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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/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 MOTION TO DISMISS
VILLAGE OF MOUNT PROSPECT’S SECOND AMENDED
VERIFIED COUNTERCLAIM FOR INJUNCTIVE RELIEF**

NOW COMES the Plaintiff/Counter-Defendant, Prestige Feed Products, LLC (“Prestige”), by its attorneys, Robbins DiMonte, Ltd., moves to dismiss the Village of Mount Prospect (“Village”, or “VOMP”) Second Amended Verified Counterclaim for Injunctive Relief pursuant to §2-619.1 of the Civil Practice Law, and states as follows:

INTRODUCTION

Prestige moves for dismissal and judgment on VOMP’s Second Amended Verified Counterclaim pursuant to §2-615, 2-619, and 2-1005 as set forth below. Pursuant to § 2-615, the Second Amended Verified Counterclaim should be dismissed because it fails to allege that Prestige emits odors which exceed legally defined odorous matter limitations. Specifically, the Village fails to allege that Prestige releases odorous matter above and beyond the odor threshold level found in the Village Code and the Illinois Administrative Code, Section 245.121. The Village Code defers to Section 245.121 definitions which require objective, scientific, and measurable Scentometer readings.

The Village itself has taken no scientific measurements nor conducted any studies. In fact,

the only scientific investigation of the odors are the Prestige's Odor Investigation and Assessment Reports dated June 2, 2021, October 31, 2022, and April 1, 2024. The Prestige expert's reports contain objective and measurable ambient air samples, and each report concludes that Prestige is operating within Village Code odor thresholds as defined by the air quality standards set forth in the Illinois Administrative Code. Due to the fact that the Second Amended Verified Counterclaim fails to allege violation of the objective and measurable Illinois Administrative Code, Title 35, Section 245.121, the Second Amended Verified Counterclaim should be dismissed.

Alternatively, Prestige moves for dismissal pursuant to §2-619 and/or summary judgment pursuant to §2-1005 of the Civil Practice Law. The objective, scientific, measurable evidence gathered by Prestige in the Mostardi Platt reports of June 2, 2021, and October 31, 2022, along with the odor assessment report prepared by V3 on April 1, 2024, are grounds for dismissal pursuant to §2-619(9) and summary judgment pursuant to §2-2005. There is no genuine issue of material fact and Prestige is entitled to judgment as a matter of law because all of the objective, measurable, and scientific evidence gathered by the experts concludes that Prestige is operating within legal threshold limits provided by Village Code and the Illinois State Administrative Code. In the five years which Prestige has been operating in the Village of Mount Prospect, the Village has failed to collect and offer evidence that the Prestige business is emitting odors in excess of those thresholds specified by Village Code and the Illinois Administrative Code. Therefore, the Second Amended Verified Counterclaim should be dismissed pursuant to §2-619 and/or summary judgment entered pursuant to §2-1005.

LEGAL STANDARDS FOR §2-615, §2-619 AND §2-1005

§ 2-619.1 of the Code of Civil Procedure allows a party to file a combined § 2-615, § 2-619, and/or § 2-1005 motion. (735 ILCS 5/2-619.1). A § 2-615 motion to dismiss challenges the

legal sufficiency of the complaint. *Napleton v. Vill. of Hinsdale*, 229 Ill.2d 296, 305 (2008). The question presented is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Borowiec v. Gateway 2000, Inc.*, 209 Ill.2d 376, 382 (2004). The complaint must set forth a legally recognized claim and must plead facts which bring the claim within the legally recognized cause of action alleged. *MLade v. Finley*, 112 Ill.App.3d 914, 918 (1st Dist. 1983). If it does not, the complaint must be dismissed. *Id.* A plaintiff must allege facts, not mere conclusions, to establish his or her claim as a viable cause of action. *Napleton*, 229 Ill.2d at 305.

