

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

ASHTON BELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 3:17cv829-JAG
)	
WESTROCK CP, LLC, <i>et al.</i> ,)	
)	
Defendants.)	
)	

ANSWER TO AMENDED COMPLAINT

Defendant WestRock CP, LLC (“WestRock”), by counsel, hereby answers Plaintiffs’ First Amended Class Action Complaint (“Amended Complaint”) as follows:

To the extent the Amended Complaint attempts to characterize certain alleged facts (*i.e.*, by describing conduct or actions as “willful,” “knowing[],” “negligent[],” or “nuisance”), WestRock responds generally that such allegations are mere pejoratives or conclusions of law and do not constitute allegations of fact requiring a response. To the extent such allegations may be construed as allegations of fact, WestRock objects to and denies each and every allegation and incorporates by reference this response in each paragraph below as if fully set forth therein.

WestRock further responds that the headings in the Amended Complaint do not constitute allegations of fact requiring a response, but to the extent the headings may be construed as allegations of fact, WestRock responds that it is without sufficient knowledge or information to form a belief as to the truth of the allegations and on that basis denies each and every such allegation.

Except as may be expressly and specifically admitted herein, WestRock denies each and every allegation alleged in the Amended Complaint, and further denies that Plaintiffs have

suffered any damages by reason of any act, omission, or conduct on the part of WestRock. WestRock further denies that Plaintiffs are entitled to the relief sought in the Amended Complaint, or to any relief at all, from WestRock.

In response to the first unnumbered paragraph of the Amended Complaint, WestRock admits that Plaintiffs attempt to set forth their claims against WestRock and Defendant West Point Chips, but WestRock denies that their claims have merit and that Plaintiffs are entitled to any relief whatsoever. WestRock denies the remaining allegations in the first unnumbered paragraph as written.

NATURE OF THE CASE

1. WestRock admits that it operates a paper mill in West Point, Virginia and that it maintains wood chips at the paper mill. WestRock admits that West Point Chips operates a wood chipper that processes logs for WestRock. WestRock admits that the wood chips are used in the manufacture of containerboard. WestRock denies the remaining allegations as written in Paragraph 1.

2. WestRock denies the allegations as written in Paragraph 2. WestRock specifically denies that this case may proceed as a class action.

3. WestRock denies the allegations as written in Paragraph 3. WestRock specifically denies that this case may proceed as a class action.

4. WestRock admits that Plaintiffs have brought a putative class action against WestRock for nuisance and trespass. WestRock admits that Plaintiffs seek monetary damages for loss of use and enjoyment of their properties. WestRock denies that their claims have merit and that Plaintiffs are entitled to any relief whatsoever. WestRock denies the remaining

allegations as written in paragraph 4. WestRock specifically denies that this case may proceed as a class action.

5. WestRock admits that Plaintiffs seek an injunction. WestRock denies that their claims have merit and that Plaintiffs are entitled to any relief whatsoever. WestRock denies the remaining allegations as written in Paragraph 5. WestRock specifically denies that this case may proceed as a class action.

PARTIES

6. WestRock is without sufficient knowledge to admit or deny the allegations in Paragraph 6 and, therefore, denies the allegations as written.

7. WestRock is without sufficient knowledge to admit or deny the allegations in Paragraph 7 and, therefore, denies the allegations as written.

8. WestRock is without sufficient knowledge to admit or deny the allegations in Paragraph 8 and, therefore, denies the allegations as written.

9. WestRock is without sufficient knowledge to admit or deny the allegations in Paragraph 9 and, therefore, denies the allegations as written.

10. WestRock is without sufficient knowledge to admit or deny the allegations in Paragraph 10 and, therefore, denies the allegations as written.

11. WestRock is without sufficient knowledge to admit or deny the allegations in Paragraph 11 and, therefore, denies the allegations as written.

