

IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI

GARY COLSON, JOHN OCHOA, AND)	
JANET OCHOA on behalf of themselves,)	
and all others similarly situated)	Case No.
)	
Plaintiffs,)	
)	
v.)	
)	
PROTEIN SOLUTIONS, LLC,)	
)	
Defendant.)	

PLAINTIFFS' CLASS ACTION COMPLAINT AND JURY DEMAND

INTRODUCTION

1. Plaintiffs, Gary Colson, John Ochoa, and Janet Ochoa ("Plaintiffs") bring this class action against the Defendant, Protein Solutions, LLC, an industrial protein processing facility ("Defendant" or the "facility") located in Joplin, Missouri. Through the operation of its facility, Defendant releases noxious odors that invade Plaintiffs' properties, causing property damage through negligence, gross negligence and nuisance for which Plaintiffs seeks compensatory and punitive relief and injunctive relief not inconsistent with Defendant's federally and state enforced air permits.

PARTIES

2. At all times relevant hereto, Plaintiff, Gary Colson, has resided and intended to remain at 3600 E. 13th St., City of Joplin, County of Jasper, State of Missouri.

3. At all times relevant hereto, Plaintiffs, John and Janet Ochoa, have resided and intended to remain at 4017 Belle-Locke Pl., City of Joplin, County of Jasper, State of Missouri.

4. Defendant, Protein Solutions, LLC is a Limited Liability Company operating an industrial protein processing facility located at 3800 E. 32nd Street, in the City of Joplin, County

of Newton, State of Missouri.

JURISDICTION AND VENUE

5. This Court has jurisdiction as the invasion of Plaintiffs' properties by noxious odors has interfered with Plaintiffs' use and enjoyment of their properties, resulting in damages in excess of \$25,000.00.

6. Venue is proper in this Court pursuant to Missouri Supreme Court Rule 508.010(4) as Plaintiffs were first injured in and reside in Jasper, County.

GENERAL ALLEGATIONS

7. Defendant operates an industrial protein processing plant located at 3800 E. 32nd Street Joplin, MO 64804 where it processes chilled chicken parts, such as liver into flavored broths, chicken oils and dehydrated pet food palatines. Defendant also produces fresh and frozen blends of chicken for the pet food industry. Through these processes Defendant emits noxious odors into the adjacent residential community.

8. Plaintiffs' properties have been and continue to be physically invaded by noxious odors.

9. The noxious odors which entered Plaintiffs' properties originated from the facility, where they are generated as a result of Defendant's manufacturing process.

10. Defendant, its predecessors and agents either constructed or directed the construction of the facility and exercised control and ownership over the facility.

11. Defendant's facility, and specifically its emissions, has been the subject of frequent complaints from residents in the neighboring area.

12. Residents of sixty (60) households have already communicated with Plaintiffs' counsel regarding their experiences with Defendant's emissions.

13. Defendant intentionally, recklessly, willfully, wantonly, maliciously, grossly and negligently failed to properly construct, maintain and operate the facility, and caused the invasion of Plaintiffs' properties by noxious odors on intermittent and reoccurring dates.

14. Defendant has a well-documented history of emitting noxious odors. Examples include, but are not limited to the following:

- A. Over one-hundred odor complaints have been filed with the City of Joplin and Missouri Department of Natural Resources (DNR) by residents from the adjacent neighborhood community for the release of noxious odors attributed to Defendant's facility.;
- B. In March 2018 and in response to Defendant's continuous release of odors into the residential community, over 1,000 Joplin City residents signed a petition desperately calling for the City to better monitor Defendant's emissions.; and
- C. Defendant has been cited on at least three occasions by the Missouri DNR for *Odor Violations* as a result of continuous complaints filed by area residents.

15. A properly operated, maintained, and managed protein processing facility will collect, capture and destroy odorous compounds in order to prevent noxious emissions into the surrounding community.

16. Defendant failed to install and maintain adequate technology to properly control its emissions of noxious odors, including but not limited to its "*dryer room exhaust system*," which Defendant has previously described in a Missouri DNR compliance report as the source of its noxious emissions.

CLASS ALLEGATIONS

A. Definition of the Class

17. Plaintiffs bring this action individually and on behalf of all persons as the Court may determine to be appropriate for class certification, pursuant to Supreme Court Rule 52.08 of

the Missouri Rules of Civil Procedure. Plaintiffs seek to represent a Class of persons preliminarily defined as:

All owner/occupants and renters of residential property residing within two (2.0) miles of the facility's property boundary within the ten years predating the filing of this Class Action Complaint.