A § 2-619 motion may go beyond allegations in the complaint and present other affirmative matters that may defeat the claims made in the complaint. (See e.g., *Kedzie & 103rd Currency Exch., Inc. v. Hodge*, 156 Ill.2d 112, 116 (1993) (acknowledging that materials of the same nature as those used to support motions for summary judgment may serve as support for a § 2-619 motion). “A motion to dismiss brought under this section of the Code admits the legal sufficiency of the claim but asserts an affirmative matter that defeats the claim or operates to avoid its legal effect.” *Ross v. May Co.*, 377 Ill.App.3d 387, 390 (1st Dist. 2007). “Affirmative matter in this context encompasses any defense other than a negation of the essential elements of the plaintiff’s cause of action.” *Id.*, at 214. When a party moving for dismissal under § 2-619 supplies facts that, if not contradicted, would entitle the party to a judgment as a matter of law, the opposing party cannot rely on bare allegations alone to raise issues of material fact. *Atkinson v. Affronti*, 369 Ill.App.3d 828, 835 (1st Dist. 2006).

Summary judgment is proper “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005. “Although

the burden is on the moving party to establish that summary judgment is appropriate, the nonmoving party must present a *bona fide* factual issue and not merely general conclusions of law.” *Morrissey v. Arlington Park Racecourse, LLC*, 404 Ill.App.3d 711, 724 (1st Dist. 2010). “A genuine issue of material fact exists where the facts are in dispute or where reasonable minds could draw different inferences from the undisputed facts.” *Id.* Any inferences drawn in favor of the non-movant must be supported by evidence. *Destiny Health, Inc. v. Connecticut Gen’l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20.

STATEMENT OF FACTS

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”). (Prestige Complaint ¶1).

2. The Defendant, VOMP, is an Illinois municipal corporation, located in Cook County, Illinois. (Prestige Complaint ¶2).

3. Prestige is a light manufacturing business which manufactures and sells soy and cheese-based feed products for livestock. The Facility equipment and machinery dehydrates cheese and soy material to produce an animal feed ingredient. (Prestige Complaint ¶11).

4. 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).

(Prestige Complaint ¶12).

5. The properties to the South of the Facility are zoned R-1, the properties to the East, West and North are zoned I-1¹. (Prestige Complaint ¶13).

6. 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. (Prestige Complaint ¶14).

7. 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. (Prestige Complaint ¶15).

8. 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 existing odor mitigation system by installing additional vaporization nozzles to disperse more vapor to the airstream. (Prestige Complaint ¶16).

9. 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

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

the Facility. The Village approved this plan and Prestige completed the re-construction of the odor control system in July 2020. (Prestige Complaint ¶17).

10. 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. (Prestige Complaint ¶18).

11. The Village Code of Ordinances, Section 11.3401: Nuisances, Section 14.604: Land Use Tables, Section 14.2104: Bulk Regulations provide as follows:

a. 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).

b. 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].

(Prestige Complaint ¶21).

12. 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. (Prestige Complaint ¶24).

13. 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].

(Prestige Complaint ¶25).

14. 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 a March 30, 2021, Tolling Agreement. (Prestige Complaint ¶26).

15. 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 offsite and 6 onsite). (Prestige Complaint ¶30).

16. 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. (Id. ¶31).

17. On June 2, 2021, Mostardi Platt issued an Odor Investigation report which was immediately shared with the VOMP. (Prestige Complaint ¶29). A true and correct copy of this report without its appendices, is attached as Exhibit 2 to Ryan Hartley's Affidavit and as Exhibit E to Prestige's Complaint.

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

19. 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. (Prestige Complaint ¶33).

20. 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. (Prestige Complaint ¶34).

21. 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 to as Exhibit 3 Ryan Hartley's Affidavit and as Exhibit F to Prestige's Complaint. 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). (Prestige Complaint ¶35).

22. 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. (Prestige Complaint ¶36).

