

NORTH CAROLINA COURT OF APPEALS

LEGAL IMPACT FOR
CHICKENS,

Plaintiff-Appellant,

v.

CASE FARMS, L.L.C, CASE
FOODS, INC., and CASE FARMS
PROCESSING, INC.,

Defendants-Appellees.

From Burke County

PLAINTIFF-APPELLANT'S BRIEF

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PLAINTIFF-APPELLANT'S BRIEF

ISSUES PRESENTED

1. If a complaint alleges improper purposes, may a trial court ruling on a motion to dismiss for failure to state a claim find that a defendant acted for proper purposes under N.C.G.S. § 19A-1.1?
2. Are actions that prevent food from being used for human or animal consumption “conducted for the primary purpose of providing food for human or animal consumption” under N.C.G.S. § 19A-1.1(3)?
3. Is the abuse of chicks and chickens the prevents them from being “be used for food or other intended purposes,” “conducted for the purpose of production” of poultry under N.C.G.S. § 19A-1.1(2)?

4. Are actions that violate North Carolina and United States law “lawful activities” under N.C.G.S. § 19A-1.1?

INTRODUCTION

This appeal is not primarily about “extreme violence” to farmed chickens resulting in their “unjustifiable and unnecessary physical pain, suffering, and death.” (R p 109, ¶2). Nor is it primarily about whether that conduct violates North Carolina’s animal cruelty law, N.C.G.S. § 19A-1, *et seq.* (2023) (“Chapter 19A”).

This appeal is primarily about pleading standards and burdens of proof. When a court hears a 12(b)(6) motion to dismiss, it must take a complaint’s allegations as true. At that stage, a complaint’s allegations about a defendant’s purpose are binding. A defendant may deny allegations about its purpose or allege another purpose. But the purpose of its actions remains a question of fact a court cannot resolve on a motion to dismiss.

The trial court erred by deciding contested facts when hearing a 12(b)(6) motion. It should have instead relied on the allegations of the Plaintiff’s Complaint. The Complaint alleges intentional cruelty not “conducted for the primary purpose of[] providing food for human or animal consumption.” (R p 110, ¶¶ 3, 6). A complaint alleging cruelty to

animals for a non-exempt purpose states a claim under Chapter 19A—even if the conduct is otherwise lawful. Conduct is also not exempt, even when it is for an exempt purpose, if it is unlawful. The Complaint alleged that Defendants’ cruelty was unlawful and for a non-exempt purpose. This Court should reverse the trial court and hold that allegations and facts showing unlawfulness and a non-exempt purpose must be taken as true under 12(b)(6) and state a claim under Chapter 19A.

STATEMENT OF THE CASE

Plaintiff sued Defendants on 24 May 2023. (R p 3). Plaintiff amended its complaint twice; the second time with consent. (R pp 23, 66, 109). Defendants answered and moved to dismiss the second amended complaint for failure to state a claim under Rule 12(b)(6). (R p 140). The trial court dismissed the second amended complaint for failure to state a claim on 15 December 2023. (R p 160). The order was served on Plaintiff on 2 January 2024.¹ Plaintiff timely filed notice of appeal on 30 January 2024. (R p 161).²

¹ The Parties have stipulated to service on this date and Plaintiff’s counsel is moving to amend the record to reflect their stipulation.

² Plaintiff’s notice of appeal was timely under N.C. R. App. Proc. 3(c)(2) because the order was served on Plaintiff more than three days after it was entered.

STATEMENT OF FACTS

When a chicken dies other than by slaughter, her cadaver “simply become[s] [a] waste product” that cannot legally be used for human or animal food. (R p 110, ¶¶ 4–5; 21 U.S.C. §§ 453(g)(5), 458(a); N.C.G.S. §§ 106-122(1), 106-129(1)(e), 106-549.51(1)(e), 106-549.56(a) (2023)). Plaintiff’s Complaint alleges at least nine ways Defendants kill their chickens other than by slaughtering them:

1. starving chicks (R p 126, ¶¶ 95–97);
2. overheating chicks in a hatcher (R p 125, ¶ 88);
3. using a conveyor belt system that Case Farms’ staff acknowledge will “simply *always* injure or kill a few chicks” (R p 120, ¶ 63);
4. crushing birds between transport trays (R pp 121–122, ¶¶ 69–72; p 124, ¶ 80)
5. letting chicks fall through the floor of transport trucks to their death (R p 123, ¶ 77);
6. intentionally running chicks over (R p 124, ¶ 86);
7. overheating chickens in a transport truck (R p 134, ¶129);
8. burying injured chickens alive under dead chickens (R p 129, ¶¶ 115–117); and
9. boiling chickens alive (R p 135, ¶135).

The Complaint alleges these actions are “*not* necessary for, nor conducted for the primary purpose of, providing food for human or animal consumption” and that Defendants’ “employees . . . engage in the sadistic abuse of chickens.” (R p 110, ¶ 3; pp 135–136, ¶ 138) (emphasis added).

Defendants³ hatch, raise, and slaughter broiler chickens for human consumption. (R p 109, ¶ 2). Defendants’ operation includes two Morganton, N.C. facilities: one for hatching chickens and another for their slaughter. (R p 109, ¶ 2). Between hatching and slaughter, Defendants drive chickens to “grower farms” that their affiliates operate. (R p 115, ¶ 30). A 2017 report noted that Defendants’ slaughterhouse had the “second-highest number of [United States Department of Agriculture (USDA)] violations” in the United States. (R p 129, ¶ 114).

Defendants’ chickens begin their lives gestating as eggs in Defendants’ setter room—and some make it no further than that. (R p 114, ¶¶ 22–23; p 125, ¶ 88). The setter room has no food or water and is checked no more than three times a week. (R p 126, ¶¶ 96–97). Because of the lack of food and water, many chicks that hatch early die. (R p 126, ¶ 97). When Defendants expect eggs to hatch, they move the eggs to a hatcher. (R p 114, ¶ 23). Defendants do not check the hatcher often enough either, so chicks often die of overheating. (R p 125, ¶ 88).