The definitional boundary is subject to modification as discovery will disclose the location of all persons properly included in the Class ("Class Members"). Plaintiffs reserve the right to propose one or more sub-classes if discovery reveals that such subclasses are appropriate.

18. This case is properly maintainable as a class action pursuant to and in accordance with Supreme Court Rule 52.08(a) of the Missouri Rules of Civil Procedure in that:

- a. The class, which includes thousands of members, is so numerous that joinder of all members is impracticable;
- b. There are substantial questions of law and fact common to the class including those set forth in greater particularity herein;
- c. Questions of law and fact such as those enumerated below, which are all common to the class, predominate over any questions of law or fact affecting only individual members of the class;
- d. A class action is superior to any other type of action for the fair and efficient adjudication of the controversy;
- e. The relief sought in this class action will effectively and efficiently provide relief to all members of the class;
- f. There are no unusual difficulties foreseen in the management of this class action; and
- g. Plaintiffs, whose claims are typical of those of the Class, through experienced counsel, will zealously and adequately represent the Class.

B. Numerosity

19. The Class consists of thousands of members and therefore is so numerous that joinder is impracticable.

C. Commonality

20. Numerous common questions of law and fact predominate over any individual questions affecting Class Members, including, but not limited to the following:

- a. whether and how Defendant intentionally, recklessly, willfully, wantonly, maliciously, grossly and negligently failed to construct, maintain and operate the facility;
- b. whether Defendant owed any duties to Plaintiffs;
- c. which duties Defendant owed to Plaintiffs;
- d. which steps Defendant has and has not taken in order to control the emission of noxious odors through the construction, maintenance and operation of the facility;
- e. whether and to what extent the facility's noxious odors were dispersed over the class area;
- f. whether it was reasonably foreseeable that Defendant's failure to properly construct, maintain and operate the facility would result in an invasion of Plaintiffs' property interests;
- g. whether the degree of harm suffered by Plaintiffs and the class constitutes a substantial annoyance or interference; and
- h. the proper measure of damages incurred by Plaintiffs and the Class.

D. Typicality

21. Plaintiffs have the same interests in this matter as all the other members of the Class, and their claims are typical of all members of the Class. If brought and prosecuted individually, the claims of each Class member would require proof of many of the same material and substantive facts, utilize the same complex evidence including expert testimony, rely upon the same legal theories and seek the same type of relief.

22. The claims of Plaintiffs and the other Class members have a common cause and their damages are of the same type. The claims originate from the same failure of the Defendant

to properly construct, maintain and operate the facility.

23. All Class members have suffered injury in fact as a result of the invasion of their properties by noxious odors emitted from Defendant's facility, causing damage in the form of losses to property values.

E. Adequacy of Representation

24. Plaintiffs' claims are sufficiently aligned with the interests of the absent members of the Class to ensure that the Class claims will be prosecuted with diligence and care by Plaintiffs as representatives of the Class. Plaintiffs will fairly and adequately represent the interests of the Class and do not have interests adverse to the Class.

25. Plaintiffs have retained the services of counsel who are experienced in complex class action litigation, and in particular class actions stemming from invasions of industrial emissions. Plaintiffs' counsel will vigorously prosecute this action and will otherwise protect and fairly and adequately represent Plaintiffs and all absent Class members.

F. Class Treatment Is the Superior Method of Adjudication

26. A class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint because:

27. Individual claims by the Class members would be impracticable as the costs of pursuit would far exceed what any one Class member has at stake;

28. Little or no individual litigation has been commenced over the controversies alleged in this Complaint and individual Class members are unlikely to have an interest in separately prosecuting and controlling individual actions;

29. The concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy; and

30. The proposed class action is manageable.

CAUSE OF ACTION I

NUISANCE

31. Plaintiffs restate allegations 1 through 30 of this Complaint as if fully rewritten herein.

32. The noxious odors, which entered Plaintiffs' properties originated from the facility constructed, maintained and operated by Defendant.

33. The noxious odors invading Plaintiffs' properties are indecent and offensive to the senses, and obstruct the free use of their properties so as to substantially and unreasonably interfere with the comfortable enjoyment of life and property.

34. Defendant owed and continues to owe a duty to Plaintiffs to prevent and abate the interference with the invasion of the private interests of the Plaintiffs.

35. By constructing and then failing to reasonably repair and maintain its facility, Defendant has intentionally and negligently caused an unreasonable invasion of Plaintiffs' interest in the use and enjoyment of their properties.

36. As a foreseeable, direct and proximate result of the foregoing conduct of Defendant, Plaintiffs suffered injuries and damages to their properties as alleged herein.

