

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

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Annjeanette Gillis, Individually, and as	)
Grandmother and Guardian of minor child	)
Daqwan Robinson,	)
Woody Gillis,	)
Gwendolyn Pickett,	)
Allen T. Johnson,	)
Allen A. Johnson,	)
William Murphy,	)
Edna Murphy, Individually and as Mother and	)
Guardian of minor child Roberto Murphy,	)
Mary Tatum,	)
Lottie Fowler,	)
Darlene Fowler Maynor,	)
Kim Newton, and	)
Connie Newton, Individually and as Mother and	)
Guardian of Kiron Newton,	)
	)
Plaintiffs,	)
	)
v.	)
	)
Murphy-Brown, LLC,	)
	)
Defendant.	)

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**COMPLAINT**

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

**I. INTRODUCTION**

1. The Plaintiffs are residents of Sampson County, North Carolina. During the pertinent times they have resided on, owned and used land in proximity to the Sholar Farm swine confinement facility (the “Facility”), which is owned by Murphy-Brown and contains approximately 7,184 “feeder to finish” swine also owned by Murphy-Brown. Because of its size it is a Concentrated Animal Feeding Operation (“CAFO”).

2. While placing thousands of its hogs at the Facility, Murphy-Brown failed to take appropriate steps to eliminate the obnoxious odor, flies, pest vectors, and other nuisance periodically caused by its hogs.

3. During the pertinent times, Murphy-Brown placed thousands of hogs at the Facility, provided feed, additives and medicines, and provided veterinary, technical and engineering services. Defendants knew that the placement of so many hogs in such a confined space was likely to cause egregious odors and other nuisance. However, Defendant failed to take reasonable steps to reduce the nuisance and injury.

4. The hogs produce large amounts of urine and feces which falls onto the slatted floors of the hog sheds, is held in storage pools below, goes out to a large open-air pond or cesspool known as a “lagoon,” and is sprayed onto fields. Odors are blown out of the hog sheds by large fans, evaporate off of the lagoon surface, and come off the spray mist which drifts.

5. The nuisance from Murphy-Brown’s swine has caused injury to the Plaintiffs. The Plaintiffs have suffered injury to their right to the use and enjoyment of their properties, diminution of the values of their properties, and other harm.

6. Murphy-Brown’s parent company Smithfield Foods, Inc. was sold to a Chinese-backed multinational corporation, WH Group Limited, 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. Clearly Defendant has the resources to eliminate the nuisance. However, it has not done so.

## **II. PARTIES**

### **A. Plaintiffs**

7. Plaintiff **Annjeanette Gillis** is a resident of North Carolina who resides at 357 Moon Johnson Road, Rose Hill, NC.

8. Plaintiff **Woody Gillis** is a resident of North Carolina who resides at 357 Moon Johnson Road, Rose Hill, NC.

9. Plaintiff **Daqwan Robinson** is a resident of North Carolina who resides with his Grandmother and Guardian Ann Jeanette Gillis at 357 Moon Johnson Road, Rose Hill, NC.

10. Plaintiff **Gwendolyn Pickett** is a resident of North Carolina who resides at 561 Moon Johnson Road, Rose Hill NC.

11. Plaintiff **Allen T. Johnson** is a resident of North Carolina who resides at 541 Moon Johnson Road, Rose Hill NC.

12. Plaintiff **Allen A. Johnson** is a resident of North Carolina who resides at 541 Moon Johnson Road, Rose Hill NC.

13. Plaintiff **William Murphy** is a resident of North Carolina who resides at 2426 Herring Road, Rose Hill NC.

14. Plaintiff **Edna Murphy** is a resident of North Carolina who resides at 2426 Herring Road, Rose Hill NC.

15. Plaintiff **Roberto Lee Murphy** is a resident of North Carolina who resides with his mother and Guardian Edna Murphy at 2426 Herring Road, Rose Hill NC.

16. Plaintiff **Mary Tatum** is a resident of North Carolina who resides at 408 Moon Johnson Road, Rose Hill NC.

17. Plaintiff **Lottie Fowler** is a resident of North Carolina who resides at 2384 Herring Road, Rose Hill NC.

18. Plaintiff **Darlene Fowler Maynor** is a resident of North Carolina who resides at 2363 Herring Road, Rose Hill NC.

19. Plaintiff **Kim Newton** is a resident of North Carolina who resides at 2701 Herring

Road, Rose Hill NC.

