

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

Woodell McGowan,)
Wanda McGowan,)
Perry Miller,)
Cartha Williams,)
Elaine Carlton,)
Anthony Carlton,)
Barbara Gibbs,)
Elvis Williams,)
Vonnie Williams,)
Kenneth Carter,)
LaTonya Carter,)
Linnill Farland Sr.,)
Georgia Farland,)
David Carter,)
Dreama Carter,)
James Davis Sr.,)
Jacqueline Davis,)
James Davis Jr.,)
Cathy Pearsall,)
Tevin Newkirk,)
Robert Carter,)
Sabena Carter,)
)
Plaintiffs,)
)
v.)
)
Murphy-Brown, LLC,)
)
Defendant.)

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 Duplin County, North Carolina. During the pertinent times they have resided at, and owned, and used land in close proximity to two separate

hog confinement sites that together are known as the Joey Carter Farms facility. These sites contain approximately 4,740 “feeder to finish” swine owned by the Defendant, Murphy-Brown. Because of its size it is a Concentrated Animal Feeding Operation (“CAFO”).

2. Murphy-Brown’s hogs at the Joey Carter facility generate many times more sewage than the entire town of Beulaville nearby. Yet Murphy-Brown has failed to take adequate steps to control the millions of gallons of feces and urine that come from the hogs, and the odor, flies and other nuisance that they cause.

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

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

5. Finally, the dead hogs themselves are a nuisance. The dead hogs are from time to time placed in “dead boxes” which are nothing more than dumpsters full of dead animals left out

in the open often in plain view. These “dead boxes” are unsightly and attract buzzards, flies and vermin which are a further cause of nuisance.

6. Defendant is a large enterprise with the ability and the resources to reduce and end the nuisance. Upon information and belief, Murphy-Brown owns more than 5 million hogs at more than 1400 sites in North Carolina and 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 the hogs at issue herein and closely controls how they are managed.

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

8. The use of the outmoded “lagoon and sprayfield” system has been banned for new farms in North Carolina for years, and many measures exist to reduce the nuisance from existing facilities. Defendant has the means and ability to correct the nuisance but has failed to do so negligently and improperly.

II. PARTIES

A. Plaintiffs

9. Plaintiff **Woodell McGowan** is a resident of North Carolina who resides at 978 Hallsville Road, Beulaville, NC.

10. Plaintiff **Wanda McGowan** is a resident of North Carolina who resides at 978 Hallsville Road, Beulaville, NC.

11. Plaintiff **Perry Miller** is a resident of North Carolina who resides at 987 Hallsville Road, Beulaville, NC.
12. Plaintiff **Cartha Williams** is a resident of North Carolina who resides at 973 Hallsville Road, Beulaville, NC.
13. Plaintiff **Elaine Carlton** is a resident of North Carolina who resides at 967 Hallsville Road, Beulaville, NC.
14. Plaintiff **Anthony Carlton** is a resident of North Carolina who resides at 967 Hallsville Road, Beulaville, NC.
15. Plaintiff **Barbara Gibbs** is a resident of North Carolina who resides at 956 Hallsville Road, Beulaville, NC.
16. Plaintiff **Elvis Williams** is a resident of North Carolina who resides at 928 Hallsville Road, Beulaville, NC.
17. Plaintiff **Vonnie Williams** is a resident of North Carolina who resides at 928 Hallsville Road, Beulaville, NC.
18. Plaintiff **Kenneth Carter** is a resident of North Carolina who resides at 122 Howards Farm Road, Beulaville, NC.
19. Plaintiff **LaTonya Carter** is a resident of the State of North Carolina who resides at 122 Howards Farm Road, Beulaville, NC.
20. Plaintiff **Linnill Farland Sr.** is a resident of North Carolina who resides at 138 Howards Farm Road, Beulaville, NC.
21. Plaintiff **Georgia Farland** is a resident of North Carolina who resides at 138 Howards Farm Road, Beulaville, NC.

