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 IRIS Y. MARTINEZ
 CIRCUIT CLERK
 COOK COUNTY, IL
 2023CH05147
 Calendar, 14
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IN THE CIRCUIT COURT OF COOK COUNTY
 COUNTY DEPARTMENT, CHANCERY DIVISION

PRESTIGE FEED PRODUCTS, LLC, an Illinois	)	
limited liability company,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2023 CH 5147
	)	
VILLAGE OF MOUNT PROSPECT, an Illinois	)	Judge Quish
municipal corporation,	)	
	)	
	)	
Defendant.	)	

VILLAGE OF MOUNT PROSPECT, an Illinois	)
municipal corporation,	)
	)
Defendant/Counter-Plaintiff,	)
	)
v.	)
	)
PRESTIGE FEED PRODUCTS, LLC, an Illinois	)
limited liability company,	)
	)
Plaintiff/Counter-Defendant.	)

VILLAGE DEFENDANT/COUNTER-PLAINTIFF'S RESPONSE TO PLAINTIFF/COUNTER-DEFENDANT'S MOTION TO DISMISS COUNTERCLAIM

NOW COMES the Defendant, VILLAGE OF MOUNT PROSPECT (the "Village"), by and through its attorneys, KLEIN, THORPE, AND JENKINS, LTD., and for its response to Plaintiff PRESTIGE FEED PRODUCTS, LLC's ("Prestige") Motion to Dismiss Defendants' Verified Counterclaim for Injunctive Relief; states as follows:

INTRODUCTION

Plaintiff's Motion to Dismiss Defendants' Verified Counterclaim for Injunctive Relief (the "MTD Counterclaim") should be denied in its entirety. Prestige seeks to dismiss the Village's Verified Counterclaim for Injunctive Relief (the "Counterclaim") on the basis that an Agreed Order between the Parties is an

affirmative matter that bars or defeats the Village's Counterclaim and warrants involuntary dismissal under Section 2-619(a)(9) of the Illinois Code of Civil Procedure. 735 ILCS § 2-619(a)(9).

The Agreed Order, entered by this Court on June 7, 2023, limits the Village from (1) issuing a "cease and desist" order against Prestige; (2) revoking Prestige's business license and/or occupancy permit; and (3) refusing to renew Prestige's business license and/or occupancy permit until this Court adjudicates the rights of the Parties "or this Court orders otherwise." See *Agreed Order*, attached hereto as Exhibit A. The Agreed Order further provides that Prestige "may continue to operate its feed production equipment," subject to stated limitations, until this Court adjudicates the rights of the parties, the parties otherwise agree, "or the Court orders otherwise." *Id.* at ¶ 2. The Agreed Order also stated the Village would answer Prestige's initial Complaint "or otherwise plead." *Id.* at ¶ 4.

Plaintiff asserts that the Village's Counterclaim is barred by the Agreed Order because it is "binding upon the Village as a matter of law" and "no set of facts can be alleged that would entitle the Village to relief in the form of an injunction prohibiting Prestige from operating its business until the conclusion of this litigation." *Pl. MTD Counterclaim* at 3. For the reasons set forth below, the Village's Counterclaim is not defeated by Section 2-619(a)(9) and Prestige's motion to dismiss should be denied.

LEGAL STANDARD

Section 2-619 is designed to "provide a mechanism to dispose of issues of law or easily proved issues of fact at the outset of litigation." *Meyers v. Rockford Systems, Inc.*, 254 Ill.App.3d 56, 61 (2d Dist. 1993). Section 2-619(a)(9) allows for involuntary dismissal when the claim is "barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS § 2-619(a)(9). An "affirmative matter" is "something in the nature of a defense that negates a cause of action completely." *Van Meter v. Darien Park District*, 2017 Ill.2d 359, 367 (2003). The affirmative matter "must be apparent on the face of the complaint or supported by affidavits or certain other evidentiary materials." *Doe v. University of Chicago Medical Center*, 2015 IL App (1st) 133735, ¶ 37.

When reviewing a motion to dismiss, the court construes all pleadings and supporting documents in favor of the non-moving party and determines if a genuine issue of material fact precludes dismissal or,

absent such factual issues, whether the affirmative matter renders dismissal proper as a matter of law. *Lyons Township ex. rel. Kielczynski v. Village of Indian Head Park*, 2017 IL App (1st) 161574, ¶ 8.

ARGUMENT

I. Plaintiff's Motion to Dismiss is Unclear on Its Face.

The MTD Counterclaim should be dismissed because, as a preliminary matter, it is not clear how the affirmative matter of the Agreed Order is applied. In the title of the motion, it appears Plaintiff is seeking to dismiss the Village's Counterclaim. *Pl. MTD Counterclaim* at 1. The MTD Counterclaim refers to "the Village's Counterclaim," attaches a copy of the Counterclaim, and quotes the Counterclaim. *See Pl. MTD Counterclaim* at 2, 5, 8 -10. A review of the Counterclaim shows the relief sought is not a preliminary injunction. *Def. Counterclaim* at 13 – 14.

However, in the opening paragraph there are two contradictions in the same sentence where Plaintiff "respectfully states the following" to dismiss the "Verified Counterclaim for Injunctive Relief (Motion) as it relates to temporary injunctive relief." *Pl. MTD Counterclaim* at 1. Plaintiff then frequently characterizes the Counterclaim as "seeking a preliminary injunction," "seeking preliminary injunctive relief," or "a temporary injunction. *Id.* at 2 – 4, 7, 9 – 10.

The Village's Counterclaim seeks a judicial determination in favor of the Village and an order that: (1) enjoins Prestige's operations until the odors are eliminated, as evaluated by a mutually selected independent expert; and (2) provides Prestige will assume the costs of the independent expert evaluation; or (3) enjoins Prestige's operations until they obtain a conditional use permit. *Def. Counterclaim* at 13 – 14. The Village did file a Motion for Preliminary Injunction, which Plaintiff references separately within the MTD Counterclaim. *See MTD Counterclaim* at 8. There, the Village proceeds pursuant to 65 ILCS § 5/11-13-15 and 65 ILCS § 5/11-31-2 to seek a preliminary injunction. *See Def. Motion for Preliminary Injunction* at ¶¶ 20 – 21, 30.

Based on the language in the MTD Counterclaim, it is unclear if Plaintiff seeks to dismiss the Counterclaim or the Motion for Preliminary Injunction. This is because the Counterclaim, while referenced by title, attached, and quoted, does not seek the type of relief that Plaintiff takes issue with and opposes in the

MTD Counterclaim. The Village's Motion for Preliminary Injunction does seek temporary and/or injunctive relief, which is the relief Plaintiff's MTD Counterclaim is focused on.

However, this presents a co-mingling of the issues that frustrates the response here. Prestige states "the Village's Counterclaim for temporary injunctive relief should be dismissed," but the Counterclaim did not make a claim for temporary injunctive relief. *Pl. MTD Counterclaim* at 10. Plaintiff based its MTD Counterclaim on the assertion that the Agreed Order bars temporary injunctive relief, which fails because that is not what the Counterclaim seeks. This means the MTD Counterclaim does not properly address the actual relief sought and therefore fails to demonstrate that the Agreed Order is an affirmative matter that defeats the claim. If Plaintiff seeks to dismiss the Counterclaim based on the Agreed Order, it still fails because, as discussed below, the Agreed Order does not limit the type of relief sought in the Counterclaim.

Plaintiff's MTD Counterclaim creates unnecessary complications and confusion because it comingles the relief sought in the Counterclaim with the Motion for Preliminary Injunction. While it states that the terms of the Agreed Order are an affirmative matter that defeats the Counterclaim, it mischaracterizes the relief sought as a temporary or preliminary injunction and creates confusion as to how Plaintiff applied the Agreed Order.

II. The Counterclaim Does Not Breach the Agreed Order.

Assuming, *arguendo*, that the MTD Counterclaim is seeking to dismiss the relief stated in the Counterclaim, then it should be denied because the relief sought does not violate the terms of the Agreed Order. The Village was authorized "to answer the *Complaint for Injunction, for Declaratory Judgement, and for Damages* or otherwise plead." *Ex. A* at ¶ 4. Under Section 2-608 of Illinois Civil Procedure, a counterclaim "shall be a part of the answer" and the trial court had discretion "to allow the filing of a counterclaim subsequent to filing an answer." 735 ILCS § 2-608(b); *Otto Real Estate Inc. v. Shelter Investments*, 153 Ill.App.3d 756, 762 (4th Dist. 1987). Here, the Village initially filed an answer, pursuant to 735 ILCS § 5/2-602, and then filed the Counterclaim, with leave of this Court. *See Court Order, dated August 2, 2023*, attached hereto as **Exhibit B**. The Agreed Order clearly shows the Parties intended for the Village to respond to Prestige's Complaint, and the Counterclaim was filed, with leave of the Court, as part of the Village's answer. The terms

of the Agreed Order do not limit how the Village would choose to answer or otherwise plead and does not reflect an intent to waive rights that could be pleaded and brought before the Court.

A. The “Four Corners” of the Agreed Order Demonstrate that the Parties Intended to Seek Adjudication of their Rights and Obligations.

When taken as a whole, the “four corners” of the Agreed Order demonstrates that both Parties anticipated conditions would change based on developments in the litigation process, which includes subsequent court orders. The Counterclaim seeks injunctive relief that is within the “four corners” of the Agreed Order because it seeks adjudication of the Village’s “rights and obligations.”

