

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

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

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiffs.

Case No. 2023 CH 05147

Judge Clare J. Quish
Cal. 14
Courtroom 2301

**PLAINTIFF’S MEMORANDUM OPPOSING DEFENDANT’S
THIRD MOTION FOR TEMPORARY RESTRAINING ORDER**

The Plaintiff/Counter-Defendant, Prestige Feed Products, LLC, (“Prestige”), by its attorneys, Robbins DiMonte, Ltd., hereby responds to the Defendant/Counter-Plaintiff, Village of Mount Prospect (the “Village”)’s Third Motion for Temporary Restraining Order and the Setting of a Preliminary Injunction Hearing (“Third Motion”), and states as follows:

INTRODUCTION

The Third Motion is a motion for preliminary injunction – not a temporary restraining order. The Third Motion seeks to enjoin Prestige from operating its business for an unlimited duration and Prestige has filed an answer contesting the allegations of material fact of the Village’s Third Amended Counterclaim. The Third Motion must be resolved following an evidentiary hearing because Prestige has raised and supported the existence of material questions of fact. The Third Motion is also barred by laches and should be further denied when the record proves there is no emergency or irreparable injury since the Village voluntarily withdrew its two previous “emergency” motions and unreasonably delayed bringing this third claim for “emergency” relief to hearing for over five years. Further, the Village has intentionally misstated easily verifiable facts in its Third Motion and its

Counterclaim. The Village has also failed to plead actual facts that establish the existence of immediate, irreparable, harm. In conclusion, granting to the Village either a temporary restraining order or preliminary injunction would alter the status quo, not maintain it.

STATEMENT OF FACTS

1. On May 25, 2023, Prestige filed a Verified Complaint for Injunction, for Declaratory Judgment, and for Damages, which contains verified allegations that are incorporated and restated herein. Prestige's Verified Complaint for Injunction, for Declaratory Judgment, and for Damages remains pending and undetermined before the Court.

2. On May 26, 2023, Prestige filed a verified Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support thereof, which contains verified allegations that are incorporated and restated herein. These allegations were withdrawn via the June 7, 2023 Court Order and reinstated via the October 12, 2023 Court Order.

3. On December 5, 2023, the Village filed its first Emergency Motion for Temporary Restraining Order and a Motion for Leave to File Amended Verified Counterclaim for Injunctive Relief. On December 11, 2023, the Village filed its first Amended Verified Counterclaim for Injunctive Relief.

4. On December 14, 2023, the Court entered an Agreed Order wherein: (i) the Village agreed to withdraw its first Emergency Motion for Temporary Restraining Order; (ii) the parties agreed that Prestige would increase its hours of operation, including daytime hours, and (iii) the parties agreed to stay all discovery through January 8, 2024.

5. On April 8, 2024, the Village filed its second Motion for Temporary Restraining Order. Seven days later, on April 15, 2024, the Court entered an Order allowing Prestige to file an answer to the second Motion for Temporary Restraining Order and set the matter for hearing to

May 9, 2024.

6. On April 19, 2024, the Village filed its Second Amended Verified Counterclaim for Injunctive Relief. On May 3, 2024, Prestige filed its Response to the Village's Second Motion for Temporary Restraining Order.

7. On June 4, 2024, the Court entered an Order that stated, "Village's Motion for TRO is withdrawn without prejudice."

8. On July 19, 2024, the Village filed its Third Amended Verified Counterclaim ("Counterclaim"). The Village filed its Third Motion on August 23, 2024.

9. On September 4, 2024, Prestige filed Prestige's Verified Answer and Affirmative Defenses to the Counterclaim ("Prestige's Answer"); the Affidavit of Joseph C. Pesoli dated September 4, 2024 ("Pesoli Affidavit"); the Affidavit of Ryan Hartley dated September 4, 2024 ("Hartley Affidavit"); and the Affidavit of Riccardo A. DiMonte Dated September 4, 2024 ("DiMonte Affidavit"), which are all incorporated in full herein.

