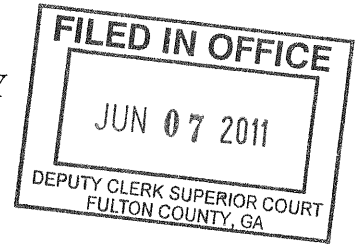


IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



BEN H. ANDERSON, )  
PARKER FREEMAN, )  
and )  
ADAM BATH, individually and for )  
all others similarly situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
KING AMERICA FINISHING, INC., )  
MICHAEL ALBERT BEASLEY, )  
and )  
BILLY T. PARRISH, )  
 )  
Defendants. )  
\_\_\_\_\_ )

CIVIL ACTION NUMBER:

2011CV201659

JURY TRIAL DEMANDED

**COMPLAINT IN CLASS ACTION FOR DAMAGES**

COME NOW, Ben H. Anderson, Parker Freeman, and Adam Bath (hereinafter "Plaintiffs"), through counsel and file this, their Complaint against King America Finishing, Inc., Michael Albert Beasley, and Billy T. Parrish (collectively "Defendants") with this Court as follows:

**THE PARTIES**

1)

Plaintiff Parker Freeman is a citizen of the State of Georgia, and owns the property located adjacent to and downstream from the King America Finishing, Inc. property at 1351 Scarboro Highway, Sylvania, GA 30467 (hereinafter, the "Freeman Property") with approximately one and one-half mile of river frontage on the Ogeechee River.

2)

Mr. Freeman, or his family, has owned the Freeman Property since 1930's.

3)

Plaintiff Ben H. Anderson is a citizen of the State of Georgia, and owns and resides at the property located adjacent to and downstream from the Freeman Property (hereinafter, the "Anderson Property") with approximately one and one-half mile of river frontage on the Ogeechee River.

4)

Mr. Anderson, or his family, has owned the Anderson Property since the 1930's.

5)

Plaintiff Adam Bath is a citizen of the State of Georgia, and resides at 5603 Landings Parkway, Statesboro, Bulloch County, Georgia 30458.

6)

Defendant King America Finishing, Inc. ("KAF") is a corporation duly formed in the State of Illinois.

7)

KAF's principal office address is 2845 West 48<sup>th</sup> Place, Chicago, Cook County, Illinois 60632-2012.

8)

KAF is authorized to do business in the State of Georgia, and maintains a registered agent in Georgia, C.T. Corporation System, located at 1201 Peachtree Street, N.E., Atlanta, Fulton County, Georgia 30361.

9)

Defendant Michael Albert Beasley (“Beasley”) is a Georgia domiciliary and resides at 902 Monarch Circle, Statesboro, Bulloch County, Georgia 30459-1493. Defendant Beasley may be served with Summons and Complaint at this address. Beasley is the General Manager of KAF.

10)

Defendant Billy T. Parrish (“Parrish”) is a Georgia domiciliary and resides in Statesboro, Bulloch County, Georgia. Defendant Parrish may be served with Summons and a copy of this Complaint at his place of business at 1351 Scarboro Highway, Sylvania, Georgia 30467. Defendant Parrish is the Plant Manager of KAF.

11)

KAF is in the business of preparing, dyeing, finishing, application of fire retardant, crease prevention materials and other processing of textile materials at its manufacturing plant located in Dover, Georgia.

12)

KAF works with chemicals such as water repellent, fire retardant, naphthol, sulfur, sodium hydroxide, and various other dyes and chemicals.

13)

KAF disposes of treated wastewater into the Ogeechee River pursuant to its NPDES Permit Number GA0003280.

14)

KAF is the only large industrial facility with significant discharge of wastewater into the Ogeechee River in the area of Dover, Georgia.

## JURISDICTION AND VENUE

15)

Jurisdiction and venue are proper in this Court pursuant to OCGA § 14-2-510 and Ga. Const. Art. 6, Section 2, Paragraph VI.

16)

KAF may be properly served pursuant to OCGA § 9-11-4 by delivering a copy of this Complaint to its registered agent, C T Corporation System, located at 1201 Peachtree Street, N.E., Atlanta, Fulton County, Georgia 30361.

