

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

Tony Farris,
Kecia Farris,
Annie Harper,
James Harper, Jr.,
Jediael Leak,
Janice Pickett,
Richard Williams,
Margaret Williams,
Calvin Melvin,
Debbie Melvin,
Celestine Brown Smith,
Sandra C. Bethune,
Donald David Carr,
Carolyn B. Carr,
Gregory Carr,
Robert Bethune,
Delois Bethune,
Gemell Bethune,
Jeffery Lanier,
Doris Chasten, and
Julaine Bennerman,

Plaintiffs,

v.

Murphy-Brown, LLC,

Defendant.

COMPLAINT

Plaintiffs hereby file their Complaint against Defendant Murphy-Brown, LLC (“Murphy-Brown” or “Defendant”) and allege as follows:

I. INTRODUCTION

1. The Plaintiffs are residents of Duplin County, North Carolina. During the pertinent times they have resided on, owned and used land in close proximity to hog confinement sites known as E & B Farms #1 - 3, Austin Farm #1 & #2, James Bryan Peterson Farm 3, Pork

Chop # 4, and Bud Rivenbark Farm. Together, these sites contain approximately 31,000 "feeder to finish" swine owned by the Defendant, Murphy-Brown. Each of these hog confinement sites is referred to herein as a Concentrated Animal Feeding Operation ("CAFO").

2. Hogs generate three times as much or more feces and urine as humans. The Defendant's hogs at these facilities generate as much sewage as a small city, but any city would have plumbing and a sewage treatment plant. Defendant Murphy-Brown has failed to take adequate steps to dispose of the millions of gallons of urine, feces and flush water that come from the hogs each year, and the odor, flies, pests, and other nuisance they cause.

3. While placing tens of thousands of its hogs at these facilities, Murphy-Brown has failed to take appropriate steps to eliminate the obnoxious recurrent odors, flies, insect and pest vectors, and nuisance periodically emitted from the hogs. During the pertinent times, the hogs have impaired the Plaintiffs' use and enjoyment of their properties.

4. During the pertinent times, Murphy-Brown has placed many thousands of hogs at these facilities, provided feed, additives, and medicines, and provided veterinary, technical, and engineering services. Defendant knew and knows that the placement of so many hogs in such a small area causes egregious odors and other nuisance. However, Defendant has failed to take reasonable steps to reduce the nuisance and injury.

5. As a direct and proximate result of Defendant's conduct, Plaintiffs have been injured by odors, flies and other pests, and other causes of nuisance. The hogs produce large amounts of urine and feces which falls onto the slatted floors of the hog sheds, is held in storage spaces below, goes out to one or more large cesspools euphemistically called "lagoons," and is sprayed or otherwise land-applied onto fields. Dust and odor are blown out of the hog sheds by

large fans, and other odorous matter evaporates off of the lagoon surface and is sprayed in the air and comes off of the fields.

6. Defendant is a large enterprise with the ability and the resources to end the nuisance. Defendant's parent company, Smithfield Foods, Inc., was sold to a Chinese-backed multinational corporation, Shuanghui, in late 2013 in a transaction valued in excess of \$7 billion, and reported record profits for the first quarter of 2014. Defendant has made investments in other States to improve facilities and has remained highly profitable. However, during the pertinent times, Murphy-Brown has failed to make or cause to be made similar changes at the facilities herein despite knowing of the harm and injuries to neighbors caused by its swine.

7. Upon information and belief, Murphy-Brown owns more than 5 million hogs at more than 1,400 hog confinement sites in North Carolina. Murphy-Brown owns hogs and facilities in 11 other States including Colorado, Illinois, Iowa, Missouri, South Carolina, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, and Virginia. Murphy-Brown owns many of the local facilities and is much larger than the contract growers who own the others and who Murphy-Brown controls.

8. The image attached hereto as Exhibit 1, hereinafter referred to as “the map,” is an aerial photograph of the 2.5-mile-by-1.5-mile area in which Plaintiffs live and the hog CAFOs complained of herein are located. The area is part of the community of Greenevers. The road on which most of the Plaintiffs live is called “Carr Town Road” and is indicated with a yellow outline on the map. The yellow outline also encompasses the part of Cedar Lane where some Plaintiffs live, and part of Pasture Branch Road where some Plaintiffs live.

A. CAFO Facilities

9. All the facilities described herein follow the design established by Murphy-Brown for hog CAFOs, and upon information and belief were designed and specified by Murphy-Brown or its predecessor entities Murphy Farms and Brown's of Carolina. The hogs are kept in densely packed barns with slatted floors. Their urine and feces fall through the floor slats and are washed out into huge, open cesspools, each with a capacity of millions of gallons, called "lagoons."