FACTUAL QUESTIONS REQUIRING THE PRESENTATION OF EVIDENCE

The common law record contains too many factual issues for the Court to rely solely on the parties' affidavits and verified pleadings to rule on the Village's Third Motion. Among the key contested factual issues and non-exhaustive examples of such disputes from the pleadings are:

1. Whether Prestige is releasing detectable odors. The Prestige witnesses will testify it is not. (See e.g., Prestige Answer ¶¶ 7, 18; Hartley Affidavit ¶¶ 20, 21, 28, 29, 34, 38, 43, 45, 50; and Pesoli Affidavit ¶¶ 26 – 27, 33, 34). The Village witnesses will testify that it is. (See e.g., Counterclaim ¶¶ 7, 18).

2. Whether Prestige is releasing odors above legal thresholds (24 dilutions of odor concentration between industrial properties). The Prestige witnesses will testify it is not. (See,

e.g., Prestige Answer ¶¶ 47 – 50, 169; Hartley Affidavit ¶¶ 20, 21, 28, 29, 34, 38, 43, 45, 50; and Pesoli Affidavit ¶¶ 26 – 27, 33, 34, 50 – 52). The Village witnesses will testify that it is (See, e.g., Counterclaim ¶¶ 47 – 50, 169).

3. Whether odors allegedly released by Prestige annoy or disturb a significant portion of surrounding businesses and/or residences. The Prestige witnesses will testify it does not (See e.g., Prestige Answer ¶¶ 61, 99 – 121, 125 – 134; Hartley Affidavit ¶¶ 20, 21, 28, 29, 34, 38, 43, 45, 50; and Pesoli Affidavit ¶¶ 61 – 62, 73). The Village Witness will testify that it does. (See e.g., Counterclaim ¶¶ 61, 99 – 121, 125 – 134).

4. Whether odor allegedly released by Prestige causes illness to adults or children in the vicinity. The Prestige witnesses will testify it does not (See e.g., Prestige Answer ¶¶ 9, 116, 118, 143; and Pesoli Affidavit ¶¶ 61 – 62). The Village witnesses will testify that they do. (See e.g., Counterclaim ¶¶ 9, 116, 118, 143).

5. Whether Prestige misrepresented or concealed facts from the Village on its construction permit application or business license application. The Prestige witnesses will testify it did not (See e.g., Prestige Answer ¶¶ 5, 7, 23, 30 – 34, 37; and Pesoli Affidavit ¶¶ 6 – 16). The Village now claims it did. (See e.g., Counterclaim ¶¶ 5, 7, 23, 30 – 34, 37).

6. Whether Prestige unilaterally addressed or collaborated with the Village to address complaints lodged by surrounding residents. The Prestige witnesses will testify that it collaborated with the Village (See e.g., Prestige Answer ¶¶ 52, 53, 76, 81, 89; and Pesoli Affidavit ¶¶ 17 – 21, 30, 38 – 40). The Village witnesses will now testify Prestige did not. (See e.g., Counterclaim ¶¶ 52, 53, 76, 81, 89).

ARGUMENT

- I. The Third Motion is a motion for preliminary injunction – not a temporary restraining order – because it seeks to enjoin Prestige from operating its business

for an unlimited duration and Prestige has filed an answer contesting the allegations of material fact of the Village's Third Amended Counterclaim.

Under the Illinois Injunction Act (735 ILCS 5/11-101 *et seq.*), there are two specific types of temporary injunctions that may be sought pending the outcome of litigation; namely: (a) the temporary restraining order (735 ILCS 5/11-101); and (b) the preliminary injunction (735 ILCS 5/11-102). The Code of Civil Procedure additionally requires litigants, except in personal injury cases, to request specific remedies that the movant believes it should receive from the court. 735 ILCS 5/2-604.2(a).

The Village labelled the Third Motion as an “emergency” motion for “temporary restraining order,” and asks this Court to forego the procedural safeguards that are afforded to litigants under preliminary injunction proceedings. Such safeguards include but are not limited to requiring an evidentiary hearing on contested issues of material fact before the court can enter an order enjoining a party’s conduct.

However, the Village’s Third Motion is a motion for preliminary injunction and not a motion for temporary restraining order, and Prestige is entitled to offer evidence because: (a) the relief sought by the Village asks this Court to enjoin Prestige from operating its business for an unlimited duration; (b) the Third Motion was issued with notice and Prestige file an answer denying the material allegations; and (c) courts may not decide whether to issue a preliminary injunction based upon competing affidavits.