³ The Complaint names three separate entities: Case Foods, Inc.; Case Farms, L.L.C.; and Case Farms Processing, Inc. (R p 109). Case Farms and Case Farms Processing are subsidiaries of Case Foods. (R pp 110–111, ¶¶ 8–10). Both Case Farms and Case Farms Processing take part in operating the Morganton Hatchery and Morganton Slaughterhouse. (*Id.*).

Defendants “know[] that chicks are dying due to improper hatching practices” (R p 127, ¶ 105); their own employees acknowledge that chicks are “left [] in a hatcher for too long” and so “die[] of overheating.” (R p 125, ¶ 88).

The chicks that survive the hatcher are stacked in rectangular plastic trays for transportation. (R p 115, ¶ 26). The trays then go on a system of conveyor belts. (R pp 114–115, ¶ 25). The trays are overpacked and slip atop each other, so chicks’ necks are “caught and crushed between the trays.” (R pp 121–122, ¶¶ 70–71). Defendants’ employees know the way they pack and handle the trays is “certain to cause unnecessary and unjustifiable extreme pain and suffering” to the chicks. (R p 123, ¶ 74).

Defendants’ conveyor belt system “traps, maims, dismembers, and pulverizes” newly hatched chicks. (R p 119, ¶ 53). Defendants use pistons to redirect or push trays. (R p 120, ¶ 61). Because of “defect, design, improper maintenance, no maintenance, or reckless monitoring,” the conveyor belts “regularly injure[] and kill[] chicks by slamming automated pistons onto them.” (R p 120, ¶¶ 61–62). Other chicks fall out of trays and are “caught by, and violently dragged inside, a conveyor

belt.” (R p 121, ¶ 66). Defendants do not “properly examine and maintain” the conveyor belts. (R p 119, ¶ 57). Their employees even say that the malfunctioning machine “w[ill] simply *always* injure or kill a few chicks.” (R p 120, ¶ 63) (emphasis original). They know their actions “are certain to cause unnecessary and unjustifiable extreme pain and suffering.” (R p 123, ¶ 74). Chicks that fall or are otherwise on the ground are “routinely trample[d]” by Defendants’ employees. (R p 124, ¶ 85).

After the conveyor belts, Defendants drive the chicks to affiliated grower farms. (R p 115, ¶ 30). Defendants’ trucks have “corroded and loose floorboards” so chicks “fall through the floor.” (R p 123, ¶ 77). Defendants’ employees acknowledge that some chicks will be run over. (R p 123, ¶ 78). They even “tell one another to run chicks over.” (R pp 124–125, ¶ 86). Employees say that “if they [get] caught, [Defendants] would have to pay a fine for engaging in animal cruelty.” (R p 123, ¶ 78).

Once a chicken has grown to be ready for slaughter, Defendants drive the chickens from the grower farm to the slaughterhouse. (R p 116). Defendants leave the chickens waiting in trucks for three to four hours. (R p 116, ¶ 32). “[N]umerous chickens regularly die from the heat while

waiting in the trucks outside the Morganton Slaughterhouse.” (R pp 133–134, ¶ 129).

Defendants’ Morganton slaughterhouse had the “second-highest number of [USDA] violations” of any slaughterhouse inspected by USDA from 2015 to 2016. (R p 129, ¶ 114). Like at the hatchery, Defendants run over chickens at the slaughterhouse. (R p 129, ¶ 115). Defendants often injure chickens too: one USDA inspection found thirteen percent of sampled birds had wing fractures. (R pp 130–131, ¶ 118). Injured “live birds [are] buried under the bodies of dead birds.” (R p 129, ¶ 115).

Defendants slaughter chickens in a three-step process. (R p 116). First, Defendants paralyze the chicken in a stun bath. (R p 116, ¶ 37). Next, Defendants cut the chicken’s neck using automated machinery. (R p 116, ¶ 38). Then, Defendants immerse the chicken in a scalding tank. (R p 117, ¶ 40). But not every bird’s neck is successfully cut. (R pp 116–117, ¶ 39). Defendants employ backup killers to cut the remaining chickens’ necks—with just two people responsible for ensuring the slaughter of roughly 80,000 to 120,000 chickens per shift. *Id.* When the backup killers do not cut the remaining chickens’ necks, chickens go “into the scalding tank alive and fully conscious” and are boiled alive. (R p 135, ¶ 135).

This happens “routinely.” *Id.*

The Complaint alleges Defendants’ actions are “intentional, affirmative, and reckless.” (R pp 109–110, ¶ 2). Defendants know their actions are unlawful. (R p 123, ¶ 78). Defendants have falsified records showing that employees received required animal welfare training. (R p 128, ¶ 109). Their “employees . . . engage in the sadistic abuse of chickens.” (R pp 135–136, ¶ 138). Defendants’ actions are “*not* necessary for, nor conducted for the primary purpose of, providing food for human or animal consumption.” (R p 110, ¶ 3) (emphasis original). And they “disregard [] poultry-industry norms.” (R pp 126–127, ¶ 101).

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

The trial court dismissed the Complaint with prejudice for failure to state a claim. (R p 160). The dismissal order is a final order and this Court has jurisdiction under N.C.G.S. § 7A-27(b)(2) (2023); *Hoots v. Pryor*, 106 N.C. App. 397, 404, *disc. review denied*, 322 N.C. 345 (1992) (“A dismissal under Rule 12(b)(6) operates as an adjudication of the merits unless the court specifies that the dismissal is without prejudice.”).

ARGUMENT

North Carolina law prohibits animal cruelty. In addition to criminal and regulatory penalties, the General Statutes create a private right of action against any person who engages in animal cruelty. N.C.G.S. § 19A-1, *et seq.* (2023). This law does not apply to:

Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species[; or]
[]lawful activities conducted for the primary purpose of providing food for human or animal consumption.

