

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

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Eunice Anderson,	)
Talley Saunders,	)
Edith Saunders,	)
Jerry Boney,	)
Annie Hayes,	)
Mae Mazyck,	)
Nicholas Woodard, Sr.,	)
Evelyn Woodard,	)
Dominique Woodard,	)
Nicholas Woodard, Jr.,	)
Shatinah Woodard, and	)
Harvey Tate,	)
	)
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 Pender County, North Carolina. During the pertinent times, they have resided on and used land in proximity to two adjacent swine operations which hold thousands of hogs owned by the Defendant: the Crooked Run Farm (“Crooked Run”) licensed to hold up to 4,200 of Defendant’s hogs and Willow Creek Farm (“Willow Creek”) which can hold 1,446 of Defendant’s sows. Because of their size, they each are termed a Concentrated Animal Feeding Operation (“CAFO”).

2. Hogs generate three times or more manure than humans. The Defendant's hogs at the CAFO facilities generate many times more sewage than entire nearby towns. 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. While placing thousands of its hogs at CAFO sites, Murphy-Brown has failed to take appropriate steps to eliminate the obnoxious recurrent odors and other causes of nuisance. The hogs have impaired the Plaintiffs' use and enjoyment of their properties.

3. In addition and as an independent cause of the nuisance, the presence of Defendant's hogs has caused periodic swarms of flies, other insects, and other pests. 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 may come onto the properties. These insects and pests are "vectors" for disease.

4. Further, as another independent cause of the nuisance, Defendant's hogs necessitate very large trucks crawling up and down the streets outside of the Plaintiffs' homes. These are often narrow and even unpaved country lanes, which normally would never be subjected to having repeated episodes of large tractor-trailers and other big trucks taking feed to the hogs, trucking in live hogs, and trucking out both live and dead hogs. These trucks often go by Plaintiffs' homes in the dead of night and they cause noise, dust, 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. 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.

6. 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**

7. Plaintiff **Eunice Anderson** is a resident of North Carolina who resides at 5709 NC Highway 11, Willard, NC.

8. Plaintiff **Talley Saunders** is a resident of North Carolina who resides with his wife, Edith Saunders, at 5901 NC Highway 11, Willard, NC.

9. Plaintiff **Edith Saunders** is a resident of North Carolina who resides with her husband, Talley Saunders, at 5901 NC Highway 11, Willard, NC.

10. Plaintiff **Jerry Boney** is a resident of North Carolina who resides at 5878 NC Highway 11, Willard, NC.

11. Plaintiff **Annie Hayes** is a resident of North Carolina who resides at 325 Red Tip Lane, Willard, NC.

12. Plaintiff **Mae Mazyck** is a resident of North Carolina who resides at 6031 NC Highway 11, Willard, NC.

13. Plaintiff **Nicholas Woodard, Sr.**, is a resident of North Carolina who resides at 6061 NC Highway 11, Willard, NC, with his wife, Evelyn Woodard, and their children: Dominique, Shatinah, and Nicholas, Jr.

14. Plaintiff **Evelyn Woodard** is a resident of North Carolina who resides at 6061 NC Highway 11, Willard, NC, with her husband, Nicholas Woodard, Sr., and their children: Dominique, Shatinah, and Nicholas, Jr.

15. Plaintiff **Dominique Woodard** is a resident of North Carolina who resides at 6061 NC Highway 11, Willard, NC.

16. Plaintiff **Nicholas Woodard, Jr.**, is a resident of North Carolina who resides at 6061 NC Highway 11, Willard, NC.

17. Plaintiff **Shatinah Woodard** is a resident of North Carolina who resides at 6061 NC Highway 11, Willard, NC.

18. Plaintiff **Harvey Tate** is a resident of North Carolina who resides at 5500 NC Highway 11, Willard, NC.

**B. Defendant**

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

### **III. JURISDICTION AND VENUE**

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

21. 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.

22. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) in that this is an action in which the matter in controversy, inclusive of monetary damages and the value of injunctive relief, exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

### **IV. FACTUAL BACKGROUND**

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

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

24. 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.

25. 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.

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

**i. Eunice Anderson.**

27. Plaintiff Eunice Anderson was born and raised on the property on which she

currently resides. To the best of her recollection, her father bought the property in the 1930s and built the home in which she was raised. After many years of working hard and saving their money, Ms. Anderson's parents built the home in which she currently lives.

28. After more than a 40-year career as a school teacher, she retired in or about 1996 and moved in with her ailing mother at her homeplace to help care for her. Upon her mother's death in 2010, Ms. Anderson inherited the property and has continued living there. Ms. Anderson, now 80 years of age and having no children herself, has already made arrangements for her home and property to be left to her church on her death. She is concerned, however, that the property would be worth considerably more if not for the Facilities being so close and is upset that the only property she has to leave to her church can be so overrun with odors coming from the Defendant's swine. Both the Crooked Run and Willow Creek facilities are within a short distance of her home.

29. Having been born and raised on this property, Ms. Anderson knows very well the impact the swine have had on her property. The odors, flies, and presence of large hog trucks passing by on a frequent basis were not in existence prior to the Facilities' construction. The odor is particularly bad around the time it has been raining in the area.

30. To help combat the odor problem presented by the Defendant's swine, Ms. Anderson keeps her windows closed and frequently uses air freshener inside her home.

31. Ms. Anderson is concerned that the Defendant's swine have had an irreversible impact on the quality of her drinking water, as it often has a foul odor. For that reason, she only buys her drinking water in bottles.

**ii. Edith and Talley Saunders.**

32. Talley Saunders and his wife, Edith, live in his family home at 5901 NC Highway

11 in Willard, NC. The entrance to the Crooked Run facility is directly across the street from their home. Therefore, they frequently see large and noisy hog trucks entering and exiting from the facility, which have frequently woken them up of a night or early morning.

33. Mr. Saunders was raised on the property where the Crooked Run facility now sits. In or about 1975, his parents purchased the property on which he currently resides. His home is directly across the street from the entrance to the Crooked Run facility. Although very close to the hog barns at each facility, the fields on which the feces and urine from Defendant's swine is sprayed are even closer to their home.

34. Mr. and Mrs. Saunders have been significantly affected and bothered by the nuisance created by the Defendant's swine ever since they have been housed at the Facilities. These conditions were not present on the property before the Facilities began housing Defendant's swine in 1990 and 1991, but have been recurrent ever since.

35. They are frequently denied the use and enjoyment of their property due to the nuisances caused by the Defendant's swine. As a recent example, the Saunderses wanted to have a celebratory cookout for their grandson who was graduating from high school this past June. Due to the unpredictable nature of the foul odor, they decided against having it on their family homeplace for fear that others may not want to come and instead had it in a public park. Mr. Saunders also recalls that one day recently in July 2014, the odor and flies were so bad while he was doing yard work, he had to wear a face mask to lessen its effect.

36. A further example of the nuisance is how one Saturday in July 2014, Mr. and Mrs. Saunders saw a large hog truck passing by their residence, leaking what appeared to be effluent and entering the Crooked Run facility, then leaving the facility approximately 30 minutes later. "Dead trucks" also present a concern for them. On frequent basis, large dump trucks enter the

Facilities and leave with the dead hogs owned by Defendant. When these trucks enter and exit, they leave behind them a trail of foul odor that can linger for some time after.

37. The Saunderses also have concerns that their well water quality has been affected by the Defendant's swine. Their water has somewhat of a foul odor to it and for this reason they always buy bottled water for drinking and cooking.

**iii. Jerry Boney.**

38. Across the street from Mr. and Mrs. Saunders, Plaintiff Jerry Boney has lived in his home at 5878 Highway 11 since approximately 1986 with his wife and children. His property is directly in front of and adjacent to the Crooked Run facility, separated only by a ditch and he can see the hog houses at the Crooked Run facility from his backyard. The open-air lagoon where the waste produced by Defendant's swine is held is only about 450 yards from his house. In between the lagoon and his home is the large spray field where the waste is sprayed into the air and on the field near his home.