20. Plaintiff **Connie Newton** is a resident of North Carolina who resides at 2701 Herring Road, Rose Hill NC.

21. Plaintiff **Kiron Newton** is a resident of North Carolina who resides with his mother and Guardian Connie Newton at 2701 Herring Road, Rose Hill NC.

**B. Defendant**

22. Defendant **Murphy-Brown, LLC** is a limited liability company organized under the law of Delaware. Murphy-Brown's sole member is John Morrell & Company ("Morrell"), a corporation incorporated under Delaware law 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 Virginia and with its principal office located at 200 Commerce Street, Smithfield VA 23430. During the pertinent times, Murphy-Brown has conducted business in numerous States including North Carolina.

**III. JURISDICTION AND VENUE**

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

24. 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.

25. 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.**

26. 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 thousands of 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 blown out by large fans set in hog shed walls or by other means.

27. 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 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 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.

28. 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 numerous other harms.

29. 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.

30. 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,” the 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.

i. **Annjeanette Gillis.**

31. Plaintiff **Annjeanette Gillis** resides with her husband, **Woody Gillis** and her grandson, **Daqwan Robinson**, at 357 Moon Johnson Road in Rose Hill, NC in Sampson County.

Along with Duplin County, Sampson County is one of the two counties the most densely-packed with swine in the United States.

32. Ms. Gillis has lived on Moon Johnson Road her whole life. When she was born in 1949, her mother lived at 337 Moon Johnson Road. Ms. Gillis lives there until she inherited a portion of her mother's land at 357 Moon Johnson Road in 1972.

33. Ms. Gillis is proud of her homestead. Her family's claim to the land goes back a century or more and traces all the way back to Reconstruction after the Civil War. Ms. Gillis is an African-American and lives in an economically depressed area. She does not have the financial resources to move away from the odor nor should she be required to do so.

34. Both Ms. Gillis and her husband have suffered from odors caused by the hogs. When she breathes the bad odor, it makes it harder to breathe.

35. Ms. Gillis resides within view of the Facility and just a few hundred feet of it. No one asked for her permission or asked for her views before building the Facility right next to her home and putting 6000 hogs in it.

36. Ms. Gillis has been subjected to multiple episodes of nauseating odors from the Facility. The smell has been especially bad when they spray the fields. The mist from the spraying of the feces and urine comes over onto her land and into her home.

37. Ms. Gillis would like to pass down her property to her daughter, Arneatha Gillis James. However, her property has less value because the swine site is next to it.

38. Ms. Gillis raised her daughter and son in her home and as they became older, they had to endure the bad odor and flies from the hogs. She has raised her grandson, Daqwan at her home and believes it is shameful that the children have had to live like this.

39. When the smell in the air is bad, Ms. Gillis cannot open the windows or hang out her clothes to dry. She is afraid to drink the water and has to spend money to buy water. She has bought water since around 1998.

40. When the big hog trucks come to load up the hogs for slaughter, it wakes her up at night. The trucks cause dust, noise and odor.

41. There have been decaying dead animals in the dumpster next to the Facility and from the “dead truck” that comes to take them away. The dead hogs add to the bad odor with a smell of death. The dumpster or “dead box” where they put dead hogs has been kept within hundreds of feet of her home and in plain sight. The Facility has allowed dead hogs to rot and fester in those dumpsters or days at a time before taking them away. She has seen liquid dripping out of the trucks that get the hogs.

42. Ms. Gillis has also had episodes of lots of big flies coming onto her property and into her house. At times, when she has opened her door to come in or out, flies have come into her home.

43. The episodes of nauseating smell can happen any time during the year. They get worse in the summer when it gets hot. The bad smell also gets worse when they spray up into the air and onto the nearby fields. Even in the winter the smell can get very bad.

44. The bad smell can come into the vents and into her home even when she keeps the windows and door closed and runs the air conditioner. Sometimes the bad smell wakes her up first thing in the morning.