An agreed order is “a recordation of an agreement between the parties and is subject to the rules of contract interpretation.” *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 13. A contractual issue can be reviewed under Section 2-619 because “contract construction is a question of law for the court.” *Coles-Moultrie Elec. Co-op v. City of Sullivan*, 304 Ill.App.3d 153, 158 (4th Dist. 1999). Contract interpretation “must be read as a whole and all parts construed together” and it is “improper to take words of a contract out of context or read only one provision alone.” *Preski v. Warchol Const. Co. Inc.*, 111 Ill.App.3d 641, 645 (1st Dist. 1982). When analyzing contract language, “the starting point . . . is the language of the contract itself.” *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill.2d 100, 129 (2005). In Illinois, written agreements “must be presumed to speak the intention of the parties” and “must be determined from the language used.” *Air Safety Inc. v. Teachers Realty Corporation*, 185 Ill.2d 457, 462 (1999) (quoting *Western Illinois Oil Co. v. Thompson*, 25 Ill.2d 287, 291 (1962)). This is also known as the “four corners” rule. *Id.*

Plaintiff argues that, based on the Agreed Order, there are “no set of facts that would entitle the Village to relief in the form of an injunction prohibiting Prestige from operating its business until the conclusion of this litigation.” *Pl. MTD Counterclaim* at 3. Plaintiff asserts this creates an affirmative matter that negates the Counterclaim completely. *Id.* However, this is a narrow reading of the Agreed Order that focuses on the provision that states, “[t]hese conditions shall remain in effect until this Court adjudicates all Parties’ respective rights and obligations. . . .” *Ex. A* at ¶ 2. This essentially focuses on one provision to state the Village is stayed from pursuing relief against Prestige in this Court until the “underlying zoning violations

have been fully adjudicated at a trial on the merits.” *Pl. MTD Counterclaim* at 1. However, when interpreting the Agreed Order, it is improper to “read only one provision alone.” *Preski*, 111 Ill.App.3d at 645.

Here, the Agreed Order sets limits on Village administrative actions taken against Prestige until the Court adjudicates all the Parties’ rights *or* until the Court orders otherwise. *Ex. A* at ¶ 1. For example, the Agreed Order prevents the Village from issuing a “cease and desist” order against Prestige, which it has done in the past. *See Cease and Desist Letter, dated April 29, 2021*, attached hereto as **Exhibit C**. The Village’s “cease and desist” order is the result of Village processes, which permit the Village Manager to revoke or suspend a business license. *See Village Code* § 10.402. If a license is revoked or suspended, any continued operations can incur a daily fine. *Id.* at § 10.404. The Agreed Order shows the Village’s agreement to refrain from issuing further “cease and desist” orders, but the “four corners” do not show an intent to waive other judicial remedies.

Additionally, the Agreed Order limits the Village from either revoking or refusing to renew Prestige’s business license and/or occupancy permit. *Ex. A* at ¶ 1. Both processes are governed by the Village Code. *See Village Code art. III, ch. 10* (providing the process for obtaining a business license) and § 15.703 (detailing how to obtain an occupancy permit). Both processes set forth requirements for operating within the Village and authorize Village officials to take certain actions when violations occur. Again, this shows an intent to expressly limit the administrative authority of the Village, but not an intent to forego other judicial remedies.

Under the Agreed Order, the Village agreed *not* to pursue those administrative actions, which, if taken, could result in fines or administrative proceedings against Prestige. Instead, the Village agreed to stay its ability to enforce the Village Code and to grant Prestige temporary relief from further sanctions authorized by the Village Code. The Village did not agree to waive its ability to seek judicial remedies or orders from this Court. The proposed injunctive relief in the Counterclaim does not meet the criteria of the Agreed Order because the Village is not issuing a “cease and desist” order, is not revoking Prestige’s business license and/or occupancy permit, and is not refusing to issue Prestige’s business license and/or occupancy permit.

Prestige asserts that the “Village promised to allow Prestige the ability to operate [...] in exchange for having Prestige withdraw its Motion for Temporary Restraining Order and Preliminary Injunction.” *Pl. MTD Counterclaim* at 8. This is not what the Village promised.

The Village agreed to refrain from certain actions that it is authorized to take without court order *in exchange* for withdrawal of the motion and voluntary dismissal of former Co-Defendants. *Ex. A* at ¶¶ 1, 3-5. The withdrawn motion, which is presented as Count II in the initial Complaint, sought a court order that would: (1) temporarily prevent the Village from issuing any “cease and desist orders” against Prestige; (2) temporarily prevent the Village from revoking Prestige’s business license and occupancy permit; and (3) a preliminary injunction for the same relief. *See Plaintiff’s Complaint* at 13-14, attached hereto as **Exhibit D**. This requested relief became moot because the Village agreed to refrain from those very actions. *Ex. A* at ¶ 1.

Prestige maintains that, in consideration of the terms in the Agreed Order, it “relinquished its ability to litigate” its right to operate during “normal daytime business hours” and its “right to obtain a declaratory judgment and temporary restraining order against the Village.” *MTD Counterclaim* at 2. However, this overstates the scope of the Agreed Order. Plaintiff withdrew its Motion for Temporary Restraining Order and Preliminary Injunction, which appears as Count II in its Complaint. *See Ex. D* at 13 – 14. Prestige is still pursuing Count I and seeking declaratory judgment that: (1) “Prestige’s use of the Facility does not constitute a nuisance; (2) the use “does not emanate odors in excess of the odor threshold level determined by Illinois law”; (3) the use does not violate certain provisions of the Village Code; (4) the use is permitted based on the zoning district; and (5) damages for the alleged “non-meritorious claim.” *See id.* at 11-13. Prestige is also still pursuing Count III, a claim for damages “in excess of \$50,000 plus attorney’s fees and costs.” *Id.* at 14.

As such, Prestige overstates that the Agreed Order waived its ability to seek a declaratory judgment because it is still pursuing that relief. In addition, the terms of the Agreed Order only withdrew the Motion for Temporary Restraining Order but does not bar further court order that may arise throughout litigation. Indeed, the language indicates that the conditions are in effect until adjudication “or this Court orders otherwise.” *Ex. A* at ¶¶ 1 – 2. The Village relinquished administrative actions against Prestige, not judicial action, and both Parties agreed the conditions were effective until subsequent Court action.

Prestige has also not relinquished its “ability to litigate Prestige’s right to operate its production equipment during normal daytime business hours” because it is still seeking a declaratory judgment that, if in its favor, could result in daytime operations. Furthermore, Prestige states that daytime operation “was its practice prior to negotiation the terms of the Agreed Order; however, the Complaint states that, “since May 11, 2021, the Village allowed Prestige to run its production equipment and machinery at the Facility during weeknights during the night.” *Ex. D* at ¶ 28. Therefore, based on the facts alleged in the Complaint, Prestige has not been operating during the day since, at least, May 11, 2021, and the Agreed Order did not change that status when it was entered on June 7, 2023.

Because the Counterclaim does not violate the Agreed Order, Plaintiff’s Motion to Dismiss pursuant to Section 2-619(a)(9) should be denied.

B. The Plain Terms Indicate the Conditions Can Change by Court Order.

Furthermore, the Agreed Order indicates both Parties contemplated that the conditions could change through a court order, which could effect Prestige’s operations. *Ex. A* at ¶ 2. In its MTD Counterclaim, Prestige maintains that the Agreed Order provides Prestige cannot be prohibited from business operations until the litigation concludes. *Pl. MTD Counterclaim* at 3.

However, the scope of the Agreed Order states Plaintiff “*may* continue to operate,” subject to certain limitations, *until* the Court adjudicates respective rights and obligations, the parties agree otherwise, *or* the Court orders otherwise. *Ex. A* at ¶ 2 (emphasis added); see *Professional Executive Center v. LaSalle Nat. Bank*, 211 Ill.App.3d 368, 379 (1st Dist. 1991) (stating that “Illinois courts interpret the word ‘may’ as permissive and ‘shall’ as mandatory” in contracts).

The plain language does not indicate that Prestige’s operations are guaranteed during the entirety of litigation because an order from the Court could come prior to final resolution. See *Black’s Law Dictionary, Order* (11th ed. 2019) (defining “order” of the court as a “command, direction or instruction” that “generally embraces final decrees as well as interlocutory directions or commands.”). As Prestige points out, both Parties “were represented by counsel of equal position and capacity in negotiating the terms of the Agreed Order.” *Pl. MTD Counterclaim* at 5. With equal negotiation expertise, it is reasonable to infer both Parties were aware of

the plain language meaning of court “order” and that such orders can arise while litigation is ongoing. While Prestige states the Village is barred from the relief in the Counterclaim “until the conclusion of this litigation,” the plain language of the Agreed Order does not show an intent to limit judicial action until a final judgment. The Agreed Order reflects that Prestige may continue to operate its feed production equipment subject to the limitations set forth in the Agreed Order until *either* an adjudication of rights or obligations *or* the parties agree otherwise *or* a subsequent Court order. The Agreed Order does not require the Village to waive its right to seek a court order.

The Agreed Order is “not a judicial determination of the parties’ rights.” *Olsen v. Staniak*, 260 Ill.App.3d 856, 861 (1st Dist. 1994). In order to adjudicate its rights, the Village would need to seek judicial remedies. The Village did not agree, and the Agreed Order does not require, that the Village waive its right to seek additional remedies, as it does in the Counterclaim. The Agreed Order shows the Parties’ contemplated that the Court might “order otherwise[],” and, as such, any subsequent court order could affect the conditions and limitations on Prestige’s continue operations as set forth in Paragraph two.

Because the Agreed Order does not waive the ability of either party to seek court orders that adjudicate the Parties’ respective rights and obligations, the Counterclaim does not violate the terms of the Agreed Order and thus dismissal is not warranted under 735 ILCS § 2-619(a)(9).

III. There is a Factual Dispute that Precludes Dismissal.

The MTD Counterclaim should be denied because the Counterclaim raises a factual dispute that precludes dismissal based on the Agreed Order. A motion made pursuant to Section 2-619(a)(9) “admits the legal sufficiency of the complaint” and “well-pleaded allegations of facts.” *Xochi, LLC v. City of Galena*, 2022 IL App (4th) 220340, ¶ 19. A claim should be dismissed under Section 2-619(a)(9) only if the non-movant “can prove no set of facts that would support a cause of action.” *Id.*

The Agreed Order states the Parties will “maintain the status quo” through the agreed actions. *Ex. A* at 1. Illinois Courts routinely defines “status quo” as “the last, actual, peaceable, uncontested status preceding the controversy.” *Electronic Design & Mfg. Inc. v. Konopka*, 272 Ill.App.3d 410, 415 n.2 (1st Dist. 1995). Prestige

maintains that the status quo has remained constant and has not changed. *Pl. MTD Counterclaim* at 8 - 9.

