

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 28th JUDICIAL CIRCUIT
MISSAUKEE COUNTY

MARK BAKER and BAKER'S GREEN
ACRES, INC.,

Plaintiffs/Counter-Defendants,

File No. 12-8097-CZ

v

Honorable William M. Fagerman

RODNEY A. STOKES, DIRECTOR,
MICHIGAN DEPARTMENT OF
NATURAL RESOURCES and the
MICHIGAN DEPARTMENT OF
NATURAL RESOURCES,
Defendants/Counter-Plaintiffs.

Freda Michelle Halley (P62637)
Attorney at Law
375 N. McClellan Avenue
Marquette, MI 49855
Phone: (906) 361-0520
Attorney for Plaintiffs

Danielle Allison-Yokom (P70950)
Kelly M. Drake (P59071)
Harold J. Martin (P39234)
Assistant Attorneys General
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30755
Lansing, MI 48909
Phone: (517) 373-7540
Attorneys for Defendants

**DEFENDANTS' SUPPLEMENT TO
SECOND MOTION FOR SUMMARY DISPOSITION**

Defendants are supplementing their second motion for summary disposition based on recent statements by Plaintiff Mark Baker that indicate that Plaintiffs made false statements in response to interrogatories. These misrepresentations affect the relief sought in that motion. Based on Plaintiffs' discovery responses, Defendants sought civil penalties in the amount of \$700,000 and an order for abatement of 70 pigs. On June 29, 2013, Plaintiff Mark Baker made statements during an interview posted online that made it apparent to Defendants that some of

Plaintiffs' responses to interrogatories are likely false. As a result, the civil penalties and order for abatement sought through Defendants' motions are likely insufficient to remedy the violations of Part 413 and the ongoing public nuisance.

In response to interrogatories, Plaintiffs indicated that they owned 20 sows and 50 feeder pigs. (See Pls' Response to First Set of Interrogatories, No. 3 (Ex A).) Plaintiffs' interrogatory answers were verified by Plaintiff Baker's wife, Jill Baker, and her signature was notarized. Plaintiffs have not supplemented their response to this interrogatory.

Because Plaintiff Baker had made previous public statements indicating that he possessed approximately 200 animals, Defendants served a second set of interrogatories in which they asked Plaintiffs to explain the discrepancy. Plaintiffs responded that the numbers in the previous public statements were estimates and that a large number of animals had been culled in late 2012 and early 2013. (Pls' Answer to Defendants' Second Set of Interrogatories, No. 12 (Ex B).) Plaintiffs' interrogatory answers included an unsigned verification page listing Plaintiff Baker and his wife, Jill Baker. Plaintiffs have not supplemented their response to this interrogatory.

Based on Plaintiffs' interrogatory responses, Defendants' second motion for summary disposition seeks civil penalties in the amount of \$700,000 (\$10,000 for each of Plaintiffs' 70 pigs) and an order from the court that Plaintiffs dispossess their 70 pigs. (Defs' 6/20/13 Brf, pp 17-19.)

However, in a June 29, 2013 interview, Plaintiff Baker stated that he owns more than 70 pigs. Specifically, Plaintiff Baker stated that Defendants sought

\$700,000 in fines “because I told them that I have 70 pigs here. I actually have more than that.” (Recording of Free Talk Live, 6/29/13, 5:00-5:40, <https://www.soundcloud.com/freetalklive/ftl2013-06-29> (Ex C).)

In light of this new information, the relief sought in Defendants’ second summary disposition motion appears to be insufficient. In particular, an order that Plaintiffs dispossess 70 pigs likely would not bring Plaintiffs into compliance with the Invasive Species Order or fully resolve the outstanding issues. As a result, Defendants respectfully request that this Court issue an order that Plaintiffs dispossess all of their prohibited pigs.

