

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22-CVS-929

2022 APR -5 A 10:53  
FILED  
KAREN PRUDENCIO, ARCOLA  
LEWIS, and SHERMAN and KELLY  
TRANSOU,

Individually and On Behalf of All Others  
Similarly Situated,

Plaintiffs,

v.

WINSTON WEAVER Co. Inc.,

Defendant.

**AMENDED VERIFIED COMPLAINT**  
**(Jury Trial Demanded)**

**CLASS ACTION COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF**

1. Plaintiffs, individually and as representatives of the Class herein, for their Amended Verified Complaint against Defendant, state as follows:

**NATURE OF THE LITIGATION**

2. This is a class action seeking compensatory and punitive damages as well as injunctive relief for Plaintiffs individually and as representatives of the Class described herein.

3. Plaintiffs allege that Defendant was negligent or grossly negligent in causing, or contributing to the cause of, a fire at Defendant's facility, located at 4440 Cherry Street, Winston-Salem, North Carolina (hereinafter the "Plant"), on January 31, 2022, which continued to burn for several days thereafter.

4. Plaintiffs and all other persons and businesses similarly situated suffered damages arising out of the fire and its aftermath as more fully set forth herein.

### **PARTIES**

5. Named as Plaintiffs and as class representatives are Karen Prudencio, Arcola Lewis, and Sherman and Kelly Transou, who are all persons of full legal capacity and domiciled in Forsyth County, North Carolina.

6. Plaintiff are citizens and residents of Forsyth County, North Carolina, and appear in their individual capacities and as representatives of a class set forth infra.

7. In addition to the above named Plaintiffs, it is further alleged that thousands of residents and businesses of Forsyth County, most of whom at this time are unknown and therefore unnamed, were damaged in one or more ways as alleged herein, who will be identified as this class action progresses, and are in fact contemplated members of the Class of persons, entities, and businesses whom this action seeks to protect.

8. Defendant Winston Weaver Co., Inc. ("Weaver") is a North Carolina Corporation, and its principle place of business is located at 4440 N Cherry Street, Winston-Salem, NC 27105.

9. Upon information and belief, Defendant is in the business of processing and storing hazardous chemicals, including but not limited to ammonium nitrate.

### **JURISDICTION AND VENUE**

10. Jurisdiction is proper in the Superior Court for Forsyth County, State of North Carolina. This court has jurisdiction over the subject matter of this action pursuant to, inter

alia, the provisions of N.C. Gen. Stat. §§ 7A-240 and 7A-243. This Court has personal jurisdiction over Defendant pursuant to, inter alia, the provisions of N.C. Gen. Stat. § 1-75.4.

11. Venue is proper in this Court pursuant to the provisions of N.C. Gen Stat. §§ 1-79 and 1-80.

### **COMMON FACTUAL ALLEGATIONS**

#### **The January 31<sup>st</sup> Incident**

12. On the evening of January 31<sup>st</sup>, 2022 at about 7:00 p.m., a devastating fire broke out at Defendant's Plant, causing at least two ground-rocking explosions. The fire burned for several days, releasing massive amounts of toxic, hazardous, and ultra-hazardous chemicals into the air and surrounding community.

13. When it became apparent that the firefighters could not control the blaze and that the fire was threatening to set off an explosion that would have brought a great loss of life and damage in a large area surrounding the plant, Winston-Salem Fire Chief William "Trey" Mayo prudently withdrew the firefighters, called for an emergency evacuation of all homes and businesses within a one-mile radius of the plant, and sent fire personnel through residential streets within the danger area to inform residents of the need to evacuate.

14. The evacuation forced about 6,500 people, including women and children, in 2,500 homes to evacuate in the middle of the night. The evacuation forced residents out of their homes and closed local businesses for over 96 hours. The majority of the people forced from their homes because of the fire were African American, Hispanic, and other people of color.

15. According to Winston-Salem Fire Chief Mayo, “there was enough ammonium nitrate on hand for this to be one of the [worst] explosions in U.S. history.”<sup>1</sup> To put this into perspective, there was an explosion and fire at a fertilizer plant in West, Texas in 2013 that killed 15 people and injured more than 250. The explosion shook the ground so hard that it registered 2.1 on the Richter scale. That explosion involved only 270 tons of ammonium nitrate – less than half of the amount that was stored at Defendant’s Plant. In 1995, a bomb comprised of just two tons of ammonium nitrate leveled the Alfred P. Murrah Federal Building in Oklahoma, killing 169 people.

16. One Winston-Salem City Council Woman called this incident the “worst fire this city has seen.” It “disrupted [the] lives [of local residents] and caused [them] to make changes and spend money that [they] had not planned to spend.”<sup>2</sup>

17. Unable to return home, the evacuees were forced to pay for hotel rooms, stay with friends or family, or go to shelters. Since the evacuation started at 3:00 a.m., many had no change of clothes or toiletries. Consequently, many could not go to school or work in the days following the evacuation.

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<sup>1</sup> As accessed at <https://www.wxii12.com/article/north-carolina-governor-winston-salem-leaders-weaver-fertilizer-plant-fire/38966351#> on February 17, 2022.

<sup>2</sup> See <https://youtu.be/VrukWsuNUFg>, last accessed February 18, 2022.

18. Many of the local residents who were evacuated were also unable to work because they worked from homes they were unable to access or at businesses that were forced to shutter their doors.

19. Residents reported that they felt their homes shake when the fire caused explosions. Upon information and belief, some residents noticed cracks in the walls and ceilings of their homes when they returned.

20. Moreover, in an interview with the Winston-Salem Journal, Dr. Jill Ohar, a pulmonologist at Atrium Health Wake Forest Baptist Medical Center, advised that when released into the air by the fire, particulates from materials used to build the decades-old facility could be large enough to enter the lungs if inhaled. Dr. Ohar further stated that young children and older adults are most at risk from the particulates, along with anyone suffering from asthma, COPD, or other respiratory conditions.<sup>3</sup>

21. The Winston-Salem Journal further reported that Jen Richmond-Bryant, associate professor of forestry and environmental resources at N.C. State University, advised that these particulates could include plastics, metals, and other substances, including remnants of ammonium nitrate that, when released into the air by fire, can be an eye irritant and cause difficulty breathing.<sup>4</sup>

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<sup>3</sup> As accessed at [https://journalnow.com/opinion/editorial/our-view-the-fire-this-time/article\\_10cacea2-8455-11ec-ae98-afdcdc7e2eca.html](https://journalnow.com/opinion/editorial/our-view-the-fire-this-time/article_10cacea2-8455-11ec-ae98-afdcdc7e2eca.html) on February 17, 2022.

<sup>4</sup> As accessed at [https://journalnow.com/news/local/smoke-from-fertilizer-plant-fire-could-pose-health-risks-for-some-winston-salem-residents-officials/article\\_2cebe070-8384-11ec-a57a-afd26ff6fa96.html](https://journalnow.com/news/local/smoke-from-fertilizer-plant-fire-could-pose-health-risks-for-some-winston-salem-residents-officials/article_2cebe070-8384-11ec-a57a-afd26ff6fa96.html) on February 17, 2022.

22. Indeed, residents have reported suffering from headaches, dizziness, vomiting, anxiety, sleeping problems, fatigue, and eye, nose, and throat irritation. The smell of fertilizer reportedly has been so strong that some residents must wear masks in their own homes.<sup>5</sup>

23. The City of Winston-Salem reports that approximately 4.2 million gallons of water were poured onto the fire by the fire department to combat the blaze. This water mixed with ash and chemicals before leeching into the ground and local waterways.