However, the Village's Counterclaim indicates otherwise. *Def. Counterclaim* at ¶ 78 - 79.

The underlying action between Prestige and the Village has been developing since, at least, 2019. *See id.* at ¶ 20 - 21. This makes the "last actual, peaceable uncontested status" difficult to determine. However, the terms of the Agreed Order show the "status" is where Prestige retains its business license and occupancy permit, and does not receive further "cease and desist" orders from the Village. *Ex. A* at ¶ 1. In exchange for limiting its ability to use administrative functions to uphold the Village Code, the Village permits Prestige to operate on a limited basis, subject to changes as ordered by this Court. *Id.* at ¶ 2. However, the "status" does not limit the Village's obligation to protect the rights of Village residents through judicial remedies.

Prestige acknowledges that the Village receives complaints regarding the odor emanating from the facility but maintains that this is not new evidence that would warrant setting aside the Agreed Order. *Pl. MTD Counterclaim* at 5. The Village does not seek to set aside the Agreed Order and, as discussed above, is operating within the agreed limits. The Village disagrees with Prestige's statement that "any alleged complaints concerning any odor produced by Prestige following entry of the Agreed Order cannot be considered new evidence." The complaints are not contemplated or included in the Agreed Order and the Village has not set aside its ability to protect the public interest. As such, any inclusion of the odor complaints in defining "status quo" is outside the scope of the Agreed Order.

Even if the frequent complaints are used to set the status quo, there have been changes to the nature of the complaints that give rise to a factual dispute that precludes dismissal. Since the Agreed Order was entered on June 7, 2023, the Village has not only received a marked increase of complaints from surrounding residents; but officers from the Mount Prospect Police Department have also reported a significant increase in the odor emitted from Prestige during their late night and early morning patrol shifts. *See Reports from Mount Prospect Police Department*, attached hereto as **Group Exhibit E**. The basis of the complaints – Prestige's odor – may remain the same, but the intensity and frequency of the nuisance, as reflected in the increased volume of complaints, has changed since the entry of the Agreed Order. The Village filed its Answer on July 25, 2023. The Counterclaim was filed August 8, 2023. The Motion for Preliminary Injunction was filed August

11, 2023. Before and after the Agreed Order was entered, the Mount Prospect Police Department routinely monitored the area around Prestige to track the ongoing issues.

Between the entry of the Agreed Order on June 7, 2023 and when the Counterclaim was filed, the reports showed an increase in the intensity of the odor. *Compare Ex. E* at 3 (stating the officer detected a “faint, unpleasant, cheesy odor” on June 28, 2023) *with Ex. E* at 19 (describing a “very strong, unpleasant, cheesy odor” on August 4, 2023). Since the Counterclaim was filed, the reports continue to show and escalation in the intensity of the odor. *See Ex. E* at 25 (reporting that the “odor was strong and it was EVERYWHERE” and that the officer was “hit with wave after wave of bad smell” on August 31, 2023). This signified a change in circumstances that necessitated the Village to seek immediate protection for the affected residents and, because the Agreed Order limited its administrative options, the Village utilized the judicial methods permitted under the Agreed Order.

As such, the Village maintains that the escalation of the odor problem following the entry of the Agreed Order warranted and, in fact, required, the Village’s Counterclaim and subsequent Motion for Preliminary Injunction. In accepting well-pleaded allegations of fact as true, the question of whether there is a change in the circumstances is a “genuine issue of material fact” that precludes dismissal and “requires the resolution of an essential element of material fact.” *Epstein v. Chicago Bd. Of Education*, 178 Ill.2d 370, 383 (1997).

Because a genuine issue of material fact exists, the Agreed Order cannot, on its own, defeat the Counterclaim and the Plaintiff’s MTD Counterclaim should be denied.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Defendant/Counter-Plaintiff asks that this Honorable Court deny Plaintiff/Counter-Defendant’s motion.

Respectfully submitted,

Village of Mount Prospect

By: /s/ Allen Wall

One of their attorneys

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Allen Wall
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**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation; MICHAEL J. CASSADY,
in his capacity as Village Manager; WILLIAM
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation; MICHAEL J. CASSADY,
in his capacity as Village Manager; WILLIAM
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as Village Mayor,

Defendants/Counter-Plaintiffs,

v.

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT A

Agreed Order

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation, et al.

Defendants.

Case No. 2023 CH 05147

**JURY DEMANDED ON LAW
COUNTS**

Judge Clare J. Quish
Cal. 14
Courtroom 2301

AGREED ORDER

This matter coming before the Court on June 7, 2023, upon the Parties' agreement, and the Court being fully advised that the Parties agree to the entry of an agreed order to maintain the status quo during the pendency of the litigation, and the Court being fully advised:

IT IS HEREBY ORDERED:

1. Defendant, the Village of Mount Prospect agrees that it will not issue a "cease and desist order" against Prestige Feed Products, LLC, revoke its business license and/or its occupancy permit, and refuse to renew its business license and/or its occupancy permit, until this Court adjudicates all Parties' respective rights and obligations or this Court orders otherwise;
2. Prestige Feed Products, LLC may continue to operate its feed production equipment at its Facility located at 431 Lakeview Court, Suite A, in the Village of Mount Prospect, Cook County, Illinois on a limited basis beginning at 9 PM and ending at 5 AM on days of operation, not including the warm-up and cool-down time for the business's machinery and subject to ongoing monitoring and scheduling adjustments as needed. The above-stated limitations shall not apply to the normal administrative operations of the business, including, but not limited to, the delivery and pick-up of materials. These conditions shall remain in effect until this Court adjudicates all Parties' respective rights and obligations, or the parties otherwise agree, or the Court orders otherwise;



3. Plaintiff withdraws its Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support Thereof.
4. Defendant, the Village of Mount Prospect shall have until July 5, 2023, to answer the *Complaint for Injunction, for Declaratory Judgment, and for Damages* or otherwise plead;
5. Plaintiff's claims against Defendants MICHAEL J. CASSADY in his capacity as Village Manager, WILLIAM COONEY in his capacity as Village Director of Community Development, WILLIAM SCHROEDER in his capacity as Village Director of Building & Inspection Services, and PAUL HOEFERT in his capacity as the Village Mayor, are voluntarily dismissed without prejudice;
6. Bond requirement is waived; and
7. The case is set for status on **July 17, 2023 at 9:30 a.m.** before Judge Quish and shall be conducted via Zoom Court Appearance, ZOOM ID: 953-7174-9534 Password: 253498, Tel: 312-626-6799.

Judge Clare J. Quish
(312) 603-3733
ccc.chancerycalendar14@cookcountyil.gov
Zoom Meeting ID: 953 7174 9534
Zoom Password: 253498
Zoom Dial-In: (312) 626-6799

ENTERED:



Judge Clare J. Quish
DATE: June 7, 2023

[[ATTORNEY SIGNATURE PAGE FOLLOWS]]

Judge Clare J. Quish

JUN 07 2023

Circuit Court - 2160

PREPARED AND AGREED TO BY:

Prestige Feed Products, LLC

/s/ Riccardo A. DiMonte
By: _____
One of its Attorneys

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Village of Mount Prospect

/s/ Lance C. Malina (with permission)
By: _____
One of its Attorneys

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**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
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in his capacity as Village Manager; WILLIAM
COONEY, in his capacity as Village Director of
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Defendants.

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of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as Village Mayor,

Defendants/Counter-Plaintiffs,

v.

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT B

Court Order, dated August 2, 2023

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

DIVISION PRESTIGE FEED PRODUCTS, LLC,)
an Illinois limited liability company,)

Plaintiff,)

v.)

Case No. 2023 CH 05147

VILLAGE OF MOUNT PROSPECT, an Illinois)
municipal corporation; MICHAEL J. CASSADY)
in his capacity as Village Manager; WILLIAM)
COONEY in his capacity as Village Director of)
Community Development; WILLIAM)
SCHROEDER in his capacity as Village Director)
of Building & Inspection Services; and PAUL)
HOEFERT in his capacity as the Village Mayor,)

Defendants.)

ORDER

This matter coming before the Court August 2, 2023 for status, counsel for Plaintiff and Defendants present, with due notice given, and the Court being fully advised:

IT IS HEREBY ORDERED:

1. The Defendants' oral motion for leave to file a counterclaim for injunctive relief is granted;
2. The Defendants will file their counterclaim for injunctive relief on or before August 9, 2023;
3. The Plaintiff shall answer or otherwise plead to the Defendants' counterclaim on or before September 6, 2023;
4. The Plaintiff and the Defendants shall issue written discovery on or before September 29, 2023;
5. The case management conference scheduled for September 25, 2023 is stricken.
6. The case is set for status on pleadings and written discovery on **October 25, 2023 at 9:30 AM** via Zoom before Judge Quish, ZOOM ID: 953-7174-9534 Password: 253498, Tel: 312-626-6799.

Lance C. Malina
Allen Wall
Klein, Thorpe and Jenkins, Ltd.
120 South LaSalle Street, Suite 1710
Chicago, Illinois 60603
(312) 984-6400
Firm Attorney No. 90446
lcmalina@ktjlaw.com
jawall@ktjlaw.com

Judge Clare J. Quish

AUG 02 2023

Circuit Court - 2160

ENTERED:



Judge Clare J. Quish

DATE: August 2, 2023

Judge Clare J. Quish
(312) 603-3733
ccc.chancerycalendar14@cookcountyl.gov
Zoom Meeting ID: 953 7174 9534
Zoom Password: 253498
Zoom Dial-In: (312) 626-6799

EXHIBIT

B

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation; MICHAEL J. CASSADY,
in his capacity as Village Manager; WILLIAM
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation; MICHAEL J. CASSADY,
in his capacity as Village Manager; WILLIAM
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as Village Mayor,

Defendants/Counter-Plaintiffs,

v.