## FACTUAL BACKGROUND

17)

On, about and during the week beginning Monday, May 16, 2011, upon information and belief, KAF, by and through Defendants Parrish and Beasley, either knowingly and purposefully, or unknowing and negligently, released into the Ogeechee River an unknown quantity of caustic chemical agents and other contaminants from its manufacturing plant located adjacent to the Ogeechee River in Dover, Georgia (hereinafter, the "Release").

18)

The Release caused a massive fish kill along a 35-60 mile segment of the Ogeechee River beginning directly at, or just downstream from, Defendants' Plant.

19)

The effects of the Release were observed, and continue to be observed, in the Ogeechee River in Screven, Bulloch, Byron, Chatham, and Effingham Counties.

20)

The Release killed virtually all aquatic life downstream from Defendants' Plant, including, but not limited to, all species of fish, amphibians, birds, and reptiles, including alligators.

21)

The Release killed virtually all aquatic life in and around the Ogeechee River along the Freeman and Anderson Properties, located adjacent to, or downstream from, Defendants' Plant.

22)

As a result of the Release, Plaintiffs Freeman and Anderson have been unable to enjoy and utilize their property near the river.

23)

State and Federal officials advised the public not to swim in the Ogeechee River, and not to consume any fish caught in the river, downstream from Defendants' Plant; however, such warning was not issued until Sunday, May 22, 2011, several days after the Release.

24)

After the Release and before any official warning from government authorities, Plaintiff Adam Bath swam in the Ogeechee River downstream from Defendants' Plant and sustained personal injuries as a result, including, but not limited to, burning of the lungs, resulting in pain and breathing difficulties.

25)

Absolutely no adverse effects to aquatic life have been observed upstream from Defendants' Plant.

## CLASS ALLEGATIONS

26)

Plaintiffs Ben H. Anderson, Parker Freeman, and Adam Bath seek class certification on the following subclasses:

**All persons who have been exposed, directly or indirectly, with the waters of the Ogeechee River that had been contaminated by the Release,**

(hereinafter “Personal Injury Class”); and

**All possessors of property affected, directly or indirectly, by Defendants’ release of chemicals into the waters of the Ogeechee River,**

(hereinafter “Property Damage Class”).

## COUNT I – DAMAGE TO PERSONS

27)

Plaintiffs re-allege and incorporate all preceding paragraphs of their Complaint as if fully set forth herein.

28)

Plaintiff Adam Bath sustained personal injuries as a result of exposure to Defendants’ Release including, but not limited to, burning of the lungs, resulting in pain and breathing difficulties.

29)

Due to unknown quantity and the unknown composition of the caustic chemical agents involved in the Release by Defendants, and due to the observed toxicity of the Release to all aquatic life exposed to it, Plaintiff Bath will likely suffer from injuries that have yet to manifest.

30)

The Personal Injury Class is similarly situated to Plaintiff Adam Bath in that the Personal Injury Class suffered personal injuries in the same manner as Bath when they swam in, consumed fish from, and/or had contact with, the waters and surrounding environment of the Ogeechee River that was contaminated and damaged by the Release, and continues to be contaminated and damaged by the release.

31)

The Personal Injury Class have experienced overall pain, burning sensation in the lungs, pressure in the chest, and other symptoms resulting from contact with the contamination in the Ogeechee River.

32)

The Personal Injury Class will likely suffer from injuries that have yet to manifest due to exposure to the yet-unknown quantity and composition of the chemicals and other contaminants in the Release.

33)

The individuals defined as the Personal Injury Class are so numerous that joinder is impracticable.

34)

The claims being made by Plaintiff Bath are typical of the claims of the entire class of individuals defined as the Personal injury Class.

35)

The claims being made by Plaintiff Bath present common issues of law and fact among all members of the Personal Injury Class.

36)

The members of the Personal Injury Class have sustained serious injuries as a result of Defendants' actions, and are entitled to compensation for medical expenses, lost wages, pain and suffering, and loss of consortium in an amount and manner to be shown at trial.

