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1/28/2025 1:43 PM  
Mariyana T. Spyropoulos  
CIRCUIT CLERK  
COOK COUNTY, IL  
2023CH05147  
Calendar, W  
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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. )  
 )  
CITY OF DES PLAINES, an Illinois municipal )  
corporation, )  
Intervening Petitioner )

**PRESTIGE’S REPLY IN OPPOSITION TO DES PLAINES’ RESPONSE BRIEF AND  
IN SUPPORT OF ITS SECTION 2-619.1 MOTION TO DISMISS DES PLAINES’  
COMPLAINT**

Prestige Feed Products, LLC, by and through its attorneys, Manetti Aguilera Seiler LLC,  
states in opposition to the City of Des Plaines’ response brief, and in support of Prestige’s motion to  
dismiss the City’s intervening complaint pursuant to 735 ILCS 5/2-619.1, as follows:

**I. RELEVANT BACKGROUND**

In February 2018, the Village of Mount Prospect approved Prestige’s use of the commercial  
rental space located at the property commonly known as 431 Lakeview Court, Ste. A, Mount  
Prospect, Illinois. *Aff. of Pescoli*, ¶¶ 2, 6. By February 2019, the Village had issued to Prestige an  
occupancy permit. *Id.*, ¶ 7. And in March 2019, Prestige began operations.

The underlying lawsuit was filed by Prestige against the Village because despite the Village’s  
approval of all required permits, its numerous successful inspections, and issuances of necessary  
licenses, the Village subsequently commenced a pattern of behavior in which, at whim, it issued  
grievances and threats to shut down Prestige; Prestige would incur monetary damages to

accommodate the Village's most recent alleged grievance; the Village would accept the accommodations for a period of time; and then, the Village would start the process all over again. On May 25, 2023, Prestige sued for an injunction against the Village, seeking a declaratory judgment that Prestige be allowed to operate its business without subjective restrictions, and damages.

On August 19, 2024, more than five years after Prestige began operations, City petitioned to join this litigation, alleging that Prestige was in violation of its own municipal ordinances because Prestige's operations "cause a source of discomfort and nuisance" and it happens to operate less than one-half mile from the City. *Compl.*, ¶ 9.

On September 9, 2024, Judge Quish entered an order denying the Village's Emergency Motion for TRO and the Setting of a Preliminary Injunction Hearing, finding the Village had not met its burden for the extraordinary relief of Prestige being required to cease its operations. To support its ruling, the order found that the Village failed to plead specific facts, and it specifically allowed Prestige to continue its operations.

On September 24, 2024, the City filed its intervening complaint, boot-strapping itself into this action by relying on the arguments already pleaded by the Village. In response to the improper attempt of the City to exceed its authority via conclusory and underwhelming allegations, Prestige filed its combined section 2-619.1 motion to dismiss.

To date, there has been no order or finding that Prestige has violated any Village or Illinois codes or regulations. In fact, the only finding which speaks to these issues is the September 9, 2024, order of Judge Quish which confirms Prestige's right to operate and points to obvious and blatant factual insufficiencies of the Village's third attempt to plead a claim.

To date, there has been no showing of an objectional odor nuisance existing within the Village or the City.

## II. ARGUMENT

Prestige's motion clearly establishes that the City is exceeding its authority and seeks from this Court an award of unconstitutional relief, and that there is no malodor<sup>1</sup> either in the Village or in the City. Also, the City's complaint is conclusory, vague, and substantially insufficient at law pursuant to section 2-615 and fails to plead the actions the City pursues. The City's response offers no factual opposition to Prestige's 2-619 motion and such omission is fatal. Moreover, the response's attempt to cure or justify the pleading insufficiencies doesn't abate the obvious—the City doesn't and can't sufficiently plead its causes of action against Prestige.

