

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

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Pamela Kaye McMillon,	)
Joe E. Powell, Jr.,	)
Rededieth Morrissey,	)
Timothy Morrissey,	)
Marilyn Alderman,	)
Norwood Alderman,	)
Geraldine Burton,	)
Dennis Burton,	)
Willie Burton,	)
Ollie Burton,	)
Carolyn Davis,	)
Sharade Davis,	)
Hermetta Judge,	)
Thurman McArthur Judge,	)
Natasha Judge, individually and as the mother	)
and natural guardian of Maya Judge and	)
Myron Judge,	)
Thurman Judge,	)
Isolene Scarborough,	)
Council Glaspie,	)
Joyce Ann Glaspie,	)
Rachel Scarbrough,	)
Melissa Glaspie,	)
Raquan Scarbrough,	)
Deborah Peterson,	)
Gregory Peterson,	)
Marcus Peterson,	)
Collins Lopez,	)
Ernestine Savage,	)
Jimmie Savage,	)
Dorothy Jackson, and	)
Nova Williams,	)
	)
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 Duplin County, North Carolina. During the pertinent times they have resided on, owned and used land in close proximity to hog confinement sites that hold thousands of hogs owned by the Defendant. These facilities are known as Concentrated Animal Feeding Operations (“CAFOs”).

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

3. In addition and as an independent cause of the nuisance, the presence of Defendant’s hogs has caused periodic swarms of flies, other insects, and other pests. 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. 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.

7. 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

8. Plaintiff **Pamela Kaye McMillon** is a resident of North Carolina who lives at 217 Rock Road, Wallace, NC 28466.

9. Plaintiff **Joe E. Powell, Jr.** is a resident of North Carolina who lives at 217 Rock Road, Wallace, NC 28466.

10. Plaintiff **Rededieth Morrissey** is a resident of North Carolina who lives at 225 Rock Road, Wallace, NC 28466.

11. Plaintiff **Timothy Morrissey** is a resident of North Carolina who lives or during pertinent times has lived at 225 Rock Road, Wallace, NC 28466.

12. Plaintiff **Marilyn Alderman** is a resident of North Carolina who lives at 174 Rock Road, Wallace, NC 28466.

13. Plaintiff **Norwood Alderman** is a resident of North Carolina who lives at 174 Rock Road, Wallace, NC 28466.

14. Plaintiff **Geraldine Burton** is a resident of North Carolina who lives at 127 Burton Lane, Wallace, NC 28466.

15. Plaintiff **Dennis Burton** is a resident of North Carolina who lives at 127 Burton Lane, Wallace, NC 28466.

16. Plaintiff **Willie Burton** is a resident of North Carolina who lives at 678 Deep Bottom Road, Wallace, NC 28466.

17. Plaintiff **Ollie Burton** is a resident of North Carolina who lives at 678 Deep Bottom Road, Wallace, NC 28466.

18. Plaintiff **Carolyn Davis** is a resident of North Carolina who lives at 148 Fitz Williams Road, Wallace, NC 28466.
19. Plaintiffs **Sharade Davis** is a resident of North Carolina who lives with her grandmother and guardian Carolyn Davis at 148 Fitz Williams Road, Wallace, NC.
20. Plaintiff **Hermetta Judge** is a resident of North Carolina who lives at 178 Angola Bay Road, Wallace, NC 28466.
21. Plaintiff **Thurman McArthur Judge** is a resident of North Carolina who lives 178 Angola Bay Road, Wallace, NC 28466.
22. Plaintiff **Natasha Judge** is a resident of North Carolina who lives at 180 Angola Bay Road, Wallace, NC 28466.
23. Plaintiff **Maya Judge** is a resident of North Carolina who with her mother, Natasha Judge, lives at 180 Angola Bay Road, Wallace, NC 28466.
24. Plaintiff **Myron Judge** is a resident of North Carolina who with his mother, Natasha Judge, lives at 180 Angola Bay Road, Wallace, NC 28466.
25. Plaintiff **Thurman Judge** is a resident of North Carolina who lives 104 Fitz William Road, Wallace, NC 28466.
26. Plaintiff **Isolene Scarborough** is a resident of North Carolina who lives at 145 Rock Road, Wallace, NC 28466.
27. Plaintiff **Council Glaspie** is a resident of North Carolina who lives at 147 Stokestown Road, Wallace, NC 28466.
28. Plaintiff **Joyce Ann Glaspie** is a resident of North Carolina who lives at 147 Stokestown Road, Wallace, NC 28466.