**COUNT II – DAMAGE TO PROPERTY**

37)

Plaintiffs re-allege and incorporate all preceding paragraphs of their Complaint as if fully set forth herein.

38)

Plaintiffs Freeman and Anderson and the members of the Property Damage Class have sustained damage to their properties as a result of the Release caused by Defendant.

39)

Plaintiffs Freeman and Anderson, as well as the Property Damage Class members, have been unable since the release from Defendant's plant to utilize any portion of their property in close proximity to the Ogeechee River, nor have they been able to utilize any part of the River itself, since the Release occurred.

40)

Plaintiffs' Freeman's and Anderson's property values have been diminished as a result of the release and subsequent damage to the aquatic life in and around the Ogeechee River.

41)

The members of the Property Damage Class have suffered diminished property values as a result of the release and subsequent damage to the aquatic life in and around the Ogeechee River.

42)

The natural resources on and adjacent to Plaintiffs' Freeman and Anderson properties have been devastated by the Release caused by Defendants.

43)

The members of the Property Damage Class have suffered devastation of the natural resources of their land in a similar fashion.

44)

The individuals defined as the Property Damage Class members are so numerous that joinder is impracticable.

45)

The claims being made by Plaintiffs Freeman and Anderson are typical of the claims of the entire class of individuals defined as the Property Damage Class.

46)

The claims being made by Plaintiffs Freeman and Anderson present common issues of law and fact among all members of the Property Damage Class.

47)

Plaintiffs' Freeman's and Anderson's properties as well as the properties of all of the members of the Property Damage Class have sustained significant damages as a result of Defendants' actions that require compensation in an amount and manner to be shown at trial.

**COUNT III – CONTINUING NUISANCE**

48)

Plaintiffs re-allege and incorporate all preceding paragraphs of their Complaint as if fully set forth herein.

49)

Defendants' failures to comply with the statutes, rules, and regulations enacted to control and prevent unauthorized releases of chemicals into the environment constitute a continuing nuisance which has damaged, and continues to damage, Plaintiffs Freeman and Anderson and the Property Damage Class.

50)

The release of caustic and harmful chemicals and other contaminants into the Ogeechee River has caused massive damage to aquatic life in the river, and well as surrounding organisms, causing injury, inconvenience, and damage to Plaintiffs Freeman and Anderson, to the Property Damage Class, and to their properties. Such inconvenience would affect and damage any ordinary, reasonable person.

51)

The comfortable enjoyments of Plaintiffs' and the Property Damage Class's properties have been greatly diminished by the damage done by Defendants.

52)

Plaintiffs' Freeman's and Anderson's and the Property Damage Class's property values have been, and continue to be, diminished by the damage resulting from Defendants' Release of harmful chemicals into the Ogeechee River.

53)

Plaintiffs Freeman and Anderson and the Property Damage Class have been deprived of the unrestricted use and full enjoyment of their properties as a result of Defendants' actions.

54)

This nuisance will continue until Defendant is compelled to abate the nuisance by performing sufficient remedial corrective action to correct, cleanup and restore Plaintiffs' and the Property Damage Class's properties to return all such properties to their natural states. Defendant is compelled to comply with all applicable federal, state, and local environmental laws relating to discharge of pollutants into waters of the United States.

55)

As a result of Defendants' continuing nuisance, Plaintiffs Freeman and Anderson and the Property Damage Class have suffered pecuniary and property damages, and should be compensated in an amount and manner to be determined at trial.

**COUNT IV – TRESPASS**

56)

Plaintiffs re-allege and incorporate all preceding paragraphs of their Complaint as if fully set forth herein.

57)

As a result of Defendants' actions, toxic and harmful chemicals and other contaminants have been released into the Ogeechee River and have entered upon

Plaintiffs Freeman's and Anderson's and the Property Damage Class's properties, and remain on the properties as of the filing of this Complaint.

58)

The invasion of these toxic and harmful chemicals and other contaminants resulting from Defendants' actions were not in any way, or at any time, sanctioned, permitted, or authorized by Plaintiffs Freeman and Anderson or the Property Damage Class members.