### *A. The City's Failure to Properly Contest Prestige's section 2-619 affirmative matter is fatal*

In support of its motion, and in compliance with section 2-619, Prestige submitted the affidavits of Ryan Hartley and Joseph C. Pesoli with their attestations that there was and there is no objectionable odor by any measurable objective standard, and that, despite its threats, the Village has not exercised and enforced any legitimate regulation or ordinance against Prestige over the five years it has enjoyed its power to make Prestige go through an elaborate, complicated, and expensive procedure to appease it. *See generally, Aff. of Hartley; Aff. of Pesoli.* The City, in response, merely states that the existence of the affidavits doesn't mean this Court should accept the facts within them as true—and yet, that is precisely what this Court is required to do in the absence of any counteraffidavit. Under well-established statutory procedure for section 2-619 motion practices, the failure to properly contest [a movant's] affidavit by submitting a counteraffidavit is fatal to this cause of action, and results in an admission of the fact stated therein. *Vantage Hospitality Grp., Inc. v. Q Ill Dev., LLC*, 2016 IL App (4th) 160271, ¶ 62 (citations omitted). As such, the City admits that Prestige's operations do not constitute a nuisance, there is no detectable odor by any objective standard, and, resultingly, no harm or injury to the City, and no interference with a public right.

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<sup>1</sup> Malodor as used in the City's complaint shall also encompass all verbiage, such as “rancid,” “putrid,” “odor,” “smell.”

The City similarly neglects to controvert Prestige's affirmative matter that the City seeks to exceed its authority and obtain from this Court an award of unconstitutional relief. Notably absent is *any* authority supporting the City's premise that it doesn't need extraterritorial jurisdiction to prosecute Prestige because it is enforcing its Code against a nuisance present *within* the City, not outside of it. And the City also fails to address the cases that Prestige cites in its Motion and which hold that extraterritorial jurisdiction is required, even when the alleged violation occurs within municipal borders. *Des Plaines v. Chicago & N. W. R. Co.*, 65 Ill. 2d 1, 7 (1976) (the attempt by Des Plaines to regulate via local ordinance noise pollution emissions of Chicago & N. W. R. Co., with locations throughout Chicagoland *and within* the City, was not within the City's constitutional home rule power); see also, *Rockford v. Hey*, 366 Ill. 526, 527-35 (1937) (the Court holding the application of a Rockford ordinance, which declared unlawful their sale or selling in Rockford of any product manufactured by an ice cream factory without having met certain Rockford registration requirements, invalid and not within powers delegated to Rockford by statute, and so the application of the ordinance against Dixon and Sterling factories unlawful).

Prestige's motion establishes that the City lacks the police power to enforce its municipal codes, duly legislated by its officials, against those outside its territory without Constitutional and statutory authority. Further, sections 12-12-6 and 12-12-7 of the City Code do not and cannot overcome the "public health and quarantine threshold" of section 5/7-4-1. In response, the City simply says not so: "extraterritorial jurisdiction is not a prerequisite." *Resp. Br.*, p. 6. The only support offered of this position is its own pleading—and not any authority. That is because the single case referenced, *Chicago v. Spaulding*, cannot be considered as authority given that it was decided four years before section 5/7-4-1, it addressed enforcement within a municipality's own borders, not outside them, and that the concerned ordinances expressly and repeatedly referred to

activities “dangerous to life or detrimental to health,” which neither 12-12-6 or 12-12-7 do. *Chicago v. Spaulding*, 15 Ill. App. 2d 407, 409-10 (1st Dist. 1957). The City is over-reaching and it fails.

The City does not address the issue that its police powers are superseded by conflicting state regulations. The motion establishes that Prestige’s alleged odor emissions are governed by the threshold established in 35 IAC 245.121. The case law in Prestige’s motion supports this position. *See Harris Bank of Roselle v. Mettawa*, 243 Ill. App. 3d 103, 115 (2d. Dist. 1993) (holding that the Mettawa ordinance creating a blanket prohibition barring operation of wastewater land treatment systems on extraterritorial property was not in harmony with IL Wastewater Land Treatment Site Regulation Act, was not a “health or quarantine ordinance or regulation” within the meaning of 5/7-4-1, and was thus invalid as applied to landowners’ property); *also, Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 293 (2001)(holding when a municipal ordinance is silent or less restrictive than state law, the state law simply fills that gap by providing a recourse, the “ordinance complements the statute; it does not limit *sub silentio* statutory remedies); *see also, Des Plaines v. Chicago & N. W. R. Co.*, 65 Ill. 2d 1, 7 (1976). For these reasons, and those asserted in Prestige’s motion, the City’s complaint must be dismissed pursuant to section 2-619 with prejudice.