Although Plaintiff Baker’s statements also provide grounds for Defendants to seek civil penalties in excess of \$700,000, Defendants’ greater interest is in the dispossession of all the prohibited pigs and resolution of this matter. Therefore, Defendants continue to seek \$700,000 in civil fines as stated in their earlier motion.

Respectfully submitted,

Bill Schuette
Attorney General



Danielle Allison-Yokom (P70950)
Kelly M. Drake (P59071)
Harold J. Martin (P39234)
Assistant Attorneys General
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

Attorneys for Defendants

Dated: July 3, 2013

ENRA/cases/open/2012-0005661-A/Baker v MDNR/Supplement to 2nd Motion SD 2013.07.03

A

Freda Michelle Halley

Attorney

May 13, 2013

Danielle Allison-Yokom
Kelly M. Drake
Assistant Attorney General
Environment, Natural Resources and Agriculture Division
P.O. Box 30755
Lansing, MI 48909

Dear Mss. Allison-Yokom and Drake:

Enclosed please find Plaintiffs' Answers to Defendants' First Set of Interrogatories and Request for Production of Documents. Due to the geographical distance between me and my client, I will send the executed Affidavit of Jill Baker separately.

Yours truly,



F. Michelle Halley

Dept. of Attorney General
RECEIVED

MAY 16 2013

**NATURAL RESOURCES
DIVISION**

Freda Michelle Halley

Attorney

May 13, 2013

Clerk of the Court
28th Judicial Circuit
111 S. Canal Street
P.O. Box 800
Lake City, MI 49651

RE: 12-8097-CZ

Dear Clerk:

Please find the enclosed Proof of Service for Plaintiffs' Answer to Defendants' First Set of Interrogatories and Request for Production of Documents. Please contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "F. Michelle Halley", followed by a long, sweeping horizontal flourish.

F. Michelle Halley

Encl.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MISSAUKEE

Mark Baker,
Baker's Green Acres, LLC,

File No.: 12-8097-CZ
Honorable William M. Fagerman

Plaintiffs,

v.

Rodney A. Stokes, Director, Michigan
Department of Natural Resources, and the
Michigan Department of Natural Resources,

Defendants.

Freda Michelle Halley
Attorney for Plaintiffs
375 N. McClellan Avenue
Marquette, MI 49855
(906) 361-0520

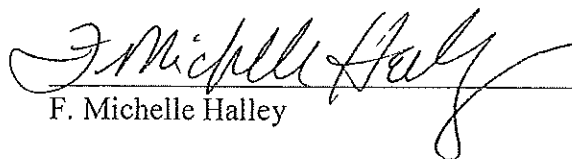
Danielle Allison-Yokom
Kelly M. Drake
Attorneys for Defendant
Assistant Attorneys General
Environment, Natural Resources
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

PROOF OF SERVICE

The undersigned certifies that Plaintiffs' ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS and this Proof of Service was served by United States first class mail, postage pre-paid upon the following:

Danielle Allison-Yokom
Kelly M. Drake
Assistant Attorneys General
Environment, Natural Resources and Agriculture Division
P.O. Box 30755
Lansing, MI 48909

Dated: 5/13/13


F. Michelle Halley

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 28TH JUDICIAL CIRCUIT
MISSAUKEE COUNTY

MARK BAKER and BAKER'S GREEN
ACRES, INC.,

File No.: 12-8097-CZ

Plaintiffs and Counter-Defendants,

Honorable William M. Fagerman

v.

RODNEY A. STOKES, DIRECTOR,
MICHIGAN DEPARTMENT OF NATURAL RESOURCES
and the MICHIGAN DEPARTMENT OF NATURAL
RESOURCES,

Defendants/Counter-Plaintiffs.

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Lansing, MI 48909
(517) 373-7540
Attorneys for Defendants

PLAINTIFFS' ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

Now comes Plaintiffs, Baker's Green Acres, Inc. and Mark and Jill Baker, by and through
their attorney, Freda Michelle Halley and answers DEFENDANTS' FIRST SET OF
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS:

1. Identify each person who participated in preparing or assisted the person signing the answers to these discovery requests, including those person(s) who have provided information for such answers, stating with specificity the answers involved.

ANSWER: Jill Baker, Plaintiff, answered Interrogatories 3-9 and the Request for Production of Documents 2-8. Freda Michelle Halley, Attorney for Plaintiffs, answered Interrogatories 1, 2, partial objection regarding 5, partial objection regarding 8, and 10-16 and Request for Production of Documents 1 and 9-15.

2. Identify all exhibits Plaintiffs may rely on or introduce at trial.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

3. Disclose the number of pigs you own.

~~ANSWER: We own one (1) boar, twenty (20) sows, and fifty (50) feeders.~~

4. Disclose the number of pigs you purchased on or after April 1, 2012. For each purchase provide the following:

- a. The date of the purchase;
- b. The number of pigs purchased;
- c. The type of pigs purchased (e.g. Mangalitsa, Russian boar);

- d. How the pigs were identified at the time of purchase (i.e. ear tag, RFID tag, etc.);
- e. The identity of the person or entity, including name and address, from whom the pigs were purchased;
- f. Whether you have bred the purchased pigs;
- g. Whether you are still in possession of the purchased pigs and if you are not in possession of the pigs, the pigs' disposition; and
- h. The gender of the pigs purchased.

ANSWER: We have purchased zero (0) pigs since April 1, 2012.

5. Disclose the number of pigs you sold on or after April 1, 2012. For each sale provide the following:
- a. The date of the sale;
 - b. The number of pigs sold;
 - c. Whether the sale was of live pigs, dead pigs and/or for immediate slaughter;
 - d. How the pigs were identified at the time of sale (i.e. ear tags, RFID tag, etc.); and
 - e. The identity of the person or entity, including their name and address, to whom the pigs were sold.
-

ANSWER:

Plaintiffs object in part to this interrogatory. Plaintiffs provide below the information requested in subsection (a)-(d) for all sales. Plaintiffs object, however, to subsection (e); no sales of live pigs were made in Michigan therefore the identities of buyers are irrelevant to this litigation and overly broad.

Sales were made as follows:

- a. 01/13/13
 - i. 6 feeder pigs, 6 breeding stock
 - ii. Live pigs
 - iii. No identifier used.
 - iv. Buyer resides in and pigs were sold in Indiana.
 - b. 05/21/2012
 - i. ½ hog
 - ii. Processed
 - iii. No identifier used.
 - c. 05/21/2012
 - i. Whole hog
 - ii. Processed
 - iii. No identifier used.
 - d. 05/22/2012
 - i. ½ hog
 - ii. Processed
 - iii. N No identifier used.
 - e. 05/22/2012
 - i. Half Hog
 - ii. Processed
 - iii. No identifier used.
 - f. 07/14/2012
 - i. Whole Hog
 - ii. Processed
 - iii. No identifier used.
-
- g. 10/24/2012
 - i. Whole Hog
 - ii. Processed
 - iii. No identifier used.
 - h. 12/01/2012
 - i. Half Hog
 - ii. Processed
 - iii. No identifier used.
 - i. 1/30/2013
 - i. 4 whole hogs
 - ii. Processed

- iii. No identifier used.
 - j. 01/31/2013
 - i. 2 whole hogs
 - ii. Processed
 - iii. No identifier used.
6. Disclose every instance where pigs owned by you or held on your property have escaped, been released, or otherwise have been outside of enclosures, including:
- a. The date of the escape, release, or event;
 - b. The number of pigs that escaped, were released, or were outside the enclosure;
 - c. Whether the pigs were recaptured, lost, killed, or if otherwise disposed of, how the pigs were handled;
 - d. The identity, including the name, address, and phone number, of the individual(s) who discovered the pigs had escaped, been released, or had gotten outside of the enclosures;
 - e. The identity, including name, address, and home number, of any individual(s) who assisted in capturing, killing, or otherwise handling the released pigs; and
 - f. The identity, including name, address, and phone number, of any individuals who witnessed the escape, release, or event.
-

ANSWER: No pigs have escaped, been released, or otherwise have been outside of enclosures.

7. Do you use unique identifiers (for example, metal ear tags, RFID ear tags) to identify your pigs? If yes, please describe the unique identifies that you use and identify the numbers of any tags you currently use or possess.

ANSWER: We do not use unique identifiers.

8. Identify every location where your pigs are located. For each location, provide the address and identify the person or persons who own or hold an interest in the property.

ANSWER:

Plaintiffs object in part to Interrogatory 8. Plaintiffs below provide every location where their pigs are located. Plaintiffs object, however, to identifying others who own or hold an interest in the property as being irrelevant to this litigation and overly broad.

All pigs are located at:

Baker's Green Acres, Inc./Mark and Jill Baker
1579 Brinks Rd.
Marion, MI 49665

9. Identify every individual or entity who claims ownership in or a right to possess your pigs.

ANSWER: Mark and Jill Baker own all pigs.

-
10. Identify the evidence that you will present and/or rely on to support your claim that the DNR lacked authority to issue the Invasive Species Order, stated in Paragraphs 34-36 of your Complaint.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

11. Identify the evidence that you will present and/or rely on to support your Administrative Procedures Act claim stated in Paragraphs 37-39 of your Complaint.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

12. Identify the evidence that you will present and/or rely on to support your Separation of Powers claim stated in Paragraphs 40-42 of your Complaint.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

13. Identify the evidence that you will present and/or rely on to support your Due Process claim stated in Paragraphs 43-45 of your Complaint.

~~ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially~~
be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

14. Identify the evidence that you will present and/or rely on to support your Equal Protection claim stated in Paragraphs 46-47 of your Complaint.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

15. Identify the evidence that you will present and/or rely on to support your takings claim stated in Paragraphs 48-50 of your Complaint.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

16. Identify the evidence that you will present and/or rely on to support your claim that your animals satisfy an exemption in the Invasive Species Order stated in Paragraphs 51-52 of your Complaint.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

ANSWER TO REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce all exhibit Plaintiffs may rely on or introduce at trial.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

2. For each purchase of pigs identified in response to Interrogatory No. 3, provide all documents evidencing the purchase including, but not limited to, receipts, band records, cancelled checks, bills of lading, veterinary health certificates, bills of sale, contracts for sale, communications relating to the purchase, invoices, pictures, and any and all other documents related to the purchase.

ANSWER: No such documents exist.

3. For each sale of pigs identified in response to Interrogatory No. 4, provide all documents evidencing the sale including, but not limited to, receipts, band records, cancelled checks, bills of lading, veterinary health certificates, bills of sale, contracts for sale, communications relating to the purchase, invoices, pictures, and any and all other documents related to the sale.

ANSWER: Requested documents are attached; see attached "Response for Request for Production of Documents, No. 3."

4. For each instance identified in response to Interrogatory No. 5, provide all documentation of the event including complaints, letters, citations, pictures, or other communications or documents related to the instance identified.

ANSWER: No such documents exist.

5. Provide all advertisements, sales documents, commercials, papers, flyers, etc. used to solicit purchasers of your pigs for the past five years.

ANSWER: Requested documents are attached; see attached "Response for Request for Production of Documents, No. 5."

6. Provide all documents and records evidencing the inventory of your pigs on or after April 1, 2012, including but not limited to, documents or records evidencing additions to your herd of pigs (including births) and losses to your herd of pigs (including deaths).

ANSWER: Requested documents are attached; see attached "Response for Request for Production of Documents, No. 6."