24. Rain in the area further dispersed toxic, hazardous, and ultra-hazardous chemicals from the smoke-cloud onto land and water in the surrounding residential community.

25. Upon information and belief, these chemicals contaminated local creeks and waterways, killing fish and other wildlife along the Monarcas Creek, which is fed by water runoff from the site of the Plant.<sup>6</sup>

26. On February 5<sup>th</sup>, 2022, the City of Winston-Salem said in a statement, “City officials are warning the public to stay out of Muddy, Mill, and Monarcas creeks downstream from the Winston Weaver Co. fertilizer plant and to keep pets and other animals out of the creeks due to elevated levels of chemicals in the water resulting from the fire at the plant.”<sup>7</sup>

27. Residents report that ash from the fire settled in the soil, turning their yards gray and black.

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<sup>5</sup> <https://youtu.be/VrukWsuNUFg>

<sup>6</sup> As accessed at [https://journalnow.com/news/local/weaver-co-runoff-contaminates-creek-in-winston-salem-city-had-warned-fertilizer-maker-about-offsite/article\\_51891724-8936-11ec-bc54-ebbeb863e33b.html](https://journalnow.com/news/local/weaver-co-runoff-contaminates-creek-in-winston-salem-city-had-warned-fertilizer-maker-about-offsite/article_51891724-8936-11ec-bc54-ebbeb863e33b.html) on February 17, 2022.

<sup>7</sup> Id.

### **Previous Fires at the Weaver Facility**

28. This was not the first fire to occur at the Plant in recent years. In fact, public records show that there were four previous fire department calls to the Plant since 2017. On January 27, 2017, fire officials found light smoke at the facility and were told a heater that was being used to burn off product occasionally smoked when starting in cold weather. The next call was at 7:42 a.m. on December 8, 2019, when the fire department found a short circuit had caused a meter box on the side of the warehouse to catch fire. Another electric incident brought firefighters to the facility on March 6, 2020, when a cluster of wires began to arc and smoke but did not catch fire. The most recent call came at 6:52 p.m. on December 26, 2021, when an electrical failure caused machinery to drop hot materials onto a fertilizer pile, causing the pile to smolder. Firefighters tried to flood the area with water but faced challenges because the “pile of fertilizer material” had hardened into what the incident report describes as “a rock like substance.” Ultimately, the fire department called a wrecker and hazmat crew in to remove the pile of fertilizer from the factory. A subsequent fire inspection found “parts of the building in poor condition.”<sup>8</sup>

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<sup>8</sup> See <https://www.newsobserver.com/news/politics-government/article258036408.html#storylink=cpy> last accessed on February 18, 2022.

### **Weaver's Intentional Disregard for Safety**

29. In 1986, the United States Congress passed the Emergency Planning and Community Right-to-Know Act ("EPCRA") (42 U.S. Code Chapter 116). The EPCRA was passed in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. The "Community Right-to-Know" provisions of the act were designed to help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment.

30. Under Section 312 of the EPCRA, facilities that handle and store any substance for which the facility must maintain a Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS) under the OSHA Hazard Communication Standard (29 CFR 1910) are required to annually submit a "Tier 2" form to federal and state government. The purpose of this form is to provide state and local government officials and the public specific information on potential hazards related to the businesses handling of hazardous materials.

31. Upon information and belief, hazardous and ultra-hazardous chemicals for which Defendant was required to maintain MSDSs were stored at the Plant on January 31, 2022. Approximately 600 tons of ammonium nitrate and an unknown quantity of potassium nitrate were among these chemicals.

32. Upon information and belief, Defendant violated the EPCRA by failing to submit a Tier II form in 2020 or 2021, despite storing large quantities of toxic and hazardous chemicals in a facility surrounded by a residential neighborhood. According to August



Vernon, the director of Forsyth County Emergency Management, Winston Weaver last filed a Tier II report in 2019.<sup>9</sup>

33. Upon information and belief, the majority of residents living around the Plant did not know that Defendant was storing toxic and hazardous chemicals, let alone storing them in such large quantities. This is precisely the type of issue the EPCRA was designed to stop.

34. Upon information and belief, the Winston-Salem Fire Department, despite doing an outstanding job of protecting the citizens of Winston-Salem, were hindered in their response because of Defendant's failure to inform them of the nature and quantities of hazardous chemicals stored at the Plant by submitting the required Tier II form.

35. Defendant failed to submit these federally mandated safety reports during a period when multiple fires occurred at the Plant, putting them on notice that there were unsafe conditions that were causing fires at their facility.

#### **The Class Representatives**

36. Plaintiff Prudencio is a member and representative of the Class who lives within the one-mile evacuation zone. As a result of the fire, she was forced to leave her property on the morning of February 1, 2022. She initially stayed with relatives, but tested positive for COVID-19 on February 2, 2022. This prompted her to look for alternative living arrangements to avoid spreading the illness to her family members. While leaving her relatives' house, Plaintiff Prudencio was involved in an automobile collision caused by

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<sup>9</sup> See, <https://www.wfdd.org/story/questions-remain-about-chemicals-stored-burned-fertilizer-plant> Last accessed on February 18, 2022.

another driver. Without a vehicle, and having nowhere else to go, she had no choice but to return home on February 2, 2022 while the voluntary evacuation was still in effect. As a result of the fire and evacuation, she incurred evacuation expenses, loss of use and enjoyment of her home, and lost wages since she was unable to return to work until February 9, 2022. Plaintiff Prudencio is situated similarly to all members of the Class with respect to the issues presented in this case. If Defendant's actions harmed Plaintiff Prudencio, they harmed the Class members in a common fashion.

37. Plaintiff Arcola Lewis is a member and representative of the Class who lives and operates a business within the one-mile evacuation zone. Plaintiff Lewis' business, Premier One Salon, is located on Cherry Street directly across from the Weaver Plant. Plaintiff Lewis had to close her salon for at least two weeks following the fire because police had the parking lot barricaded and would not allow anyone on the property. Plaintiff's business lost thousands of dollars in revenue during the time it was forced to close. Plaintiff Lewis also had to evacuate her home because of the fire. Plaintiff Lewis is situated similarly to all members of the Class with respect to the issues presented in this case. If Defendant's actions harmed Plaintiff Lewis, they harmed the Class members in a common fashion.

38. Plaintiffs Sherman and Kelly Transou are a members and representatives of the Class, who live within the one-mile evacuation zone. As a result of the fire, they were forced to leave their home of 28 years on the morning of February 1, 2022. Plaintiff Sherman Transou works at the FedEx facility located adjacent to the Plant. This facility was temporarily closed following the fire, causing Sherman Transou to miss a day of work and

forcing him to drive to the Greensboro FedEx facility to avoid missing more days of work.

Plaintiffs Sherman and Kelly Transou are situated similarly to all members of the Class with respect to the issues presented in this case. If Defendant's actions harmed them, they harmed the Class members in a common fashion.

### **CLASS ALLEGATIONS**

39. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

40. Plaintiffs request certification pursuant to North Carolina Rule of Civil Procedure 23 on behalf of a proposed class defined as: all natural persons (whether minor or adult) and all businesses that live, work, or were otherwise located within the one-mile evacuation zone on January 31, 2022, and suffered damages other than personal injury as a result of the fire and evacuation.

41. Specifically excluded from the class are those persons or businesses who would otherwise be class members, but who, or which, are: (i) Defendant, or any of its employees, agents, insurers, contractors, and subcontractors, including employees of Defendant's agents, contractors, or subcontractors; (ii) the Court and Court personnel and their immediate families; (iii) the attorneys who have made appearances for any of those parties; and (iv) anyone person or entity that opts out of this action.

