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Kim Windle James, Clerk
Chattooga County, Georgia

IN THE STATE COURT OF CHATTOOGA COUNTY
STATE OF GEORGIA

THE TOWN OF LYERLY GEORGIA,

Plaintiff,

v.

3M COMPANY, *et al.*;

Defendants.

CIVIL NO.: 24SCA4052

REPLY IN SUPPORT OF
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendants EIDP, Inc. f/k/a E.I. du Pont de Nemours and Company¹; DuPont de Nemours, Inc.; The Chemours Company; The Chemours Company FC, LLC; and Corteva, Inc. (collectively “Defendants”) respectfully submit this reply in support of their motion under O.C.G.A. § 9-11-12(b)(6) to dismiss all claims asserted by Plaintiff as either inadequately pleaded and/or unavailable under Georgia law. Defendants incorporate by reference the arguments made by Defendants Daikin America, Inc. and 3M Company in their Reply briefing, filed on October 21 and October 28, 2024, respectively (the “Motions”). Specifically, and as discussed in further detail in the Motions, all of Plaintiff’s claims against Defendants should be dismissed because:

- **Count I (Negligence):** Plaintiff’s negligence claim should be dismissed because Defendants owe no legal duty to Plaintiff under Georgia law and even if a legal duty did exist, Defendants did not breach it or proximately cause Plaintiff’s alleged injuries. Plaintiff’s response highlights the deferential standard of review applicable to

¹ Plaintiff filed this action asserting claims against both E.I. du Pont de Nemours and Company and EIDP, Inc. as separate defendants. E.I. du Pont de Nemours and Company is now known as “EIDP, Inc.”

consideration of the *factual allegations* of Plaintiff’s Complaint at the motion to dismiss stage. Of course, the Court must accept as true the allegations of Plaintiff’s Complaint. *Fritz v. Shadwich*, 312 Ga. App. 906, 906 (2011). But, the Court is not required to accept the *legal conclusions* or unreasonable inferences that Plaintiff asserts those facts dictate. *See Love v. Morehouse Coll., Inc.*, 287 Ga. App. 743, 743–44 (2007) (explaining that, when reviewing the trial court’s dismissal of a complaint, “we view all of the plaintiff’s well-pleaded material allegations as true, and view all denials by the defendant as false, [but] we are under no obligation to adopt a party’s legal conclusions based on these facts”) (citing cases). And, as discussed in the Motions, Plaintiff has not identified a source of duty under Georgia law running from the manufacturing defendants—like Defendants—to Plaintiff. Plaintiff fails to cite any reported decisions of the Georgia appellate courts as required to establish a common-law duty for a negligence claim, *Sheaffer v. Marriott Int’l, Inc.*, 349 Ga. App. 338, 340 (2019), and the non-Georgia appellate court decisions Plaintiff cites to are neither binding nor persuasive.² Furthermore, Defendants are not subject to the Georgia Water Quality Control Act (“GWQCA”) or its regulations, because Plaintiff does not allege that Defendants specifically discharged anything, and certainly no pollutants, anywhere in Georgia. And, as discussed in the Motions, neither the GWQCA, O.C.G.A. §

² Plaintiff posits that “[n]early every argument that the Defendants have raised in their motions to dismiss has been rejected by other judges in PFAS cases involving many of the same defendants and nearly identical legal claims.” *See* Response at pp. 7-8. This is false. *See, e.g., Bd. of Water and Sewer Commissioners of the City of Mobile, Alabama v. 3M Company, et al.*, Circuit Court of Mobile County, Alabama Case No. 02-CV-2024-900933.00 (October 24, 2024) at ¶¶ 4-5 (dismissing negligence, public nuisance, private nuisance, trespass, injunctive relief, wantonness and punitive damage claims, finding that “Plaintiff has failed to allege proximate causation”, and that Plaintiff’s claims “fail for lack of any allegations establishing an underlying duty to Plaintiff”, noting that, “[a]s a matter of law, a defendant cannot be liable for injuries that it did not cause, arising out of the conduct of third parties that it did not control and had no ‘duty to control.’”).

51-9-7 nor § 389 of the Restatement (Second) of Torts establish a duty or provide for any free-standing cause of action against Defendants. In addition, Plaintiff has failed to allege a “legally attributable causal connection between the defendant’s conduct and the alleged injury.” *Grinold v. Farist*, 284 Ga. App. 120, 121-22 (2007) (citing *Anderson v. Barrow County*, 256 Ga.App. 160, 163 (2002)); *see also CertainTeed Corp. v. Fletcher*, 300 Ga. 327, 331 (Ga. 2016). The Complaint establishes that Plaintiff would not have been injured without a series of subsequent, independent, wrongful acts of PFAS Users who discharged “PFAS-contaminated waste streams” into the environment. Complaint ¶ 56. As discussed in 3M Company’s Motion, this alleged unlawful discharge by PFAS Users is an intervening act that severs any causal chain to Defendants.