N.C.G.S. §§ 19A-1.1(2), (3) (2023).

To be exempt, an action must be *both* (1) lawful and (2) “conducted for” an exempt purpose. If the activity is either unlawful or not conducted for an exempt purpose, the animal cruelty law applies. The Complaint alleges cruelty that is *neither* lawful *nor* for an exempt purpose.

Defendants’ actions are not conducted for an exempt purpose because they contradict the exempt purposes of producing poultry or food. A chicken that has been boiled alive or overheated in a truck cannot be used for human or animal consumption. Intentionally running chickens over is not part of producing poultry. These actions are “*not* necessary for” food production and “disregard [] poultry-industry norms.” (R p 110,

¶ 3; pp 126–127, ¶ 101).

Defendants’ actions are unlawful because they violate the common law, statutory law, and regulatory law. The common law “punish[es] public cruelty inflicted upon animals.” *State v. Hale*, 9 N.C. 582, 585 (1823); N.C.G.S. § 4-1 (2023). The Complaint alleges that Defendants’ cruelty violates federal Poultry Products Inspection Act regulations, also making them unlawful. (R p 130, ¶ 117); 02 N.C. Admin. Code 52D.0101 (2023) (incorporating federal regulations into state regulation).

The Complaint’s allegations show Defendants’ cruelty is unlawful and not for an exempt purpose. An action’s purpose is a question of fact the trial court cannot decide at the 12(b)(6) stage. Whether an action is lawful is a mixed question of law and fact the trial court also cannot decide when ruling on a 12(b)(6) motion. The trial court was bound by the Complaint’s allegations of Defendants’ intent and actions. It erred in allowing Defendants’ motion to dismiss and this Court should reverse.

I. Standard of Review

This Court reviews orders granting motions to dismiss for failure to state a claim de novo. *E.g., Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 332 (2019). Under de novo review, this Court “considers the matter

anew and freely substitutes its own judgment for” the trial court’s judgment. *E.g., In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 647 (2003). The question is not “whether a plaintiff will ultimately prevail but whether [it] is entitled to offer evidence to support the claims.” *Concrete Serv. Corp. v. Invs. Grp., Inc.*, 79 N.C. App. 678, 681 (1986).

In other words, the question here is whether the Court will allow Plaintiff to offer evidence to support its claims that Defendants’ animal cruelty violates Chapter 19A. The Court should only deny Plaintiff that opportunity if Plaintiff cannot prevail under any legal theory, “tak[ing] the allegations in the complaint as true and draw[ing] all reasonable inferences in the plaintiff’s favor.” *New Hanover Cty. Bd. of Educ. v. Stein*, 380 N.C. 94, 106–107 (2022). To show Plaintiff cannot prevail under any legal theory, the Complaint must “affirmatively disclose” a defect. *Sutton v. Duke*, 277 N.C. 94, 106 (1970). In other words, Defendants must show that Plaintiff could not prove “any state of facts” to “support [] the claim.” *Raritan River Steel Co. v. Cherry, Bekaert & Holland*, 322 N.C. 200, 205 (1988).

II. The Purpose of Defendants' Cruelty Is a Question of Fact and Its Lawfulness Is a Mixed Question of Law and Fact. The Trial Court Could Not Answer Those Questions at the Motion to Dismiss Stage.

Defendants' cruelty falls outside the statutory exemptions both because the cruelty is not for an exempt purpose and it is not lawful. Courts treat those allegations as true when ruling on a motion to dismiss for failure to state a claim. The trial court erred by not treating those allegations as true.

A civil claim for animal cruelty requires showing that a defendant "caused or permitted" "unjustifiable pain, suffering, or death" to an animal. N.C.G.S. § 19A-1(2) (2023). The Complaint alleges that Defendants inflict "extreme violence," causing their chickens "unjustifiable and unnecessary physical pain, suffering, and death." (R pp 109–110, ¶ 2). That violence is "*not* necessary for, nor conducted for the primary purpose of, providing food for human or animal consumption." (R p 110, ¶ 3) (emphasis original). If there were no facts to support these allegations, the trial court might be able to disregard them as conclusory. But the Complaint alleges facts showing Defendants' cruelty is unjustifiable. Defendants "disregard [] poultry-industry norms" by, among other things, boiling chickens alive. (R pp

126–127, ¶ 101). Those deaths violate federal Poultry Products Inspection Act regulations and are unlawful. (R p 130, ¶ 117; 9 C.F.R. § 381.65(b) (requiring that poultry producers slaughter birds in a way that “ensure[s] that breathing has stopped prior to scalding”)). The Complaint alleges facts supporting a claim under Chapter 19A and alleges facts to support the contention that Defendants’ cruelty is not exempt. The trial court’s analysis should have ended there. Instead, the trial court considered whether Defendants’ cruelty was exempt under N.C.G.S. § 19A-1.1.

Deciding whether Defendants’ cruelty is exempt under Section 19A-1.1 requires deciding questions of fact—something a court cannot do at the 12(b)(6) stage. *Wells Fargo Ins. Servs. USA, Inc. v. Link*, 372 N.C. 260, 261 (2019). To be exempt, Defendants’ cruelty must be both lawful and conducted for an exempt purpose. N.C.G.S. § 19A-1.1 (2023). Whether an activity is lawful is a mixed question of law and fact because it requires applying legal principles to a complaint’s allegations. *E.g.*, *Brown v. Charlotte-Mecklenburg Bd. of Educ.*, 269 N.C. 667, 670 (1967).

