and PFOS are likely to cause cancer (e.g., kidney and liver cancer) and that there is no dose below which either chemical is considered safe.”

99. Finally, on April 19, 2024, the EPA formally designated PFOA and PFOS as “Hazardous Substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). According to the EPA, the designation of PFOA and PFOS as “Hazardous Substances” under CERCLA “is designed to ensure that those responsible for contamination pay to clean it up.”

IV. PFAS POLLUTION IN AND AROUND PLAINTIFF’S WATER SUPPLY

100. Lyerly owns and operates two groundwater wells: the “Railroad Well” and the “Licksillet Well.” These two wells are the main source of drinking water for the citizens of Lyerly, Georgia.

101. PFAS pollution caused by the Defendants has jeopardized the safety of Plaintiff’s groundwater source(s) as an ongoing source of drinking water for the residents of Chattooga County.

102. The PFAS Users operate manufacturing facilities that in the past and/or currently discharge PFAS into the environment and surrounding areas, contaminating the groundwater, directly, indirectly and/or via PFAS-contaminated industrial wastewater discharges to wastewater treatment plants incapable of removing PFAS. These PFAS were in the past, and in some cases still today, manufactured and sold by the PFAS Manufacturers.

103. Defendants have known or should have known that PFAS cannot be removed by conventional wastewater treatment methods and that the Defendants’ PFAS-contaminated wastewater passes directly through the wastewater treatment system and back into the environment and groundwater in Chattooga County.

104. In addition to the aforementioned PFAS discharges, Defendants have also discharged PFAS into the environment, groundwater and surrounding areas by way of stormwater and groundwater discharges.

105. As a result of Defendants' manufacture, use, disposal, and discharge of PFAS and/or products and waste that contain or degrade into PFAS, dangerously high levels of PFAS have been detected in Plaintiff's water supply. The levels of PFAS detected far exceed EPA's most recent Health Advisory and proposed Maximum Contaminant Levels and Maximum Contaminant Level Goals.

106. Lyerly has sampled the drinking water from its groundwater wells on numerous occasions and has found high levels of PFAS at the Railroad Well.

107. PFOS levels have been found at 37 ppt at the Railroad Well, which is more than nine times the MCL.

108. PFOA levels have been found at 37 ppt at the Railroad Well, which is more than nine times the MCL.

109. PFHxS levels have been found at 14 ppt at the Railroad Well, which is above the MCL.

110. PFBS levels have been found at 360 ppt at the Railroad Well.

111. Because of their persistence and bioaccumulation, PFAS discharged into Plaintiff's water source(s) five (5), ten (10), or even twenty (20) years ago are still present in Plaintiff's water supply and still impacting Plaintiff's ability to provide clean drinking water to its customers. These "forever chemicals" will continue to pollute Plaintiff's water supply for generations to come—unless and until they are removed through very specific filtration methods.

112. Scientific experts, including several of the Defendants’ own scientists and consultants, agree that PFOS and PFOA do not readily degrade and will remain in the environment for centuries.

113. Because Plaintiff’s water treatment plant, like most water treatment plants in the country, is incapable of removing PFAS, Plaintiff’s raw and finished water both contain levels of “forever chemicals” much higher than that which is allowed by EPA under the 2022 Health Advisory and the 2024 National Primary Drinking Water Regulation.

COUNT I – NEGLIGENCE

114. Plaintiff incorporates all prior paragraphs by reference as if fully set forth and restated herein.

115. As manufacturers, refiners, formulators, distributors, suppliers, sellers, marketers, shippers, users, disposers, and/or handlers of PFAS, products containing and/or degrading into PFAS, products manufactured using PFAS, and/or waste containing and/or degrading into PFAS, Defendants owed a duty to Plaintiff, as well as to all persons whom Defendants’ PFAS might foreseeably harm, in their handling, control, use, and disposal of PFAS.

116. The Georgia Water Quality Control Act regulations specify that all waters of the State of Georgia shall be free from: “industrial waste or other discharges in amounts sufficient to be unsightly or to interfere with the designated use of the water body” Ga. Comp. R. & Regs. § 391-3-6-.03(5)(b); “industrial or other discharges which produce turbidity, color, odor or other objectionable conditions which interfere with the designated use of the water body” Ga. Comp. R. & Regs. § 391-3-6-.03(5)(c); “toxic, corrosive, acidic and caustic substances discharged from . . . industries or other sources, such as nonpoint sources, in amounts, concentrations or combinations which are harmful to humans, animals or aquatic life” Ga. Comp. R. & Regs. § 391-3-6-.03(5)(e).