59)

Defendants' failure to comply with the statutes, rules and regulations enacted to control and prevent unauthorized releases of chemicals into the environment has resulted in a trespass to Plaintiffs Freeman's and Anderson's and the Property Damage Class members' properties.

60)

As a result of this trespass, Plaintiffs and the Property Damage Class members have suffered mental anguish and emotional trauma, as well as damages for their inability to enjoy and utilize their properties in close proximity to the Ogeechee River.

61)

The individuals defined as the Property Damage Class are so numerous that joinder is impracticable.

62)

The claims being made by Plaintiffs Freeman and Anderson are typical of the claims of the entire class of individuals defined as the Property Damage Class.

63)

The claims being made by Plaintiffs Freeman and Anderson present common issues of law and fact among all members of Property Damage Class.

64)

As a result of Defendants' actions, Plaintiffs Freeman and Anderson as well as all of the members of Property Damage Class have suffered pecuniary and property damages, and should be compensated in an amount and manner to be determined at trial.

**COUNT V – NEGLIGENCE PER SE**

65)

Plaintiffs re-allege and incorporate all preceding paragraphs of their Complaint as if fully set forth herein.

66)

Defendants' violations of applicable environmental laws, including, but not limited to, the Federal Clean Air Act (33 USCA § 1311), the Federal Water Pollution Control Act as amended by the Clean Water Act, 33 U.S.C.A. § 1251, *et seq.*, and the Georgia Water Quality Control Act (OCGA § 12-5-20 *et seq.*), are evidence of negligence per se.

67)

As a result of Defendants' actions, Plaintiffs, the members of the Personal Injury Class and the Property Damage Class have suffered damages that should be compensated in an amount and manner to be proven at trial.

**COUNT VI – NEGLIGENCE**

68)

Plaintiffs re-allege and incorporate all preceding paragraphs of their Complaint as if fully set forth herein.

69)

Defendants have acted negligently by allowing toxic and harmful chemicals and other contaminants to be released into the Ogeechee River, causing massive damage to aquatic life, as well as personal injury and property damage to Plaintiffs, individually and as representatives of the Personal Injury Class and the Property Damage Class.

70)

Defendants have a duty to use its land in a manner that does not injure adjacent or downstream property owners.

71)

Defendants negligently breached this duty by allowing toxic and harmful chemicals and other contaminants to be released from its manufacturing plant into the Ogeechee River, in violation of applicable water quality laws and regulations.

72)

Defendants' actions are the proximate cause, and cause-in-fact, of damages to Plaintiffs' properties and to Plaintiffs themselves, as well as the members of the Personal Injury Class and the Property Damage Class.

73)

Plaintiffs, individually and as class representatives for the Personal Injury Class and the Property Damage Class, are therefore entitled to compensation in an amount and manner to be proven at trial.

**COUNT VII – RIPARIAN RIGHTS**

74)

Plaintiffs re-allege and incorporate all preceding paragraphs of their Complaint as if fully set forth herein.

75)

Georgia law, specifically, OCGA § 44-8-1 *et seq.*, entitles persons that own property on a stream or river to certain riparian rights.

76)

A landowner or tenant, like Defendants, have no right to use or adulterate the waters of the Ogeechee River, such that such actions interfere with the enjoyment of the Ogeechee River by the downstream property possessors, such as Plaintiffs Freeman and Anderson and the Property Damage Class members.

77)

Defendants' interference with Plaintiffs' and the Property Damage Class members' use and enjoyment of the Ogeechee River has caused damages to Plaintiffs Freeman and Anderson and the Property Damage Class, which must be compensated in an amount and manner to be proven at trial.

**COUNT VIII – PUNITIVE DAMAGES**

78)

Plaintiffs re-allege and incorporate all preceding paragraphs of their Complaint as if fully set forth herein.

79)

Upon information and belief, Defendants willfully failed to maintain proper mechanisms which would control and prevent the release of toxic and harmful chemicals and other contaminants into the Ogeechee River.

80)

Defendants have willfully failed to take responsibility for, or even attempt to remedy, the problems caused by the Release.

