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1/13/2025 12:59 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
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IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

PRESTIGE FEED PRODUCTS, LLC

Plaintiff/Counterclaim Defendant,

v.

VILLAGE OF MOUNT PROSPECT,

Defendant/Counterclaim Plaintiff.

Case No. 2023 CH 5147
(transferred to Law Div'n)

Hon. Thomas More Donnelly

Cal. W

VILLAGE OF MOUNT PROSPECT’S EMERGENCY MOTION TO FILE
SUPPLEMENTAL RESPONSE TO PRESTIGE’S SUMMARY JUDGMENT MOTION

Defendant/Counterclaim Plaintiff Village of Mount Prospect (“**Village**”), by its undersigned counsel, moves this Court for leave to file the attached Supplemental Response to Prestige Feed Products, LLC’s (“**Prestige**”) Combined Motion for Judgment on the Pleadings and Summary Judgment in order to raise new evidence which was not available when the Village filed its response to the motion.

1. The Village filed its Response to Prestige’s Combined Motion for Judgment on the Pleadings and Summary Judgment on November 27, 2024.
2. Pursuant to an Interim Agreement between the Village and Prestige, the parties agreed on a third-party to conduct Scentometer testing on a periodic basis to determine if the Prestige odor was present at various locations in the vicinity of Prestige’s facility.
3. Eleven days ago, on the night January 2, 2025, the third-party Scentometer testing returned readings of 15 D/T at a residential address: 676 Middleton Lane, Des Plaines, IL which is referred to by the Interim Agreement as the Stillmaker Residence.
4. Four days ago, on the night January 9, 2025, the third-party Scentometer testing returned readings of 15 D/T at educational facility: 1601

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Feehanville Drive, Mt. Prospect, IL which is referred to by the Interim Agreement as Park View Montessori [School].

5. These readings were not available to the Village when it initially responded to the summary judgment ruling and could not have been cited then.

6. The Village seeks emergency relief so that the Court will have the opportunity to consider this evidence as a further basis for denying Prestige's summary judgment motion at the January 28, 2025 hearing on Prestige's motion.

WHEREFORE, The Village seeks leave to file the attached, two-page (without the signature block) Supplemental Response Raising New Evidence in Response to Prestige's Partial Summary Judgment Motion.

Dated: January 13, 2025

VILLAGE OF MOUNT PROSPECT

By: /s/ Isaiah A. Fishman

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Exhibit A

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

PRESTIGE FEED PRODUCTS, LLC

Plaintiff/Counterclaim Defendant,

v.

VILLAGE OF MOUNT PROSPECT,

Defendant/Counterclaim Plaintiff.

Case No. 2023 CH 5147
(transferred to Law Div'n)

Hon. Thomas More Donnelly

Cal. W

**THE VILLAGE'S SUPPLEMENTAL RESPONSE RAISING NEW EVIDENCE
IN RESPONSE TO PRESTIGE'S PARTIAL SUMMARY JUDGMENT MOTION**

Prestige Feed Products, LLC ("**Prestige**") moved for summary judgment on the Village of Mount Prospect's ("**Village**") Counterclaims contending that there is no evidence that Prestige is emitting odors in excess of its proposed legal threshold, *i.e.*, the Supposed Scentometer Standard. (Mot., p. 12) Prestige lifts its Supposed Scentometer Standard not from the Village Code, but from the Illinois Administrative Code. Ill. Admin. Code tit. 35, § 245.12. Assuming the Supposed Scentometer Standard is applicable here (the Village, in its response, explains why it is not) there is new evidence which, when considered, presents an additional reason for denying Prestige's summary judgment motion.

