

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

JOEL FERGUSON, et al.

PLAINTIFFS

v.

No. 5:20-CV-05053

CMS TECHNOLOGY, et al.

DEFENDANTS

**OPINION AND ORDER**

Before the Court is a motion (Doc. 50) for summary judgment filed by Defendant Brainerd Chemical Company, Inc. (“Brainerd”). Brainerd also filed a brief (Doc. 51) and statement of facts (Doc. 52) in support of its motion. Brainerd subsequently filed an amended motion (Doc. 57) and statement of facts (Doc. 58). No party responded to Brainerd’s motion. For the limited purpose of Brainerd’s motion, any material facts in its statement of facts are deemed admitted. Fed. R. Civ. P. 56(e); W.D. Ark. R. 56.1(c).

On the undisputed facts on this motion, Brainerd was not responsible for the transfer hose involved in Plaintiffs’ injuries and never used it or instructed Plaintiffs or anyone else to use it in connection with the circumstances of Plaintiffs’ injuries. Brainerd had no duty of care and committed no negligent act, and summary judgment for Brainerd is appropriate. Pursuant to Federal Rule of Civil Procedure 54(b), judgment will not be entered on this order until final resolution of all claims.

The Court further notes that Plaintiffs have named several John Doe defendants. None of these defendants have been served, the deadline to serve them has not been extended, and Plaintiffs’ operative complaint (Doc. 12) alleges no specific conduct by any John Doe defendant that would subject that Defendant to liability to Plaintiffs. Dismissal of the John Doe defendants from this action is appropriate.

IT IS THEREFORE ORDERED that Defendant Brainerd Chemical Company, Inc.'s motion for summary judgment (Doc. 50) and amended motion (Doc. 57) are GRANTED, and all claims against this Defendant are DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that claims against all John Doe defendants are DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED this 7th day of May, 2021.

*/s/ P. K. Holmes, III*

P.K. HOLMES, III  
U.S. DISTRICT JUDGE