- **Count II (Public Nuisance) and Count III (Private Nuisance):** Plaintiff’s public and private nuisance claims should be dismissed for the same reasons stated by 3M Company and Daikin in their Motions. Plaintiff cannot bring a public nuisance claim because Defendants have no control over the alleged nuisance. *See, e.g., Corp. of Mercer Univ. v. Nat’l Gypsum Co.*, No. CIV.A. 85-126-3-MAC, 1986 WL 12447, at *6 (M.D. Ga. Mar. 9, 1986); *see also Jordan v. Southern Wood Piedmont Co.*, 805 F. Supp. 1575, 1577 (S.D. Ga. 1992). Plaintiff alleges that the PFAS Users purchased Defendants’ products and later improperly disposed of them, causing the alleged nuisance. Complaint ¶¶ 9, 53-57, 105-107. Thus, it was the disposal of PFAS-containing products—not their initial sale—that caused the alleged nuisance. As discussed in 3M Company’s Motion, the mere sale of a product causing contamination does not suffice to support a nuisance claim absent some relationship between the seller and the disposal practices of the purchaser. *See Jordan v. Southern Wood Piedmont Co.*, 805 F. Supp. 1575, 157 (S.D. Ga. 1992) (dismissing

nuisance claim where defendant was not involved in the “handling and disposal of chemicals” at issue). Defendants also have no legal right to enter Plaintiffs’ property or modify its treatment facilities, which is fatal to Plaintiff’s nuisance claims. *See Briggs & Stratton Corp. v. Concrete Sales & Servs., Inc.*, 971 F. Supp. 566, 573 (M.D. Ga. 1997) (“In order to be held liable for maintaining a continuing nuisance or trespass, [defendant] must have a legal right and be under a legal duty to terminate the cause of the injuries sustained by the [plaintiff].”) And, as discussed in 3M Company’s Motion, Plaintiff cannot bring a private nuisance claim because it alleges harm to more than a small number of individuals, and a nuisance cannot be both public and private under the plain language of O.C.G.A. § 41-1-2.

- **Count IV (Trespass):** As discussed in 3M Company’s Motion, Plaintiff’s trespass claim is subsumed within its nuisance claim, and should be dismissed. *Briggs*, 971 F. Supp. at 573. Moreover, Plaintiff has failed to allege (and is unable to identify) any voluntary and intentional invasion of Plaintiff’s property by Defendants, which is fatal to this claim. *Lanier v. Burnette*, 254 Ga. App. 566, 570 (2000) (“[T]he 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.”). Nor does Plaintiff allege that Defendants controlled any of the third-party conduct by PFAS Users that might otherwise support the alleged trespass. *Page v. Braddy*, 255 Ga. App. 124, 127 (2002) (no trespass where third party “acted independently and without authority, assistance, or direction from [defendant]”). And, as discussed in Daikin’s Motion, Plaintiff cites no Georgia precedent for the proposition that a municipality has a cause of action for civil trespass. *See* O.C.G.A. § 51-9-1 (creating a cause of action to protect “[t]he right of

enjoyment of *private* property [which is] an absolute right of every *citizen*”) (emphasis added).

- **Count VII (Georgia Water Quality Control Act):** Plaintiff’s GWQCA claim should also be dismissed. Plaintiff does not dispute that Defendants did not spill, discharge, or deposit PFAS anywhere near Lyerly (or elsewhere in Georgia). *See*, Compl. ¶¶ 9, 50-54, 102-104 (the “PFAS Users” discharges resulted in contamination); *see also* Response at p. 40 (stating that PFAS “enter the environment through the PFAS Users’ standard manufacturing processes, thereby harming Lyerly”). Plaintiff puts forth an argument based on the plain language of GWQCA found in the words “causes or permits.” *See id.* (citing O.C.G.A. § 12-5-51(a)). Contrary to Plaintiff’s interpretation, Defendants cannot be held liable simply as a purported causer or permitter of discharges by others as O.C.G.A. § 12-5-51(a) only reaches those discharges “intentionally or negligently” caused or permitted. Plaintiff does not allege that Defendants intended or negligently caused the presence of PFAS within its water. As noted in Daikin’s Motion, the GWQCA applies to those who direct their agents to discharge pollutants into state waters, or permit others to come onto their property to illegally discharge pollutants into state waters. But that is far afield from Plaintiff’s theory that product suppliers are liable under the GWQCA if residue from their products ends up in state water long after and far away from the sale. Plaintiff’s citation to *Parris v. 3M Co.*, to suggest that Defendants can be held liable for indirectly discharging PFAS “through their manufacture and sale” is inapposite, as the defendant in *Parris* was a textile manufacturer who *did* discharge wastewater containing PFAS. 595 F. Supp. 3d 1288, 1324 (N.D. Ga. 2022). Plaintiff here does not allege Defendants discharged anything, let alone PFAS, in the State of Georgia. And, as noted in 3M Company’s Motion,

as a municipality, Plaintiff has no right of action under the statute, which does not itself define the terms “political subdivision”.

- **Count V (Wantonness and Punitive Damages) and Count VI (Attorney’s Fees and Litigation Expenses):** Because Plaintiff’s substantive claims asserted against Defendants are subject to dismissal, their derivative claims for punitive damages and attorney fees must also be dismissed. *Popham v. Landmark Am. Ins. Co.*, 798 S.E.2d 257, 264 (Ga. Ct. App. 2017).

For these reasons, Defendants respectfully move the Court to dismiss all claims asserted against them with prejudice.

Dated: October 29, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2024, I electronically filed the foregoing with the Clerk of Court using the Court's electronic filing system, which will automatically send e-mail notification of such filing to all attorneys of record.

/s/ Caroline M. Gieser

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