10. Upon information and belief, as happens at other feeder-to-finish hog CAFOs, up to 10% or more of the hogs die during the few months they are present due to the stressful conditions, and this number has been higher in recent months due to the outbreak of Porcine Epidemic Diarrhea Virus or "PEDV" that has affected hog CAFOs throughout the State.

11. The CAFO called "**Austin Farm #1 & #2**" is a feeder-to-finish operation, meaning that it takes in baby hogs weighing about 30 pounds and about 5 months later sends them to be slaughtered at a weight of about 250 pounds. It consists of 6 barns and 2 lagoons, having capacity to hold an average of 7,344 swine. It was first stocked with hogs on or about June 29, 1995. Throughout its existence this facility has been used to grow hogs that are owned by Murphy-Brown (or its predecessors).

12. To spread the liquefied hog manure from the cesspools onto fields, this CAFO uses a "reel-and-gun" system, which uses pumps and hoses to pump the lagoon contents out to mobile sprayers which shoot it into the air at an upward angle, rotating so as to spread it over fields. This CAFO has about 200 acres of land, most of which is used for manure application. However, on information and belief the acreage for this site as for others is insufficient to absorb the effluent from so many hogs, which contributes to the malodorous decomposition. Murphy Family Farms Technical Specialists M. Kevin Weston and Kraig Westerbeek designed and

created Austin Farm #1 & #2's management plan and lagoon, which included use of "Traveling Gun / Reel Irrigation." Murphy-Brown has full knowledge of the amount of manure produced by the hogs it places here (approximately 10,000 gallons per day), and what is done with it.

13. Upon information and belief, up to 35 or more hogs die at Austin Farm #1 & #2 each week on average. This CAFO places the dead hogs in dumpsters called "dead boxes" to be picked up by "dead trucks" that take the hogs to a rendering plant called Valley Protein, where they are cooked down to make feed for other animals. Murphy-Brown is aware of the numbers of hogs that die and of how they are disposed.

14. The Plaintiffs named herein live between about a quarter mile and a mile and a half from Austin Farms #1 & #2.

15. The CAFO called "**E & B Farms #1 - 3**" is a feeder-to-finish operation like Austin Farm. It consists of 9 barns and 3 lagoons, having capacity to hold an average of 11,016 swine. Throughout its existence it has been used to grow hogs owned by Murphy-Brown.

16. To spread liquid from the cesspools onto nearby fields, this CAFO uses a "reel-and-gun" system as previously described. This CAFO has over 160 acres of land, mostly used for hog effluent application. The acreage is insufficient to absorb the effluent from so many hogs, which contributes to the malodorous decomposition. Murphy-Brown has full knowledge of the amount of manure produced by the hogs it places here (approximately 15,000 gallons per day), and what is done with it.

17. Upon information and belief, more than 50 hogs die at E & B Farms #1 - 3 each week on average and are disposed of via "dead boxes" and "dead trucks" as described above. Murphy-Brown is aware of the numbers of hogs that die and of how they are disposed.

18. The Plaintiffs named herein live between about one (1) mile and two (2) miles from E & B Farms #1 - 3.

19. “**James Bryan Peterson Farm 3**” is a feeder-to-finish operation. It has capacity to hold an average of 3,672 hogs. This operation was started under the name “Greenevers Farm” and upon information and belief was first stocked with hogs in about 1992 or 1993. Throughout its existence this facility has been used to grow hogs that are owned by Murphy-Brown.

20. The facility’s “lagoon” holds approximately 5.6 million gallons. This facility has in the past used a “reel-and-gun” method to spread manure from the cesspool onto nearby fields, but upon information and belief now uses a different system called a “pivot sprayer,” which is a long, metal, wheeled, cross-braced structure that slowly swings around a pivot at one end while spraying lagoon contents downward from many points along its length onto fields in a large circle. Murphy Family Farms Technical Specialists Weston and Westerbeek designed and created this CAFO’s management plan and lagoon. On this facility’s plan on file with DENR, the hog barns are referred to as “Murphy Topping Houses.” This CAFO has about 60 acres of land, but upon information and belief only sprays to about 23 acres via its pivot sprayer system. The acreage is insufficient to absorb the manure, which contributes to the malodorous decomposition. Murphy-Brown has full knowledge of the amount of manure produced by the hogs it places here (approximately 5,000 gallons per day), and what is done with it.

21. Upon information and belief, more than 18 hogs die at James Bryan Peterson Farm 3 each week on average and are disposed of via “dead boxes” and “dead trucks” as described at the other CAFOs. Murphy-Brown is aware of the numbers of hogs that die and of how they are disposed.