42. The number of Class members is sufficiently numerous so as to make class action status the most practical method for Plaintiffs to secure redress for injuries sustained and to

obtain class-wide equitable relief. The exact number of members of the class is not known, but it is estimated that the total number exceeds 6,500.

43. There are questions of law and fact raised by Plaintiffs' claims common to those raised by the Class she seeks to represent. Such common questions predominate over questions affecting only individual members of the Class.

44. The violations of law and resulting harms alleged by Plaintiffs are typical of the legal violations and harms suffered by the different Class members.

45. As Class representatives, Plaintiffs will fairly and adequately protect the interests of Class members. Plaintiffs' counsel are unaware of any conflicts of interest between the Class representatives and absent Class members with respect to the matters at issue in this litigation; the Class representatives will vigorously prosecute the suit on behalf of the Class; and the Class representatives are represented by experienced counsel. Plaintiffs are represented by attorneys with substantial experience and expertise in complex and class action litigation involving personal injury and property damage.

46. Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and have committed sufficient resources to represent the Class.

47. The maintenance of this matter as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice. Moreover, the prosecution of separate class actions by individual members of the Class could result in inconsistent or varying adjudications with respect to individual members of the Class and/or the defendant.

## **CLAIMS FOR RELIEF**

### **COUNT I: NEGLIGENCE**

48. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

49. Defendant had a duty to handle and store hazardous chemicals in a safe and reasonably prudent manner and in such a way as to avoid an explosion and/or fire. It was reasonably foreseeable that failure to do so would cause harm to Plaintiffs and the other members of the class.

50. Defendant had a duty to adequately train its employees to properly store, handle, process, and distribute toxic and hazardous chemicals in a safe and reasonable manner and in such a way so as to avoid an explosion and/or fire.

51. Defendant had a duty to inform Plaintiffs, and the Class she represents, of the conditions at the Plant that posed a threat to the safety and well-being of them and their property.

52. Defendant knew, or should have known, of the dangers associated with its handling and storage of the toxic, hazardous, and ultra-hazardous chemicals as well as the adverse consequences of failing to handle and store these chemicals in a reasonably safe manner.

53. Defendant breached its duty and was negligent in one or more of the following ways:

- a. By failing to exercise reasonable care in protecting and preserving the rights and safety of persons and property at, and in the vicinity of, the Plant;
- b. By failing to exercise reasonable care in the management, supervision, and operation of the Plant, including the chemicals contained therein;
- c. By failing to adequately train their employees to properly store, handle, and process hazardous chemicals;
- d. By releasing toxic and hazardous chemicals in violation of state and regulatory standards as well as industry standards governing these chemicals;
- e. By failing to warn Plaintiffs, the class they represent, and the City of Winston-Salem of the hidden dangers and unsafe conditions present at the Plant, of which they knew or could have discovered by reasonable inspection in the exercise of due care;
- f. By taking reasonably prudent steps to mitigate risks of fire and otherwise maintain the facility in proper condition suitable for a fertilizer plant.

54. **Inherently Dangerous Activity**. Defendant's storage of extremely dangerous and explosive chemicals, including 600 tons of ammonium nitrate, is an inherently dangerous activity. Defendant knew, or should have known, that storing 600 tons of highly explosive chemicals was inherently dangerous. Defendant had a non-delegable duty to take the necessary precautions to control the attendant risks of storing explosive chemicals. Defendant breached its non-delegable duty by failing to take the necessary precautions to avoid an explosion and fire. Defendant's breach directly and proximately caused the Plaintiffs' and

Class members injuries. Therefore, Defendant should be held directly liable for any acts or omissions that caused the fire.

55. **Res Ipsa Loquitur**. Plaintiffs and the Class members they represent suffered injury to person, business, and to property as described herein. The occurrence causing the injury was the fire at Defendant's fertilizer plant, which housed ammonium nitrate. Explosions and fires involving hazardous and explosive chemicals ordinarily do not happen without negligence on someone's part. At all relevant times, the Plant and ammonium nitrate contained therein, and which caused the injuries, was under the exclusive control and management of Defendant. Thus, there is a rebuttable presumption that Defendant was negligent in causing the fire. Further, the fire may have destroyed material evidence that could prove Defendant's negligence – Defendant should not benefit from the destruction it caused.

56. As a direct and proximate result of Defendant's negligence alleged herein, Plaintiffs and the Class they represent were damaged by, inter alia, being evacuated from their homes and businesses in the middle of the night, not being able to return to their homes, workplaces, or operate their businesses for days or even weeks following the fire, being exposed to toxic chemicals, incurring damage to their property, and as is further described herein. Plaintiffs and the Class are entitled to recover these damages from Defendant. They are further entitled to injunctive relief as described in Counts V and VI infra.

## COUNT II: NEGLIGENCE PER SE

57. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

58. Defendant had a duty to comply with federal and state laws and regulatory standards, as well as industry standards, governing the transportation, storage, processing, and distribution of hazardous chemicals.

59. The laws include, inter alia, the EPCRA (42 U.S.C. Chapter 116), 29 CFR 1910, N.C. Gen. Stat. § 95-173 et seq., and N.C. Gen. Stat. § 143-215.

60. Plaintiffs and the Class they represent are members of the class of persons that these regulations were designed to protect. Indeed, the EPCRA contains “community right-to-know” provisions designed to avoid this type of incident in a residential area.

61. Defendant breached that duty by failing to submit Tier II forms, failing to properly store hazardous materials, and failing to properly repair and maintain its facility. This breach caused the release of toxic and/or hazardous chemicals in violation of those regulations and standards.

62. As a result of Defendant’s violation of law and regulations, Defendant is liable *per se*, without further proof of fault, for all compensatory and punitive damages suffered by Plaintiffs and the Class they represent.

63. As a direct and proximate result of Defendant’s negligence alleged herein, Plaintiffs and the Class they represent, were damaged as described herein and are entitled to



recover the same of Defendant. They are further entitled to injunctive relief as described in Counts V and VI infra.

64. Defendant's violation of law shows a gross, willful, and wanton disregard for the safety of others, rendering them liable to Plaintiffs and the class she represents, for punitive damages. More precisely, Defendant operated a facility containing hazardous chemicals in the middle of a residential area without adhering to state and federal regulations as described herein.

### **COUNT III: GROSS NEGLIGENCE**

65. The previous allegations are realleged and incorporated by reference as is fully set forth herein.

66. Defendant owed Plaintiffs and the Class a duty to exercise reasonable care, including a duty to take reasonable precautions to prevent fires and other unsafe conditions at the Plant, which is located within a residential neighborhood, in order to avoid injury to those Plaintiffs, the Class, and their property.

67. As alleged herein, Defendant failed to take the necessary precautions to prevent fires and otherwise acted with gross negligence, recklessness, or willful, wanton, and/or intentional disregard to the safety of Plaintiffs, the Class, and their property, resulting in a massive fire and evacuation.

68. As alleged herein, Defendant intentionally, wantonly, and/or recklessly failed to file federally mandated Tier II forms describing the chemicals (and their associated risks) Defendant was storing in the two years leading up to the fire.

69. Defendant owed Plaintiffs and the Class a duty to act with reasonable care in undertaking its obligations. As stated herein, Defendant breached its duty of care by failing to notify local residents about the risk of explosion and fire associated with the chemicals Defendant stored at its Plant, failing to comply with federal and state regulations, and storing 600 tons of highly explosive chemicals in an unsafe manner.