12. WestRock admits the allegations in the first sentence of Paragraph 12 except that its principal place of business is 1000 Abernathy Road NE, Atlanta, Georgia 30328. WestRock admits the allegations in the second sentence of Paragraph 12 that it operates the paper mill located at 19th and Main Street, West Point, Virginia 23181 and that it owns the property located

at 200 14th Street in West Point. WestRock denies the remaining allegations as written in Paragraph 12.

13. WestRock admits the allegations in the first sentence of Paragraph 13. WestRock admits the allegations in the second sentence of Paragraph 13 that West Point Chips operates a wood chipper on property owned by WestRock. WestRock denies the remaining allegations as written in Paragraph 13.

JURISDICTION

14. WestRock states that the allegations contained in Paragraph 14 purport to state conclusions of law to which no response is required. WestRock specifically denies that this case may proceed as a class action.

15. WestRock states that the allegations contained in Paragraph 15 purport to state conclusions of law to which no response is required.

FACTS COMMON TO ALL COUNTS

16. WestRock admits the allegations in Paragraph 16.

17. WestRock admits the allegation in Paragraph 17 that it stores and maintains wood chips in connection with its operation of the paper mill. WestRock denies the remaining allegations as written in Paragraph 17.

18. WestRock admits that West Point Chips operates a wood chipper and chips wood logs into wood chips on property adjacent to the paper mill in West Point, King William County, Virginia. WestRock denies the remaining allegations as written in Paragraph 18.

19. WestRock is without sufficient knowledge to admit or deny the allegations in Paragraph 19 and, therefore, denies the allegations as written.

20. WestRock admits that Plaintiffs purport to bring this case on behalf of a putative class of individuals located within .75 miles of 200 14th Street in West Point, Virginia.

WestRock denies the remaining allegations as written in Paragraph 20. WestRock specifically denies that this case may proceed as a class action.

21. WestRock denies the allegations as written in Paragraph 16. WestRock specifically denies that this case may proceed as a class action.

22. WestRock denies the allegations as written in Paragraph 22.

23. WestRock denies the allegations as written in Paragraph 23.

24. WestRock denies the allegations as written in Paragraph 24.

25. WestRock denies the allegations as written in Paragraph 25.

26. WestRock denies the allegations as written in Paragraph 26.

27. WestRock denies the allegations as written in Paragraph 27.

19. WestRock denies the allegations as written in Second Paragraph 19.¹ WestRock specifically denies that this case may proceed as a class action.

20. WestRock denies the allegations as written in Second Paragraph 20.

21. WestRock denies the allegations as written in Second Paragraph 21. WestRock specifically denies that this case may proceed as a class action.

22. WestRock denies the allegations as written in Second Paragraph 22. WestRock specifically denies that this case may proceed as a class action.

23. WestRock denies the allegations as written in Second Paragraph 23.

24. WestRock admits that it has received—and addressed—some complaints from individuals regarding dust allegedly emanating from the paper mill. WestRock denies the

¹ Plaintiffs Amended Complaint contains two Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, and 27.

remaining allegations as written in Second Paragraph 24. WestRock specifically denies that this case may proceed as a class action.

25. WestRock denies the allegations as written in Second Paragraph 25. WestRock specifically denies that this case may proceed as a class action.

26. WestRock denies the allegations as written in Second Paragraph 26.

CLASS ACTION ALLEGATIONS

27. WestRock admits that Plaintiffs purport to bring this case on behalf of a putative class of individuals located within .75 miles of 200 14th Street in West Point, Virginia. WestRock denies the remaining allegations as written in Second Paragraph 27. WestRock specifically denies that this case may proceed as a class action.

28. WestRock admits that Plaintiffs purport to bring this case on behalf of a putative class of individuals located within .75 miles of 200 14th Street in West Point, Virginia. WestRock further states that the picture included purporting to show the location of properties within the class speaks for itself. WestRock denies any allegation inconsistent therewith. WestRock denies the remaining allegations as written in Paragraph 28. WestRock specifically denies that this case may proceed as a class action.

