

FILED
3/14/2025 4:49 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2023CH05147
Calendar, W
31835329

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

MOTION FOR LEAVE TO FILE THIRD AMENDED COUNTERCLAIM

Defendant/Counterclaim Plaintiff Village of Mount Prospect (“**Village**”), by its undersigned counsel, moves, pursuant to 735 ILCS 5/2-616, this Court for leave to file the attached Village’s Fourth Amended Verified Counterclaim (“**Proposed Amended Counterclaim**”) and states:

1. This Court, during oral arguments held on January 28, 2025 regarding Prestige Feed Products, LLC’s (“**Prestige**”) motion for judgment on the pleadings and partial summary judgment against the Village, made recommendations to the Village regarding its Third Amended Counterclaim.
2. While the Court denied the Prestige’s motion, the Court suggested the Village make certain aspects of the pleadings easier for a jury, easier for jury instructions purposes, and easier for Prestige to better understand the claims against it.
3. The suggestions included taking the allegations embodying Count II—Village Code Section 14.2104(G)—and breaking the different odor standards articulated therein into three separate causes of action.
4. In that spirit, Exhibit A is the Village’s Proposed Amended Counterclaim in redline format against its Third Amended Counterclaim.

5. Regarding Count II, the Village needed to articulate the three separate standards under Village Code Section 14.2104(G) (Paras. 47-52) and, thereafter, separate Count II into three counts (II. A – C) (Paras. 156 – 172).

6. Moreover, in the spirit of the Court's comments the Village attempted to make its requested relief for the Village Code violations more clear generally.

7. There are no new causes of action. These are the same Village Code violations alleged in the Third Amended Counterclaim.

8. There is no undue prejudice upon Prestige related to the Proposed Amended Counterclaim.

WHEREFORE, The Village seeks leave to file a non-redlined version of the attached Proposed Amended Counterclaim.

Dated: March 14, 2025

VILLAGE OF MOUNT PROSPECT

By: /s/ Isaiah A. Fishman

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

Isaiah A. Fishman
Charles A. Valente
Meltzer, Purtill & Stelle, LLC
Firm No. 33682
1515 East Woodfield Road, Suite 250
Schaumburg, Illinois 60173
(847) 330-2400
ifishman@mpslaw.com

Exhibit A

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, ~~CHANCERY 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. WCase No. 2023 CH 5147

~~—Calendar 14~~

~~—Hon. Clare J. Quish~~

VILLAGE OF MOUNT PROSPECT'S ~~THIRD~~
~~FOURTH~~ AMENDED VERIFIED COUNTERCLAIM

Defendant/Counter-Plaintiff, Village of Mount Prospect (“**Village**”), by its undersigned counsel, for its ~~Third-Fourth~~ Amended Verified Counterclaim against Prestige Feed Products, L.L.C. (“**Prestige**”) states:

1. The Village is an Illinois home rule municipality located in Cook County, Illinois.
2. Prestige is in the business of drying soy and milk-based cheese and then selling it as an additive to livestock feed.
3. On March 19, 2019, Prestige applied for a business license with the Village to operate under a light manufacturing use.
4. Notably, Prestige’s proposed operating location contained a zoning classification for a light, not heavy, manufacturing use because, in part, an

established residential community borders the location a mere approximately 150 feet to the South.

5. Prestige knew that it would operate as a heavy manufacturing use that expelled noxious odors beyond its facility and lot lines and tricked the Village into approving a light manufacturing use on its business license.

6. Once operational, Prestige's zoning misclassification became immediately apparent. Namely, Prestige's non-conforming operation instantly caused a source of discomfort and a nuisance not only among the neighboring residential, but also the neighboring business communities.

7. Specifically, the neighboring communities detected a persistent burnt, sometimes rancid, cheese odor originating from Prestige's operations.

8. Prestige approached the Village in what appeared to be a good faith desire to fix the issue and come into compliance. Instead, over a period of months that became years, Prestige slow-walked a series of self-selected Band-Aids that did not remedy the issue before finally giving up under the cover of the results of its own cherry-picked and flawed testing.

9. The problem persists, with the Village fielding daily complaints from affected neighbors. For example, several of a local school's students become sick when they are outside during Prestige's operation and Prestige's operation is interfering with a neighboring business' ability to operate.

10. The problem is also getting worse, with the volume and diversity of the complaints escalating, especially now that Prestige is operating without restriction.

11. Therefore, Prestige's operation is in continuing violation of the Village's zoning and nuisance ordinances and is a common-law nuisance.

12. Accordingly, this Court should enjoin Prestige from operating or restrict its operations until it can come into compliance.

A. Prestige pulls a "bait and switch" with the Village by applying for an approved use and operating as an unapproved use.

13. Prestige desired to operate from a building within the Kensington Business Park area of the Village with a common address of 431 Lakeview Court, Suite A, Mount Prospect, Illinois (the "**Facility**").

14. Because, in part, a single-family residential area borders the Facility approximately 150 feet to its South, the Village zoned the Facility as an I-1 zoning district which is a "Limited Industrial District."

