

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA**

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Elsie Herring,	)
Robert Pickett,	)
Jessie Brinson,	)
John Bannerman, and	)
Clarence Bannerman,	)
	)
Plaintiffs,	)
	)
v.	)
	)
Murphy-Brown, LLC,	)
	)
Defendant.	)

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**COMPLAINT**

Plaintiffs hereby file their Complaint against the Defendant Murphy-Brown, LLC and allege as follows:

**I. INTRODUCTION**

1. The Plaintiffs are residents of Duplin County. During the pertinent times they have resided on, owned, and used land in close proximity to hog confinement sites that hold thousands of hogs owned by the Defendant. These facilities are known as Concentrated Animal Feeding Operations (“CAFOs”). The closest of these facilities is Major Murray Farm which is licensed to hold more than 1,000 of Defendant’s hogs.

2. Hogs generate multiple times more manure than humans. The Defendant’s hogs at the CAFO facilities generate many times more sewage than entire towns. Yet Defendant has failed to take adequate steps to manage the number of hogs at the sites or the millions of gallons of manure that come from them. While placing thousands of its hogs at CAFO sites, Murphy-Brown has failed to take appropriate steps to eliminate the obnoxious recurrent odors and other causes of nuisance. The hogs have impaired the Plaintiffs’ use and enjoyment of their properties.

3. In addition and as an independent cause of the nuisance, the presence of Defendant's hogs has caused periodic swarms of flies, other insects, and other pests. Flies periodically descend upon Plaintiffs' properties, ruining and interfering with family activities, cookouts, and other outdoor activities. Other insects such as gnats come onto Plaintiffs' land. The flies get stuck to windows and get inside the homes. Other vermin may come onto the properties. These insects and pests are "vectors" for disease.

4. Further, Defendant's hogs necessitate very large trucks crawling up and down the streets outside of the Plaintiffs' homes. These are often narrow and even unpaved country lanes, which normally would never be subjected to having repeated episodes of large tractor-trailers and other big trucks taking feed to the hogs, trucking in live hogs, and trucking out both live and dead hogs. These trucks often go by Plaintiffs' homes in the dead of night and they cause noise, dust, and liquid to spill from the trucks. They are the opposite of what one would expect to see going by one's home in such a rural country neighborhood.

5. Defendant is a large enterprise with the ability and the resources to end the nuisance. Defendant's parent company Smithfield Foods, Inc. ("Smithfield") was sold to a Chinese-backed multinational corporation, Shuanghui, in late 2013 in a transaction estimated to have a value in excess of \$7 billion, and reported record profits for the first quarter of 2014. Smithfield reported sales for the first quarter of 2014 of \$3.4 billion and net income of \$105.3 million. Defendant clearly has the resources to eliminate the nuisance yet has not done so.

## **II. PARTIES**

### **A. Plaintiffs.**

6. Plaintiff **Elsie Herring** is a resident of North Carolina who resides at 114 Beulah Herring Lane in Wallace, North Carolina.

7. Plaintiff **Robert Pickett** is a resident of North Carolina who resides at 353 River Road in Wallace, North Carolina.

8. Plaintiff **John Bannerman** is a resident of North Carolina who resides at 107 Beulah Herring Lane in Wallace, North Carolina.

9. Plaintiff **Jessie Brinson** is a resident of North Carolina who resides at 111 Beulah Herring Lane in Wallace, North Carolina.

10. Plaintiff **Clarence Bannerman** is a resident of North Carolina who resides with his mother, Jessie Brinson, at 107 Beulah Herring Lane in Wallace, North Carolina.

**B. Defendant.**

11. Defendant **Murphy-Brown, LLC**, formerly known as Carroll's Foods, Inc., is a limited liability company organized under the law of Delaware. Defendant's sole member is John Morrell & Company ("Morrell"), a corporation incorporated under the law of Delaware and with its principal office located at 200 Commerce Street, Smithfield, VA 23430. Morrell is wholly-owned subsidiary of Smithfield, a corporation incorporated under the law of Virginia and with its principal office located at the same address as Morrell. During the pertinent times, Defendant has conducted business in numerous states including North Carolina.

**III. JURISDICTION AND VENUE**

12. The Court has personal jurisdiction pursuant to N.C. Gen. Stat. § 1-75.4.

13. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in that this is a district in which a substantial part of the events or omissions giving rise to the claim occurred, and in which a substantial part of property that is the subject of the action is situated.

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) in that this is an action in which the matter in controversy, inclusive of monetary damages and the

value of injunctive relief, exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

#### **IV. FACTUAL BACKGROUND**

##### **A. Background Regarding the Plaintiffs.**

15. During the pertinent times, the Plaintiffs have suffered injury and harm as a direct result of the thousands of swine placed near their homes by Murphy-Brown. Defendant's hogs generate feces and urine that fall onto slatted floors and adhere to hog bodies, dry into particulate dust, adhere to skin cells from pigs, and drip and trickle under the slatted floor into holding ponds below the floors that hold raw feces and urine. Stench rises from below the floor and from throughout the hog sheds, and the dust, skin cells, dander, particulates, dried fecal matter and stench from below-floor manure is sent out by large fans set in hog shed walls or by other means.

16. The urine and feces go into giant holding ponds outdoors from which it evaporates and may leak and spill. Because Murphy-Brown does not cover the cesspools they are free to evaporate odor into the air and attract flies and other pests. The slurry or liquid containing the urine and feces is also sprayed into the air and onto fields around the hog sheds causing odorous fecal and urinous mist to drift through the air, go onto neighboring lands, and moisture and matter to fall and puddle on the soil so that more odor rises off of it. Sites must spray large quantities or else the "lagoons" will overflow.

17. One or more Plaintiffs have witnessed spraying and spray mist and the spraying regularly occurs and causes sickening stench. The sites also breed and attract flies and other insects. Dead hogs are placed in "dead trucks" and carried out of the facilities. All of these activities cause odor, annoyance, dust, noise and loss of use and enjoyment of homesteads. The stench and associated nuisance also embarrasses and humiliates the Plaintiffs.

18. Murphy-Brown provides the hogs, the feed, additives, medicines and on information and belief also provides rat and bug killer in an effort to control part of the nuisance and special clothes required to be worn by workers in an effort to control germs coming out of the hog sheds. However Murphy-Brown refuses to provide all the tools and controls that are needed to end the harm to neighbors and the nuisance caused by its thousands of hogs it places at the sites, nor will it reduce the hog counts to reduce the nuisance.

19. Plaintiffs have suffered episodes of noxious and sickening odor, onslaughts of flies and pests, nausea, burning and watery eyes, stress, anger, worry, loss of property value, loss of use and enjoyment of their property, inability to comfortably engage in outdoor activities, cookouts, gardening, lawn chores, drifting of odorous mist and spray onto their land, at times an inability to keep windows and doors open, difficulty breathing and numerous other harms.

20. All Plaintiffs have employed measures and incurred expenses to try to protect themselves from the odors, pests, and nuisance from the hog sites and large hog trucks that pass up and down their rural roads. They variously engage in keeping windows and doors closed and running air conditioner during mild weather, caulking and employing other sealants on windows and doors, purchasing cans of spray insecticides, paying to have their yards sprayed with pesticides, purchasing flypaper strips, purchasing bottled water so as to avoid using well water, purchasing scented candles or incense, and purchasing air fresheners, purifiers, and deodorizers.