Specifically, a third-party conducting testing via a Scentometer on behalf of both the Village and Prestige reported the following measurable scientific data:

1. Eleven days ago, on the night January 2, 2025, the third party Scentometer testing returned readings of 15 D/T at a residential premises: 676 Middleton Lane, Des Plaines, IL which is referred to in the parties' Interim Agreement as the Stillmaker Residence.
2. Four days ago, on the night January 9, 2025, the third party Scentometer testing returned readings of 15 D/T at an educational premises: 1601 Feehanville Drive, Mt. Prospect, IL which is referred to in the Interim Agreement as Park View Montessori [School].

See Supplemental Exhibit A.

The Supposed Scentometer Standard provides as follows:

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 (“**8 D/T**”);

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 (“**24 D/T**”); [...]

(Emphasis and Definitions added)

As the Scentometer detected Prestige’s odor on or adjacent to residential (the Stillmaker Residence) and educational premises (Park View Montessori) at a level in excess of 8 D/T (15 D/T, Supplemental Ex. A), Prestige has failed to meet the Supposed Scentometer Standard that Prestige advanced in its motion. While Prestige contends that the Supposed Scentometer Standard is somehow 24 D/T, that contention does not square with the plain language of Ill. Admin. Code tit. 35, § 245.12.

Accordingly, in addition to the reasons expressed in the Village’s earlier response, the newly disclosed Scentometer test reports also demonstrate, at the very least, a question of fact preventing the entry of summary judgment here.

[Signature Page Follows]

Dated: January 13, 2025

VILLAGE OF MOUNT PROSPECT

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Supplemental Response Exhibit A

Prestige Feed – Village of Mount Prospect
Monitoring Locations

Date: 1/9/2025

Field Operator Matthew Drabik

Randomize order of observations, collecting readings at all locations

Wellness Check MTD

Locations		Time	Wind Direction	Wind Speed	Temp. °F	Humidity	Barometric Pressure	Weather (Precip?)	Scentometer Reading or Non-Detect	Odor Description Prestige Odor
Locations	#									
431 Lakeview Ct, Mt P Prestige Parking Lot	N M-1	2017	SW	3.8	30.0	45.2	29.47	N	2	Prestige
431 Lakeview Ct, Mt P Prestige Parking Lot	E M-2	2022	SW	2.2	30.2	41.8	29.47	N	<2	Prestige
431 Lakeview Ct, Mt P Prestige Parking Lot	S M-3	2010	SW	1.3	31.6	42.0	29.48	N	ND	---
431 Lakeview Ct, Mt P Prestige Parking Lot	W M-4	2014	WSW	2.0	30.6	46.9	29.47	N	ND	---
1601 Feehanville Drive, Mt P (Mizkah American/ Park View Montessori)	M-5	2003	SW	2.2	25.5	44.7	29.47	N	15	Prestige
1660 Feehanville Drive, Pt P (Professional Endodontics of IL)	M-6	1951	SW	1.1	32.3	48.3	29.49	N	4	Prestige
1471 E Business Center Dr, Mt P (DeliverCareRx Pharmacy)	M-7	1957	SW	4.1	25.3	52.1	29.48	N	ND	---
E Lowden Ln & Yates Ln, Mt P (South of the Facility)	M-8	1925	SW	3.4	28.1	43.1	29.47	N	ND	---
E Lowden Ln & N Stratton Ln, Mt P (Southwest of the Facility)	M-9	1933	WSW	5.5	25.3	45.7	29.48	N	ND	---
1513 Mitchell Ln, Mt P (Inzerillo Residence)	M-10	1929	WSW	1.9	28.6	47.4	29.47	N	ND	---
676 Middleton Ln, DP (Stillmaker Residence)	M-11	1942	SW	4.0	28.6	44.4	29.49	N	ND	---

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Prestige Feed – Village of Mount Prospect
Monitoring Locations

Date: 1/9/2025

Field Operator Matthew Drabik

Randomize order of observations, collecting readings at all locations

Wellness Check MTD

Locations		Time	Wind Direction	Wind Speed	Temp. °F	Humidity	Barometric Pressure	Weather (Precip?)	Scentometer Reading or Non-Detect	Odor Description Prestige Odor
Locations	#									
650 Dursey Ln, DP (Merza Residence) 660 Dursey Ln, DP (Kulaga Residence)	M-12	1947	WSW	4.9	26.6	58.8	29.49	N	ND	---
774 Mark Ave, DP (Pfisterer Residence)	M-13	1920	SE	1.5	34.2	44.9	29.47	N	<2	---
720 E. Central Rd, DP Steve's Automotive Repair Center	M-14	1915	SW	4.4	27.1	35.4	29.47	N	<2	---
630 Kylemore Dr, DP (Thomas & Kuriakose Residence)	M-15	1937	SSW	6.3	29.9	52.2	29.49	N	ND	---

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**Prestige Feed – Village of Mount Prospect
Monitoring Locations**

Date: 1/2/25

Field Operator Evan Lemberger
Wellness Check EJL

Randomize order of observations, collecting readings at all locations

Locations		Time	Wind Direction	Wind Speed	Temp. °F	Humidity	Barometric Pressure	Weather (Precip?)	Scentometer Reading or Non-Detect	Odor Description Prestige Odor
Locations	#									
431 Lakeview Ct, Mt P Prestige Parking Lot	N M-1	21:56	WNW	4.5	30.0	55.6	29.52	—	ND	—
431 Lakeview Ct, Mt P Prestige Parking Lot	E M-2	21:50	W	3.1	31.1	63.1	29.52	—	15	Prestige
431 Lakeview Ct, Mt P Prestige Parking Lot	S M-3	21:47	WNW	5.4	28.7	78.3	29.52	—	ND	—
431 Lakeview Ct, Mt P Prestige Parking Lot	W M-4	21:39	WNW	4.6	36.8	59.5	29.52	—	ND	—
1601 Feehanville Drive, Mt P (Mizkah American/ Park View Montessori)	M-5	21:34	WNW	3.2	36.6	69.4	29.52	—	ND	—
1660 Feehanville Drive, Pt P (Professional Endodontics of IL)	M-6	21:24	WNW	2.1	35.4	56.7	29.53	—	ND	—
1471 E Business Center Dr, Mt P (DeliverCareRx Pharmacy)	M-7	21:29	NW	2.8	36.9	56.3	29.54	—	ND	—
E Lowden Ln & Yates Ln, Mt P (South of the Facility)	M-8	22:03	NW	3.8	39.4	56.4	29.52	—		
E Lowden Ln & N Stratton Ln, Mt P (Southwest of the Facility)	M-9	20:48	WNW	2.6	29.7	66.2	29.53	—	<2	—
1513 Mitchell Ln, Mt P (Inzerillo Residence)	M-10	20:42	WNW	2.5	34.9	66.4	29.54	—	ND	A
676 Middleton Ln, DP (Stillmaker Residence)	MP-11	21:06	WNW	4.1	32.8	68.1	29.54	—	15	Prestige human

Prestige Feed – Village of Mount Prospect
Monitoring Locations

Date: 1/2/25

Field Operator Evan Lemberger

Randomize order of observations, collecting readings at all locations

Wellness Check ETL

Locations		Time	Wind Direction	Wind Speed	Temp. °F	Humidity	Barometric Pressure	Weather (Precip?)	Scentometer Reading or Non-Detect	Odor Description Prestige Odor
Locations	#									
650 Dursey Ln, DP (Merza Residence) 660 Dursey Ln, DP (Kulaga Residence)	M-12	21:16	WNW	4.4	33.1	89.6	29.53	—	ND	—
774 Mark Ave, DP (Pfisterer Residence)	M-13	20:33	NW	3.2	29.5	69.0	29.54	—	ND	—
720 E. Central Rd, DP Steve's Automotive Repair Center	M-14	20:23	N	4.0	32.6	64.7	29.54	—	4	—
630 Kylemore Dr, DP (Thomas & Kuriakose Residence)	M-15	21:00	WNW	2.5	30.6	67.0	29.53	—	ND	—

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