15. All remaining zoning districts bordering the Facility are Limited Industrial Districts.

16. Per Village Code, the Village allows manufacturing in a Limited Industrial District, but only under a "Manufacturing, Light" use, instead of a "Manufacturing, Heavy" use.

17. The difference between the two uses is whether a manufacturing facility can operate in a self-contained manner where odors stay "in house" by not leaving the facility or crossing lot lines.

18. Light Manufacturing is a manufacturing process where the impacts are self-contained within the manufacturing facility:

The assembly, fabrication or processing of goods and materials using processes that do not create noise, smoke, fumes, odors, glare or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building.

Village Code § 14.2401.

19. The Village Code defines Heavy Manufacturing, in contrast, as a manufacturing process beyond Light Manufacturing where the impacts leave the manufacturing facility and cross lot lines. (“The assembly, fabrication or processing of goods and materials ... that otherwise do not constitute ‘light manufacturing’”).

Village Code § 14.2401.

20. Therefore, the Village Zoning Code’s definitions of “Light Manufacturing” and “Heavy Manufacturing” provide that if Prestige’s operations result in odor emissions that were not self-contained and extended beyond the Facility or its property line, then such operations are not a permitted use.

21. Prestige applied to the Village for a Certificate of Occupancy and a business license (“**License Application**”) to operate from the Facility as a Light Manufacturing use.

22. Prestige would not be able to operate from the Facility if the Village denied either the Certificate of Occupancy or business license.

23. Prestige knew that its operation from the Facility would be a Heavy Manufacturing use (*i.e.*, odor emissions that would extend beyond the Facility and its lot line) and, in both applications, materially misrepresented or omitted (despite a

duty to disclose), key information to the Village to obtain approval to operate as a Light Manufacturing use.

24. There was a lot at stake for Prestige: the process of securing a special use permit to allow for Heavy Manufacturing operations at the Facility would require public hearings, increased disclosures of Prestige's processes, approval by the Village Board of Trustees, and likely opposition from the public.

25. In addition to being time-consuming and costly, the result could be a denial of a special use permit and the inability of Prestige to operate from the Facility.

26. While, in contrast, a Light Manufacturing use approval would allow Prestige to move in, set up, operate, and deal with any misclassifications if they arose.

27. Prestige chose to "beg forgiveness" rather than "seek permission" by applying under a Light Manufacturing use when it knew it would operate as a Heavy Manufacturing use.

28. Regarding the Certificate of Occupancy, "Nicholas & Associates" submitted the building permit application on behalf of Prestige. Exhibit A is the building permit application.

29. On the application, Prestige described construction of the following benign improvements: "Re-portion tenant demising walls within building, addition of interior bathrooms, overhead doors, and two (2) recessed loading docks. Scope raising a portion of the rear roof to accommodate a future tenant." (Ex. A)

30. 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, just north of and a mere 600 feet away from an established zoned residential district.

31. Industrial stacks are indicators of Heavy Manufacturing use because they suggest that the operations will produce smoke, fumes, or odors which will not be contained within the facility or the lot lines.

32. 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.

33. Prestige intentionally omitted disclosing the industrial stacks on its application to avoid such scrutiny and the risk denial of its application.

34. The Village relied on Prestige's omission when granting the Certificate of Occupancy.

35. There was another intentional omission in Prestige's License Application for a Light Manufacturing use.

36. The License Application required Prestige to provide a "Detailed Description of All Business Uses/Services provided." Exhibit B is a copy of the License Application as submitted by Prestige.

37. Prestige used an intentionally generic description to deemphasize the odor causing effects of its operational process:

We will be processing cheese for animal feed in the facility. The cheese will be dried into powder form and then sold as a raw ingredient into swine feeds. This product will be solely for animal feed use.

38. For example, Prestige did not mention that it processed after-market, typically moldy and acrid cheese to place in its feed products and that it would not refrigerate the after-market cheese it procured in the Facility.

39. Prestige certified on the License Application that it understood that any misleading information would be cause for the refusal to grant or for the revocation of any license granted pursuant to the Application. (Ex. B)

40. Prestige further certified on the License Application that by applying in writing for a license to operate in the Village it “read and underst[ood] [its] obligations under appropriate Village ordinances.” (Ex. B)

41. The Village would have denied Prestige a business license if Prestige disclosed on the License Application that its animal feed processing would emit odors that carried beyond the Facility and the lot lines of the Location.

B. Prestige’s misclassification is obvious, and Prestige begs forgiveness from the Village with a series of self-selected proposed remedies.

42. Almost immediately, the Village received complaints from residents that Prestige’s operation from the Facility created odors which penetrated their property, were sources of discomfort to the public, a nuisance, and significantly impacted the residents and businesses use and enjoyment of their property.

43. Village staff corroborated the complaints through, among other things, Village staff inspections.

44. On June 12, 2019, the Village Manager sent a Notice of Violation and Imminent Legal Action (“**June 12, 2019 Notice**”) to Prestige. Exhibit C is the June 12, 2019 Notice.