22. The plaintiffs named herein live between about a quarter mile and one (1) mile from James Bryan Peterson Farm 3.

23. The CAFO called “**Pork Chop # 4**” is a feeder-to-finish operation. It has capacity to hold an average of 2,448 hogs. This operation was started under the name “C. C. Rouse Farm” and first stocked with hogs in 1995. Prior to construction of the CAFO, the land on which it now sits was wooded wetlands. Throughout its existence this facility has been used to grow hogs that are owned by Murphy-Brown.

24. This facility’s “lagoon” holds approximately five (5) million gallons. This facility uses the previously described “reel-and-gun” method which for this facility was designed by Murphy employee Westerbeek. Murphy also created the nutrient utilization plan filed with the North Carolina Department of the Environment and Natural Resources (DENR) on July 14, 2000. This CAFO has over 66 acres of land, but upon information and belief only sprays about 23 acres, insufficient to absorb the manure from so many hogs, which contributes to the malodorous decomposition. Murphy-Brown has full knowledge of the amount of manure produced by the hogs it places here (approximately 3,400 gallons per day), and what is done with it.

25. Upon information and belief, more than 12 hogs die at Pork Chop # 4 each week on average and are disposed of via “dead boxes” and “dead trucks” as described above. Murphy-Brown is aware of the numbers of hogs that die and of how they are disposed.

26. The Plaintiffs named herein live between about a half mile and three-quarters of a mile from Pork Chop # 4.

27. “**Bud Rivenbark Farm**” is also a feeder-to-finish operation. It has capacity to hold an average of 7,200 hogs. Upon information and belief, it was first stocked with hogs in

1995. Upon information and belief, throughout its existence this facility has been used to grow hogs that are owned by Murphy-Brown or its predecessor entity Brown's of Carolina.

28. This facility uses the previously described "reel-and-gun" system. An employee of Murphy-Brown's predecessor Brown's of Carolina named Jimmy Vinson provided technical expertise in designing the system. This CAFO holds approximately 300 acres of land, but upon information and belief only sprays on about 60 total acres, insufficient to absorb properly the manure from so many hogs, which contributes to malodorous decomposition. Murphy-Brown has full knowledge of the amount of urine and feces produced by the hogs it places here (approximately 10,000 gallons per day), and of what is done with it.

29. Upon information and belief, more than 35 hogs die at Bud Rivenbark Farm each week on average and are disposed of via "dead boxes" and "dead trucks" as described above. Murphy-Brown is aware of the numbers of hogs that die and of how they are disposed.