70. As a direct and proximate result of Defendant's actions alleged herein, Plaintiffs and the Class they represent were damaged as described herein and are entitled to recover from Defendant. They are further entitled to injunctive relief as described in Counts V and VI infra.

71. Defendant's conduct was so reckless as to demonstrate a substantial lack of concern for whether injury would result to Plaintiffs or the Class.

72. Defendant's violation of law shows a gross, willful, and wanton disregard for the safety of others, rendering them liable to Plaintiffs and the class they represent for punitive damages. More precisely, Defendant operated a facility containing hazardous chemicals in the middle of a residential area without adhering to state and federal regulations as described herein.

#### **COUNT IV: STRICT LIABILITY – ULTRA-HAZARDOUS ACTIVITY**

73. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

74. Defendant engaged in the ultra-hazardous activity of handling and storing highly volatile and explosive materials, including but not limited to 600 tons of ammonium nitrate.

75. Defendant's handling and storage of highly explosive chemicals is so dangerous that even the exercise of reasonable care cannot eliminate the risk of serious harm. As described supra, the explosion in Texas that registered 2.1 on the Richter scale was caused by less than half the amount of ammonium nitrate that Defendant stored in its Plant.

76. Defendant's handling and storage of highly explosive chemicals caused an explosion and fire that resulted in toxic and/or hazardous chemicals being released into the surrounding community.

77. As a direct and proximate cause of Defendant's ultra-hazardous activities, Plaintiffs and the Class they represent were damaged as described herein and are entitled to recover from Defendant. They are further entitled to injunctive relief as described in Counts V and VI infra.

#### **COUNT V: PRIVATE NUISANCE**

78. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

79. Defendant's tortious or wrongful acts and/or omissions substantially and unreasonably interfered, and continue to interfere, with Plaintiffs' and Class members' use and enjoyment of their property.

80. Defendant's negligent operation of its Plant caused a fire that was a significant annoyance to Plaintiffs and the Class members, caused material physical discomfort and injury by exposing them to toxic fumes, and caused injury to their property by polluting it with ash and diminishing its future value.

81. The history of multiple fires igniting on Defendant's property as well as their history of failing to file mandatory Tier II forms, as noted supra, show a history of tortious conduct that is likely to continue. Continued tortious conduct by Defendant is likely to result in another fire or explosion that will cause harm to Plaintiffs and the Class members.

82. Moreover, Plaintiffs and the Class members they represent can no longer use and enjoy their property as they did prior to the fire. They will continue to fear the possibility of another fire forcing them from their homes in the middle of the night; or even worse, an explosion that devastates the community.

83. As a direct and proximate result of Defendant's private nuisance, Plaintiffs and the Class they represent were damaged as described herein and are entitled to recover damages from Defendant.

84. Plaintiffs and the Class members are entitled to injunctive relief because their remedies at law are inadequate. Plaintiffs and the Class members will suffer irreparable harm if injunctive relief is not granted. Further, Plaintiffs' and the Class members' interests will be served through the grant of injunctive relief

85. Therefore, Plaintiffs and the Class members respectfully request the Court to enter an award of injunctive relief by ordering that Defendant, and any future owners of Defendant's property located at 4440 Cherry Street, are permanently enjoined and abated from storing, processing, or otherwise handling ammonium nitrate or any other toxic or explosive chemicals on said property.

## **COUNT VI: PUBLIC NUISANCE**

86. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

87. Defendant's tortious or wrongful acts or omissions unreasonably interfered, and continue to interfere, with the public's right to a healthy and safe residential, occupational, and recreational environment in the City of Winston-Salem.

88. Plaintiffs and Class members suffered an invasion of a more particular and more personal right that cannot be considered merged in the general public right due to their close proximity to the nuisance. In addition to suffering the same interference of rights as the general public, the Class had to evacuate their homes and businesses because of the fire, had significantly more exposure to smoke from the fire, have ash and debris to clean from their properties, and face an ongoing risk of another fire and explosion. If a future explosion were to ignite, then Plaintiffs and the Class members face a particularly increased risk of serious injury and death.

89. Plaintiffs and the Class members they represent will benefit from proper and individualized relief in the form of compensation for the costs incurred cleaning their properties, the ongoing risk of explosion and fire, loss of business revenues and wages, and the corresponding loss of property value due to the same.

90. The history of multiple fires igniting on Defendant's property as well as their history of failing to file mandatory Tier II forms show a history of tortious conduct that is

likely to continue. Continued tortious conduct by Defendant is likely to result in another fire or explosion that will cause harm to Plaintiffs, the Class members, and the general public.

91. Moreover, Plaintiffs and the Class they represent can no longer use and enjoy their property as they did prior to the fire. They will continue to fear the possibility of another fire forcing them from their homes in the middle of the night; or even worse, an explosion that devastates the community and causes loss of life.

92. As a direct and proximate result of Defendant's public nuisance, Plaintiffs and the Class they represent were damaged in a more particular and individualized way than the public, and are entitled to recover from Defendant.

93. Plaintiffs and the Class members are entitled to injunctive relief because their remedies at law are inadequate. Plaintiffs and the Class members have a strong likelihood of prevailing on the merits of their claims and will suffer irreparable harm if injunctive relief is not granted.

94. The interests of the general public will be served through the grant of injunctive relief. The impact of this fire closed businesses and heavily traveled roadways located outside of the evacuation zone. It caused an adverse financial impact on an uncounted number of citizens and the local economy. A future explosion of several hundred tons of ammonium nitrate will undoubtedly affect the City even more severely.

95. Therefore, Plaintiffs and the Class members respectfully request the Court to enter an award of injunctive relief by ordering that Defendant, and any future owners of Defendant's property located at 4440 Cherry Street, are permanently enjoined and abated

from storing, processing, or otherwise handling ammonium nitrate or any other toxic or explosive chemicals on said property.

#### **COUNT VII: TRESPASS**

96. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

97. Plaintiffs and the Class they represent own, reside, work, operate businesses, or otherwise have lawful possession of their property in the area of the evacuation zone.

98. Defendant's acts or omissions caused the unauthorized entry of airborne and waterborne particles of toxic and/or hazardous materials on Plaintiffs' and Class members' property without their permission or invitation.

99. The presence of hazardous chemicals on Plaintiffs' and Class members' properties as well as their bodily exposure to these chemicals constitute continuing trespasses.

100. Plaintiffs and Class suffered damage in the form of ash deposited on the property, hazardous chemicals invading the ground water and local waterways, being forced from their homes in the middle of the night, and/or closing their businesses because of Defendant's tortious acts.

101. Defendant's past and continuing trespass upon Plaintiffs' and Class members' properties and persons proximately caused and continues to proximately cause damage to Plaintiffs and Class members in the form of mental anguish, bodily injury, and property damage for which Defendant is liable.

## **PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for the following relief:

- a. That this action be certified as a class action pursuant to North Carolina Rule of Civil Procedure 23;
- b. Injunctive relief and abatement as described herein;
- c. An award of compensatory damages;
- d. An order for an award of punitive damages;
- e. An order for pre-judgment and post-judgment interest;
- f. An order for an award of reasonable attorneys' fees and litigation costs;
- g. Any other relief that the Court deems just and proper.

## **DEMAND FOR TRIAL BY JURY**

102. Plaintiffs demand a trial by jury as to all those issues triable as of right.

Respectfully submitted, this 4th day of April, 2022.