The purpose of an activity is a pure question of fact. As a question of fact, the purpose of Defendants’ cruelty cannot be resolved on a 12(b)(6)

motion. Our courts have held that questions of purpose or intent are questions of fact in other contexts. *E.g., United Lab'ys, Inc. v. Kuykendall*, 322 N.C. 643, 664 (1988) (“[W]hen the issue to be decided is the intent of a party, the general rule is that it is a question of fact to be determined by a jury.”). For instance, whether a parent abandoned their child intentionally “is a question of fact to be determined from the evidence.” *In re B.E.V.B.*, 381 N.C. 48, 51 (2022). A tenant’s intent in improving real property is “a question of fact” that “can be resolved only by the trier of fact unless the evidence of intent is undisputed.” *Thornburg v. Lancaster*, 303 N.C. 89, 94–95 (1981) *overruled on other grounds by Daniels v. Montgomery Mut. Ins. Co.*, 320 N.C. 669, 680 (1987). And in criminal cases, intent is a question of fact for a jury to decide. *State v. Rawls*, 202 N.C. 397, 399 (1932); *see also State v. Ataei-Kachuei*, 68 N.C. App. 209, 214 (1984) (when there is conflicting evidence, “what defendant’s purpose was and whether he acted reasonably or unreasonably are not questions of law for the court, but questions of fact for a jury.”).

By alleging that Defendants’ cruelty is not for an exempt purpose and facts supporting that conclusion, the Complaint creates issues of fact

the trial court could not resolve at the 12(b)(6) stage. Defendants’ “sadistic abuse” is not “conducted for the primary purpose of, providing food for human or animal consumption.” (R pp 135–136, ¶ 128; p 110, ¶ 3). A chicken who dies other than by slaughter cannot be used for human or animal food. 21 U.S.C. §§ 453(g)(5), 458(a)(2)(A). Running over chickens, boiling them alive, and permitting them to overheat and die in hatchers or trucks is not done to produce food for human or animal consumption, nor to raise poultry.

Because the purpose of Defendants’ cruelty is a question of fact, the trial court had to treat the Complaint’s purpose allegations as true. Defendants’ Answer alleges statutory exemption as an affirmative defense—an admission that Defendants bear the burden of proving facts showing they are exempt. (R pp 157–158). Defendants argued their conduct was a lawful part of chicken farming because they had a license, were properly zoned, and there was no regulatory enforcement action. (Doc. Ex. pp 6–9). But none of those facts are in the Complaint. The trial court could not consider those facts, let alone decide the motion to dismiss based on them.

The Complaint alleges that Defendants' cruelty is not for an exempt purpose. At the motion to dismiss stage, the trial court was bound by these allegations. The trial court's analysis should have ended there, and this Court's can end there. This Court should hold that the trial court erred by deciding facts at the 12(b)(6) stage, reverse and remand for entry of an order denying Defendants' motion to dismiss.

III. Because The Chickens That Defendants Run Over, Starve, Overheat, Bury Alive, and Boil Alive Are Not Legally Food, Those Actions Cannot Be to Produce Food.

The Court can resolve this case without interpreting § 19A-1.1's exemptions. If it chooses to interpret those exemptions, it should hold that Defendants' cruelty is (1) not for an exempt purpose, (2) not lawful, or (3) both.

Chickens who die by means other than slaughter cannot legally be used for human or animal consumption. 21 U.S.C. §§ 453(g)(5), 458(a)(2)(A). So boiling chickens alive, running over them, or letting them die from overheating cannot serve the primary purpose of providing food for human or animal consumption. The trial court erred by holding otherwise.

Defendants' cruelty is not exempt from Chapter 19A because it prevents chickens from being used for human or animal consumption. The exemptions in N.C.G.S. § 19A-1.1 focus on the activities themselves rather than the entity performing the action. Cruelty is not exempt just because a farm does it. The cruel action itself must be for an exempt purpose.

Cruelty that is both lawful and "conducted for the primary purpose of providing food for human or animal consumption" may be exempt from North Carolina's civil animal cruelty law. N.C.G.S. § 19A-1.1(3) (2023). But Plaintiff's Complaint alleges Defendants' activities are (1) unlawful, (2) not for an exempt purpose, or (3) both.

A. State and federal law say that chickens that die other than by slaughter are not food.

Statutory law defines when a chicken can be used for human or animal consumption. An adulterated product cannot be used for human or animal consumption. 21 U.S.C. § 458(a)(2); N.C.G.S. §§ 106-122, 106-549.58(b)(1) (2023). A chicken who "died otherwise than by slaughter" is an adulterated product. 21 U.S.C. § 453(g)(5); N.C.G.S. §§ 106-129(1)(e), 106-549.51(1)(e) (2023).

Cruelty that makes it impossible for a chicken to be used for human or animal consumption cannot be done to provide food for human or animal consumption. The Complaint alleges at least nine ways Defendants kill chickens other than slaughtering them. Those chickens' carcasses are waste that must be condemned and disposed of. 9 C.F.R. § 381.78; N.C.G.S. § 106-549.70 (2023). No human or animal will ever consume them.

B. Persons that produce food are not actions that produce food.

Defendants argue the exemption applies to farms broadly rather than the specific actions farms take. But the statute explicitly exempts "activities" not entities. Precedent requires interpreting the exemption narrowly, and Defendants' interpretation is so broad it cannot even be supported by the statute's text.

Statutory exemptions "must be narrowly construed." *E.g., Good Hope Hosp., Inc. v. N.C. Dep't of Health & Hum. Servs.*, 175 N.C. App. 309, 312, *aff'd*, 360 N.C. 641 (2006). It is Defendants' "burden [to] establish[] that they fit squarely within the exception." *Id.* While it did not address § 19A-1.1, *Good Hope Hospital* instructs courts to apply exemptions narrowly to specific actions rather than broadly to who is

acting.