30. The Plaintiffs named herein all live a little under a mile from Bud Rivenbark Farm.

II. PARTIES

A. Plaintiffs

31. Plaintiff **Tony Farrior** is a resident of North Carolina who resides at 344 Carr Town Road, Rose Hill, NC.

32. Plaintiff **Kecia Farrior** is a resident of North Carolina who resides at 344 Carr Town Road, Rose Hill, NC.

33. Plaintiff **Annie Harper** is a resident of North Carolina who resides at 303 Carr Town Road, Rose Hill, NC.

34. Plaintiff **James Harper, Jr.** is a resident of North Carolina who resides at 303 Carr Town Road, Rose Hill, NC.

35. Plaintiff **Jediael Leak** is a resident of North Carolina who resides at 303 Carr Town Road, Rose Hill, NC.

36. Plaintiff **Richard Williams** is a resident of North Carolina who resides at 275 Carr Town Road, Rose Hill, NC.

37. Plaintiff **Margaret Williams** is a resident of North Carolina who resides at 275 Carr Town Road, Rose Hill, NC.

38. Plaintiff **Janice Pickett** is a resident of North Carolina who resides at 276 Carr Town Road, Rose Hill, NC.

39. Plaintiff **Calvin Melvin** is a resident of North Carolina who resides at 269 Carr Town Road, Rose Hill, NC.

40. Plaintiff **Debbie Melvin** is a resident of North Carolina who resides at 269 Carr Town Road, Rose Hill, NC.

41. Plaintiff **Celestine Brown Smith** is a resident of North Carolina who resides at 165 Cedar Lane, Rose Hill, NC.

42. Plaintiff **Sandra C. Bethune** is a resident of North Carolina who resides at 184 Cedar Lane, Rose Hill, NC.

43. Plaintiff **Donald David Carr** is a resident of North Carolina who resides at 158 Carr Town Road, Rose Hill, NC.

44. Plaintiff **Carolyn B. Carr** is a resident of North Carolina who resides at 158 Carr Town Road, Rose Hill, NC.

45. Plaintiff **Gregory Carr** is a resident of North Carolina who resides at 247 Carr Town Road, Rose Hill, NC.

46. Plaintiff **Robert Bethune** is a resident of North Carolina who resides at 150 Carr Town Road, Rose Hill, NC.

47. Plaintiff **Delois Bethune** is a resident of North Carolina who resides at 150 Carr Town Road, Rose Hill, NC.

48. Plaintiff **Gemell Bethune** is a resident of North Carolina who resides at 148 Carr Town Road, Rose Hill, NC.

49. Plaintiff **Jeffery Lanier** is a resident of North Carolina who resides at 143 Carr Town Road, Rose Hill, NC.

50. Plaintiff **Doris Chasten** is a resident of North Carolina who resides at 591 Pasture Branch Road, Rose Hill, NC.

51. Plaintiff **Julaine Bennerman** is a resident of North Carolina who resides at 579 Pasture Branch Road, Rose Hill, NC.

B. Defendant

52. Defendant **Murphy-Brown, LLC** is a limited liability company organized under the law of the State of Delaware. As reflected by its Annual Report dated March 25, 2014 filed with the North Carolina Secretary of State, Murphy-Brown'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 Foods, Inc. ("Smithfield"), a corporation incorporated under the law of the State of Virginia and with its principle office located at 200 Commerce Street,

Smithfield VA 23430. During the pertinent times, Murphy-Brown has conducted business in many States including North Carolina.

III. JURISDICTION AND VENUE

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

54. 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.

55. 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 the matter is between citizens of different States.

IV. FACTUAL BACKGROUND

A. Background regarding the Plaintiffs

56. During the pertinent times, the Plaintiffs have suffered injury and harm as a direct result of the tens of 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 into the air by large fans set in hog shed walls or by other means.

57. 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. 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 it. Sites must spray large quantities or else the “lagoons” will overflow. Murphy-Brown refuses to truck manure away by tanker truck although it has the capacity to do so. One or more Plaintiffs have witnessed spraying and spray mist. The sites also breed and attract flies and other insects. Dead hogs are placed in “dead boxes” where they rot until picked up by “dead trucks.” Large hog trucks carry hogs into and 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.

58. 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, inability to keep windows and doors open, difficulty breathing and other harms.

59. 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 or

public water, purchasing scented candles or incense, and purchasing air fresheners, purifiers, and deodorizers.

60. Plaintiffs have suffered decline in property values; horrible smells of hog feces, urine, body odor, and corpses; the sight of dead, bloated, and decaying hogs; liquid dripping from passing hog trucks and “dead trucks;” increased pest populations; and other aspects of the nuisance. The Plaintiffs feel angry, fearful, worried, and depressed. They are worried and fearful about their health and their children’s health. They are angry and depressed because Murphy-Brown has done nothing to fix the problem. Below are examples of some of the injuries suffered by the Plaintiffs and additional facts regarding the families.

61. **Kecia** and **Tony Farris** are a married couple who have lived at 344 Carr Town Road (at the north end of Carr Town Road) in the community of Greenevers since 1999. The James Bryan Peterson Farm 3 CAFO, approximately 600 yards away, is visible from their house.

62. Tony was born and raised in Greenevers. This house used to be Tony’s grandparents’ home and has been in his family since at least 1958. When Tony’s grandfather passed away, Tony inherited the house. Tony remembers wading in creeks and streams in the area as a child; the waters ran clear and he could sometimes catch fish to eat. Today, those waters are covered in algae and if Tony caught a fish there, he would not eat it. As a child and as a teenager, Tony got paid to pick crops of watermelons, tobacco, blueberries, and peppers in the fields around 344 Carr Town Rd. Today, some of those fields are part of the CAFOs holding tens of thousands of hogs.

63. Tony and Kecia met in Kecia’s home state of Florida in 1994. Tony had moved there for work in 1990, which was before the CAFOs started all around his home. Tony returned to North Carolina early in 1994 for a job with Circuit City in Raleigh, and Kecia came to live

with him in September 1994. Tony wanted to move back to his home town of Greenevers, but Kecia was reluctant. Tony remembered the fresh country air, blueberries, and clear streams from before he moved away, but Kecia had only been there recently and she saw and smelled the hog barns, urine, feces, dead hogs, and flying insects that by then infested the area. Nevertheless, Tony still wanted to move back, remembering the idyllic countryside of his youth. In 1999, Kecia relented. Tony and Kecia renovated the house and moved in.

64. It did not take Tony long to realize that this area was no longer the countryside he remembered. Since 1999, Tony and Kecia have dealt as well as they can with the recurrent odor of hog urine, feces, corpses, and body odor; the hordes of flies and other insects that feed on hog feces and urine and living and dead hog bodies; and the trucks that traverse the dirt lane adjacent to their property every day carrying living or dead hogs, spilling hog urine, feces, blood, and corpse residue onto the ground and leaving behind lingering foul odors.