45. In the June 12, 2019 Notice, the Village told Prestige it operated the Facility as a Heavy Manufacturing use in violation of Village zoning for the Facility.

(Ex. C)

C. The release of odorous matter that crosses lot lines violates three independent provisions of the Village Code.

~~45-46.~~ Moreover, the Village informed Prestige that regardless of the misclassification of manufacturing use, Prestige’s operation of the Facility independently violated other separate provisions of the Village Code. (Ex. C)

47. Section 14.2104(G) of the Village Code contains “Performance Standards”.

48. Section 14.2104(G) prohibits Prestige from “exceed[ing] the performance standards listed below” and “any use already established” shall not “be permitted to be altered, enlarged, expanded or modified” unless “all performance standards of the district are met.”

46.—Regarding unacceptable odors (or, as the Village Code puts it: “Odorous Matter limitations”), Section 14.2104(G)(6) of the Village Code ~~—(emphasis added)~~ providesprovides three performance standards.:

49. ~~The release of odorous matter from any industrial district across residence or business district boundary lines~~

50. The first performance standard is that the release of odorous matter shall be so controlled that, at ground level or at habitable elevations, the concentration shall not exceed the odor threshold level.” (Village Code § 14.2104(G)(6))

51. The second performance standard is that the release of odorous matter across lot lines shall not become a nuisance.” (Village Code § 14.2104(G)(6))

~~47. Further, the release of odorous matter across lot lines shall not become [1] a nuisance or [2] source of discomfort to neighboring uses.~~

~~48-52. The Village Code has a specific enumeration of what constitutes an odor. An odor related “nuisance,” Namely as defined by the Village Code, is a subjective standard:~~

[t]o use any premises to create an offensive smell which taints the air and renders it unwholesome or unreasonably disagreeable to other persons.

~~(§ 1423.14032104(G)(1)).~~

~~Both Section 14.2104(G)(6) and Section 14.2104(G)(1) establish a standard for when Prestige’s odor emissions violate the Village Code: if the odor emissions from the Facility cross the Prestige property lot line and:~~

~~either create an offensive smell which taints the air and renders it unwholesome or unreasonably disagreeable to other persons;~~

~~53. or become a source of discomfort to neighboring uses. The third performance standard is that the release of odorous matter across lot lines shall not become a source of discomfort to neighboring uses. (Village Code § 14.2104(G)(6))~~

D. Prestige admits violating Village Code and promises to comply.

~~49-54.~~ Prestige acknowledged that its operation violated Village Code and, in an August 28, 2019 letter to the Village, asked the Village for time to install a self-selected odor reduction system that Prestige claimed to believe “will sufficiently reduce odors to comply with Village Code Requirements.” Exhibit D is a copy of the August 28, 2019 letter.

~~50-55.~~ Further, Prestige promised to run its processing operations at night until Prestige fully implemented its odor reduction system and, in Prestige’s own words, “we have this odor issue 100% behind us.” Exhibit E is correspondence from Prestige to the Village dated January 21, 2020.

~~51-56.~~ Notably, if Prestige properly disclosed the potential for odor issues on its initial application, Prestige and the Village would have engaged in a much more collaborative process in selecting the means and methods of the mitigation efforts.

~~52-57.~~ Even when Prestige pledged to come into conformance with Village Code, Prestige independently dictated what mitigation it was going to perform, many times without the knowledge, review, or consent of the Village.

~~53-58.~~ After Prestige installed its self-selected odor reduction system, Prestige reopened its processing operations at the Facility.

~~54-59.~~ However, the odor reduction system did not bring Prestige into compliance with the Village Code.

~~55-60.~~ The Village continued receiving complaints about odor emitted from the Facility from residents in the nearby residential neighborhood and from neighboring businesses and the Village revoked Prestige’s permitted use permit in March 2020.

56-61. Prestige acknowledged its operations from the Facility were still creating issues and proposed yet another self-selected enhancement to its odor reduction system.

57-62. In October 2020, the Village and Prestige met at the Facility to review Prestige's changes to odor reduction system.

58-63. The Village, believing that Prestige took enough steps to attempt to comply with Village Code, allowed Prestige to resume regular operations on a trial basis under a temporary use permit expiring in mid-April 2021.

59-64. However, Prestige's resumption of regular operations caused numerous and regular complaints from nearby residential and business communities of odors which penetrated their property, were sources of discomfort, a nuisance, and significantly impacted their use and enjoyment of their property.

60-65. Village staff corroborated the complaints and agreed Prestige's operation of the Facility caused odors that would disrupt the enjoyment of property in adjacent neighborhoods as well as the operation of adjacent business uses.

61-66. On March 1, 2021, the Village sent a notice to Prestige of its non-conforming use and that it would revoke Prestige's temporary use permit unless Prestige actually and effectively resolved the odor problem or until Prestige was issued a conditional use permit by the Village Board. Exhibit F is a copy of the March 1, 2021 notice.

62-67. The Village remained committed to giving Prestige the opportunity to come into compliance.

