

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV029851-590

WATER.IO LTD (f/k/a WaterIO Ltd.),

Plaintiff,

v.

SEALED AIR CORPORATION,

Defendant.

**ORDER ON
MOTION TO AMEND**

1. Plaintiff Water.io Ltd has moved for leave to amend its complaint. The motion is fully briefed, and the Court held a hearing on 18 November 2025. For the following reasons, the Court **DENIES** the motion.

2. **Background.** This case arises out of a dispute over a contract for the development and sale of sensors for use in insulated shipping containers. Water.io is an Israeli company that makes water bottles with sensors that can transmit data to a mobile app. Defendant Sealed Air Corporation is a North Carolina-based packaging company. In late 2018, the parties finalized a purchase agreement in which Sealed Air promised to buy over four million sensors through 2025, assuming Water.io met certain development milestones. Just three years later, the parties' relationship fell apart, and each now accuses the other of breaching their contract.

3. Water.io filed suit in July 2024, alleging, among other things, that Sealed Air acted in bad faith when it manufactured grounds to terminate the purchase agreement for cause. According to Water.io, its injuries went beyond lost sales; Sealed Air's actions allegedly forced it to delay a planned initial public offering and decimated its valuation. The original complaint lists seven overlapping claims for

breach of contract, including that Sealed Air breached the parties' agreement by failing to perform its contractual duties (claim one), repudiating the contract (claims two and three), preventing Water.io from performing its own duties (claim four), committing a "material breach" and "total breach" (claims five and six), and violating the implied covenant of good faith and fair dealing (claim seven).^{*} (*See, e.g.*, Compl. ¶¶ 19, 25–29, 36, 43, 47, 52, 56, 61, 67, 70, 74, 77–79, ECF No. 3.)

4. In their case management report, the parties jointly proposed the end of January 2025 as the deadline to amend pleadings and mid-June 2025 as the close of fact discovery. The Court adopted these dates in the case management order. Since then, the parties have requested (and received) extensions of the discovery period but not the deadline to amend pleadings. (*See* ECF No. 10 at 2; *see also* ECF Nos. 13, 38, 116.)

5. Although discovery is not yet complete, Sealed Air moved for partial summary judgment in July 2025. It raised a single, albeit weighty, issue: whether Water.io may recover the multimillion-dollar decline in valuation from its delayed initial public offering as damages for breach of contract. Before the summary-judgment hearing took place, Water.io moved for leave to amend its complaint but later withdrew that request. The Court then granted Sealed Air's motion for partial summary judgment. *See Water.io Ltd v. Sealed Air Corp.*, 2025 NCBC LEXIS 119, at *7 (N.C. Super. Ct. Sept. 5, 2025) ("Water.io may not recover consequential damages resulting from Sealed Air's alleged breach of contract.").

^{*} Due to a typographical error, the complaint misnumbers the last three claims. Also, the claim for "material breach" appears to be incomplete. (*See* Compl. ¶¶ 69–71.)

6. At that point, just weeks before fact discovery was set to close, Water.io again moved for leave to amend. The proposed amended complaint is nearly three times the size of the original. It adds a new defendant, six new claims for relief, and about a hundred paragraphs containing new factual allegations (plus widespread edits to dozens of other paragraphs). Five of the six new claims are torts or tort-like causes of action: a claim against Sealed Air's in-house counsel, Lori Tylinski, for negligent misrepresentation; and claims against Sealed Air for negligent misrepresentation, negligence under both North Carolina and Israeli law, and unfair or deceptive trade practices under N.C.G.S. § 75-1.1. All these claims are tied to Water.io's delayed initial public offering and diminished valuation. The sixth and final new claim is another claim for breach of the purchase agreement, this time based on allegations that Sealed Air misused confidential information. (*See generally* Proposed Am. Compl., ECF No. 109.1.)

7. **Discussion.** Rule 15(a) of the North Carolina Rules of Civil Procedure provides that courts should freely give leave to amend pleadings “when justice so requires.” N.C. R. Civ. P. 15(a). “Acceptable reasons for which a motion to amend may be denied are undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice and futility of the amendment.” *Nationsbank of N.C., N.A. v. Baines*, 116 N.C. App. 263, 268 (1994) (citation and quotation marks omitted); *see also, e.g., JPMorgan Chase Bank, N.A. v. Browning*, 230 N.C. App. 537, 541 (2013). Whether to allow or deny leave to amend is left to the trial court's sound discretion. *E.g., Draughon v. Harnett Cnty. Bd. of Educ.*, 166 N.C. App. 464, 467 (2004).