29. Plaintiff **Rachel Scarbrough** is a resident of North Carolina who lives at 147 Stokestown Road, Wallace, NC 28466.

30. Plaintiff **Melissa Glaspie** is a resident of North Carolina who lives at 147 Stokestown Road, Wallace, NC 28466.

31. Plaintiff **Raquan Scarbrough** is a resident of North Carolina who lives at 147 Stokestown Road, Wallace, NC 28466.

32. Plaintiff **Deborah Peterson** is a resident of North Carolina who lives at 233 Rock Road, Wallace, NC 28466.

33. Plaintiff **Gregory Peterson** is a resident of North Carolina who lives at 233 Rock Road, Wallace, NC 28466.

34. Plaintiff **Marcus Peterson** is a resident of North Carolina who lives at 233 Rock Road, Wallace, NC 28466.

35. Plaintiff **Collins Lopez** is a resident of North Carolina who lives at 233 Rock Road, Wallace, NC 28466.

36. Plaintiff **Ernestine Savage** is a resident of North Carolina who lives at 122 Jimmie Savage Lane, Wallace, NC 28466.

37. Plaintiff **Jimmie Savage** is a resident of North Carolina who lives at 122 Jimmie Savage Lane, Wallace, NC 28466.

38. Plaintiff **Dorothy Jackson** is a resident of North Carolina who lives at 164 Rock Road, Wallace, NC 28466.

39. Plaintiff **Nova Williams** is a resident of North Carolina who lives at 213 Rock Road, Wallace, NC 28466.

**B. Defendant**

40. 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 the law of Delaware and with its principle office located at 200 Commerce Street, Smithfield VA 23430. Morrell is a wholly-owned subsidiary of Smithfield, a corporation incorporated under the law of Virginia with its principle office located at 200 Commerce Street, Smithfield VA 23430. During the pertinent times, Murphy-Brown has conducted business in North Carolina, among other States.

**III. JURISDICTION AND VENUE**

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

42. 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.

43. 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.**

44. 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 and gases rise from below the floor and from throughout the hog sheds, and the dust, skin cells, dander, particulates, dried fecal matter and stench from below-floor manure is sent out into the environment by large fans set in hog shed walls or by other means.

45. 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.

46. 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.

47. 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.

48. 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.

49. Plaintiff **Pamela Kaye McMillon** lives at 217 Rock Road. Family members including Stephanie McMillon and her son **Joe E. Powell, Jr.** have also resided there or come to visit. Ms. McMillon’s home is located close to the hogs. She has lived in the area almost her whole life and her family has deep roots there. Her home is also right next to the narrow road that curves by her house and over which the hog trucks go.

50. Like the others, Ms. McMillon has dealt with repeated episodes of foul odor from the hogs. The episodes get worse in the summer when it gets hot. Also, it can get very bad when it starts to rain.

51. Hog trucks pass by her house frequently carrying hogs. The hogs trucks cause more foul odor as well as dust and noise. Ms. McMillon also has episodes of flies. When the weather is warmer the flies are worse. The flies come in when she opens the door or the windows to her house.

52. Plaintiffs like Ms. McMillon cannot hang clothes or laundry out to dry and one or more of the Plaintiffs have taken down their clotheslines because they could not stand the way the foul odor made their clothes smell when hung out to dry. Further, Plaintiffs like Ms. McMillon cannot use their yards like they would want to. When the smells are bad she does not open her windows. On breezy days the odor in her house can become very bad if the door or windows are open.