~~63-68.~~ In that context, the Village entered into a Tolling Agreement with Prestige which, among other things, limited Prestige's operation of the Facility to late night and early morning hours. Exhibit G is the Tolling Agreement.

~~64-69.~~ Prior similar operating limitations reduced the complaint volume and effect of Prestige's non-conforming operation on the neighboring communities.

~~65-70.~~ The Village and Prestige amended and restated the Tolling Agreement on numerous occasions so that the Tolling Agreement ran from March 1, 2021, until the Village terminated the Tolling Agreement effective May 11, 2023.

~~66-71.~~ Each extension reflected the parties' mutual recognition that Prestige had not solved the problem.

~~C.E.~~ Prestige becomes less collaborative, more opaque, and more hostile, leading the Village to terminate the tolling agreement.

~~67-72.~~ The Village hoped the limited operating hours would spur Prestige to make meaningful progress in its mitigation efforts so that it could come into full compliance with the Village Code.

~~68-73.~~ Instead, Prestige changed tactics and became even more opaque about their mitigation efforts and engaged in cherry-picked testing to rubber-stamp its self-selected ineffective remedies.

~~69-74.~~ Prestige hired a third party, Mostardi Platt, in April of 2021 to perform an odor investigation at the Facility.

~~70-75.~~ Mostardi Platt performed tests at an isolated moment in time on separate standards than those set forth in the Village Code.

~~71-76.~~ Prestige via Mostardi Platt, its paid agent, entirely dictated the testing conditions (the operational capacity, wind, locations of testing equipment, temperature) with no input from the Village.

~~72-77.~~ While Prestige claims Mostardi Platt's testing proved that its operation did not cause non-compliance with the Village Code, Prestige's actions belied this contention.

~~73-78.~~ Despite claiming compliance, Prestige subsequently invested in what Prestige termed "additional significant upgrades" to its self-selected odor control system at significant additional cost.

~~74-79.~~ Prestige's act of fundamentally altering their system rendered its prior Mostardi Platt testing meaningless because it changed the system that Mostardi Platt tested.

~~75-80.~~ Prestige performed this work without soliciting any input or approval from the Village, or without applying for permits and requesting inspections of any construction or structural work it performed.

~~76-81.~~ Prestige would not have made these changes if it believed its prior system brought it into compliance with Village Code.

~~77-82.~~ After Prestige made these changes, Prestige again independently decided to engage Mostardi Platt for a second round of testing under the same non-Village Code standard and under conditions completely dictated by Prestige.

~~78-83.~~ The Village grew increasingly frustrated with Prestige's failure to remedy the issue and its opaque efforts at self-mitigation and self-selected testing criteria.

~~79-84.~~ The Village began doubting that Prestige was acting in good faith and instead, the Village came to believe that Prestige was simply employing a series of half measures without engaging in a collaborative process that would fundamentally address the issues.

~~80-85.~~ Prestige believed that engaging in that collaborative process would likely result in odor mitigation processes that would be cost-prohibitive to Prestige and, therefore, avoided collaboration.

~~81-86.~~ For example, despite Prestige's claimed changes and even with Prestige operating the Facility at reduced operating hours, the Village received consistent complaints from neighboring businesses and residents that Prestige's operation from the Facility created odors which penetrated their property, were sources of discomfort, a nuisance, and significantly impacted their use and enjoyment of their property.

~~82-87.~~ Ultimately, the Village believed that Prestige had no intention of bringing itself into compliance with the Village Code and terminated the Tolling Agreement.

~~83-88.~~ It was Prestige, not the Village, which ran into Court in this matter to seek a declaratory judgment that its operation of the Facility complied with Village Code on May 25, 2023.

84-89. Prestige did agree, however, to continue operating at limited hours.

85-90. Despite Prestige's claims of compliance, Mount Prospect Police Department ("MPPD") officers reported noxious odors when patrolling the area beyond the Facility and beyond the lot lines during late night and early morning hours.

86-91. The MPPD received, investigated, and documented numerous complaints from residents about noxious odors during Facility operations from October 21, 2023 through December 1, 2023. Exhibit H is a collection of MPPD reports from October 21, 2023 through December 1, 2023.

87-92. This, in part, led the Village to file a motion for a temporary restraining order.

88-93. Again, belying Prestige's contention that the first and second Mostardi Platt testing it performed means that Prestige is *per se* in compliance with the Village Code, Prestige engaged in *more* self-selected odor mitigation efforts.

89-94. Specifically, on December 9, 2023, after the documented observations above, facing a temporary restraining order, and after this Court denied Prestige's Motion To Dismiss Defendants' Verified Counterclaim For Injunctive Relief, Prestige claims it installed a "Tri-Stack Strobic Air Fan" at significant cost to further mitigate the issue.

90-95. Continuing a familiar pattern, Prestige performed this work without soliciting any input or approval from the Village, or without applying for permits and requesting inspections of any construction or structural work it performed.

~~91-96.~~ This work included installing significant exterior mechanical ductwork to the exterior of the Facility.