8. The Court concludes that Water.io unreasonably delayed in pursuing its motion to amend. Water.io filed its motion fourteen months after the original complaint, over seven months after the deadline to amend set by the case management order (which Water.io proposed), and nearly two weeks after the Court's order granting Sealed Air's motion for partial summary judgment. When viewed "in relation to the progress of the lawsuit," this delay is unreasonable. *Wilkerson v. Duke Univ.*, 229 N.C. App. 670, 679 (2013) (affirming denial of motion to amend made "thirteen months after [plaintiff] filed the initial complaint and only five days before the hearing on defendants' motion for summary judgment"); *see also Wall v. Fry*, 162 N.C. App. 73, 80 (2004) (affirming denial of motion to amend made fourteen months after the initial complaint and after other parties had filed motions for summary judgment).

9. Nor has Water.io offered any persuasive reason for its delay. In vague, conclusory fashion, Water.io contends that its new allegations and claims are based on information learned during discovery. Neither its motion nor its brief identifies this newly discovered information with specificity, however. And the few exhibits attached to the motion offer little insight.

10. Moreover, it is clear that Water.io possessed much of the key information before beginning this lawsuit. Water.io contends, for example, that discovery provided the basis for its tort claims, "demonstrat[ing] for the first time that [Sealed Air] could not reasonably have believed" certain statements that Tyliniski had made in a letter to Water.io in May 2021. (Reply Br. 4, ECF No. 128.) But the alleged

falsity of the May 2021 letter featured prominently in the original complaint. Water.io expressly alleged that statements in the letter were “false,” that Tyliniski aimed “to concoct an argument for material breach by Water.io,” and that the letter was sent “in conspicuously bad faith.” (Compl. ¶¶ 25, 28, 29.) Thus, it appears that Water.io could have asserted these claims in its original complaint. It has offered no compelling explanation for its delay. *See Micro Cap. Invs., Inc. v. Broyhill Furniture Indus.*, 221 N.C. App. 94, 102 (2012) (affirming denial of motion to amend when claim could have been raised in earlier pleading “based on the information known to plaintiff at the time”).

11. Even so, Water.io insists that its delay should be excused because Sealed Air faces no prejudice. The Court disagrees. The critical, disputed events occurred four and a half years ago. There is an acute risk that further delay will result in the loss of evidence, especially as memories fade and witnesses move to new roles or new employers. This is not a theoretical concern; the parties have already raised one dispute about a laptop that Water.io has been unable to locate. (*See, e.g.*, ECF No. 66 at 5.)

12. Moreover, the proposed amended complaint would overhaul the case, adding a new defendant, tripling the size of the complaint, introducing new tort theories into what had been purely a contract case, reintroducing a damages theory excluded on summary judgment, requiring the parties and the Court to grapple with issues of Israeli law, and opening the door to treble damages. These are material differences that would “greatly change the nature of the defense” and “greatly increas[e] the

stakes of the lawsuit.” *House Healers Restorations v. Ball*, 112 N.C. App. 783, 786–87 (1993) (citation and quotation marks omitted); *see also Kinnard v. Mecklenburg Fair, Ltd.*, 46 N.C. App. 725, 727 (1980) (concluding that the addition of a section 75-1.1 claim “would not only greatly change the nature of the defense to what was a breach of contract action but also would subject defendant to potential treble damages which greatly increased the stakes of the lawsuit”); *United Therapeutics Corp. v. Liquidia Techs.*, 2023 NCBC LEXIS 88, at *15 (N.C. Super. Ct. July 20, 2023) (observing that proposed claim under section 75-1.1 “would unquestionably change the stakes”); *Kixsports, LLC v. Munn*, 2019 NCBC LEXIS 92, at *6 (N.C. Super. Ct. Jan. 24, 2019) (noting prejudicial effect of the “clear and significant difference between” original claims and proposed claims that would introduce new legal theories and remedies).

13. Contrary to what Water.io says, such a substantial amendment would necessitate additional discovery. Tyliniski is not a party and has conducted no discovery; she would certainly be entitled to have a fair chance to do so. As for Sealed Air, “the addition of a new legal theory may well have changed [its] approach to discovery.” *Freese v. Smith*, 110 N.C. App. 28, 33 (1993). The switch from a contract defense to a tort defense is far from trivial. “Different evidence would be necessary to support these additional legal claims, which could involve more discovery for the parties, slow the litigation process, and present a more unwieldy litigation for the trial court to administrate.” *Stetser v. TAP Pharm. Prods. Inc.*, 165 N.C. App. 1, 32 (2004).

14. In short, Water.io has not offered a persuasive explanation for its delay in moving to amend. Its proposed amendment would wholly transform this case just as fact discovery was set to wind down, resulting in prejudice to Sealed Air. These reasons, taken together, support denying the motion. Accordingly, the Court need not and does not address Sealed Air's argument that the amendment would be futile.

15. **Conclusion.** In its discretion, the Court **DENIES** Water.io's motion to amend.

SO ORDERED, this the 24th day of November, 2025.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases