EL19-003 – In the Matter of the Application by Crowned Ridge Wind, LLC for a Permit of a Wind Energy Facility in Grant and Codington Counties

- This month the AmericanExperiment.org reported that El Nino has caused electricity generation from wind to plummet by approximately 14%. NextEra Energy told Bloomberg, that wind resources were the worst in 30 years, despite the fact that this year El Nino is a relatively weak one.
- In 2012 Boulevard Associates, NextEra affiliate, sent letters to local contracted landowners stating one of the reasons to terminate the wind farm agreement was based on wind resources. 2011-12 was not an El Nino year it was a year the PTC's were not extended.
- Page 15 of the application states "applicant over a period of 10 years within the Project Area indicated that the Project Area is one area in South Dakota with the premier wind sources."
- Which statements is true?
- I ask why is NextEra applying for a permit to install 130 industrial wind turbines?
- During the committee hearing on HB1226 a bill updating safe setbacks, a state legislator was honest and said "yes, it is all about the money".
- On 2-25-19 in a committee hearing for SB16 a PUC commissioner said "each developer is getting about $300k PTC not counting the energy they produce" this is per turbine per year.
- I want to be factual so I ran the numbers for the Crowned Ridge Project based on PTC alone, at 40% efficiency, the developer will receive $193,420.80* per turbine per year of the tax payers dollars. Over ten years this is a little over $250 million taxpayer dollars. which equals $25,144,704 dollars, per year for ten years of taxpayer's dollars. This does not count energy produced, sold carbon credits, subleases allowed thru fence to fence easements, payment in lieu of taxes incentives given by the state, or the benefits of accelerated depreciation.
- Did the contracted landowners get a fair deal in the contract? Are the most impacted; local communities getting a fair deal?
- According to the application Appendix B, NextEra has been working on the Project since 2007. They have had plenty of time to apply for the application. On Page 16 of the application last line "to receive the Production Tax Credit (PTC) the Project must be constructed by December 31, 2020.
- This leads to asking for a denial, and why that has not happened yet from the PUC. Over the past couple years, the PUC has been presented with evidence and first-hand testimony from people whose health and lives have been greatly affected from living in an industrial wind turbine project. Yet no denial. Is it because of the threat of a lawsuit? How many times has NextEra sued a community or the State PUC? How many times has a local board or state PUC denied NextEra a permit because it was not in the public's interest or would affect the public health safety and welfare of the inhabitants or the future inhabitants of the area?
- How many lawsuits have been filed against NextEra for being a public nuisance or damaging the health safety and welfare of the people living in and near NextEra wind projects? I submit the latest class action lawsuit against NextEra filed in Florida this month.
- Earlier in my presentation I was factual, I have included the method so it can be checked. I ask that the PUC make NextEra prove the vague statements in this application such as on page 114 "considered to be safe based on the developers experience" What is their experience? I ask the PUC to demand records, the incident reports, after review reports, safety manuals, manufacture

setback requirement as well as other manuals and documentation needed to fully evaluate the safety of industrial wind turbines built near homes.

- I ask that you deny this permit and not strap South Dakotans with the dangers of living in a wind project, higher electric rates and a tax for an intermittent unreliable energy source being built because of the PTC money.

[redacted]

*130 turbines X 2.3MW =299 MW
299 MW x 8,760 hours = 2,619,240 MW 100% efficiency
2,609,240 x 40% efficiency = 1,047,696 MW
1,047,696 MW x $24 PTC = $ 25,144,704 million
$25,144,704 / 130 turbines = $193,420.80 per turbine per year

22.0 Reliability and Safety (ARSD 20:10:22:33.02(8))

22.1 Reliability

GE, one of the world's largest wind turbine suppliers of has over 35,000 wind turbines installed globally. GE has been producing wind turbines since 2002. Preventative maintenance based on analyzing real time data will be used to help mitigate potential failures.

To improve reliability, the Project has the ability to create short-term forecasts of wind speed and energy that will be produced. Determining weather conditions with accuracy enables the project owner and operator to efficiently maximize the facility output. Transmission system operators need to know how much energy wind facilities can deliver and when to dispatch generators on the system to match load to generation. Typically, wind projects provide a daily, hourly and incremental forecast, updated every 15 minutes to the off-taker, balancing authority, and/or regional TO. Predicting energy generation through vast, location-specific weather forecasting is used to integrate wind energy into the region's power grid and to schedule turbine and transmission maintenance windows, improving overall reliability. As wind forecasting has improved, the reliability of wind energy generation forecasts provided to the transmission operators has also improved.

