

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR ESCAMBIA COUNTY, FLORIDA

CHARLIE MULLINS and  
EARL RHODES,

Plaintiffs,

G.S.I. RECYCLING, INC.,  
D & S OF PENSACOLA, INC., and  
SCRAP, INC.

CASE NO:  
DIVISION:

Defendants.

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**COMPLAINT**

COME NOW plaintiffs, CHARLIE MULLINS and EARL RHODES, by and through their undersigned attorneys, and file this complaint against defendants G.S.I. RECYCLING, INC. (G.S.I.), a Florida corporation, D & S OF PENSACOLA, INC. (D & S), a Florida corporation, and SCRAP, INC. (SCRAP), a Florida corporation, and allege as follows:

**GENERAL ALLEGATIONS**

1. Defendants are intimately connected, family-owned and controlled, closely-held Florida corporations. Through the coordinated efforts of related persons who are also officers and directors of the corporations, defendants have engaged and are engaging in a willful and common enterprise and course of misconduct to enrich themselves by owning, operating, and controlling a major nuisance to the substantial disadvantage of surrounding residents and other innocent persons, including children attending a nearby elementary school.

2. The nuisance is a very large multi-story 4,000 HP metal shredding facility at 1751 North Green Street, Pensacola, Escambia County, Florida (“facility” or “subject property”). The

facility includes the real property as it is currently designed, constructed and operated, along with associated buildings, fixtures, and appurtenant or otherwise connected equipment and activities at the property, including, but not limited to, the shredder system itself, heavy equipment, and tractor-trailers which transport automobile bodies and other scrap metal brought to the facility. Defendants' conduct, use, and operation of the subject property is at the expense of preventing the quiet use and enjoyment of the property of surrounding residents, including plaintiffs, school children and others with the misfortune to have this facility operated in their community.

3. This massive metal shredding operation (which devours entire cars and trucks with attending fluids, upholstery, glass, metal and other components), among other things, creates a deafening noise, offensive odors, fumes and other emissions of undisclosed content that create and cause to be carried by air a tangible smoke carrying film on nearby houses and cars, continuous vibrations, and periodic explosions so as to have created a public nuisance. One result has been and is the ongoing and continuous violation of the property and other constitutional rights of nearby private residents, including plaintiffs, along with others subjected to this nuisance. This nuisance makes it impossible for plaintiffs to comfortably and quietly enjoy their lives on their own private properties, forcing them to involuntarily suffer tremendous annoyance, discomfort, aggravation, inconvenience, and other harms on their own properties and on nearby neighborhood streets from the frequent and recurring loud noises and vibrations, explosions, back-up beepers, highly offensive odors, fumes and other emissions from this massive shredding and heavy equipment operation, as well as from the continuous tractor-trailer traffic associated with the facility operations.

## **JURISDICTION AND VENUE**

4. This is an action for damages which exceed fifteen thousand dollars (\$15,000.00) and for permanent injunctive relief.

5. Venue in this court is proper under Section 47.051, Florida Statutes, because the properties at issue in this action are in Escambia County, Florida.

## **THE PARTIES**

6. Plaintiff Charlie Mullins owns and resides on the property at 1800 Border Street, Pensacola, Escambia County, Florida and has so resided with his wife for nearly fifty years.

7. Plaintiff Earl Rhodes owns and resides at the property at 1800 ½ Border Street, Pensacola, Escambia County, Florida and is a long time resident at this address with his wife, son, and daughter.

8. Defendant G.S.I. is a Florida corporation originally incorporated in 1976 as Goulding Scrap Material, Inc. The name was changed to G.S.I. Recycling, Inc. in 1995. The company publicly holds itself out as having and controlling, among other operations, the metal shredding operation at 1751 North Green Street.

9. Defendant D & S is a Florida corporation incorporated on or about June 16, 2006. D & S was established and has been used by G.S.I. to take title to the property where the shredder was built (on or about December 2009). Approximately one month after its incorporation, D & S took title to the subject property by general warranty deed. The shredding operation at the facility, though on property owned by D & S, was intended, and has served, to greatly diversify and expand G.S.I.'s business opportunities in the metals recycling business.

10. Defendant SCRAP is a Florida corporation incorporated on or about May 6, 2008,

by or on the behalf of G.S.I., D & S, and intimately related family members to shield the individuals and their closely-held related corporations from liability for their planned harmful conduct in the operation of the shredder. Sometimes referred to internally by these herein-described corporations and individuals as the “SCRAP” project, it was at all times a facility that has been and is now controlled by and is serving the interests of G.S.I. and those of the related family members whom defendants benefit.

### **BACKGROUND FACTS**

11. The subject property at 1751 North Green Street encompasses approximately 11.16 acres.

12. The facility houses a massive shredding operation with a maximum feed rate of 150 tons/hour and 360,000 tons/year. The shredder discharges several tons of noxious emissions (described as “fugitive” emissions, disseminated through emitted smoke and discharge, estimated by these defendants to be nine (9) tons of residual glass, automobile component part fluids, upholstery and metals and other chemicals annually when operating at maximum capacity) into the surrounding community each year where they are breathed by plaintiffs, school children, and other innocent persons who are exposed without their consent.

13. At various times and in various ways since the acquisition of the subject property, defendants and their agents have made it apparent that G.S.I. and its employees are in control of these facilities and directly involved in the shredding operation at the subject property.

14. For instance, and without limitation, in YouTube footage uploaded by G.S.I. and in other public communications, it is evident that the facility is represented to the public by G.S.I. to be an asset controlled and marketed by G.S.I.