65. Sometimes the odors are so strong that Kecia and Tony gag and choke. The hog trucks also damage Carr Town Road, the small country road that the Farris live on, creating potholes, cracks and raising dust and leaking liquids. The Farris have observed the trucks going to and coming from the James Bryan Peterson Farm 3 and Pork Chop # 4 CAFOs down the dirt lane beside their house, as well as Austin Farms #1 & #2 CAFO down another dirt lane that continues from the end of Carr Town Road.

66. In attempting to deal with the smell and insects, Kecia and Tony have carefully sealed all their windows and doors and keep them closed; they run their air conditioner constantly, even during mild weather, to keep the house cool because the insects seem to enter a cool house less often; they buy scented candles and other fragrance products; they have their

yard sprayed with pesticides in an attempt to control the insects; and they buy bottled water because they are concerned about hog farm runoff.

67. Despite their best efforts, the smell on some occasions has become so bad inside the house that Kecia has fled the property and stayed in a hotel.

68. Also despite these measures, their 8-year-old granddaughter Kamari, who lives in Raleigh with her mother, refuses to visit because of the smell and the insects.

69. When their 2-year-old granddaughter Khloe comes to visit, they do not allow her to play outside because of the biting insects. They do not even allow Khloe to walk herself to and from the car; one of them will run ahead to open the door and the other will carry Khloe quickly to or from the car to try to minimize the opportunities that the insects will have to bite her. Khloe has asked for a swingset at her grandparents' home, and Tony and Kecia would like to get one, but they have not done so because they do not want Khloe to play outside where the insects will bite her.

70. Since returning, Kecia and Tony have attempted to hold outdoor gatherings for their family in the area on a couple of occasions. The last time they tried was several years ago. They rented a tent, set up large fans, distributed flyswatters to all their guests, and lit candles that contained a chemical that was supposed to keep bugs away. Despite these measures, the guests could still smell the odor from the CAFOs, the insects swarmed the food, and the cookout was ruined. Kecia and Tony have not made another attempt at an outdoor gathering.

71. For a couple of years around 2004 or 2005, Tony and Kecia attempted to sell their home. They listed it with a realtor. Although the home is very well-kept and nicely furnished, they had trouble even getting a realtor to show the house because of the multiple nearby hog CAFOs. After about two years of having their house on the market, Tony and Kecia gave up on

trying to sell the house for what they felt would be a fair price. They feel like they are trapped here: they have put a lot of money into the house, but no one wants to buy it.

72. **Annie and James Harper, Jr.**, a married couple, live with Annie's son **Jediael Leak** at 303 Carr Town Road (near the north end of Carr Town Road). Annie was born and raised on this piece of land and inherited it from her father in 1999. Jediael was born October 4, 1994. She and James were married in 2001 and James moved here to live with Annie. Annie remembers wading in clear streams there as a child, enjoying the fresh country air unbothered by insects. Today, those same streams are covered in algae and the air at her home is frequently fouled by the smell of hogs and thick with biting insects and flies. James is from another part of the state, but the situation in his hometown is similar: there are hog CAFOs there now too.

73. Annie, James, and Jediael frequently smell strong, foul odors from the hogs. Sometimes the odors are so strong that they gag and choke. Although they keep their doors and windows closed as much as possible and run the air conditioner, the smell and insects still frequently infiltrate their home. Trucks pass the Harpers' home every day carrying living or dead hogs. These trucks spill hog urine, feces, blood, and corpse residue, leaving behind lingering foul odors. These trucks also tear up the road, causing potholes, cracks, and erosion.

74. In an attempt to deal with the flying insects that now infest the area, Annie, James, and Jediael use flypaper strips that they suspend from the ceiling indoors and from the eaves outdoors. These flypaper strips rapidly fill with flies, gnats, and other bugs.

75. Annie uses scented candles and air fresheners to try to deal with the smell indoors. She sprays her family's clothes with disinfectant sprays to try to keep the smell from getting into their clothes and embarrassing them when they go out. The Harpers also buy bottled water because they are worried about runoff from the facilities.

76. On several occasions, most recently around October 2013, hogs from a nearby CAFO have escaped and run amuck on the Harpers' land. When this happens, the hogs tear up the Harpers' yard and plants, requiring significant work to repair the damage. The Harpers also feel that the hogs would be dangerous to confront, so if they are home during one of these escapes, they do not come outside. The Harpers know that the hogs are from the nearby CAFOs because these hogs are the same white color as the CAFO hogs, whereas wild or natural pasture raised outdoor hogs are darker. In addition, they have spoken with their neighbor Janice Pickett, a former hog farm worker who identifies these as CAFO hogs based on markings known to her from her time in the industry. Annie and James have complained about these escapes to one of the growers, who denied ownership and refused to take any action. On one occasion, a grower told Annie that she could "keep the hog." Annie did not want the hog.