22.2 Safety

The Project is located in a rural setting with low population density. Construction and operation of the Project will have minimal impacts on the security and safety of the local population. The construction team will coordinate with first responders, including, but not limited, to air ambulance, local sheriff's office(s) and local fire services to develop a safety plan during the Project's 5-9-month construction period. During the operation period of the Project, the on-site operation and maintenance team members will also be in contact with local first responders to offer information about the Project and to answer any questions response teams may have regarding Project plans and details. The following security measures will be taken to reduce the chance of physical and property damage, as well as personal injury, at the site:

- The towers will be setback from occupied residences and roadways as described in this Application in Table 13.1.2 and the applicable regulations identified herein. These distances are considered to be safe based on developer experience, and are consistent with prior Facility Permits.
- Security measures will be taken during the construction and operation of the Project including temporary (safety) and permanent fencing, gates, warning signs, and locks of equipment and wind power facilities.
- Regular maintenance and inspections will address potential blade failures, minimizing the potential for blade throw.

4.0 Purpose of, and Demand for, the Wind Energy Facility (ARSD 20:10:22:08, 20:10:22:10)

ARSD 20:10:22:08. Purpose of facility. *The applicant shall describe the purpose of the proposed facility.*

ARSD 20:10:22:10. Demand for facility. *The applicant shall provide a description of present and estimated consumer demand and estimated future energy needs of those customers to be directly served by the proposed facility. The applicant shall also provide data, data sources, assumptions, forecast methods or models, or other reasoning upon which the description is based. This statement shall also include information on the relative contribution to any power or energy distribution network or pool that the proposed facility is projected to supply and a statement on the consequences of delay or termination of the construction of the facility.*

The Project will generate electricity to be delivered to the high-voltage transmission grid at the Big Stone South Substation. NSP and CRW have entered into a PPA for the full output of the Project. Although, the generation from the Project will be sold to NSP, CRW will retain ownership of the Project and is responsible for the development, construction, and O&M of the Project.

The Project provides zero-emission cost electricity to the grid and long-term, economic energy pricing in the region. Electricity generated from the Project will be utilized within the Midcontinent Independent System Operator, Inc. (MISO) regional grid to help satisfy demand within MISO's operating territory. Demand for the power and its benefits are discussed in Section 4.2.

The Project will provide benefits not only to the State, but, also, to the local communities as well in the form of construction jobs, an increase in local economy, and investments in local businesses. The Project represents an approximate $400 million investment in Codington and Grant Counties, of which Crowned Ridge will pay taxes on the Project, increasing the tax revenues available in the local communities and State. The project will employ up to 12 personnel (see Section 19).

4.1 Wind Resources Areas

The Project location was selected due to its high wind resources and open area that could easily support a large-scale wind energy facility. Studies of the wind resource were conducted by the Applicant over a period of 10-years within the Project Area and indicated that the Project Area is one area in South Dakota with premier wind sources and suitable for wind energy development. Based on data collected, composite mean wind speeds (CMWS) are 9.01m/s and generally highest in the winter (mainly December and January) months of the year. The Project is classified as an IEC Classification Class II wind site. IEC Classifications are a set of design requirements that ensure wind turbines are engineered against damage from hazards within their

planned lifetime. An IEC Class II wind site has an annual average wind speed at the hub height greater than 8.5 m/s and less than 10 m/s.

4.2 Renewable Power Demand

Demand for renewable energy is evident in the United States, the upper Midwest region, and the State of South Dakota. The National Conference of State Legislatures specifies that 29 states, Washington, D.C., and three territories have adopted a Renewable Portfolio Standard and eight states and one territory have set renewable energy goals (National Conference of State Legislatures 2018). Additionally, Xcel's Minnesota Resource Plan shows a demand for 1,800 MW of new wind energy generation by 2026 (Xcel Energy 2015).