7. For each location identified in response to Interrogatory No. 7, provide all documents, including deeds, title documents, lease agreements, etc., that demonstrate the interests held by you or any other person in the property.

ANSWER: Requested documents are attached; see attached "Response for Request for Production of Documents, No. 7."

8. For each person or entity identified in response to Interrogatory No. 8, provide all documents evidencing the person's or entity's interest in the pigs, including but not limited to, bills of sale, contracts, agreements, veterinarian health certificates, and communications.

ANSWER: Requested documents are attached; see attached "Response for Request for Production of Documents, No. 8."

9. Produce all documents identified in your response to Interrogatory No. 10.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that it may have a duty to supplement this response.

10. Produce all documents identified in your response to Interrogatory No. 11.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

11. Produce all documents identified in your response to Interrogatory No. 12.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

12. Produce all documents identified in your response to Interrogatory No. 13.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

13. Produce all documents identified in your response to Interrogatory No. 14.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

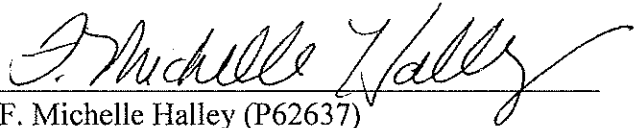
14. Produce all documents identified in your response to Interrogatory No. 15.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of a list and understands that it may have a duty to supplement this response.

15. Produce all documents identified in your response to Interrogatory No. 16.

ANSWER: Plaintiffs have not yet prepared an exhibit list or determined exhibits to potentially be used at trial. Plaintiffs will comply with any deadline set for an exchange of exhibit lists and understand that they may have a duty to supplement this response.

Dated: 5/13/13


F. Michelle Halley (P62637)
Attorney for Plaintiffs

AFFIDAVIT

STATE OF MICHIGAN)

MISSAUKEE COUNTY)

Jill Baker, being sworn, says:

I verify the attached "Plaintiffs' Answer to Defendants' First Set of Interrogatories and Request for Production of Documents." The matters stated in the response are within my personal knowledge and the facts stated in the response are true.

/s/ _____
Jill Baker

Subscribed and sworn to before me on May ____, 2013.

/s/ _____

Notary's Name _____

Notary public, State of Michigan, County of Missaukee.

My commission expires _____.

AFFIDAVIT

STATE OF MICHIGAN)

MISSAUKEE COUNTY)

Jill Baker, being sworn, says:

I verify the attached "Plaintiffs' Answer to Defendants' First Set of Interrogatories and Request for Production of Documents." The matters stated in the response are within my personal knowledge and the facts stated in the response are true.

/s/ Jill Baker
Jill Baker

Subscribed and sworn to before me on May 17, 2013.

/s/ Jill Baker

Notary's Name Melissa Howey / Melissa Howey

Notary public, State of Michigan, County of Missaukee.

My commission expires 10/15/18

MELISSA L. HOWEY
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF MISSAUKEE
My Commission Expires Oct. 15, 2018
Acting in the County of Missaukee

B

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 28TH JUDICIAL CIRCUIT
MISSAUKEE COUNTY

MARK BAKER and BAKER'S GREEN
ACRES, INC.,

File No.: 12-8097-CZ

Plaintiffs and Counter-Defendants,

Honorable William M. Fagerman

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and the MICHIGAN DEPARTMENT OF NATURAL
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Attorney
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Attorney for Plaintiffs

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Environment, Natural Resources, and
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Lansing, MI 48909
(517) 373-7540
Attorneys for Defendants

**PLAINTIFFS' ANSWERS TO DEFENDANTS' SECOND SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Now comes Plaintiffs, Baker's Green Acres, Inc. and Mark and Jill Baker, by and
through their attorney, Freda Michelle Halley and answers DEFENDANTS' SECOND SET OF
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS:

GENERAL OBJECTIONS

Plaintiffs' responses to these Interrogatories were prepared in full compliance with the Michigan Court Rules and pursuant to a reasonable and duly diligent search for the information properly requested.