The exemptions in § 19A-1.1 focus on activities, not actors. Section 19A-1.1 does not exempt an entity simply because the entity engages in other lawful activities to produce food or poultry. It exempts only specific lawful activities for that purpose. The statute's words themselves show this. The lawful activities must be "conducted for" an exempt purpose. N.C.G.S. §§ 19A-1.1(2), (3). The statute could have said the exemption applied to "entities organized for the purpose of lawfully producing poultry" or "entities lawfully producing poultry." It does not say that though. It says, "lawful activities," not lawful entities, are exempt. The statute exempts certain lawful activities, not defendants engaged in lawful activities.

If the General Assembly had intended to exempt actors rather than activities it would have said so. The General Assembly has exempted an entire class of defendants in other statutes. For example, corporations "organized for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals" are exempt from North Carolina's corporate income tax. N.C.G.S. § 105-130.11 (2023). North Carolina's fair housing law exempts

“accommodations owned and operated for other than a commercial purpose by a religious organization.” N.C.G.S. § 160A-499.2 (2023). Any “nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public” is exempt from laws regulating smoking in public places. N.C.G.S. § 143-599 (2023). The General Assembly chose to exempt activities from Chapter 19A, not organizations. The Court should apply the statute as written.

Making an organization’s purpose, rather than an action’s purpose, controlling also poses risks for other North Carolina statutes—especially when no statutory language identifies those organizations. For example, N.C.G.S. § 14-190.5A(b) criminalizes disclosing sexual images of identifiable people without consent and with unlawful intent. The law contains an exemption for “disclosures made in the public interest,” including for “educational activities.” N.C.G.S. § 14-190.5A(d)(2) (2023). The intent of this exemption is to allow people to use those images in educating students, the public, or law enforcement professionals about crime, and to ensure people cannot be liable for simply attempting to educate others. But suppose Defendants’ interpretation of Chapter 19A applies. Then *educational activities*, like *activities for the purpose of*

producing food, would exempt an entire class of defendants: in this hypothetical, educators. Under this interpretation, a teacher who discloses sexual images of an identifiable student to another teacher during school hours for purely prurient reasons would be exempt from Section 14-950.5A. The General Assembly no more intended to give educators unqualified immunity in Section 14-950.5A than it intended to give farmers unqualified immunity from Chapter 19A.

C. Not every action a farm takes is for farming purposes.

This Court has already recognized the distinction between a farm and farm purposes. *Hampton v. Cumberland Cty.*, 256 N.C. App. 656 (2017). *Hampton* addressed a shooting range on farmland. The dissent in *Hampton* argued the shooting range was exempt from zoning regulations because the property was a farm and the shooting range was a bona fide farm purpose. *Id.* at 673. The General Assembly’s grant of zoning authority to counties did not include authority to regulate land being used for “bona fide farm purposes.” *Id.* at 663 (quoting N.C.G.S. § 153A-340 (2015)⁴). Under Chapter 153A, “bona fide farm purposes include[d] the production and activities relating or incidental to the

⁴ Like many other zoning laws, § 153A-340 has been repealed and is now at § 160D-903).

production of . . . poultry.” N.C.G.S. § 153A-340(b)(2) (2019). The dissent argued bona fide farm purposes included all the purposes of a farm. *Hampton* at 673. The Hamptons argued that their property was a farm because they had a federal Farm Identification Number. So, the dissent reasoned, all the operations of the Hamptons’ farm were bona fide farm purposes. *Id.* And the General Statutes seemed to justify this position. When the trial court decided their case, “state law provided that a Farm Identification Number constituted ‘sufficient evidence the property is being used for bona fide farm purposes.’ ” *Id.* (quoting N.C.G.S. § 153A-340(b)(2) (2016)). But this Court disagreed. Rather than exempting farms entirely, it held that the exemption “applie[d] *only to farm related purposes.*” *Id.* (emphasis original). The exemption had two parts: one general and another specific. The property had to generally be used for bona fide farm purposes and the actual use in question had to be a farm purpose. *Id.* So, “non-farm uses, even on bona fide farms, [were] not exempt.” *Id.* at 674.

Like the Hamptons, Defendants argue their cruelty is exempt because they are a farm—an argument this Court has rejected. They argue that they generally raise and slaughter chickens, so they have a

general exempt purpose. But just like N.C.G.S. § 153A-340(b)(2) did not exempt non-farm activities, N.C.G.S. § 19A-1.1(3) does not exempt activities that are either unlawful or not for the primary purpose of providing food for human or animal consumption. The question is whether the specific activities alleged here are for an exempt purpose. By definition, they cannot be. Killing chickens other than by slaughter cannot be to provide food for human or animal consumption because those chickens cannot legally be consumed by humans or animals. Defendants' general purpose does not exempt them from the animal cruelty statute any more than having a Federal Farm Identification Number exempted the Hamptons from zoning laws.

The Complaint alleges Defendants kill chickens other than by slaughter, making it impossible for them to be used as human or animal food. The Court must take those allegations as true. Actions that prevent a chicken from being used for human or animal food cannot be conducted to produce food for human or animal consumption. The trial court erred in holding that N.C.G.S. § 19A-1.1(3) exempts the activities alleged in the Complaint.

IV. Defendants' Cruelty Is Not to Produce Poultry Because Intentionally, Sadistically Abusing Chicks and Chickens by Running Over Them, Trampling on Them, and Hitting and Kicking Them Is Not Part of Raising Chickens.

Defendants' animal cruelty is unjustifiable and unnecessary. Leaving injured chickens to die while piling dead chickens on top of them, crushing chickens, and trampling them underfoot are not actions taken for the purposes of production of poultry. The trial court erred by finding otherwise.

Production of poultry is broader than producing food for human or animal consumption. While Chapter 19A does not define production of poultry, other statutes provide guidance. For example, N.C.G.S. § 68-25(b) defines a "commercial poultry operation" as any "premises or operation where domestic poultry are fed, caged, housed, or otherwise kept for meat or egg production until sold or marketed." A farmer who raises chicks to sell them to others is producing poultry but is not producing food for human or animal consumption. Defendants do not raise chicks to sell them to others. They "hatch[], raise[], and slaughter[] broiler (meat) chickens." (R p 109, ¶ 2). And their cruelty kills young chicks, "preventing them from growing large enough to be used for food or other intended purposes." (R p 110, ¶ 4).