(a) *The Third Motion does not seek a temporary restraining order because it asks the Court to enter an order altering the status quo and enjoining Prestige from operating its business for an unlimited duration that would extend through a final trial on the merits.*

“The purpose of a temporary restraining order is to preserve the status quo until the court can conduct a hearing to determine whether it should grant a preliminary injunction.” *Am. Fed’n of State, Cnty., & Mun. Emps., Council 31 v. Ryan*, 332 Ill. App. 3d 965, 966 (1st Dist. 2002).

Currently, the status quo is Prestige operating two shifts a day, Sunday night through Saturday morning. Here, the Village improperly seeks to alter, not preserve, the status quo until the court can conduct a hearing to determine whether it should grant a preliminary injunction. (*See e.g., Strief v. Bovinette*, 88 Ill. App. 3d 1079, 1084 (5th Dist. 1980), stating that granting an injunction is “improper if its tendency is to change the status quo of the litigants rather than preserve it.”). Rather, the Village’s prayer for relief asks this Court to shut down Prestige’s entire business and put its employees out of work “until it can display that it operate without violating the Village zoning code, the Village code regarding odors, and common law public nuisance.” (See Third Motion at § IV, p. 29).

Whether Prestige is “violating the Village zoning code, the Village code regarding odors, and common law public nuisance,” are the very contested issues of fact and law that must be resolved by the Court following a trial on the merits. Should the Court grant the relief requested by the Village in the Third Motion on an emergency basis, the temporary restraining order would alter the status quo and remain in place until the entire controversy is resolved at trial at some unknown point in the future following months of discovery. Temporary restraining orders are not intended to address the relief requested by the Village. Rather, preliminary injunction proceedings are what the legislature intended parties to use when seeking to maintain the status quo pending a complete resolution of the case on the merits.

Specifically, unlike a temporary restraining order, “a preliminary injunction serves the purpose of maintaining the status quo until the case is disposed on its merits.” *Bismarck Hotel Co. v. Sutherland*, 92 Ill. App. 3d 167, 175 (1st Dist. 1980). That is exactly the relief that the Village requests in its Third Motion and the Court should not allow the Village to circumvent the procedural requirements mandated in a preliminary injunction hearing simply because the Village

calls its Third Motion a motion for temporary restraining order.

(b) *The Third Motion must be treated as a motion for preliminary injunction because Prestige has filed a verified answer denying the material allegations of fact asserted by the Village.*

Illinois law is crystal clear that “A temporary restraining order issued with notice and a preliminary injunction issued with notice are the same type of relief and, whether referred to under either term, require the same elements of proof.” *In re Est. of Wilson*, 373 Ill. App. 3d 1066, 1075 (1st Dist. 2007); citing, *Jacob v C & M Video Inc.*, 248 Ill.App.3d 654, 664 (1993); *Kable Printing Co. v. Mount Morris Bookbinders Union Local 65-B*, 63 Ill.2d 514, 524 (1976); and *Houseknecht v. Zagel*, 112 Ill.App.3d 274, 291 (1983). (See also, *McHenry Cnty. Sheriff v. McHenry Cnty. Dep’t of Health*, 2020 IL App (2d) 200339, ¶ 28, stating that temporary restraining orders entered after both notice and hearing are the functional equivalent of a preliminary injunction; *Spunar v. Clark Oil & Ref. Corp.*, 53 ILL. App. 3d 477, 480 (1st Dist. 1977), stating that where notice is given and argument is heard prior to granting injunctive relief, the relief is a preliminary injunction and holding that the trial court erred in granting the motion, in part, because it sought to alter the status quo by requiring defendant to close its operations or change its practices).

The Court has permitted Prestige to file an answer to the Third Motion, albeit on extremely short notice. Prestige has done so and has denied numerous factual allegations in the Third Motion and the Counterclaim, that are supported by affidavits and exhibits. Accordingly, the Third Motion is a motion for preliminary injunction and not a motion for temporary restraining order.

