

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

Rene Miller,)
)
Plaintiff,)
)
v.)
)
Murphy-Brown, LLC,)
)
Defendant.)

COMPLAINT

Plaintiff hereby files her Complaint against Defendant Murphy-Brown, LLC and alleges:

I. INTRODUCTION

1. The Plaintiff is a resident of Duplin County. During the pertinent times she has resided on, owned and used land in close proximity to hog confinement sites that hold tens of thousands of hogs owned by the Defendant. These facilities are known as Concentrated Animal Feeding Operations (“CAFOs”). The closest of these facilities is E&J Farm (“the Facility”) holding approximately 5,280 of Defendant’s hogs.

2. Hogs generate three times or more manure than humans. 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 nuisance. This has impaired the Plaintiff’s use and enjoyment of her property.

3. In addition, the presence of Defendant’s hogs has caused periodic swarms of flies and other insects and pests. Flies periodically descend upon Plaintiff’s property. Other insects such as gnats come onto Plaintiff’s land. These pests are “vectors” for disease.

4. Further, Defendant's large trucks crawl up and down the streets outside of the Plaintiff's home. This narrow country road normally would never be subjected to large tractor-trailers and other big trucks taking feed to hogs, trucking in live hogs, and trucking out live and dead hogs. These trucks often go by Plaintiff's home in the dead of night and they cause noise, dust, liquid spilling and bright lights of 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.

II. PARTIES

A. Plaintiff

7. Plaintiff **Rene Miller** is a resident of North Carolina who resides at 446 Veachs Mill Road in Warsaw, North Carolina.

B. Defendant

8. Defendant **Murphy-Brown, LLC**, formerly known as Carroll's Foods, Inc., is a limited liability company organized under the law of Delaware. Defendant'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 the same address as Morrell. During the pertinent times, Defendant has conducted business in numerous States including North Carolina.

III. JURISDICTION AND VENUE

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

10. 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.

11. 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 Plaintiff.

12. Plaintiff Rene Miller lives in the home in which she was raised, at 446 Veachs Mill Road in Warsaw. Her mother, Daisy Miller, built the home in or about 1961 and lived in the home until her death in 1995, and is the namesake of the road, Daisy Miller Ln., which accesses a small neighborhood behind her property.

13. Plaintiff Ms. Miller has suffered injury and harm as a direct result of the tens of thousands of swine placed near her home by Defendant. Its 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.

14. The urine and feces go into cesspools, or “lagoons,” from which it evaporates and may leak and spill. Because Murphy-Brown does not cover the cesspools they evaporate odor into the air and attract flies and other pests. The liquid is also sprayed into the air and onto fields including directly in front of Ms. Miller’s home causing odorous fecal and urinous mist to drift onto her land. Murphy-Brown refuses to reduce the hog count, provide controls or truck manure away although it has the capacity to do so. Ms. Miller has witnessed spraying which occurs in a field directly across the street from her home causing a sickening stench.

15. Dead hogs are placed in one or more “dead boxes” near Ms. Miller’s home, then picked up by “dead trucks” and carried out. All of these activities cause odor, annoyance, dust, noise and loss of use and enjoyment.

16. Ms. Miller has suffered episodes of noxious odor, flies and pests, nausea, burning and watery eyes, stress, anger, worry, loss of property value, loss of use and enjoyment of her property, inability to comfortably engage in outdoor activities, drifting of odorous mist and spray onto her land, inability to keep windows and doors open and other harms.

17. She has employed measures and incurred expenses to try to protect herself from the odors, pests, and nuisance. She keeps windows and doors closed, uses various types of air fresheners, and runs the air conditioner during even mild weather due to the odor.

18. Within the last few years, the adjacent hog facility built a large “pivot” sprayer in the field directly across from Ms. Miller’s home. This pivot sprayer is stationary on one end while the other end is mobile and “pivots” through the field in a semi-circle fashion. This sprays

effluent from Defendant's hogs onto the ground around the sprayer and has a "spray gun" on the end. Effluent often drifts onto her property from the sprayer which, at its closest pivoting position, appears to be fewer than 200 feet from her home. The spraying can cause foul odor and this pivot sprayer makes humming and mechanical noises which interfere with sleep.

19. Due the unpleasant conditions, Plaintiff is unable to enjoy her property as she should be able to and as she was able to prior to the hogs being placed close to her home. Before, she and her mother were able to hang their clothes out to dry in the fresh air, but now, she is subject to unpredictable foul odors.

20. Near her family's longtime graveyard, here are dead boxes where the dead hogs are dumped and draw buzzards and pests. These dead boxes are visible from the family graveyard.

