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PFAS "forever chemical" cases: allegations dependent on testing must plausibly support theory of liability

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Takeaway: We have written about false advertising cases alleging that consumer products are contaminated with some sort of harmful substance. *See, e.g., Federal court dismisses false advertising claims, ruling that studies cited in complaint did not plausibly support allegation that "Natural Artesian Water" was contaminated with microplastics* (March 28, 2025). When such cases depend on scientific tests or studies, those tests or studies must plausibly support the contamination theory of the case. The Northern District of California reached that conclusion in *Bounthon v. The Procter & Gamble Co.*, No. 23-cv-00765-AMO, 2025 WL 1874890 (N.D. Cal. July 7, 2025), rejecting the plaintiffs' liability theory after granting them a number of opportunities to amend their complaint to allege a plausible PFAS case against Procter & Gamble.

The *Bounthon* case was one of a trio of putative class action lawsuits launched against Procter & Gamble in the Northern District of California, alleging that its "Tampax Pure Cotton" products were contaminated with PFAS "forever chemicals," rendering its advertising about its tampon products literally false.

The plaintiffs' allegations depended on testing which purported to show that the tampon products contained organic fluorine. In a prior order entered in one of the cases, the district court dismissed the plaintiffs' amended complaint, ruling that "[t]he testing allegations are cursory" and "devoid of the factual content necessary to nudge Plaintiffs' claims, based on the theory that [Defendants'] tampons contain PFAS, from possible to plausible." *Id*. at *1.

In the third amended complaint in *Bounthon*, the plaintiffs emphasized their allegations of concealment by Procter & Gamble – the "omissions-based" nature of their claims – while also emphasizing that the "independent third-party testing" on which they relied detected organic fluorine "above trace amounts and well within the detection limits." *Id*.

The plaintiffs' amended allegations again failed to nudge their liability theory "from possible to plausible." According to the district court, the new allegations failed to address whether the organic fluorine was "indicative of natural sources," or was "linked to forever chemicals," or was linked to "some unspecified man-made chemical or contaminant." *Id*.

The district court dismissed the plaintiffs' third amended complaint without granting them leave to submit yet another amended complaint. Given that plaintiffs' counsel had already voluntarily dismissed

two of the other putative class actions (*see id*., n.1), the district court's order marked the termination of this trio of false advertising class action cases against Procter & Gamble.