II. The Village’s Third Motion must be resolved following an evidentiary hearing because Prestige has raised the existence of material questions of fact.

“[W]here an answer has been filed, both the answer and the complaint must be considered, and if the answer contains denials of material allegations of the complaint, a hearing on those matters must be allowed before the injunction may issue.” *Centennial Laundry Co. v. W. Side Org.*,

34 Ill. 2d 257, 262 (1966) (finding that the trial court erred in issuing a temporary restraining order to resolve questions of contested facts especially where the trial court “could conclude no more in favor of plaintiff than he could in favor of defendants, based on the pleadings before him.”). (See also, *Passon v. TCR, Inc.*, 242 Ill. App. 3d 259, 263-65 (2nd Dist. 1993), stating that “Upon an application for a preliminary injunction, an evidentiary hearing is normally required where a verified answer has been filed denying material allegations in the complaint,” and holding the court abused its discretion in entering the order when no evidentiary hearing was held before its entry).

Prestige’s Verified Answer filed contemporaneously with this Memorandum sets forth denials of all material facts alleged by the Village. Prestige’s Verified Answer includes several affidavits and exhibits that clearly demonstrate the existence of material questions of fact. Accordingly, and as a matter of law, the Village’s Third Motion should either be denied or the matter set for a full evidentiary hearing following written and oral discovery at a future date.

- III. The Village’s Third Motion is barred by laches, or in the alternative, should be denied when the record of this case proves there is no emergency or irreparable injury because the Village voluntarily withdrew its two previous “emergency” motions and unreasonably delayed bringing this third claim for “emergency” relief to hearing for over five years.

As this Court is well aware, this is now the Village’s third time claiming the existence of emergent and irreparable circumstances giving rise to their claims. However, the fact that the Village voluntarily withdrew their prior two motions must be given effect and demonstrates that the Village has failed to diligently bring and adjudicate its alleged “emergency”. Prestige reasonably relied upon the Village’s representations and actions in withdrawing the prior motions by way of investing significant capital into improving its facility to its detriment. Prestige additionally reasonably relied on the Village’s representations and actions in withdrawing the prior motions by cancelling numerous depositions that it had scheduled for many of the individuals that have provided affidavits or statements relied upon in the Third

Motion.

Had the Village truly believed that this was an emergency situation, it should have pursued its claims in 2019 upon receiving alleged complaints from its citizens. Had there truly been a condition created by Prestige causing irreparable injury to the citizens of Mount Prospect, the Village should have sought emergency relief five years ago in 2019. Despite the fact that the Village allegedly began receiving complaints about Prestige's operations as early as 2019, the Village took no judicial action that demonstrates it believed Prestige's operations caused any irreparable harm, or that Prestige needed to be shut down on an emergency basis without a full evidentiary hearing, until 2023. For the reasons set forth more fully herein, the Village's claims are barred by laches. In the alternative, the Village's delay in seeking emergency relief for approximately five years demonstrates the lack of urgency and emergency needed to justify the extraordinary remedy of an injunction.

(a) *The Village's Third Motion is barred by laches because it should have brought and prosecuted its alleged entitlement to emergency relief when Prestige opened for business in 2019 and Prestige is now prejudiced as a result of the Village's delay.*

"There are no fixed rules to determine what constitutes laches." *McCartney v. McCartney*, 8 Ill. 2d 494, 500 (1956). Rather, "Its existence depends upon whether, under the circumstances of the particular case, the plaintiff is chargeable with want of due diligence in failing to institute proceedings earlier." *Id.*

(1) The Village failed to act diligently in bringing and prosecuting its claim within a reasonable period following Prestige opening its business in 2019.

