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Kim Windle James, Clerk
Chattooga County, Georgia

IN THE STATE COURT OF CHATTOOGA COUNTY

STATE OF GEORGIA

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:
:
THE TOWN OF LYERLY, GEORGIA, :

Plaintiff,

v.

Case No.: 24SCA4052

3M COMPANY, *et al.*, :

Defendants.

-----X
DEFENDANT DAIKIN AMERICA, INC.'S MOTION TO DISMISS

Defendant Daikin America, Inc., by and through its undersigned counsel of record and pursuant to O.C.G.A. § 9-11-12(b), respectfully moves to dismiss Plaintiff's First Amended Complaint. This motion is supported by the accompanying Memorandum of Law in Support of Defendant Daikin America, Inc.'s Motion to Dismiss.

Respectfully submitted this 30th day of August, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I e-filed a true and correct copy of the foregoing Motion to Dismiss and Memorandum of Law in Support of Defendant Daikin America, Inc.'s Motion to Dismiss via the PeachCourt E-Filing system. The parties will be served via eService through PeachCourt.

Dated: August 30, 2024

/s/ David E. Nahmias
David E. Nahmias
GA Bar No. 534106

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**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT DAIKIN AMERICA, INC.'S MOTION TO DISMISS**

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Georgia Water Quality Control Act, O.C.G.A. § 12-5-50 et. seq.passim

O.C.G.A.

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INTRODUCTION

In this case, the Town of Lyerly alleges that its water is contaminated with PFAS (per- and polyfluoroalkyl substances), and that a litany of different Defendants are responsible for that contamination. Listed in the litany is Defendant Daikin America, Inc. (“Daikin”), a chemical products manufacturer.

Lyerly’s allegations about Daikin are easy to miss. Lyerly spends many paragraphs outlining how certain carpet companies discharged wastewater allegedly containing PFAS near Lyerly. Lyerly also offers extensive allegations about two other chemical products manufacturers, 3M and DuPont, which long manufactured and sold PFOS or PFOA—the two types of PFAS at the center of this case—and allegedly long knew about the alleged risks of those two PFAS. By contrast, Lyerly has almost nothing to say about Daikin. There is a reason—because Daikin is different. Daikin did not discharge wastewater anywhere in Georgia, let alone near Lyerly. And Daikin did not manufacture or sell PFOS or PFOA to carpet companies in Georgia.¹ Indeed, Lyerly fails to allege that Daikin has done anything at all in

¹ Lyerly’s failure to allege that Daikin specifically ever made or sold PFOS or PFOA is not an accident. In fact, Daikin never manufactured or sold any products containing PFOS, nor did it manufacture or use PFOA as an ingredient in any products sold to Lyerly carpet companies (sales that began only in 2007), although vanishingly small quantities of PFOA were later found as impurities in some Daikin products. These facts, however, are unnecessary to resolve the motion for Daikin, and Daikin provides them only as background for the Court given the many opaque group-pleaded allegations in the complaint.

Georgia. Simply put, Daikin does not belong in this case.

There are many reasons why Lyerly's case against Daikin cannot proceed. Daikin focuses here on the most clear and categorical legal problems with each of Lyerly's substantive claims—those for which dismissal is most certainly appropriate. *First*, Lyerly's negligence claim (Count One) against Daikin fails for lack of any established legal duty from Daikin to Lyerly. Rather than point to any recognized statutory or common law duty under Georgia law, Lyerly invokes a duty to the world—an approach foreclosed by the Georgia Supreme Court. *Second*, Lyerly's public and private nuisance claims (Counts Two and Three) fail, because Lyerly does not allege that Daikin ever controlled land anywhere in Georgia, much less near Lyerly, nor does it allege that Daikin ever engaged in any unlawful action or in any lawful action in an inappropriate location—core elements of any recognized Georgia nuisance theory. *Third*, Lyerly's trespass claim (Count Four) cannot survive, because Lyerly fails to allege that Daikin entered its properties, engaged in inherently wrongful conduct, or took any intentional action against it. *Finally*, Lyerly's Georgia Water Quality Control Act (GWQCA) claim (Count Seven) fails, because Lyerly does not allege that Daikin discharged anything in Georgia.²