**i. Elsie Herring.**

21. Plaintiff Elsie Herring lives in the home in which she was born and raised, at 114 Beulah Herring Lane in Wallace, North Carolina. Her mother, Beulah Herring, who died in 2001 after having lived on this property all of her 99 years, is the namesake of the road. This property is adjacent to the Major Murray facility.

22. The youngest of 15 siblings, Ms. Herring was born on this property in 1948 which was originally purchased by her grandfather, Immanuel Stallings, in 1891. Her parents built the house in which she currently lives in 1920 and lived there until their respective deaths. Her brother who had Down's syndrome lived on the land all of his 60 years and one of her sisters lived on the land until her death at age 64. A number of close family members still live on this land with her today.

23. Having lived on this land most of her life, Ms. Herring remembers well life on her homeplace before the Defendant began placing so many of its hogs so close to her home. She remembers the outdoor family gatherings her family would have regularly and remembers her parents and family "living off the land" on their small family farm.

24. Although the facility was constructed in whole or part some time earlier, effluent from the Defendant's hogs was not sprayed on adjoining land until the mid-1990s. Ms. Herring immediately became indignant about the odors, flies, and drift of effluent mist onto her and her family's property. At the time, effluent from Defendant's hogs was being "land applied" by the "traveling-gun" spray method discussed below in more detail, which resulted in fecal mist drifting onto her property.

25. She remembers well the first time the swine effluent was sprayed on the adjoining land. It was a Saturday and she was with her elderly mother, her brother, and nephew Robert Pickett at her mother's house, in which Ms. Herring currently lives. They were all sitting on her mother's screened-in porch, enjoying it as they had done for so many years prior. When the spraying commenced, it was so close to their homes that they had to retreat inside and close all the windows and doors, otherwise the mist would have gotten in their homes.

26. Ms. Herring, determined to stop this spraying, began communicating her concerns directly to the original land owner which only resulted in his declaration that he can do whatever he wishes on his property. She then took her concerns to Don Butler of Carroll's Foods, now Murphy-Brown, who owned the hogs creating the nuisance. He was also of no assistance. Upon information and belief, Don Butler is currently Director of Governmental Relations and Public Affairs for Murphy-Brown. Upon information and belief, Carroll's Foods was acquired by Smithfield Foods in 1999 and became what is now the Defendant, Murphy-Brown, upon Smithfield's acquisition of Murphy Family Farms.

27. Ms. Herring then took her concerns to various government agencies including the Duplin County Department of Health and the North Carolina Department of Environmental and Natural Resources ("DENR") which regulated the facility. DENR staff visited the facility.

28. Determined to effect some change, Ms. Herring then turned to her local representative at the time, Cynthia Watson, and then-Governor James B. Hunt, both of whom took an interest in the Herrings' situation. In total, she called or wrote letters, or both, to the Governor, the state and local health departments, the Attorney General of North Carolina, the United States Justice Department, DENR, the local sheriff and police departments, the county commissioners, the federal EPA, her congressman, and the owner of the hogs, the Defendant.

29. Finally, in 1998, after persistent complaints and at the urging of Rep. Watson, Defendant finally took some action to improve the situation and designed for the contract grower a new "solid set" waste-spraying system to replace the more traditional traveling-gun method. This consisted of the use of smaller sprinkler systems spraying the waste in the air. In addition, Defendant initiated the planting of fast-growing evergreens between Ms. Herring's family property and the adjacent spray field to act as a buffer of sorts between the properties and

hopefully reduce the drifting of the effluent mist onto Ms. Herring's property. Having already written a similar letter to DENR dated July 20, 1998, Mr. Butler wrote to Ms. Herring a letter dated January 4, 1999 explaining the changes the Defendant would soon implement on the contract facility.

30. In addition, Governor Hunt wrote Ms. Herring a letter dated October 8, 1998 pointing out that "[a]lthough this voluntary plan addresses aerosol drift, odors may continue to be a problem," and further explained that, unfortunately, "[t]he state currently has no jurisdiction over odors from animal operations."

31. Just as predicted by Governor Hunt, the recurring odors remain to this day as a result of the large number of Defendant's hogs being so close to neighbors with the continued use of the "lagoon and spray" system, despite the inadequate changes that Defendant made. As a result, Ms. Herring still has to keep her windows and doors closed and therefore run her air conditioning when, but for the odors, she would raise her windows to let in fresh air. This raises her power bills substantially.

32. Flies and other recurring nuisances remain as well, and Defendant's hogs continue to significantly impact Ms. Herring's and her family's quality of life and enjoyment of their property. The episodes of odor, flies and other nuisance are unpredictable. They depend on variables such as wind direction and schedules of facility activities. Episodes of the nuisance can last a short or a longer period of time and are temporary in nature.

33. Ms. Herring has been very active in her community in trying to improve the conditions caused by Defendant because she knows that, at times, over two million of Defendant's hogs reside in Duplin County alone, which amounts to a nearly 40-to-1 hog-to-human ratio in Duplin County. She became involved and is still involved with the North

Carolina Environmental Justice Network based in Rocky Mount as well as Rural Empowerment And Community Health (“REACH”) based in Warsaw. As an example of her activism, she went with other members of REACH and other organizations to the lawn of the Legislative Building for 51 consecutive hours to protest the adverse impacts of large hog operations like the one beside her property. While some change as described above has resulted from her persistent actions, the recurring nuisance from the Defendant’s hogs very much remain today and for so many others community members she knows.

34. Due to the complaints and communications of Ms. Herring and other Plaintiffs, Defendant has long had actual knowledge of the nuisance caused by its hogs.

**ii. Robert Pickett.**

35. Plaintiff Robert Pickett, nephew of Elsie Herring, lives alone on the property on which he was raised and that his parents purchased in the early 1950s, directly across the street from the Herring property as well as the Major Murray facility spray field which is visible from his home. He lives in the home he put on the property in 1976 and has lived there ever since.

36. Mr. Pickett has many of the same concerns as his aunt Elsie Herring regarding the nuisance created by Defendant’s hogs. In addition, Mr. Pickett has always enjoyed keeping his windows raised to let fresh air into his home and to also keep his utility bill as low as possible. Living on a fixed income significantly limits his expenditures and running air conditioning more than absolutely necessary presents a real hardship for him.

37. Ever since the Defendant’s hogs have been on the adjacent property, he has experienced recurring foul odors as well as an increase in the number of flies on and around his property, both of which significantly impacts his ability to use and enjoy his land. This greatly

upsets him as this is his family homeplace which he used to enjoy without the burden of thousands of Defendant's hogs being so nearby.

38. In an effort to reduce the impact of the foul odors emanating from Defendant's hogs, he regularly burns incense. Unfortunately, this does not eliminate the nuisance.

**iii. John Bannerman.**

39. Plaintiff John Bannerman lives alone on the property on which he was born and raised and has lived here virtually his entire life. He lives on the same property as his cousin, Jessie Brinson, and his aunt, Elsie Herring and therefore has many of the same issues as they do with the Defendant's hogs being placed so close to his property.

40. Having grown up and lived on this property his entire life, he remembers a time before the facility when he and his family could peacefully enjoy their property without the possibility of their land being overrun with foul odors or mist coming from the spraying of hog waste. A time when his family had a friendly relationship with the owner of the facility. The nuisance presented by the owner's raising Defendant's hogs has driven a wedge between the two families that has lasted many years as a result. This is simply one more detrimental effect caused almost exclusively by Defendant's hogs.

**iv. Jessie Brinson.**

41. Plaintiff Jessie Brinson lives in in a home next door to Elsie Herring, her aunt, in which she was raised and which she inherited on her mother's death.