81)

As a direct result of this Release, Plaintiffs have sustained considerable damages to their persons and properties.

82)

Defendants' actions were willful, wanton, and malicious, and their conduct showed conscious indifference to the consequences of their actions and omissions.

83)

Plaintiffs, the Personal Injury Class members, and the Property Damage Class members are entitled to an award of punitive damages sufficient to deter, penalize, or punish Defendants for their actions, omissions, and failure to act.

**COUNT IX – ATTORNEY FEES**

84)

Plaintiffs re-allege and incorporate all preceding paragraphs of their Complaint as if fully set forth herein.

85)

Pursuant to O.C.G.A. §13-6-11, Plaintiff is entitled to the recovery of its attorneys' fees in an amount to be proven at trial, because Defendants' actions were in bad faith, stubbornly litigious, and have caused Plaintiff unnecessary trouble and expense. Defendants' actions are intentional and show Defendants' bad faith in this matter.

**WHEREFORE**, Plaintiffs being entitled to a trial by jury and judgment against the Defendants, pray for the following:

- a) That summons be directed to Defendants and served upon them as provided by law;
- b) That Plaintiff Adam Bath be designated class representative for the Personal Injury Class, as defined herein;
- c) The Plaintiffs Parker Freeman and Ben H. Anderson be designated class representatives for the Property Damage Class, as defined herein;
- d) That Plaintiffs' counsel be designated class counsel for the Personal Injury Class and the Property Damage Class, as defined herein;
- e) That the Personal Injury Class be certified for all persons who have been exposed, directly or indirectly, with the waters of the Ogeechee River that had been contaminated by the Release;

- f) That the Property Damage Class be certified for all possessors of property affected, directly or indirectly, by Defendant's release of chemicals into the waters of the Ogeechee River;
- g) That Plaintiff Adam Bath, individually and as class representative of all others similarly situated as the Personal Injury Class members, have judgment against Defendants for medical expenses, lost wages, pain and suffering, and loss of consortium in an amount and manner to be shown at trial resulting from Defendants' damage to persons (Count I), Defendants' negligence *per se* (Count V), and Defendants' negligence (Count VI);
- h) That Defendants be required to pay all monies referred to herein which relate to the Personal Injury Class Plaintiffs into a common fund for the benefit of the Personal Injury Class Plaintiffs, less expenses and attorneys' fees;
- i) That Plaintiffs Parker Freeman and Ben H. Anderson, individually and as class representatives of all others similarly situated as the Property Damage Class Plaintiffs, have judgment against Defendants in an amount in an amount and manner to be shown at trial to compensate Plaintiffs and the Property Damage Class members for Defendants' damage to property (Count II), Defendants' continuing nuisance (Count III), Defendants' trespass (Count IV), negligence *per se* (Count V), Defendants' negligence (Count VI), and Defendants' interference with riparian rights (Count VII);

- j) That Defendants be required to pay all monies referred to herein which relate to the Property Damage Class claims into a common fund for the benefit of the Property Damage Class members, less expenses and attorneys' fees;
- k) That the Court conduct a "fairness hearing," after due and proper notice to all Personal Injury Class members and Property Damage Class members, and make such award of attorneys' fees and expenses as the Court deems appropriate from the common funds (as above referred to) and/or from Defendants;
- l) That Plaintiffs, individually and as class representatives for the Personal Injury Class members and the Property Damage Class members, have a trial by jury; and
- m) That Plaintiffs, individually and as class representatives for the Personal Injury Class members and the Property Damage Class members be awarded interest on any award granted;
- n) That Plaintiffs, individually and as class representatives for the Personal Injury Class members and the Property Damage Class members, have such other equitable and further relief as this Court deems proper.
- o) That Plaintiffs, individually and as class representatives for the Personal Injury Class and the Property Damage Class members, be awarded attorneys' fees and expenses in an amount to be proven at trial.

Respectfully submitted, this 7<sup>th</sup> day of June, 2011.

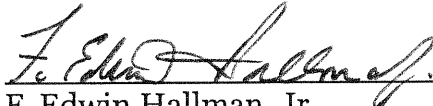
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