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COUNTY OF FORSYTH

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IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

22-CVS-929

**KAREN PRUDENCIO, ARCOLA  
LEWIS, and SHERMAN and KELLY  
TRANSOU,**

Individually and On Behalf of All Others  
Similarly Situated,

**Plaintiffs,**

v.

**WINSTON WEAVER Co. Inc.,**

**Defendant.**

**AMENDED VERIFIED COMPLAINT**  
**(Jury Trial Demanded)**

**CLASS ACTION COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF**

1. Plaintiffs, individually and as representatives of the Class herein, for their Amended Verified Complaint against Defendant, state as follows:

**NATURE OF THE LITIGATION**

2. This is a class action seeking compensatory and punitive damages as well as injunctive relief for Plaintiffs individually and as representatives of the Class described herein.

3. Plaintiffs allege that Defendant was negligent or grossly negligent in causing, or contributing to the cause of, a fire at Defendant's facility, located at 4440 Cherry Street, Winston-Salem, North Carolina (hereinafter the "Plant"), on January 31, 2022, which continued to burn for several days thereafter.

4. Plaintiffs and all other persons and businesses similarly situated suffered damages arising out of the fire and its aftermath as more fully set forth herein.

### **PARTIES**

5. Named as Plaintiffs and as class representatives are Karen Prudencio, Arcola Lewis, and Sherman and Kelly Transou, who are all persons of full legal capacity and domiciled in Forsyth County, North Carolina.

6. Plaintiff are citizens and residents of Forsyth County, North Carolina, and appear in their individual capacities and as representatives of a class set forth infra.

7. In addition to the above named Plaintiffs, it is further alleged that thousands of residents and businesses of Forsyth County, most of whom at this time are unknown and therefore unnamed, were damaged in one or more ways as alleged herein, who will be identified as this class action progresses, and are in fact contemplated members of the Class of persons, entities, and businesses whom this action seeks to protect.

8. Defendant Winston Weaver Co., Inc. ("Weaver") is a North Carolina Corporation, and its principle place of business is located at 4440 N Cherry Street, Winston-Salem, NC 27105.

9. Upon information and belief, Defendant is in the business of processing and storing hazardous chemicals, including but not limited to ammonium nitrate.

### **JURISDICTION AND VENUE**

10. Jurisdiction is proper in the Superior Court for Forsyth County, State of North Carolina. This court has jurisdiction over the subject matter of this action pursuant to, inter

alia, the provisions of N.C. Gen. Stat. §§ 7A-240 and 7A-243. This Court has personal jurisdiction over Defendant pursuant to, inter alia, the provisions of N.C. Gen. Stat. § 1-75.4.

11. Venue is proper in this Court pursuant to the provisions of N.C. Gen Stat. §§ 1-79 and 1-80.

### **COMMON FACTUAL ALLEGATIONS**

#### **The January 31<sup>st</sup> Incident**

12. On the evening of January 31<sup>st</sup>, 2022 at about 7:00 p.m., a devastating fire broke out at Defendant's Plant, causing at least two ground-rocking explosions. The fire burned for several days, releasing massive amounts of toxic, hazardous, and ultra-hazardous chemicals into the air and surrounding community.

13. When it became apparent that the firefighters could not control the blaze and that the fire was threatening to set off an explosion that would have brought a great loss of life and damage in a large area surrounding the plant, Winston-Salem Fire Chief William "Trey" Mayo prudently withdrew the firefighters, called for an emergency evacuation of all homes and businesses within a one-mile radius of the plant, and sent fire personnel through residential streets within the danger area to inform residents of the need to evacuate.

14. The evacuation forced about 6,500 people, including women and children, in 2,500 homes to evacuate in the middle of the night. The evacuation forced residents out of their homes and closed local businesses for over 96 hours. The majority of the people forced from their homes because of the fire were African American, Hispanic, and other people of color.

15. According to Winston-Salem Fire Chief Mayo, “there was enough ammonium nitrate on hand for this to be one of the [worst] explosions in U.S. history.”<sup>1</sup> To put this into perspective, there was an explosion and fire at a fertilizer plant in West, Texas in 2013 that killed 15 people and injured more than 250. The explosion shook the ground so hard that it registered 2.1 on the Richter scale. That explosion involved only 270 tons of ammonium nitrate – less than half of the amount that was stored at Defendant’s Plant. In 1995, a bomb comprised of just two tons of ammonium nitrate leveled the Alfred P. Murrah Federal Building in Oklahoma, killing 169 people.

16. One Winston-Salem City Council Woman called this incident the “worst fire this city has seen.” It “disrupted [the] lives [of local residents] and caused [them] to make changes and spend money that [they] had not planned to spend.”<sup>2</sup>

17. Unable to return home, the evacuees were forced to pay for hotel rooms, stay with friends or family, or go to shelters. Since the evacuation started at 3:00 a.m., many had no change of clothes or toiletries. Consequently, many could not go to school or work in the days following the evacuation.

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<sup>1</sup> As accessed at <https://www.wxii12.com/article/north-carolina-governor-winston-salem-leaders-weaver-fertilizer-plant-fire/38966351#> on February 17, 2022.

<sup>2</sup> See <https://youtu.be/VrukWsuNUFg>, last accessed February 18, 2022.

18. Many of the local residents who were evacuated were also unable to work because they worked from homes they were unable to access or at businesses that were forced to shutter their doors.

19. Residents reported that they felt their homes shake when the fire caused explosions. Upon information and belief, some residents noticed cracks in the walls and ceilings of their homes when they returned.

20. Moreover, in an interview with the Winston-Salem Journal, Dr. Jill Ohar, a pulmonologist at Atrium Health Wake Forest Baptist Medical Center, advised that when released into the air by the fire, particulates from materials used to build the decades-old facility could be large enough to enter the lungs if inhaled. Dr. Ohar further stated that young children and older adults are most at risk from the particulates, along with anyone suffering from asthma, COPD, or other respiratory conditions.<sup>3</sup>

21. The Winston-Salem Journal further reported that Jen Richmond-Bryant, associate professor of forestry and environmental resources at N.C. State University, advised that these particulates could include plastics, metals, and other substances, including remnants of ammonium nitrate that, when released into the air by fire, can be an eye irritant and cause difficulty breathing.<sup>4</sup>

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<sup>3</sup> As accessed at [https://journalnow.com/opinion/editorial/our-view-the-fire-this-time/article\\_10cacea2-8455-11ec-ae98-afdedc7e2eca.html](https://journalnow.com/opinion/editorial/our-view-the-fire-this-time/article_10cacea2-8455-11ec-ae98-afdedc7e2eca.html) on February 17, 2022.

<sup>4</sup> As accessed at [https://journalnow.com/news/local/smoke-from-fertilizer-plant-fire-could-pose-health-risks-for-some-winston-salem-residents-officials/article\\_2cebe070-8384-11ec-a57a-afd26ff6fa96.html](https://journalnow.com/news/local/smoke-from-fertilizer-plant-fire-could-pose-health-risks-for-some-winston-salem-residents-officials/article_2cebe070-8384-11ec-a57a-afd26ff6fa96.html) on February 17, 2022.

22. Indeed, residents have reported suffering from headaches, dizziness, vomiting, anxiety, sleeping problems, fatigue, and eye, nose, and throat irritation. The smell of fertilizer reportedly has been so strong that some residents must wear masks in their own homes.<sup>5</sup>

23. The City of Winston-Salem reports that approximately 4.2 million gallons of water were poured onto the fire by the fire department to combat the blaze. This water mixed with ash and chemicals before leeching into the ground and local waterways.