39. The driveway of the Crooked Run facility is close to and is visible from his front yard. He and his family can see, hear, and smell the large Murphy-Brown hog trucks which pass behind, beside, and in front of their home on a frequent basis, leaving a trail of odor and, at times, effluent on the road. Dead or alive the swine being hauled into and out of the property leave odor on his property and at times leak waste onto the road in front of his home.

40. Prior to the Facilities' construction, he had no concerns about any odor or fly presence because there was no presence like there is on a recurring basis now. These nuisances have significantly impacted his and his family's ability to enjoy their property.

**iv. Annie Hayes.**

41. Plaintiff Ms. Hayes has lived at her current home at 325 Red Tip Lane since about

1972 when she and her husband, Leslie Hayes, began living there. They raised their four children on this property. He passed away in 1989, but she has continued to live there.

42. Like the other Plaintiffs, her home is very close to the Facilities where Defendant's swine are kept.

43. The odor emanating from the swine frequently make her nauseous when she is outside. Since the Facilities' construction, she has spent considerably more time inside her home to avoid the periodic but frequent odor and increase in flies around her property. She is always mindful to close her front door immediately so as to not let any flies or odor into her home. She keeps the odor out by keeping her windows closed and uses air freshener inside.

**v. Mae Mazyck.**

44. Plaintiff Ms. Mazyck, now 92 years old, lives across the road from and about halfway in between the two Facilities, within close proximity of each. She and her husband, Caesar Mazyck, bought the property in about 1974 and although her husband died in 1984, she has lived here ever since.

45. The quality of her life on the property has been diminished by the recurrent odors emanating from the swine being housed at the Facilities. The odors for her come at various times of a day, but are particularly obnoxious around the time it is or has been raining.

46. As she lives between the two facilities, large Murphy-Brown hog trucks pass by her home quite frequently, which did not occur when she and her husband first began living here.

**vi. The Woodards.**

47. Nicholas Woodard, Sr., and his wife, Evelyn Woodard, have lived at their property on Highway 11 since about 1987, the year they married and bought the property from Mr. Woodard's grandfather. On this property, they raised all their children: Nicholas Woodard,

Jr., Dominique Woodard, and Shatinah Woodard, each of whom are at least 18 years of age and still live on this property. They are all plaintiffs in this action as they have each been significantly impacted by the recurrent nuisance created by the Defendant's swine.

48. Nicholas, Jr., and Dominique are both in the United States Marine Corps Reserves and Shatinah just graduated from high school. Each of them were born and raised by their parents on this family property.

49. Much like the other plaintiffs in this action, the Woodards experience recurrent odor emanating from the Defendant's swine at the two Facilities. They live next door to fellow plaintiff Mae Mazyck and are also approximately one-half mile from either Facility.

50. Living so close to and between the two Facilities as they do, they very frequently see large hog trucks pass by their home going to or leaving either of the Facilities, sometimes leaking effluent from the trucks onto the road and leaving an odor on their property.

**vii. Harvey Tate, Jr.**

51. Plaintiff Harvey Tate, Jr., lives at his family homeplace at 5500 Highway 11 which has been his primary residence practically his entire life. His great-uncle, James Tate, built the home in or about 1971, but died shortly thereafter, and Harvey Tate's late parents began living there. His father and mother died in 2001 and 2011, respectively, but he has continued to live in his family home.

52. Although very close to both facilities, the Crooked Run facility is visible from his backyard.

53. Since his parents have passed away, he has considered doing renovations and improvements, but has not because the Defendant has destroyed his quality of life on his family homeplace. He also believes that his property value is significantly lower, in real terms, because

of the nearby presence of Defendant's swine. Moreover, he is embarrassed when guests come to his home because of the foul odor that frequently drifts from Defendant's swine. Prior to the Facility being constructed, he and his family would often have outdoor events and cookouts on their property, but no longer do this in large measure due to the Defendant's swine.