D.F. Prestige's decision to operate at full capacity exacerbates its non-compliance with the Village Code and is a continuing nuisance.

~~92-97.~~ Like some prior attempted fixes performed by Prestige, the Village hoped that these attempted fixes could possibly bring Prestige into compliance with Village Code.

~~93-98.~~ However, just because in an isolated instance, under isolated conditions, Prestige may temporarily comply with Village Code related to odors, does not mean Prestige's regular operation would comply with Village Code. And, experience proved as much.

~~94-99.~~ The parties agreed Prestige could operate without restriction to test whether Prestige's newest attempted fix could comply with Village Code.

~~95-100.~~ The answer is "no", and, since Prestige resumed full operations, the Village received and continues to receive an unending series of increased complaints and notices about noxious odors being released by the Facility.

~~96-101.~~ The complaints have come from residents in nearby neighborhoods and from business owners, including a school located near the Facility.

~~97-102.~~ To give an idea of the escalation of the complaints, since Prestige began operations in 2019, the Village received approximately 600 complaints from residents and businesses in the vicinity of the Facility about the emission of noxious

odors. *More than half* of those complaints occurred since Prestige's latest attempt at a fix in December of 2023.

~~98~~103. Now that Prestige operates during normal business hours, its operation causes greater impacts on local schools and businesses.

~~99~~104. For example, the Village received complaints from personnel at the Park View Montessori School about the Facility's odors adversely affecting their students.

~~100~~105. The Park View Montessori School is approximately two-tenths of a mile from the Facility.

~~101~~106. The Park View Montessori School is primarily a private pre-school, offering a curriculum from students starting at 6 months and going through 6 years old.

~~102~~107. The Assistant Director of the Park View Montessori School, Irena Nikolic, reported to the Village that during a three-day period in February 2024, the burnt cheese smell coming from the Facility caused problems for students at the school. Exhibit I is the Affidavit of Irena Nikolic. (Ex. I at ¶ 3)

~~103~~108. Children attending the Park View Montessori School had to leave a nearby park where they were playing and return indoors due to the burnt cheese smell. (Ex. I at ¶ 4)

~~104~~109. On February 8, 2024, several school children complained they felt ill after being outside and smelling the odors emitted by the Facility. (Ex. I at ¶ 6)

~~105-110.~~ Several parents with children enrolled at Park View Montessori School expressed to Nikolic their concern about the odor coming from the Facility and the adverse effect it has on their children when they are at the school. (Ex. I at ¶ 7)

~~106-111.~~ Nikolic believes the odor emitted from the Facility poses a threat to the health of students who attend the school, particularly children with asthma and other breathing conditions. (Ex. I at ¶ 8)

~~107-112.~~ On February 8, 2024, a teacher at the Park View Montessori, Jennifer Stanley, contacted the Village to report that she had to bring her students who were playing outside back indoors due to a strong burnt cheese smell coming from the Facility. Exhibit J is the Affidavit of Jennifer Stanley. (Ex. J at ¶ 4)

~~108-113.~~ One of the children Stanley teaches was so affected by the burnt cheese smell that when she came back inside the school, she felt ill and thought she was going to vomit. The student refused to eat lunch because she was nauseous from the odor emitted by the Facility. (Ex. J at ¶ 5)

~~109-114.~~ On February 20, 2024, Stanley again contacted the Village to complain about the odor coming from the Facility. (Ex. J at ¶ 6)

~~110-115.~~ Due to the overpowering smell on February 20, 2024, Stanley had to bring one of her students indoors from playing outside because she experienced nausea. (Ex. J at ¶ 7)

~~111-116.~~ When the cheese smell from the Facility drifts towards the playground where Park View Montessori School students play, it is so strong that the children on the playground start coughing. (Ex. J at ¶ 10)

~~112.117.~~ The smell from the Facility is so overpowering that Stanley must cover her nose when she supervises students on the playground. (Ex. J at ¶ 11)

~~113.118.~~ As a result of the smell emitted during Facility operations, Stanley has been forced to cut the mandatory outdoor play time for her children set by the Department of Children and Family Services. (Ex. J at ¶ 12)

~~114.119.~~ Stanley believes the smell emitted by the Facility poses a threat to the health of her students. (Ex. J at ¶ 13)

~~115.120.~~ Similarly, schoolchildren at a nearby public school also were struck ill by the noxious odors.

~~116.121.~~ On March 14, 2024, the Village received a complaint about a burnt cheese odor from Max Inzerillo, a Mount Prospect resident living at 1513 Mitchell Lane, approximately a mile from the Facility. Exhibit K is an Affidavit of Max Inzerillo. (Ex. K at ¶ 1)

~~117.122.~~ On March 14, 2024, Inzerillo was outside with his children waiting for the bus to pick them up to take them to school. (Ex. K at ¶ 2)

~~118.123.~~ While standing outside, Inzerillo detected an odor he recognized as a burnt cheese smell that comes from the Facility. Inzerillo had detected the burnt cheese smell on previous occasions. (Ex. K at ¶ 3-4)

~~119.124.~~ While waiting for the school bus, the burnt cheese smell was so bad that Inzerillo's daughter, who was outside with him, started to vomit. (Ex. K at ¶ 5)

~~120-125.~~ The Facility's operation during regular working hours is also affecting local businesses beyond the Park View Montessori School.