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT C

Cease and Desist Letter; dated April 29, 2021



20 N. Wacker Drive, Ste 1660
Chicago, Illinois 60606-2903
T 312 984 6400 F 312 984 6444

15010 S. Ravinia Avenue, Ste 10
Orland Park, Illinois 60462-5353
T 708 349 3888 F 708 349 1506

www.ktjlaw.com

April 29, 2021

Via Email Transmission

Mr. Anastas Shkurti, Esq.
DiMonte & Lizak, L.L.C.
216 West Higgins Road,
Park Ridge, Illinois 60068
AShkurti@dimontelaw.com

Re: Prestige Feed Products, L.L.C.

Dear Mr. Shkurti:

The Village of Mount Prospect ("Village") very recently has received complaints about noxious odors emitted by Prestige Feed Products, L.L.C. ("Prestige") at its 431 Lakeview Court facility (the "Facility"). Over the last two evenings, persons living in the Fairview Gardens neighborhood have complained to the Village about a strong unpleasant odor coming from the Facility. One neighborhood resident contacted both Cook County and the newly elected Village President to voice complaints.

On March 30, 2021, Prestige and the Village executed a Tolling Agreement (the "Agreement") to give the parties time to resolve the odor problem caused by Facility operations. Since entering the Agreement, Prestige has engaged in limited overnight operations for business purposes and to complete needed testing so it can determine how to successfully abate the odor problem and comply with applicable Village Code provisions.

Due to the recent complaints regarding the noxious odors emitting from the Facility, the Village must require that Prestige cease and desist its operations entirely until further notice. Please contact me at your earliest convenience so we can discuss this matter further.

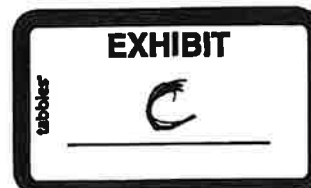
Very truly yours,

KLEIN, THOPRE AND JENKINS, LTD.

Lance C. Malina (by JAW)
Lance C. Malina

cc: Michael J. Cassady, Village Manager
William Cooney, Director of Community Development
William Schroeder, Director of Building & Inspection Services

470398_1



**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois)
limited liability company,)

Plaintiff,)

v.)

Case No. 2023 CH 5147

VILLAGE OF MOUNT PROSPECT, an Illinois)
municipal corporation; MICHAEL J. CASSADY,)
in his capacity as Village Manager; WILLIAM)
COONEY, in his capacity as Village Director of)
Community Development; WILLIAM)
SCHROEDER, in his capacity as Village Director)
of Building & Inspection Services; and PAUL)
HOEFERT, in his capacity as the Village Mayor,)

Judge Quish

Calendar 14

Defendants.)

VILLAGE OF MOUNT PROSPECT, an Illinois)
municipal corporation; MICHAEL J. CASSADY,)
in his capacity as Village Manager; WILLIAM)
COONEY, in his capacity as Village Director of)
Community Development; WILLIAM)
SCHROEDER, in his capacity as Village Director)
of Building & Inspection Services; and PAUL)
HOEFERT, in his capacity as Village Mayor,)

Defendants/Counter-Plaintiffs,)

v.)

PRESTIGE FEED PRODUCTS, LLC, an Illinois)
limited liability company,)

Plaintiff/Counter-Defendant.)

Defendants/Counter-Plaintiffs'

EXHIBIT D

Plaintiff's Complaint for Injunction, for Declaratory Judgment, and for Damages

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation; MICHAEL J. CASSADY
in his capacity as Village Manager; WILLIAM
COONEY in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT in his capacity as the Village Mayor,

Defendants.

Case No. 2023CH05147

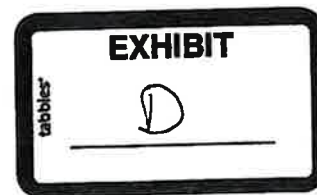
JURY DEMANDED ON LAW COUNTS

**COMPLAINT FOR INJUNCTION,
FOR DECLARATORY JUDGMENT, AND FOR DAMAGES**

The Plaintiff, Prestige Feed Products, LLC ("Prestige"), by its attorneys Riccardo A. DiMonte, Anastas Shkurti, and Vlad Chirica of Robbins DiMonte, Ltd., complains of the Defendants, the Village of Mount Prospect ("VOMP" or "Village"), the Village Manager Michael J. Cassady ("Cassady"), the Village Director of Community Development William Cooney ("Cooney"), the Village Director of Building & Inspection Services William Schroeder ("Schroeder"), and the Village Mayor Paul Hoefert ("Hoefert"), and alleges as follows:

SUMMARY OF THE DISPUTE

Prestige is a light manufacturing business which manufactures and sells soy and cheese-based feed for livestock. The VOMP is threatening to revoke Prestige's business license and occupancy permit on June 9, 2023, claiming that Prestige's business is a "nuisance." The Village claims that Prestige's business is a nuisance based on subjective inconsistent complaints about



odors emanating from its Facility. However, Prestige has commissioned two scientific odor studies during 2021 and 2022 which objectively measure the air discharged from the Facility. These facts and data conclusively establish that the level of odor discharge from Prestige's Facility is either immeasurable or well below the legal definition of nuisance.

While Prestige has shared its expert reports with the Defendants, and while the Village has no objective measurable or scientific data, the VOMP is currently threatening to revoke Prestige's occupancy permit and business license on June 9, 2023. If the Village revokes Prestige's occupancy permit and business license, then the Plaintiff will suffer the following immediate and irreparable harm:

- A. Prestige will immediately default on its contract orders for delivery of product in the pipeline with serious financial consequences for Prestige and its customers;
- B. All of Prestige's plant workers will immediately lose their jobs;
- C. Prestige will default on payment of its monthly rent obligations to its Landlord;
- D. Prestige will lose its \$2,944,151 investment in the Facility.

Due to the fact that the VOMP has no objective facts or data that establish that PFP's business is a nuisance as defined by law, Prestige has a high likelihood of prevailing on the merits.

FACTS COMMON TO ALL COUNTS

A. The Parties and the Tolling Agreement

1. The Plaintiff, Prestige, is an Illinois limited liability company, operating a light manufacturing facility at 431 Lakeview Court, Suite A, in the Village of Mount Prospect, Cook County, Illinois (the "Facility").

2. The Defendant, VOMP, is an Illinois municipal corporation, located in Cook County, Illinois.

3. Defendant Michael J. Cassady is the VOMP Village Manager.
 4. Defendant William Cooney is the VOMP Director of Community Development.
 5. Defendant William Schroeder is the VOMP Director of Building & Inspection Services.
 6. Defendant Paul Hoefert is the VOMP Mayor.
 7. On March 30, 2021, Prestige and the Village entered into a Tolling Agreement, to postpone the filing of a lawsuit and the costs of litigation, and to toll all limitations deadlines that may expire while the parties attempted to amicably resolve their dispute (the "Tolling Agreement"). A copy of the Tolling Agreement is attached hereto as Exhibit A.
 8. The Tolling Period under the original Tolling Agreement would have expired on June 4, 2021. The Parties amended and renewed the Tolling Agreement several times, with the last renewal dated March 30, 2023, and with an updated Tolling Period of December 31, 2023.
 9. On April 10, 2023, the Village delivered to Prestige a Notice of Termination of Tolling Agreement between Prestige Feed Products, LLC, and the Village of Mount Prospect, Illinois (March 31, 2023-December 31, 2023). A true and correct copy of the April 10, 2023, termination letter is attached hereto and identified as Exhibit B.
 10. The Termination of the Tolling Agreement results in the VOMP's ability to revoke Prestige's occupancy permit and business license at the Facility. As of June 9, 2023, VOMP admits that June 9, 2023, is the deadline for Prestige to file suit against the Village regarding this dispute.
- B. Prestige's Operations and Installation of Odor Mitigation Systems**
11. Prestige is a light manufacturing business which manufactures and sells soy and cheese-based feed products for livestock. The Facility equipment and machinery dehydrates raw material to produce an animal feed ingredient.

12. The Facility is located in the Village's I-1 zoning district. The Village Zoning Code in Section 14.2101 states:

"14.2101: Purpose: The I-1 limited industrial district is intended to provide an area suitable for industrial, manufacturing, warehousing and research facilities that do not create appreciable nuisance or hazards, or an area for such uses that require a pleasant, hazard and nuisance free environment." (Ord. 4590, 9-21-1993).

13. The properties to the South of the Facility are zoned R-1, the properties to the East, West and North are zoned I-1¹.

14. During February 2018, VOMP approved Prestige's use of the site for light manufacturing in the Village's I-1 Zoning District. VOMP approved all permits and inspections and licenses to renovate the Facility and approved all construction permits. Final inspections took place on February 6 and 7, 2019. The Village granted Prestige an occupancy permit on February 7, 2019, and Prestige began operations onsite March 19, 2019.

15. After March of 2019, neighbors surrounding the Facility complained to the Village about odors emanating from the Facility. To address the complaints and the Village's concerns, Prestige closed down operations between June and October of 2019 and informed the Village that it would purchase and install a Byers Scientific Vapor System to reduce or eliminate released odors. The Village reviewed and approved the construction permit for the Byers odor remediation system which was installed in September 2019 and further calibrated through October 2019. Prestige resumed operations in October 2019.

16. Between November of 2019 and April of 2020, the Village communicated additional complaints from neighbors, some of which complaints were on days when Prestige was not even operating its equipment at the Facility. During this time, Prestige further improved the

¹ On June 21, 2022, VOMP rezoned the property located at 3500 Wolf Road from B-1 to I-1.

existing odor mitigation system by installing additional vaporization nozzles to disperse more vapor to the airstream.

17. On April 22, 2020, Prestige advised the Village that, in good faith, it would further improve the odor mitigation system by reconstructing the duct work from the exterior cyclones to be all closed duct work and have their air dispersed into a carbon filtration system on the roof of the Facility. The Village approved this plan and Prestige completed the re-construction of the odor control system in July 2020.

18. On October 1, 2020, representatives of Prestige and of the Village met at the Facility during operation and agreed that Prestige could resume general operations with no restrictions due to lack of released odors. Prestige operated during regular hours from October 1, 2020, to February 28, 2021.