42. Ms. Brinson grew up on this property and, like her other family members, remembers a time when they could enjoy fully their property and have family gatherings, cookouts, and other outdoor events. Her mother used to have lots of family over for Thanksgiving and other holidays. Now, if they want to gather for events like that, they do it

other places because they never know when the odor is going to be present or when the feces is going to be sprayed. They cannot take the chance that their gathering will be ruined. Ever since Defendant's hogs have been kept nearby, those outdoor family gatherings have dwindled to almost none due in large measure to the nuisance created by the hogs.

43. There are typically two to three days per week when the odor is bad. Before the trees were planted in between the properties, as mentioned above, the spray field was visible from the front porch, and mist from the spray would often drift onto her mother's clothes hung on the clothesline to dry. They no longer hang clothes out to dry for that reason, which in turn increases their electric bill because of the increased use of their electric clothes dryer.

44. Living so close to Defendant's hogs has made life difficult. It is embarrassing for her to invite people to her home because of the foul odor, particularly in the summer when it is especially bad.

45. Sometimes the odor is so strong it wakes her and her family in the middle of the night. To help reduce the odor, she does something her mother did before her death – place a Pine-Sol type product in a bucket to emanate through the house which helps.

46. Ms. Brinson worries about her family having to inhale the foul odor and health effects it may have. It upsets her that this was not a worry before the hog facility and is further upset by the fact that her mother's final years of life, which should have been her "golden" years, were so significantly impacted by this injustice and hopes that it can be corrected once and for all so her children can enjoy the property as she once did before the hog operation started.

v. **Clarence Bannerman.**

47. Plaintiff Clarence Bannerman was born and raised on this Herring property and has spent the vast majority of his 31 years on this property. He was raised primarily by his

grandmother, then continued living in the same home when his grandmother died and left the property to Clarence's mother, Jessie Brinson.

48. Clarence has many of the same concerns his family does about the proximity of the Defendant's hogs, as described above.

49. In addition, he recalls a number of instances when friends or out-of-town family have come to the property and inquired about the foul odor. He must then explain to them the fact that hog feces is sprayed on the piece of property next door.

50. He has a vague recollection of what life was like on this property before the hog operation and hopes that one day, when perhaps he inherits this property, it will once again be free from the nuisance created by the Defendant's hogs.

**B. Background on the Facilities.**

51. The Major Murray facility is a Concentrated Animal Feeding Operation or "CAFO" with permit number AWS310593 issued by DENR. It is located on Mail Route Road in Wallace, North Carolina which is located just beside and behind the property of the Plaintiffs.

52. Upon information and belief, the facility is owned by Dwight Strickland of Duplin County and was previously owned by Major Murray, the facility's namesake. It is a "feeder to finish" facility with an allowable count of 1,182 hogs. It has two hog buildings and one open-air cesspool also known as a "lagoon." The facility, however, never owns the hogs it houses. All the hogs are directly owned by Murphy-Brown.

53. Upon information and belief, the Major Murray facility opened its operation in 1986 and, for all pertinent times, is and has been a "contract grower" exclusively for Murphy-Brown and its predecessors including Carroll's Foods, Inc., meaning that Dwight Strickland

contracts with Defendant to raise its hogs until they are ready to be sent to a processing facility owned by Smithfield Packing Co., part of the same Chinese enterprise that owns Murphy-Brown.

54. Upon information and belief, Murphy-Brown and its predecessors devised the “Nutrient Utilization Plan” or “Waste Utilization Plan” for the facility which, among other things, specifies that the manure, urine, feces, and flush water will be held in the open-air cesspool and sprayed onto the fields and includes detailed rules for such things as the rate at which the manure should be applied to the land surrounding the facility and the amount.

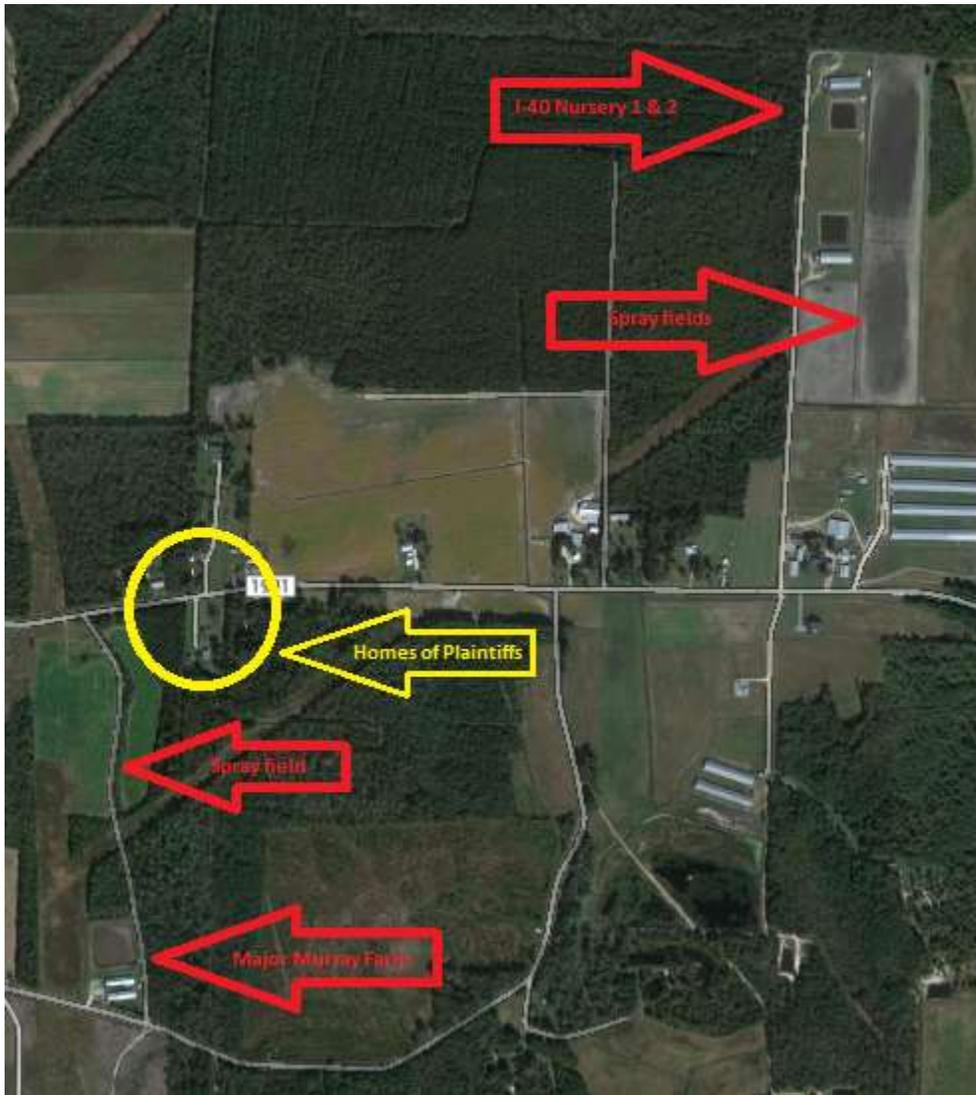
55. Upon information and belief, Defendant has intervened in the past when compliance issues or neighbor complaints have arisen with regard to this facility. For example, after mounting political pressure in or about 1998, Defendant designed and implemented a new irrigation system for the facility and also ordered trees to be planted between the facility’s spray field and the Herring property. As mentioned above, these changes unfortunately did not abate the nuisance for the Plaintiffs.

