

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA

XENIA BLANKINSHIP, SPANLINE  
DIXON, and JEFFREY WATERS, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

GEORGIA PACIFIC LLC,

Defendant.

Civil Action No. \_\_\_\_\_

**NOTICE OF REMOVAL**

Defendant Georgia-Pacific LLC hereby removes this action from the Superior Court of Glynn County, Georgia, where it is presently pending, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. In support of removal, Georgia-Pacific LLC submits the following:

**FACTUAL BACKGROUND**

1. This case arises from claims Plaintiffs Xenia Blankinship, Spanline Dixon, and Jeffrey Waters (collectively “Plaintiffs”) assert against Georgia-Pacific LLC, the only named Defendant (which, as noted below, should be Brunswick Cellulose, LLC) in the Superior Court of Glynn County, Georgia, where it was assigned Docket/Case No. CE22-01084. Until removed pursuant to this Notice, the action was pending in that Court.

2. In accordance with 28 U.S.C. § 1446(a), Exhibit A to this Notice comprises all pleadings, including Plaintiffs’ summons and Complaint served upon the Defendant.

3. Plaintiffs filed the initial Complaint on October 20, 2022. Plaintiffs served Georgia-Pacific LLC on November 7, 2022. Ex. A.

4. The allegations comprising Plaintiffs’ claims are that:

- a. The operation, maintenance, and design of the cellulose fluff pulp mill located at 1400 9th Street, Brunswick, Georgia (the “Facility”) releases noxious odors onto the private residential properties of Plaintiffs and Plaintiffs’ proposed class, causing property damage through nuisance, trespass, and negligence.
- b. More than 65 neighboring residents have reported to Plaintiffs’ counsel that they have experienced and are adversely impacted by the noxious odor emissions and 295 complaints of the odors have been registered.
- c. Several thousand households are contained within Plaintiffs’ proposed class geographic area, which Plaintiffs allege sustained property damage, including but not limited to interference with the ability to use and enjoy their properties, impacted property values, and deprivation of the full value of their properties.

**NOTICE OF REMOVAL IS TIMELY**

5. The instant Notice of Removal is timely, as “the 30–day period for removal begins to run when the defendant is formally served with the summons and complaint.” *Gardner v. TBO Cap. LLC*, 986 F. Supp. 2d 1324, 1330 (N.D. Ga. 2013). Additionally, this notice was filed within one year of the Lawsuit being commenced.

6. Plaintiffs filed their original pleading on October 20, 2022. The Complaint and summons were served upon Defendant Georgia-Pacific LLC on November 7, 2022. *See* Ex. A, Service of Process Notice. Upon information and belief, no other Defendant has been Named in Plaintiffs’ Complaint or properly served.

7. No previous request has been made for the relief requested in this Notice.

**COMPLETE DIVERSITY JURISDICTION**

8. This action is a civil action within the meaning of the Acts of Congress and may be removed pursuant to 1441(a).

9. Diversity jurisdiction exists where any member of class of plaintiffs is a citizen of a state different from any defendant. 28 U.S.C. §§ 1332 and 1441.

10. The Complaint alleges that Plaintiff Xenia Blankinship is domiciled in Georgia and thus is a citizen of Georgia. (Ex. A, Complaint ¶¶ 4, 26).

11. The Complaint alleges that Plaintiff Spanline Dixon is domiciled in Georgia and thus is a citizen of Georgia. (Ex. A, Complaint ¶¶ 5, 28).

12. The Complaint alleges that Plaintiff Jeffrey Waters is domiciled in Georgia and thus is a citizen of Georgia (Ex. A, Complaint ¶¶ 6, 30).

13. Plaintiffs' own description of the proposed class limits the entire proposed class to Georgia residents. Ex. A, Complaint ¶ 43); *see also* 28 U.S.C. § 1332(d)(7).

14. Although Georgia-Pacific LLC was named as the Defendant in this action, Brunswick Cellulose LLC – not Georgia-Pacific LLC – is the proper party as it is the owner and operator of the Facility that is the subject of this lawsuit. (Exhibit B, Affidavit of Mark Berry ¶ 4).

15. Regardless, the citizenships of both Georgia-Pacific LLC and Brunswick Cellulose LLC are the same for purposes of diversity jurisdiction: both are citizens of Delaware and Kansas. Ex. B, Affidavit of Mark Berry ¶ 5.

16. When determining diversity jurisdiction, “a limited liability company is a citizen of any state of which a member of the company is a citizen.” *Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004) (internal citations

omitted). When a Defendant is comprised of multiple layers of entities, the citizenship determination requires an exploration of the citizenship of the constituent entities as far down as necessary to unravel fully the citizenship of the entity before the court. *Carden v. Arkoma Assoc.*, 494 U.S. 185, 189 (110 S. Ct. 1015) (“[W]e reject the contention that to determine, for diversity purposes, the citizenship of an artificial entity, the court may consult the citizenship of less than all of the entity’s members.”); *see also Hicklin Eng’g L.C. v. Bartell*, 439 F. 3d 346, 347 (7th Cir. 2006) (“The citizenship of a limited liability company is that of its members, and its members may include partnerships, corporation, and other entities that have multiple citizenships. A federal court thus needs to know each member’s members’ citizenship.”)

17. The members of Georgia-Pacific LLC and Brunswick Cellulose LLC are as follows:

- d. Brunswick Cellulose LLC is a Delaware limited liability company whose sole member is GP Cellulose, LLC, a Delaware limited liability company.
- e. GP Cellulose, LLC’s sole member is GP Packaging and Cellulose Operations Holdings LLC, a Delaware limited liability company.
- f. GP Packaging and Cellulose Operations Holdings LLC’s sole member is GPPC Equity Holdings LLC, a Delaware limited liability company.
- g. GPPC Equity Holdings LLC’s sole member is Georgia-Pacific LLC, a Delaware limited liability company.
- h. Georgia-Pacific LLC’s sole member is Georgia-Pacific Holdings, LLC, a Delaware limited liability company.
- i. Georgia-Pacific Holdings, LLC’s sole member is Georgia-Pacific Equity Holdings LLC, a Delaware limited liability company.

- j. Georgia-Pacific Equity Holdings LLC's sole member is Koch Renewable Resources, LLC, a Delaware limited liability company.
- k. Koch Renewable Resources, LLC's sole member is Koch Industries, Inc., a Kansas corporation.
- l. Koch Industries, Inc. is a Kansas corporation with its principal place of business in Wichita, Kansas.

Ex. B, Affidavit of Mark Berry ¶ 5; *see also* Exhibit C (Georgia Secretary of State Printouts for Brunswick Cellulose LLC and Georgia-Pacific LLC).<sup>1</sup>

18. Accordingly, because Georgia-Pacific LLC and Brunswick Cellulose LLC are both Delaware LLCs wholly owned by other Delaware LLCs that are wholly owned by parent corporation, Koch Industries, Inc. a Kansas citizen, both companies are citizens of Delaware and Kansas for purposes of diversity jurisdiction.<sup>2</sup> *Id.* at ¶ 5; *see also RES-GA Creekside Manor, LLC v. Star Home Builders, Inc.*, No. 2:10-CV-207- RWS, 2011 WL 6019904, at \*2 (N.D. Ga. Dec. 2, 2011). Thus, complete diversity of citizenship exists here because Plaintiffs (and the proposed class members) are alleged to be citizens of Georgia. *See* 28 U.S.C. § 1332(d)(2)(A).