21. Since approximately 2000, Ms. Miller has been an active member in the organization known as Rural Empowerment And Community Health ("REACH") based in Warsaw. In approximately 2007, she spoke to a national commission on industrial animal operations to describe how the hog farms harm her. Although Murphy-Brown is aware of complaints regarding its hogs, little if anything has been done to eliminate the nuisance.

B. Background on the Facilities.

22. The nearest of the hog facilities, **E&J Farms**, is a CAFO with permit number AWS310067. It is on Veachs Mill Road beside and in front of the property of Ms. Miller.

23. Upon information and belief, the E&J facility is owned by E and J Farms LLC, a limited liability company established in 2010 and owned by George Elwood Garner III and Lori Garner and owned previously by the late George Elwood Garner, Jr., who served as the elected sheriff of Duplin County until his death in 1999. It is a "feeder to finish" facility with an

allowable count of 5,280 of Defendant's hogs. It has six hog buildings and a large open-air lagoon. All the hogs are owned directly by Murphy-Brown LLC.

24. Upon information and belief, the facility opened in or about 1994 and has been a "contract grower" for Murphy-Brown or its predecessors, meaning that E and J Farms LLC contracts with Murphy-Brown to raise its hogs until they are ready to be slaughtered at a processing facility owned by Smithfield Packing Co., part of the same Chinese enterprise which owns Murphy-Brown.

25. Upon information and belief, Defendant prepared or approved the facility and "lagoon" design for the E&J facility, and the "Nutrient Utilization Plan" or "Waste Management Plan" which, among other things, specifies that the manure, urine, feces and flush water will be held in the open-air cesspool and sprayed onto the fields and includes detailed rules for how the manure should be applied to the land.

26. In addition to the E&J facility, there are seven other facilities, including at least one owned directly by Murphy-Brown, which house Murphy-Brown's hogs and are found within approximately one mile of Ms. Miller. Collectively, they comprise 30 hog houses, 10 lagoons, and house 26,615 swine which only add to the nuisance. Ms. Miller has up to 31,895 hogs within approximately one mile owned by Murphy-Brown. If this one mile radius were extended to two miles, the total count rises to over 80,000 hogs owned by Murphy-Brown. Her county is one of the two most densely packed hog counties in the United States.

C. Background on Hog Manure and Odors.

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

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

29. 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.

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

31. 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.

32. The presence of Defendant's hogs causes periodic swarms of flies and other insects and pests. Plaintiff finds that large black flies periodically come onto her property. These flies were not prevalent before the hogs came. The flies impair outdoor activities. Other insects such as gnats also come. The flies get stuck to windows and get inside her home. They land on her skin and her food and are disgusting and humiliating.

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

34. In addition, ever since the hogs have come, large trucks crawl up and down the streets outside of the Plaintiff's home. These streets are not wide city thoroughfares but narrow

country roads such as Veachs Mill Road where Ms. Miller lives. Ms. Miller's home is approximately 30 feet from the road. The trucks cause noise, dust, and lights from headlights even in the middle of the night. Further, when the trucks transport hogs in and out this can create extra odor. When the "dead trucks" come, they can create additional foul odor as well as dripping foul substances.

35. The dead hogs are a nuisance. Animals in confinement under high-density circumstances present a ready climate for disease. Many swine facilities have used vaccines and antibiotics not only to promote growth but also to counteract the health effects of crowded conditions. 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 a pasture, 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.

36. 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 dumpsters full of dead animals left out in the open often in plain view so that neighbors see rotting animal corpses in their neighborhoods. These "dead boxes" attract buzzards, flies and vermin. Periodically a "dead truck" picks up the dead hogs to drive them to a rendering plant.

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

37. 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.

38. 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.

39. 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 farms in other states. However, hogs generate a great deal of manure, and North Carolina is more densely populated than many other agricultural states. 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. It also increased the number of hogs until counties like nearby Duplin and Sampson became the most densely-packed hog counties in the entire United States.

40. 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.

41. 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 and remains in effect today. 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.

42. 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.”

43. Under the Murphy CAFO design, hogs step, sit and lie on the raw manure and it adheres to their bodies, which are 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. Odors from the feces and urine go into the air and are blown out by the fans.

44. After manure collects under the slatted floors, it is flushed or drained out through pipes into the nearby open-air, uncovered, artificial cesspool filled with millions of gallons of hog urine, feces, and flush water. Because the cesspool is uncovered, bad odors evaporate into the air.

45. 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 across from Plaintiff’s house, a pressurized center-pivot reel system has been used.