A. The General Assembly narrowed the poultry production exemption, showing its intent not to categorically exempt poultry production.

Legislative history shows the General Assembly did not intend to exempt all actions relating to producing poultry from the animal cruelty statute. The 1979 version of the statute included an exemption for “the production of livestock or poultry.” N.C.G.S. § 19A-1(2) (1979). Every other activity exempted in the 1979 statute specifically had to be “lawful.” *Id.* Only the exemption for production of poultry lacked the modifier “lawful.” In that context, some might argue that production of poultry did not have to be otherwise lawful to be exempt.

But in 2003 the General Assembly added the word “lawful” to modify poultry production activities exempted in the animal cruelty statute, showing it did not want to categorically exempt all poultry farming from Chapter 19A. 2003 N.C. Sess. Laws 208⁵ modifies or clarifies the substance of Chapter 19A. *Town of Hazelwood v. Town of Waynesville*, 320 N.C. 89, 95 (1987) (“It is presumed[] that an amendment to a statute is generally designed either to change the law or to clarify it.”). The General Assembly changed an unqualified exemption

⁵ For ease of reference, citations to session laws embed a hyperlink to the session law.

for the production of poultry to an exemption for lawful activities conducted for the purpose of producing poultry. That change demonstrates an intent to exempt farming activities rather than farms and to examine the purposes of those activities rather than simply exempting all chicken farming activities.

The Complaint alleged activities that illustrate why even poultry producers might not support an exemption on every activity that might happen at a facility involved in poultry production.

B.A private right of action supplements regulatory enforcement. Lack of regulatory enforcement does not bar a private action.

Regulators and prosecutors do not always have the resources or the will to address every instance of animal cruelty. Leading scholars acknowledge that USDA “has hardly been eager to enforce” animal welfare laws. Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L. Rev. 1333, 1342 (2000). State and local regulators and prosecutors face similar hurdles. They have limited budgets and limited enforcement resources. They cannot pursue every bad actor.

Those limitations are one reason why North Carolina created a private right of action for animal cruelty. North Carolina's modern civil animal cruelty law was first styled as "An Act to Provide a Civil Remedy for the Protection and Humane Treatment of Animals to Supplement Existing Criminal Remedies in G.S. 14-360." 1969 N.C. Sess. Laws 831. Its express purpose was "to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available[.]" *Id.* Law enforcement may not consider criminal enforcement feasible or prudent. Criminal enforcement also has a higher burden of proof and is limited to reactive, rather than proactive, remedies. Unlike a criminal prosecution, a civil claimant can obtain a temporary restraining order or permanent injunction preventing future harm. A private right of action costs taxpayers less and provides an expansive pool of possible plaintiffs.

A private right of action benefits the public because animal cruelty is not solely a private wrong. It harms the people who witness it or engage in it. It sows doubts about the quality of food provided to the public. And the FBI's Law Enforcement Bulletin acknowledges that "research shows a well-documented link" between animal cruelty and

violence to people. Charlie Robinson and Victoria Clausen, *The Link Between Animal Cruelty and Human Violence*, FBI L. Enft Bull. (Aug. 10, 2021) <https://leb.fbi.gov/articles/featured-articles/the-link-between-animal-cruelty-and-human-violence>.

North Carolina created a private right of action to prevent public and private harm resulting from animal cruelty. Plaintiff sues to prevent exactly that harm. Defendants' actions here are not to produce poultry. Defendants engage in "intentional, affirmative, and reckless acts of neglect and extreme violence." (R pp 109–110, ¶ 2). This includes "the sadistic abuse of chickens." (R pp 135–136, ¶ 138). They condone violence, including "tell[ing] one another to run over chicks." (R pp 124–125, ¶ 86). Intentionally running over chicks is not part of producing poultry.⁶ It has no rational relationship to the purpose of producing poultry. A chick that is run over and dies cannot lay eggs and cannot be eaten. The chick just becomes waste.

Actions that make chickens into waste are not done to produce poultry. The trial court erred in finding that Defendants are exempt.

⁶ The Complaint alleges that Defendants' cruel activities are not only not related to the purpose of producing poultry but disregard the poultry industry's own guidelines. (R pp 126–127, ¶ 101; pp 112–113, ¶ 17; p 129, ¶ 113; p 135, ¶ 135).

V. Defendants' Cruelty Violates the Common Law and Statutory Law. Even if Defendants' Cruelty Were for an Exempt Purpose, It Still Would Not Be Exempt, Because It Is Unlawful.

Defendants' cruelty is not just for a non-exempt purpose. Defendants' cruelty is also unlawful because it violates common law and statutory prohibitions on animal cruelty. Even if it is done for an exempt purpose, animal cruelty is only exempt from Chapter 19A if it is also lawful. But no statutory or common law exception allows needlessly running over chickens, leaving them to overheat and die, or boiling them alive. The trial court erred in concluding Defendants' cruelty was exempt and this court should reverse.

A. The common law prohibits animal cruelty—a prohibition that is still part of the law today.

The common law generally prohibits animal cruelty, including the needless killing of chickens. The North Carolina Supreme Court has recognized that the common law prohibition on animal cruelty is not abrogated or limited by our animal cruelty statute. “Neither at the common law, nor since the passage of our [animal cruelty] statute . . . can a dog be killed for the commission of any slight or trivial offence.” *State v. Smith*, 156 N.C. 628, 629 (1911) (citing *State v. Neal*, 120 N.C. 613 (1897)). It was “never the law” that an animal could be killed “without

any sufficient cause.” *Id.*; see also, *State v. Simmons*, 36 N.C. App. 354, 355 (1978) (applying *Smith* to a self-defense jury instruction).