² In addition, Lyerly is unable to establish that most rudimentary of elements for all of its claims—but-for causation—because it does not allege that any PFAS in its water (let alone any PFOS or PFOA) came from Daikin *specifically*. Daikin's alleged conduct—selling products containing PFAS from another state to another

This Court should accordingly dismiss Lyerly’s substantive claims against Daikin. With no substantive claims, Lyerly’s derivative claims for wantonness and punitive damages (Count Five) and attorneys’ fees (Count Six) also fail. In the end, the Court should dismiss all of Lyerly’s claims as to Daikin.

STANDARD OF REVIEW

When ruling on a motion to dismiss, “a trial court is required to consider [the plaintiff’s] factual allegations to be true,” but “is not required to accept the legal conclusions the [plaintiff] suggests that those facts dictate.” *Bankston v. RES-GA Twelve, LLC*, 334 Ga. App. 302, 304 (2015) (citation omitted).

BACKGROUND

Lyerly alleges negligence, public and private nuisance, trespass, and GWQCA claims arising from the alleged presence of PFAS in its water supply due to contamination from industrial PFAS users. *See* Compl. ¶¶ 11–13. PFAS is a term used to refer to a large group of different chemicals with a wide array of characteristics and applications. *See id.* ¶¶ 1–2. Lyerly focuses on two PFAS—PFOA and PFOS. *See, e.g., id.* ¶¶ 58–65, 74–78, 82–83, 90–92, 97–99, 107–08.

party—is also too far removed from any wastewater discharges near Lyerly to establish the proximate causation required for liability. Affirmative defenses also foreclose Lyerly’s claims. Much or all of Lyerly’s case is not only preempted by state environmental regulation but also time-barred. These grounds and others are sound reasons to end Lyerly’s case, and Daikin incorporates by reference such grounds as raised by any other Defendant insofar as applicable to Daikin.

In its 165-paragraph amended complaint, Lyerly offers numerous allegations concerning the carpet companies (labeled “PFAS Users”) and the chemical products manufacturers (labeled “PFAS Manufacturers”), but only five paragraphs refer to Daikin specifically. *Id.* ¶¶ 32, 61, 75, 78, 85. And while Lyerly alleges the chemical products manufacturers as a group knew certain facts or took certain actions regarding certain PFAS, its specific examples involve only two other chemical products manufacturers, 3M and DuPont. *Id.* ¶¶ 60–75.

ARGUMENT

Lyerly fails to plead essential elements of each of its substantive claims against Daikin. Those claims should accordingly be dismissed. And because Lyerly’s substantive claims fail, its derivative claims for punitive damages and attorneys’ fees also fail.

I. Lyerly’s Negligence Claim Fails (Count One).

Lyerly’s negligence claim against Daikin fails on a fundamental ground—lack of duty. Whether a defendant owes a legal duty to the plaintiff is a “threshold issue in a negligence action” that this Court must decide as a “question of law.” *Sheaffer v. Marriott Int’l, Inc.*, 349 Ga. App. 338, 340 (2019) (citation omitted).

Several years ago, the Georgia Supreme Court made clear that there is no “general legal duty to all the world not to subject others to an unreasonable risk of harm.” *Dep’t of Labor v. McConnell*, 305 Ga. 812, 816 (2019) (citation and

punctuation omitted). Instead, “[a] legal duty sufficient to support liability in negligence is either a duty imposed by a valid statutory enactment of the legislature or a duty imposed by a recognized common law principle declared in the reported decisions of our appellate courts.” *Shaeffer*, 349 Ga. App. at 340 (citation and punctuation omitted). One such duty exists between “[r]iparian proprietors” who “have a common property right in the waters” adjacent to their land. *Roughton v. Thiele Kaolin Co.*, 209 Ga. 577, 578 (1953). A similar duty exists between adjoining landowners. *See N. Ga. Petroleum Co. v. Lewis*, 128 Ga. App. 653, 655 (1973) (one landowner may be liable to another for water pollution). But, again, there is no duty to anyone and everyone.