24. Rain in the area further dispersed toxic, hazardous, and ultra-hazardous chemicals from the smoke-cloud onto land and water in the surrounding residential community.

25. Upon information and belief, these chemicals contaminated local creeks and waterways, killing fish and other wildlife along the Monarcas Creek, which is fed by water runoff from the site of the Plant.<sup>6</sup>

26. On February 5<sup>th</sup>, 2022, the City of Winston-Salem said in a statement, “City officials are warning the public to stay out of Muddy, Mill, and Monarcas creeks downstream from the Winston Weaver Co. fertilizer plant and to keep pets and other animals out of the creeks due to elevated levels of chemicals in the water resulting from the fire at the plant.”<sup>7</sup>

27. Residents report that ash from the fire settled in the soil, turning their yards gray and black.

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<sup>5</sup> <https://youtu.be/VrukWsuNUFg>

<sup>6</sup> As accessed at [https://journalnow.com/news/local/weaver-co-runoff-contaminates-creek-in-winston-salem-city-had-warned-fertilizer-maker-about-offsite/article\\_51891724-8936-11ec-bc54-ebeeb863e33b.html](https://journalnow.com/news/local/weaver-co-runoff-contaminates-creek-in-winston-salem-city-had-warned-fertilizer-maker-about-offsite/article_51891724-8936-11ec-bc54-ebeeb863e33b.html) on February 17, 2022.

<sup>7</sup> Id.

### **Previous Fires at the Weaver Facility**

28. This was not the first fire to occur at the Plant in recent years. In fact, public records show that there were four previous fire department calls to the Plant since 2017. On January 27, 2017, fire officials found light smoke at the facility and were told a heater that was being used to burn off product occasionally smoked when starting in cold weather. The next call was at 7:42 a.m. on December 8, 2019, when the fire department found a short circuit had caused a meter box on the side of the warehouse to catch fire. Another electric incident brought firefighters to the facility on March 6, 2020, when a cluster of wires began to arc and smoke but did not catch fire. The most recent call came at 6:52 p.m. on December 26, 2021, when an electrical failure caused machinery to drop hot materials onto a fertilizer pile, causing the pile to smolder. Firefighters tried to flood the area with water but faced challenges because the “pile of fertilizer material” had hardened into what the incident report describes as “a rock like substance.” Ultimately, the fire department called a wrecker and hazmat crew in to remove the pile of fertilizer from the factory. A subsequent fire inspection found “parts of the building in poor condition.”<sup>8</sup>

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<sup>8</sup> See <https://www.newsobserver.com/news/politics-government/article258036408.html#storylink=cpy> last accessed on February 18, 2022.

### **Weaver's Intentional Disregard for Safety**

29. In 1986, the United States Congress passed the Emergency Planning and Community Right-to-Know Act ("EPCRA") (42 U.S. Code Chapter 116). The EPCRA was passed in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. The "Community Right-to-Know" provisions of the act were designed to help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment.

30. Under Section 312 of the EPCRA, facilities that handle and store any substance for which the facility must maintain a Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS) under the OSHA Hazard Communication Standard (29 CFR 1910) are required to annually submit a "Tier 2" form to federal and state government. The purpose of this form is to provide state and local government officials and the public specific information on potential hazards related to the businesses handling of hazardous materials.

31. Upon information and belief, hazardous and ultra-hazardous chemicals for which Defendant was required to maintain MSDSs were stored at the Plant on January 31, 2022. Approximately 600 tons of ammonium nitrate and an unknown quantity of potassium nitrate were among these chemicals.

32. Upon information and belief, Defendant violated the EPCRA by failing to submit a Tier II form in 2020 or 2021, despite storing large quantities of toxic and hazardous chemicals in a facility surrounded by a residential neighborhood. According to August



Vernon, the director of Forsyth County Emergency Management, Winston Weaver last filed a Tier II report in 2019.<sup>9</sup>

33. Upon information and belief, the majority of residents living around the Plant did not know that Defendant was storing toxic and hazardous chemicals, let alone storing them in such large quantities. This is precisely the type of issue the EPCRA was designed to stop.

34. Upon information and belief, the Winston-Salem Fire Department, despite doing an outstanding job of protecting the citizens of Winston-Salem, were hindered in their response because of Defendant's failure to inform them of the nature and quantities of hazardous chemicals stored at the Plant by submitting the required Tier II form.

35. Defendant failed to submit these federally mandated safety reports during a period when multiple fires occurred at the Plant, putting them on notice that there were unsafe conditions that were causing fires at their facility.

#### **The Class Representatives**

36. Plaintiff Prudencio is a member and representative of the Class who lives within the one-mile evacuation zone. As a result of the fire, she was forced to leave her property on the morning of February 1, 2022. She initially stayed with relatives, but tested positive for COVID-19 on February 2, 2022. This prompted her to look for alternative living arrangements to avoid spreading the illness to her family members. While leaving her relatives' house, Plaintiff Prudencio was involved in an automobile collision caused by

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<sup>9</sup> See, <https://www.wfdd.org/story/questions-remain-about-chemicals-stored-burned-fertilizer-plant> Last accessed on February 18, 2022.

another driver. Without a vehicle, and having nowhere else to go, she had no choice but to return home on February 2, 2022 while the voluntary evacuation was still in effect. As a result of the fire and evacuation, she incurred evacuation expenses, loss of use and enjoyment of her home, and lost wages since she was unable to return to work until February 9, 2022. Plaintiff Prudencio is situated similarly to all members of the Class with respect to the issues presented in this case. If Defendant's actions harmed Plaintiff Prudencio, they harmed the Class members in a common fashion.

37. Plaintiff Arcola Lewis is a member and representative of the Class who lives and operates a business within the one-mile evacuation zone. Plaintiff Lewis' business, Premier One Salon, is located on Cherry Street directly across from the Weaver Plant. Plaintiff Lewis had to close her salon for at least two weeks following the fire because police had the parking lot barricaded and would not allow anyone on the property. Plaintiff's business lost thousands of dollars in revenue during the time it was forced to close. Plaintiff Lewis also had to evacuate her home because of the fire. Plaintiff Lewis is situated similarly to all members of the Class with respect to the issues presented in this case. If Defendant's actions harmed Plaintiff Lewis, they harmed the Class members in a common fashion.

38. Plaintiffs Sherman and Kelly Transou are a members and representatives of the Class, who live within the one-mile evacuation zone. As a result of the fire, they were forced to leave their home of 28 years on the morning of February 1, 2022. Plaintiff Sherman Transou works at the FedEx facility located adjacent to the Plant. This facility was temporarily closed following the fire, causing Sherman Transou to miss a day of work and

forcing him to drive to the Greensboro FedEx facility to avoid missing more days of work. Plaintiffs Sherman and Kelly Transou are situated similarly to all members of the Class with respect to the issues presented in this case. If Defendant's actions harmed them, they harmed the Class members in a common fashion.

### **CLASS ALLEGATIONS**

39. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

40. Plaintiffs request certification pursuant to North Carolina Rule of Civil Procedure 23 on behalf of a proposed class defined as: all natural persons (whether minor or adult) and all businesses that live, work, or were otherwise located within the one-mile evacuation zone on January 31, 2022, and suffered damages other than personal injury as a result of the fire and evacuation.

41. Specifically excluded from the class are those persons or businesses who would otherwise be class members, but who, or which, are: (i) Defendant, or any of its employees, agents, insurers, contractors, and subcontractors, including employees of Defendant's agents, contractors, or subcontractors; (ii) the Court and Court personnel and their immediate families; (iii) the attorneys who have made appearances for any of those parties; and (iv) anyone person or entity that opts out of this action.