Plaintiffs have not yet completed the investigation of the facts related to this litigation. Consequently, all of the responses are based only on such information and documentation that is presently available and disclose only those contentions that presently occur to the Plaintiffs. It is possible that further investigation, research, and analysis will supply additional facts, add meaning to known facts, and perhaps establish entirely new factual conclusions, all of which may lead to substantial additions or changes to these responses.

ANSWERS TO INTERROGATORIES

1. Identify each person who participated in preparing or assisted the person signing the answers to these discovery requests, including those person(s) who have provided information for such answers, stating with specificity the answers involved.

ANSWER:

1. Jill Baker
1579 Brinks Rd.
Marion, MI 49665
231-825-0293
Self-employed by Baker's Green Acres Inc, address and phone same as above.

Mark Baker
1579 Brinks Rd.
Marion, MI 49665
231-825-0293
Self-employed by Baker's Green Acres Inc., address and phone same as above.

Plaintiffs' attorney, Freda Michelle Halley, for general assistance.

2. Disclose all amounts you have paid as part of the national and state pork checkoff

programs.

ANSWER:

Zero dollars.

3. Disclose all disease testing done on your pigs over the past three years including:
- (a) The date of the testing;
 - (b) The type of testing;
 - (c) The results of the testing;
 - (d) The name, address, and phone number for the veterinarian or other individual who conducted the testing;
 - (e) How the pigs were identified for testing purposes; and
 - (f) The reason the testing was done.

ANSWER:

- (1) (a) 4/13/2012¹
 - (b) USDA for meat processing
 - (c) All were approved for butchering except one which "frustrated" due to sepsis in a shoulder wound hidden under the fur. Plaintiff does not have documentation on this and Kathy DeVries said she has no reports in her office
 - (d) Name/contact information unknown; USDA vet assigned to DeVries on this date
-
- (e) Only as a group
 - (f) Butchering
-
- (2) (a) Jan. 2013
 - (b) Veterinary health certificate
 - (c) All tests negative

¹ Prior to this shipment, Baker pigs were managed under "Michigan Mangalitsa, Inc."

- (d) Stoney Corner Vet Service
Dr. Dallas Burrell
(231) 825-2531
9980 S. Lucas Rd
McBain, MI 49657
- (e) Vet put on a tag
- (f) Shipment across state lines
- (3)(a) November 9, 2010
 - (b) Veterinary health certificate
 - (c) All tests negative
 - (d) Stoney Corner Vet Service
Dr. Dallas Burrell
(231) 825-2531
9980 S. Lucas Rd
McBain, MI 49657
 - (e) Vet put on a tag
 - (f) Shipment across state lines
- (4)(a) September 28, 2009
 - (b) Veterinary health certificate
 - (c) All tests negative

- (d) Stoney Corner Vet Service
Dr. Dallas Burrell
(231) 825-2531
9980 S. Lucas Rd
McBain, MI 49657
- (e) Vet put on a tag
- (f) Shipment across state lines
- (5)(a) September 28, 2009

- (b) Veterinary health certificate
- (c) All tests negative
- (d) Stoney Corner Vet Service
Dr. Dallas Burrell
(231) 825-2531
9980 S. Lucas Rd
McBain, MI 49657
- (e) Vet put on a tag
- (f) Shipment across state lines

4. Identify the factual basis for your claim that the DNR lacked authority to issue the Invasive Species Order, stated in Paragraph 34-36 of your Complaint.

ANSWER:

This claim was most recently addressed by unpublished *Michigan Animal Farmers Association and Douglas Miller v. Department of Natural Resources and Environment* decision dated March 1, 2012. Docket No. 305302.