56. In addition to the Major Murray Facility, there is a facility called “I-40 Nursery 1 & 2,” permit number AWS310810 issued by DENR, on River Road which is also very close to the Plaintiffs. This facility also contracts to grow hogs owned by the Defendant. This facility is licensed to house 5,200 of Defendant’s swine which only adds to the nuisance by the additional volume of Defendant’s large hog trucks traveling on River Road past the Plaintiffs’ homes.

57. Defendant has similarly intervened in the past when compliance issues have arisen with this facility.

58. Below is an overhead satellite photo of the area, with the area where Plaintiffs live inside the yellow circle and the two nearby farms labeled by red arrows as well as their

respective spray fields. Upon information and belief, the hog farm due east of the Major Murray facility was previously a Murphy-Brown contract facility but is no longer in operation.



**C. Background on Hog Manure and Odors.**

59. Hogs generate multiple times more feces and urine per day than a human being. The General Accounting Office has estimated that 7.5 million hogs in five eastern NC counties produced 15.5 million tons of manure each year.

60. Murphy-Brown's diet and antibiotic regimen is meant to promote aggressive growth, causing more manure to be generated in less time.

61. A hog may grow from birth to 250 pounds in about six months or less before it is slaughtered. A piglet usually feeds from its mother until it is three to four weeks old and weighs about 10 to 15 pounds. Then its diet is transitioned to feed grain over the next few weeks until it is about 9 weeks old and weighs 40 to 60 pounds. Then it is known as a feeder pig. It takes about six months altogether for a pig to reach market weight of over 250 pounds. A slaughter-weight hog is thus about fifty percent heavier than an average person.

62. The hog odors can be smelled at extremely low concentrations that cannot be measured with available instruments. The odors are released from the hog sheds, the open-air lagoons and the spray fields.

63. Dietary manipulation can reduce odor. Murphy-Brown supplies all the feed and sets the ingredients and additives for its hogs and on information and belief has tailored the diet without regard to reducing the odor and nuisance.

**D. Other Causes of Nuisance From Flies, Buzzards, Trucks, Dead Boxes.**

64. In addition to and separate from any foul odors, the presence of Defendant's hogs causes periodic swarms of flies and other insects and pests. As reflected in the facts regarding the Plaintiffs and their families, they find that large black flies periodically come onto Plaintiffs' properties. These flies were not prevalent before the thousands of hogs came. The flies impair cookouts and other outdoor activities. Other insects such as gnats also come onto Plaintiffs' property. The flies get stuck to windows and get inside the homes. They land on peoples' skin and on their food and are disgusting and humiliating.

65. These insects and pests are also scientifically found to be "vectors" for disease. Flies for example can carry germs.

66. In addition, ever since the hogs have come, trucks crawl up and down the streets outside of the Plaintiffs' homes. These streets are not wide city thoroughfares distanced from the houses, but rather narrow country lanes. The trucks cause noise, dust, and lights from headlights and they pass even in the middle of the night. Further, when the trucks bring hogs in and out this can create extra odor. And, when the "dead trucks" come for dead hogs, they can create extra foul odor as well as dripping foul substances.

67. In addition, the dead hogs are a nuisance. Animals in confinement under high-density circumstances present a ready climate for disease. As a result, many swine facilities have used vaccines and antibiotics not only to promote growth but also to counteract the health effects of crowded conditions. It has been estimated that as much as 80% of all antibiotics administered to CAFO animals are at sub-therapeutic levels, *i.e.*, they are not used to treat animals that are sick. The crowded often hot conditions still lead to significant mortality rates. The pigs cannot develop resistances to disease like they would living in pastures outdoors, and their systems have extra stress from living in close quarters without any earth to root or dig in, resulting in weakened immune systems. The pigs are susceptible to infection, microbes, parasites, and fungi.

68. The mortality rates from the CAFOs as well as periodic epidemics of diseases such as PEDV (Porcine Epidemic Diarrhea Virus) result in there being many dead hogs from time to time placed in "dead boxes." These are nothing more than dumpsters full of dead animals left out in the open often in plain view so that neighbors see rotting animal corpses in the middle of their neighborhoods. These "dead boxes" are unsightly and attract buzzards, flies and vermin, and are a further cause of nuisance. Periodically a "dead truck" picks up the dead hogs to drive

them to a rendering plant. For no reason but convenience for the CAFO the dead boxes are often placed in plain view by the street. This increases the nuisance to the neighbors.

**E. Murphy-Brown's Control Over its Hogs.**

69. Defendant is a large and sophisticated company and precisely monitors the activities occurring at the facilities holding its hogs. Defendant through standardized procedures and equipment monitors the number of hogs at each site, the amount of feed used, the growth rate, the amount of feces and urine going into the cesspools, and the "freeboard", *i.e.*, the distance between the surface of the cesspool and the top of the earthen rim surrounding it.

70. Defendant has publicized in the past how it exercises detailed control over the operations of the facilities that hold its hogs. Defendant uses trucks to haul its hogs from one site to another depending on what is most efficient and profitable for Defendant. Defendant has also used tanker trucks to haul manure and flush water from one lagoon to another at different sites for reasons including when the volume that is being generated threatens to flood a lagoon.

71. Murphy-Brown was formed in 2000 from an acquisition by Smithfield of companies owned by Wendell Murphy, Sr. (the founder of the business), the Murphy family, and Murphy businesses including Murphy Family Farms (collectively "Murphy"), as well as Brown's of Carolina. Mr. Murphy is credited with adopting the CAFO design of mechanized farms that had first been invented for poultry raising in other states. However, hogs generate a great deal of manure, and North Carolina is more densely populated than many other agricultural states and the coastal plain land has a shallower water table and more wetlands. Murphy required growers to invest in CAFO equipment if they wanted to hold Murphy hogs and increased the number of hogs until counties like Duplin and Sampson became the most densely-packed hog counties in the entire United States.

72. The close confinement of hogs also means epidemics can spread through hog populations and diseases such as Porcine Epidemic Diarrhea Virus aka PEDV have led to “PED” signs outside many of the facility gates and at roadsides at various times.

73. Recognizing the unsustainable and injurious nature of the “lagoon and sprayfield” system, North Carolina banned further construction of CAFOs that use the design in 1997. This ban was re-enacted in 2007. Under this “moratorium,” in fact hog producers are free to build new facilities so long as among other things, they will not cause odor to cross onto neighboring land. Upon information and belief, no new CAFOs have been built using the lagoon and sprayfield design, in an admission of their nuisance-causing nature.

74. The 1997 moratorium was enacted only after CAFO construction began to threaten the Pinehurst golf course. The bill was sponsored by North Carolina State House Representative Richard Morgan who stated that he filed the bill because he was “worried about industrial-style hog farms cropping up near golf courses in Moore County” and stated that his aim was to “draw a distinction between farming and the mass production of swine.”

75. Under the Murphy CAFO design, hogs step, sit, and lie on the raw manure and it gets on their bodies closely packed in the sheds. The hogs squish and push it down through the slats in the floor. It drips into a holding pond below the floor where it sits like an unflushed toilet. Large fans at the ends of the sheds ventilate to keep the hogs from suffocating. The hogs create dust that dries and turns into floating particles, and smells from the feces and urine goes into the air and is blown out by the fans.

76. After manure collects under the slatted floors, it gets flushed or drained out through pipes into the nearby open-air, uncovered, artificial cesspool filled with millions of

gallons of hog urine and feces and flush water. Because the cesspool is uncovered, it is free to evaporate bad odors into the air.