53. Ms. McMillon has found that the bad smells are unpredictable. If she leaves the windows open she is taking a chance that the odors might come. The bad smells keep her from being able to open the windows and door and air out the house. Further, the water from her water well has an odor to it. She has had to buy cases of bottled water to drink.

54. Hog trucks go by during the day and night. Sometimes trucks come to get dead hogs in the mornings. Some of the Plaintiffs try to drive out in the morning early to get out before the "stink truck" so they do not have to smell it. Sometimes the trucks leak and Plaintiffs see liquid trickle out onto the road. Sometimes there are visible dead hogs on top of the truck.

55. The trucks frequently go by Ms. McMillon's house on the road. Each time, the truck goes by twice, once to the site and another time leaving. The trucks go very close to her yard and her house which is very close by the road, going on a very narrow curving country lane and spilling liquid and causing dust, noise and odor.

56. These events of bad smell and nuisance have continued to occur months after Plaintiffs had initially made demands and claims to the Defendant to stop the nuisance.

57. Ms. McMillon and other Plaintiffs like to grow flowers and plant and tend to a garden. But when the smell is bad, they have to go inside.

58. The hog smell is a rotten smell and it smells different from other kinds of animals and farms. Some of the Plaintiffs have worked or spent time on family farms in the past and the hog facilities are not like farms but instead they have a much worse smell.

59. Ms. McMillon has family and friends who live nearby such as her mother and brother. The bad smell and flies interfere with their ability to enjoy visiting with each other. Ms. McMillon has bought things like air fresheners, candles, spray, and fly swatters to try to control the odor and the flies. She has had to run the air conditioner when she would rather have the windows open. It is embarrassing and humiliating to have a smell of rotten hog feces and urine in the home when guests come over when it is no fault of your own.

60. Ms. McMillon believes that the thousands of hogs nearby are making her homestead worth less.

61. Plaintiff Joe E. Powell, Jr. lives with his mother Ms. McMillon at the 217 Rock Road address. He also is harmed the same ways. He believes that the smells and the flies are hurting the value of their property. He deals with episodes of a bad smell of animal feces and urine and dead animals. The bad smells get worse in the summer. But they also happen at other times during the year.

62. Like his mother, Mr. Powell has found that outdoor activities get disrupted by the bad smells and the flies. They cannot have family gatherings when they want to and they cannot play with children outdoors in an enjoyable way. The foul odors and the flies interfere with

cookouts and with being able to do yard work and sit outdoors. Mr. Powell has seen the hog trucks go by daily and they create more foul odors, noise and dust. The hog trucks spill on the road in front of the house. It gets on his car and on his shoes and into his home and on his carpet. Mr. Powell is also concerned about the bad effects on the well water. When he visits with neighbors and friends, he sees the same things happening to them.

63. Mr. Powell deals with flies that come in the home when the doors are opened. If he tries to cook food or serve food outside, the flies get on the food.

64. There is a church in the area where many of the Plaintiffs go. Often when they come out of the church they will be hit by the odor and odor gets on their church clothes.

65. Plaintiff **Rededieth Morrisey** lives at 225 Rock Road. She has lived in the area for many years and from before when the hogs were there. Her spouse is now deceased and she is a widow. Her family member **Timothy Morrisey** has also spent time residing at this address. Rededieth is Pam McMillon's mother and Timothy is her brother. She can see one or more of the hog sites from her yard.

66. Like other Plaintiffs, Ms. Morrisey has found that the bad smell from the hogs can be the worst when it is hot in the summer and when it first starts to rain. When the smell is bad, she cannot open the windows of her house or the door, she cannot air out the house, and she cannot enjoy spending time outside. She cannot sit outdoors or on her porch when it stinks really bad. She cannot grill outdoors or hang clothes outside to dry when it smells bad.