29. WestRock states that the allegations contained in Paragraph 29 purport to state conclusions of law to which no response is required. WestRock specifically denies that this case may proceed as a class action.

30. WestRock denies the allegations as written in Paragraph 30. WestRock specifically denies that this case may proceed as a class action.

31. WestRock denies the allegations as written in Paragraph 31, including all subparts. WestRock specifically denies that this case may proceed as a class action.

32. WestRock denies the allegations as written in Paragraph 32. WestRock specifically denies that this case may proceed as a class action.

33. WestRock denies the allegations as written in Paragraph 33. WestRock specifically denies that this case may proceed as a class action.

34. WestRock denies the allegations as written in Paragraph 34. WestRock specifically denies that this case may proceed as a class action.

FIRST CLAIM FOR RELIEF
(NUISANCE)

35. WestRock incorporates each and every response as though fully set forth herein.

36. WestRock denies the allegations in Paragraph 36. WestRock specifically denies that this case may proceed as a class action.

37. WestRock denies the allegations in Paragraph 37. WestRock specifically denies that this case may proceed as a class action.

38. WestRock denies the allegations as written in Paragraph 38.

SECOND CLAIM FOR RELIEF
(TRESPASS)

39. WestRock incorporates each and every response as though fully set forth herein.

40. WestRock denies the allegations in Paragraph 40.

41. WestRock denies the allegations in Paragraph 41. WestRock specifically denies that this case may proceed as a class action.

42. WestRock denies the allegations in Paragraph 42. WestRock specifically denies that this case may proceed as a class action.

PRAYER FOR RELIEF

WestRock denies that Plaintiffs are entitled to any relief or remedy whatsoever, including, without limitation, certification of a class action or any other relief sought in the unnumbered “WHEREFORE” paragraph, including subparts a. through h., contained on page 11 of the Amended Complaint.

JURY DEMAND

WestRock admits that Plaintiffs demand a jury trial.

GENERAL DENIAL

Any and all allegations not expressly admitted herein are hereby denied.

FIRST AFFIRMATIVE DEFENSE
(Incorporating all defenses and arguments in Motion to Dismiss)

WestRock incorporates by reference herein all defenses and arguments raised in its Motion to Dismiss, Memorandum in Support, and Reply, as well as its Motion to Strike Class Allegations, Memorandum in Support, and Reply, previously filed in response to Plaintiffs’ original Complaint.

SECOND AFFIRMATIVE DEFENSE
(Failure to State a Claim)

The Amended Complaint fails to state claims upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE
(Preemption)

Plaintiffs’ claims are preempted by the Clean Air Act.

FOURTH AFFIRMATIVE DEFENSE
(Primary Jurisdiction)

Each of the causes of action alleged in the Amended Complaint is barred by the primary jurisdiction doctrine because adjudication of Plaintiff’s claims requires resolution of issues that

lie within the specific expertise of state and/or federal regulatory bodies including, but not limited to, the Virginia Department of Environmental Quality.

FIFTH AFFIRMATIVE DEFENSE
(Waiver/Estoppel)

Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver and estoppel.

SIXTH AFFIRMATIVE DEFENSE
(Statute of Limitations/Statute of Repose)

Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations and/or statute of repose.

SEVENTH AFFIRMATIVE DEFENSE
(Laches)

Plaintiffs' claims are barred, in whole or in part, by the equitable doctrine of laches. Among other things, Plaintiffs unreasonably delayed in asserting the claims asserting in the Amended Complaint, thereby precluding an award of injunctive, or other, relief.

EIGHTH AFFIRMATIVE DEFENSE
(Economic Loss Doctrine)

Plaintiffs' claims are barred, in whole or in part, by the economic loss doctrine.

NINTH AFFIRMATIVE DEFENSE
(Contribution)

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs' alleged damages were caused or contributed to by the fault of persons or entities not acting in concert with WestRock; any recovery from WestRock, therefore, should be reduced in proportion to the degree of fault attributed to those other persons or entities.