77. James and Annie started a ministry and church together several years ago, operating out of their home and offering worship services. They started out with a substantial congregation, but it has dwindled and now only a couple of people attend. James and Annie believe that the decline in membership was due to the hogs; no one wanted to dress up on Sunday and then get swarmed with insects and sit in a smelly room.

78. **Janice Mathews Pickett** lives at 276 Carr Town Rd. (on the map, about three-fourths of the way up Carr Town Road toward the north end). Janice was born and raised in Greenevers and has lived at this address since 1968, before tens of thousands of hogs were trucked into this area every year. Janice remembers wading in clear streams there as a child, enjoying the country air. Today, those same streams are covered in algae and the air at her home is frequently fouled by the smell of hogs and hog manure and thick with biting insects.

79. Janice frequently smells strong, foul odors from the hog CAFOs in her area. Sometimes the odors are so strong that she gags and chokes on the air. Although she keeps her doors and windows closed as much as possible and runs the air conditioning, the smell and insects still infiltrate her home. Trucks pass her home at least twice a day that carry living or dead hogs. These trucks spill hog urine, feces, blood, and corpse residue onto the road, leaving behind lingering foul odors.

80. In her attempts to deal with the nuisance, Janice also buys and burns scented candles in her home, buys and uses air fresheners, and buys and hangs flypaper strips that quickly fill with flies, gnats, and other insects. Janice also buys bottled water to drink instead of tap water because she is concerned about the hog runoff.

81. On several occasions, most recently around October 2013, hogs from a nearby CAFO have run amuck on Janice's land as hogs had with the Harpers. The hogs tear up Janice's yard and plants, requiring significant work to repair the damage. Janice feels that the hogs would be dangerous to confront, so if she is home during one of these escapes, she does not come outside. Janice knows that the hogs are from the nearby CAFOs because she used to work for a CAFO and she knows how they mark their hogs. She recognizes the markings on these hogs that show they are Murphy-Brown hogs. Also, these hogs are the same white color as the CAFO hogs, whereas wild hogs are darker. Janice has complained about these escapes to one of the growers, but the grower denied ownership of the hogs and refused to take any action.

82. **Richard and Margaret Williams** live at 275 Carr Town Road (on the map, about three-fourths of the way up Carr Town Road toward the north end). Like the other Plaintiffs, Donald and Carolyn frequently smell strong, foul odors at their home from the hogs in their area; rarely go outside because of the flying insect pests; and have hog trucks that pass their house

spilling urine, feces, blood, and corpse residue and leaving lingering foul odors. Sometimes the odors are so strong that they gag and choke. Richard and Margaret, like others in this area, have also had escaped hogs from the nearby CAFOs tear up their yard.

83. **Calvin Melvin, Debbie Melvin**, and their four children live at 269 Carr Town Road (on the map, about three-fourths of the way up Carr Town Road toward the north end). Like the other Plaintiffs, Calvin and Debbie and their children frequently smell strong, foul odors at their home from the hogs; rarely go outside because of the insects; and have hog trucks that pass their house spilling and leaving lingering foul odors. Sometimes the odors are so strong that they gag and choke. Calvin and Debbie, like others in this area, have also had escaped hogs from the CAFOs tear up their yard.

84. Their children wait for the bus most mornings when school is in session, and have to smell unpleasant odors and get bitten by bugs while waiting for the bus.

85. **Celestine Brown Smith** lives at 165 Cedar Lane (on Cedar Lane near the intersection with Carr Town Road). Celestine was born and raised on this property, before Murphy-Brown began trucking tens of thousands of hogs to and from the area. Like other Plaintiffs, Celestine remembers wading in clear streams and enjoying fresh air before the hogs came. Today, the streams are covered in algae and the air is frequently fouled by the smell.

86. Like other Plaintiffs herein, Celestine frequently smells strong, foul odors at her home from the hog CAFOs in her area; rarely goes outside because of the insects; and has hog trucks that pass her house spilling and leaving lingering foul odors.

87. **Sandra C. Bethune** lives at 184 Cedar Lane (on Cedar Lane near the intersection with Carr Town Road). Sandra was raised on this property. Like other Plaintiffs herein, Sandra

frequently smells strong, foul odors at her home from the hogs in her area; rarely goes outside; and has hog trucks that pass her house spilling residue and leaving foul odors.