67. Ms. Morrisey would like to move away because of the odor that sickens her, but she does not have the income to do so. Ms. Morrisey is African-American and this land is where her family has deep roots and she does not believe it is fair that the hogs should force her to move away after she has lived there for so many years.

68. Hog trucks go by her house very often. They include very big trucks carrying live hogs, dead hogs, or feed. They make noise and dust and cause more of the odor. Ms. Morrisey also has problems with flies from the hogs. Their house is very near the narrow road in front where big trucks go by.

69. The hogs have a different smell than other animals and other kinds of farms. It is a bad, rotten smell. Ms. Morrisey has used things like air freshener, candles and spray to try to cut the bad odor. When the hog odors are very bad it makes it harder to breathe.

70. Timothy Morrisey has experienced similar problems from the nearby hog farms and from the trucks that come from the farms.

71. Plaintiff **Marilyn Alderman** along with **Norwood Alderman** lives at 174 Rock Road. They live near several sites holding Murphy-Brown-owned hogs including the Ann Lee English facility, the Cavanaugh facility #1, and the Cavanaugh facility #2.

72. These facilities hold thousands of hogs belonging to Murphy-Brown and follow the rules and requirements set by Defendant. Trucks owned by Defendant are routinely bringing hogs in, taking them from one site to another, and trucking out dead hogs from the “dead boxes.”

73. Mr. and Mrs. Alderman have had repeated episodes of foul odors from the swine. They have also had episodes of flies. The flies are big and can get in the house if they open the windows or the door. The flies and the foul smell can keep them from doing activities like a cookout. Some of the Plaintiffs including the Aldermans have also seen buzzards around their property. Mrs. Alderman has seen buzzards on the roof and around her land.

74. Trucks carrying live hogs and trucks carrying dead hogs repeatedly pass by the home. The trucks bring with them more odor as well as dust and noise. Also, a foul liquid can come out of the trucks and trickles onto the road where it causes more stench.

75. Many times the worst odors come when it is in the summer and it is hot. When it rains, the hog odor can be worse. The times when the foul odor comes are unpredictable. The Plaintiffs are always on edge because there could be a blast of foul stench at any time. If they leave the windows open at their house, or they open the windows and doors to air the house out, they are taking a chance because the foul smell could happen at any time.

76. When the Plaintiffs are doing activities or chores outside, if the foul smells come, it can sicken them. The stench smells different than what normal farms smell like. They make it harder to breathe. The Plaintiffs are concerned about the danger of the spray mist and germs.

77. The odor and flies can come when the Plaintiffs are trying to work on the yard, sitting outside, or walking to the car. Sometimes, the smell is so bad that it stays on their clothes or they can smell it at church. In addition, the presence of the thousands of hogs and the foul smell and flies from the millions of gallons of hog manure and urine has made their properties worth less.

78. Plaintiffs **Geraldine Burton** and her husband **Dennis Burton** live at 127 Burton Lane. Their family has deep roots in the area going back for very many years, even to the 1800s after slavery and the Civil War.

79. When the hogs cause a bad odor, it makes it so that Mr. and Mrs. Burton do not want to go outside. When the smell is very bad, they cannot have an outdoor barbeque, they cannot sit outside, and they cannot enjoy doing things in their yard.

80. There are times when the flies are bad. When the flies are bad Mr. and Mrs. Burton cannot do things like to have a cookout. The flies also get into their house.

81. The hog odor is a strong sharp odor. They have experienced it sometimes during the mornings, other times in the afternoons. Mr. and Mrs. Burton must go on with their daily life despite the bad odor. But it makes their quality of life and use of their property less enjoyable.

82. They have had to run the air conditioner with the windows closed when they did not want to. They have had to stay indoors when they did not want to. They have bought things like scented candles or incense to try to cover the bad odor that gets in their house.

83. Plaintiffs **Willie Burton** and **Ollie Burton** live at 678 Deep Bottom Road, which is right up the street from Geraldine and Dennis Burton. They have suffered from similar nuisance and harm caused by the thousands of Murphy-Brown hogs.