TENTH AFFIRMATIVE DEFENSE
(Legal Compliance)

WestRock's paper mill is regulated by local, state, and federal law. Plaintiffs' claims are barred, in whole or in part, because Defendant fully complied with all laws and regulations applicable to the facility allegedly at issue.

ELEVENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate their alleged damages.

TWELFTH AFFIRMATIVE DEFENSE
(Speculative)

The alleged damages claimed by Plaintiffs are speculative, depend on the happening of events that are not reasonably certain to occur, may be mitigated by future events, and cannot be determined with the degree of certainty required by law.

THIRTEENTH AFFIRMATIVE DEFENSE
(Alternative Cause)

Any dust that Plaintiffs complain of was not caused by WestRock but rather by alternative causes or sources including, but not limited to, naturally occurring dust.

FOURTEENTH AFFIRMATIVE DEFENSE
(Utility Outweighs Harm)

The Amended Complaint and each purported cause of action therein are barred because the utility of the conduct of which Plaintiffs complain outweighs any alleged harm to Plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE

(State of the Art)

Plaintiffs' claims are barred, in whole or in part, because at all times and places mentioned in the Amended Complaint, WestRock complied with the state of the art, and, therefore, Plaintiffs are not entitled to recover from WestRock as a matter of law.

SIXTEENTH AFFIRMATIVE DEFENSE

(Satisfaction of All Legal Duties)

WestRock has completely satisfied all legal duties, if any, with regard to the Plaintiffs and thus is released from liability.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Conformity with Applicable Guidelines or Regulations)

WestRock has at all times acted in conformance with applicable guidelines or regulations that establish the standard of care and has otherwise acted with due care and the caution of a reasonably prudent entity.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

Plaintiffs' claims and the claims of any putative class members are barred, in whole or in part, to the extent the injuries alleged in the Amended Complaint, the fact and extent of which are expressly denied by WestRock, were caused by their contributory negligence.

NINETEENTH AFFIRMATIVE DEFENSE

(Insubstantial Number of Putative Class Members Affected)

The purported claims made by Plaintiffs and members of the purported classes on whose behalf they purport to sue are precluded because the alleged conduct would have affected, if anyone, only an insubstantial number of putative class members.

TWENTIETH AFFIRMATIVE DEFENSE
(Class Certification Improper)

The purported classes cannot be certified under Federal Rule of Civil Procedure 23 because the purported classes, class representatives and/or class counsel fail to meet the typicality, commonality, adequacy, superiority, and predominance requirements for class actions.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Class Certification Improper)

Plaintiffs' purported class claims are barred because the members of the classes are not so numerous that it would be impracticable and uneconomical to require joinder of each class member.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(Class Certification Improper)

Plaintiffs' purported class claims are barred because Plaintiffs' definition of the class is vague, ambiguous, and overly broad.

TWENTY-THIRD AFFIRMATIVE DEFENSE
(Class Certification Improper)

Plaintiffs' purported class claims are barred because Plaintiffs' definition of the class is not ascertainable in that no time frame is included in the class definition.

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Good Faith)

WestRock has acted at all times in good faith.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Acquiescence)

Plaintiffs' claims are barred in whole or in part by the doctrine of acquiescence. Among other things, Plaintiffs knowingly stood by without complaint or objection to the harm allegedly caused or asserted in the Amended Complaint .

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Abatement)

Plaintiffs is not entitled to relief because any alleged nuisance has been abated.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Feasible and Prudent Alternative)

Plaintiffs' injuries and damages, if any, are not recoverable because there is no feasible and prudent alternative to WestRock's conduct.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Act of God)

Plaintiffs' injuries and damages, if any, were caused by acts of God.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Other Applicable Limitations)

WestRock pleads all applicable limitations on Plaintiffs' recovery of damages as to amount or type as may be applicable to this matter under Virginia law or any other applicable law or statute.