~~121-126.~~ Mizkan America, Inc. ("**Mizkan**") is a corporation that occupies building space located at 1601 Feehanville Drive in Mount Prospect. Exhibit L is an Affidavit of Michael Sobotta. (Ex. L at ¶ 1)

~~122-127.~~ Michael Sobotta is the Mizkan plant manager. (Ex. L at ¶ 1)

~~123-128.~~ Mizkan is located approximately two tenths of a mile from Prestige. (Ex. L at ¶ 2)

~~124-129.~~ On January 5, 2024, Sobotta informed the Village that a noxious odor was in the Mizkan parking lot outside the company's offices. (Ex. L at ¶ 5)

~~125-130.~~ On January 10, 2024, Sobotta informed the Village he could smell a noxious odor emitted by the Facility when he was in the Mizkan parking lot. (Ex. L at ¶ 6)

~~126-131.~~ On January 11, 2024, Sobotta informed the Village that the noxious odor emitted by the Facility was easily detectable by Mizkan staff when they left work at 8:00 p.m. the previous evening. (Ex. L at ¶ 7)

~~127-132.~~ On February 7, 2024, Sobotta informed the Village that the noxious smell from Prestige was "really bad" outside the Mizkan facility. (Ex. L at ¶ 8)

~~128-133.~~ On February 26, 2024, Sobotta informed the Village that at 11:00 a.m., the burnt cheese smell emitted by the Facility was present in the back courtyard of the Mizkan facility, that at 12:00 p.m., the smell was stronger, and it could be

detected in the backrooms of Suites 100 and 200 of the company's offices. (Ex. L at ¶ 9)

~~129-134.~~ On February 27, 2024, Sobotta informed the Village that during the middle of the day the Prestige burnt cheese smell was in the Mizkan parking lot and it was "very heavy" at the entrance/exit door to the Mizkan facility. (Ex. L at ¶ 10)

~~130-135.~~ The burnt cheese smell emitted by the Facility interferes with work conducted at Mizkan. (Ex. L at ¶ 11)

~~131-136.~~ The burnt cheese smell infiltrates the Mizkan HVAC system and gets into the Mizkan facility. (Ex. L at ¶ 12)

~~132-137.~~ Mizkan conducts work related to the taste and smell of food products. When the Prestige burnt cheese smell gets into the Mizkan facility, it becomes exceedingly difficult, even impossible, to conduct the food products testing that constitutes an important part of Mizkan's business. (Ex. L at ¶¶ 3, 13)

~~133-138.~~ The burnt cheese smell the Facility continues to emit has a negative, harmful effect on the Mizkan business. (Ex. L at ¶ 14)

~~134-139.~~ In sum, Prestige keeps trying to apply window dressing to its system because its system does not and cannot work.

~~135-140.~~ What the Village assumed was a good faith effort by Prestige to actually fix the problem was a series of self-selected Band-aids that were cheaper than an actual solution.

~~136.141.~~ One of the issues with Prestige's self-selected odor scrubbing system is that it is a "dry" system.

~~137.142.~~ A "wet" or a "thermal" scrubbing system, though more expensive, would capably solve the problem by destroying the odors.

~~138.143.~~ Although, it is difficult to know what the best method is and whether Prestige can ever come into compliance without an understanding of what exactly Prestige did to attempt to mitigate the odor issues and submit to an unbiased third-party review and analysis of the efficacy of that system.

~~139.144.~~ The Village has a duty and an obligation to protect its residents from Prestige's operations in violation of a zoned Light Manufacturing use by expelling odors beyond its Facility and lot lines.

~~140.145.~~ The Village has a duty and an obligation to protect its residents and businesses from the conduct of Prestige that subjects them to noxious odors that unreasonably interfere with both their use and enjoyment of their property and denies them their right to a healthy and safe environment.

~~141.146.~~ The Village will suffer irreparable harm if it cannot enforce its Code provisions and protects its citizens from the harm caused to them by Prestige's actions in operating the Facility in such fashion that denies them both the use and enjoyment of their property and their right to a healthy and safe environment.

~~142.147.~~ Due to the irreparable harm to the Village and neighboring residents, including young school children, and businesses caused by Prestige's operation of the Facility, the Village has no adequate remedy at law.

COUNT I

Abatement of Village Code Violation ~~of~~ (Village Zoning Code § 14.604)

~~143.148.~~ The Village adopts and realleges its prior allegations.

~~144.149.~~ Prestige, through the noxious odors emitted during operations at its Facility, violates § 14.604 of the Village Code, related to an I-1 Limited Industrial District that allows for Light Manufacturing as a permitted use.