77. The manure is also spread on nearby fields. Often this is done by a “traveling-gun” system in which liquid is sprayed up into the air, and mist can drift off. Other times, a “center-pivot” system is used, which ejects it into the air by means of pressurized spraying. The use of subsurface injection or “knifing” the effluent into the ground can help lower odor. Yet on information and belief, Defendant has not required this at most of its swine sites in North Carolina even though it has replaced spray irrigation at sites in one or more other states.

78. In 2000, due to widespread concerns about pig farm odor coming from lagoons, North Carolina commissioned a multi-year study known as the “Smithfield Agreement.”

79. After years of study under the Smithfield Agreement, a majority of the economic committee members found there was economic feasibility for improvements. A minority opposed the finding. The minority report was signed off on by: Bart Ellis (of Smithfield Foods, Inc.); Dave Townsend and Dennis Dipietre (both of Premium Standard Farms, acquired by Smithfield in 2007); Bundy Lane (a Murphy-Brown contract grower who co-founded Frontline Farmers, a pork industry interest group); and Richard Eason (President of Cape Fear Farm Credit that finances CAFOs for Murphy-Brown growers).

80. Murphy-Brown is a multi-state corporation, wholly-owned by an even larger multinational corporation which itself is owned by a Chinese-controlled enterprise (formerly Shuanghui, now WH Group) after an acquisition valued at more than \$7 billion. The Smithfield integrated annual report for 2012 describes how Murphy-Brown is “the world’s largest producer of pork” and fiscal 2012 sales for Murphy-Brown were \$3.1 billion. Defendant is much larger

than and earns far greater revenues and profits from the hog operations than the local growers, who are akin to fast-food franchisees.

81. Murphy-Brown is part of one “integrated” enterprise, Smithfield, which owns the hogs through Murphy-Brown, owns the processing plants through its Smithfield Packing subsidiary, and controls other aspects of the pork production process. The relationship between Murphy-Brown and its growers is part of “vertical integration” in which Murphy-Brown is the “integrator.”

82. Smithfield has touted how “Smithfield manages every aspect of the pork production process. Vertical integration is a key point of difference and a unique selling proposition for our products and brands, allowing us to drive changes through the supply chain.” Despite its control over the entire process, Defendant has not made changes to end the nuisance.

83. As mentioned above, when tensions rose between Plaintiff Elsie Herring and Defendant’s contract grower over the spraying and foul odors, among other things, Defendant intervened and exerted control over the subject grower. Unfortunately, the changes Defendant implemented did not substantially eliminate or abate the nuisance.

84. Murphy-Brown is part of the pork processing conglomerate owned by WH Group, formerly Shuanghui. Shuanghui Group is a meat processing company headquartered in Luohe, Henan, China and the largest meat producer in China.

85. At the time of the acquisition, Smithfield President and CEO Larry Pope denied any Chinese government control over Shuanghui. However, according to a PBS report dated September 12, 2014, the Chinese government in 2011 issued a 5 year plan directing food companies such as Shuanghui to obtain more meat by purchasing overseas businesses, Shuanghui was required to carry out the 5 year plan, and senior management of Shuanghui were

appointed by the Chinese government. The Bank of China, owned by the Chinese Government, approved a \$4 billion loan to facilitate the deal. According to testimony before the U.S. Senate in July 2013 and reported translations of the Chinese-language website pages, Shuanghui is a Chinese state-controlled company founded by Chairman Wan Long, whose biography describes him as a member of the Communist Party and a former soldier in the People's Liberation Army and political official. This was the largest Chinese takeover of any U.S. business and the first Chinese purchase of a U.S. food company.

86. The WH Group Global Offering dated on or about April 15, 2014 in fact describes: "We believe we can increase our exports to China because of the supply-demand gap in China and the scale of our U.S. operations." Chinese demand for pork is rapidly growing. On information and belief, Murphy-Brown-grown pork is already sold in China. Plaintiffs are concerned that with Shuanghui's purchase of Smithfield, and in light of the company's 5 year plan with the Chinese government, there will be pressure to increase exports to China, increase pork production in North Carolina and this will increase the nuisance.

87. The WH Group Global Offering described that "we are the world's largest pork company" and how they owned "the U.S.'s largest pork company, Smithfield." Further it stated how "We have strict quality control systems in each segment of our value chain, from production through sales and distribution. In the U.S., these objectives are grounded in our sustainability program, which focuses on key areas such as ... helping communities and value creation." Murphy-Brown public pronouncements include similar assertions. It is improper, negligent and reckless for Murphy-Brown to continue causing a known nuisance with its hogs and harming the community while representing to investors that it does nothing of the sort.

88. The WH Group offering also states that “hog prices in the U.S. from 2010 to 2012 were approximately 40% lower than those in China....” It is improper and reckless for Murphy-Brown to continue to shift the costs caused by its hogs and their waste onto North Carolina communities, so that U.S. hog costs can stay at a price much lower than what they cost in China.

89. The WH Group offering also states that “In the U.S. and Europe, a growing number of our customers prefer suppliers that are vertically integrated and have stringent controls over supply and a commitment to sustainability,” and touts a “commitment to sustainability” and “our sustainability program, which focuses on ... helping communities.....” It is negligent and reckless for Defendant to continue using an unsustainable system in our State while touting to the public that it does the opposite.

90. The growers must follow the orders and rules from Murphy-Brown or risk losing the hogs, which they never even own. The 2012 annual report describes how “All company-owned and contract farms are subject to random third-party audits and site assessments” and how “Members of our production management staff ... visit every contract and company-owned farm at least once a month.” Murphy-Brown constantly sends specialists to the site such as engineers and technicians, inspectors, and veterinarians and controls relevant details of operations.

91. As of 1995, it was reported that a typical contract grower borrowed anywhere from \$200,000 to \$1 million to construct hog sheds. Murphy specified the CAFO design and equipment. Murphy financed or facilitated the financing for many growers. While the grower carried the debt for a many-year loan term, under the form contracts, Murphy could pull its hogs out at any time for a variety of reasons. The CAFOs are “single use” facilities designed for raising hogs and no other purpose. Wendell Murphy, Sr. has described the situation with words to the effect of “once you pour the concrete, you are committed.”

92. Over the years Murphy has also required some or all growers to accept terms under which if a grower fell into some lower percentage of all the growers on various metrics, such as the lowest 25%, Murphy could cancel the contract. These provisions incentivize the contract growers to work to maximize growth of the hogs at the expense of all other considerations. Meanwhile, at all times Murphy-Brown still owns the hogs.

93. Murphy has admitted the control it has over the hog CAFOs and its direct involvement in the swine sites. In 2011, Wendell Murphy, Sr. described that “The typical livestock or poultry agreement is that the farmer or contract producer provide the facilities and labor, but in this case, to enhance the idea, to cause more people to come forward, we agreed to supply their materials... the fence and the posts, the feeders, everything.” However in grower bankruptcy proceedings Murphy-Brown has also contended that it had no duty to keep pigs at the site if it wanted to remove them. These facts further evidence Defendant’s control.

94. Murphy-Brown owns the hogs at as many as two-thirds of all North Carolina sites. DENR records confirm Defendant’s control over the hogs and the odors and nuisance that they cause. On multiple occasions, when a grower has encountered problems, Murphy-Brown has intervened to contest any efforts by DENR to impose fines or require changes, and has closely controlled and supervised any corrections.