23. To date, Prestige has invested more than \$3,547,210.93 in combined buildout, production equipment, air mitigation equipment and reports, and litigation costs. (Joseph Pesoli

Affidavit ¶40). The buildout of 431 Lakeview Ct, Ste A cost \$518,698.14; and the installation of feed processing equipment cost \$1,691,898.68. In addition, between 2019 and 2024, to achieve near zero measurable odors, comply with Village Code, be a good neighbor, and operate in good faith, Prestige has spent over \$1,188,841.02 in odor mitigation equipment and tests and reports; and more than \$147,773.09 in legal expenses. *Id.*

24. Currently, Prestige has hired 13 employees to man and supervise the two operating shifts and to handle the deliveries to and from the Facility. By operating two shifts a day for five days a week during the first quarter of year 2024, Prestige has managed to generate approximately \$439,000 in monthly gross revenue and approximately \$172,000 in monthly gross profit. (Joseph Pesoli Affidavit ¶34).

25. Prestige rents the Facility and its current lease agreement runs through January 31, 2029. Prestige pays combined base rent, common area maintenance, and real estate taxes in excess of \$300,000 per year. (Joseph Pesoli Affidavit ¶¶ 4, 5, and 45).

26. On December 9, 2023, Prestige invested more than \$171,899 to install a Tri-Stack Strobic Air Fan to further reduce or completely eliminate the emissions at the site. (*Id.* ¶¶ 27-28).

27. 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. (Prestige Complaint ¶43).

28. 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, 13 Prestige employees will lose their jobs, Prestige will default on its lease for the sum of \$300,000 per year, Prestige will lose its investment of \$3,547,210.93 for the Facility, Prestige will immediately default on its

outstanding contract orders for delivery of product with serious financial consequences for Prestige and its customers, Prestige will also not be able to enter into any additional contracts and suffer irreparable damage to its business reputation, and Prestige will immediately lose the ability to generate the monthly gross revenue of approximately \$439,000, and monthly gross profit of approximately \$172,000 which it desperately needs after years of constant losses. (Joseph Pesoli Affidavit ¶¶ 41 - 45).

29. Since December 9, 2023, when Prestige installed the Strobic fan, odor surrounding the facility is either non-detectable, or, in one location, detectable but well below the legal standard. In response to the Village's most recent claims allegedly arising during February and March of 2024, Prestige obtained a third report from V3 which again reflects that Prestige is emitting odors which are either non-detectable or well below legal limits as measured by Scentometer. A true copy of the full Odor Assessment Report dated April 1, 2024 (without its appendices) is attached as Exhibit 4 to this Ryan Hartley Affidavit.

ARGUMENT

I. The Second Amended Verified Complaint should be dismissed pursuant to §2-615 because it fails to allege a violation under the applicable Village Ordinance and Illinois Administrative Code.

"[A] motion to dismiss under section 2-615 differs significantly from a motion for involuntary dismissal under section 2-619." *Becker v. Zellner*, 292 Ill.App.3d 116, 122 (2d Dist. 1997). "A significant difference between the two motions is that a section 2-615 motion is based on the pleadings rather than on the underlying facts." *Cwikla v. Sheir*, 345 Ill.App.3d 23, 29 (5th Dist. 2003). A section 2-615 motion is solely concerned with defects on the face of the complaint where the pleading is substantially insufficient in law. *Becker*, 292 Ill.App.3d at 122. It admits "all well-pleaded facts and attacks the legal sufficiency of the complaint." *Randle v. AmeriCash*

Loans, LLC, 403 Ill.App.3d 529, 533 (1st Dist. 2010). “The question presented by a section 2-615 motion to dismiss is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted.” *Id.* The allegations in the pleadings are the only matters that the court is to consider in ruling on a 2-615 motion. *Illinois Graphics Co.*, 159 Ill.2d at 485, 639 N.E.2d at 1289.