Unless a statute specifically abrogates the common law, the common law fully applies today. N.C.G.S. § 4-1 (2023). It must “affirmatively appear[]” that a statute abrogates the common law. *E.g.*, *Price v. Edwards*, 178 N.C. 493, 500 (1919); see also *Morris Commc’ns Corp. v. City of Bessemer City Zoning Bd. of Adjustment*, 365 N.C. 152, 157 (2011) (citing *Price* for this rule). Even when there is an explicit abrogation of the common law, our courts construe that abrogation strictly. *E.g.*, *Stone v. N.C. Dep’t of Labor*, 347 N.C. 473, 479 (1998); *McKinney v. Deneen*, 231 N.C. 540, 542 (1950). Strict construction requires that the “application [of statutes] be limited to their express terms.” *Turlington v. McLeod*, 323 N.C. 591, 594 (1988). Our civil animal cruelty law does not expressly or implicitly abrogate the common law’s punishment of animal cruelty. If it did, the abrogation would still be limited to its express terms—another reason to construe the exemptions narrowly.

Statutes can clarify the common law without abrogating it. The general rule is that animal cruelty violates the common law. Our

statutes define specific actions as animal cruelty. But these definitions are illustrative, rather than exhaustive. Our courts have consistently relied on non-statutory aspects of the common law by, for example, requiring willfulness or allowing a defense of justification. *E.g.*, *State v. Simpson*, 73 N.C. 269 (1875); *State v. Parker*, 81 N.C. 548 (1879). Chapter 19A does not abrogate the common law. Cruelty that violates either the common law or a statute is unlawful.

Our current civil animal cruelty law carries on the common law tradition and our state's history of penalizing animal cruelty. Its very terms draw from that history. Our statutes have penalized animal cruelty since at least 1868. 1868 N.C. Sess. Laws 253. More than a century ago, the General Assembly made it a crime to "overdrive, overload, torture, torment . . . cruelly beat, or needlessly mutilate, or kill" any "useful beast, fowl, or animal." 1881 N.C. Sess. Laws 368 § 1. The 1881 Act also created a type of private right of action. *Id.* The "agents of any society" for the "prevention of cruelty to animals" could "make arrests" and bring charges "before any court or magistrate [with] jurisdiction." *Id.* § 9.

Today's law uses the same definition of cruelty as the 1881 Act. The 1881 Act defined "torture, torment, or cruelty" to "include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted." 1881 N.C. Sess. Laws 368 § 15. That definition still applies today. Section 19A-1(2) defines " 'cruelty' and 'cruel treatment' " to "include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted."

Cruelty that violates the common law is unlawful even without any statute. In *State v. Neal*, the defendant requested a jury instruction saying it was lawful for him to kill chickens to protect his crops. 120 N.C. 613, 27 S.E. 81, 83 (1897). He also requested a jury instruction saying it was lawful to kill chickens on an "impulse of anger." *Id.* The trial court gave neither instruction, and Neal appealed. This Court affirmed Neal's conviction, explaining why each defense was insufficient. Anger was no defense because "[s]ince the enactment of [the animal cruelty] statute, it has been unlawful in this state for a man to gratify his angry passions . . . at the cost of wounds and death to any useful creature over which he has control." *Id.* at 84. (quoting *State v. Porter*, 112 N.C. 887, 887 (1893). Even if Neal violated no other statute, his cruelty was still unlawful. And

“needless[ly] killing” chickens is “of itself cruelty though done without torture.” *Id.* at 85. In rejecting Neal’s second defense, this Court did not mention the animal cruelty statute.

It was unlawful for the *Neal* defendant to needlessly kill chickens, even without torturing them. The Pattern Jury Instructions show that this is still the law today. The “only justification for killing or injuring an animal appears to be an immediate need to prevent the animal from doing substantial damage.” N.C.P.I.—Crim. 247.10B, n.1. The Pattern Jury Instruction reflects our precedent going back to before the Civil War. *E.g., Morse v. Nixon*, 51 N.C. 293, 294 (1859) (killing an animal justified if “the danger was imminent” of death or great bodily harm to another animal); *State v. Butts*, 92 N.C. 784, 787 (1885) (killing unjustified merely because cow was running loose and eating a neighbor’s crop).

Like the *Neal* defendant, Defendants’ needlessly kill chickens by, among other things, intentionally running over them. Defendants’ cruelty is “unjustifiable and unnecessary.” (R pp 109–110, ¶ 2). Needlessly killing chickens was unlawful under the common law, remained unlawful under our animal cruelty statute, and is unlawful

today.

B. Improper slaughter is illegal under North Carolina and United States statutes. Defendants' improper slaughter is unlawful.

In addition to violating the common law, Defendants' cruelty also violates specific statutes. Because needlessly killing chickens is generally unlawful, our statutes explain when killing a chicken *is* lawful. United States law prohibits "slaughter[ing] any poultry or process[ing] any poultry products which are capable of use as human food at any establishment processing any such articles for commerce, except in compliance with the [federal Poultry Products Inspection Act.]" 21 U.S.C. § 458(a)(1). North Carolina's Poultry Products Inspection Act applies the same text to poultry or poultry products "solely for intrastate commerce." N.C.G.S. § 106-549.56(a)(1) (2023). North Carolina's Poultry Products Inspection Act mirrors the federal Poultry Products Inspection Act. And North Carolina regulations expressly incorporate federal regulations. 02 N.C. Admin. Code 52D.0101 (2023). Whether chickens are slaughtered in intrastate or interstate commerce, their slaughter must comply with the Poultry Products Inspection Act.