22. Plaintiff **David Carter** is a resident of North Carolina who resides at 118 Howards Farm Road, Beulaville, NC.

23. Plaintiff **Dreama Carter** is a resident of North Carolina who resides at 118 Howards Farm Road, Beulaville, NC.

24. Plaintiff **James Davis Sr.** is a resident of North Carolina who resides at 108 Howards Farm Road, Beulaville, NC.

25. Plaintiff **Jacqueline Davis** is a resident of North Carolina who resides at 108 Howards Farm Road, Beulaville, NC.

26. Plaintiff **James Davis Jr.** is a resident of North Carolina who resides at 108 Howards Farm Road, Beulaville, NC.

27. Plaintiff **Cathy Pearsall** is a resident of North Carolina who resides at 118 John Hall Farm Lane, Beulaville, NC.

28. Plaintiff **Tevin Newkirk** is a resident of North Carolina who resides at 118 John Hall Farm Lane, Beulaville, NC.

29. Plaintiff **Robert Carter** is a resident of North Carolina who owns property at 122 Howards Farm Road, Beulaville, NC.

30. Plaintiff **Sabena Carter** is a resident of North Carolina who owns property at 122 Howards Farm Road, Beulaville, NC.

B. Defendant

31. 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, a corporation incorporated under the law of the State 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 many States including North Carolina.

III. JURISDICTION AND VENUE

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

33. 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.

34. 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.

35. 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 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.

36. 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.

37. 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.

38. 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.

39. 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. Woodell and Wanda McGowan.

40. Plaintiff **Woodell McGowan** resides at 978 Hallsville Road with his wife, **Wanda McGowan**. The land on which he currently resides has been in his family for several generations. Mr. McGowan inherited the property after his great-aunt passed away. Born in 1948, Mr. McGowan grew up on the Hallsville Road property with his family. The home where he lives was built by the family in the 1960s.

41. Mr. McGowan’s family homestead is now located directly between two hog sites known collectively as Joey Carter Farms. His property adjoins that of the site located North of Hallsville Road. The distance from the edge of the site’s open-air cesspool to his backyard is about 630 feet. There are no buffers separating his home and that site. Further, the facility built a dirt road beside his property. When the big hog trucks drive through it kicks up dust that goes onto his property and the trucks cause additional odor and nuisance.

42. Hog feces has been sprayed as near as approximately 100 yards from Mr. McGowan's back porch. The application field is slightly higher in elevation than his property. Upon information and belief, the fecal spray runs down onto his property after it rains. At times, he is unable to mow his lawn due to large puddles of feces and urine that form on the edge of his property line. Recently, the site has started utilizing sprayfields that are farther away from the McGowan's property. This only occurred after Mr. McGowan and other community members began sending mediation demands and filing litigation in State Court regarding their complaints and he is concerned that the farm will go back to nearby noxious spray application in the future. In addition, other sources of nuisance still continue.

43. Prior to 2010, a "dead box" was located a couple feet from the corner of Mr. McGowan's property and near his grandchildren's swing set. A dead box is used to store dead hogs before they are removed by hog trucks. Dead boxes are eyesores that emit odors and liquid from rotting carcasses and attract buzzards and vermin. Mr. McGowan has heard the hog trucks picking up dead hogs at night and he could hear the hogs flop into the back of the truck as they rolled out of the dead box. Mr. McGowan complained to the farm about the placement of the dead box, but his phone calls were never returned. Eventually, he called Murphy-Brown to voice his frustration. Shortly thereafter, someone moved the dead box, but only about 80 feet away from the previous location. The dead box is still within view of Mr. McGowan's back porch and the area that his grandchildren play around.

44. The second Joey Carter Farms site is located South of Hallsville Road and directly across from the McGowan property. The distance from their property to that site's open-air cesspool is approximately 350 yards. Over the years, episodes of sickening noxious odor have occurred including when either site has sprayed the lagoon contents into the fields.