42. The number of Class members is sufficiently numerous so as to make class action status the most practical method for Plaintiffs to secure redress for injuries sustained and to

obtain class-wide equitable relief. The exact number of members of the class is not known, but it is estimated that the total number exceeds 6,500.

43. There are questions of law and fact raised by Plaintiffs' claims common to those raised by the Class she seeks to represent. Such common questions predominate over questions affecting only individual members of the Class.

44. The violations of law and resulting harms alleged by Plaintiffs are typical of the legal violations and harms suffered by the different Class members.

45. As Class representatives, Plaintiffs will fairly and adequately protect the interests of Class members. Plaintiffs' counsel are unaware of any conflicts of interest between the Class representatives and absent Class members with respect to the matters at issue in this litigation; the Class representatives will vigorously prosecute the suit on behalf of the Class; and the Class representatives are represented by experienced counsel. Plaintiffs are represented by attorneys with substantial experience and expertise in complex and class action litigation involving personal injury and property damage.

46. Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and have committed sufficient resources to represent the Class.

47. The maintenance of this matter as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice. Moreover, the prosecution of separate class actions by individual members of the Class could result in inconsistent or varying adjudications with respect to individual members of the Class and/or the defendant.

## **CLAIMS FOR RELIEF**

### **COUNT I: NEGLIGENCE**

48. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

49. Defendant had a duty to handle and store hazardous chemicals in a safe and reasonably prudent manner and in such a way as to avoid an explosion and/or fire. It was reasonably foreseeable that failure to do so would cause harm to Plaintiffs and the other members of the class.

50. Defendant had a duty to adequately train its employees to properly store, handle, process, and distribute toxic and hazardous chemicals in a safe and reasonable manner and in such a way so as to avoid an explosion and/or fire.

51. Defendant had a duty to inform Plaintiffs, and the Class she represents, of the conditions at the Plant that posed a threat to the safety and well-being of them and their property.

52. Defendant knew, or should have known, of the dangers associated with its handling and storage of the toxic, hazardous, and ultra-hazardous chemicals as well as the adverse consequences of failing to handle and store these chemicals in a reasonably safe manner.

53. Defendant breached its duty and was negligent in one or more of the following ways:

- a. By failing to exercise reasonable care in protecting and preserving the rights and safety of persons and property at, and in the vicinity of, the Plant;
- b. By failing to exercise reasonable care in the management, supervision, and operation of the Plant, including the chemicals contained therein;
- c. By failing to adequately train their employees to properly store, handle, and process hazardous chemicals;
- d. By releasing toxic and hazardous chemicals in violation of state and regulatory standards as well as industry standards governing these chemicals;
- e. By failing to warn Plaintiffs, the class they represent, and the City of Winston-Salem of the hidden dangers and unsafe conditions present at the Plant, of which they knew or could have discovered by reasonable inspection in the exercise of due care;
- f. By taking reasonably prudent steps to mitigate risks of fire and otherwise maintain the facility in proper condition suitable for a fertilizer plant.

54. **Inherently Dangerous Activity.** Defendant's storage of extremely dangerous and explosive chemicals, including 600 tons of ammonium nitrate, is an inherently dangerous activity. Defendant knew, or should have known, that storing 600 tons of highly explosive chemicals was inherently dangerous. Defendant had a non-delegable duty to take the necessary precautions to control the attendant risks of storing explosive chemicals. Defendant breached its non-delegable duty by failing to take the necessary precautions to avoid an explosion and fire. Defendant's breach directly and proximately caused the Plaintiffs' and

Class members injuries. Therefore, Defendant should be held directly liable for any acts or omissions that caused the fire.

55. **Res Ipsa Loquitur**. Plaintiffs and the Class members they represent suffered injury to person, business, and to property as described herein. The occurrence causing the injury was the fire at Defendant's fertilizer plant, which housed ammonium nitrate. Explosions and fires involving hazardous and explosive chemicals ordinarily do not happen without negligence on someone's part. At all relevant times, the Plant and ammonium nitrate contained therein, and which caused the injuries, was under the exclusive control and management of Defendant. Thus, there is a rebuttable presumption that Defendant was negligent in causing the fire. Further, the fire may have destroyed material evidence that could prove Defendant's negligence – Defendant should not benefit from the destruction it caused.

56. As a direct and proximate result of Defendant's negligence alleged herein, Plaintiffs and the Class they represent were damaged by, inter alia, being evacuated from their homes and businesses in the middle of the night, not being able to return to their homes, workplaces, or operate their businesses for days or even weeks following the fire, being exposed to toxic chemicals, incurring damage to their property, and as is further described herein. Plaintiffs and the Class are entitled to recover these damages from Defendant. They are further entitled to injunctive relief as described in Counts V and VI infra.

## COUNT II: NEGLIGENCE PER SE

57. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

58. Defendant had a duty to comply with federal and state laws and regulatory standards, as well as industry standards, governing the transportation, storage, processing, and distribution of hazardous chemicals.

59. The laws include, inter alia, the EPCRA (42 U.S.C. Chapter 116), 29 CFR 1910, N.C. Gen. Stat. § 95-173 et seq., and N.C. Gen. Stat. § 143-215.

60. Plaintiffs and the Class they represent are members of the class of persons that these regulations were designed to protect. Indeed, the EPCRA contains “community right-to-know” provisions designed to avoid this type of incident in a residential area.

61. Defendant breached that duty by failing to submit Tier II forms, failing to properly store hazardous materials, and failing to properly repair and maintain its facility. This breach caused the release of toxic and/or hazardous chemicals in violation of those regulations and standards.

62. As a result of Defendant’s violation of law and regulations, Defendant is liable *per se*, without further proof of fault, for all compensatory and punitive damages suffered by Plaintiffs and the Class they represent.

63. As a direct and proximate result of Defendant’s negligence alleged herein, Plaintiffs and the Class they represent, were damaged as described herein and are entitled to



recover the same of Defendant. They are further entitled to injunctive relief as described in Counts V and VI infra.

64. Defendant's violation of law shows a gross, willful, and wanton disregard for the safety of others, rendering them liable to Plaintiffs and the class she represents, for punitive damages. More precisely, Defendant operated a facility containing hazardous chemicals in the middle of a residential area without adhering to state and federal regulations as described herein.

### **COUNT III: GROSS NEGLIGENCE**

65. The previous allegations are realleged and incorporated by reference as is fully set forth herein.

66. Defendant owed Plaintiffs and the Class a duty to exercise reasonable care, including a duty to take reasonable precautions to prevent fires and other unsafe conditions at the Plant, which is located within a residential neighborhood, in order to avoid injury to those Plaintiffs, the Class, and their property.

67. As alleged herein, Defendant failed to take the necessary precautions to prevent fires and otherwise acted with gross negligence, recklessness, or willful, wanton, and/or intentional disregard to the safety of Plaintiffs, the Class, and their property, resulting in a massive fire and evacuation.

68. As alleged herein, Defendant intentionally, wantonly, and/or recklessly failed to file federally mandated Tier II forms describing the chemicals (and their associated risks) Defendant was storing in the two years leading up to the fire.

69. Defendant owed Plaintiffs and the Class a duty to act with reasonable care in undertaking its obligations. As stated herein, Defendant breached its duty of care by failing to notify local residents about the risk of explosion and fire associated with the chemicals Defendant stored at its Plant, failing to comply with federal and state regulations, and storing 600 tons of highly explosive chemicals in an unsafe manner.