Illinois law is clear that delay in seeking a temporary restraining order or preliminary injunction may act as a bar to a movant establishing entitlement to injunctive relief. (See e.g., *Naxon Telesign Corp. v. Selig*, 38 Ill. App. 2d 242, 244 (1st Dist. 1962), finding that, "In view of the fact that nearly a year has elapsed between the filing of the complaint and the motion for a

temporary injunction without a sufficient showing of some excuse for the delay, the plaintiff will not now be heard to say that there is any emergency or that it is in grave and immediate peril.”; *People ex rel. Bolton v. Progressive Gen. Ins. Co.*, 84 Ill. App. 2d 109, 114 (1st Dist. 1967), stating that because temporary injunctions are extraordinary remedies granted in emergency situations, “a delay of even a few months in seeking injunctive relief is indicative of such a lack of urgency as to preclude the issuance of an injunction” (finding, however, that the claim was not barred because the delay was the court’s and not movant’s); *Evers v. Collinsville Twp.*, 269 Ill. App. 3d 1069, 1074-75 (5th Dist. 1995), holding that laches barred movant’s action for an injunction when two annual meetings had passed between the announcement of intent to engage in the conduct at issue and the commencement of the suit); *Lowery v. City of Pekin*, 210 Ill. 575, 579 (1904), finding that the complainant’s right to injunctive relief was barred by laches when the city had used certain land as a highway for several years prior to suit for injunctive relief being filed); and *Classen v. Danforth*, 56 Ill. App. 552, 554 (2nd Dist. 1895), finding that the movant’s claim for injunctive relief was barred by laches and noting that “In cases of injunctions, more diligence in prosecuting the suit is required than in an ordinary suit.”).

Prestige opened its business in the Village in 2019. As early as May 2019, the Village claims that it began receiving complaints from its residents about a “strong burning smell” coming from Prestige’s facility. (See Village’s August 8, 2023 Counterclaim at ¶ 20). For several years thereafter, the Village began to accuse Prestige of violating various Village Ordinances. (See Village’s August 8, 2023 Counterclaim). The Village did not allege at any time that its residents were sustaining irreparable harm from 2019 through 2023. Absolutely nothing about Prestige’s operations has changed from 2019 through present except that it has spent millions of dollars improving its facility to address the Village’s alleged concerns.

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The Village's actions in voluntarily withdrawing its two prior motions seeking temporary restraining orders and filing its Third Amended Counterclaim demonstrates such a lack of urgency and due diligence so as to preclude the grant of injunctive relief.

- (2) Prestige has been prejudiced by the Village's delay because it has invested significant capital into improving its operation over the past five years in reliance upon the Village entering numerous agreed orders voluntarily withdrawing its previous "emergency" motions for temporary restraining orders and its decision to not diligently pursue temporary injunctive relief.

"A defendant has been prejudiced by a delay when the assertion of a claim available some time ago would be inequitable in light of the delay in bringing the claim and ensues when a defendant has changed his position in a way that would not have occurred if the plaintiff had not delayed." *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 824 (7th Cir. 1999). (See also, *Schnepper v. Am. Info. Techs., Inc.*, 136 Ill. App. 3d 678, 981 (1st Dist. 1985), stating that "equity will not require the defendant temporarily to undo what has been legitimately done," where the defendant lawfully constructed a facility following the trial court's denial of the plaintiff's request for a preliminary injunction; and *Huerbinger Drug Co. of Glenview v. Topp's of Niles, Inc.*, 28 Ill. App. 2d 336 (1st Dist. 1960), finding that the trial court should have refused to grant injunctive relief due in part to the fact that there was "no showing of an emergency because the court of the case with respect to pleadings and the hearing had been unhurried; and the probability that the status quo was being upset rather than maintained").

Prestige has been prejudiced in the Village's delay and continuous change of position by way of investing significant capital into improving its facility from 2019 through present. Had the Village not withdrawn its prior two motions or proceeded to completely adjudicate its claims of entitlement to temporary injunctive relief earlier, Prestige could have undertaken efforts to renegotiate its lease or relocate to another facility. Further, Prestige would not have invested

millions of dollars into improving the existing facility.

IV. The Village has intentionally misstated easily verifiable facts in its Third Motion and should be admonished by this Court.

In the Third Motion and Counterclaim, the Village makes numerous statements which are factually wrong. The Village seeks to rewrite history and ignore the written discovery already exchanged between the parties. The two main arteries of such statements (but not all) are that (i) Prestige misrepresented and concealed facts from the Village on its construction permit application and business license application (See e.g., Counterclaim ¶¶5, 7, 23, 30 – 34, 37), and that (ii) Prestige unilaterally and independently installed and modified mitigation equipment without permits or the Village's knowledge or consent. (See e.g., Counterclaim ¶¶ 52, 53, 76, 81, 89).