46. 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.” After years of study, a majority of the economic committee members found there was economic feasibility for improvements. A minority opposed the finding. The minority report was joined 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), and Richard Eason (President of Cape Fear Farm Credit that finances CAFOs for Murphy-Brown growers).

47. Murphy-Brown is a multi-state corporation, wholly-owned by a multinational corporation itself owned by a Chinese-controlled enterprise (formerly Shuanghui, now WH Group) after an acquisition valued at more than \$7 billion. The Smithfield 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.

48. Shuanghui Group is the largest meat producer in China. According to testimony before the U.S. Senate and reported translations of the Chinese-language website pages, Shuanghui is a Chinese state-controlled company founded by Chairman Wan Long, who is a member of the Communist Party, a former soldier in the People’s Liberation Army, and a former political official. On information and belief, Shuanghui and Murphy-Brown intend to increase production and exports to China and Plaintiff is concerned that this will increase the nuisance.

49. As an “integrated” enterprise, Smithfield owns the hogs through Murphy-Brown, owns the processing plants through Smithfield Packing, 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.”

50. 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.

51. The growers must follow the orders and rules from Murphy-Brown or risk losing the hogs, which they never 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 such as engineers and technicians, inspectors and veterinarians and controls relevant details of operation of the sites.

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

53. 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.

54. 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.

55. 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.

56. 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.

57. 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

including Ms. Miller. Production in North Carolina tripled growing from 5 million hogs produced in 1990 to 15 million in 1995. 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.

58. 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.

59. Mr. Murphy in a news article dated February 19, 1995 stated 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.

60. 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 to buy their properties, Mr. Murphy backed out and refused to do so.

61. 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 company falsified documents and destroyed water quality records.

62. 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.

63. 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."

64. 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.”

65. Murphy has added special controls at other sites to “reduce the level of odor produced by the farms.” Defendant has added controls at sites such as the Mitchell Norris facility in Bladen County due to odor and 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 provide controls at the site herein.

66. 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. Defendant is aware of these studies and thus has actual knowledge of the nuisance. As examples 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, 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 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**

67. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

68. Plaintiff has been in lawful possession of her property and has used it as her residence.

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

70. Plaintiff's right to use and enjoy her 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 that cause noise and lights at night and foul smells; dead hogs; and other sources of nuisance.

71. The nuisance caused by Defendant's swine has substantially impaired Plaintiff's use and enjoyment of her 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.

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

73. 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 Plaintiff's interests, would consider Defendant's conduct to be unreasonable.

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

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

76. 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 Plaintiff's properties, and substantially impair her use and enjoyment of her properties.

77. 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.

78. 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 Plaintiff.

79. 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 Plaintiff.

80. 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 Plaintiff. *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.”).

81. 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.

82. As a result of Defendant’s liability for private temporary recurring abatable nuisance, Plaintiff is entitled to compensatory damages in an amount to be determined at trial.

83. In accordance with Fed. R. Civ. P. 9(g), Plaintiff hereby pleads special damages including the diminished value and lost rental value of their homesteads and properties. Plaintiff shows that as a tax-paying homeowner and occupant of her family property, she is of the opinion that one impact of Defendant’s nuisance has been to reduce her property value. Numerous studies and reports have determined that hog CAFOs lower nearby property values. Plaintiff alleges that her properties have 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

84. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

85. 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.

86. 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 Plaintiff.

87. 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 Plaintiff.

88. 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 Plaintiff has been injured.

89. During the pertinent times, Defendant knew or should have known that its actions and omissions were causing and contributing to cause harm to the Plaintiff.

90. Plaintiff is entitled to actual damages in a fair and reasonable sum in an amount to be determined at trial sufficient to compensate Plaintiff for the negligence of Defendant.

COUNT III: PUNITIVE DAMAGES

91. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

92. 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.

93. 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.

94. 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 Plaintiff and justify an award of punitive damages. Accordingly, Plaintiff demands judgment against Defendant for punitive damages in an amount to be determined at trial.

COUNT IV: INJUNCTIVE AND EQUITABLE RELIEF

95. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs, as if fully set forth herein.

96. In addition to their claims for monetary damages, the Plaintiff respectfully requests 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

Plaintiff respectfully requests a trial by jury of all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Court:

- A. Award the Plaintiff compensatory damages, in an amount to be determined at trial;
- B. Award the Plaintiff punitive damages;
- C. Award the Plaintiff pre-judgment and post-judgment interest and any other costs, expenses or fees to which they may be entitled by law;
- D. Award the Plaintiff appropriate injunctive and equitable relief; and
- E. Award the Plaintiff such other and further relief as is just and proper.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted, this the 3rd day of October, 2014.

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