54. In addition to the odor, Mr. Tate sees large hog trucks passing by quite frequently, sometimes leaking what appears to be hog effluent onto the road. This and the presence of the swine so close has affected the quality of his well water, he believes, as the quality was of no concern prior to the Facilities. For this reason, he purchases bottled water to drink instead.

**B. Background on the Facilities.**

**i. Background on the Crooked Run Facility.**

55. The Crooked Run Facility is a CAFO with permit number AWS710012 issued by the North Carolina Department of Environment and Natural Resources ("DENR"). It is located on Highway 11 in Pender County.

56. Upon information and belief, the Crooked Run Facility is owned by Bandit 3 LLC ("Bandit 3"), a limited liability corporation of Sampson County created in 2011 and owned by Robert Montgomery,<sup>1</sup> Joseph Butler, and Ryan Butler. It is a "feeder to finish" facility with an allowable count of 4,200 hogs. The Facility has approximately seven hog buildings to house Defendant's swine and a large open-air cesspool also known as "lagoon." Bandit 3, however, never owns the hogs it houses. Upon information and belief, all the hogs are at all times during the life of the hog directly owned by Murphy-Brown.

57. Upon information and belief, the facility now known as Crooked Run opened in 1990 and, for all pertinent times, is and has been a "contract grower" for Murphy-Brown (or its

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<sup>1</sup> Upon information and belief, Robert Montgomery is currently an employee involved in "ingredient procurement" for Murphy-Brown.

predecessors) meaning that Bandit 3 contracts with Murphy-Brown to raise its hogs until they are ready to be sent to a processing facility.

58. Upon information and belief, Crooked Run has had a number of regulatory violations while attempting to manage the waste created by Defendant's swine, the most recent of which are set out below.

59. On February 25, 2014, DENR sent Bandit 3 a Notice of Violation ("NOV") describing the violations it noted on its inspection. This letter noted: (1) failure to maintain vegetative cover on the spray fields in accordance with the management plan, (2) failure to maintain adequate "freeboard" of the cesspools, i.e., the distance between the surface of the pool and the top of the earthen rim of it, and (3) failure to notify DENR of the inadequate freeboard as required. This NOV was carbon-copied to Kraig Westerbeek<sup>2</sup> of Murphy-Brown.

60. On March 27, 2014, DENR issued yet another NOV citing, this time, four violations: (1) excessive land application resulting in ponding of effluent on the spray fields and running into a ditch, (2) failure to maintain vegetative cover on the spray fields in accordance with the management plan, (3) failure to have an operator in charge or person under his supervision to inspect the land as often as necessary to prevent ponding of effluent on the spray fields, and (4) failure to notify DENR within the required time of the deficiencies of the Facility. This NOV was also carbon-copied to Kraig Westerbeek of Murphy-Brown.

61. On April 8, 2014, Robbie Montgomery of Bandit 3 and Murphy-Brown responded to the March 27, 2014 Notice of Violation. This response, written on Murphy-Brown letterhead, describes the methods taken to correct "mismanagement" of this Facility which

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<sup>2</sup> Upon information and belief, Mr. Westerbeek is director of environmental compliance for Murphy-Brown.

ultimately led to the noted violations, including the improper spraying onto the fields near the Plaintiffs which ran into an adjacent ditch.

**ii. Background on the Willow Creek Facility.**

62. The Willow Creek Facility is a hog CAFO with permit number AWS710008 issued by DENR. It is located on Highway 11 in Pender County.

63. Upon information and belief, the Willow Creek Facility is owned by Godwin Twins, Inc. (“Godwin Twins”), a limited liability corporation of Sampson County created in 2000 and owned by Oliver Godwin and Diana Godwin, both of Duplin County. Willow Creek is a sow farm, or a “farrow to wean” facility with an allowable count of 1,446 hogs. The Facility has four hog buildings to house Defendant’s swine and a large open-air cesspool. Upon information and belief, all the hogs are at all times owned by Murphy-Brown.