117. Pursuant to O.C.G.A. § 12-5-51, Defendants owed a duty Plaintiff, as well as to all persons whom Defendants' PFAS might foreseeably harm, to avoid intentionally or negligently causing or permitting any sewage, industrial wastes, other wastes, or other substance or substances to be discharged or deposited in the waters of the State of Georgia.

118. Defendants owed a duty to Plaintiff, as well as to all persons whom Defendants' PFAS might foreseeably harm, to exercise reasonable care in their manufacturing procedures and waste-handling and disposal operations to prevent the discharge of toxic PFAS chemicals into the Plaintiff's water supply, water treatment plant, and related property.

119. Defendants owed a duty to Plaintiff, as well as to all persons whom Defendants' PFAS might foreseeably harm, to comply with permits, to comply with state and local laws and regulations, and to prevent the discharge of PFAS into the Plaintiff's water supply and related property.

120. As described in detail above, Defendants breached their duty to exercise due care and reasonable care owed to the Plaintiff. The Defendants knew or should have known that their PFAS is persistent in the environment and bioaccumulative and toxic to humans and wildlife. The Defendants also knew or should have known that conventional filtration systems are incapable of removing PFAS from environmental media, and that the Plaintiff would be incapable of removing Defendants' PFAS from its water supply. The Defendants' breaches of their duties to Plaintiff constitute negligent, willful, and/or reckless conduct.

121. Plaintiff had a reasonable expectation that Defendants would avoid contaminating Plaintiff's water, Plaintiff's property, and the surrounding environment—an expectation that extends to the pollution of the area's water supply.

122. As a direct, proximate, and foreseeable result of Defendants' conduct, practices, actions, and omissions, the Plaintiff has been damaged and has incurred expenses and will continue to incur expenses in the future.

WHEREFORE, Plaintiff demands judgment for compensatory damages against all Defendants, jointly and severally, in an amount to be determined by struck jury in excess of the jurisdictional minimum of this Court, including past and future damages, plus interest and all recoverable costs.

COUNT II – PUBLIC NUISANCE

123. Plaintiff incorporates all prior paragraphs by reference as if fully set forth and restated herein.

124. Defendants have created a public nuisance by failing to prevent the contamination of the environment and groundwater in Chattooga County, and, as a direct result, Plaintiff's water supply, water treatment plant, and related property with Defendants' PFAS, thereby causing Plaintiff hurt, inconvenience, and harm. The nuisance created by Defendants' PFAS is continuous and ongoing.

125. The contamination of the environment and groundwater in Chattooga County and the Plaintiff's water supply, water treatment plant, and related property constitutes a public nuisance, which has caused Plaintiff damages that are separate and distinct from those faced by the general public, including but not limited to: past and future expenses associated with installing, maintaining, and operating drinking water treatment systems and associated facilities and equipment capable of removing PFAS; past and future expenses associated with testing and monitoring raw and finished water for the presence of PFAS; costs associated with remediating

Plaintiff's existing treatment facilities as necessary to remove PFAS from Plaintiff's water supply; damage to goodwill and reputation; and lost revenue and sales.

126. In addition to the special damages suffered by the Plaintiff, the Defendants' PFAS contamination has created a condition that threatens the health and well-being of residents of Chattooga County, including Plaintiff's customers.

127. It was reasonably foreseeable, and in fact known to Defendants, that their actions would contaminate, and have contaminated, Plaintiff's water to a degree incapable of remediation through conventional treatment methods. This nuisance has caused substantial damage and will continue to cause damages until Plaintiff receives compensatory damages for the necessary improvements of filtration technology that will allow for the removal of PFAS from Plaintiff's water supply.

128. Defendants knew it was substantially certain that their acts and omissions would cause Plaintiff's water supply to become contaminated by PFAS. Defendants have acted with a conscious indifference to the probable dangerous consequences of their actions and the reasonably foreseeable impact such actions would have on public health and welfare.

WHEREFORE, Plaintiff demands judgment for compensatory and punitive damages against all Defendants, jointly and severally, in an amount to be determined by struck jury in excess of the jurisdictional minimum of this Court, including past and future damages, plus interest and all recoverable costs.