*B. The City’s response cannot salvage the insufficient pleading; it has no causes of action against Prestige*

Prestige additionally, and alternatively, moves to dismiss the City’s causes of action as conclusory, vague, and substantially insufficient at law failing to plead common law public nuisance, failing to plead specific facts as to the malodor, and failing to plead environmental detriment or public nuisance as defined by its own municipal code. In response, the City points to the conclusory and vague allegations of its complaint as the requisite elements of its causes of action, and, cites *Stop Northpoint, LLC v. City of Joliet*, for the proposition that it is not required to provide benchmark data as a pleading requirement. But the City’s utter failure to respond to Prestige’s argument that the City, after five years, does not and cannot allege any facts that Prestige’s operations release odors

exceeding 24 dilutions as measured by a Scentometer pursuant to the legal threshold levels established by 35 IAC 245.121, is a concession to the issue. The City can never sufficiently plead its actions having conceded there are no facts demonstrating an odor exceeding the threshold and its attempts to argue a cure for its pleading fails; the pleading must be dismissed pursuant to section 2-615.

Moreover, beyond this concession, it is clear obvious that the City pleading contains few well-pleaded facts, and that its complaint is replete with repetitive conclusory allegations of negative impacts by odors purportedly coming from Prestige's facility since 2019. The complaint alleges no specific facts of an interest common to the general public of the City, but asserts the individual rights and purported subjective harms of certain residents at 660 Dursey Lane and 774 Mark Avenue, and a business owner at 720 E. Central Road. It complains the nuisance has been ongoing and worsening since 2019, but provides no details as to that statement, and no facts as to why the City, so concerned about the harm to its public health, waited five years before it sought to protect the purported public interest. It alludes to "numerous complaints across various agencies and governmental entities regarding the negative impact of Prestige operations" but states no facts as to the number of complaints, the substance of the complaints, the timing of the complaints, the agencies and governmental entities that received the complaints, the actions taken by the officials at the agencies and governmental entities, and what the negative impact is to the common general public. It further contends that Prestige emits "noxious odors that are detectable outside the bounds of its property" and the odors are an "invasion of City properties." However, it notably fails to state any well-pleaded facts as to how the odors are "detectable" and amount to an "invasion" of the City. And there is no affidavit by a City agency or governmental entity that attests to a detection of odors and the proximate cause of those odors to an injury to the City. Beyond this must be some well pled allegation that establishes the City has extraterritorial jurisdiction into the Village to prosecute

Prestige for fines and an injunction on the premise that air from within the Village territory enters the City's boundaries and is a "source of discomfort," particularly when Prestige is operating lawfully and in conformity with Village ordinances, and the Village cannot even complain sufficiently for relief.

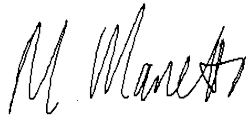
Simply put, while the City need not prove its case at the pleading stage, it must have actual causes of action, and to establish those it needs well-plead facts as to its public rights, the exercise of authority beyond the City, and an objective and measurable standard for determining nuisance. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 369 (2004) (emphasis added). Given the complaint's many conclusions and attempt to only plead in a general way of the nature of the claim against Prestige, it fails and must be dismissed pursuant to section 2-615. *Id.*, 369-70.

### III. CONCLUSION

Wherefore, Prestige Feed Products, LLC, respectfully requests that the Court dismiss the City of Des Plaines Verified Complaint pursuant to section 2-619 with prejudice, alternatively, dismiss the Verified Complaint pursuant to section 2-615, and for any further relief the Court deems just.

Respectfully submitted,

Prestige Feed Products, LLC

By: 

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