The decision in *Johnson v. 3M Co.*, 563 F. Supp. 3d 1253 (N.D. Ga. 2021), a federal case involving PFAS, illustrated the proper application of these principles. There, the district court held that the Dalton Whitfield Solid Waste Authority and certain carpet companies in and around Dalton had a duty that could support a negligence claim brought by a putative class of City of Rome residents, because the waste authority and the carpet companies, by discharging wastewater containing PFAS, took actions on upstream lands allegedly affecting downstream riparians. *Id.* at 1323–24. But the court also held that this duty could *not* reach a non-riparian and non-landowner chemical products manufacturer—like Daikin—that merely sold lawful products, was not alleged to have polluted any water itself, and took no action

on any lands near any resident of Rome. *Id.* at 1325. As the court explained, there is no “authority from Georgia establishing a duty on the part of a chemical supplier to protect an unknown third-party, rather than its consumer, from harm resulting from the negligent use or disposal of the chemical,” on the property of that third party or anywhere else. *Id.* That is correct. So the Court should dismiss Lyerly’s negligence claim against Daikin, as Lyerly offers no foundation for any statutory or common law duty owed to it by Daikin.

Lyerly nonetheless asserts that Daikin owed it a duty because Daikin’s “PFAS might foreseeably harm” Lyerly. Compl. ¶ 115. Put another way, Lyerly says the chemical products manufacturers breached their duty to Lyerly, like “all persons whom Defendants’ PFAS might foreseeably harm,” to “prevent the discharge of PFAS into” Lyerly’s water supply. *Id.* ¶ 119. This claim, rooted in foreseeability, is no surrogate for Lyerly’s missing allegation of a recognized duty. The Supreme Court has rejected “mere foreseeability . . . as a basis for extending a duty of care.” *CSX Transp., Inc. v. Williams*, 278 Ga. 888, 890 (2005). Indeed, the Court has explained that foreseeability is a *limitation* on negligence duties, not the *foundation* for such a duty. *See Maynard v. Snapchat, Inc.*, 313 Ga. 533, 537 n.3 (2022) (highlighting multiple contexts where foreseeability limits duty). That is, a duty comes before—not after—foreseeability. *Amos v. City of Butler*, 242 Ga. App. 505, 506 (2000) (“Negligence consists of exposing someone to whom a duty of care is

owed to a foreseeable, unreasonable probability of harm.”). Lyerly alleges no preceding duty owed by Daikin here, and its negligence claim cannot survive on alleged foreseeability alone.³

Lyerly also attempts to ground a duty in the GWQCA and its implementing regulations. Compl. ¶¶ 116–17. But Daikin is not subject to the GWQCA or its regulations, because Lyerly does not (and could not in good faith) allege that Daikin specifically discharged anything, and certainly no pollutants, anywhere in Georgia. *See* Section IV below. Moreover, while the GWQCA provides its own cause of action, its language precludes it from being the foundation for a free-standing negligence claim. The statute ties liability to discharges done “intentionally or negligently.” O.C.G.A. § 12-5-51(a). It would be nonsensical to base a negligence claim on such a statute—that is, to say that there is a duty to not act negligently when you are acting intentionally, or that there is a duty to not act negligently when you are acting negligently. As for the regulations implementing the GWQCA, Lyerly selectively quotes them to obscure the fact that they merely announce an objective—

³ That Lyerly has alleged no preceding duty owed by Daikin follows from well-established Georgia law, which makes clear that generally “there is no duty to control the conduct of third persons to prevent them from causing physical harm to others.” *Thomas v. Food Lion, LLC*, 256 Ga. App. 880, 882 (2002); *see also Maynard*, 313 Ga. at 544 (“It is true that Georgia decisional law ordinarily does not recognize . . . a general ‘duty to control the conduct of third persons to prevent them from causing physical harm to others.’” (citation omitted)).