**F. Evidence of Negligent, Willful and Wanton Conduct.**

95. Murphy-Brown and its predecessors, in placing tens of thousands of hogs at the facilities, acted negligently and in willful disregard to the harm known to be caused by the hogs. Over the years, Defendant has continued to cause its hogs to create nuisance and injury without taking action to end the nuisance despite repeated episodes of damage and mounting scientific research verifying the harm suffered by the Plaintiffs.

96. The 2012 Smithfield annual report claims that “Murphy-Brown is committed to ... protecting the environment...” The studies, reports, incidents and complaints that have amassed since Murphy first started the CAFO system clearly show predictable nuisance caused by swine sites to nearby neighbors. However, Defendant has not stopped the nuisance, even after many neighbors sent mediation demands over a year ago.

97. From the early 1990s to present, due chiefly to Defendant and its predecessors’ efforts, hog production greatly expanded and CAFOs were placed near community members and Plaintiffs. Production in North Carolina tripled between 1990 and 1995, growing from 5 million hogs produced in 1990 to 15 million in 1995. The hogs at the subject facilities were part of this rapid expansion. Multiple spills, lagoon breaches, episodes of odor and harm have occurred. Numerous reports have confirmed the injury suffered by community members. The Legislature has banned any new CAFOs using the Defendant’s old system due to the indisputable evidence of harm and damage to neighbors.

98. Defendant and its predecessors have acted improperly during prior incidents caused by the CAFOs. As an example, on May 8, 1991, a 10-acre feces and urine cesspool ruptured on Murphy's Magnolia No. 1 facility in Duplin County. After the lagoon collapsed, tons of water went into Millers Creek. According to news reports, Wendell Murphy, Sr. knew about the incident within hours and personally visited the site. It took four days to find and patch the leak. But Murphy never notified the State about the spill.

99. Mr. Murphy in a news article dated February 19, 1995 stated that there was “not one shred, not one piece of evidence anywhere in this nation” that hog lagoons were harming the groundwater.” In fact, hog CAFOs do harm the groundwater. Studies have reviewed lagoons in the coastal plain of North Carolina and found seepage losses to the surficial aquifer.

100. Mr. Murphy, as reported on February 24, 1995, represented that CAFOs increased property values: “Wendell Murphy, founder and chairman of Murphy Family Farms, rejects claims that hog farms devalue nearby property. In fact, he says the opposite is true: ‘Property values have gone up, and I mean seriously gone up, as a result of this industry being here.’ ... ‘If somebody has property near us and they say their property is worth less and they have to leave -- tell us about it. We'll buy it.’” Those statements were inaccurate. Numerous studies have shown that swine sites hurt property values. According to subsequent news reports, when one or more CAFO neighbors later sought to take Mr. Murphy up on his offer to have him buy their properties, Mr. Murphy backed out and refused to do so.

101. In August of 1997, Smithfield was fined \$12.6 million for violating the U.S. Clean Water Act. This was reported to be the largest fine ever imposed under the Clean Water Act. Smithfield was found to be dumping into the Pagan River, a tributary flowing into the Chesapeake Bay. The company's failures resulted in more than 5,000 violations of permit limits over five years. These violations caused harm to the water quality of the Pagan River, the James River, and the Chesapeake Bay. Further, the Courts found that the company had falsified documents and destroyed water quality records.

102. Smithfield contributed to an explosion in growth of hog CAFOs in close proximity to one another and to neighboring communities when it opened the world's largest slaughterhouse in Tar Heel, Bladen County in 1992. Duplin, Sampson, Bladen and other North Carolina Counties became the most densely hog-packed in the United States. Smithfield also has a processing plant in Kinston, Lenoir County which it massively expanded in 2006 pursuant to a supplier agreement with Subway and has since expanded further. Smithfield also acquired another large processing plant in Clinton, Sampson County in 2007.

103. The input demand of these plants has led to the Plaintiffs being surrounded by Defendant's hogs in Duplin County, which has been described as the most densely packed hog County in the United States along with Sampson County, having upwards of 30 to 40 hogs for every resident. From the standpoint of nuisance caused to nearby neighbors, it was improper, negligent, and reckless to densely pack so many hogs at sites using the lagoon and spray system, and it has become more so over time as scientific studies have repeatedly confirmed the harm.

104. In April 1999, a spill at Vestal Farms, owned by Murphy, dumped over a million gallons of water in Duplin County. Murphy and the NC Pork Council claimed the spill was caused by vandals. The State found zero evidence to back up Murphy's claim. In fact there was vegetation growing near the lagoon, tree roots weakened the wall, and there were erosion issues. Murphy had been warned to clear the trees. The State concluded that excessive seepage through the dike wall was the probable cause. Nearly 2 million gallons spilled into a tributary of the Northeast Cape Fear River. Murphy was fined \$40,650.

105. In September 1999, Hurricane Floyd caused flooding in Eastern North Carolina. Many hog farms spilled and thousands of dead pigs floated in nearby areas. This hurricane and other rain events have caused flooding from hog facilities and highlighted the vulnerabilities in our State. However in 2011, Wendell Murphy, Sr. stated the harm caused by the hog facilities in the hurricane was "minimal."

106. In the 1999-2000 time period, NC DENR and Governor Hunt's Administration proposed a program to end the use of the lagoon and spray system and described: "The Hunt Administration proposes this anaerobic swine lagoon conversion plan in an effort to move North Carolina towards a day when swine production produces no ill public health or environmental

impacts so that it becomes a sustainable part of North Carolina's economy." However, efforts to change the waste technology were opposed by Defendant.

107. In 2003, the non-partisan RTI institute issued a report regarding the nuisance and other bad impacts to North Carolina of the lagoon-and-sprayfield CAFOs. The report found among other things that the sites have a negative impact on "measures of human well-being" and found: "Odor emissions from hog farms are a continuing concern in North Carolina, particularly for residents living in close proximity to farms." It noted how "using data on housing prices in nine counties in southeastern North Carolina ... found that proximity to hog farms had a significantly negative impact on housing values and that these effects varied by the size of the operation." Finally it noted "disease-transmitting vectors."

108. Murphy has added special controls at sites in other states and has publically admitted that it was to "reduce the level of odor produced by the farms." Defendant has added controls at some sites in North Carolina such as the Mitchell Norris facility in Bladen County due to odor and has installed a partial lagoon cover at Kenansville Farm in Duplin County "to respond to odor complaints from neighbors." Defendant is aware that the hog sites cause odor and nuisance, but willfully refuses to install improvements where its hogs are stored herein.

109. In contrast to Defendant's assertions that its hogs do not cause nuisance or injury, numerous scientific reports and studies have found that they do. These reports show that Defendant has actual knowledge of the nuisance caused by its swine, or is willfully blind to that fact. They also support the fact that the Plaintiffs suffer adverse effects from the odors such as nausea, congestion, wheezing and difficulty breathing, and loss of enjoyment and have reasonable fears regarding the effect of the nuisance upon them and their families, including young children or grandchildren, elderly and disabled family members, and other loved ones.