64. Upon information and belief, the Willow Creek facility opened in 1991 and, for all pertinent times, is and has been operated by a “contract grower” for Murphy-Brown or its predecessors meaning that Godwin Twins, the current “contract grower,” contracts with Murphy-Brown to raise its hogs until they have reached the weaning stage of the growing process. Like the Crooked Run facility, Willow Creek has also had regulatory issues including ponding of hog waste on their spray fields.

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

65. 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.

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

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

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

69. 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.**

70. 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. The 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.

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

72. In addition, ever since the hogs have come, very large trucks crawl up and down the streets outside of the Plaintiffs' homes. 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.

73. In addition, the dead hogs themselves are a nuisance. Animals in confinement under high-density circumstances present a ready climate for disease. As a result, many swine facilities have used vaccines and antibiotics not only to promote growth but also to counteract the health effects of crowded conditions. It has been estimated that as much as 80% of all antibiotics administered to CAFO animals are at sub-therapeutic levels, i.e., they are not used to treat animals that are sick. 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.

74. 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.**

75. 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.

76. 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.

77. 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 nearby Duplin and Sampson became the most densely-packed hog counties in the entire United States.

78. 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.

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

80. 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.”

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

82. 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.

83. 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.

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

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

86. 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).

87. 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.

88. 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.”

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

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

91. As of 1995, it was reported that a typical contract grower borrowed anywhere from \$200,000 to \$1 million to construct hog sheds. Murphy 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.”

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

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

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

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

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

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

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

98. Defendant and its predecessors have acted improperly during prior incidents caused by the CAFOs. As an example, on May 8, 1991, a 10-acre feces and urine cesspool ruptured on Murphy's Magnolia No. 1 facility in Duplin County. After the lagoon collapsed, tons of water went into Millers Creek. According to news reports, Wendell Murphy, Sr. knew

about the incident within hours and personally visited the site. It took four days to find and patch the leak. But Murphy never notified the State about the spill.

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

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

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

102. 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.

103. 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."

104. 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."

105. 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.

106. 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.

107. 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.

108. 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 a safe manner so that North Carolina and its residents such as Plaintiffs are not required to bear the externalized costs.

109. 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.

110. 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.

111. 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 located in communities susceptible to the nuisance and 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 rural communities 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 factors like low income, inadequate housing, low health status, and insufficient access to medical care compound the negative impacts that hog farms create.

- n. A study from 2007 noted how “Odour gives a problem when pig farms are located close to residential areas.”
- o. A 2008 study investigated residents living within 1.5 miles of industrial swine operations in eastern North Carolina. The study indicated that odor is commonly present and that the odors are related to interruption of activities of daily life.
- p. A 2008 report found that “Recurrent strong odors” and “increased populations of flies are among the problems caused by CAFOs that make it intolerable for neighbors and their guests to participate in normal outdoor recreational activities or normal social activities in and around their homes.”
- q. A 2008 study noted that for residents near CAFOs “hog odor limits several leisure time activities and social interactions.” The study focused on nuisance in North Carolina, defined to include conduct that “is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property.” The study found that within 1.5 miles of CAFOs, “hog odor limits activities of daily living that participants either ‘enjoyed’ doing the most or expected to be able to perform inside and outside their homes. It restricts, for instance, activities like cookouts, barbequing, family reunions, socializing with neighbors, gardening, working outside, playing, drying laundry outside, opening doors and windows for fresh air and to conserve energy, use of well water, and growing vegetables.”
- r. A 2009 study found that individuals 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**

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

113. 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.

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

115. 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.

116. 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.

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

118. 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.

119. 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.

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

121. 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.

122. 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.

123. 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.

124. 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.

125. 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.”).

126. 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.

127. 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.

128. 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**

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

130. 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.

131. 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.

132. 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.

133. 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.

134. 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.

135. 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**

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

137. 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.

138. 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.

139. 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**

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

141. 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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