that “[a]ll waters shall be free from” various conditions—rather than create a duty (which, under Lyerly’s framing, would be owed not only by *everyone* in Georgia but also everywhere else) to *keep* waters of the State free from those conditions. *See* Ga. Comp. R. & Regs. § 391-3-6-.03(5)(b), (c), (e). Accordingly, a federal court rejected the same argument made by another Georgia town regarding the same regulations with respect to non-dischargers like Daikin. *See Parris v. 3M Co.*, 595 F. Supp. 3d 1288, 1333–34 (N.D. Ga. 2022).

II. Lyerly’s Nuisance Claims Fail (Counts Two and Three).

Lyerly’s public and private nuisance claims both fail for at least two reasons: because Lyerly does not allege that Daikin took any action on any land over which Daikin had control, and because Lyerly does not allege that Daikin engaged in any unlawful conduct or in any lawful conduct in an inappropriate location.⁴

No action on land Daikin controlled. Fundamentally, Georgia nuisance law is about actions or conditions occurring on real property—it is “grounded in the fundamental premise that everyone has the right to use his or her property . . .

⁴ Lyerly repeatedly asserts that the alleged nuisance is “continuous.” Compl. ¶¶ 44, 54, 124, 133. But whether the alleged nuisance is continuous or permanent is a legal conclusion for the Court, one that can affect both the remedies available and the application of the statute of limitations. *See Oglethorpe Power Corp. v. Forrister*, 289 Ga. 331, 333–36 (2011). Lyerly cannot control the Court’s decision on this point just by alleging its preferred conclusion. *See Bankston*, 334 Ga. App. at 304 (a court need not accept a complaint’s legal conclusions at the motion-to-dismiss stage); *Small v. Chatham County*, 360 Ga. App. 500, 506 n.2 (2021) (same).

provided that [he or she] . . . does not unreasonably invade the corresponding right[s] of others.” *Blondell v. Courtney Station 300 LLC*, 362 Ga. App. 1, 14 (2021) (citation omitted). Accordingly, the “whole idea of nuisance” is a “continuous or regularly repeated act or condition on [a] property, which caused [the alleged] injury.” *Barnes v. St. Stephen’s Missionary Baptist Church*, 260 Ga. App. 765, 769 (2003) (citation and emphasis omitted); *see also Gatto v. City of Statesboro*, 312 Ga. 164, 171 (2021) (nuisance liability must be grounded on “dominion or control over the property giving rise to the alleged nuisance, whether by virtue of ownership or the assumption of responsibility for its maintenance or operation”).

Further, the action or condition must be on land the defendant controls. *Ownership* of the land is not always required, but under Georgia law, “control” is the “essential element of nuisance.” *Grinold v. Farist*, 284 Ga. App. 120, 122 (2007). And to have that control, and thus to be potentially liable for nuisance, the defendant must at least have a “legal right to abate,” or end, the nuisance, “regardless of whether the relief desired is an injunction or damages.” *Corp. of Mercer Univ. v. Nat’l Gypsum Co.*, No. 85-126-3-MAC, 1986 WL 12447, at *6 (M.D. Ga. Mar. 9, 1986); *see also Bodin v. Gill*, 216 Ga. 467, 473 (1960) (no liability where no “legal right” to abate the asserted nuisance). Absent such control, the defendant cannot be liable. *See, e.g., Merlino v. City of Atlanta*, 283 Ga. 186, 189 (2008) (plugged pipe on plaintiff’s land was asserted nuisance but defendant not liable because “no

evidence” it “owned or maintained dominion or control over the pipe”). This makes sense. With the right to abate, the defendant can address the alleged nuisance, and the failure to do so may lead to liability. But where a defendant has never had the right to abate as to the property at issue, the defendant is not responsible for the nuisance, and thus cannot be held liable.