The Second Amended Verified Counterclaim contains 21 pages and 137 paragraphs. However, the Village fails to make a single allegation that Prestige is releasing odors detectable in the ambient air after it is diluted with eight volumes of odor free air as measured by the Scentometer. It also fails to allege that it is detected in the ambient air after it is diluted with 24 volumes of odor free air as measured by the Scentometer. Specifically, the Village Code Bulk Regulations, Section 14.2104 specifically state:

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. [Emphasis added].

The properties to the East, North, and West of Prestige are zoned I-1 industrial. The Village fails to allege that Prestige is releasing odors detectable in the ambient air after it is diluted with 24 volumes of odor free air as measured by the Scentometer.

The closest residential neighborhood is over 500 feet south of the Facility. However, there are four businesses sharing the between Prestige and the southerly residential neighborhood. (Joseph Pesoli Affidavit ¶¶ 2, 3, 59). None of those businesses have complained about an odor. (*Id.* ¶59). The Village fails to allege that Prestige is violating the objectionable odor nuisance determination in Section 245.121 by releasing odors which are detectable in the ambient air after

it is diluted with eight volumes of odor free air as measured by the Scentometer.

Additionally, the Village fails to allege an objectionable odor nuisance from the facility exists on neighboring properties surrounding the facility. Neither the Village nor the complainers have performed a single objective, measurable, scientific test of the ambient air they allegedly complain about. There is not a single allegation in the second amended complaint that Prestige is releasing odors above threshold levels specified by Illinois or Municipal law.

In summary, the Village's Second Amended Verified Counterclaim should be dismissed because it fails to allege that Prestige is releasing odorous matter across residence or business district boundary line at ground level or habitable elevations in concentrations exceeding the odor threshold level.

II. The Court should dismiss the Second Amended Verified Counterclaim pursuant to § 2-619 because Prestige is not emitting odors over and above odor threshold levels.

Standards for judgment under §2-619 and §2-1005 are similar. However, "Section 2-619 affords an avenue between the completely legal bases of section 2-615 motions and the completely factual bases of section 2-1005." *Barber-Colman Co. v. A & K Midwest Insulation Co.*, 236 Ill.App.3d 1065, 1071 (5th Dist. 1992). "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarowski v. Lata*, 227 Ill.2d 364, 369 (2008).

In this case, Prestige has a complete defense that defeats the VMOP's claims pursuant to §2-619 (affirmative matter). Specifically, the only objective, measurable, and scientific evidence collected in this case shows that Prestige is emitting odors which are either non-detectable (non-odors) or at levels well below legal thresholds. In this case, there is no genuine issue of material fact and Prestige is entitled to judgment pursuant to §2-619 (affirmative matter) or summary

judgment as a matter of law.

The June 2, 2021 Mostardi Platt Investigation Odor Report states:

The Olfactometer results of all four Tedlar Bag samples collected at the boundaries of the neighboring real properties adjacent to the Facility had detection readings of 3 or lower. The Scentometer results at all 21 tested locations had detection readings of less than 2. Therefore, no objectionable odor nuisance from the Facility exists on the properties surrounding the Facility. As a result, the normal operation of the Facility does not have a significant impact on the use and enjoyment of neighboring real properties.

See Ryan Hartley Affidavit, PREST000062.

The October 31, 2022 Mostardi Platt Investigation Odor Report provides:

Based on our analysis of the data collected at the Facility during our investigation and in preparation of both these reports, we conclude that Prestige's operation of the feed producing machinery does not emanate objectionable odor nuisances anywhere near to the applicable threshold levels. As a result, this operation does not impact the use and the enjoyment of neighboring properties, and it does not constitute a nuisance.