Episodes of foul odor are worse with warmer weather. There are times when the odor has prevented the McGowan family members from sitting outside together or picking blueberries in their yard. The increase of flies and vultures to the area also interferes with their use and enjoyment of the property.

45. Mr. McGowan frequently witnesses both live and dead hogs leaving the property in the back of pickup trucks and hog trucks. Mrs. McGowan finds it harder to breath when the odor is bad. She is currently battling cancer and confined to their home the majority of the time.

46. Mr. McGowan enjoys working in his yard and takes great pride in maintaining its beauty. Unfortunately, the stench of the hogs and the runoff has prevented him from doing yard work on certain days. The McGowans take care of their young grandchildren from time to time. When the grandchildren play on the swing set in the side yard, the McGowans worry about the effect of the hog odor and nuisance on the children. When the odor is bad, it interferes with their outdoor activities and playing outdoors.

47. Mr. McGowan's ancestors owned many of the surrounding parcels of land near their home, including the plot that was purchased by J.D. Carter in 1992 at an estate sale. As executor of the estate, Mr. McGowan was never informed that the purchaser planned to build a new hog facility in his backyard. The McGowans are also concerned that their property value has declined and become much less attractive to buyers because of the swine.

ii. Perry Miller

48. Plaintiff **Perry Miller** resides at 987 Hallsville Road. Mr. Miller lives directly between the two hog sites known collectively as Joey Carter Farms. Each site is visible from his property. The site located South of Hallsville Road is only about 230 yards away.

49. The odors are worst when either site is spraying the fields. At times, the spraying has occurred less than a couple hundred feet from his home. In fact, the fecal mist has even drifted onto his property and the side of his house. Not only does the spray produce a horrendous stench, but he is concerned that it affects his health.

50. Mr. Miller has been harmed by the episodes of foul stench from the hogs. He is disabled and spends a lot of time at home. When the smell has been bad, he has to keep windows and doors closed. The odors have affected family gatherings and cookouts and other activities.

51. Mr. Miller used to raise his own hogs on his land and in a natural pasture setting. Instead of a factory farm with thousands of hogs, he just raised 60 or so pigs and they had plenty of pasture to forage and run and there were no odor or fly problems. He fed his hogs natural ingredients like corn and sold them down at the local livestock market.

52. The land behind Mr. Miller's home was put up for sale in 1985. Mr. Miller and his neighbors were curious about what the land would be used for given its close proximity to their homes. They had heard in the news about large hog farming operations being built and they did not want one in their backyard. Mr. Miller and his neighbors would have considered trying to band together and purchase the land to prevent a factory farm from being built and to protect the neighborhood. However, the prospective purchasers did not tell Mr. Miller or his neighbors what they were planning to build. So, Mr. Miller and his neighbors could not try to buy the land for themselves or try to protest or ask the County or local government to keep out the farm.

53. Before the hog farm was built, Perry Miller spoke to Joey Carter. Mr. Miller asked Mr. Carter what his plans were for the property he recently purchased. Mr. Carter led Mr. Miller to believe he was not planning to put up a big hog farm at all, but just to grow a few crops. Mr. Carter assured Mr. Miller there would be no hogs. However, soon after, Mr. Miller

noticed construction workers pouring in concrete and building two large hog houses a couple hundred feet from his home.

54. Mr. Miller was trying to protect his wife and their five children from the nuisance. Once Mr. Miller came home from church and saw the farm spraying up into the air and it was landing on his home. He was embarrassed and outraged. After complaining about the spraying on his home, the sprayer remained but was moved a little further away.

55. There were other times Mr. Miller saw spray mist coming onto his land and getting on the side of his house. The spray mist and splattering left sticky stains on the side of his home requiring him to scrub the smelly mess off by hand.

56. When the Joey Carter farm first started, the hogs were supplied by Murphy Family Farms. On one occasion, Wendell Murphy stopped by and spoke to Mr. Miller. Mr. Miller was shocked when Mr. Murphy told him to get rid of the hogs that he was raising on his own property. Mr. Murphy, who was wealthy and white, tried to threaten and intimidate Mr. Miller, who is African-American and struggling to get by.