Consistent with those principles, Georgia courts have long held that “nuisance” is limited to the “class of wrongs that arise from . . . use by a person of his own property.” *Wilson v. Evans Hotel Co.*, 188 Ga. 498, 504 (1939); *see also*, *e.g.*, *Brimberry v. Savannah, F. & W. Ry. Co.*, 78 Ga. 641, 644 (1887) (no liability where the “ditches and drains” from which the alleged nuisance emanated were not “located on the lands of the defendant, or subject to its use and control”). Indeed, every binding Georgia precedent upholding nuisance liability has involved the defendant’s creation or maintenance of a nuisance on real property that the defendant controlled through ownership or at least possession.

In this case, Lyerly identifies the alleged public nuisance as “[t]he contamination of the environment and groundwater in Chattooga County and [Lyerly’s] water supply, water treatment plant, and related property,” Compl. ¶ 125, and the alleged private nuisance as “[t]he contamination of the water at [Lyerly’s] intake site, water treatment plant, and related property, *id.* ¶ 133. If that is the alleged nuisance, it cannot concern Daikin—for Lyerly never says what action Daikin took

on any land subject to Daikin’s control to create that nuisance. Indeed, Lyerly offers no allegation that Daikin ever owned, controlled, or took any action on any land in Chattooga County—or anywhere in Georgia. There is not even an allegation that Daikin delivered its products to the property of any of the carpet companies. In fact, Lyerly does not allege that Daikin did anything on any property anywhere in Georgia at all. This omission dooms Lyerly’s nuisance claims. *See, e.g., Citizens & S. Tr. Co. v. Phillips Petroleum Co.*, 192 Ga. App. 499, 499–500 (1989) (affirming summary judgment on nuisance claim for four defendants who were not “shown to have committed any act or omission or to have maintained any control over [leaking] underground [gasoline] storage tanks” on the alleged nuisance property during the relevant period, while holding that a gasoline supplier that entered the alleged nuisance property to discharge gasoline into the tanks, knowing that they were defective, was potentially liable).

Were this Court to rule otherwise and hold that Daikin could be liable based on its *product sales*, despite its lack of control over any property, it would subject product manufacturers to potential nuisance liability merely because they lawfully sold a lawful product that was later used (or even just disposed of) by others on some property in a way that caused alleged harm. Nearly every product manufacturer—whether of such obvious products as guns or alcohol, or of such not-so-obvious products as batteries, kitchen knives, allergenic foods, or building materials—would

be similarly subject to liability based on the conduct of third parties on property that the manufacturers never controlled or even entered. *No Georgia appellate decision has ever upheld nuisance liability on that theory*, which indeed would inappropriately subsume products liability law (and the important limitations that come with that law) into an unbounded law of nuisance. Instead, Georgia’s approach is in line with the “clear national trend” of courts to “limit public nuisance to land or property use” and “refuse[] to allow products-based public nuisance claims.” *State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719, 730 (Okla. 2021) (citing cases). There is no reason for this Court to depart from established Georgia law, and thus Lyerly’s nuisance claims should be dismissed.⁵

No unlawful action or lawful action in an inappropriate location. While lawful conduct can be the cause of a nuisance, *see* O.C.G.A. § 41-1-1, Georgia courts have long held that such conduct constitutes a nuisance only if done in an

⁵ Two federal district courts have allowed nuisance claims under Georgia law to proceed on the novel theory that the continued sale of products containing PFAS can support nuisance liability. But their conclusions were unsupported by any Georgia appellate precedent, and other federal district courts have correctly reached the opposite conclusion. *Compare Johnson*, 563 F. Supp. 3d at 1342–44; and *Parris*, 595 F. Supp. 3d at 1341–43; *with Jordan v. S. Wood Piedmont Co.*, 805 F. Supp. 1575, 1582 (S.D. Ga. 1992) (chemical manufacturer not liable in nuisance for the “handling and disposal activities” of those who purchased chemicals); *and Corp. of Mercer Univ.*, 1986 WL 12447, at *6 (explaining that allowing the plaintiff to bring an action for asbestosis against an asbestos manufacturer “under a nuisance theory would convert almost every products liability action into a nuisance claim”).