C. The Village's Notices of Imminent Legal Action and to Cease and Desist

19. On March 1, 2021, the Village sent Prestige a Notice of Imminent Legal Action alleging that Prestige's operations constituted a nuisance. Attached hereto and identified as **Exhibit C** is the VOMP's letter of March 1, 2021.

20. The Notice of Imminent Legal Action alleged that the ongoing odors created by Prestige brought the use within the definition of "Manufacturing, Heavy," that Prestige has not been issued a conditional use permit for this use and, therefore, is limited to "Manufacturing, Light" uses, and that the business remains in violation of the Village Code.

21. The Notice of Imminent Legal Action also alleged that Prestige's Use violated these sections from the Village Code of Ordinances: Section 11.3401: Nuisances; Section 14.604: Land Use Tables; and Section 14.2104: Bulk Regulations.

22. In its pertinent part, Section 11.3401: Nuisances, states:

“Section 11.3401: Nuisances: No business, occupation or activity, licensed under this code or not, shall be conducted or operated so as to constitute a nuisance or so as to amount to a nuisance in fact.” (1981 Code; amd. Ord. 3617, 3-4-1986).

23. In its pertinent part, Section 14.2104: Bulk Regulations, states:

“Section 14.2104: Bulk Regulations

...

G. Performance Standards: No use established in an I-1 limited industrial district shall be operated so as to exceed the performance standards listed below. Any use already established shall be permitted to be altered, enlarged, expanded or modified provided that all performance standards of the district are met.

...

6. Odorous Matter Limitations: The release of odorous matter from any industrial district across residence or business district boundary lines shall be so controlled that, at ground level or at habitable elevations, the concentration shall not exceed the odor threshold level. Further, the release of odorous matter across lot lines shall not become a nuisance or source of discomfort to neighboring uses. (Ord. 4590, 9-21-1993; amd. Ord. 5173, 3-6-2001; Ord. 5751, 8-4-2009)” [Emphasis added].

24. The Village Code does not define ‘odor threshold level’ and defers to Illinois law with respect to the odor threshold level applicable to Section 14.2104: Bulk Regulations.

25. The odor threshold level is found in the Illinois Joint Committee on Administrative Rules, Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter L: Air Quality Standards and Episodes, Part 245 Odors, Section 245.121 Objectionable Odor Nuisance Determination, which in pertinent part states,

“Section 245.121 Objectionable Odor Nuisance Determination

An objectionable odor nuisance exists:

- a) On or adjacent to residential, recreational, institutional, retail sales, hotel or educational premises when odor is detectable in the ambient air after it is diluted with eight volumes of odor-free air as measured by the Scentometer;
- b) On or adjacent to industrial premises when odor is detectable in the ambient air after it is diluted with twenty-four volumes of odor-free air as measured by the Scentometer;

c) On or adjacent to premises other than those above when odor is detectable in the ambient air after it is diluted with sixteen volumes of odor-free air as measured by the Scentometer;

d) When concurrent determinations made by three trained inspectors as outlined above in any given one hour period and at intervals of not less than fifteen minutes result in two positive determinations in each series of three determinations; and

e) Provided that any quantitative odor level measurements taken to arrive at a determination that an objectionable odor nuisance exists shall be at or beyond the property line or at or near places where people live or work.”
[Emphasis added].

26. To address these concerns, Prestige engaged Mostardi Platt, an expert engineering and environmental compliance firm, to perform an onsite and offsite odor investigation. Additionally, Prestige agreed to run its Facility for limited late night and early morning hours between 8:00 pm and 5:00 am. The parties also executed the March 30, 2021 Tolling Agreement. (Exhibit A).

27. Notwithstanding Prestige’s cooperation with the Village, on April 29, 2021, the Village attorney sent Prestige a written demand to cease and desist its operation until further notice. Attached hereto and identified as Exhibit D is the Village attorney’s April 29, 2021, letter.

28. Prestige proposed to adjust the starting time of its machinery at the Facility to 11 PM. The Village agreed and since May 11, 2021, the Village allowed Prestige to run its production equipment and machinery at the Facility during weeknights during the night.

D. Prestige’s Expert Reports

29. On June 2, 2021, Mostardi Platt issued its Odor Investigation report which was immediately shared with the VOMP. A true and correct copy of this report without the appendices is attached hereto and identified as Exhibit E.

30. In order to objectively measure the odors emanating from Prestige's Facility, on April 1, 2021, Mostardi Platt collected Olfactometer readings at 8 locations and conducted an ambient odor survey using a Scentometer at 21 locations, 15 of them offsite and 6 onsite.

31. The Olfactometer results of all four Tedlar Bag samples collected at the boundaries at the neighboring real properties adjacent to the Facility had detection readings of 3 or less. The Scentometer results on all 21 tested locations had detection readings of less than 2. Therefore, as of April 2021, no objectively measured odor nuisance from the Facility existed on the properties surrounding the Facility. Additionally, Mostardi Platt determined that the normal operation of the Facility does not have a significant impact on the use and enjoyment of neighboring real properties and therefore, the Village's claims of a legal odor nuisance were without merit.

32. Based on this report, the Village allowed Prestige to continue operating during nighttime hours between June 2021 and October 2022.

33. During Spring 2022, Prestige implemented additional significant upgrades to its odor control system. First, Prestige upgraded the carbon filters with the Anue-Geo filter unit. To fit the newer and thicker filters, Prestige built a new custom aluminum filter cage to provide additional support against the elements. Secondly, Prestige upgraded the vapor deodorizer solution with one specifically engineered for solid waste odor applications and is a stronger and more potent mix of essential oils. To handle this new vapor, Prestige sent back its Vapor-Phase Odor Control Machine to Byers Scientific to replace all PVC piping with stainless steel piping to prevent degradation from the stronger vapor. The cost of purchasing and installing Prestige's odor control system and its various upgrades at the Facility was \$432,594.

34. During September and October of 2022, the Village reported receiving additional complaints about odors emanating from the Prestige Facility, some of which were received on days when Prestige was not operating.

35. In response to these allegations, Prestige commissioned a second report from Mostardi Platt which collected data on June 10, 2022, and issued an updated report on October 31, 2022. A true and correct copy of the October 31, 2022, report without the appendices is attached hereto and identified as Exhibit F. This report was also immediately shared with the Village. The results of the updated report are as follows:

- a) The Scentometer readings were zero (zero at 7 of the 8 tested fence line locations and less than 2 at the 8th location); and
- b) The test results demonstrate that Prestige's operation at the Facility does not reach or surpass the nuisance threshold Scentometer readings under applicable law, which are 8 along the Facility's southern border (zoned R-1), and 24 everywhere else (zoned I-1).

36. The October 31, 2022, Report also concludes that (i) no objectionable odor nuisance from the Facility exists on the real property boundary line, and that (ii) the normal operation of the Facility does not constitute a nuisance, and that (iii) Prestige's use does not impact the use and enjoyment of the neighboring real properties.

37. On April 10, 2023, notwithstanding objective test results from June 2, 2021, and October 31, 2022, the VOMP served Prestige with notice that it intended to terminate the Parties' Tolling Agreement as of June 9, 2023. A true and correct copy of the April 10, 2023, termination letter is attached hereto and identified as Exhibit B. Termination of the Tolling Agreement results in the VOMP's ability to revoke Prestige's occupancy permit/business license as of June 9, 2023.

38. Prestige's original investment to build the Facility was \$2,375,482.

39. Prestige employs five (5) workers on the Facility floor during overnight hours and requires a second daytime shift in order to meet demand for its product.

40. Prestige has spent \$432,594 on odor remediation equipment between 2019 and 2022 in order to achieve near zero measurable odors, comply with Village Code, be a good neighbor, and operate in good faith.

41. Prestige is willing to invest an additional \$171,899 to install a Tri-Stack Strobic Air Fan to further reduce or completely eliminate the emissions at the site.

42. The Village has threatened to issue another “cease and desist order” after June 9, 2023.

43. Although to date the Village has no objective measurable or scientific data that establish that Prestige’s business is a nuisance as defined by law, various Village officials have stated in the press and to the public that Prestige is in violation of the Village Code.

44. On April 4, 2023, the *Journal & Topics* publication quoted Village Manager Cassady as saying: “Prestige needs to either fix the matter again in a given period of time, get zoning relief to operate at their location, or relocate where they can operate without any complaints.” (A ‘Stink’ Is Back: Village Working With Industrial Company Following Return Of Complaints, *By Richard Mayer on April 04, 2023*).

45. On April 19, 2023, the *Journal & Topics* publication quoted Village Mayor Hoefert as saying: “They [Prestige] can stay if they can completely eliminate the stench. Unless they can completely eliminate the stench, this business needs to go.” (Mount Prospect Rescinds Agreement, Wants Company To Fix Odor For Good, *By Richard Mayer on April 19, 2023*).

46. The Village has also threatened to revoke the Prestige occupancy permit and business license.

47. Prestige is entitled to unfettered operation of its business because it is not a nuisance by any objective standard defined by law. Without injunctive relief, five Prestige employees will lose their jobs, Prestige will default on its lease for the sum of \$23,343 per month, Prestige will lose its investment of \$2,944,151 for the Facility, and Prestige will suffer financial losses and irreparable harm by failing to fill its customers' orders currently in the pipeline.

COUNT I DECLARATORY JUDGMENT

1 - 47. Prestige adopts and realleges the allegations asserted in Paragraphs 1 through 47 above as if fully set forth herein as Paragraphs 1 through 47 of Count I.

48. Prestige has a protectable interest in operating its business at the Facility.

49. There exists an actual controversy between Prestige and the Village as to whether Prestige's use and activity at the Facility constitutes a nuisance as defined by Illinois law.

50. Prestige has provided the Village with two scientific odor studies during 2021 and 2022 which objectively measure the air discharged from the Facility. These facts and data conclusively establish that the level of odor discharge from Prestige's Facility is either immeasurable or well below the legal definition of nuisance.