57. Mr. Miller was left feeling powerless and beaten down. Wendell Murphy, who backed the farm, was rich and powerful, and Mr. Carter became the Beulaville Police Chief. Eventually, Mr. Miller lost hope of getting the farm to change. Thirty years ago, they did not have these problems with episodes of strong and sickening odor.

58. Mr. Miller's home which used to be a safe place where he could relax after work and raise his family, became subject to unpredictable episodes of stench, spray and flies. Now, his property is worth less than it would be without the thousands of hogs and he is upset about the situation.

iii. Cartha Williams

59. Plaintiff **Cartha Williams** resides at 973 Hallsville Road. He purchased this property in 1970 from relatives of Woodell McGowan. Mr. Williams is a local truck driver and also owns a shop directly next door to his residence.

60. Mr. Williams lives directly between the two swine operations. Mr. Williams lived here prior to the hog sites starting their operations.

61. Mr. Williams is African-American and lives in an economically depressed area. He does not have the financial resources to protect himself against the odor by moving away nor does he feel that he should have to do so. Defendant has never offered to compensate him or any of the other Plaintiffs for the spreading of odor and nuisance on their land.

62. Mr. William's residence and shop are within view of both sites and within just a few hundred feet of the operation located South of Hallsville Road. The land application occurs as close as 150 yards from his home. The edge of the lagoon at the site located North of Hallsville Road is only approximately 750 yards from his home.

63. No one asked for Mr. Williams' permission or asked for his views before building the sites right next to his home and putting the thousands of hogs there. In fact, Mr. Williams was one of many local residents that signed a petition in opposition to the hogs.

64. The quality of life for Mr. Williams has been negatively impacted by the swine kept near his property. At times, it is very unpleasant for him to be outside. Because of the flies, odors and other nuisance, Mr. William's ability to use and enjoy his property have been impaired, including keeping him from cooking out, keeping him from being able to enjoy his home, shop, and the outdoors.

65. Over the years, Mr. Williams has witnessed hog trucks driving to and from the sites. These trucks cause dust and additional odor. He also can recall being woken up early in the morning by the sound of the trucks emptying the dead box across the street. He has witnessed live and dead hogs being carried away in the back of pickup trucks and large hog trucks.

66. Mr. Williams plans to pass his property on to his family members, but unless something changes, he's unsure anyone would want it.

iv. Elaine and Anthony Carlton

67. Plaintiff **Elaine Carlton** lives at 967 Hallsville Road. Her home is only a couple hundred yards from thousands of Murphy-Brown-owned hogs and the lagoons. Mrs. Carlton purchased the property in 1971. At this time, there were no farming operations on the land where the swine are now sited. Ms. Carlton lives with her husband, **Anthony Carlton**, who moved in after they got married.

68. The Carltons home is located directly between both of the Joey Carter sites. Hog trucks constantly drive by their home when going to either of the facilities.

69. The Carltons' ability to use and enjoy their land has been hurt because of the odors, stench, flies and other nuisance from the hogs. When the smell is bad, the Carltons have had to keep their windows and doors closed. Sometimes, Mrs. Carlton has used products to try to cover the bad smell. They have also been prevented from having cookouts and drying their clothes outside on the clothes line. The flies are so bad they will beat you inside when you open the door.

70. Mr. Carlton use to enjoy exercising in the carport. But, the odors, flies and contaminants get in his carport, forcing him to spend money to join a gym. The Carltons also have to use city water and buy bottled water.

v. Barbara Gibbs

71. Plaintiff **Barbara Gibbs** resides as 956 Hallsville Road. Ms. Gibbs has lived on Hallsville Road without interruption since 1973. She lived there for many years before either of the swine sites began operation. Both of the sites are very close to her home. The hogs have harmed her quality of life and forced her to deal with the bad smells and odors. At times, she is unable to open her windows when the weather is nice to get fresh air. The odor and flies at times simply overrun her house. The odors are worse when the sites are spraying the fields.

72. At times, she has had to run the air conditioning and pay extra for her power bill, and stay inside instead of enjoying the outdoors. Ms. Gibbs has also had to buy deodorizing spray, candles, or other products to try to reduce the odor. Ms. Gibbs must use private well water and fears for its safety. She is also forced to deal with the dust and odors caused by the hog trucks when they drive past her home.

vi. Elvis and Vonnie Williams

73. Plaintiff **Elvis Williams** resides at 928 Hallsville Road. He purchased the home in 1989. Mr. William's wife **Vonnie Williams** lives in the home with him. The hogs and sprayfields are very close to their home. The odors, flies and nuisance started after the sites were built and thousands of hogs were placed next to their home. Sometimes, the odor from the hogs is so bad that it smells like someone is dumping feces directly in their front yard.

74. The odors and flies from the hogs have negatively affected their lives. At times, they are unable to sit on the front porch. Even though their back porch is screened in, the flies still get in and create a nuisance while they try to grill out. Sometimes, they have to go back inside another door because the screened-in porch is full of flies.

75. Mr. Williams enjoys taking care of his yard. But, when the odor from the hogs comes, it prevents him from working with his flowers, raking, and doing other yard work.

vii. Kenneth and LaTonya Carter

76. Plaintiff **Kenneth Carter** resides at 122 Howards Farm Road. He has lived there for his entire life and inherited the property. Mr. Carter's wife, **LaTonya Carter** lives with him. Their children and grandchildren have also lived there from time to time.

77. Mr. Carter's homestead is located very near where the hogs are kept and the lagoons. The open-air cesspool is a couple hundred yards from his home. The hogs have harmed the ability of Mr. and Mrs. Carter and their family to use and enjoy their homestead.

78. The smell can be worse on a hot and humid day, or when there is spraying. Mr. Carter has seen feces and urine spray mist being sprayed on the side of his neighbor's home.

79. Upon information and belief, only after complaints were made, one of the sites started using subsurface injection (where the feces and urine liquid is put into the land instead of sprayed in the air). However, that has not eliminated all of the nuisance, and the site located North of Hallsville Road continues to use spray guns.

80. Mr. Carter would like to pass the home down to his children. But, he is concerned that presence of the hogs has made his homestead worth much less.

viii. Linnill and Georgia Farland

81. Plaintiff **Linnill Farland Sr.** resides at 138 Howards Farm Road with his wife, **Georgia Farland**. They inherited their property in 1971. This property has been in their family for several generations. The Farlands' property adjoins the hog site located South of Hallsville Road. The open-air cesspool is located approximately 200 yards from their property. No one asked for their permission or their views before putting thousands of hogs next to the family

homestead. In fact, their Farlands joined many of their neighbors in signing a petition to oppose building a hog farm beside their property.

82. The odors are worst during the summer and when there is spraying of the fields. During the spraying process, a mist gets into the air and covers things on Mr. and Mrs. Farland's property. The family has been harmed by the episodes of foul stench. When the smell is bad, they have to keep windows and doors closed. Sometimes the odor makes it hard to breathe.

83. From time to time, the Farlands see trucks pass by containing live and dead hogs. These trucks give off foul odor and dust.

84. The Farlands intend to pass on their family land to their children. However, they fear that the property is worth much less now that thousands of Murphy-Brown hogs are being confined right next to their home.

ix. David and Dreama Carter

85. Plaintiff **David Carter** resides with his wife, **Dreama Carter**, at 118 Howards Farm Road. The land was family-owned land, which Mr. Carter inherited. He has lived on Howards Farm Road for his entire life and Mrs. Carter moved here after they got married.

86. The Carters are situated directly between the two hog confinement sites where the Murphy-Brown hogs are housed. One of the farms is located directly in their backyard. From time to time, Mr. and Mrs. Carter experience foul odors from these hogs and the lagoons.

87. Big trucks go past their house with live and dead hogs. These trucks can produce a stench and also they cause noise and dust. The foul odor has affected Mr. and Mrs. Carter's use and enjoyment of their land and their ability to enjoy time with family and friends.

88. The odors are worse after the farm sprays hog feces and urine into the open fields behind their home. From time to time, the Carters have observed a mist drifting onto their

property from the spray. This has even forced them to have to pressure-wash everything outside their home, including their children's toys, because they become covered with a film, which smells awful.

89. Upon information and belief, approximately six months ago, the site behind their house started using subsurface injections. While this keeps some mist from drifting onto their property, they still have episodes of foul odor and flies. This change only occurred after the Carters and other community members began sending demands and filing litigation in State Court regarding their complaints.

90. The Carters and other neighbors signed a petition objecting to the building of a swine facility beside their home, but it was ignored. The hogs have hurt their property value and their quality of life.

x. James and Jacqueline Davis Sr. and their Family

91. Plaintiff **James Davis Sr.** resides at 108 Howards Farm Road with his wife, **Jacqueline Davis**, and children **James Davis Jr.** and **Shawn Davis**. They purchased their current property in 1971, before either hog site of Joey Carter Farms was built.

92. Mr. Davis was employed as a maintenance worker for Guilford Mill for approximately 37 years. He is now retired. Because he is retired, he spends a lot of time at home. The bad hog smells and odors hurt his ability to use and enjoy his land and his home.

93. The odor is worse in the summer and when they are spraying. His home lies in between the two sites where Murphy-Brown puts thousands of hogs. When the wind blows from either direction the smell can fill the air. He cannot do things like sit outside, have a cookout, or play with his six-year-old son, because of the smell.

94. Mr. Davis would like to pass the land to his children someday. But he is concerned that the value of their home has gone down because of the thousands of hogs nearby.

95. James Davis Jr. recently graduated from college and is back home living with his parents. While in college, he was embarrassed to bring friends home because of the odors and flies. When friends would ask him where Beulaville was located, he would tell them it is in eastern North Carolina, and they would smell it long before getting there.

xi. Cathy Pearsall and Tevin Newkirk

96. Plaintiff **Cathy Pearsall** resides at 118 John Hall Farm Lane with her son, **Tevin Newkirk**. Ms. Pearsall purchased the property in 1991 and has lived there ever since.

97. Like the other Plaintiffs, from time to time they have experienced foul odor from the hogs. The foul odor has affected their use and enjoyment of the land and their ability to enjoy time with family relatives and friends. There are also instances when the flies are unbearable.

98. When the smell is bad, Ms. Pearsall has to keep the windows closed and use deodorizing spray to mask the smell like her neighbors. The property value of Ms. Pearsall's home is less because of the presence of the hogs. She and her son have suffered other harm and damages from the hogs like the other Plaintiffs in this case.

xii. Robert and Sabena Carter

99. Plaintiff **Robert Carter** and his wife, **Sabena Carter**, own property located at 122 Howards Farm Road. This is family property which they inherited. Their family members and friends live beside the property and they visit quite frequently.

100. The close proximity to both farm sites has impaired their use and enjoyment of their property and from time to time, the odor and nuisance is very bad. The nuisance has diminished the value of their family land.

B. Background on the Facility

101. Joey Carter Farms is a Concentrated Animal Feeding Operation or “CAFO” with permit number AWS31-259 issued by the North Carolina Department of Environment and Natural Resources (“DENR”).

102. The registered owner of the operation is Joey D. Carter. Mr. Carter owns two hog confinement sites that operate under the same name and facility number. (See Exhibit 1. Plaintiffs live in the outlined area.” However, the sites started at different times and are operated from separate locations. The older of the two sites is located at 160 Howards Farm Road. The newer site is located at 175 Joey Carter Lane.

103. Mr. Carter purchased the land used for his first hog confinement site in 1985. Upon information and belief, his hog operation started that same year. That older site housed approximately 1,860 hogs and had one lagoon.

104. Mr. Carter purchased the land used for the second site in 1994. In February 1995, he received an Animal Waste Management Certification allowing him to begin production. This second site with all-new physically separated buildings was designed to house 2,880 hogs and uses a separate lagoon.

105. According to available records, the two sites initially operated under separate permits. In or about March 1998, the two sites were consolidated under permit number 31-259.

106. All of the hogs living at these swine confinement sites are directly and solely owned by Murphy-Brown. They are “feeder to finish” sites with a combined allowable count of 4,740 hogs. Combined, the sites have seven hog buildings and two open-air lagoons.

107. According to DENR records, Joey Carter Farms maintains a steady-state live weight of 639,900 pounds, generating 9,006 tons and a volume of 4,393,980 gallons of feces and urine and flush water per year.

108. Those involved with the operation have long known of the nuisance. Abortive attempts to control it by Joey Carter have occurred. In an article published by the Associated Press in October 1996, a new waste system was touted and Mr. Carter stated, “You’re standing here yourself, your nose is your own witness. It’s a lot safer. You don’t have the problems you have with the (lagoons).” However, since then, the sites have abandoned the efforts to put in a new system, and instead have continued to use the giant open-air cesspools of raw hog sewage.

109. Despite ongoing knowledge of the noxious odors and other nuisance caused by their hogs, Murphy Brown has continued to stock thousands of hogs on Joey Carter Farms, located just hundreds of yards from family homes.

110. Murphy-Brown has the technological expertise and finances to change the North Carolina farms. Upon information and belief, in one or more other states, Defendant has taken steps to reduce the odors where its hogs are kept. It is only logical that they are required to do the same in North Carolina, the second-largest hog producing state in the country.

C. Background on Hog Odors and Flies, Buzzards, Trucks, Dead Boxes.

111. Hogs generate multiple times more feces and urine per day than a human being. In 20082, 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 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.

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 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.

D. Murphy-Brown's Control Over Its Hogs.

121. 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.

122. 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.

123. 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.

124. 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.

125. 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.

126. 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.”

127. 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.

128. 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.

129. 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.

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

131. 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.

132. 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.”

133. 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 its process to reduce the nuisance.

134. 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.

135. 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.”

136. 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.

137. 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.

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

F. Evidence of Negligent, Willful and Wanton Conduct.

139. 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.

140. 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.

141. 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.

142. 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.

143. 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.

144. 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.

145. 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.

146. 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.

147. 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.”

148. 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.”

149. 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.

150. 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.

151. 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.

152. 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.

153. 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.

154. 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.

155. 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, barbecuing, family reunions, socializing with neighbors, gardening, working outside, playing, drying laundry outside, opening doors and windows for fresh air and to conserve energy, use of well water, and growing vegetables.”
- 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**

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

157. 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.

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

159. 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.

160. 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.

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

162. 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.

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

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

165. 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.

166. 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.

167. 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.

168. 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.

169. 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.").

170. 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.

171. 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.

172. 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

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

174. 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.

175. 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.

176. 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.

177. 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.

178. 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.

179. 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

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

181. 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.

182. 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.

183. 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

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

185. In addition to their claims for monetary damages, the Plaintiffs respectfully request entry of injunctive and equitable relief requiring the Defendants 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
Mona Lisa Wallace
NCSB #9021
John Hughes
NCSB #22126
Wallace & Graham, P.A.
525 North Main Street
Salisbury, NC 28144
Phone: 704-633-5244
Fax: 704-633-9434
mwallace@wallacegraham.com
jhughes@wallacegraham.com

Exhibit 1

Aerial Photo Showing Farm Locations



AWS310259 Joey Carter Farms

John Hall Farm Ln

John Hall Farm Ln

Peace Ln

Paradise Ln

Paradise Ln

Joey Carter Ln

Joey Carter Ln

Hallsville Rd

Hallsville Rd

Hallsville Rd

1961

1961

1961

Howards Farm Rd

Howards Farm Rd

Howards Farm Rd

Howards Farm Rd

AWS310259 Joey Carter Farms