19. Although Georgia-Pacific LLC disputes liability and damages, it is evident that the Named Plaintiffs purport to allege claims for monetary damages that, if granted, would exceed the amount in controversy of \$75,000, exclusive of interest and costs, as each Plaintiff is

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<sup>1</sup> Defendant requests the Court take judicial notice of the contents of the Georgia Secretary of State's records for these two entities, found in Exhibit C. *See* Fed. R. Evid. 201; *see also Siegel v. LePore*, 234 F.3d 1163, 1196 (11th Cir. 2000); *Williams v. Bd. of Regents of Univ. Sys. of Georgia*, No. CV 120-100, 2022 WL 4588587, at \*3 (S.D. Ga. Sept. 29, 2022)

<sup>2</sup> Plaintiffs' Complaint wrongly asserts that Georgia-Pacific LLC is a Georgia citizen because its "managers" are citizens of Georgia. (Ex. A, Complaint ¶ 7) However, as mentioned above, Georgia-Pacific LLC's *members* – the metric by which an LLC's citizenship is determined – are citizens of Delaware and Kansas, not Georgia. *See also* Ex. B.

alleging damages including past, present and future nuisance and trespass damages, past, present, and future diminution in property value, personal residential damages, and injunctive relief on behalf of the Facility. Plaintiffs also seek special damages for negligence, attorney fees and costs, and injunctive relief. As a result, even a modest alleged damage amount for each Plaintiff, plus the requested additional attorneys' fees, would exceed \$75,000.

**DIVERSITY JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

20. This Court also has diversity jurisdiction under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d).

21. Under CAFA, federal courts have original jurisdiction over class actions in which the amount in controversy exceeds \$5,000,000 in the aggregate; there is minimal (as opposed to complete) diversity among the parties, i.e., any class member and any defendant are citizens of different states; and there are at least 100 members in the class. 28 U.S.C. § 1332(d).

**I. Minimal Diversity Exists**

22. As explained *supra*, ¶¶ 7-15, Plaintiffs Xenia Blankinship, Spanline Dixon, and Jeffrey Waters are citizens of Georgia, (Ex. A, Complaint ¶¶ 4-6, 26, 28, 30), while Defendant Georgia-Pacific LLC and, the proper party, Brunswick Cellulose LLC are citizens of Delaware and Kansas. (Ex. B, Affidavit of Mark Berry ¶ 5); *see* 28 U.S.C. § 1332(c)(1); 1332(d)(7).

23. Accordingly, because Georgia-Pacific LLC and Brunswick Cellulose LLC are citizens of different states than Plaintiffs, the minimal diversity requirement is met. *See* 28 U.S.C. § 1332(d)(2)(A).

**II. The Amount In Controversy is Met.**

24. Although Georgia-Pacific LLC disputes liability and damages, it is evident that the Named Plaintiffs purport to allege claims for themselves and the proposed class members for

monetary damages that, if granted, would, in the aggregate, exceed CAFA's \$5 million requirement. 28 U.S.C. § 1332(d)(6) (under CAFA, "the claims of the individual class members shall be aggregated[.]")

25. Although a removing defendant has the burden of proving the existence of federal jurisdiction, "where a Plaintiff has made an unspecified demand for damages, a lower burden of proof is warranted because there is simply no estimate of damages to which a court may defer." *Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1356-57 (11th Cir. 1996), *overruled on other grounds*, *Cohen v. Office Depot, Inc.*, 204 F3d 1069 (11th Cir. 2000). The legislative history of CAFA makes clear that the amount-in-controversy requirement is satisfied "if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief)." S. REP. No. 109-14 at 42 (2005); *see also Thompson v. Louisiana Reg'l Landfill Co.*, 365 F. Supp. 3d 725, 730 (E.D. La. 2019)

26. In determining the amount in controversy on removal, "the court will consider first whether it is facially apparent from the complaint that the jurisdictional amount is in controversy. If it is not, the court may consider facts alleged in the notice of removal, judicial admissions made by the plaintiffs, non-sworn letters submitted to the court, or other summary judgment type evidence that may reveal that the amount in controversy is satisfied." *See Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010) (citation omitted)

27. Here, Plaintiffs allege in the Complaint that emissions of "noxious odors" and "malodorous gases [that] primarily take the form of hydrogen sulfide" which emit and continue to emit, objectionable, noxious odors "on intermittent and reoccurring dates too numerous to individually recount" have caused "substantial and unreasonable interference with the use and

enjoyment of the full value of their properties.” Ex. A, Complaint ¶¶ 16, 20, 36, 41. Plaintiffs propose a class of:

All owner/occupants and renters of residential property who have within 4 years of the filing of this complaint, resided within the following geographic area:

Beginning at the corner of Gloucester Street and Highway 17. North on Highway 17 to U.S. Route 25 also known as Golden Isles Parkway. Northwest on Georgia State Route 303 to the East Rivercoastline. East Rivercoastline south to Gloucester Street. East on Gloucester Street to the starting point of Gloucester Street and Highway 17.

*Id.* at ¶ 43.

28. Plaintiffs also allege that “[t]here are **several thousand households** in the proposed class,” *id.* at ¶ 44 (emphasis added), that “[m]ore than 65 neighboring residents have reported to Plaintiffs’ counsel that they have experienced and are adversely impacted by Defendant’s noxious odor emissions,” *id.* at ¶ 24, and that “[b]etween December 2020 and December 2021, the GEPD Coastal District reports that there have been 235 air quality complaints.” *Id.* at ¶ 32.

29. Further, Plaintiffs allege that “[m]embers of the public...have experienced and been harmed by the fugitive noxious odors emitted from the Facility into public spaces”, *id.* at ¶ 35, that “[s]eparate and distinct from the property damage incurred by Plaintiffs and the putative class, Defendant’s emissions have substantially interfered with rights common to the general public, including the right to uncontaminated and/or unpolluted air, causing damages to all those persons who come within the Facility’s sphere of operation,” *id.* at 67, and that these noxious odors “caused Plaintiffs and the Class substantial harm.” *Id.* ¶¶ at 25, 80.

30. In regard to damages, Plaintiffs’ request “compensatory damages arising from the property damages they suffered and any recoverable attorneys’ fees and costs, including pre-judgment and post-judgment interest...Injunctive relief not inconsistent with Defendant’s



federally and state enforced air permits...An Order holding that entrance of the aforementioned noxious odors upon Plaintiffs' property constituted negligence and nuisance..." and also allege "annoyance or interference," property damage "through diminution in property value, deprivation of full value of property, and interference with use and enjoyment of property," and physical damage to Plaintiffs' "private residential property." *Id.* at ¶¶ 36, 46, 66, 71, 75, 84, and Prayer for Relief.