45. When the odor, flies and nuisance get bad, they can get in the way of when she tries to have a barbeque or a family gathering. When she and her family or friends want to grill

and eat outside, the bad smell from spraying and dead hogs can make the experience worse or force them to go indoors.

46. Ms. Gillis on many occasions has personally witnessed the Facility spraying into the air and onto the nearby fields only hundreds of feet away. The spraying has happened as often as once a week.

47. The episodes of odor and flies make her run her air conditioning and run up her electric bill, they force her to keep windows closed, they have forced her to stay indoors, and she has had to buy products to make it smell better inside like scented candles, incense, spray or other such items. She is proud of her home and it is embarrassing and humiliating to her to have a smell of urine and feces on her land and in her home and to have flies in her kitchen when guests or relatives come over.

48. Ms. Gillis has a Vitamin D deficiency and is supposed to spend time walking and out in the sun but the Facility impairs this. The odor can make it harder for her to breathe.

49. Plaintiff **Woody Gillis** is Ann Jeannette's husband. Mr. Gillis has been married to his wife since 1974 and has lived in the family home on Moon Johnson Road as well for decades. He has had the same problems with the odor, flies and nuisance from the Sholar Facility as his wife has had.

50. In addition, Mr. Gillis has problems with breathing when the hog odor is bad.

51. Mr. Gillis has been employed with the United States Department of Agriculture. He is familiar with what a traditional farm smells like, and the Sholar Facility is nothing like that. The smells from the Sholar Facility are different and worse.

52. When the odor has gotten very bad it has woken him up at night. At times, the odor has come inside their home. He is very concerned about the nuisance it has caused for himself, his wife and his grandson.

53. Plaintiff **Daqwan Robinson** was born in 1996. He is the grandson of Mr. and Mrs. Gillis. Daqwan has had the same kinds of injuries that his grandparents have had from the Facility. He has had to endure the bad smells, flies and nuisance from the nearby Facility during the time that he has lived with his grandparents.

**ii. Gwendolyn Pickett.**

54. Plaintiff **Gwendolyn Pickett** resides at 561 Moon Johnson Road, Rose Hill in Sampson County. She receives her mail at 541 Moon Johnson Road.

55. Ms. Pickett has lived on Moon Johnson Road almost without interruption for her whole life, about 50 years. She lived there for many years before the Sholar Farm began. The land goes back in her family and used to be owned by Esau Pickett and Maggie Pickett.

56. The Sholar Facility is very near to her home, as close as a couple hundred feet. The nuisance from the Facility has harmed her quality of life. Many times, she has had to deal with very bad smell and odor.

57. At times she has not been able to let up her windows in the spring of the year for the fresh air. She cannot do it, because of the bad smell. The odors are the worst when the Facility is spraying the fields. The spraying can happen more than once a week.

58. There can also be bad odors when the “dead truck” comes. That is the truck that comes to haul away the dead hogs. There is a dumpster or “dead box” that holds dead hogs. This dead box has been kept as close as two hundred feet from her property.

59. The odors and flies from the hogs have affected family reunions and gatherings, cookouts and when she walks to the mailbox. They get in the way of being able to go and sit outside and enjoy a nice day. There are times when she cannot sit outside, enjoy a nice breeze, or have a cookout.

60. At times, Ms. Pickett has seen runoff from the spraying across the road from where she lives. At times, Ms. Pickett has had to run the air conditioning and pay extra for her power bill, she has had to keep the windows closed when she wanted to open the windows, and she has had to stay indoors when she wanted to go outside.

61. At times, she has bought deodorizing sprays, candles, incense or other products to try to reduce the odor. There have even been times when Ms. Pickett has left her home to get away from how bad it smelled.

62. Ms. Pickett has purchased bottled water because of the bad taste of the well water and her concerns about the health risks of drinking it. She has to boil water to use it to cook.

63. The swine odor and dust makes it harder for her to breathe. Sometimes the smell comes in even through the air conditioner vents in the home. At night sometimes, it has come in and she has to get out of bed at a time like 3 or 4 a.m. and cannot catch her breath.