The Project provides a solution for the demand of clean energy within the Midwest. The market exists for independently produced electricity from wind projects and other renewables to meet the growing demand for renewable energy. The Project's location is conveniently located within South Dakota's high wind resource and with close proximity to the newly available capacity along the CapX2020 transmission project which allows for windier parts of the South Dakota to satisfy the markets growing demand for electricity in more densely populated regions further east. In fact, a recently completed 70-mile stretch of the CapX2020 project in South Dakota has resulted in proposals for over nine wind projects and one natural gas plant totaling more than 2,000 MW. One of those contributing wind projects is the Crowned Ridge Wind Project, the largest proposed wind energy investment in South Dakota's history.

According to a March 2018 Gallup poll, 73% of the public believes that alternative energy is key in solving the nation's energy problems and 70% of the public think more emphasis should be put on wind energy (Gallup 2018).

4.3 Consequences of Delay

Should the Project be delayed the Project benefits for the local communities, region, and State as listed in Section 18, will be at risk. If the Project does not achieve COD by the end of the first quarter 2020, the Project will face commercial challenges that could place it at risk of completion. Delay of Project's COD could also impact savings for regional customers as a higher cost of energy may be needed to fulfill renewable standards and requirements for the region from an alternative source of energy with potentially less, long-term economic benefits for the State and the Project's local communities. To receive the Production Tax Credit (PTC), the Project must be constructed by December 31, 2020.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: _____

KEVIN KOHMETSCHER, individually and on behalf of similarly situated individuals,

Plaintiff,

v.

NEXTERA ENERGY, INC., a Florida,

Defendant.
_____ /

CLASS ACTION

CLASS ACTION COMPLAINT & DEMAND FOR JURY TRIAL

Plaintiff, Kevin Kohmetscher, brings this Class Action Complaint & Demand for Jury Trial against Defendant, NextEra Energy, Inc. ("NextEra" or "Defendant"), to stop Defendant from operating wind turbines near residential communities in a way that causes a nuisance and interferes with homeowners' use and enjoyment of their property. Plaintiff alleges as follows based on personal knowledge as to himself and his own acts and experiences, and as to all other matters, on information and belief, including an investigation by his attorneys.

NATURE OF THE ACTION

1. Defendant is one of the largest electric utility companies in the country, and the largest generator of wind energy in the world.

2. To generate wind energy, Defendant has constructed numerous "wind farms" across the United States. A wind farm is an array of wind turbines. Each turbine sits high in the air atop a tower and consists of a large rotor with three blades that spin as wind passes over the blades.

Defendant's wind farms often consist of dozens of turbines and stretch for miles across open terrain.

3. Although wind farms can supply renewable energy, they can also pose a number of hazards when built too close to homes and residential communities.

4. For instance, a turbine's spinning blades create flickering shadows that pass over nearby land. For those in the path of a wind turbine's shadows, the "shadow flicker" effect is similar to a constant strobe light. Those who experience prolonged shadow flicker often complain of severe headaches, nausea, difficulty concentrating, and in some cases seizures.

5. Turbines are also very noisy. The spinning blades create a deep thumping noise that sounds similar to a distant helicopter or train. This constant sound can travel for miles depending on weather conditions, and results in a decreased quality of life for those within a certain radius of the wind turbines due to stress, loss of sleep, and anxiety.

6. Rather than constructing its wind farms away from residential areas to prevent interfering with homeowners' use and enjoyment of their land, Defendant has instead sited many of its wind farms in the middle of farm fields, near houses, and next to important roads.

7. Although Defendant's chosen wind farm locations may be optimal for wind energy generation, the turbines' proximity to residential areas can be devastating to those living in the surrounding community. The turbines drive people from their homes due to the unreasonable inconvenience, interference, annoyance, and adverse health effects caused by the turbines. Wind farms also destroy the scenic beauty of rural areas, cluttering the horizon with conspicuous towers and spinning blades.

8. Those who attempt to sell their homes and move away from Defendant's wind farms are often unable to do so because the value of land near turbines plummets.

9. Accordingly, Plaintiff brings this action on his own behalf and on behalf of similarly situated individuals to obtain redress and injunctive relief for those who have suffered harm as a result of Defendant's substantial and unreasonable interference with their use and enjoyment of their property.