31. Accordingly, because of the breadth of Plaintiffs' proposed class (*at minimum* 2,000 households) and the wide-ranging allegations of odor nuisance, each of the class members' claims for nuisance, trespass, and negligence would only have to average \$2,500-\$5,000 per plaintiff, not to mention the attorneys' fees or the widespread injunctive relief requested. Thus, the aggregated amount of damages alleged for each class member facially satisfy the requirement of \$5,000,000 in controversy. *Addison v. Louisiana Reg'l Landfill Co.*, 398 F. Supp. 3d 4, 11 (E.D. La. 2019) (finding in landfill odor class action it was "facially apparent that the aggregate amount in controversy exceeds \$5,000,000" because "the actions consolidated in state court were filed by over 600 Plaintiffs seeking various damages...includ[ing] loss of use and enjoyment of their property, diminution in property value, and physical and mental injury."); *Thompson v. Louisiana Reg'l Landfill Co.*, 365 F. Supp. 3d 725, 730 (E.D. La. 2019) (holding that landfill odor class action satisfied amount in controversy based on number of odor complaints received and number of people residing in the broad geographic class area); *Priselac v. Chemours Co.*, 561 F. Supp. 3d 562, 570 (E.D.N.C. 2021) (basing amount in controversy on "breadth of the damages sought and size of the putative class")

32. Even if the Court finds that the amount in controversy is not apparent from the proposed class size and breadth of damages sought alone, "Defendants may introduce their own

affidavits, declarations, or other documentation—provided of course that removal is procedurally proper.” See *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 755 (11th Cir. 2010)

33. “The general rule for the measure of damages involving real property is the diminution of the fair market value of the property and/or the cost of repair or restoration, but limited by the fair market value at the time of the breach or tort.” *Unified Gov't of Athens Clarke Cnty. v. North*, 250 Ga. App. 432, 438–39, 551 S.E.2d 798, 804 (2001)

34. Accordingly, because the Named Plaintiffs allege damage to the value of their properties, the maximum amount of potential damages – and thus the amount put in controversy – is the fair market value of each residential property in the proposed class.

35. Based on the proposed class of at least 2,000 households in the City of Brunswick, Glynn County (Ex. A, Complaint ¶ 43) and based on publicly available data from the U.S. Census Bureau,<sup>3</sup> the median value of owner-occupied housing units from 2016-2020 was \$102,600.<sup>4</sup>

36. In addition to damages for diminution in property value, Plaintiffs also allege a common question of the proposed class is “whether the degree of harm suffered by Plaintiffs and the Class constitutes a substantial and unreasonable annoyance or interference.” Ex. A, Complaint ¶ 46. In Georgia, “[d]amages for discomfort and annoyance caused to the owner and

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<sup>3</sup> See <https://www.census.gov/quickfacts/fact/table/brunswickcitygeorgia/LND110210>. Defendant requests the Court take judicial notice of the “Median value of owner-occupied housing units, 2016-2020” data set from the US Census Bureau, which can be accessed at the above link. See Fed. R. Evid. 201; see also *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571–72 (5th Cir. 2011) (“United States census data is an appropriate and frequent subject of judicial notice.”)

<sup>4</sup> Additionally, U.S. Census data compiled by Data USA, a joint program between Deloitte, Datawheel, and Cesar Hidalgo, Professor at the MIT Media Lab and Director of Collective Learning), found that the 2020 median property value in Brunswick, Georgia was \$167,100. See <https://datausa.io/profile/geo/brunswick-ga-31000US15260>

his family are separate and distinct from damage to the value of the realty.” *City of Atlanta v. Murphy*, 194 Ga. App. 652, 653, 391 S.E.2d 474, 476 (1990); *see also Toyo Tire N. Am. Mfg., Inc. v. Davis*, 299 Ga. 155, 165, 787 S.E.2d 171, 180 (2016)

37. Taking this amount and multiplying it by the alleged proposed class member properties (*minimum* 2,000), the amount put in controversy by the Complaint is at least \$205,200,000 which far exceeds CAFA’s \$5 million jurisdictional threshold.

38. Plaintiffs have not limited their demand for damages to less than \$5,000,000.<sup>5</sup>

39. In addition, Georgia courts have affirmed large awards for cases solely involving temporary nuisance with less individuals than in Plaintiffs’ class, demonstrating that a factfinder might find for Plaintiffs with a large measure of damages. *See Davis v. Toyo Tire North America Mfg. Inc.*, 2017 WL 4369392, pending in the Georgia Superior Court, Cherokee Judicial Circuit, Bartow County (February 14, 2017) (jury awarded two plaintiffs \$50,000 in compensatory odor nuisance damages, in addition to plaintiffs’ attorney fees and expenses of litigation); *see also Simerly v. Pulte Home Corp.*, 2011 WL 5438800, pending in Georgia Superior Court, Bel-Forsyth Judicial Circuit, Forsyth County (2011) (jury awarded six plaintiffs \$2,059,312 in compensatory damages and attorneys’ fees for negligence, nuisance, and trespass).

40. These cases are akin to the case at bar because they involve allegations of odor nuisance or other temporary nuisance which Plaintiffs claim resulted in property damage and

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<sup>5</sup> This is likely because Plaintiffs’ national counsel, Liddle Sheets Coulson PC, has recently obtained numerous settlements for similar class actions based on noxious emissions around the county. *See* <https://www.lscounsel.com/results> (noting \$9.5 million settlement, including significant improvements designed to reduce emissions, for residents of Granada Hills neighborhood who alleged noxious odors from nearby landfill in *Michaely v. Republic Services of California* and \$8.5 million settlement, including significant facility improvements, for residents of Clairton, Pennsylvania alleging emissions from steelmaking coke plant in *Ross v. United States Steel Corporation*).

required remediation or injunctive relief. These awards were in the case of husband and wife plaintiffs, not class actions. It is therefore reasonable to infer that had these allegations of nuisance, trespass, and negligence been pleaded across a class the size of Plaintiffs' proposed class, the award would be in excess of \$5,000,000. The decisions in these cases establish that under Georgia law a fact finder could reasonably determine that Plaintiffs' claims against Defendant could result in an award of damages in excess of \$5,000,000, exclusive of interest and costs.

41. Lastly, Plaintiffs allege injunctive relief. *See* Ex. A, Complaint ¶ 71, Prayer for Relief. "For amount in controversy purposes...the value of the requested injunctive relief is the monetary value of the benefit that would flow to the plaintiff if the injunction were granted." *Anderson v. Wilco Life Ins. Co.*, 943 F.3d 917, 925 (11th Cir. 2019) Further, for purposes of CAFA, courts "aggregate the claims of individual class members and consider the monetary value that would flow to the entire class if [injunctive or] declaratory relief were granted." *Id.*

42. Though the costs of all actions needed to stop odor emissions or to close the Facility have not been specifically pled, they need to be considered in determining the amount in controversy, and would more likely than not, coupled with the aforementioned damages, exceed \$5,000,000. *See Thompson v. Louisiana Reg'l Landfill Co.*, 365 F. Supp. 3d 725, 731 (E.D. La. 2019) ("Looking from the defendant's viewpoint, assuming an injunction lasted 218 days, which is not an unreasonable assumption, the Waste Connections Defendants' loss would exceed \$ 5 million in revenues. This amount also would satisfy CAFA's amount-in-controversy requirement.")