Since our first report of June 14, 2021, Prestige has installed at the Facility additional odor control measures including newer air filtration and vapor units. As a result, key readings at the Real Property boundaries improved significantly. The Scentometer readings were **zero (0)** at 7 of the 8 tested fence-line locations. The only one noticeable Scentometer reading of **less than two (2)** was at the location directly by the Facility's discharge bay in the North-East corner of the Real Property. These results demonstrate that the Facility's operation does not reach or surpass the nuisance threshold Scentometer readings under applicable law (8 along the Real Property's southern border and 24 everywhere else).

See Ryan Hartley Affidavit, PREST000173.

In September 2023, Prestige hired V3 Companies, Ltd. ("V3") to perform an odor assessment report for the Prestige site. See Joseph Pesoli Affidavit ¶ 36 and Ryan Hartley Affidavit ¶ 4. V3 prepared an Odor Assessment Report dated April 1, 2024, which concluded:

The odor strength at the real property boundaries lines is either non-existent or below the threshold levels established in *Illinois 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* ("35 IAC

245.121”). The onsite Scentometer readings and odor panel Olfactometer results of air samples collected at the real property lines and adjacent properties in January 2024 are depicted in **Table 1** below and are similar to or lower than those of the 2022 Report. Also, the addition of the Strobic Fan at the Facility has increased air dispersion to further reduce any odor impacts at the real property line and the neighboring properties. **Based on these results, Prestige’s operation at the Facility does not constitute a nuisance under any definition known to this author.**

See Ryan Hartley Affidavit, PRESTIGE000252.

Between February 7, 2019, when the Village granted Prestige an occupancy permit and April 19, 2024, when the Village filed its Second Amended Verified Counterclaim, the Village has failed to perform a single objective scientific or measurable study concerning the odors which it complains Prestige is releasing from its facility. Instead of measurable scientific data, the Village relies entirely on hearsay complaints from Mount Prospect and Des Plaines residents.

III. The Court should enter summary judgment in favor of Prestige because there is no genuine issue of material fact that Prestige is not emitting odors over and above threshold levels.

Prestige incorporates and restates the allegations and argument in Section II above as though set forth in Section III. As previously stated, the Village has failed to present a shred of evidence that establishes Prestige has violated any ordinance or statute, and accordingly, summary judgment should be entered in favor of Prestige and against.

“Summary judgment is ‘the put up or shut up moment in a lawsuit’ where a party lays its proverbial cards on the table, showing what evidence it possesses to convince a trier of fact to agree with its version of the events.” *Eagle F. v. Phyllis Schlafly’s Am. Eagles*, 451 F. Supp. 3d. 910, 916 (S.D. Ill. 2020). (See also, *North Community Bank v. 17011 South Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 15 (Mar. 16, 2015) (Same.)). “The mere existence of a scintilla of evidence in support of the nonmovant’s position will be insufficient; there must be evidence on which the

jury could reasonably find for the nonmovant.” *Schade v. Clausius*, 2016 IL App (1st) 143162, ¶ 26. “Facts unrelated to the essential elements of the plaintiff’s cause of action are immaterial, and no matter how sharply controverted, their presence in the record will not warrant denial of a motion for summary judgment.” *Quintin v. Kuffer*, 221 Ill.App.3d 466, 470-71 (2d Dist. 1991).

There is no genuine issue of material fact and Prestige is entitled to judgment as a matter of law against the Village. The only objective, measurable and scientific evidence collected in this case shows that Prestige is emitting odors which are either non-detectable (non-odors) or at levels well below legal thresholds. The Village has produced no evidence that Prestige is emitting odors above and beyond legal thresholds. Therefore, the Court should enter judgment in favor of Prestige and against the Village on the second amended counterclaim.

WHEREFORE, respectfully requests that the Court dismiss the Village of Mount Prospect Second Amended Verified Counterclaim for Injunctive Relief pursuant to §2-619.1 of the Civil Practice Law, and for any further relief the Court deems just.

Respectfully submitted,
Prestige Feed Products, LLC

/s/ Riccardo A. DiMonte

By: _____
One of its attorneys

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