5. Identify the factual basis for your Administrative Procedures Act claim stated in Paragraphs 37-39 of your Complaint.

ANSWER:

The declaratory ruling utilizes phenotype-only identification methods to determine which animals are subject to the ISO. Many of the phenotype characteristics utilized in the declaratory ruling apply to every pig in the world (i.e. straight tail or curly tail). Certain of the phenotype characteristics apply to a variety of pig breeds at varying stages of maturity. And one of the declaratory ruling standards, "Other characteristics not currently known to the MDNR that are identified by the scientific community," is completely void of notice to citizens as to which types of pigs with which characteristics will ultimately be found to be banned by the ISO. For these specific facts, in addition to other language found in the declaratory ruling for the factual basis for the claim stated in Paragraphs 37-39 of Plaintiffs' Complaint.

6. Identify the factual basis for your Separation of Powers claim stated in Paragraph 40-42 of your Complaint.

ANSWER:

The factual bases for this claim lies within the Complaint.

7. Identify the factual basis for your Due Process claim stated in Paragraphs 43-45 of your Complaint.

ANSWER:

Defendants have identified phenotype characteristics by which the legality of pigs in Michigan is to be determined. The characteristics are vague. See Response to Interrogatory 5, *supra*. The Defendant, the regulator, has never seen Mr. Baker's pigs and yet, they declare that they are illegal. Mr. Baker's pigs are "mutts" and he has been given no applicable information as to whether a certain percentage of prohibited species genetics is allowable or not, or what that percentage might be. Further MDNR has not produced any information indicating that eradication of Mr. Baker's pigs will in any way contribute to addressing the alleged problem of "feral" pigs. Mr. Baker's pigs are not feral and have never been feral.

8. Identify the factual basis for your Equal Protection claim stated in Paragraphs 46-47 of your Complaint.

ANSWER:

It appears that large industrial pork growers were heavily consulted during the ISO development process. Small farmers who would be more likely to own the targeted species were not.

9. Identify the factual basis for your takings claim stated in Paragraph 48-50 of your Complaint.

ANSWER:

The Bakers have lost tens of thousands of dollars due to the ISO and declaratory ruling. Their butcher began refusing to accept their pigs, therefore they could not sell the meat. Instead they had to very heavily cull the herd to reduce feed costs. See Interrogatory response 12, *infra*. Because the meat could not get to market, their customers became frustrated with the lack of supply, therefore, greatly diminishing, and probably precluding, the Bakers' ability to resume their business as it existed prior to the ISO and declaratory ruling. Other business relationships have been adversely affected by the ISO and declaratory ruling. Further, their reputation has been sullied by insinuations that their pigs are diseased. All of these instances equate to lost income and lost future income.

10. Identify the factual basis for your claim that your animals satisfy an exemption in the Invasive Species Order stated in Paragraph 51-52 of your Complaint.

ANSWER: The Bakers' pigs satisfy the "domestic hog production" exemption because their pigs are raised behind fences and in farm buildings and rely solely on humans for their feed and shelter. They are used solely for human consumption. As Plaintiffs responded in their first set of interrogatory responses, they have never had a pig escape.

11. Identify where the pigs that you indicated were sold "processed" in response to

Defendants' First Set of Interrogatories No. 5 were processed. For each animal, provide:

- (a) The name of the processing facility;
- (b) The USDA-FSIS facility identifier;
- (c) The date of the last USDA inspection of the facility; and
- (d) If the processing facility is not inspected by USDA-FSIS, identify the basis for the basis for the facility's exemption from USDA-FSIS inspection.