~~145.150.~~ The Village Code defines Light Manufacturing as:

The assembly, fabrication or processing of goods and materials using processes that do not create noise, smoke, fumes, odors, glare or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building.

Village Code § 14.2401.

~~146.151.~~ Prestige’s operation of Facility is far from “self-contained,” creating odors that go beyond the Facility and lot lines.

~~147.152.~~ The odor penetration does more than just cross lot lines, it causes adverse health impacts on the Village residents, including young school children, and business employees, and adversely effects business operations of neighboring businesses.

~~148.153.~~ Accordingly, the odor penetration significantly impacts the use and enjoyment of adjacent properties.

~~149.154.~~ The Village has a clear and compelling interest in the enforcement of the Village Code zoning provisions.

WHEREFORE, The Village of Mount Prospect requests this Court:

A. Abate the nonconforming use by eEnjoin Prestige Feed Products LLC

from operating (if not completely, during normal business hours) unless
and until it can come into a conforming Light Manufacturing use.

A.B. Award the Village all fees, costs, and expenses incurred by the Village
related to its abatement including, but not limited to, daily nuisance
fees. (Village Code §§ 23.2505 *et. seq.*, 23.1401 *et. seq.*, 65 ILCS 1-2-1)

B.C. Any additional damage or remedy that is appropriate.

COUNT II A¹

~~Violation~~ Abatement of Village Code ~~Violation (Section~~
14.2104(G)(6))

150.155. The Village adopts and realleges its prior allegations.

156. Section 14.2104(G)(6) of the Village Code ~~(emphasis—added)~~
~~provides;~~ provides that the Facility's release of odorous matter across lot lines shall
not become a "nuisance."

~~151.—~~

~~152.— 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~~

¹ Pursuant to this Court's recommendation at oral arguments held on January 28, 2025 that the Village split its Count II into three separate causes of action, the Village hereby repleads Count II as Count II A., Count II B., and Count II C.

~~shall not become [1] a nuisance or [2] source of discomfort
to neighboring uses.~~

~~153.157.~~ An odor related “nuisance,” as defined by the Village Code, is ~~a~~
based on a subjective standard to those experiencing the smell:

[t]o use any premises to create an offensive smell which
taints the air and renders it unwholesome or
unreasonably disagreeable to other persons.

§ ~~14.210423.1403(G)(1F)~~.

~~154. The Village Code at Section 11.3401, directs that, “[n]o 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.”~~

~~158.~~ Prestige’s operation of the Facility releases odorous matter that crosses
lot lines.

~~155.159. Prestige’s operation of the Facility creates an offensive smell
which taints the air and renders it unwholesome or unreasonably disagreeable to
other persons.~~

~~156.160.~~ The odorous matter causes adverse health impacts on the local
residents, including young school children, and business employees, and adversely
effects business operations of neighboring businesses.

~~157. Therefore, the odorous matter is a source of discomfort to neighboring
uses.~~

~~158. Moreover, the odorous matter is an offensive smell which taints the air
and renders it unwholesome or unreasonably disagreeable to other people.~~

159. ~~The complaints from residents, businesses, schools, and parents regarding the noxious odors emitted by the Facility during its operations show that Prestige releases odorous matter across its lot lines and the lot lines of neighboring residences, businesses, and schools in violation of Section 14.2104(G)(6) to become a nuisance and a source of discomfort to its neighbors and their use and quiet enjoyment of their property.~~

161. ~~The Village has a clear and compelling interest in the enforcement of the Code provisions prohibiting nuisance activities or activities that create sources of discomfort to Village residents and businesses.~~The Village can, in addition to other remedies at law and equity, can bring an abatement action and request injunctive relief. (Village Code § 23.1404)

160.—

WHEREFORE, The Village of Mount Prospect requests this Court:

- A. ~~Abate the nuisance by e~~Enjoining Prestige Feed Products LLC from operating (if not completely, during normal business hours) unless and until it can operate the Facility so as not to release odors across lot lines that creates an offensive smell which taints the air and renders it unwholesome or unreasonably disagreeable to other persons.~~to cause a source of discomfort to neighboring uses.~~
- B. ~~Enjoin Prestige Feed Products LLC from operating (if not completely, during normal business hours) unless and until it can operate the Facility so as not to cause a nuisance to neighboring uses.~~Award the Village all fees, costs, and expenses incurred by the Village related to its abatement

including, but not limited to, daily nuisance fees. (Village Code § 23.1401 et. seq., 65 ILCS 5/1-2-1)

C. Any additional damage or remedy that is appropriate.

COUNT II BI

Abatement of Violation of Village Violation (Section 14.2104(G)(6))

162. The Village adopts and realleges its prior allegations.

163. Section 14.2104(G)(6) of the Village Code requires Prestige to operate the Facility so as not to release odorous matter across lot lines that becomes a source of discomfort to neighboring uses.

164. Prestige's operation of the facility releases odorous matter across lot lines.

165. The odorous matter is a source of discomfort to neighboring uses.

166. The Village has a clear and compelling interest in the enforcement of the Code provisions prohibiting activities that create sources of discomfort to Village residents and businesses.