43. Based on the foregoing and because Plaintiffs seek varied damages across a broad class definition in a metropolitan area, Plaintiffs' allegations and relevant Georgia law establish

it is more likely than not that the Plaintiffs' claims exceed the amount in controversy requirement of \$5,000,000.

**III. Numerosity Requirement is Met.**

44. As noted above, Plaintiffs allege that “[t]here are several thousand households in the proposed class. Accordingly, the members of the Class are so numerous that joinder of all parties is clearly impracticable” Ex. A, Complaint ¶ 44. Thus, Plaintiffs allege at least 2,000 potential class members, 64 of which Plaintiffs’ counsel have already spoken with. *Id.* at ¶ 24.

45. Based upon Plaintiffs’ allegations, the putative class size is well-over 100 and thus satisfies 28 U.S.C. §1332(d)(5)(B).

46. For the foregoing reasons, this action is properly removed to this Court pursuant to CAFA. *See* 28 U.S.C. § 1332(d).

**REMOVAL TO THIS JUDICIAL DISTRICT IS PROPER**

47. Removal to this Court is proper because the Southern District of Georgia includes Glynn County, Georgia, the location of the court in which the Complaint was originally filed. 28 U.S.C. ¶ 90(c) and 1441(a).

**DEFENDANT HAS COMPLIED WITH ALL PROCEDURAL REQUIREMENTS OF REMOVAL**

48. Immediately upon the filing of this Notice, a copy of same will be filed with the Clerk of the Superior Court of Glynn County, Georgia as required by 28 U.S.C. § 1446(d), and notice of this filing will be given to all parties.

49. There are no other defendants, so consent from additional defendants is not required.

50. Defendant has not answered the Complaint in state court, and will do so consistent with Fed. R. Civ. P. 8.

**RESERVATIONS**

51. Georgia-Pacific LLC and Brunswick Cellulose LLC hereby reserve all defenses and objections to the Complaint, including but not limited to: lack of personal jurisdiction, improper venue, forum non conveniens, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, and failure to satisfy the requirements of class certification.

WHEREFORE, Georgia-Pacific LLC hereby removes this action from the Superior Court of Glynn County, Georgia to the United States District Court for the Southern District of Georgia for further proceedings.

Respectfully submitted, this 6<sup>th</sup> day of December, 2022

ELLIS PAINTER

  
/s/ \_\_\_\_\_  
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ATTORNEYS FOR DEFENDANT

GEORGIA-PACIFIC LLC

# EXHIBIT A





Computershare Governance Services, Inc.  
100 Beard Sawmill Road, Shelton, CT 06484

11/08/2022

Georgia-Pacific LLC  
Emily O. Valladares - Law Department  
Koch Companies Public Sector, LLC  
133 Peachtree Street, NE  
Atlanta GA 30303

## SERVICE OF PROCESS NOTICE

Item: 2022-1473

The following is a courtesy summary of the enclosed document(s). **ALL information should be verified by you.**

Note: Any questions regarding the substance of the matter described below, including the status or how to respond, should be directed to the contact set forth in line 12 below or to the court or government agency where the matter is being heard.

1.	<b>Entity Served:</b>	Georgia-Pacific LLC
2.	<b>Title of Action:</b>	Xenia Blankinship, et al. vs. Georgia Pacific LLC
3.	<b>Document(s) Served:</b>	Summons General Civil and Domestic Relations Case Filing Information Form Class Action Complaint and Jury Demand
4.	<b>Court/Agency:</b>	Glynn County Superior Court, Georgia
5.	<b>State Served:</b>	Georgia
6.	<b>Case Number:</b>	CE22-01084
7.	<b>Case Type:</b>	Nuisance
8.	<b>Method of Service:</b>	Certified Mail
9.	<b>Date Received:</b>	Monday 11/07/2022
10.	<b>Date to Client:</b>	Tuesday 11/08/2022
11.	<b># Days When Answer Due: Answer Due Date:</b>	30 Wednesday 12/07/2022  <b>CAUTION:</b> Client is solely responsible for verifying the accuracy of the estimated Answer Due Date. To avoid missing a crucial deadline, we recommend immediately confirming in writing with opposing counsel that the date of the service in their records matches the Date Received.
12.	<b>Sop Sender:</b> (Name, City, State, and Phone Number)	Mario A. Pacella Brunswick, GA 912-264-6465
13.	<b>Shipped To Client By:</b>	Email Only with PDF Link
14.	<b>Tracking Number:</b>	
15.	<b>Handled By:</b>	111
16.	<b>Notes:</b>	None.

NOTE: This notice and the information above is provided for general informational purposes only and should not be considered a legal opinion. The client and their legal counsel are solely responsible for reviewing the service of process and verifying the accuracy of all information. At ComputerShare, we take pride in developing systems that effectively manage risk so our clients feel comfortable with the reliability of our service. We always deliver service of process so our clients avoid the risk of a default judgment. As registered agent, our role is to receive and forward service of process. To decrease risk for our clients, it is not our role to determine the merits of whether service of process is valid and effective. It is the role of legal counsel to assess whether service of process is invalid or defective. Registered agent services are provided by United Agent Group Inc.

**IN THE SUPERIOR COURT OF GLYNN COUNTY  
STATE OF GEORGIA**

XENIA BLANKINSHIP, SPANLINE	)	
DIXON, and JEFFREY WATERS, on behalf	)	
of themselves and all others similarly	)	
situated,	)	
	)	Case No. CE22-01084
Plaintiffs,	)	
	)	<b>SUMMONS</b>
vs.	)	
	)	
GEORGIA PACIFIC LLC,	)	
	)	
Defendant.	)	

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To Georgia Pacific, LLC, 133 Peachtree Street, NE, Atlanta, Georgia, 30303 and its  
Registered Agent CT Corporations Systems:  
United Agent Group Inc.,  
2985 Gordy Parkway, 1<sup>st</sup> Floor  
Marietta, GA 30066

You are hereby summoned and required to file with the Clerk of said Court and serve  
upon the Plaintiffs’ attorney, whose name and address is:

Mario A. Pacella  
P.O. Box 1635  
Brunswick, GA 31521  
Tel: 912-264-6465

An answer to the Complaint, which is herewith served upon you, within 30 days after  
service of this summons upon you, exclusive of the date of service. If you fail to do so,  
judgement by default will be taken against you for the relief demanded in the complaint.

This 20th day of OCTOBER, 2022

The Honorable Ronald M. Adams  
Clerk of Superior Court

By: /s/ Madison Browning  
Deputy Clerk

## General Civil and Domestic Relations Case Filing Instructions

1. Provide the class of court and county in which the case is being filed.
2. Provide the plaintiff's and defendant's names.
3. Provide the plaintiff's attorney's name and State Bar number. If you are representing yourself, provide your own name and check the self-represented box.
4. Provide the primary type of case by checking only *one* appropriate box. Cases can be either general civil or domestic relations and only *one* type of primary case within those categories. Check the case type that most accurately describes the primary case. If applicable, check one sub-type under the primary case type. If you are making more than one type of claim, check the case type that involves the largest amount of damages or the one you consider most important. See below for definitions of each case type.
5. Provide an answer to the four questions by checking the appropriate boxes and/or filling in the appropriate lines.