88. **Donald David Carr** and **Carolyn B. Carr** live at 158 Carr Town Road (at the intersection with Cedar Lane). Donald has lived on this property his whole life and built this house in 1974. Carolyn married him and came to live with him in 1977, which was before Murphy-Brown began trucking tens of thousands of hogs into the area. Like other Plaintiffs, Donald and Carolyn frequently smell strong, foul odors from the hogs; rarely go outside; and have hog trucks that pass their house spilling residue and leaving odors.

89. The Carrs are descended from an ancestor, common to some of the other plaintiffs herein, after whom Carr Town Road is named.

90. **Gregory Carr** lives at 247 Carr Town Road. Gregory was born and raised in Greenevers, and lives on property that has been passed down through his family from his ancestor after whom Carr Town Road is named. Like other Plaintiffs, Gregory frequently smells foul odors from the hogs; rarely goes outside; and has hog trucks that pass his house spilling residue and leaving odors.

91. **Robert** and **Delois Bethune** live at 150 Carr Town Road (just south of the intersection with Cedar Lane). Like other plaintiffs herein, Robert and Delois frequently smell foul odors from the hogs; rarely go outside; and have hog trucks that pass their house spilling residue and leaving odors.

92. **Gemell Bethune** lives at 148 Carr Town Road (just south of the intersection with Cedar Lane) with her two minor children Nija and Nakesha. Like other Plaintiffs herein, Gemell frequently smells foul odors; rarely goes outside; and has hog trucks that pass her house.

93. Gemell's children wait indoors for the bus most mornings when school is in session, and go out just in time to catch it to avoid having to smell unpleasant odors and get bitten by bugs while waiting for the bus outside.

94. **Jeffery Lanier** and his twin sons Jakeem and Rakeem live at 143 Carr Town Road (south of the intersection with Cedar Lane). Jeffery's family first acquired the property and began living there many years ago, long before Murphy-Brown began trucking tens of thousands of hogs in. Like other Plaintiffs, Jeffery and his sons frequently smell strong, foul odors; rarely go outside; and have hog trucks that pass their house causing more nuisance.

95. **Doris Chasten** lives at 591 Pasture Branch Road (on the corner of Carr Town Road and Pasture Branch Road). She owns the land and has lived there since 1978, before tens of thousands of hogs were trucked into the area. Like other Plaintiffs, Doris frequently smells strong, foul odors; must endure flying insect pests when she goes outside; and has hog trucks that pass her house spilling residue and leaving lingering foul odors.

96. **Julaine Bennerman** lives at 579 Pasture Branch Road (just west of the intersection with Carr Town Road). She moved there and bought the land in 1981, before tens of thousands of hogs were trucked into this area. Like other Plaintiffs, Julaine frequently smells strong, foul odors at her home from the hogs; must endure flying insect pests when she goes outside; and has hog trucks that pass her house spilling residue and leaving lingering foul odors.

B. Background on Hog Odors and Causes of Nuisance

97. Hogs generate multiple times more feces and urine per day than a human being. In 2002, the General Accounting Office estimated that 7.5 million hogs in five eastern NC counties produced 15.5 million tons of manure each year.

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

99. 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.

100. The hog odors can be smelled at extremely low concentrations that cannot be measured with available instruments.

101. 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.

102. 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. Plaintiffs and their families find that large black flies periodically come onto Plaintiffs' properties. These flies were not prevalent before the thousands of hogs were placed at the CAFO. 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.

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

104. In addition, ever since the hogs have come, very large trucks crawl up and down the streets. 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. These trucks are the opposite of what one would expect to see in such a rural country neighborhood.

105. In addition, the dead hogs themselves are a nuisance. Animals in confinement under high-density circumstances present a ready environment 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. Unfortunately 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, and parasites or fungi.

106. 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.

C. Murphy-Brown's Control Over its Hogs.

107. 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.

108. 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.

109. 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.

110. 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.

111. 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. On information and belief, no new CAFOs have been built using the lagoon and sprayfield design, in an admission of their nuisance-causing nature.

112. 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.”

113. 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 on the stale air. The hogs create dust that dries and turns into floating particles, and smells from the feces and urine go into the air and are blown out by the fans.

114. 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.

115. 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.

116. In 2000, due in part to widespread concerns about odor and lagoons, North Carolina commissioned a multi-year study known as the “Smithfield Agreement.”

117. 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), Richard Eason (President of Cape Fear Farm Credit that finances CAFOs for Murphy-Brown growers).

118. 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.

119. 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 contract growers is part of “vertical integration” in which Murphy-Brown is the “integrator.”