10. On his own behalf and on behalf of a proposed class defined below, Plaintiff seeks an award of damages compensating him and the putative class members for the negative effects that Defendant's turbines have had on their health and well-being, use and enjoyment of their property, and diminution in value of their property due to Defendant's turbines. Plaintiff also seeks a permanent injunction barring Defendant from continuing to unreasonably interfere with his and the putative class members' use and enjoyment of their property.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this matter pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d) *et seq.*, because this case is a putative class action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs; there are greater than 100 putative class members; at least one putative class member is a citizen of a state other than Defendant's states of citizenship; and none of the exceptions under subsection 1332(d) apply to the instant action.

12. This Court has general personal jurisdiction over Defendant, because Defendant is a corporation organized under the laws of Florida and its headquarters is located within this District.

13. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), because Defendant resides in this District.

PARTIES

14. Plaintiff, Kevin Kohmetscher, is a natural person who resides and owns property in Nebraska.

15. Defendant, NextEra Energy, Inc., is a for-profit corporation organized under the laws of Florida. Defendant is engaged in business as an energy company that owns and operates power generating plants and wind turbine farms across the country.

ALLEGATIONS OF FACT COMMON TO ALL COUNTS

Background

16. Wind energy is produced through the use of wind turbines. Turbines generally consist of three spinning blades connected to a rotor and a generator that sit atop a tower. As wind passes over the blades, the blades rotate and spin the generator to convert the wind's kinetic energy into electrical energy.

17. Towers range in size up to 500 feet high, and blades can be more than 260 feet long. Due to their size, wind turbine towers require a large foundation to stay upright. Turbines are generally painted white to make them visible to aircraft.

18. When used to generate energy for commercial applications, large numbers of wind turbines are grouped together for efficiency in arrays known as wind farms.

19. Wind farms require use and control of extensive land area in order to optimize the spacing between turbines and minimize turbulence at downwind turbines.

20. Wind farms are typically sited in wide-open, rural areas. As such, the turbines often disrupt the natural scenic beauty of the land where they are placed. Wind farms also pose a risk of mortality to migratory birds whose flight paths pass through wind farms.

21. Many industrial wind turbine manufacturers recommend that turbines be at least

1,500 feet from any residence—a minimum setback—to provide a safety zone in the event of catastrophic failure (e.g. a blade breaks and flies off, or the turbine flings shards of ice that have accumulated along the blades during winter).

22. As a result, there is typically a "no-build" zone in a 1,500 feet radius surrounding any turbine. In many instances, however, this "no-build" zone overlaps with the property of landowners.

23. More importantly, wind turbines often interfere with residents' use and enjoyment of their property even where they live beyond the recommended minimum setback.

24. For instance, the rotation of turbine blades causes a rhythmic flickering of sunlight, commonly called "shadow flicker."

25. Shadow flicker can be especially noticeable in the mornings and evenings, when the sun appears close to the horizon. During such times, turbine blades can cast intermittent shadows that completely obscure sunlight each time a blade passes in front of the sun, causing a strobe-like effect. Shadow flicker can be an issue both indoors and outdoors when the sun is low in the sky.

26. Prolonged exposure to the strobe-like effect of shadow flicker is not only distracting and annoying, it also causes headaches, nausea, and has been reported to cause seizures in certain individuals.

27. Wind turbines can also be very noisy, exceeding prescribed decibel limits in many residential areas.

28. In addition to the noise made by the mechanical equipment inside turbine towers, turbines also cause aerodynamic noise. Aerodynamic noise is created by wind passing over the blades of a wind turbine. The tip of a 40-50 meter blade can travel at speeds of over 140 miles per

hour under normal operating conditions. As the wind passes over the moving blade, the blade interrupts the laminar flow of air, causing turbulence and noise. Although current blade designs attempt to minimize the amount of turbulence and noise caused by wind, it is not possible to completely eliminate turbulence or noise from turbines.

29. Those who live near wind turbines have described the noise that turbines make as a rhythmical beating that sounds like "like a train that never gets there," a "distant helicopter," "thumping," "thudding," "pulsating," and "beating."