110. Because Murphy recklessly failed to perform proper studies to determine the potential harmful effects of the swine CAFOs before building them in the 1980s-early 90s, scholars were obligated to work to assess the health risks after the fact. Defendant's failure to take steps to end the nuisance and harm to neighbors even after all of this research was published reflects willful conduct. As merely a few examples of the numerous studies that were produced from 1995 onward:

- a. A 1995 study reviewed the effect of odors from large-scale hog operations on neighbors. The results indicated that persons living near the swine experienced odors and reported significantly more tension, depression, anger, fatigue, and confusion. Persons exposed to the odors also had more total mood disturbance.
- b. Studies from 1996 and later reflect that swine CAFOs are disproportionately located in communities of color and poverty more susceptible to the nuisance and more likely to experience detrimental consequences.
- c. A 1997 study of neighbors living within a two-mile radius of a 4,000 sow swine facility found that they reported higher rates of negative effects.
- d. A 1999 report found that health effects of swine sites included "odors" and "flies" among others.
- e. A 2000 study found that hog sites are concentrated in southeast North Carolina in poor, rural and African-American communities who are more susceptible to harm and who report decreased quality of life.
- f. A 2000 study on odors from swine sites found that people living nearby reported more tension, depression, anger, fatigue, confusion, and less vigor.
- g. In 2000, the North Carolina Council of Churches noted that hog operations adversely affect "those who live in the surrounding neighborhoods."
- h. A 2002 paper described how CAFOs and their odor disrupt the quality of life for neighbors in rural communities.
- i. A 2005 study reviewed the health effects of residents near industrial hog farms in the Duplin/Sampson County area and found increased psychological distress.
- j. 2006 studies surveyed children from schools in North Carolina who were near CAFOs and suggested that swine odor adversely affects the children.

- k. A 2006 study examined the air plume upwind and downwind from a CAFO and recommended buffering swine CAFOs from residential areas.
- l. A 2007 report found that “The encroachment of a large-scale livestock facility near homes is significantly disruptive of rural living.”
- m. A 2007 study found that due to factors like low income, inadequate housing, low health status, and insufficient access to medical care, racial discrepancies compound the negative impacts that hog farms create.
- n. A study from 2007 noted how “Odour gives a problem when pig farms are located close to residential areas.”
- o. A 2007 working paper noted that alternative technologies to process hog waste had been developed and that “the employment of alternative manure-management strategies ... would help address groundwater contamination and may also have the added effect of reducing air pollution or odor depending on the kind of strategy employed.”
- p. A 2008 study investigated residents living within 1.5 miles of industrial swine operations in eastern North Carolina. The study indicated that odor is commonly present and that the odors are related to interruption of activities of daily life.
- q. A 2008 report found that “Recurrent strong odors” and “increased populations of flies are among the problems caused by CAFOs that make it intolerable for neighbors and their guests to participate in normal outdoor recreational activities or normal social activities in and around their homes.”
- r. A 2008 publication by the Union of Concerned Scientists found that “CAFOs are sited in rural communities that bear the brunt of the harm caused by CAFOs. This harm includes the frequent presence of foul odors and water contaminated by nitrogen and pathogens, as well as higher rates of respiratory and other diseases compared with rural areas that are not located near CAFOs.” The report further noted how “Open manure lagoons ... allow substantial amounts of ammonia to escape into the air” and “emission of hydrogen sulfide, particulates, odors, and pathogens. Fine particulates formed from ammonia can be a cause of respiratory disease.”
- s. A 2008 study noted that for residents near CAFOs “hog odor limits several leisure time activities and social interactions.” The study focused on nuisance in North Carolina, defined to include conduct that “is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property.” The study found that within 1.5 miles of CAFOs, “hog odor limits activities of daily living that participants either ‘enjoyed’ doing the most or expected to be able to perform inside and outside their homes. It restricts, for instance, activities like cookouts, barbecuing, family reunions, socializing with neighbors, gardening, working

outside, playing, drying laundry outside, opening doors and windows for fresh air and to conserve energy, use of well water, and growing vegetables.”

- t. A 2009 study found that individuals living in African-American communities in southeastern North Carolina near hog farms reported high rates of stress and negative mood.
- u. In 2008-09, a global swine flu pandemic was caused by H1N1 influenza virus. Research noted that one potential source of the outbreak was swine in CAFOs and that swine flu is more likely to persist in larger farms with higher pig densities. Reports noted how in 1994, Smithfield had established its Perote operations in Mexico and in 1999 expanded its operations. The first reports of swine flu came from Perote. The Perote facility raised upwards of 950,000 hogs in 2008. It was reported that the vector of the outbreak was the clouds of flies that come out of the hog barns, and the lagoons into which the facility spewed tons of excrement. According to a municipal health official, the disease vector was a type of fly that reproduces in pig manure.
- v. A 2009 study noted that increases in livestock production were associated with an increase in infant mortality. “Using county-level national data spanning two decades, the article documents a positive relationship between the concentration of industrial production in livestock farming and infant mortality rates....”
- w. A 2010 report noted how “CAFO odors can cause severe lifestyle changes for individuals in the surrounding communities and can alter many daily activities. When odors are severe, people may choose to keep their windows closed, even in high temperatures when there is no air conditioning. People also may choose to not let their children play outside and may even keep them home from school.... Odor can cause negative mood states, such as tension, depression, or anger....”
- x. In 2011, a study summarized how “Animal manure and sewage sludge” were harmful to neighbors based on studies of 16 eastern North Carolina communities near industrial swine farms.
- y. A 2012 sought “To determine whether neighbors around manure lagoons and massive hog confinement buildings who complained of offensive odors and symptoms had impaired brain and lung functions.” The study found that “Exposed subjects mean forced vital capacity and expiratory volume in 1 sec were reduced significantly compared to local and regional controls.” Further, “Near neighbors of hog enclosures and manure lagoon gases had impaired neurobehavioral functions and pulmonary functions and these effects extended to nearby people thought to be controls. Hydrogen sulfide must be abated because people living near lagoons cannot avoid rotten egg gas.”
- z. A 2013 study found that “malodors may be associated with acute blood pressure increases that could contribute to development of chronic hypertension.”

- aa. A 2013 article noted that “Swine finishing operations near residential areas can create public nuisance concerns due to the annoyance potential of odor emitted from the houses.”
- bb. A 2013 study of the effect of hog CAFOs in Sampson County on property values found that proximity to a lagoon results in a decline in the value of residential parcels with homes.
- cc. According to a 2013 publication by the National Association of Realtors “most studies have found a negative relationship between feedlots and property values.”
- dd. A 2013 report described how “On the coastal plain of eastern North Carolina, families in certain rural communities daily must deal with the piercing, acrid odor of hog manure—reminiscent of rotten eggs and ammonia—wafting from nearby industrial hog farms. On bad days, the odor invades homes, and people are often forced to cover their mouths and noses when stepping outside. Sometimes, residents say, a fine mist of manure sprinkles nearby homes, cars, and even laundry left on the line to dry.”
- ee. A 2014 study “odor concentrations ... in the ventilation air from the pig rooms” and found the results “indicate an acute need for ... odor mitigation technologies.”
- ff. A 2014 paper documented how industrial hog operations in North Carolina disproportionately affected Black, Hispanic and American Indian residents. The paper noted how confinement houses, cesspools, and sprayers “affect nearby neighborhoods where they cause disruption of activities of daily living, stress, anxiety, mucous membrane irritation, respiratory conditions, reduced lung function, and acute blood pressure elevation.”
- gg. A 2014 study found a significant association between individuals residing in communities with pigs and livestock associated MRSA, and found pig-associated MRSA even in people without direct contact with the swine.
- hh. An April 2014 study reviewed available data regarding ammonia (NH<sub>3</sub>) and hydrogen sulfide (H<sub>2</sub>S) emissions from swine production facilities and found increased emission rates.
- ii. A 2014 article regarding industrial food animal production (IFAP) described how “Research linking IFAP to public health concerns and impacts continues to increase. In addition to posing respiratory health risks to those residing near operations due to emissions that include hydrogen sulfide, particulate matter, endotoxins, ammonia, allergens, and volatile organic compounds, odor generated by IFAP operations and spray fields has been associated with a broad range of health problems” and how there was “research linking chronic exposure to odors

from IFAP to headaches, nausea, upset stomach, mood disorders, high blood pressure, and sleep problems. Additionally, there is growing evidence that livestock can transmit methicillin-resistant Staphylococcus aureus (MRSA) to humans.”