120. 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.” However Defendant has not made changes to end the nuisance.

121. 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 operation.

122. As of 1995, it was reported that a typical contract grower borrowed anywhere from \$200,000 to \$1 million to construct hog sheds. Murphy specifies the CAFO design and equipment. Murphy financed or facilitated the financing for many growers. While the grower carries the debt for a many-year loan term, under the form contracts, Murphy can 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.”

123. 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.

124. 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.

125. 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.

D. Evidence of Negligent, Willful and Wanton Conduct.

126. 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.

127. 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 Plaintiffs have complained and even sent nuisance mediation demands over a year ago.

128. 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 and the environment.

129. 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.

130. 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.

131. 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 and to have him buy their properties, Mr. Murphy backed out and refused to do so.

132. 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.

133. 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.

134. 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.”

135. 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.”

136. 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.

137. 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. 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. Plaintiffs are concerned that with Shuanghui/WH Group's buying of Smithfield, there may be pressure to increase pig production, exports to China and increase of the nuisance.

138. The WH Group Global Offering dated on or about April 15, 2014 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." (p. 185, emphasis added). In order for these statements to be true, Defendant must remedy the harm caused by its swine.

139. The WH Group offering also states: "Looking ahead, we will continue to adhere to our business principles of providing high quality and safe animal protein to consumers globally and promoting social responsibility." (p. 186). The document describes how "hog prices in the U.S. from 2010 to 2012 were approximately 40% lower than those in China principally due to lower feed costs and higher productivity...." (p. 188). "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." (Id.). If the company wishes to export pork to China, it must produce the pork in an environmentally safe manner so that North Carolina and its residents such as Plaintiffs are not required to bear the externalized costs.

140. The WH Group offering also states: “In China, the U.S. and Europe, we operate a platform that seamlessly integrates R&D, production, quality control and distribution.” (p. 191). “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.” (Id.). it states that “we have adopted ... stringent supply chain controls.” (p. 192). “We believe quality assurance, traceability and commitment to sustainability are key purchasing decisions for our customers in the U.S.” (Id.). “In the U.S., we will continue to promote our sustainability program, which focuses on ... helping communities.....” (p. 195). In order for these statements to be true, Defendant must remedy the harm that it now causes.

141. 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.

142. Because Murphy recklessly failed to perform proper studies to determine the potential harmful effects of the swine CAFOs before have them built in the 1980s-early 90s, scholars were obligated to work to assess the health risks after the fact. 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 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.

- p. 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.”
- q. 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, barbequing, 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.”
- r. 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.
- s. 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.
- t. 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....”
- u. 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.
- v. A 2013 study found that “malodors may be associated with acute blood pressure increases that could contribute to development of chronic hypertension.”

- w. 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.”
- x. 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.”
- y. 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.”

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

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

144. 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.

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

146. 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 cause noise and lights at night and foul smells; dead hogs; and other sources of nuisance.

147. 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.

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

149. 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.

150. 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 property.

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

152. 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.

153. 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.

154. 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.

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

156. Alternatively, during the pertinent times, Defendant employed contract growers to do work which Defendant knew or had reason to know to be likely to 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.").

157. 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.

158. 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.

159. 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

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

161. 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.

162. 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.

163. Alternatively, during the pertinent times, Defendant's own 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.

164. 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.

165. 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.

166. 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

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

168. 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.

169. 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.

170. 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: TRESPASS

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

172. It is a Class 3 misdemeanor in North Carolina, pursuant to N.C.G.S. § 68-16, for an owner of livestock negligently to permit that livestock to run at large. Although Plaintiffs do not know exactly how the hogs escaped Murphy-Brown custody, Murphy-Brown's negligence may be imputed from its failure to keep these massive, dangerous animals confined.

173. Murphy-Brown, through its hogs, has trespassed onto the properties of those Plaintiffs noted above and caused damage to their yards and landscaping.

174. In addition, as herein alleged, Defendant causes the feces and urine from its hogs to be collected in large cesspools, and from there sprayed onto the surrounding land. Defendant knows that these “lagoons,” together with their tens of thousands of hogs in this area, act as a breeding ground for flies, biting insects, and other pests. Defendant knows that these pests invade the property and homes of Plaintiffs. Defendant knows that these “lagoons” emit large amounts of odor, dust and particulates into the air that drift onto the property and into the homes of Plaintiffs.

175. 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 Defendant’s trespasses.

COUNT V: INJUNCTIVE AND EQUITABLE RELIEF

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

177. 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 21st day of August, 2014.

By: s/Mona Lisa Wallace
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Exhibit 1:
Aerial Photo Showing Farm Locations

2 - 1/2 miles