WHEREFORE, The Village of Mount Prospect requests this Court:

A. Abate Prestige's noncompliance with Village Code by enjoining Prestige Feed Products LLC from operating (if not completely, during normal business hours) unless and until it can operate the Facility so as to not to release of odorous matter across lot lines that becomes a source of discomfort to neighboring uses.

B. Award the Village All fees, costs, and expenses incurred by the Village related to its abatement including, but not limited to, daily nuisance fees. (Village Code §§ 23.2505 et. seq., 23.1401 et. seq., 65 ILCS 5/1-2-1)

C. Any additional damage or remedy which is appropriate.

COUNT II C.

Abatement of Violation of Village Code (Section 14.2104(G)(6))

167. The Village adopts and realleges its prior allegations.

168. A heavy manufacturing facility is a conditional use in a Limited Industrial District. (Village Code § 14.604 – Table 2)

169. In contrast to a light manufacturing facility (a permitted use in an I-1 Limited Industrial District), the Village Code allows a heavy manufacturing facility to expel odors beyond its building and lot lines. (Village Code § 14.2401)

170. However, regardless of whether a permitted or conditional use, any facility within a Limited Industrial District cannot release odors “at ground level or at habitable elevations” that “exceed[s] the odor threshold level.”

171. The Prestige Facility releases odorous matter that at ground level or at habitable elevations exceeds the odor threshold level.

172. The Village has a clear and compelling interest in the enforcement of the Code provisions prohibiting activities that exceed the odor threshold level.

WHEREFORE, The Village of Mount Prospect requests this Court:

A. Abate the Village Code violation by enjoining Prestige Feed Products LLC from operating (if not completely, during normal business hours) unless and

until it can operate the Facility so as to not to release of odorous matter that at ground level or habitable elevations exceeds the odor threshold level.

B. Award the Village all fees, costs, and expenses incurred by the Village related to its abatement including, but not limited to, daily nuisance fees. (Village Code §§ 23.2505 *et. seq.*, 23.1401 *et. seq.*, 65 ILCS 5/1-2-1).

C. Any additional damage or remedy which is appropriate.

Count III

Common Law Public Nuisance

~~161.173.~~ The Village adopts and realleges its prior allegations.

~~162.174.~~ The Illinois Constitution of 1970, Art. XI, § 2, provides that, “[e]ach person has the right to a healthy environment.”

~~163.175.~~ Residents living in the vicinity of Prestige have the right to the enjoyment and use of their property.

~~164.176.~~ Children have the right to be outdoors without becoming nauseous and ill from exposure to noxious odors.

~~165.177.~~ Local businesses have the right to operate without noxious odors inhibiting their operations.

~~166.178.~~ Public policy encourages these types of uninhibited uses.

~~167.179.~~ The Village has the right and the obligation to enforce its ordinances and protect the health, safety, and welfare of the community.

~~168.180.~~ Since December 2023, hundreds of complaints about the effects of the noxious odor emissions from the Facility during its operations indicate Prestige’s conduct threatens public health and safety.

~~169-181.~~ Prestige's operations that continually emit noxious odors beyond the Facility and the lot lines of its property violate Village Code provisions intended to promote the health, safety, and welfare of the community.

~~170-182.~~ Prestige's continued operation violates the Constitutionally guaranteed public right to a safe and healthy environment.

~~171-183.~~ The interference caused by Prestige's operation is substantial and unreasonable.

~~172-184.~~ Prior to Prestige initiating operations in 2019 at the Facility, the Village received no complaints about noxious odors preventing residents located in close vicinity to the Facility from the quiet enjoyment of their property.

~~173-185.~~ Prior to Prestige initiating operations at the Facility, the Village received no complaints about noxious odors adversely affecting any business located in close vicinity to the Facility.

~~174-186.~~ Prior to Prestige initiating operations at the Facility, the Village received no complaints about noxious odors adversely affecting pre-school and school children.

~~175-187.~~ Since December 2023 to the present when Prestige alleges to have "fixed" the odor problem, the Village has received approximately 250 complaints about noxious odors emitted from the Facility during its operations that have adversely affected the rights of residents, including school children, and local businesses.

WHEREFORE, The Village of Mount Prospect requests this Court:

A. Enjoin Prestige Feed Products LLC from operating (if not completely, during normal business hours) unless and until it can operate the Facility so as not to cause a nuisance.

B. Any additional damage or remedy that is appropriate.

DATED:

VILLAGE OF MOUNT PROSPECT

By: _____
One of its attorneys

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

Isaiah A. Fishman
Charles A. Valente
Meltzer, Purtill & Stelle, LLC
Firm No. 33682
1515 East Woodfield Road, Suite 250
Schaumburg, Illinois 60173
(847) 3309-2400
ifishman@mpslaw.com
cvalente@mpslaw.com

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in foregoing Village of Mt. Prospect's ~~Third~~ Fourth Amended Counterclaim are true and correct.

Dated: March 14, 2025