84. The Burton family members would like to spend time in family gatherings outdoors and going to each other's homes, but the episodes of foul stench and the flies reduce their ability to use and enjoy their property. The Burton family members have had the value of their property go down because of the thousands of hogs and millions of gallons of hog sewage kept nearby. They have also had buzzards sitting in the trees around their property.

85. The Burtons have been trying to sell their home for reasons including the nuisance and their inability to enjoy their property. However, to date they are unable to sell it.

86. Plaintiffs **Carolyn Davis** and her granddaughter **Sharade Davis** live at 148 Fitz Williams Road. Carolyn Davis is a widow.

87. Carolyn and Sharade have suffered through repeated episodes of a foul smell from the hogs. When the breeze blows from where the hogs are, a very bad rotten odor can come onto their land. The foul smells make it harder for Carolyn Davis to breathe.

88. There are also times when big black flies come onto the property and into their house. Sometimes, the flies can become glued to the doors and windows. When the flies and the

odor are bad, this means that gatherings with family and friends have to happen indoors or elsewhere. Carolyn Davis has seen and heard the hog trucks going by with live hogs and dead hogs. These big trucks can cause more foul odors as well as dust and noise.

89. Carolyn has had to run the air conditioner instead of keeping the windows open at times when the odor and flies are bad. She has bought air freshener products to try to lower the smell. She is concerned about her water well and more recently they have gone to county water.

90. Plaintiff **Hermetta Judge** resides at 178 Angola Bay Road along with her husband **Thurman McArthur Judge**. Residing next door at 180 Angola Bay Road are **Natasha Judge** and her two children **Maya** and **Monique Judge**. Nearby also resides **Thurman Judge**, the father of Thurman McArthur Judge, at 104 Fitz William Road. The family members have lived in the area for many years. Family ancestors have resided on the land and in the community and owned land there for many decades.

91. Hermetta Judge has a job as a Certified Nursing Assistant at Pender Memorial Hospital. The nuisance impairs her ability to relax and enjoy her home life. Natasha has worked as a correctional officer at the Duplin Correctional Center. The hog odors, flies and nuisance harm her ability to use and enjoy her property after a long day at work.

92. Hermetta Judge and the other Judge family members have dealt with repeated episodes of foul odor from the hogs. It is a strong odor and it is different than the smell from a normal farm.

93. The odor harms their ability to enjoy and use their property. Instead of having a cookout, they will have to cook inside. Instead of having a birthday party outdoors, it has to stay inside. When they would like to open their windows on a sunny day, if they do, the foul odor comes in. If they try to hang their clothes outside to dry, the foul smell can get on the clothes.

At times they have to keep the windows closed and run the air conditioner when they would like to keep the windows open.

94. There are times when Judge family members cannot play with children or grandchildren outdoors. The foul odor gets in the way of other outdoor activities and chores like washing the car. Family members cannot go and sit outside on a nice sunny day. While they are doing yard work or mowing the lawn, the bad stench may assault them.

95. The Judges must also deal with the dead boxes. These can have a very bad odor, and sometimes dead rotting animal carcasses are visible sticking out in the hot sun. Dead hogs can also be seen on trucks going by the dead boxes. Sometimes, a foul liquid leaks out.

96. The Judge family members also have episodes of big black flies that go onto their property and come in their doors and windows. At times, family members have seen spraying up into the air in the fields next to the hog sheds.

97. Thurman McArthur Judge is retired and so he spends a lot of time at home. The bad hog smells make it harder for him to use and enjoy his property. He has experienced episodes of foul odor many times. The time that the bad odor comes is unpredictable and you cannot plan for it. It has come at times of all seasons and in every month of the year. Thurman Judge (senior), who lives nearby up the street, experiences similar problems.

98. Because the family members reside in the same neighborhood, they would like to be able to go sit on each other's porches or get together for cookouts or walk to each other's houses. When the bad smell comes, it impairs these activities.