### Case Type Definitions

#### General Civil Cases

**Automobile Tort:** Any tort case involving personal injury, property damage, or wrongful death resulting from alleged negligent operation of a motor vehicle.

**Civil Appeal:** Any case disputing the finding of a limited jurisdiction trial court, department, or administrative agency.

**Contempt/Modification/Other Post-Judgment:** Any case alleging failure to comply with a previously existing court order, seeking to change the terms of a previously existing court order, or any other post-judgment activity in a general civil case.

**Contract:** Any case involving a dispute over an agreement between two or more parties.

**Garnishment:** Any case where, after a monetary judgment, a third party who has money or other property belonging to the defendant is required to turn over such money or property to the court.

**General Tort:** Any tort case that is not defined or is not attributable to one of the other types of torts listed.

**Habeas Corpus:** Any case designed to review the legality of the detention or imprisonment of an individual, but not the question of his or her guilt or innocence.

**Injunction/Mandamus/Other Writ:** Cases involving a written court order directing a specific person to perform or refrain from performing a specific act.

**Landlord/Tenant:** Any case involving a landlord/tenant dispute if the landlord removed a tenant and his or her property from the premises or placed a lien on the tenant's property to repay a debt.

**Medical Malpractice Tort:** Any tort case that alleges misconduct or negligence by a person in the medical profession acting in a professional capacity, such as doctors, nurses, physician's assistants, dentists, etc.

**Product Liability Tort:** Any tort case that alleges an injury to a person was caused by the manufacturer or seller of an article due to a defect in, or the condition of, the article sold or an alleged breach of duty to provide suitable instructions to prevent injury.

**Real Property:** Any case involving disputes over the ownership, use, boundaries, or value of land.

**Restraining Petition:** Any petition for a restraining order that does not result from a domestic altercation or is not between parties in a domestic relationship.

**Other General Civil:** Any case that does not fit into one of the other defined case categories in which a plaintiff is requesting the enforcement or protection of a right or the redress or prevention of a wrong.

#### Domestic Relations Cases

**Adoption:** Cases involving a request for the establishment of a new and permanent parent-child relationship between persons not biologically parent and child.

**Contempt:** Any case alleging failure to comply with a previously existing court order. If the contempt action deals with the non-payment of child support, medical support, or alimony, also check the corresponding sub-type box.

**Dissolution/Divorce/Separate Maintenance/Alimony:** Any case involving the dissolution of a marriage or the establishment of alimony or separate maintenance.

**Family Violence Petition:** Any case in which a protective order from a family member or domestic partner is requested.

**Modification:** Any case seeking to change the terms of a previously existing court order. If the modification deals with custody, parenting time, or visitation, also check the corresponding sub-type box.

**Paternity/Legitimation:** Cases involving establishment of the identity and/or responsibilities of the father of a minor child or a determination of biological offspring.

**Support – IV-D:** Cases filed by the Georgia Department of Human Services to request maintenance of a minor child by a person who is required under Title IV-D of the Social Security Act of 1973 (42 USC §§ 651-669b) to provide such maintenance.

**Support – Private (non-IV-D):** Cases filed to request maintenance of a parent/guardian or a minor child by a person who is required by a law other than Title IV-D of the Social Security Act of 1973 (42 USC §§ 651-669b) to provide such maintenance.

**Other Domestic Relations:** Domestic relations cases that do not adequately fit into any of the other case types, including name changes.

**Please note:** This form is for statistical purposes only. It shall have no legal effect in a case. The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or court rules. Information on this form will not be entered into evidence.

General Civil and Domestic Relations Case Filing Information Form

Superior or  State Court of Glynn County

For Clerk Use Only  
Date Filed 10/20/2022 Case Number CE22-01084  
MM-DD-YYYY

Plaintiff(s)  
Blakens Xenia  
Last First Middle I. Suffix Prefix  
Dixon Spaline  
Last First Middle I. Suffix Prefix  
Waters Jeffrey  
Last First Middle I. Suffix Prefix  
Last First Middle I. Suffix Prefix

Defendant(s)  
Georgia Pacific LLC  
Last First Middle I. Suffix Prefix  
Last First Middle I. Suffix Prefix  
Last First Middle I. Suffix Prefix  
Last First Middle I. Suffix Prefix

Plaintiff's Attorney Mario A. Pacella State Bar Number 558519 Self-Represented

Check one case type and one sub-type in the same box (if a sub-type applies):

- General Civil Cases
 Automobile Tort
 Civil Appeal
 Contempt/Modification/Other Post-Judgment
 Contract
 Garnishment
 General Tort
 Habeas Corpus
 Injunction/Mandamus/Other Writ
 Landlord/Tenant
 Medical Malpractice Tort
 Product Liability Tort
 Real Property
 Restraining Petition
 Other General Civil

- Domestic Relations Cases
 Adoption
 Contempt
 Non-payment of child support, medical support, or alimony
 Dissolution/Divorce/Separate Maintenance/Alimony
 Family Violence Petition
 Modification
 Custody/Parenting Time/Visitation
 Paternity/Legitimation
 Support - IV-D
 Support - Private (non-IV-D)
 Other Domestic Relations

Check if the action is related to another action pending or previously pending in this court involving some or all of the same: parties, subject matter, or factual issues. If so, provide a case number for each.

Case Number Case Number

I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in OCGA § 9-11-7.1.

Is a foreign language or sign-language interpreter needed in this case? If so, provide the language(s) required.

Language(s) Required

Do you or your client need any disability accommodations? If so, please describe the accommodation request.

FILED - MB  
GLYNN CO. CLERK'S OFFICE  
Filed 10/20/2022 1:06 PM  
Accepted 10/20/2022 1:43 PM  
CASE # CE22-01084

*Ronald M Adams*  
CLERK SUPERIOR COURT

**IN THE SUPERIOR COURT OF GLYNN COUNTY  
STATE OF GEORGIA**

XENIA BLANKINSHIP, SPANLINE )  
DIXON, and JEFFREY WATERS, on behalf )  
of themselves and all others similarly )  
situated, )

Plaintiffs,

vs.

GEORGIA PACIFIC LLC, )

Defendant. )

) Case No. CE22-01084

) **JUDICIAL OFFICER: JUDGE GUY**

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**CLASS ACTION COMPLAINT AND JURY DEMAND**

**INTRODUCTION**

1. Plaintiffs bring this action against Georgia Pacific LLC (“Defendant”) for the operation of its cellulose fluff pulp mill located at 1400 9<sup>th</sup> Street, Brunswick, Georgia (the “Facility”).

2. Defendant’s Facility is surrounded by private, residential properties.

3. Through the Facility’s operation, maintenance, and design, Defendant releases noxious odors onto the private residential properties of Plaintiffs and the Class, causing property damage through nuisance, trespass, and negligence.

**THE PARTIES**

4. Plaintiff Xenia Blankinship does reside and at all relevant times has resided at 3303 Altama Avenue, City of Brunswick, State of Georgia.