ANSWER:

- (1)(a) DeVries Meats, Inc. (616-837-6061, Kathy DeVries)
- (b) Plaintiff lacks knowledge with which to answer this question.
- (c) Inspector present on all kill days
- (d) Plaintiff lacks knowledge with which to answer this question.
- (2)(a) Baker's Green Acres, Inc.
1579 Brinks Rd. Marion, MI 49657
- (b) Facility is identified as "Baker's" on FSIS Form 5930-1
- (c) November 29, 2010
- (d) See Form 5930-1

12. In a YouTube video posted December 25, 2012, Mark Baker stated that he possessed approximately 200 animals. In response to Defendants' First Set of Interrogatories No. 3 you stated that you possess 71 pigs. Explain the discrepancy between these two numbers. If you assert that the discrepancy is due to the death, sale and/or other dispossession of pigs, identify how many pigs died, how many pigs were sold, and how many were otherwise disposed of that accounts for the discrepancy. For each animal otherwise disposed of, please identify the circumstances of that disposal.

ANSWER:

Circumstances for culling the herd are as stated in the Dec. 25, 2012 video. We were unable to send through USDA processor so unable to sell and therefore unable to continue feeding animals. The meat was donated/given to the individuals who helped us process the pigs and kept for our own use. We culled 15 sows with 90 piglets Dec. 31, 2012-Jan. 6, 2013 Numbers in the video were estimates. Additionally, 1 boar died in March of 2013. 200 was an approximate number including piglets in utero.

RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce all invoices, receipts, cancelled checks, acknowledgements or other documents evidencing your payment to the state and/or national pork check-off programs.

ANSWER: None.

2. For each instance of disease testing identified in response to Interrogatory No. 3, provide the following:

- (a) All invoices, receipts, documentation, or other information provided by the veterinarian who did the testing; and
- (b) All documentation of the testing results:

ANSWER: See attached documents.

3. Produce all documents that evidence the factual basis for your claims identified in your response to Interrogatory No. 4.

ANSWER: No documents are in Plaintiffs' possession at this time.

4. Produce all documents that evidence the factual basis for your claims identified in your response to Interrogatory No. 5.

ANSWER: See attached documents.

5. Produce all documents that evidence the factual basis for your claims identified on your response to Interrogatory No. 6

ANSWER: No documents are in Plaintiffs' possession at this time.

6. Produce all documents that evidence the factual basis for your claims identified in our response to Interrogatory No.7.

ANSWER: See documents provided in response to No. 4 above.

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7. Produce all documents that evidence the factual basis for your claims identified in our response to Interrogatory No. 8.

ANSWER: See Deposition of Ronald Bates; August 23, 2012.

8. Produce all documents that evidence the factual basis for your claims identified in our response to Interrogatory No. 9.

ANSWER: See documents produced in response to Request No. 9 below and attached documents.

9. Produce all documents that evidence the factual basis for your claims identified in our response to Interrogatory No. 10.

ANSWER: See attached documents and Response to Request No. 12.

10. Produce all documentation relied on or referenced in response to Interrogatory No. 11.

ANSWER: See attached documents.

11. Produce all documents that evidence the sale, death, or other disposition of the animals described in response to Interrogatory No. 12.

ANSWER:

See videos and documents produced in response to Request No. 8, *supra*, and see also videos at:

Pig butchering at bakers green acres part 1/3 at <http://www.youtube.com/watch?v=vkh5yp70OdA>

Pig Butchering at Bakers Green Acres part 2/3 at <http://www.youtube.com/watch?v=trAEOw8aeYc>

Pig Butchering at Baker's Green Acres part 3/3 at <http://www.youtube.com/watch?v=bgFvcM7dqJ8>

Dated: 6/17/13



F. Michelle Halley (P62637)
Attorney for Plaintiffs

AFFIDAVIT

STATE OF MICHIGAN)

MISSAUKEE COUNTY)

Jill Baker, being sworn, says:

I verify the attached "Plaintiffs' Answer to Defendants' Second Set of Interrogatories and Request for Production of Documents." The matters stated in the response are within my personal knowledge and the facts stated in the response are true.

/s/ _____
Jill Baker

/s/ _____
Mark Baker

Subscribed and sworn to before me on June ____, 2013.

/s/ _____

Notary's Name _____

Notary public, State of Michigan, County of Missaukee.

My commission expires _____.

C