99. When the smell is bad, it can cause nausea and a feeling of a scratchy throat and parents like Natasha Judge are very concerned because the nuisance is affecting young children in their families.

100. The Judge family members like the other Plaintiffs are concerned about the loss of property value for their homes because of the thousands of hogs and the nuisance.

101. Plaintiff **Isolene Scarborough** resides at 145 Rock Road within approximately half a mile of the Jason Cavanaugh I and II sites and half a mile of the Ann Lee English site. She is also less than a mile and a half from the Chris and Jeremy Bond Farm site.

102. Ms. Scarborough has experienced foul odors from the hogs. It makes the inside of her house stink like a hog pen. When it is hot out, this can make the smell worse. When the wind blows, this can bring foul odors. The bad smells make it harder for her to work in her yard or garden. The bad smells make her nauseous and make her want to wear a mask outdoors.

103. Ms. Scarborough has also experienced foul odors from the trucks that come by to pick up the dead animals. These trucks go by full of dead hogs. Sometimes large trucks carrying live hogs go by her house. These trucks carry a foul odor. They pass by close to her house and stir up dust. They leak a foul liquid. She can see them trickle a foul liquid down the road. The spill stays on the road afterward.

104. She deals with episodes of flies. The flies fly in her face and crawl on her arms. Flies come in when she opens the windows or the door of her home.

105. Ms. Scarborough has family and friends nearby. The odor, flies and the trucks make it harder for them to spend time together, go to each other's houses and enjoy a sunny day outside. She has tried to use air fresheners. The bad smells can make it harder for her to breathe. In a rural community like hers the community members want to be able to walk to each other's houses without unpredictable sickening smells.

106. Plaintiffs **Council Glaspie, Joyce Ann Glaspie, Rachel Scarbrough, Melissa Glaspie** and **Raquan Scarbrough** live at 147 Stokestown Road. Joyce Ann Glaspie is Council

Glaspie's wife. Rachel Scarbrough is their daughter and Melissa Glaspie is also a daughter. Raquan Scarbrough is Rachel's son, a grandson. Council and Joyce Ann Glaspie have lived in the area for many years.

107. The Glaspies often encounter a foul odor from the thousands of hogs. When the odor is bad it makes them feel sick to their stomach. It makes it harder for them to breathe. They cannot stay outside and they have to go indoors.

108. When the odor is very bad outdoors, they cannot enjoy outdoor activities. They cannot sit outside or have a cookout. It gets in the way of family gatherings. They cannot play with children outside. It gets in the way of a birthday dinner in the yard. They are worried it will make children sick.

109. They see hog trucks go by the house. Sometimes the trucks have live hogs and sometimes dead hogs. Their porch gets full of flies. When someone opens the house door or the window, the flies come in and get on your face and body and get on your food.

110. They have to keep the windows closed at times when they do not want to. They have to run the air conditioner instead of having the windows open. They have to stay indoors at times when the weather is nice or they want to go out and do yard work. They have bought products to try to reduce the foul odor when it gets indoors, like scented candles or incense.

111. With five people in the house, they would like to be able to go outside more and to open up the windows and doors more and air out the house and enjoy the outdoors. But the foul smells and flies from the hog farms get in the way.

112. Plaintiffs **Deborah Peterson**, her husband **Gregory Peterson** and their adult sons **Marcus Peterson** and **Collins Lopez** have all lived at 233 Rock Road. Deborah is the sister of Pam McMillon. They inherited the land from family members. The Petersons find that the

stench from the hogs is at its worst in the summer. When the weather gets hot, the scent gets worse. Also, the smell can get very bad when it starts to rain.

113. The trucks go by carrying feed and live and dead hogs. The dead trucks are especially bad. Smelly liquid leaks out. When the liquid leaks out, it can stay on the road afterward where it continues to stink. The trucks go very close by the house with noise and dust.

114. When the smell gets bad, it means the Peterson family members cannot keep the windows open. They cannot air the house out or enjoy the outdoors. They cannot sit outside. They have to run the air conditioner to try to keep the smell out. They cannot have cookouts outside when the smell gets very bad. Being able to open the windows and air out the house and do things outside is important when you have a family living together in a small mobile home or modular home.

115. When the hog smells are bad, then the Petersons have to do yard work at other times, in the middle of the stench. They cannot go on walks or sit outdoors on a sunny day when the odors are bad, unless they want to feel sickened by it. The hog smell is a rotten smell and it is different from the smell of other animals or farms.

116. There are also episodes of flies. The flies get on the windows and come in the door when they open it. The flies can be very annoying and get on clothes and skin and food. Mr. and Mrs. Peterson have used products to try to reduce the bad smell in the house. The odors make it harder to breathe.

117. The quality of life for the family has been negatively impacted by the swine kept near their property. At times, it is very unpleasant for them to be outside. Also, the family is very concerned that their property value has been negatively impacted by the hogs.

118. The Petersons have close friendships with neighbors and want to be able to walk down the street and visit with them and sit outside without the noxious odor.

119. Plaintiffs **Ernestine and Jimmie Savage** reside at 122 Jimmie Savage Lane. They have lived in the area for very many years. They have owned their home for a long time. Mrs. Savage recalls that the land has been in her family for many years going back generations.

120. The Savages' ability to use and enjoy their land has been hurt because of the odors, stench, flies and other nuisance from the hogs. The time when the stench comes is unpredictable. It can get bad at any time.

121. Mrs. Savage is ill and has dizzy spells and is partially blind. She is homebound and her husband spends much time with her. Because they spend so much time at the home the nuisance affects them more.

122. Plaintiff **Dorothy Jackson** lives at 164 Rock Road. Where she lives is family land. She has lived in the area as a small child and for much of her life. The hog sites are close to her home. The hogs have harmed her quality of life and forced her to deal with the bad smells and odors. Trucks go by with live hogs and dead hogs and cause more foul odor. Dirty liquid runs from out of the trucks onto the road.

123. At times, Ms. Jackson finds there are many flies everywhere. She also sees buzzards. Sometimes, the bad smell comes on a daily basis. Her well water also used to have a bad smell until she changed to town water. The odor and flies get in the way of her daily activities. She cannot hang laundry on the clothesline. At times, she has to keep the windows closed. When family or friends and their children are visiting, she cannot take them outside to play. They cannot have a cookout outside when the smell and flies are bad.

124. Plaintiff **Nova Williams** resides at 213 Rock Road. She and her husband had the land since about 1967. Her husband passed away in 2008. Her children have grown and she now lives in the home alone.

125. Ms. Williams is retired and spends much of her time at home. Sometimes, the odor from the hogs is very bad. The odors and flies from the hogs have harmed her quality of life and her enjoyment of her property. The trucks that go by carrying hogs also bring a bad smell. They make noise and wake her up at night.

126. People do not want to come over to visit because of the awful smell. When the smell is bad it makes her feel sick and gives her headaches. The bad smells also make it hard to breathe. She has to buy products to try to keep the air smelling better in the house.

**B. Background on the Facilities.**

127. Murphy-Brown has put thousands of hogs at multiple swine confinement sites near each other and near to the Plaintiffs' homes.

128. The Chris and Jeremy Bond Farms facility has approximately 7,040 hogs, eight hog sheds and two open-air sewage cesspools. It has Permit No. AWS310742.

129. The Jason Cavanaugh I and Jason Cavanaugh II facilities have approximately 7,344 hogs, six hog sheds and two open-air cesspools. They have Permit No. AWS310124.

130. The Ann Lee English facility has approximately 3,672 hogs, three sheds and one cesspool. It has Permit No. AWS310127.

131. The H. Cavanaugh facility has approximately 2,580 hogs, three sheds and one cesspool. It has Permit No. AWS310789.

132. The Richard Sholar Farm facility has approximately 4320 hogs, six sheds and two cesspools. It has Permit No. AWS310581.

133. Duplin County has been reported as having more hogs than any other county in the United States, 2.2 million hogs in 1998, and 2.8 million by 2007. Duplin County has been reported as having a pigs-per-person ratio of 32-to-1 or more. Approximately 8.5 million hogs were sold out of Duplin County in 2007. Because Duplin County is so extremely densely packed with swine, the areas of odor and flies overlap and community members may experience nuisance from different directions. Murphy-Brown has placed hogs in facilities nearby to each other and causing overlapping odor and nuisance without regard to the effects on Plaintiffs.

134. Murphy-Brown and its predecessors were instrumental in increasing the hog count in the County and deciding where the hogs should go. The racial makeup of the county has been reported as 59% White and 29% African American. The Murphy-Brown swine are placed disproportionately around the residences of African-Americans in economically depressed communities where scientific studies reflect greater vulnerability to the nuisance.

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

135. 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.

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

137. 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.

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

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

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

140. In addition to and separate from any foul odors, the presence of Defendant's hogs causes periodic swarms of flies and other insects and pests. As reflected in the facts regarding the Plaintiffs and their families, they find that large black flies periodically come onto Plaintiffs' properties. These flies were not prevalent before the thousands of hogs 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.

141. One or more Plaintiffs have also observed buzzards come onto their properties. The buzzards are unsightly and another cause of nuisance.

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

143. 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.

144. 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 or fungi,

145. The mortality rates from the CAFOs as well as periodic epidemics of diseases such as PEDV (Porcine Epidemic Diarrhea Virus) result in there being many dead hogs from time to time placed in “dead boxes.” These are nothing more than dumpsters full of dead animals left out in the open often in plain view so that neighbors see rotting animal corpses in the middle of their neighborhoods. These “dead boxes” are unsightly and attract buzzards, flies and vermin, and are a further cause of nuisance. Periodically a “dead truck” picks up the dead hogs to drive them to a rendering plant. For no reason but convenience for the CAFO the dead boxes are often placed in plain view by the street. This increases the nuisance to the neighbors.

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

146. 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.

147. 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.

148. 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.

149. 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.

150. 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. No new CAFOs have been built using the lagoon and sprayfield design, in an admission of their nuisance-causing nature.

151. 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.”

152. Under the Murphy CAFO design, hogs step, sit and lie on the raw manure and it gets on their bodies closely packed in the sheds. The hogs squish and push it down through the slats in the floor. It drips into a holding pond below the floor where it sits like an unflushed toilet. Large fans at the ends of the sheds ventilate to keep the hogs from suffocating on the gases. 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.

153. 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.

154. 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.

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

156. 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).

157. 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.

158. 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.”

159. 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.

160. 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 sends specialists to the site such as engineers and technicians, inspectors and veterinarians and controls relevant details of operation of the sites.

161. 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.”

162. 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.

163. Murphy has admitted the control it has over the CAFOs and its direct involvement in the 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.

164. 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.**

165. 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.

166. The 2012 Smithfield annual report claims that “Murphy-Brown is committed to ... protecting the environment...” The studies, reports, incidents and complaints that have amassed since Murphy first started the CAFO system clearly show predictable nuisance caused

by swine sites to nearby neighbors. However, Defendant has not stopped the nuisance, even after Plaintiffs have complained and even sent nuisance mediation demands over a year ago.

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

168. 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.

169. 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.

170. 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.

171. 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.

172. 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.

173. 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.”

174. 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.”

175. 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.

176. 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.

177. 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.

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

179. 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.

180. 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.

181. 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**

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

183. 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.

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

185. 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.

186. 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.

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

188. 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.

189. 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.

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

191. 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.

192. 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.

193. 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.

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

195. 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.").

196. 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.

197. 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.

198. 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**

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

200. 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.

201. 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.

202. 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.

203. 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.

204. 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.

205. 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**

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

207. 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.

208. 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.

209. 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**

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

211. 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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