5. Plaintiff Spanline Dixon does reside and at all relevant times has resided at 2226 Pinewood Drive, City of Brunswick, State of Georgia.

6. Plaintiff Jeffrey Waters does reside and at all relevant times has resided at 135 Deloach Street, City of Brunswick, State of Georgia.

7. Defendant is a for-profit limited liability company organized under the laws of the State of Delaware and maintains its principal place of business in the State of Georgia. Defendant's managers, B.R. Caffey, James Hannan, and Tyler Woolson are all citizens of Georgia at 133 Peachtree Street, NE, Atlanta, Georgia 30303.

8. The Facility is located at 1400 9<sup>th</sup> Street, Brunswick, Georgia 31520.

9. At all relevant times, Defendant, its agents, and its predecessors did and continues to do business in Brunswick, Georgia.

10. Defendant has at all times relevant hereto exercised control and ownership over the Facility.

#### **JURISDICTION AND VENUE**

11. This Court has original and subject matter jurisdiction over this action pursuant to Ga. Code Ann. § 15-6-8.

12. This Court has personal jurisdiction over the Defendant because the Defendant regularly conducts substantial business in Glynn County through its ownership and operation of the Facility.

13. The Glynn County Superior Court is the proper venue because the Defendant conducts business in this County, and the unlawful conduct alleged herein both occurred and caused harm in this County. Further, the Plaintiffs and Putative Class are residents of this County.

**FACTUAL ALLEGATIONS**

14. Defendant operates an industrial cellulose fluff pulp manufacturing mill which is surrounded by private, residential properties.

15. Plaintiffs reside within two miles of the Facility.

16. On frequent, recurrent, and intermittent occasions too numerous to list individually, Plaintiffs' properties, including Plaintiffs' neighborhoods, residences, and yards have been, and continue to be, physically invaded by noxious odors.

17. The noxious odors which entered Plaintiffs' property originated from Defendant's cellulose fluff pulp mill.

18. Defendant produces large quantities of cellulose fluff pulp at the Facility, a process that involves breaking down wood chips into fiber using heat, chemical treatment, and water through a system of digesters, refiners, evaporators, clarifiers, and boilers.

19. Defendant's cellulose fluff pulp production process involves the use of sulfate chemicals to break down wood chips into fiber, through which malodorous gas emissions are released.

20. These malodorous gases primarily take the form of hydrogen sulfide, which has a characteristic rotten egg smell.

21. The production of cellulose fluff pulp also produces large amounts of waste sludge, which is processed through wastewater treatment at the Facility in a large aerated lagoon.

22. The noxious odors emitted by both the boiling/chemical treatment processes during production and the waste sludge treatment process can escape the Facility and enter the surrounding residential community if these systems are not properly maintained.

23. On numerous separate and distinct occasions, Defendant has discharged discrete and offensive noxious odors into the private residential properties of Plaintiffs and the Class, causing damages to property,

24. More than 65 neighboring residents have reported to Plaintiffs' counsel that they have experienced and are adversely impacted by Defendant's noxious odor emissions.

25. The invasion of Plaintiffs' properties by noxious odors has caused Plaintiffs and the Class substantial harm.

26. Plaintiff Xenia Blankinship is the owner/occupant of residential property at 3303 Altama Avenue, located within two miles of the Facility.

27. Plaintiff Xenia Blankinship reported that she "can't go outside and enjoy my life or walk my dogs because of the stench."

28. Plaintiff Spanline Dixon is the owner/occupant of residential property at 2226 Pinewood Drive, located within two miles of the Facility.

29. Plaintiff Spanline Dixon reported that "[t]he odor and fumes have been unbearable at times" and that the odors "are still interfering with my health and enjoyment of my home."

30. Plaintiff Jeffrey Waters is the owner/occupant of residential property at 135 Deloach Street, located within two miles of the Facility.

31. Plaintiff Jeffrey Waters reported that "the smell coming from that factory is the first thing anyone mentions when they come to Brunswick" and that the smell "effects [sic] our lives every day."

32. Defendant's history of failing to control its odor emissions is further demonstrated by the following:



- a. In 2020, the Georgia Department of Natural Resources Environmental Protection Division (“GEPD”) issued a Notice of Violation (“NOV”) to Defendant informing them that they had violated their monitoring guidelines set forth in their Operating Permit requiring that they continuously monitor and record Nitrogen Oxides emissions from both the power and recovery boilers by intermittently failing to monitor emissions entirely.
- b. The Glynn Environmental Coalition completed a study through a partnership with the University of Georgia that concluded “the probable source region [of the noxious odor emissions] includes the Georgia Pacific Plant. Over 80% of the complaints were downwind of the Georgia Pacific Plant.”
- c. Between December 2020 and December 2021, the GEPD Coastal District reports that there have been 235 air quality complaints, which means there was an odor complaint lodged on over 64% of days throughout the year.
- d. Defendant has acknowledged their contribution to the noxious odors emissions plaguing Plaintiffs and the Class, as Defendant’s senior manager of public affairs admitted that “[g]iven the proximity of our Brunswick operation to the location of the complaints along with a review of available meteorological data, we cannot rule out our operation as a potential contributing source of odor in the area”
- e. In November 2021, one of Defendant’s employees working at the Facility made an anonymous complaint to the GEPD Air Protection Branch that the bleach plant at the Facility had been releasing chlorine dioxide and on the particular night of the complaint, the employee had observed the bleach plant release a “green cloud.”

33. Defendant's Facility has emitted, and continues to emit, objectionable odors that are detectible outside the bounds of its property.

34. Defendant's emissions have been dispersed across private and public land throughout the Class Area.

35. The foul odors emitted from the Facility are offensive, would be offensive to a person of normal sensibilities, and have caused property damages, including by interfering with the ability of Plaintiffs and the Class to use and enjoy their homes and property.

36. The invasion of Plaintiffs' property and that of the Class by noxious odors has caused physical property damages to private residential property, including diminution of property values, deprivation of Plaintiffs and the Class' enjoyment of the full value of their properties, and substantial and unreasonable interference with the use and enjoyment of their properties.

37. Glynn County and the Class Area are home to a wide range of commercial and recreational activities including but not limited to dining, industry, construction, retail trade, lodging, ministry, and education.

38. Plaintiffs and the Class are a limited subset of individuals in Glynn County and the Class Area that includes only owner/occupants and renters of residential property who live within the Class Area and fit within the Class Definition.

39. Members of the public, including but not limited to businesses, employees, commuters, tourists, visitors, customers, clients, and students, have experienced and been harmed by the fugitive noxious odors emitted from the Facility into public spaces; however, unlike Plaintiffs and the Class, members of the public who are outside of the Class Definition have not suffered damages of the same kind, in the form of diminished property values and/or loss of use and enjoyment of their private property.

40. Defendant's operation, maintenance, control, and/or use of the Facility has caused noxious odors to invade the properties of Plaintiffs, and all others similarly situated, causing property damage.