64. She has complained about the problems caused by the Facility, but nothing has changed.

**iii. Allen T. Johnson and His Son.**

65. Plaintiff **Allen T. Johnson** resides at 541 Moon Johnson Road. Ann Jeannette Gillis is Mr. Johnson's sister. Gwendolyn Pickett who lives nearby is their niece. Mr. Johnson has lived there for many years and he inherited the property. It used to be his mother's land. He

has lived on Moon Johnson Road all his life except for a year or two. Mr. Johnson's son, **Allen A. Johnson**, lives in the home with him.

66. The Sholar Facility is very close, as close as a couple hundred feet away from their property. The bad smells, flies and nuisance started after the Facility came in.

67. Sometimes, Mr. Johnson's son has gotten sick because of the awful hog smell that comes from the site, the sprayfields and the dead hogs. The spraying on the fields makes the smell worse. The spraying could happen very close to where he lived. Sometimes, Mr. Johnson has not been able to sleep because the smell was very bad.

68. Mr. Johnson's son, Allen A. Johnson, recently graduated from high school. Mr. Johnson is very proud of his son. He is disturbed that his son has had to grow up with the bad odors and nuisance and the flies. He is concerned about the effects on his son. When his child was growing up, there were times he could not play outside with his child. They had to go inside. Sometimes the odor has made Mr. Johnson feel sick and he has seen it make his son feel sick.

69. Mr. Johnson saw how the bad odor affected his mother while she was alive and lived there. They made his mother feel sick. When the family smelled the odor, it made it hard to eat. When his brother used to live there, it made him sick as well.

70. Often, hog trucks pass nearby. They cause noise and dust and smells. The trucks carry live hogs and dead hogs. Sometimes, Mr. Johnson has seen dead hogs on the Facility property. He has seen dead hogs that they left in a "dead box" only a couple hundred feet away from his house.

71. Sometimes, Mr. Johnson and his son have to keep the windows closed because of the odor. Sometimes, they have had to run the air conditioner and pay more in their electric bill

because of that. They also have to spend extra money for products to try to freshen and purify the air. They have gotten flies and odor from the Facility many times.

72. Mr. Johnson remembers what it was like before the Facility was there. Before it was built, the bad smells were not there and the swarms of flies were not there.

73. Mr. Johnson is disabled and has to spend a lot of time at home. But friends and family relatives do not want to come over because of the bad odor.

74. Mr. Johnson has seen liquid run onto his land from the Facility. He is concerned about the effect on his water well. He has had to buy bottled water sometimes. His water well is located in sandy soil within hundreds of feet a millions of gallons of hog feces in a cesspool and fields where they spray very often.

**iv. William Murphy and his Family.**

75. Plaintiff **William Murphy** resides at 2426 Herring Road, Rose Hill with his wife, **Edna Murphy**, and their adopted child **Roberto Murphy**. As with the other Plaintiffs, the Murphy-Brown-owned hogs at the Facility have harmed the ability of Mr. and Mrs. Murphy and their family to use and enjoy their homestead.

76. Their home is located close to the Facility. They began living at their current address for many years and in the Rose Hill area for many years. They own their home. Mr. Murphy is retired and spends a lot of his time at home. The bad odors that come from the Facility hurt his ability to use and enjoy his land.

77. The smell can be worse when it rains. It is a very bad odor. If it rains and it is cloudy, a bad smell can come onto their land. When the smell is bad, Mr. and Mrs. Murphy cannot keep the windows of the house open to air out the house. They cannot leave their garage door open.

78. Sometimes, trucks that carry live or dead hogs pass by his house. They can cause additional odor as well as noise and dust. The Murphys have noticed liquid leaking out of the hog trucks sometimes.

79. The Facility causes flies to enter onto their property. If they have the door open, the flies can get in the house. Sometimes they will come in on their clothes.

80. The Murphys have had to stay indoors on times that they did not want to, because of the smell. They have had to keep windows and doors closed at times when they wanted to enjoy the day. They have had to buy products to freshen and purify the air at their house, candles or incense and other such items because of the smell.

81. Mr. and Mrs. Murphy have been concerned about the quality of their water. They have called the Health Department because of their concerns about the water.

82. The Murphys have a teenage adopted son, and they also have a foster child. They would like to do outdoor activities with the children. But, when the bad odor from the Facility comes, it interferes with these activities and makes them unpleasant.

83. Mr. Murphy would like to pass the home down to his son. He is concerned that the presence of the Facility has made his homestead worth less.