51. The Village's revocation of Prestige's occupancy permit and business license will irreparably damage Prestige's business operations.

52. If the Village revokes Prestige's occupancy permit and business license, then the Plaintiff will suffer the following immediate and irreparable harm:

- i. Prestige will immediately default on its contract orders for delivery of product in the pipeline with serious financial consequences for Prestige and its customers;
- ii. All of Prestige's plant workers will immediately lose their jobs;
- iii. Prestige will default on payment of its monthly rent obligations to its landlord;

iv. Prestige will lose its \$2,944,151 investment in the Facility.

53. The Village has presented no objective measurable or scientific data to substantiate or support the claim that Prestige's use constitutes a nuisance. Due to the fact that the VOMP has no objective facts or data that establish that Prestige's business is a nuisance as defined by law, Prestige has a high likelihood of prevailing on the merits.

54. Prestige's Use of the Facility does not violate Village Code Section 11.3401: Nuisances; Section 14.604: Land Use Tables; and Section 14.2104: Bulk Regulations.

55. Prestige's Use at the Facility falls under the definition of 'Manufacturing, Light' as stated by the Village Manager in February 2018, instead of 'Manufacturing, Heavy' as the Village claimed on March 1, 2021.

56. Prestige's Use is a permitted use at the Facility and Prestige does not need to apply for zoning relief or for a conditional use permit for 'Manufacturing, Heavy' use to operate at the Facility. Prestige is not required to request further zoning relief.

57. Prestige is entitled to operate its production equipment and machinery during daytime hours and not only during nighttime hours and there should be no limitations or restrictions on Prestige's operation during daytime business hours.

58. The damages that Prestige has suffered from the VOMP actions are without adequate remedy at law.

WHEREFORE, Plaintiff, Prestige Feed Products, LLC, requests the following relief:

- A. A declaratory judgment that Prestige's use of the Facility does not constitute a nuisance;
- B. A declaratory judgment that Prestige's use of the Facility does not emanate odors in excess of the odor threshold level determined by Illinois law;

- C. A declaratory judgment that Prestige's use of the Facility does not violate Village Code Section 11.3401: Nuisances; Section 14.604: Land Use Tables; and Section 14.2104: Bulk Regulations;
- D. A declaratory judgment that Prestige's use of the Facility is a permitted use at the Village's I-1 zoning district;
- E. An award of damages against the Village of Mount Prospect for any and all financial losses suffered as a result of its non-meritorious claim that the Prestige business is a nuisance or that Prestige is emitting odors above and beyond the standards established by law; and
- F. All further relief in favor of Prestige that the Court deems just.

**COUNT II
INJUNCTIVE RELIEF**

1 - 58. Prestige adopts and realleges the allegations asserted in Paragraphs 1 through 58 above as if fully set forth herein as Paragraphs 1 through 58 of this Count II.

59. The actions of the Village and its officials towards Prestige are intentional, substantial, unjustifiable, and unreasonable.

60. The damages that Prestige has suffered from the actions of the Village and its officials are without adequate remedy at law.

WHEREFORE, Plaintiff, Prestige Feed Products, LLC, requests the following relief:

- A. A temporary restraining order against the Village of Mount Prospect and all its officials from issuing a "cease and desist order," from revoking its business license and from revoking its occupancy permit;

- B. A preliminary injunction enjoining the Village of Mount Prospect and all its officials from issuing a “cease and desist order,” from revoking its business license and from revoking its occupancy permit;
- C. A permanent injunction against the Village of Mount Prospect and all its officials from issuing a “cease and desist order,” from revoking its business license and from revoking its occupancy permit;
- D. An award of damages against the Village of Mount Prospect for any and all financial losses suffered as a result of its non-meritorious claim that the Prestige business is a nuisance or that Prestige is emitting odors above and beyond lawful standards established by law; and
- E. All further relief in favor of Prestige that the Court deems just.

**COUNT III
DAMAGES – JURY DEMANDED ON LAW COUNTS**

1 – 60. Prestige adopts and realleges the allegations asserted in Paragraphs 1 through 60 above as if fully set forth herein as Paragraphs 1 through 60 of this Count III.

WHEREFORE, Plaintiff, Prestige Feed Products, LLC, demands judgment in its favor and against the Defendants, the Village of Mount Prospect, the Village Manager Michael J. Cassady, the Village Director of Community Development William Cooney, the Village Director of Building & Inspection Services, William Schroeder, and the Village Mayor, Paul Hoefert, in the amount in excess of \$50,000 plus attorney’s fees and costs.

Respectfully submitted,

PRESTIGE FEED PRODUCTS, LLC,

/s/ Riccardo A. DiMonte

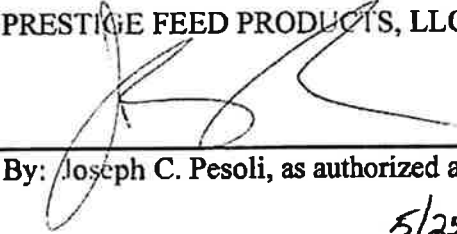
By: _____
Riccardo A. DiMonte, one of its attorneys

Riccardo A. DiMonte
rdimonte@robbinsdimonte.com
Anastas Shkurti
ashkurti@robbinsdimonte.com
Vlad V. Chirica
vchirica@robbinsdimonte.com
ROBBINS DIMONTE, LTD.
216 W. Higgins Rd.
Park Ridge, IL 60068
Tel.: (847) 698-9600
Firm No. 99688

VERIFICATION

Under penalties as provided by law pursuant to §1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated upon information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

PRESTIGE FEED PRODUCTS, LLC


By: Joseph C. Pesoli, as authorized agent

5/25/23

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation; MICHAEL J. CASSADY,
in his capacity as Village Manager; WILLIAM
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

VILLAGE OF MOUNT PROSPECT, an Illinois
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HOEFERT, in his capacity as Village Mayor,

Defendants/Counter-Plaintiffs,

v.

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

GROUP EXHIBIT E

Reports from Village of Mount Prospect Police Department

Schroeder, William M.

From: Eterno, Mike
Sent: Tuesday, June 27, 2023 3:46 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: Presige Feed

Hi Mike,

Our afternoon shift officer also detected an odor of cheese in the air last night.

Mike

From: Nava, Robert <RNava@mountprospect.org>
Sent: Tuesday, June 27, 2023 3:27 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Re: Presige Feed

Chief,

This email is regarding the Prestige Feed Products issue, I responded to the area on 06/26/23, at 2250 hours, and was S/B Wolf Rd near 322 N Wolf Rd when I initially detected the previously described scent of cheese in the area.

The scent was still detected near Wolf & Lowden and W/B on Lowden until about Stevenson Ln.

I did not observe a haze in the air while checking the area.

Thanks,

RN #265



From: Saric, Ognjen
Sent: Tuesday, June 27, 2023 4:28 AM
To: Eterno, Mike <MEterno@mountprospect.org>
Cc: Ryan, William <WRyan@mountprospect.org>
Subject: 431 Lakeview Ct

Date/Time: 06/27/2023 at approximately 0000 hrs.

I checked the area near the north side of the 431 property on Lakeview Ct and did not detect any odor.

I checked the area near the south side of the 431 property on Lowden Ln. I detected a very strong, unpleasant, cheesy odor, particularly between Wolf Rd and Yates Rd (approximately S-SE of the 431 property). I observed the air in this area appeared somewhat hazy.

There was a relatively strong wind from the N-NW direction which could explain why the odor was only detectable on the south side of 431 property. The iPhone Weather App indicated there was 6-12mph wind from the N-NW direction.

Regards,
Officer Saric

Schroeder, William M.

From: Eterno, Mike
Sent: Wednesday, June 28, 2023 10:43 AM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: 431 Lakeview Ct

Hi Mike,

Our officers detected a faint smell in the air near Prestige last night. It wasn't as strong as the night before, but it was present.

Mike

From: Saric, Ognjen <OSaric@mountprospect.org>
Sent: Wednesday, June 28, 2023 6:32 AM
To: Eterno, Mike <MEterno@mountprospect.org>
Cc: Ryan, William <WRyan@mountprospect.org>
Subject: 431 Lakeview Ct

Date/Time: 06/28/2023 at approximately 0000 hrs.

I checked the area on Lakeview Ct near the NW side of 431 Lakeview Ct property and I detected a faint, unpleasant, cheesy odor, similar to the previous night. The air did not appear hazy.

Regards,
Officer Saric

Schroeder, William M.

From: Eterno, Mike
Sent: Thursday, June 29, 2023 9:12 AM
To: Cassidy, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: 431 Lakeview Ct

Hi Mike,

Here's an update from last night's Prestige check. The odor was spreading to the north and northwest.

Mike

From: Saric, Ognjen <OSaric@mountprospect.org>
Sent: Thursday, June 29, 2023 5:07 AM
To: Eterno, Mike <MEterno@mountprospect.org>
Cc: Ryan, William <WRyan@mountprospect.org>
Subject: 431 Lakeview Ct

Date/Time: 06/29/2023 at approximately 0100 hrs.

I checked the area on Lakeview Ct near the NW side of 431 Lakeview Ct property and I detected the same unpleasant, cheesy odor, as on previous nights, but more potent. There was also a light haze in the air in that area.

The odor permeated the entire Business Center area and could be detected as far as the MPPD parking lot and even some places north of Kensington Rd.

Regards,
Officer Saric

From: Saric, Ognjen <OSaric@mountprospect.org>
Sent: Wednesday, June 28, 2023 6:32 AM
To: Eterno, Mike <MEterno@mountprospect.org>
Cc: Ryan, William <WRyan@mountprospect.org>
Subject: 431 Lakeview Ct

Date/Time: 06/28/2023 at approximately 0000 hrs.

I checked the area on Lakeview Ct near the NW side of 431 Lakeview Ct property and I detected a faint, unpleasant, cheesy odor, similar to the previous night. The air did not appear hazy.

Regards,
Officer Saric

Schroeder, William M.

From: Eterno, Mike
Sent: Friday, June 30, 2023 2:29 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: Fwd: Prestige

Hi Mike,

The winds must have been out of the west last night. At 4:45 AM an officer detected a bad odor of cheese, but only on wolf road.