41. Defendant negligently, unreasonably, knowingly, intentionally, and/or recklessly failed to properly maintain and/or operate the Facility and caused the invasion of Plaintiffs' property by noxious odors on intermittent and reoccurring dates too numerous to individually recount.

42. Defendant is vicariously liable for all damages suffered by Plaintiffs caused by Defendant's employees, representatives and agents, who, during the course and scope of their employment created, allowed or failed to correct the problems which caused noxious odors to physically invade Plaintiffs' properties.

### **CLASS ALLEGATIONS**

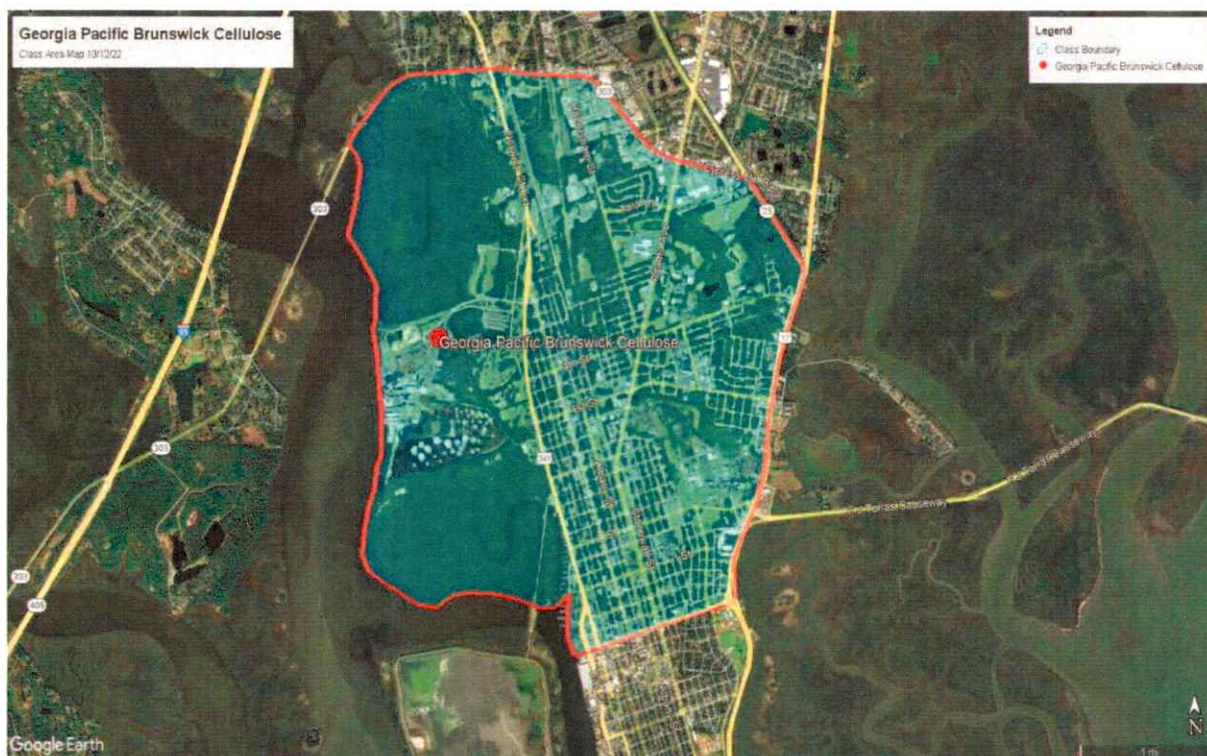
#### **A. Definition of the Class**

43. Plaintiffs bring this action individually and on behalf of all persons as the Court may determine to be appropriate for class certification, pursuant to Ga. Code Ann. § 9-11-23. Plaintiffs seek to represent a Class of persons preliminarily defined as:

**All owner/occupants and renters of residential property who have within 4 years of the filing of this complaint, resided within the following geographic area:**

**Beginning at the corner of Gloucester Street and Highway 17. North on Highway 17 to U.S. Route 25 also known as Golden Isles Parkway. Northwest on Georgia State Route 303 to the East River coastline. East River coastline south to Gloucester Street. East on Gloucester Street to the starting point of Gloucester Street and Highway 17.**

This area is depicted as follows:



The proposed class boundary is subject to modification as discovery progresses. Plaintiffs reserve the right to propose one or more sub-classes if discovery reveals that such subclasses are appropriate.

### **B. Numerosity**

44. There are several thousand households in the proposed class. Accordingly, the members of the Class are so numerous that joinder of all parties is clearly impracticable.

45. Prosecution of separate lawsuits by Class members would risk inconsistent or varying adjudications. Class-wide adjudication of these claims is therefore appropriate.

### **C. Commonality**

46. Defendant has engaged in a uniform and common course of misconduct towards members of the Class, giving rise to questions of both law and fact in common to all Class members, including but not limited to:

- a. Whether and how Defendant negligently, intentionally, recklessly, and willfully failed to maintain and/or operate the Facility;
- b. Whether Defendant owed any duties to Plaintiffs;
- c. Which duties Defendant owed to Plaintiffs;
- d. Which steps Defendant has and has not taken in order to control its emissions through the maintenance and/or operation of its Facility;
- e. Whether and to what extent the Facility's emissions were dispersed over the Class Area;
- f. Whether it was reasonably foreseeable that Defendant's failure to properly maintain and/or operate the Facility would result in an invasion of Plaintiffs' property interests;
- g. Whether the degree of harm suffered by Plaintiffs and the Class constitutes a substantial and unreasonable annoyance or interference; and
- h. The proper measure of damages incurred by Plaintiffs and the Class.

**D. Typicality**

47. The claims of the named Plaintiffs are typical of the claims of all members of the Class. If brought and prosecuted individually, the claims of each Class member would require proof of many of the same material and substantive facts, utilize the same complex evidence including expert testimony, rely upon the same legal theories, and see the same type of relief.

48. The claims of Plaintiffs and the other Class members have a common cause and their damages are of the same type. The claims originate from the same failures of the Defendant to properly maintain and/or operate the Facility.

49. All class members have suffered injury in fact as a result of the invasion of their properties by noxious odors emitted by Defendant. The noxious odors emitted by Defendant, interferes with their ability to use and enjoy their homes, has impacted property values, and has deprived the Class of the full value of their properties.

**E. Adequacy of Representation**

50. Plaintiffs' claims are sufficiently aligned with the interests of the absent members of the Class to ensure that the Class claims will be prosecuted with diligence and care by Plaintiffs as representatives of the Class. Plaintiffs will fairly and adequately represent the interests of the Class and do not have interests adverse to the Class.

51. Plaintiffs have retained the services of counsel who are experienced in complex class action litigation, and in particular class actions stemming from invasions of private property by industrial emissions. Plaintiffs' counsel will vigorously prosecute this action and will otherwise protect and fairly and adequately represent Plaintiffs and all absent Class members.

**F. Class Treatment Is The Superior Method of Adjudication**

52. A class action is superior to other methods of litigation and will provide a fair and efficient method for adjudication of the controversy because:

- a. Individual claims by the Class members would be impracticable as the costs of pursuit would far exceed what any one Class member has at stake;
- b. Little or no individual litigation has been commenced over the controversies alleged in this Complaint and individual Class members are unlikely to have an interest in separately prosecuting and controlling individual actions;
- c. The concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy; and

d. The proposed class action is manageable.