30. In addition to this audible thumping, turbines also emit inaudible low frequency sound waves known as infrasound. Although these sound waves are below the range of sound audible to humans, prolonged exposure can disturb sleep and impair mental health. Infrasound has been linked to increased instances of insomnia, stress, stroke, heart failure, immune system problems, dizziness, vertigo, nausea, ringing in the ears, breathing problems, abdominal and chest pain, urinary problems, effects on speech, and headaches. Further, high noise environments negatively impact learning in young children, making it hard to concentrate and communicate with others.

31. Health effects related to noise emissions from wind turbines have been observed in individuals living up to three miles from turbines, with the effects being greatest for those within one mile.

32. Individuals who live near Defendant's wind farms usually decide to move away from the farms shortly after their installation due to the various ways that turbines interfere with their use and enjoyment of their property, including issues stemming from shadow flicker, noise emissions, and related health issues. However, many who reside near Defendant's wind farms are

unable to move due to the financial strain caused by the decreased value of their property and the inability to find a buyer willing to live near a wind farm.

Facts Specific to Plaintiff

33. Plaintiff owns a plot of land located at 2034 Rd. 1900, Blue Hill, Webster County, Nebraska. Plaintiff's plot is approximately 11 acres in size, and Plaintiff currently resides in a single-family dwelling located on his land.

34. Plaintiff's plot has been in his family for decades. Plaintiff grew up on his land, and he purchased it from his father.

35. Plaintiff's property is adjacent to the Cottonwood Wind Farm, a wind turbine farm owned and operated by Defendant. Defendant began constructing the Cottonwood Wind Farm in or about mid 2017, and the turbines began commercial operation in or about November 2017.

36. The Cottonwood Wind Farm is miles-long and consists of more than 40 wind turbines built and maintained by Defendant.

37. The rear of Plaintiff's residence faces the Cottonwood Wind Farm. In relation to Plaintiff's property, the turbines are located to the east, south, and west of Plaintiff's residence. The nearest turbine is located approximately 1,300 feet from Plaintiff's property line.

38. Since the turbines near Plaintiff's property began operating, the turbines have negatively affected, invaded upon, and interfered with the Plaintiff's use and enjoyment of his property by:

a. creating sustained, incessant, cyclical, and highly disturbing and annoying audible noise created by and emitted from the turbines, often described as sounding like an airplane flying overhead that never flies away;

b. creating vibrations or amplitude modulation of sound pressures or a pulse sensation when the rotating blades of the turbines pass by the turbine pedestal;

c. creating a shadow flicker/strobe light effect that often covers all of Plaintiff's property and intrudes into Plaintiff's home when the rotating blades of the turbines pass in front of the sun;

d. disrupting and/or preventing Plaintiffs' ability to entertain guests or relatives, who are unable to visit for extended periods of time due to headaches and sleep disruption caused by the turbines;

e. creating highly visible glare or glint which emanates from the turbines when they reflect sunlight;

f. disrupting and obscuring Plaintiff's views and vistas with turning blades, where such vistas were previously unobstructed;

g. preventing Plaintiff from enjoying normal outdoor family activities on his property such as barbeques, and other recreational activities;

h. Preventing Plaintiff from keeping his windows open due to persistent noise.

39. As a direct and proximate result of Defendant's ongoing interference with Plaintiff's use and enjoyment of his property, Plaintiff has suffered and continues to suffer:

a. an inability to sleep, repeated awakening during sleep, and sleep deprivation;

b. headaches;

c. vertigo and/or dizziness;

d. nausea;

e. stress and tension;

f. fatigue;

g. and anxiety and emotional distress.

40. The Cottonwood Wind Farm and the impact it has had on Plaintiff's property has thus substantially and unreasonably interfered with Plaintiff's use and enjoyment of his property. On information and belief, Plaintiff's property has decreased and will continue to decrease in value due to its proximity to Defendant's wind turbines, and Plaintiff will be unable to lease or sell his property for its fair market value prior to installation of the turbines.

CLASS ACTION ALLEGATIONS

41. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), Plaintiff brings this action on behalf of himself and a nationwide class (the "Class") defined as follows:

> The Class: all persons in the United States who reside on and lease or own residential property within three miles of a NextEra wind turbine.
>
> The Subclass: all persons who reside on and lease or own residential property in the State of Nebraska within three miles of a NextEra wind turbine.