Mike

*Mike Eterno
Chief of Police
Mount Prospect Police Department*

Sent from my iPhone

Begin forwarded message:

From: "Welliver, John" <jwelliver@mountprospect.org>
Date: June 30, 2023 at 5:01:53 AM CDT
To: "Eterno, Mike" <MEterno@mountprospect.org>
Subject: Prestige

Good morning Chief Eterno,

I conducted the sniff test today June 30th. I did a test at 0007 hours and I did not detect any sent coming form the area. I drove through the turnabout near the location and did not smell anything. I also went on Lowden Ln and did not detect anything.

I conducted another test at 0445 hours and I did not smell anything near the turnabout. As I drove south on Wolf towards Lowden I did smell a bad odor of cheese coming from the direction of Presitge, as the wind was blowing west to east. I did not smell anything on Lowden Ln since the wind direction was going away from the street.

I did not see smoke or haze on either pass through.

Welliver

Schroeder, William M.

From: Eterno, Mike
Sent: Monday, July 3, 2023 11:59 AM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: Fwd: Prestige feeds

Hi Mike,

More unpleasant odors were detected by officers last night.

Mike

Sent from my iPad

Begin forwarded message:

From: "Chirila, Daniel" <DChirila@mountprospect.org>
Date: July 3, 2023 at 4:58:51 AM CDT
To: "Eterno, Mike" <MEterno@mountprospect.org>
Subject: Prestige feeds

Sir,

On 7/3/2023, between 0430-0450, I detected a strong, sharp cheesy odor at 322 N Wolf Rd. The odor was really unpleasant. No other issues were observed.

Dan #300

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Schroeder, William M.

From: Eterno, Mike
Sent: Thursday, July 6, 2023 12:27 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: Prestige Feed Products - 431 Lakeview Ct

Hi Mike,

Our officers detected the odor again last night. It seemed to be more prevalent along Wolf Road.

Mike

From: Roe, Alexander <ARoe@mountprospect.org>
Sent: Thursday, July 6, 2023 4:12 AM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Prestige Feed Products - 431 Lakeview Ct

Good evening, Chief,

Earlier this morning on 07/06/2023, at approximately 0130 hours, I monitored the ongoing scent issue near Prestige Feed Products. I observed the smell was most prevalent on Wolf Road, between Feehanville Drive and Lowden Lane. I would describe the smell as an old cheese type of smell. It should be noted, the wind was blowing eastbound during this time. I monitored the area for the next thirty minutes and observed the smell was still in the air.

Thank you, Chief, and have a great end to your week.

Warmest Regards,

Alex

Officer Alexander Roe #315
Patrol Officer
Mount Prospect Police Department
911 E. Kensington Road
Mount Prospect, IL 60056
Front desk: (847) 870-5656
Work cell: (224) 277-6453

Schroeder, William M.

From: Eterno, Mike
Sent: Thursday, July 27, 2023 9:03 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: Fwd: Prestige Feed Products

Our midnight shift officer detected an "old cheese type of smell" this morning at 5:40 AM while he was driving around at Central and Westgate. He also smelled the same scent in the parking lot of the Ice Arena, which is across the street from Prestige.

Mike

Sent from my iPad

Begin forwarded message:

From: "Roe, Alexander" <ARoe@mountprospect.org>
Date: July 27, 2023 at 6:00:38 AM CDT
To: "Eterno, Mike" <MEterno@mountprospect.org>
Subject: Prestige Feed Products

Good evening, Chief,

Earlier this morning on 07/06/2023, at approximately 0540 hours, I monitored the ongoing scent issue near Prestige Feed Products. I observed the smell was most prevalent near Central Road and Westgate Road. I would describe the smell as once again an old cheese type of smell, but less strong than previously smelled. I then monitored the smell from the parking lot of the Mount Prospect Ice Arena, and detected the same smell.

Thank you, Chief, and have a great end to your week.

Warmest Regards,

Alex

Officer Alexander Roe #315
Patrol Officer
Mount Prospect Police Department
911 E. Kensington Road
Mount Prospect, IL 60056
Front desk: (847) 870-5656
Work cell: (224) 277-6453

Schroeder, William M.

From: Eterno, Mike
Sent: Friday, July 7, 2023 10:09 AM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: Prestige Feed Products

Hi Mike,

Last night at around 9pm, an afternoon shift officer detected a foul odor near the entrance to the ice arena.

Mike

From: Gentile, Frank <FGentile@mountprospect.org>
Sent: Friday, July 7, 2023 6:46 AM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Prestige Feed Products

On 7/6/23 at approximately 2100 hrs I drove down Lowden Lane, Wolf Road and Feehanville Court with my windows down. I smelled no unusual odors. I drove down Lakeview Court and was able to smell a bad odor that smelled like burnt cheese near the entrance to the ice arena. I observed no smoke or haze in the air.

-Frank Gentile #286

Schroeder, William M.

From: Eterno, Mike
Sent: Tuesday, July 18, 2023 11:35 AM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: 431 Lakeview Ct

Hi Mike,

Our afternoon shift officer detected a faint odor last night on Lakeview Ct, northwest of Prestige's facility.

Mike

From: Davis, Laura <LDavis@mountprospect.org>
Sent: Monday, July 17, 2023 10:08 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Re: 431 Lakeview Ct

I checked again today

There is a faint odor to the northwest of the building, but the odor was faint enough that I went around again to confirm. This was on Lakeview Ct in front of the building

Laura

Sent from my iPhone

On Jul 17, 2023, at 5:51 PM, Eterno, Mike <MEterno@mountprospect.org> wrote:

Thank you, Laura.

Mike

From: Davis, Laura <LDavis@mountprospect.org>
Sent: Sunday, July 16, 2023 11:54 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: 431 Lakeview Ct

Hi Chief,

No odor detected today.

Have a good night.

Laura

RN #265

From: Eterno, Mike <MEterno@mountprospect.org>
Sent: Wednesday, July 19, 2023 11:22 PM
To: Nava, Robert <RNava@mountprospect.org>
Subject: Re: Presige Feed

Thank you, Rob. I appreciate it.

Mike

*Mike Eterno
Chief of Police
Mount Prospect Police Department*

Sent from my iPhone

On Jul 19, 2023, at 8:53 PM, Nava, Robert <RNava@mountprospect.org> wrote:

Chief,

I responded to the area of Prestige Food Products on 07/19/2023 , at 2245 hours, and the only area I could smell very faint scent of burnt cheese was from Lakeview Ct. This was just west of the business and the scent was hardly noticeable.

I did not observe a haze in the air.

Thanks,

RN #265

From: Eterno, Mike <MEterno@mountprospect.org>
Sent: Tuesday, June 27, 2023 3:44 PM
To: Nava, Robert <RNava@mountprospect.org>
Subject: RE: Presige Feed

Thank you, Rob! That's helpful info.

Mike

From: Nava, Robert <RNava@mountprospect.org>
Sent: Tuesday, June 27, 2023 3:31 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Re: Presige Feed

From: Nava, Robert <RNava@mountprospect.org>
Sent: Thursday, August 10, 2023 10:48 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Re: Prestige Feed 07/20/2023

Chief,

I responded to the area of Prestige Food Products on 08/10/2023, at 2243 hours, and there no was discernible scent observed from Lakeview Ct or from Lowden, but at Feehanville Dr /Wolf Rd I could smell the strong odor of something similar to cheese.

I did not observe a haze in the air and there was no loud noises heard from the business.

Thanks,

RN #265

From: Eterno, Mike <MEterno@mountprospect.org>
Sent: Thursday, July 20, 2023 10:08 PM
To: Nava, Robert <RNava@mountprospect.org>
Subject: Re: Prestige Feed 07/20/2023

Thank you for the update, Rob. I'll pass along your observations to the village manager and village attorney.

Mike

Sent from my iPad

On Jul 20, 2023, at 8:04 PM, Nava, Robert <RNava@mountprospect.org> wrote:

Chief,

I responded to the area of Prestige Food Products on 07/20/2023, at 2153 hours, and there no was discernible scent observed from Lakeview Ct, Feehanville Dr or Wolf Rd until about 322 N Wolf Rd (Smiling Patient Dental Care office).

The smell was also very noticeable from Wolf Rd/ Lowden W/B until about Stevenson Ln/Lowden Ln.

I did not observe a haze in the air.

Thanks,

Schroeder, William M.

From: Eterno, Mike
Sent: Friday, July 21, 2023 10:42 AM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: Fwd: 431 Lakeview Ct

Our midnight shift officer also detected a cheesy odor in the air last night at 2 AM. The odor was detected south of Prestige, near Lowden and Yates.

Mike

Sent from my iPad

Begin forwarded message:

From: "Saric, Ognjen" <OSaric@mountprospect.org>
Date: July 21, 2023 at 4:23:13 AM MST
To: "Eterno, Mike" <MEterno@mountprospect.org>
Subject: 431 Lakeview Ct

Date/Time: 07/21/2023 at approximately 0200 hrs.

I checked the area surrounding the 431 Lakeview Ct property. I detected the same cheesy type odor near Lowden Ln and Yates St, directly south of the 431 Lakeview Ct property. The odor was very faint and only appeared in this small section, possibly due to S/B wind as there was no odor anywhere else in the area.

Regards,
Officer Saric

Schroeder, William M.

From: Eterno, Mike
Sent: Monday, July 24, 2023 10:22 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: Fwd: 431 Lakeview Ct

Based on the winds tonight, our afternoon shift officer detected a strong odor north and northwest of Prestige, into the Kensington Business Center, specifically north of Feehanville Drive.

Mike

Sent from my iPad

Begin forwarded message:

From: Laura Davis <mppd_davis@icloud.com>
Date: July 24, 2023 at 8:08:40 PM MST
To: "Eterno, Mike" <MEterno@mountprospect.org>
Subject: 431 Lakeview Ct

Hi Chief,

I went by 431 Lakeview Ct shortly after 2130. There was a strong and distinct odor to the north and west of the business. I first detected the odor on Business Center Drive north of Feehanville.