**COUNT I**

**NUISANCE**

53. Plaintiffs incorporate by reference as if fully set forth herein each and every allegation in the complaint.

54. Defendant's noxious odor emissions constitutes both a private and public nuisance under Ga. Code Ann. § 41-1-2 and the common law.

55. Plaintiffs utilized their property as a residence and reside within the Class Area.

56. Through the operation of the Facility, Defendant processes wood chips to produce cellulose fiber. Defendant's production process involves a system of boilers, digesters, and chemical treatment.

57. The cellulose fluff pulp production process and the treatment of the resulting waste produces noxious odors, and if the systems are not properly maintained, operated, and/or repaired, these odors can escape into the surrounding private residential community.

58. By intentionally and/or negligently failing to reasonably design, operate, repair, and/or maintain the Facility, Defendant has caused an invasion of Plaintiffs' property by noxious odors on occasions that are too numerous to individually list herein.

59. The noxious odors invading Plaintiffs' properties interfere with Plaintiffs' use and enjoyment of their property.

60. Defendant was aware that the Facility was emitting noxious odors onto neighboring properties yet failed to take reasonably adequate steps to abate the nuisance and the resulting harm substantially certain to follow their invasion of Plaintiffs' property.

61. As a result of the lost use and enjoyment of Plaintiffs' residential land due to Defendant's fugitive noxious emissions, Plaintiffs have suffered additional harm in the form of reduced property values and the loss of the use and/or enjoyment of their property.

62. Whatever social utility is provided by the Facility is clearly outweighed by the harm suffered by Plaintiffs and the putative Class, who have on numerous occasions been deprived of the full use and enjoyment of their properties and have been forced to endure substantial loss in the use and value of their properties.

63. As a direct and proximate result of Defendant's intentional and/or negligent conduct in designing, operating, and/or maintaining its Facility, Plaintiffs' properties have been exposed to and invaded by noxious odors.

64. As a direct and proximate result of the invasion of Plaintiffs' private residential properties by noxious odors, Plaintiffs have suffered damages, including loss of property value and interference with the use and enjoyment of their property.

65. The public has a right to breathe uncontaminated and unpolluted air in public spaces.

66. Defendant owed and continues to owe a duty to the public to prevent and abate the interference with, and the invasion of, the free use and enjoyment of public spaces by emitting noxious pollutants into the ambient air.

67. Separate and distinct from the property damage incurred by Plaintiffs and the putative class, Defendant's emissions have substantially interfered with rights common to the general public, including the right to uncontaminated and/or unpolluted air, causing damages to all those persons who come within the Facility's sphere of operation.



68. Plaintiffs suffered and continue to suffer special harm relating to the use and enjoyment of their land and property, deprivation of the full value of their property, and decreased property values—damages that are of a different kind and are additional to those suffered by the public at large.

69. Plaintiffs have thus suffered damages both privately and as members of the public who reside within the sphere of operation of Defendant's Facility.

70. Plaintiffs did not consent to noxious odors entering upon their property.

71. Defendant's substantial and unreasonable interference with Plaintiffs' use and enjoyment of their property constitutes a nuisance for which the Defendant is liable to Plaintiffs for all damages arising from such nuisance, including compensatory and injunctive relief, not inconsistent with Defendant's state and/or federal regulatory obligations.

## **COUNT II**

### **TRESPASS**

72. Plaintiffs incorporate by reference as if fully set forth herein each and every allegation in the Complaint.

73. In maintaining, operating, and/or controlling the Facility, Defendant caused noxious odor emissions to invade the private residential property of Plaintiffs.

74. Defendant intentionally, recklessly, negligently, and/or unlawfully failed to abate the nuisance odors that they knew were invading Plaintiffs' residential property.

75. As a result, Plaintiffs suffered substantial damages to property in the form of diminution in property values and loss of use and enjoyment of their property.

76. Defendant's invasion of Plaintiff's land thus caused substantial damages and infringed on Plaintiffs' right to exclusive possession of their property.

77. With “[t]he right of enjoyment of private property being an absolute right of every citizen,” Defendant’s unlawful interference with Plaintiffs’ right of enjoyment by causing noxious odors to invade their private property constitutes a trespass. Ga. Code Ann. § 51-9-1 (2022).

### COUNT III

#### NEGLIGENCE

78. Plaintiffs incorporate by reference as if fully set forth herein each and every allegation in the Complaint.

79. In maintaining, operating, and/or controlling the Facility, Defendant has a duty to Plaintiffs and the Class, as neighboring holders of private residential property interests, to exercise ordinary care and diligence so that noxious odors do not invade their properties.

80. Defendant knowingly breached its duty to exercise ordinary care and diligence when it improperly maintained and/or operated its Facility and knew, or should have known, that such actions would cause Plaintiffs’ property to be invaded by noxious odors.

81. Defendant’s breaches of its duties to Plaintiffs and the Class include, but are not limited to:

- a. Defendant has failed to properly maintain or operate its paper pulp production machinery and/or associated systems related to drying, digesting, filtration, treating, venting, and wastewater treatment;
- b. Defendant has failed to properly maintain and/or operate its nitrogen oxide monitoring systems, particularly regarding monitoring of recovery and power boiler systems where such emissions are likely to escape;
- c. Defendant has failed to operate and/or properly maintain its aerated lagoon that treats waste sludge from the wood pulp digesting process; and

d. Defendant has breached its duties in additional ways to be determined during discovery.

82. As a direct and proximate result of the failure of Defendant to exercise ordinary care, Plaintiffs' residential properties have been physically invaded by noxious odors.

83. As a direct and proximate result of Defendant's negligence in operating and/or maintaining its Facility, Plaintiffs' properties have been exposed to and invaded by noxious odors.

84. As a direct and proximate result of the invasion of Plaintiffs' private residential properties by noxious odors, Plaintiffs have suffered physical property damage, including through diminution in property value, deprivation of full value of property, and interference with use and enjoyment of property.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class, pray for judgment as follows:

- A. Certification of the proposed Class pursuant to Ga. Code Ann. 9-11-23 (2022);
- B. Designation of Plaintiffs as representatives of the proposed Class and designation of their counsel as Class Counsel;
- C. Judgment in favor of Plaintiffs and the Class members and against Defendant;
- D. Award Plaintiffs and the Class members compensatory damages arising from the property damages they suffered and any recoverable attorneys' fees and costs, including pre-judgment and post-judgment interest thereupon;

- E. Injunctive relief not inconsistent with Defendant's federally and state enforced air permits;
- F. An Order holding that entrance of the aforementioned noxious odors upon Plaintiffs' property constituted negligence and nuisance; and
- G. Such further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all issues raised in this Complaint.

Dated: October 20, 2022

Respectfully submitted,

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GA Bar No. 558519  
Mario Pacella  
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*Attorneys for Plaintiffs & the Putative Class*

NOV 07 2022

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Georgia Pacific Mill Releases 'Unbearable' Odors into Neighboring Community, Class Action Claims](#)

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