## COUNT I

### PRIVATE NUISANCE

15. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-14 above as if fully restated herein.

16. Defendants' actions in causing and continuing to allow the creation and maintenance of a nuisance at the subject property have invaded and damaged and continue to invade and damage plaintiffs' rights and interests in the quiet and comfortable use and enjoyment of their own private properties thereby resulting in a private nuisance for which defendants are responsible.

17. As a result of the defendants' actions, plaintiffs have suffered annoyance, inconvenience, aggravation, discomfort, loss of use and enjoyment of property, mental anguish, pain and suffering, consequential and incidental damages, and other harms.

18. Defendants are fully capable of shutting this nuisance operation down at any time, and should be permanently enjoined to do so. Defendants are willfully and flagrantly causing plaintiffs and other innocent persons to suffer irreparable harm that cannot be adequately redressed at law. Plaintiffs and other nearby residents and other innocent persons should not be forced to continue to have their lives and well-being interrupted and to otherwise suffer harm so that defendants can be financially rewarded at the expense and sacrifice of plaintiffs. Defendants have no right of eminent domain but are acting and have acted as if they can force plaintiffs to choose between suffering and being involuntarily ejected from their own private properties.

WHEREFORE, plaintiffs request judgment against defendants for temporary damages, a permanent injunction requiring defendants to stop this nuisance, and a reservation of jurisdiction

to award additional damages if the harm does not cease, together with costs of suit, and such further relief as the court deems proper. Plaintiffs demand trial by jury on all issues so triable.

**COUNT II**  
**NEGLIGENCE**

19. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-14 above as if fully restated herein.

20. Defendants owed and owe a duty of reasonable care to plaintiffs in the design, construction, operation, and maintenance of the subject property.

21. Defendants have breached and continue to breach this duty to plaintiffs by recently designing, constructing, and now operating, and maintaining the subject property so as to cause, among other things, offensive and unsettling off-site noise, vibrations, odors, fumes, other emissions, and the dramatic increase in tractor-trailer diesel fume emissions literally twenty-four hours a day.

22. As a continuing result of this breach, and as a direct and proximate result of defendants' negligence, plaintiffs have suffered annoyance, inconvenience, aggravation, discomfort, loss of use and enjoyment of property, mental anguish, pain and suffering, consequential and incidental damages, and other harms.

23. Defendants are fully capable of shutting this negligent operation down at any time, and should be permanently enjoined to do so. Defendants are willfully and flagrantly causing plaintiffs and other innocent persons to suffer irreparable harm that cannot be adequately redressed at law. Plaintiffs and other nearby residents and other innocent persons should not be forced to continue to have their lives and well-being interrupted and to otherwise suffer harm so

that defendants can be financially rewarded at their expense and sacrifice. Defendants have no right of eminent domain but are acting and have acted as if they can force plaintiffs to choose between suffering and being involuntarily ejected from their own private properties.

WHEREFORE, plaintiffs request judgment against defendants for temporary damages, a permanent injunction requiring defendants to shut down this negligent operation, and a reservation of jurisdiction to award additional damages if the harm does not cease, together with costs of suit, and such further relief as the court deems proper. Plaintiffs demand trial by jury on all issues so triable.

### **COUNT III**

#### **UNJUST ENRICHMENT**

24. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-14 above as if fully restated herein.

25. Defendants have been and are being enriched by their acts and omissions which have allowed and allow this herein-described intrusion upon the lives and properties of plaintiffs.

26. These acts and omissions have allowed and allow defendants to unjustly enrich themselves and their family stockholders.

27. Defendants have callously calculated and made the decision that the revenues they earn from the operation of this harmful facility are worth more than permanent damages caused to property owners in the surrounding community and therefore, that any diminution in value they cause to plaintiffs' property for which they would be legally obligated to pay is simply a relatively minor cost of doing this offensive and harmful business.

28. Defendants lack any legal justification for the harms they are causing to plaintiffs,

and their purported authorities, if any, for locating near residences and schools are void and/or voidable.

29. Under the circumstances described herein it would be inequitable for the defendants to retain the benefits of their actions without paying the value thereof to plaintiffs. This inequity is ongoing and will continue as long as defendants' nuisance and negligent operation continues.

30. No other remedy at law can adequately compensate plaintiffs for the damages occasioned by defendants' conscious choice.

31. By reason of the defendants' conduct, plaintiffs are entitled to recover continuing damages for unjust enrichment, including ongoing disgorgement of all revenues realized, as well as for annoyance, inconvenience, aggravation, discomfort, loss of use and enjoyment of property, mental anguish, pain and suffering, consequential and incidental damages, and other harms.

32. Defendants are fully capable of shutting this nuisance and negligently envisioned and designed operation down at any time, and should be permanently enjoined to do so. Defendants are willfully and flagrantly causing plaintiffs and other innocent persons to suffer irreparable harm that cannot be adequately redressed at law. Plaintiffs, other nearby residents and other innocent persons should not be forced to continue to have their lives and well-being interrupted and to otherwise suffer harm so that defendants and their related family stockholders can be financially rewarded at the expense and sacrifice of the plaintiffs. Defendants have no right of eminent domain but are acting as if they can force plaintiffs to choose between suffering and being involuntarily ejected from their own private properties.

WHEREFORE, plaintiffs request judgment against defendants for temporary damages, a



permanent injunction requiring defendants to shut down this negligent operation, and a reservation of jurisdiction to award additional damages if the harm does not cease, together with costs of suit, and such further relief as the court deems proper. Plaintiffs demand trial by jury on all issues so triable.

DATED this 16 day of March, 2012.



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