**COUNT I: RECURRING, TEMPORARY, ABATABLE,  
PRIVATE NUISANCE**

111. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

112. Plaintiffs, and each of them, are, or during some or all of the pertinent times were, in lawful possession of their properties, and used them, or had the right to use them, as residences or for other legitimate uses.

113. Defendant, during the pertinent times, owned and materially controlled the hogs in close proximity to Plaintiffs’ properties so as to cause a private nuisance.

114. Plaintiffs’ right to use and enjoy their properties has been impaired by recurring foul and offensive odors; hog manure and urine; flies or other insects; buzzards or other scavenger animals; vectors of disease; trucks that cause noise and lights at night and foul smells; dead hogs; and other sources of nuisance.

115. The nuisance caused by Defendant’s swine has substantially impaired Plaintiffs’ and use and enjoyment of their property, and has caused anger, embarrassment, discomfort, annoyance, inconvenience, decreased quality of life, deprivation of opportunity to continue to develop properties, injury to and diminished value of properties, physical and mental discomfort, and reasonable fear of disease and adverse health effects.

116. Defendant has engaged in improper or negligent operation of swine sites during some or all of the pertinent times, causing harm to the Plaintiffs.

117. Defendant's conduct has been unreasonable. Reasonable persons, generally, looking at Defendant's conduct, the problems caused by it, the character of the neighborhood, the nature, utility and social value of the use of land, and the extent, nature, and recurrent nature of the harm to Plaintiffs' interests, would consider Defendant's conduct to be unreasonable.

118. The invasions, harms and injuries complained of herein by Plaintiffs are more than slight inconveniences or petty annoyances, but rather substantial invasions, harms, and injuries to Plaintiffs' comfort, property, and use of their land.

119. Defendant had actual knowledge during some or all of the pertinent times that the subject hogs were causing a nuisance.

120. Defendant knew or should have known that foul and offensive odors, hog manure and urine, flies and other insects, and other causes of nuisance from their hogs would recurrently encroach upon and invade Plaintiffs' properties, and substantially impair Plaintiffs' use and enjoyment of their properties.

121. While knowing that practicable technologies and methods are readily available to abate the nuisances and problems, Defendant has failed to abate the foul and offensive odors and other causes of nuisance.

122. During the pertinent times, the level of control that Defendant exercised over relevant aspects of the hogs and the facility operations rose to such a level that Defendant stood in a principal-agent relationship with the facility owners and is vicariously liable for their conduct in operating the facility in a manner which caused a nuisance to the Plaintiffs.

123. Alternatively, during the pertinent times, Defendant's own direct involvement in material aspects of the operation of the facility and management of the hogs renders Defendant independently liable for the nuisance with regard to the Plaintiffs.

124. Alternatively, during the pertinent times, Defendant employed contract growers to do work which Defendant knew or had reason to know would likely involve the creation of a nuisance, and is therefore subject to liability for harm resulting to Plaintiffs. *See* Restatement (Second) Torts § 427B (“One who employs an independent contractor to do work which the employer knows or has reason to know to be likely to involve a trespass upon the land of another or the creation of a public or a private nuisance, is subject to liability for harm resulting to others from such trespass or nuisance.”).

125. Defendant’s conduct described above constitutes a series of recurring temporary abatable private nuisances, which Defendant has failed to remedy within a reasonable period of time, and for which Defendant is liable.

126. As a result of Defendant’s liability for private temporary recurring abatable nuisance, Plaintiffs are entitled to compensatory damages in an amount to be determined at trial.

127. In accordance with Fed. R. Civ. P. 9(g), Plaintiffs hereby plead special damages including the diminished value and lost rental value of their homesteads and properties. Plaintiffs show that as homeowners and occupants of their family properties, they are of the opinion that one impact of Defendant’s nuisance has been to reduce their property values. Numerous studies and reports have determined that hog CAFOs lower nearby property values. Plaintiffs allege that each of their homes and properties has lost significant value as a result of the proximity of Defendant’s hogs and the stench and nuisance that they cause, to be shown at trial. These damages are in addition to all other allowable damages which the jury may award.

## **COUNT II: NEGLIGENCE**

128. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

129. At all pertinent times, Defendant had a duty of reasonable care as to the ownership, maintenance, and control of the hogs that it recurrently sent in groups to swine facilities.

130. During the pertinent times, the level of control that Defendant exercised over relevant aspects of the hogs and facility operations rose to such a level that Defendant stood in a principal-agent relationship with the facility owners and is vicariously liable for their conduct in operating the facilities in a negligent manner which caused injury to the Plaintiffs.

131. Alternatively, during the pertinent times, Defendant's direct involvement in material aspects of the operation of facilities and the management of the hogs renders Defendant independently liable for its breaches of its duty of due care with regard to the Plaintiffs.

132. Defendant has recurrently breached its duty of due care. As a direct and proximate result of Defendant's breach of its duty of care, the Plaintiffs have been injured.

133. During the pertinent times, Defendant knew or should have known that its actions and omissions were causing and contributing to cause harm to the Plaintiffs.

134. Plaintiffs are entitled to actual damages in a fair and reasonable sum in an amount to be determined at trial sufficient to compensate Plaintiffs for the negligence of Defendant.

### **COUNT III: PUNITIVE DAMAGES**

135. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

136. Defendant's above-described recurring conduct, acts, omissions, negligence, and impropriety included aggravating factors giving rise to a claim of punitive damages under Chapter 1D of the North Carolina General Statutes.

137. Pursuant to N.C. Gen. Stat. § 1D-15(a), Defendant is properly liable for punitive damages in this action in that Defendant is liable for compensatory damages and has committed one or more aggravating acts or omissions justifying an award of punitive damages, including without limitation, recurring acts of egregious and reckless behavior, and specific instances of willful and wanton conduct.

138. The recurring conduct, acts, omissions, negligence, and impropriety of the Defendant were willful, wanton, malicious, and in reckless disregard for the rights and interests of the Plaintiffs and justify an award of punitive damages. Accordingly, Plaintiffs demand judgment against Defendant for punitive damages in an amount to be determined at trial.

#### **COUNT IV: INJUNCTIVE AND EQUITABLE RELIEF**

139. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

140. In addition to their claims for monetary damages, the Plaintiffs respectfully request entry of injunctive and equitable relief requiring the Defendant to implement and continue measures to alleviate and abate the nuisance-causing conditions alleged herein.

#### **JURY DEMAND**

Plaintiffs respectfully request a trial by jury of all claims so triable.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs pray that this Court:

- A. Award the Plaintiffs compensatory damages, in an amount to be determined at trial;
- B. Award the Plaintiffs punitive damages;
- C. Award the Plaintiffs pre-judgment and post-judgment interest and any other costs, expenses or fees to which they may be entitled by law;
- D. Award the Plaintiffs appropriate injunctive and equitable relief; and
- E. Award the Plaintiffs such other and further relief as is just and proper.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted, this the 23rd day of September, 2014.

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