I did not smell anything along Wolf or Lowden.

Have a good night

Laura

Sent from my iPhone

Schroeder, William M.

From: Eterno, Mike
Sent: Wednesday, July 26, 2023 11:11 AM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: Fwd: Prestige odor

On 7/24 one of our midnight shift officer's was parked at a business located at 320 N Wolf Rd when he smelled a weak odor of what he described as spoiled cheese in the air. However on 7/25 he did not detect anything unusual in the KBC area.

Mike

Sent from my iPad

Begin forwarded message:

From: "Chirila, Daniel" <DChirila@mountprospect.org>
Date: July 25, 2023 at 6:54:50 PM MST
To: "Eterno, Mike" <MEterno@mountprospect.org>
Subject: Prestige odor

Sir,

I detected a weak odor(best descriebed as spoiled cheese/eggs) on 7/24/23 at approximately 0430 while I was conducting stationary patrol at 320 N Wolf Rd.

No odor detected on 7/25/23.

Dan

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Schroeder, William M.

From: Eterno, Mike
Sent: Wednesday, August 2, 2023 1:43 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: RE: 431 Lakeview Ct - Prestige Feed

It appears as though one of our afternoon shift officers detected a moderate odor at Feehanville and Wolf last night. Just FYI.

-----Original Message-----

From: Davis, Laura <LDavis@mountprospect.org>
Sent: Tuesday, August 1, 2023 10:25 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: 431 Lakeview Ct

Hi Chief,

So tonight there was a moderate odor at Feehanville and Wolf, but it was pretty much isolated to that area.

Have a good night

Laura

Sent from my iPhone

Schroeder, William M.

From: Eterno, Mike
Sent: Thursday, August 3, 2023 4:14 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: 431 Lakeview Ct

Our afternoon shift officer detected a strong odor last night along Wolf Road, east of Prestige.

From: Davis, Laura <LDavis@mountprospect.org>
Sent: Wednesday, August 2, 2023 10:49 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Re: 431 Lakeview Ct

Strong odor today along wolf rd from north of feehanville rd to the Comcast construction entrance. No other areas smelly

Laura

Sent from my iPhone

On Aug 1, 2023, at 4:19 PM, Eterno, Mike <MEterno@mountprospect.org> wrote:

Thank you for checking, Laura.

From: Davis, Laura <LDavis@mountprospect.org>
Sent: Tuesday, August 1, 2023 4:17 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: 431 Lakeview Ct

Hi Chief,

I'm sorry I didn't email you last night, but I did check the business at around 2145 hrs. I did not detect any odors in the area.

Thank you,

Laura

Schroeder, William M.

From: Eterno, Mike
Sent: Friday, August 4, 2023 4:41 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: Prestige Feed sniff test

And going along with the previous email I just forwarded, our afternoon shift officer detected a "cheesy" odor along Wolf Road last night at around 10:15 PM.

Mike

-----Original Message-----

From: Gliner, Joseph <JGliner@mountprospect.org>
Sent: Thursday, August 3, 2023 10:22 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Prestige Feed sniff test

Good evening Chief Eterno,

I conducted tonight's sniff test and detected a moderate cheesy odor on Wolf Rd near the Comcast construction site at about 2215 hours.

I hope you have a pleasant evening.

Joe

Sent from my iPhone

Schroeder, William M.

From: Eterno, Mike
Sent: Friday, August 4, 2023 4:38 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: 431 Lakeview Ct

Hi Mike –

Our midnight shift officer detected a very strong and unpleasant cheesy odor last night at around midnight. The odor was detected east of Prestige, along Wolf Road.

Mike

From: Saric, Ognjen <OSaric@mountprospect.org>
Sent: Friday, August 4, 2023 6:17 AM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: 431 Lakeview Ct

Date/Time: 08/04/2023 at approximately 0000 hrs. I checked the 431 Lakeview Ct property and detected a very strong, unpleasant, cheesy odor. The odor was most prominent directly east of the 431 Lakeview Ct property due to the eastbound wind, and I was able to detect it as far as Wolf Rd.

Regards,
Officer Saric

Schroeder, William M.

From: Eterno, Mike
Sent: Wednesday, August 9, 2023 7:30 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: 431 LakeviewCt

While our midnight officer did not detect any "cheesy" odors last night around Prestige, our afternoon shift officer did. She detected the strong odor along Wolf Road, between Feehanville and the old Comcast building.

Mike

-----Original Message-----

From: Davis, Laura <LDavis@mountprospect.org>
Sent: Wednesday, August 9, 2023 4:28 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: 431 LakeviewCt

Last night i checked the area near the business. There was a very strong odor between Feehanville and the Comcast construction zone on Wolf Rd. Every place else, no odor

Laura

Sent from my iPhone

Schroeder, William M.

From: Eterno, Mike
Sent: Thursday, August 10, 2023 11:41 AM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: Prestige Food Products

Our midnight shift officer detected a fowl rotten odor along Wolf Road, as well as Lakeview Court last night.

Mike

From: Gentile, Frank <FGentile@mountprospect.org>
Sent: Thursday, August 10, 2023 5:47 AM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Prestige Food Products

On 8/10/23 at approximately 0200 hrs I drove down Lowden Lane, Wolf Road and Feehanville Court with my windows down. I smelled a strong rotten odor on Wolf Road. I drove down Lakeview Court and was able to smell the same bad odor that smelled like burnt cheese. I observed no smoke or haze in the air.

-Frank Gentile #286

Schroeder, William M.

From: Eterno, Mike
Sent: Saturday, August 12, 2023 10:57 AM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: Prestige Feed 07/20/2023

Gentlemen –

An afternoon shift officer on Thursday night (8/10/23) at around 10:43 PM, detected a strong odor, similar to cheese, at the intersection of Wolf Rd and Feehanville.

From: Nava, Robert <RNava@mountprospect.org>
Sent: Thursday, August 10, 2023 10:48 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Re: Prestige Feed 07/20/2023

Chief,

I responded to the area of Prestige Food Products on 08/10/2023, at 2243 hours, and there no was discernible scent observed from Lakeview Ct or from Lowden, but at Feehanville Dr /Wolf Rd I could smell the strong odor of something similar to cheese.

I did not observe a haze in the air and there was no loud noises heard from the business.

Thanks,

RN #265

From: "Goorsky, Michael" <MGoorsky@mountprospect.org>
Date: August 17, 2023 at 3:56:02 AM CDT
To: "Eterno, Mike" <MEterno@mountprospect.org>
Subject: 3168 Smell Check

Chief Eterno,

I noticed the smell very strongly at Wolf Rd/Feehanville Rd this morning.

Mike

Schroeder, William M.

From: Eterno, Mike
Sent: Monday, August 28, 2023 1:49 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: 431 Lakeview Ct

An afternoon shift officer reported smelling a strong odor, on Friday night (8/25), on Lakeview Ct, just west of Prestige.

Mike

From: Davis, Laura <LDavis@mountprospect.org>
Sent: Saturday, August 26, 2023 10:51 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: 431 Lakeview Ct

Hi Chief,

I apologize that I did not email you last night.

Last night there was a very strong odor just to the west of the business on Lakeview Ct, but no odor in any other direction.

Tonight, no odor at all.

Thank you and have a good night.

Laura

Schroeder, William M.

From: Eterno, Mike
Sent: Friday, September 1, 2023 5:30 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: 431 Lakeview Ct

As you can see from Officer Davis' email below, apparently the smell from Prestige was terrible last night. The odor spread throughout a good portion of Kensington Business Center.

Mike

From: Davis, Laura <LDavis@mountprospect.org>
Sent: Thursday, August 31, 2023 10:53 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: 431 Lakeview Ct

Good Evening Chief,

It was really smelly today. The odor was strong and it was EVERYWHERE. North on Business Center up to Slawin Ct. Up and down Wolf Rd, west on Feehanville. I was hit with wave after wave of bad smell. The odor is so unique and foul it cannot be mistaken for any other possible source. Bad.

Laura

Schroeder, William M.

From: Eterno, Mike
Sent: Friday, September 15, 2023 7:34 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: 431 Lakeview Ct

Our afternoon shift officer detected an odor on Lakeview Court, in front of Prestige last night.

Mike

From: Davis, Laura <LDavis@mountprospect.org>
Sent: Thursday, September 14, 2023 10:52 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: 431 Lakeview Ct

Hi Chief,

So I went by the business and could smell their signature smell right on Lakeview Ct in front of the business.

That's all I have,
Laura

Schroeder, William M.

From: Eterno, Mike
Sent: Friday, September 22, 2023 3:53 PM
To: Cassady, Michael; Malina, Lance; Schroeder, William M.
Subject: FW: Prestige Feed 07/20/2023

Our afternoon shift officer detected the odor of burnt cheese as far as west as Rand and Business last night. He notated a couple of other locations as well in his email below.

Mike

From: Nava, Robert <RNava@mountprospect.org>
Sent: Thursday, September 21, 2023 10:08 PM
To: Eterno, Mike <MEterno@mountprospect.org>
Subject: Re: Prestige Feed 07/20/2023

Chief,

The odor was extremely noticeable tonight. It may have been due to higher than normal wind speeds, but I noticed the very distinct odor of cheese/burnt cheese as far west as Rand Rd/ Business Center and Main St and Isabella while driving in 3166/68 this evening (09/21/2023) at 2145 hours. This occurred in waves, but the odor was very strong.

While en route to Prestige, I could again smell the strong odor as far west as the 1000 block of Feehanville, and upon nearing Prestige at Lakeview Ct/ Feehanville. I did not smell the odor east or south of the business at Wolf Rd or Lowden.

I also did not observe a haze in the air and there were no loud noises heard from the business.

Thanks,

RN #265

From: Eterno, Mike <MEterno@mountprospect.org>
Sent: Saturday, August 12, 2023 10:54 AM
To: Nava, Robert <RNava@mountprospect.org>
Subject: RE: Prestige Feed 07/20/2023

Thank you, Rob! I appreciate the info!

Mike