COUNT III – PRIVATE NUISANCE

129. Plaintiff incorporates all prior paragraphs by reference as if fully set forth and restated herein.

130. Plaintiff owns and occupies property used to serve its water customers, including a water intake site, water distribution system, water treatment plant, offices, and associated facilities and equipment.

131. Plaintiff owns land and water rights which permits it to draw water from the Conasauga Aquifer to provide drinking water to its customers.

132. Defendants have created and contributed to a nuisance by causing or contributing to cause toxic PFAS chemicals to contaminate Plaintiff's water supply, thereby causing Plaintiff hurt, inconvenience, and harm. Each Defendant has caused, contributed to, and/or maintained such nuisance, and is a substantial contributor to such nuisance.

133. The contamination of the water at Plaintiff's intake site, water treatment plant, and related property constitutes a private nuisance depriving Plaintiff of its ability to deliver clean and uncontaminated water to its customers. The nuisance created by Defendants' PFAS is continuous and ongoing.

134. It was reasonably foreseeable, and in fact known to Defendants, that their actions would contaminate, and have contaminated, the water at Plaintiff's intake site. The contamination caused, contributed to, and/or maintained by Defendants substantially and unreasonably interferes with Plaintiff's property rights to appropriate, use, and enjoy water from the Conasauga Aquifer.

135. Defendants' nuisance has caused substantial damages and will continue to cause damages until Plaintiff receives compensatory damages for the necessary improvements of filtration technology that will allow for the removal of PFAS from Plaintiff's water supply.

136. As a direct and proximate result of Defendants' acts and omissions as alleged herein, Plaintiff has incurred, is incurring, and will continue to incur damages related to PFAS contamination.

137. Defendants knew it was substantially certain that their acts and omissions described above would cause injury and damage to Plaintiff's property, including PFAS contamination of Plaintiff's water supply. Defendants committed each of the above-described acts and omissions willfully and with malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences in order to promote sales of their products and/or services. Plaintiff therefore demands an award of punitive damages because of the aggravating circumstances alleged herein in order to penalize, punish, and deter Defendants' conduct.

WHEREFORE, Plaintiff demands judgment for compensatory and punitive damages against all Defendants, jointly and severally, in an amount to be determined by struck jury in excess of the jurisdictional minimum of this Court, including past and future damages, plus interest and all recoverable costs.

COUNT IV – TRESPASS

138. Plaintiff incorporates all prior paragraphs by reference as if fully set forth and restated herein.

139. Plaintiff owns and occupies property used to serve its water customers, including a water intake site, water distribution system, water treatment plant, offices, and associated facilities and equipment.

140. Plaintiff owns land and water rights which permit it to draw water from the Conasauga Aquifer to provide drinking water to its customers. Plaintiff has a possessory interest in the water it withdraws from the Conasauga Aquifer in order to treat and sell to its customers.

141. Defendants' intentional acts in manufacturing, supplying, using, and/or discharging PFAS and/or products and waste containing or degrading into PFAS, with full knowledge that

these toxins would contaminate Plaintiff's water supply, caused an invasion of Plaintiff's possessory interest in its property by Defendants' chemicals, which has affected and is affecting Plaintiff's interest in the exclusive possession of its property.

142. Under O.C.G.A. § 51-9-7, the owner of land through which non-navigable watercourses flow is entitled to have such water in its natural and usual flow, free from pollution. "The polluting thereof so as to lessen its value to the owner of such land shall constitute a trespass upon the property."

143. As landowner of property through which non-navigable watercourses flow, Plaintiff is entitled to water that is clean, safe, and free of Defendants' pollution and toxic contamination.

144. Plaintiff has at no time consented to the contamination of its water supply or the invasion of its property and possessory interests by Defendants' PFAS.

145. Defendants knew or should have known that their manufacture, use, purchase, sale, supply, disposal, discharge, and/or release of PFAS and PFAS-containing products or waste could contaminate Plaintiff's water supply and result in an invasion of Plaintiff's possessory interest in its property.

146. Defendants' trespass is continuous and ongoing. The contamination resulting from Defendants' trespass has migrated and spread and will continue to migrate and spread.

147. Defendants' continuing trespass has impaired Plaintiff's use of its property and has caused Plaintiff's substantial damages.

WHEREFORE, Plaintiff demands judgment for compensatory and punitive damages against all Defendants, jointly and severally, in an amount to be determined by struck jury in excess

of the jurisdictional minimum of this Court, including past and future damages, plus interest and all recoverable costs.

COUNT V – WANTONNESS AND PUNITIVE DAMAGES

148. Plaintiff incorporates all prior paragraphs by reference as if fully set forth and restated herein.

149. As manufacturers, refiners, formulators, distributors, suppliers, sellers, marketers, shippers, users, disposers, and/or handlers of PFAS, products containing and/or degrading into PFAS, products manufactured using PFAS, and/or waste containing and/or degrading into PFAS, Defendants owed a duty to Plaintiff, as well as to all persons whom Defendants' PFAS might foreseeably harm, in their handling, control, use, and disposal of PFAS.

150. Defendants owed a duty to Plaintiff, as well as to all person whom Defendants' PFAS might foreseeably harm, to exercise reasonable care in their manufacturing procedures and waste-handling and disposal operations to prevent the discharge of toxic PFAS chemicals into the Plaintiff's water supply, water treatment plant, and related property.

151. In breaching the duties described above, Defendants acted in a wanton, willful, and reckless manner.

152. Defendants knew or should have known that exposure to PFAS and water contaminated by PFAS is hazardous to the environment and to human health.

153. Defendants knew or should have known the danger to Plaintiff created by Defendants' conduct, practices, actions, and inactions.

154. Defendants knew or should have known of the likely impact, harm, damage, and injury their conduct would have on the Plaintiff.

155. Defendants' conduct, practices, and inactions evidence Defendants' reckless disregard for Plaintiff's property.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for punitive damages against all Defendants, jointly and severally, in an amount to be determined by a struck jury in excess of the jurisdictional minimum of this Court, past and future, plus interest and costs.

COUNT VI – ATTORNEYS' FEES AND EXPENSES OF LITIGATION

156. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

157. Defendants have acted in bad faith, have been stubbornly litigious, and have caused Plaintiff unnecessary trouble and expense such that Plaintiff is entitled to recover its attorneys' fees and other expenses of litigation pursuant to O.C.G.A. § 13-6-11.

COUNT VII – GEORGIA WATER QUALITY CONTROL ACT

158. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

159. Under O.C.G.A. § 12-5-51, "any person who intentionally or negligently causes or permits any sewage, industrial wastes, or other wastes, oil, scum, floating debris, or other substance or substances to be spilled, discharged, or deposited in the waters of the state, resulting in a condition of pollution as defined by this article, shall be liable in damages to the state and any political subdivision thereof for any and all costs, expenses, and injuries occasioned by such spills, discharges, or deposits."

160. Each Defendant is a "person" within the meaning of O.C.G.A. § 12-5-51.

161. Defendants intentionally or negligently caused or permitted PFAS to be deposited into the groundwater and the Conasauga Aquifer, resulting in a condition of pollution as defined by Georgia Code Title 12, Chapter 5, Article 2.

162. PFAS are industrial wastes within the meaning of O.C.G.A. § 12-5-51.

163. The amount of the damages assessed pursuant to O.C.G.A. § 12-5-51 “shall include, but shall not be limited to, any costs and expenses reasonably incurred by the state or any political subdivision thereof, as the case may be, in cleaning up and abating such spills, discharges, or deposits, and any costs and expenses reasonably incurred in replacing aquatic life destroyed by such spills, discharges, or deposits. . . . Damages to a political subdivision shall be recoverable in a civil action instituted by such subdivision.”

164. The Town of Lyerly, Georgia is a political subdivision of the State of Georgia.

165. As a direct and proximate result of Defendants’ conduct, Plaintiff has incurred, and will continue to incur, damages including, but not limited to, the costs and expenses set forth in O.C.G.A. § 12-5-51.

RELIEF DEMANDED

Wherefore, Plaintiff respectfully requests this Court grant the following relief:

- a) Award Plaintiff damages in an amount to be determined by a jury sufficient to compensate Plaintiff for past and future damages and out-of-pocket expenses;
- b) Award punitive damages;
- c) Award attorney fees and costs and expenses incurred in connection with the litigation of this matter; and
- d) Award such other and further relief as this Court may deem just, proper, and equitable.

JURY DEMAND

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES OF THIS CAUSE.

Respectfully submitted this 24th day of July, 2024.

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