Defendants' slaughter violates the law. Federal regulation says "[p]oultry must be slaughtered in accordance with good commercial practices" and their "breathing [must] stop[] prior to scalding." 9 C.F.R. § 381.65(b). Slaughtering them any other way "is a prohibited act" and makes them an adulterated product. Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56624-01, 56625 (Sept. 28, 2005). But Defendants do not adhere to good commercial practices. (R p 130, ¶ 117). Defendants put living, breathing chickens into the scalding. (R p 129, ¶ 115; pp 132–133 ¶ 126; p 135 ¶ 135). North Carolina and United States law say that is unlawful.

North Carolina law also says Defendants' transportation of chickens is unlawful. It is a misdemeanor to carry "any animal in a cruel or inhuman manner" "in or upon any vehicle or other conveyance." N.C.G.S. § 14-363 (2023). Defendants violate this law by transporting chickens in trucks that have holes in their floorboards. (R p 123, ¶ 77). Chickens fall through the floor to their death. *Id.* Defendants' own employees acknowledge they are "engaging in animal cruelty." (R p 123, ¶ 78). Leaving chicks and chickens to overheat and die in trucks also violates this statute.

Defendants' slaughter and transport of chickens violates statutes and is unlawful.

C. Defendants' needless cruelty is not a lawful part of chicken farming.

At this stage of the case, Defendants cannot justify boiling live chickens or their other cruelty as a lawful part of chicken farming. They cannot for three reasons: (1) Defendants' proposed justifications are irrelevant to a 12(b)(6) motion; (2) The common law and statutory law prohibit non-slaughter deaths and animal cruelty; and (3) Defendants' cruelty "disregard[s] poultry-industry norms" and is "unnecessary and unjustifiable." (R pp 109–110, ¶ 2; pp 126–127, ¶ 101).

First, suppose Defendants had some exempt purpose for their cruelty. That purpose is not alleged in the Complaint, so the Court cannot consider it at the 12(b)(6) stage. The question is not whether Defendants could justify their actions. The question is whether the facts alleged in the Complaint state a claim for animal cruelty. Defendants' other proposed purposes and any other allegations in the answer are irrelevant.

Second, our law declares Defendants' animal cruelty unlawful. Our law does allow killing farm animals by slaughter. It says how animals

must be slaughtered—and boiling them alive is not a legal way to slaughter animals. 9 C.F.R. § 381.65; Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56624-01, 56625 (Sept. 28, 2005). The law also prohibits abusing animals. Negligently killing or abusing an animal is criminal. This Court has rejected the argument that negligently starving horses was lawful because it was not willful. *State v. Talley*, 110 N.C. App. 180, 190 (1993). Willfulness includes “unnecessary suffering, knowingly and willfully *permitted*.” *Id.* (quoting *State v. Porter*, 112 N.C. 887, 888 (1893)) (emphasis added). Negligently permitting animals to starve—just one of the Complaint’s allegations—is willful. *Id.*

Third, the Complaint shows Defendants’ actions are not part of chicken farming. Defendants “disregard [] poultry-industry norms.” (R pp 126–127, ¶ 101). Their actions are “*not* necessary for” producing chickens for human consumption. (R p 110, ¶ 3) (emphasis original). The Complaint alleges Defendants are doing more than merely neglecting some chickens to produce the most chicken at the lowest price. Defendants know at least some of their actions are “certain to cause unnecessary and unjustifiable extreme pain and suffering.” (R p 123, ¶ 74). They know they are not following proper practices. They admit they

“left chicks in a hatcher for too long,” so the chicks “died of overheating.” (R p 125, ¶ 88). They know their conveyor belts’ pistons “w[ill] simply *always* injure or kill a few chicks.” (R p 120, ¶ 63) (emphasis original). Worse, they “tell one another to run over chicks.” (R pp 124–125, ¶ 86). Intentionally running over chickens is not part of the cost of doing business. It does not help Defendants slaughter chickens more quickly. Nor does it lower their costs. Like Defendants’ other intentional and sadistic abuse, it violates industry norms and serves no farming purpose.

The trial court erred in concluding Defendants’ actions are lawful and this Court should reverse.

ORAL ARGUMENT REQUESTED

If the Court does not resolve this case under Rule 12(b)(6) by holding that the Complaint raises questions of fact a court cannot resolve on a motion to dismiss, then it will need to construe N.C.G.S. § 19A-1.1’s exemptions. Construction of those exemptions is an issue of first impression and of sufficient public policy importance to warrant oral argument.

CONCLUSION

To qualify for the statutory exemption, Defendants must show their cruelty is both for an exempt purpose *and* lawful. Not showing either element is fatal. Defendants' cruelty is neither lawful nor for an exempt purpose. The Complaint alleged just that. The trial court should have accepted the facts alleged in the Complaint when ruling on Defendants' 12(b)(6) motion. The trial court erred and this Court should reverse and remand for the entry of an order denying Defendants' motion to dismiss.

Respectfully submitted,

3 September 2024

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CERTIFICATE OF COMPLIANCE

I certify that the attached brief complies with Appellate Rule 28(j)(2). This brief uses a 14-point Century font. According to Microsoft Word, the body of the brief (including footnotes and citations) contains fewer than 8,750 words.

3 September 2024

/s/ R. Daniel Gibson
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CERTIFICATE OF SERVICE

I certify that I served a copy of this brief on all parties by electronic mail addressed as follows:

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APPENDIX:

N.C.G.S. § 19A-1.1	App. 1
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§ 19A-1.1. Exemptions.

This Article shall not apply to the following:

- (1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this Article applies to those birds other than pigeons exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).
- (2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.
- (3) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.
- (4) Activities conducted for lawful veterinary purposes.
- (5) The lawful destruction of any animal for the purposes of protecting the public, other animals, or the public health.
- (6) Lawful activities for sport.
- (7) The taking and holding in captivity of a wild animal by a licensed sportsman for use or display in an annual, seasonal, or cultural event, so long as the animal is captured from the wild and returned to the wild at or near the area where it was captured. (2003-208, s. 1; 2013-3, s. 3; 2015-286, s. 4.32(b).)