**v. Mary Tatum.**

84. Plaintiff **Mary Tatum** resides at 408 Moon Johnson Road. Her home is located very close to the Facility, within a few hundred feet or so. Ms. Tatum inherited the land which goes back for many years in her family. Her family has lived in the area for generations and after Ms. Tatum inherited the land she began to live at her current address.

85. Ms. Tatum was born in 1936 and is retired and a widow who lives alone. She has health problems and limited mobility and spends a great deal of her time at home.

86. Ms. Tatum has been hurt in her ability to use and enjoy her home, because of the odors, stench, flies and other nuisance from the hogs.

87. When the smell has been bad, Ms. Tatum has had to keep the windows and doors closed. Sometimes, she has used products to try to cover the bad smell. At times, Ms. Tatum has had to run the air conditioner when she did not want to, because she could not open the windows, and so her electric bill has been higher.

88. Ms. Tatum has seen buzzards flying around the yard. When there is spraying in the air the odor can get real bad. She is scared to go outside because of the spray, the smell and the flies.

89. She cannot hang clothes outside to dry because of the odor. The odor can make it harder for her to breathe. Sometimes, when she is cutting the grass she has to wear a mask because of the odor. Guests at her house have noticed the bad smell. People do not want to visit her because of the smell and the nuisance.

**vi. Lottie Fowler.**

90. Plaintiff **Lottie Fowler** resides at 2384 Herring Road. She was born in 1938 and lives alone and is retired. She has lived on Herring Road for many years.

91. Her family roots go very far back in the area. She used to live in a home across the road on Herring Road, but there was a fire and it burned down. She also moved in to take care of her mother who lived on Herring Road for a period of time. She inherited the land where she lives from her family. Ms. Fowler is related to the Plaintiff Darlene Fowler Maynor.

92. Ms. Fowler has been harmed by the episodes of foul stench from the Sholar Facility which is located nearby. When the smell has been bad, she has had to keep windows

and door closed. Sometimes, the foul odor make it harder for her to breathe. Sometimes, it has made her feel sick and nauseous.

93. From time to time, Ms. Fowler has seen trucks pass by containing live or dead hogs. These trucks can give off a foul odor and dust. From time to time, there are quantities of flies around her property.

94. When it is hot or it is rainy cloudy weather that can make the smells worse. The odors from the hogs have hurt her use and enjoyment of her property, including doing yardwork, hanging out clothes to dry, keeping the windows open, and walking or sitting outdoors.

95. At times, Ms. Fowler has had to run the air conditioner when she did not want to and this has caused her to pay higher electric bills.

**vii. Darlene Fowler Maynor.**

96. Plaintiff **Darlene Fowler Maynor** resides at 2363 Herring Road, Rose Hill. Mrs. Fowler Maynor has lived at this address for approximately 23 years. Prior to this address she lived across the street with her mother Lottie Fowler. She inherited her piece of the land in 1991 and began residing at this location in 1999. Her family has lived in the area for many years.

97. She has one child. She would like to pass the land on to her son. But she is concerned that the value of the home has gone down because of the thousands of hogs nearby.

98. She is employed as an Assistant Manager at Wellman Oil. When she is not working she is unable to relax and enjoy her property because of the unpredictable foul odor.

99. The odor is worse in the summer and worse when it rains. When the smell is bad, it gets in the way of her outdoor activities. She cannot do things like sit outside, or have a picnic or a cookout, because of the bad smells.

100. She has seen dead hogs from the Facility. She has seen hog trucks go by carrying live hogs and dead hogs. The trucks cause bad smells, dust and noise.

101. The Facility has caused flies to come onto her land and in her house. She has had to keep the windows closed and run the air conditioner when she would have liked to keep the windows open.

**viii. Kim Newton and their Family.**

102. Plaintiff **Kim Newton** resides at 2701 Herring Road with his wife, **Connie Newton**, and their children **Kiron** (son, aged 14). Mr. Newton's father is William Murphy. Their family has lived in the area for many years.

103. Mr. Newton was in the U.S. Military. He received an Honorable Discharge in 2008. In the meantime, his family moved into their current home in 2004 but as noted, their family has owned the land and been in the area for much longer. Mr. Newton received the land in or about 2002 from William and Evelyn Murphy.