70. As a direct and proximate result of Defendant's actions alleged herein, Plaintiffs and the Class they represent were damaged as described herein and are entitled to recover from Defendant. They are further entitled to injunctive relief as described in Counts V and VI infra.

71. Defendant's conduct was so reckless as to demonstrate a substantial lack of concern for whether injury would result to Plaintiffs or the Class.

72. Defendant's violation of law shows a gross, willful, and wanton disregard for the safety of others, rendering them liable to Plaintiffs and the class they represent for punitive damages. More precisely, Defendant operated a facility containing hazardous chemicals in the middle of a residential area without adhering to state and federal regulations as described herein.

#### **COUNT IV: STRICT LIABILITY – ULTRA-HAZARDOUS ACTIVITY**

73. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

74. Defendant engaged in the ultra-hazardous activity of handling and storing highly volatile and explosive materials, including but not limited to 600 tons of ammonium nitrate.

75. Defendant's handling and storage of highly explosive chemicals is so dangerous that even the exercise of reasonable care cannot eliminate the risk of serious harm. As described supra, the explosion in Texas that registered 2.1 on the Richter scale was caused by less than half the amount of ammonium nitrate that Defendant stored in its Plant.

76. Defendant's handling and storage of highly explosive chemicals caused an explosion and fire that resulted in toxic and/or hazardous chemicals being released into the surrounding community.

77. As a direct and proximate cause of Defendant's ultra-hazardous activities, Plaintiffs and the Class they represent were damaged as described herein and are entitled to recover from Defendant. They are further entitled to injunctive relief as described in Counts V and VI infra.

#### **COUNT V: PRIVATE NUISANCE**

78. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

79. Defendant's tortious or wrongful acts and/or omissions substantially and unreasonably interfered, and continue to interfere, with Plaintiffs' and Class members' use and enjoyment of their property.

80. Defendant's negligent operation of its Plant caused a fire that was a significant annoyance to Plaintiffs and the Class members, caused material physical discomfort and injury by exposing them to toxic fumes, and caused injury to their property by polluting it with ash and diminishing its future value.

81. The history of multiple fires igniting on Defendant's property as well as their history of failing to file mandatory Tier II forms, as noted supra, show a history of tortious conduct that is likely to continue. Continued tortious conduct by Defendant is likely to result in another fire or explosion that will cause harm to Plaintiffs and the Class members.

82. Moreover, Plaintiffs and the Class members they represent can no longer use and enjoy their property as they did prior to the fire. They will continue to fear the possibility of another fire forcing them from their homes in the middle of the night; or even worse, an explosion that devastates the community.

83. As a direct and proximate result of Defendant's private nuisance, Plaintiffs and the Class they represent were damaged as described herein and are entitled to recover damages from Defendant.

84. Plaintiffs and the Class members are entitled to injunctive relief because their remedies at law are inadequate. Plaintiffs and the Class members will suffer irreparable harm if injunctive relief is not granted. Further, Plaintiffs' and the Class members' interests will be served through the grant of injunctive relief

85. Therefore, Plaintiffs and the Class members respectfully request the Court to enter an award of injunctive relief by ordering that Defendant, and any future owners of Defendant's property located at 4440 Cherry Street, are permanently enjoined and abated from storing, processing, or otherwise handling ammonium nitrate or any other toxic or explosive chemicals on said property.

## **COUNT VI: PUBLIC NUISANCE**

86. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

87. Defendant's tortious or wrongful acts or omissions unreasonably interfered, and continue to interfere, with the public's right to a healthy and safe residential, occupational, and recreational environment in the City of Winston-Salem.

88. Plaintiffs and Class members suffered an invasion of a more particular and more personal right that cannot be considered merged in the general public right due to their close proximity to the nuisance. In addition to suffering the same interference of rights as the general public, the Class had to evacuate their homes and businesses because of the fire, had significantly more exposure to smoke from the fire, have ash and debris to clean from their properties, and face an ongoing risk of another fire and explosion. If a future explosion were to ignite, then Plaintiffs and the Class members face a particularly increased risk of serious injury and death.

89. Plaintiffs and the Class members they represent will benefit from proper and individualized relief in the form of compensation for the costs incurred cleaning their properties, the ongoing risk of explosion and fire, loss of business revenues and wages, and the corresponding loss of property value due to the same.

90. The history of multiple fires igniting on Defendant's property as well as their history of failing to file mandatory Tier II forms show a history of tortious conduct that is

likely to continue. Continued tortious conduct by Defendant is likely to result in another fire or explosion that will cause harm to Plaintiffs, the Class members, and the general public.

91. Moreover, Plaintiffs and the Class they represent can no longer use and enjoy their property as they did prior to the fire. They will continue to fear the possibility of another fire forcing them from their homes in the middle of the night; or even worse, an explosion that devastates the community and causes loss of life.

92. As a direct and proximate result of Defendant's public nuisance, Plaintiffs and the Class they represent were damaged in a more particular and individualized way than the public, and are entitled to recover from Defendant.

93. Plaintiffs and the Class members are entitled to injunctive relief because their remedies at law are inadequate. Plaintiffs and the Class members have a strong likelihood of prevailing on the merits of their claims and will suffer irreparable harm if injunctive relief is not granted.

94. The interests of the general public will be served through the grant of injunctive relief. The impact of this fire closed businesses and heavily traveled roadways located outside of the evacuation zone. It caused an adverse financial impact on an uncounted number of citizens and the local economy. A future explosion of several hundred tons of ammonium nitrate will undoubtedly affect the City even more severely.

95. Therefore, Plaintiffs and the Class members respectfully request the Court to enter an award of injunctive relief by ordering that Defendant, and any future owners of Defendant's property located at 4440 Cherry Street, are permanently enjoined and abated

from storing, processing, or otherwise handling ammonium nitrate or any other toxic or explosive chemicals on said property.

#### **COUNT VII: TRESPASS**

96. The previous allegations are realleged and incorporated by reference as if fully set forth herein.

97. Plaintiffs and the Class they represent own, reside, work, operate businesses, or otherwise have lawful possession of their property in the area of the evacuation zone.

98. Defendant's acts or omissions caused the unauthorized entry of airborne and waterborne particles of toxic and/or hazardous materials on Plaintiffs' and Class members' property without their permission or invitation.

99. The presence of hazardous chemicals on Plaintiffs' and Class members' properties as well as their bodily exposure to these chemicals constitute continuing trespasses.

100. Plaintiffs and Class suffered damage in the form of ash deposited on the property, hazardous chemicals invading the ground water and local waterways, being forced from their homes in the middle of the night, and/or closing their businesses because of Defendant's tortious acts.

101. Defendant's past and continuing trespass upon Plaintiffs' and Class members' properties and persons proximately caused and continues to proximately cause damage to Plaintiffs and Class members in the form of mental anguish, bodily injury, and property damage for which Defendant is liable.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for the following relief:

- a. That this action be certified as a class action pursuant to North Carolina Rule of Civil Procedure 23;
- b. Injunctive relief and abatement as described herein;
- c. An award of compensatory damages;
- d. An order for an award of punitive damages;
- e. An order for pre-judgment and post-judgment interest;
- f. An order for an award of reasonable attorneys' fees and litigation costs;
- g. Any other relief that the Court deems just and proper.

### **DEMAND FOR TRIAL BY JURY**

102. Plaintiffs demand a trial by jury as to all those issues triable as of right.

Respectfully submitted, this 4th day of April, 2022.



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