It is disingenuous for the Village to state that Prestige intentionally concealed from the Village that Prestige would erect two industrial stacks on its building. The first sentence of the first page of the Third Motion contains this factual misrepresentation which is repeated throughout the Third Motion and the Counterclaim (See, e.g., Third Motion pg. 1; Counterclaim at ¶ 30-34). The Village whips this statement into a series of other factually inaccurate statements, such as: “...*The application included plans for work on the roof of the building but did not include plans for the erection of industrial stacks on the east end of the roof. ... (Third Motion at pg. 8; Counterclaim. at ¶ 30) ... Prestige knew that its disclosure of its intent to install industrial stacks on its Certificate of Occupancy application would cause greater scrutiny from the Village of its proposed Light Manufacturing use. (Third Motion, pg. 8; Counterclaim at ¶ 32). ... Prestige intentionally omitted disclosing the industrial stacks on its application to avoid such scrutiny and the risk of denial of its application.(Third Motion pg. 8; Counterclaim at ¶ 33). [and] ... The Village relied on Prestige's application with such omission when granting the Certificate of Occupancy. (Third Motion pg. 8; Counterclaim at ¶ 34)*”.

These statements are inaccurate. The electrical permits that Nicholas & Associates, Inc., submitted to the Village on or before October 30, 2018 (before the Facility opened), clearly depict the cyclones (that the Village calls stacks). See Pesoli Affidavit ¶¶ 7 – 16, (also referring to Village production VOMP001149, VOMP000918, and VOMP001147 – 001152). Also, VOMP001186 shows the exterior elevation plans (A200) with the approximate locations of Prestige’s round duct supply openings for the cyclones.

Further, Prestige installed the cyclones long before the Village conducted the final inspection prior to granting the certificate of occupancy. The cyclones are located on top of two concrete pads. The concrete pads for the cyclones were poured prior to October 23, 2018. Prestige points to VOMP001138, which shows the building inspection report for north dock slab pre-pour dated October 15, 2018. See Pesoli Affidavit ¶¶ 14 – 15.

The Village also conducted numerous inspections in Fall 2018 and Winter 2018-2019 and Spring 2019 leading up to the opening of the Facility. The cyclones were there the whole time, and the Village did not object to them. Also, the Village issued the certificate of occupancy with the cyclones already in place. They were not hidden. The Village could have objected anytime to that installation, but it did not. *Id.*, ¶ 16.

Moreover, Prestige installed and modified its mitigation equipment over the years with Village’s full knowledge and consent. *Id.*, ¶¶ 17-21, 37-38. At no time did the Village object to said installations. As mentioned, in the interest of judicial efficiency, Prestige is advising the court of these two categories of factual inaccuracies in the Village’s latest pleadings and can elaborate more during oral argument when that time comes.

V. The Village has failed to plead actual facts that establish the existence of immediate, irreparable, harm.

A motion seeking injunctive relief must allege in particular terms the manner in which the

movant will be injured. *Mingare v. DeVito*, 67 Ill.App.3d 371, 373 (1st Dist. 1978). “Such facts must be alleged with certainty and precision; it is incumbent upon the plaintiff to allege, as well, in particular terms the irreparable harm.” *Alms v. Peoria Cnty. Eletion Comm’n*, 2022 IL App (4th) 220976, ¶ 33. “Mere conclusions are inadequate.” *Id.* (See also *Smith v. Dep’t of Nat. Res.*, 2015 IL App (5th) 140583, ¶ 27, stating that “The requirement of the showing of imminent injury is not satisfied by proof of a speculative possibility of injury and such relief will not be granted to allay unfounded fears or misapprehensions.”).

Here, there are no actual facts pleaded that would establish the existence of immediate or irreparable harm. Specifically, Prestige has been operating its business at this location for five years. There is no emergency now. The Village has allegedly been fielding complaints from the same group of people for five consecutive years. If there was an emergency, it was five years ago, not today.