37. Plaintiffs did not consent to the invasion of their properties by noxious odors.

38. By causing noxious odors produced and controlled by Defendant to physically invade Plaintiffs' land and property, Defendant intentionally, recklessly, and negligently created a nuisance which substantially and unreasonably interfered with Plaintiffs' use and enjoyment of their properties.

39. Whatever social utility Defendant's facility provides is clearly outweighed by the

harm suffered by the Plaintiffs and the putative class, who have on frequent occasions been deprived of the full use and enjoyment of their properties and have been forced to endure substantial loss in the value of their properties.

40. Defendant's substantial and unreasonable interference with Plaintiffs' use and enjoyment of their properties constitutes a nuisance for which Defendant is liable to Plaintiffs for all damages arising from such nuisance, including compensatory, exemplary, injunctive and punitive relief since Defendant's actions were, and continue to be, intentional, willful, malicious and made with a conscious disregard for the rights of Plaintiffs, entitling Plaintiffs to compensatory and punitive damages.

CAUSES OF ACTION II AND III

NEGLIGENCE AND GROSS NEGLIGENCE

41. Plaintiffs restate allegations 1 through 40 of this Complaint as if fully rewritten herein.

42. Defendant negligently and improperly constructed, maintained and operated the facility such that it caused the invasion of noxious odors onto Plaintiffs' homes, land, and property on occasions too numerous to mention,

43. As a direct and proximate result of Defendant's negligence and gross negligence in constructing, maintaining and operating the facility, Plaintiffs' properties, on occasions too numerous to mention, were invaded by noxious odors.

44. As a further direct and proximate result of the foregoing conduct of the Defendant, Plaintiffs suffered damages to their properties as alleged herein.

45. The invasion and subsequent damages suffered by Plaintiffs were reasonably foreseeable by the Defendant.

46. By failing to properly construct, maintain and operate its facility, Defendant failed to exercise the duty of ordinary care and diligence, which it owes to Plaintiffs, so noxious odors would not invade Plaintiffs' properties.

47. A properly constructed, operated, and maintained facility will not emit noxious odors into neighboring residential areas.

48. By failing to construct, maintain and operate its facility, Defendant has intentionally caused the invasion of Plaintiffs' properties by noxious odors.

49. Defendant knowingly breached its duty to exercise ordinary care and diligence when it improperly constructed, maintained and operated the facility and knew, or should have known upon reasonable inspection that such actions would cause Plaintiffs' properties to be invaded by noxious odors.

50. As a direct and proximate result of the failure of Defendant to exercise ordinary care, Plaintiffs' residences were invaded by noxious odors causing and constituting damage to their properties.

51. The conduct of Defendant in knowingly allowing conditions to exist which caused noxious odors to physically invade Plaintiffs' properties constitutes gross negligence as it demonstrates a substantial lack of concern for whether an injury resulted to Plaintiffs' properties.

52. Defendant's gross negligence was malicious and made with a wanton or reckless disregard for the properties of Plaintiffs, which entitles Plaintiffs to an award of compensatory, exemplary, and punitive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class, pray for judgment as follows:

- A. Certification of the proposed Class pursuant to Supreme Court Rule 52.08 of the Missouri Rules of Civil Procedure;
- B. Designation of Plaintiffs, Gary Colston, John Ochoa, and Janet Ochoa as class representatives of the proposed Class and designation of their counsel as Class Counsel;
- C. Judgment in favor of Plaintiffs and the Class members and against Defendant;
- D. Award Plaintiffs and the Class members compensatory and punitive damages, and attorneys' fees and costs, including pre-judgment and post-judgment interest thereupon;
- E. Award Plaintiffs and the Class members injunctive relief not inconsistent with Defendant's federally and state enforced and Air Permits;
- F. An Order holding that entrance of the noxious odors upon Plaintiffs' property constituted a nuisance; and
- G. Such further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: March 15, 2019

Respectfully Submitted:

s/Terry A. Neff
Terry A. Neff MO 44907
Neff & Day, P.C.
117 W Spring St.
Neosho, MO 64850
Tel: (417) 451-7003
Fax: (417) 451-7048
tneff@neosholawyers.com s
Attorneys for Plaintiffs

Laura L. Sheets*
LIDDLE & DUBIN, P.C.
*Pro Hac Vice Applications to be submitted**
975 E. Jefferson Avenue
Detroit, MI 48207
lsheets@ldclassaction.com

Telephone: (313) 392-0015
Facsimile (313) 392-0025
Attorneys for Plaintiffs