inappropriate location—like maintaining a chicken farm near a residential neighbor. *See May v. Brueshaber*, 265 Ga. 889, 889–90 (1995) (an action “lawful and proper in one locality may be a nuisance in another” (citation omitted)); *see also Effingham Cnty. Bd. of Comm’rs v. Shuler Bros., Inc.*, 265 Ga. App. 754, 755 (2004) (no liability because “chip mill” was operating “in a location specifically negotiated and rezoned for the operation of a chip mill”); *McBrayer v. Governors Ridge Office Park Ass’n, Inc.*, 359 Ga. App. 741, 744 (2021) (“That which the law authorizes to be done, if done as the law authorizes, cannot be a nuisance.” (citation omitted)).

Here, the chemical products manufacturers, including Daikin, are alleged only to have made or sold products containing PFAS. Compl. ¶ 41. There is no allegation that any such manufacturing or sales by Daikin were in any way unlawful (and they were not), nor is Daikin alleged to have done anything anywhere in Georgia, much less at an unsuitable location. Nor is there any allegation that the carpet companies operate in an inappropriate location for the use of Daikin’s products, even if that could have any relevance to Daikin.⁶

For both reasons, therefore, both of Lyerly’s nuisance claims should be

⁶ Considering different sets of allegations, the federal district courts in *Johnson* and *Parris* denied dismissal on this ground. *See Johnson*, 563 F. Supp. 3d at 1339; *Parris*, 595 F. Supp. 3d at 1339 n.16. Neither court specifically addressed the situation here: the absence of any allegation that Daikin sold an unlawful product or took action at an inappropriate location.

dismissed.⁷

III. Lyerly's Trespass Claim Fails (Count Four).

Lyerly's trespass claim fails for at least three straightforward reasons, all arising from another effort by Lyerly to turn lawful *product* sales into a *property*-based tort.

First, and most basic, Lyerly fails to allege the “essential element” of a trespass claim—“presence on [the plaintiff's] property.” *Miller v. Smith & Smith Land Surveyors, P.C.*, 194 Ga. App. 474, 474 (1990). Instead, Lyerly alleges that Daikin sold products containing PFAS that—after purchase, use, and discharge by others—ended up in Lyerly's water through unspecified mechanisms. Nowhere does Lyerly allege that Daikin or any property controlled by Daikin entered Lyerly's property. So there is no trespass.

Second, Lyerly fails to allege any act by Daikin “unlawful in and of itself.” *Ga.-Pac. Cons. Prods., LP v. Ratner*, 345 Ga. App. 434, 444 (2018) (physical precedent). “Trespass is a wrongful interference with the right to the exclusive use and benefit of a property right.” *Bishop Eddie Long Ministries, Inc. v. Dillard*, 272 Ga. App. 894, 901 (2005). Applying this rule, the Court of Appeals held that a

⁷ Daikin also agrees with 3M that Lyerly's private nuisance claim fails for an additional reason—because the private nuisance as alleged harms more than “one or a few individuals.” O.C.G.A. § 41-1-2. *See* 3M Co.'s Motion to Dismiss Complaint 14–15 (Aug. 14, 2024).

chemical migrating to the plaintiffs' land from a nearby paper plant was not a trespass because the "operation of [the] manufacturing plant [wa]s not unlawful in and of itself," and the plaintiffs complained merely of the consequences of that lawful operation. *Ratner*, 345 Ga. App. at 444. The only action Lyerly alleged by Daikin is the manufacture or sale of lawful products. Compl. ¶¶ 32, 41. Lyerly never alleges that Daikin's sale of products was "unlawful in and of itself." *Ratner*, 345 Ga. App. at 444. Lyerly's trespass claim thus lacks the necessary element of wrongful conduct.

Third, Lyerly fails to allege that Daikin intended to interfere with its property rights. "[A] trespass is an intentional act." *Tyler v. Lincoln*, 272 Ga. 118, 120 (2000). So "the act of trespass must have been a voluntary, intentional act in that it intended the immediate consequences of the act, causing the trespass or invasion, *i.e.*, an intended act as opposed to a negligent act." *Lanier v. Burnette*, 245 Ga. App. 566, 570 (2000). Thus, for example, the Court of Appeals held a defendant did not commit the intentional act needed for trespass by failing to remediate mold, because there was "nothing to suggest that the [defendant] *intended* to maintain or promote mold growth." *Personal Concierge MD, LLC v. SG Echo, LLC*, 368 Ga. App. 720, 729 (2023) (emphasis added).

Again, the only alleged actions by Daikin are manufacturing and selling products containing PFAS to the carpet companies. Compl. ¶¶ 32, 41. The intended

consequences—that is, the “immediate consequences,” *Lanier*, 245 Ga. App. at 570—of that action had nothing to do with Lyerly or its property. Lyerly has therefore failed to allege any intentional act by Daikin supporting its trespass claim. For this reason, too, Lyerly’s trespass claim against Daikin must be dismissed.

IV. Lyerly’s GWQCA Claim Fails (Count Seven).

To assert a claim under the GWQCA, a plaintiff must allege that the defendant “spilled, discharged, or deposited” certain covered pollutants in “waters of the state,” and that the defendant did so “intentionally or negligently.” O.C.G.A. § 12-5-51.

Here, Lyerly fails to allege that Daikin itself spilled, discharged, or deposited any PFAS into Georgia waters. Instead, Lyerly alleges that Daikin and other chemical products manufacturers “sold” PFAS-containing products to the carpet companies, and that the carpet companies “discharg[ed] PFAS in industrial wastewater.” Compl. ¶¶ 32, 42, 52. Obviously, to sell or deliver a product to a customer is not to spill, discharge, or deposit into state waters.

Nor did Daikin “cause” or “permit” those forbidden actions. *See id.* ¶ 32, 42, 52. Daikin had no control over the conduct of the carpet companies—each of which allegedly made the independent and knowing decision to discharge wastewater allegedly containing PFAS. *See id.* ¶¶ 50–54. Given that lack of control, other courts, even in California, have interpreted nearly identical environmental statutes—which include the same “causes or permits” language—as not extending to supplier

defendants like Daikin whose products were later discharged by someone else. *See, e.g., City of Modesto Redevelopment Agency v. Superior Ct.*, 119 Cal. App. 4th 28, 43 (2004) (holding that “those who took affirmative steps directed toward the improper discharge” could be liable, but “those who merely placed solvents in the stream of commerce . . . are not liable”); *cf. Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 612–13 (2009) (explaining that a seller’s “mere knowledge” that its “useful product” “will be leaked, spilled, dumped, or otherwise discarded” at some point by the buyer is “alone . . . insufficient” for it to qualify as an “arranger” of the discharge under CERCLA). This Court should not go further.

The GWQCA was not enacted as a surrogate for products liability claims—claims Lyerly has not asserted here—and it cannot be the basis to hold Daikin liable for the alleged discharges of others. Indeed, if applied as Lyerly demands, the GWQCA would become a fount of unbounded liability: any supplier anywhere in the world could face liability so long as one of its products, or even a residual of one of its products, ends up in Georgia water. That is not the statute the General Assembly enacted.

V. Lyerly’s Derivative Claims Fail (Counts Five and Six).

Because Lyerly’s substantive negligence, nuisance, trespass, and GWQCA claims fail, its derivative claims for wantonness and punitive damages (Count Five) and attorneys’ fees (Count Six) fail as well. *See Popham v. Landmark American Ins.*

Co., 340 Ga. App. 603, 612 (2017) (“[A]wards of punitive damages and attorney fees are derivative of underlying claims[;] where those claims fail, claims for punitive damages and attorney fees also fail.”).

CONCLUSION

For these reasons, this Court should dismiss the complaint against Daikin.

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Respectfully submitted,

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