A party seeking to obtain injunctive relief must set forth “specific facts to sufficiently apprise the court that immediate and irreparable injury, loss or damage will result if notice and hearing are had.” *Lake Cnty. v. Spare Things*, 27 Ill.App.3d 149, 183 (2nd Dist. 1975). “An alleged injury is defined as irreparable when it is of such nature that the injured party cannot be adequately compensated therefor in damages or when damages cannot be measured by any certain pecuniary standard.” *Kalbfleisch ex rel. Kalbfleisch v. Columbia Community Unit School No. 4*, 396 Ill.App.3d 1105, 1116 (5th Dist. 2009). A motion seeking injunctive relief must allege in particular terms the manner in which the movant will be injured. *Mingare v. DeVito*, 67 Ill.App.3d 371, 373 (1st Dist. 1978). “Such facts must be alleged with certainty and precision; it is incumbent upon the plaintiff to allege, as well, in particular terms the irreparable harm.” *Alms v. Peoria Cnty. Eletion Comm’n*, 2022 IL App (4th) 220976, ¶ 33. “Mere conclusions are inadequate.” *Id.* (See also *Smith*

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v. Dep't of Nat. Res., 2015 IL App (5th) 140583, ¶ 27, stating that “The requirement of the showing of imminent injury is not satisfied by proof of a speculative possibility of injury and such relief will not be granted to allay unfounded fears or misapprehensions.”).

Nothing alleged in the Village’s Third Motion, its supporting affidavits, or Third Amended Counterclaim constitutes irreparable harm. If the alleged harm was irreparable, the Village should have taken swift action to have Prestige closed five years ago. Instead, to satisfy the Village and its constituents, Prestige has invested over one million dollars in odor mitigation equipment and reports which the Village has approved and received three times during the past five years.

The party seeking a preliminary injunction must demonstrate that irreparable injury will occur. *Retina Servs., Ltd. v. Garoon*, 182 Ill. App. 3d 851, 854 (1st Dist. 1989). An irreparable injury is one that either cannot be adequately compensated by monetary damages or cannot be measured by a pecuniary standard and is an injury which should not be submitted to or inflicted. *Diamond Sav. & Loan Co. v. Royal Glen Condo. Ass'n*, 173 Ill. App. 3d 431, 435 (2d Dist. 1988). “[A] remedy at law is considered inadequate when monetary damages cannot compensate the injury and the injury cannot be measured by pecuniary standards.” *Bd. Of Educ. Of Dolton Sch. Dist. 149 v. Miller*, 349 Ill.App.3d 806, 814 (1st Dist. 2004). In this matter, there is an adequate remedy at law because monetary damages could compensate the alleged injuries sustained by the Village’s constituents. Indeed, the same constituents that the Village uses to support its claim are the same plaintiffs in a class action suit that are seeking monetary damages from Prestige.

VI. Either a temporary restraining order or preliminary injunction would alter the status quo, not maintain it.

The “granting of a preliminary injunction is used to prevent a threatened wrong or continuing injury and preserve the status quo with the least injury to the parties concerned.” *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334, ¶ 64. “Courts should consider the status quo as it affects

both parties, not merely the party seeking injunctive relief.” *Id.* “The status quo to be preserved by a preliminary injunction is the last, actual, peaceable, uncontested status which preceded the pending controversy.” *Postma v. Jack Brown Buick, Inc.*, 157 Ill.2d 391, 397 (1993).

In our case, Prestige has operated at the facility since 2019. The Village is seeking to shut Prestige down entirely. This is the reverse relief that a TRO provides under Illinois law.

CONCLUSION

WHEREFORE, Prestige Feed Products, LLC, by its attorneys, Robbins DiMonte, Ltd., hereby requests that this Court deny the Village of Mount Prospect’s Third Motion for Temporary Restraining Order. There is no immediate irreparable harm alleged. The factual questions raised by the TRO motion require an evidentiary hearing to determine. A TRO now would alter the status quo – not maintain it. Prestige has a greater likelihood of success on the merits and a balance of the equities favors Prestige, not the Village. The class action plaintiffs have an adequate remedy at law and the agreed orders bar the Village of Mount Prospect from seeking relief contrary to its previous agreements.

Respectfully submitted,
Prestige Feed Products, LLC

By: /s/ Riccardo A. Di Monte
One of its attorneys

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