42. Expressly excluded from the Class and Subclass are any individuals who have granted Defendant an unexpired license, lease, or easement for the purpose of operating a wind turbine or wind farm on or adjacent to their property; any members of the judiciary or their staff assigned to preside over this matter; any officer, director, or employee of Defendant; and any immediate family members of such officers, directors, or employees.

43. **Numerosity:** Upon information and belief, there are approximately hundreds, if not thousands, of members of the Class such that joinder of all members is impracticable. Although the exact number of members of the Class and Subclass is presently unavailable to Plaintiff, the members of the Class and Subclass can be easily identified through Defendant's records and publicly available population data.

44. **Typicality:** Plaintiff's claims are typical of the claims of the Class members, because the factual and legal bases of Defendant's liability to Plaintiff and to the other members of the Class are the same, resulting in injury to the Plaintiff and to all of the other members of the Class as a result of Defendant's interference with Plaintiff's and the other Class members' use and enjoyment of their properties.

45. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions, and Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other members of the Class.

46. **Commonality & Predominance:** Numerous common questions of law and fact exist as to all members of the Class, and such questions predominate over questions affecting Plaintiff or individual members of the Class. Common questions for the Class include, but are not limited, to the following:

(a) Whether the effects of Defendant's wind farms, including disturbing and incessant noise, vibrations, shadow flicker and strobe lighting, which have caused nausea, headaches, sleep deprivation, vertigo, dizziness, anxiety, and diminution of property values, among other harms, are a private nuisance;

(b) Whether Defendant's invasion of Plaintiff's and the other putative Class members' interests in the private use and enjoyment of their lands was done knowingly and intentionally;

(c) Whether Defendant, as the entity that owns, operates, and constructs its wind

turbines and wind farms, Defendant knew or should have known of its turbines' propensity to generate loud and invasive noise, vibrations, shadow flicker, and to have other negative effects on individuals' health, comfort, and peace of mind

(d) Whether Defendant assumed a duty of care owed to Plaintiff and the other putative Class members when it constructed wind turbines and/or wind farms near their residences;

(e) Whether Plaintiff and the other members of the Class are entitled to monetary, restitutionary, or other remedies, and, if so, the nature of such remedies; and

(f) Whether Defendant should be enjoined from engaging in such conduct in the future.

47. **Superiority:** Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitive and would have no effective remedy. The Class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

48. Defendant has acted and failed to act on grounds generally applicable to the Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

COUNT I
Private Nuisance
(on behalf of Plaintiff and the other Class members)

49. Plaintiff incorporates by reference all of the foregoing allegations as if fully set forth herein.

50. As explained above, Defendant's construction and operation of wind turbines and

wind farms near Plaintiff's and the other putative Class members' properties has caused a substantial and unreasonable invasion of Plaintiff's and the other putative Class members' interests in the private use and enjoyment of their lands.

51. By continuing to operate its wind turbines and wind farms, Defendant continues to substantially and unreasonably interfere with the property interests of Plaintiff and the other putative Class members by, among other things, subjecting them and their guests to disturbing and incessant noise, vibrations, shadow flicker and strobe lighting, which have caused nausea, headaches, sleep deprivation, vertigo, dizziness, anxiety, and diminution of property values, among other harms.

52. Defendant's invasion of Plaintiff's and the other putative Class members' interests in the private use and enjoyment of their lands was done knowingly and intentionally. At all relevant times, Defendant was aware of its turbines' proximity to Plaintiff's and the other putative Class members' lands. Defendant knew or should have known that by siting its wind turbines in such close proximity to the Plaintiff's and the other putative Class members' properties that the turbines' noise, vibrations, shadow flicker, and strobe lighting would invade the homes and properties of Plaintiff and the other putative Class members and thus interfere with their use and enjoyment of their properties. Such siting was therefore intentional and unreasonable, negligent, and reckless.

53. Further, as the entity that owns, operates, and constructs its wind turbines and wind farms, Defendant was aware or should have been aware of its wind turbines' propensity to generate loud and invasive noise, vibrations, shadow flicker, and to have other negative effects on individuals' health, comfort, and peace of mind.

54. Defendant's invasions into Plaintiff's and the other putative Class members' use

and enjoyment of their properties are such as to cause actual physical discomfort to one of ordinary sensibilities. Defendant operates its wind turbines and wind farms in a way that is offensive and intolerable, and out of character for the normally quiet, residential nature of the areas where Plaintiff's and the other putative Class members' properties are located.