104. Since leaving the military in 2008, Mr. Newton has worked as a mail carrier for the Postal Service. In doing his job, he has been very familiar with the difference in the smell between land near hog sites and land further away.

105. The hogs at the Facility have harmed the ability of Mr. Newton and his family to use and enjoy their homestead. The worst smells can come when it is a hot day and when the breeze comes from the right direction. The smell is a foul odor like something dead.

106. The odors have made it harder for Mr. Newton and his family to enjoy activities like cooking outside and having cookouts. The smells get in the way of playing with the kids outside. The smells get in the way of sitting and relaxing outdoors on a sunny day.

107. Sometimes, there are lots of flies on his property. These flies get in the way of family activities and enjoying the outdoors. The flies get worse in the summer.

108. Mr. Newton has seen trucks go by carrying live hogs and dead hogs. The trucks can add to the bad odor and also cause dust and noise.

109. Because of the hog odor, the family has to keep the windows closed on a nice sunny day. They have to run the air conditioner which costs extra money. They have had to stay indoors. They have spent money on household products to try to freshen and purify the air indoors.

110. The family is concerned about the effect on their well water. They are concerned on the effect of the nuisance on their son Kiron who still lives at home, and for their adult daughter, Ashley, who moved away only recently.

**B. Background on Hog Odors and Causes of Nuisance.**

111. 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.

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

113. 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 four to six weeks old and weighs about 25 or 30 pounds. Then it eats feed grain and is known as a feeder pig. It takes about six months for a pig to reach market weight of 250 pounds. A slaughter-weight hog is thus about fifty percent heavier than an average person.

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

115. 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.

116. 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, they 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.

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

118. In addition, ever since the hogs have come, very large 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 and even unpaved 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. These trucks are the opposite of what one would expect to see in such a rural country neighborhood.

119. 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, parasites and fungi.

120. 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. Background on the Facility.**

121. The Sholar Farm Facility is a Concentrated Animal Feeding Operation or “CAFO” with permit number AWS820034 issued by the North Carolina Department of Environment and Natural Resources (“DENR”). It is located at 532 Moon Johnson Road in Sampson County.

122. Both the Facility and the hogs in it are directly owned by Murphy-Brown. It is a “wean to finish” facility with an allowable count of 7,184 hogs. The Facility has five hog buildings and two open-air cesspools known as lagoons.

123. Upon information and belief, prior to the sale of the Murphy operations to Smithfield in 2000, the Sholar Farm was owned and operated by Murphy Family Farms. After the sale, it became owned and operated by Murphy-Brown.

124. The DENR records for the Sholar Facility reflect significant violations. In 1997, DENR records report that effluent was leaving the building and running across the property into a trench. A copy of the report was sent to Murphy Family Farms. Upon information and belief, in or about 1999, the Facility constructed a new lagoon, in light of the prior violations.

**D. Murphy-Brown’s Control Over its Hogs.**

125. 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.

126. 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.

127. 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.

128. 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.

129. 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.

130. 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.”

131. 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 are used for ventilation. 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.

132. 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.

133. 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.

134. On information and belief, at other sites, Defendant has taken steps to reduce the nuisance. However, on information and belief Defendant has failed to institute some or all of these measures at the sites that are the subject of this Complaint.

135. 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.”

136. 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).

137. 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.

138. 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.”

139. 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.

140. 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 of the sites.

141. 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.”

142. 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.

143. 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 and domination.

144. 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.

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

145. 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.

146. 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.

147. 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.

148. 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.

149. 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.

150. 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.

151. 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.

152. 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.

153. 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."

154. 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.”

155. 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.

156. 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.

157. 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.

158. The WH Group offering also states: “Looking ahead, we will continue to adhere to our business principal 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.

159. 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.

160. 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.

161. 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**

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

163. 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.

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

165. 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.

166. 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.

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

168. 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.

169. 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

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

171. 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.

172. 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.

173. 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.

174. 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.

175. 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.").

176. 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.

177. 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.

178. 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**

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

180. 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.

181. 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.

182. 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.

183. 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.

184. 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.

185. 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**

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

187. 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.

188. 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.

189. 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**

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

191. 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.

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