THIRTIETH AFFIRMATIVE DEFENSE

(Punitive Damages)

Any calculation or award of punitive damages against WestRock based in whole or in part upon WestRock's alleged conduct toward non-parties is unconstitutional and constitutes a taking of WestRock's property without due process. *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Damages Cap)

Plaintiff's claims are limited by Virginia's cap on punitive damages.

THIRTY-SECOND AFFIRMATIVE DEFENSE
(Punitive Damages)

Any award of punitive damages against WestRock in this matter would violate WestRock's guarantees of due process, equal protection, property and protection against excessive fines under the Fourteenth Amendment to the United States Constitution and under applicable laws of Virginia.

THIRTY-THIRD AFFIRMATIVE DEFENSE
(Punitive Damages)

Punitive damages may not be awarded:

- (a) Without proof of every element beyond a reasonable doubt, or in the alternate without proof by clear convincing evidence;
- (b) Without bifurcating the trial of all punitive issues, including punitive liability;
- (c) With no limits, including the maximum amount that a jury may impose in this jurisdiction;
- (d) With no limits, including the constitutional prohibition against punitive damages awards being greater than a single-digit multiplier of any compensatory damages award, *see State Farm v. Campbell*, 538 U.S. 408 (2003);
- (e) Which improperly compensates Plaintiffs for elements of damage not otherwise recognized under the laws of this jurisdiction;
- (f) Without standards or sufficient clarity for determining the appropriateness or appropriate size of the award;
- (g) Without consideration of the three constitutional guideposts of reprehensibility, ratio, and civil penalties, *see State Farm v. Campbell*, 538 U.S. 408 (2003);

(h) Without appropriate instructions on the limits of punitive damages imposed by the applicable principles of deterrence and punishment;

(i) Under a vague and arbitrary standard that does not define the necessary conduct or mental state required for punitive damages; and

(j) Without judicial review on the basis of objective standards, including the three constitutional guideposts of reprehensibility, ratio, and civil penalties, *see State Farm v. Campbell*, 538 U.S. 408 (2003).

THIRTY-FOURTH AFFIRMATIVE DEFENSE
(Punitive Damages)

Any award of punitive damages against WestRock in this matter would violate WestRock's guarantees of due process of protection against double jeopardy, excessive fines and multiple punishments under the Fifth and Fourteenth Amendments to the United States Constitution and under applicable law of this jurisdiction, since WestRock is subject to multiple punitive awards for the same alleged wrong or conduct.

THIRTY-FIFTH AFFIRMATIVE DEFENSE
(Punitive Damages)

Any award of punitive damages against WestRock in this matter based upon a single course of conduct or enterprise for which punitive damages have already been imposed would constitute unreasonable state limitations on interstate commerce in violation of the Commerce Clause of the United States Constitution.

RESERVATION OF ADDITIONAL DEFENSES

WestRock presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. WestRock

hereby reserves the right to amend its answer to raise additional affirmative defenses as they become available or apparent to it through discovery in this matter or otherwise.

DEMAND FOR JURY TRIAL

WestRock requests a jury trial on all issues so triable.

PRAYER

WHEREFORE, having fully answered the Amended Complaint, WestRock respectfully prays as follows:

1. That Plaintiffs takes nothing by way of their Complaint;
2. That judgment be entered in favor of WestRock and against Plaintiffs on the Amended Complaint as a whole;
3. That this Court finds that this suit cannot be maintained as a class action;
4. That WestRock be awarded costs of suit, including attorneys' fees and expert fees, as may be proper under applicable statutes; and
5. That the Court award such other relief as the Court may deem appropriate.

Dated: November 2, 2018

Respectfully submitted,



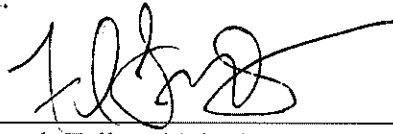
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Counsel for WestRock CP, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2018, I electronically filed the foregoing with the Clerk of Court using the Court's CM/ECF filing system which will send notification of electronic filing (NEF) to all counsel of record.



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