55. To the extent that Defendant's wind turbines and wind farms emit noise that exceeds levels prescribed under local zoning laws in the jurisdictions where Plaintiff and the other putative Class members reside, Defendant's continued operation of wind turbines and wind farms constitutes a nuisance *per se*.

56. Even if Defendant's wind turbines and wind farms fully complied with local zoning laws, it would not excuse the nuisance caused by Defendant's operation of its wind turbines and wind farms, because Defendant knows and understands the harms and negative effects that its turbines can have on nearby residents, and it nonetheless sited its turbines too close to Plaintiff's and the other putative Class members' property.

57. As a direct and proximate result of Defendant's misconduct described herein, Plaintiff and the other putative Class members have suffered actual monetary damages, pecuniary losses, and other significant harms, including physical harm, anxiety and emotional distress, disruption of their lives, and loss of the use and enjoyment of their properties, all of which have ascertainable value to be proven at trial.

COUNT II
Negligence
(on behalf of Plaintiff and the other Class members)

58. Plaintiff incorporates by reference the allegations in paragraphs 1 – 48 as if fully set forth herein.

59. Defendant assumed a duty of care owed to Plaintiff and the other putative Class

members when it constructed wind turbines and/or wind farms near their residences. As the entity that owns, operates, and constructs its wind turbines and wind farms, Defendant knew and could reasonably foresee that construction and operation of its turbines would interfere with Plaintiff's and the other putative Class members' use and enjoyment of their properties.

60. Defendant's duty of care obligated it to exercise reasonable care by (1) mitigating the noise, vibrations, and infrasound made by its turbines; (2) disabling its turbines during times of day when excessive noise and shadow flicker are an issue; and (3) siting its turbines far enough away from Plaintiff's and the other putative Class members' residences so as to not have negative effects on individuals' health, comfort, and peace of mind.

61. Defendant breached its duty of care owed to Plaintiff and the other putative Class members users as described herein by, among other things, siting its wind farms too close to Plaintiff's and the other putative Class members' properties and failing to mitigate the shadows and noise emissions from its turbines, subjecting Plaintiff and the other putative Class members and their guests to disturbing and incessant noise, vibrations, shadow flicker and strobe lighting, which have caused nausea, headaches, sleep deprivation, vertigo, dizziness, anxiety, and diminution of property values, among other harms

62. As a direct and proximate result of Defendant's misconduct described herein, Plaintiff and the other putative Class members have suffered actual monetary damages, pecuniary losses, and other significant harms, including physical harm, anxiety and emotional distress, disruption of their lives, and loss of the use and enjoyment of their properties, all of which have ascertainable value to be proven at trial.

WHEREFORE, Plaintiff, on his own behalf and on behalf of the other Class members, prays for the following relief:

A. an order certifying the proposed Class as defined above and appointing Plaintiff as the Class representative;

B. an award of actual and compensatory damages in an amount to be determined at trial;

C. an order permanently enjoining Defendant from continuing to operate its wind turbines and wind farms in ways that unreasonably interfere with Plaintiff's and the other Class members' use and enjoyment of their property;

D. such preliminary and other equitable or declaratory relief as the Court deems appropriate;

E. such other and further relief as the Court deems reasonable and just.

Dated: March 1, 2019

Respectfully submitted,

KEVIN KOHMETSCHER, individually and on behalf of other similarly situated individuals.

By: /s/ *David P. Healy*
One of Plaintiff's Attorneys

David P. Healy (0940410)
DUDLEY, SELLERS, HEALY, HEATH
& DESMOND, PLLC
SunTrust Financial Center
3522 Thomasville Rd., Suite 301
Tallahassee, Florida 32309
Tel: 850.222.5400
Fax: 850.222.7339
dhealy@davidhealylaw.com

Myles McGuire (*pro hac vice* to be filed)
Paul Geske (*pro hac vice* to be filed)
MCGUIRE LAW, P.C.
55 W. Wacker Dr., 9th Fl.
Chicago, IL 60601
Tel: (312) 893-7002
Fax: (312) 275-7895
mmcguire@mcgpc.com
pgeske@mcgpc.com

Counsel for Plaintiff and the putative class