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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,)
)
v.)
)
VILLAGE OF MOUNT PROSPECT, an Illinois)
municipal corporation,)
)
Defendant.)

Case No. 2023 CH 5147
(transferred to Law Division)

Hon. Thomas More Donnelly
Calendar W

VILLAGE OF MOUNT PROSPECT, an Illinois)
municipal corporation,)
)
Defendant/Counter-Plaintiff.)
)
v.)
)
PRESTIGE FEED PRODUCTS, LLC, an Illinois)
limited liability company,)
)
Plaintiff/Counter-Defendant.)

CITY OF DES PLAINES, an Illinois municipal)
corporation,)
)
Intervenor Plaintiff.)
v.)
)
PRESTIGE FEED PRODUCTS, LLC, an Illinois)
limited liability company,)
)
Defendant.)

INTERVENOR PLAINTIFF CITY OF DES PLAINES’ RESPONSE IN OPPOSITION
TO DEFENDANT PRESTIGE FEED PRODUCTS, LLC’S
COMBINED § 2-619.1 MOTION TO DISMISS

Intervenor Plaintiff, City of Des Plaines (“**City**”), by and through its attorney, Elrod Friedman LLP, responds to Defendant Prestige Feed Products, LLC’s (“**Prestige**”) § 2-619.1 Motion to Dismiss (“**Motion**”), as follows:

Introduction

For years, Prestige has operated its Facility¹ to the detriment of residents, businesses, and the general public in the surrounding area. Prestige operations are a source of worsening discomfort and nuisance among the neighboring residential and business communities and public rights-of-way within the boundaries of the City due to emission of a persistent burnt and sometimes rancid cheese odor. The nuisance associated with Prestige’s operations is well documented and has been ongoing and worsening since the Facility began operations in 2019. Despite years of complaints and efforts by the Village of Mount Prospect (“**Village**”) to work with Prestige to remediate the problem, the odor persists. Now, in the face of the City’s Complaint to compel Prestige to simply comply with the minimum requirements of the City’s Code of Ordinances and State law for violations occurring within the City, Prestige not only denies that its Facility is creating any nuisance odor, but attempts to argue that the City lacks the authority to protect the health and safety of its residents and the general public within City limits from nuisances and public health and safety concerns.

This Court should not allow Prestige to avoid the consequences of its ongoing disregard of the nuisance and code violations that have plagued City residents, businesses, and the general public for over five years. For the reasons explained below, this Court should deny Prestige’s Motion in its entirety.

¹ Capitalized terms not otherwise defined in this Response have the same meaning as set forth in the City’s Complaint.

Statement of Facts

The City is an Illinois home rule municipality located in Cook County, Illinois. *Verified Complaint of Intervenor City of Des Plaines (“Complaint”),* ¶ 1. Prestige is in the business of drying and selling soy and milk-based cheese as an additive to livestock feed and operates a manufacturing facility at 431 Lakeview Court, Suite A, in the Village of Mount Prospect, Cook County, Illinois (“**Facility**”). *Id.* at ¶¶ 2-3. In June 2019, Prestige began operations at the Facility. *Id.* at ¶ 6. The Facility is within the Village but is located less than one-half mile from the City’s border and many residences and businesses within the City. *Id.*

The process of manufacturing cheese-based animal feed is highly odiferous and known to produce offensive and objectionable odors, which are often described as burnt, rancid, putrid, or smelling of spoiled milk or vomit. *Complaint,* ¶ 11. Prestige operations produce noxious odors which are released into the surrounding residential and business communities. *Id.* at ¶ 12. Prestige operations cause discomfort and nuisance among neighboring residential and business communities, both in the Village where the Facility is located, and also within the nearby portions of the City. *Id.* at ¶ 9. The nuisance associated with Prestige operations has been ongoing and worsening since the Facility began operations in 2019 and affected residents and business owners have lodged numerous complaints across various agencies and governmental entities regarding the negative impact of Prestige operations. *Id.* at ¶¶ 18-19.

Due to Prestige’s inadequate efforts to prevent its emissions from escaping into the adjacent areas, the malodor extends over City rights-of-way and into the properties of City residents and businesses. *Complaint,* ¶ 15. The noxious odor and related conditions associated with Prestige operations are present within the City and the odor is dispersed across public and private land in the area surrounding the Facility within the City. *Id.* at ¶ 16.

Standard of Review

Prestige correctly states, but fails to meet, the high standard necessary to obtain relief under 735 ILCS 5/2-615. In the context of a § 2-615 motion to dismiss, the proper inquiry is whether the well-pled facts of the complaint, taken as true and construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Loman v. Freeman*, 229 Ill.2d 104, 109 (2008). All well-pled facts and all reasonable inferences to be drawn from those facts must be accepted as true. *Olivera v. Amoco Oil Co.*, 201 Ill.2d 134, 147 (2002). A cause of action should not be dismissed pursuant to a § 2-615 motion unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Tedrick v. Community Resource Center, Inc.*, 235 Ill.2d 155, 161 (2009).

In ruling on a motion to dismiss under either § 2-615 or 2-619, the Court “must accept all well-pleaded facts as true and make all reasonable inferences therefrom.” *N. Trust Co. v. County of Lake*, 353 Ill. App. 3d 268, 273 (2nd Dist. 2004) (internal citation omitted). A § 2-619 motion 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). Under this analytical framework, the Complaint is legally sufficient and the Motion must be denied.

Argument

I. Prestige Improperly Adopts Allegations from Other Pleadings.

As a preliminary matter, the Motion improperly attempts to adopt facts outside the four-corners of the City’s Complaint. In the “Statement of Facts” in the Motion, Prestige claims to restate all well pled facts in the “Prestige Complaint,” all well plead facts in the “Pesoli Affidavit,” “Hartley Affidavit,” and “DiMonte Affidavit,” and all well pled facts in “Prestige’s September 11 Motion.” *See Motion*, pg. 3. As stated above, a § 2-615 motion to dismiss “challenges only the

legal sufficiency of the complaint.” *Loman v. Freeman*, 229 Ill. 2d at 109. The Court may only consider the allegations in the Complaint, admissions in the record and any matters of which the court may take judicial notice. *Mt. Zion State Bank & Tr. v. Consol. Commc’n, Inc.*, 169 Ill. 2d 110, 115 (1995). Although this Court may take judicial notice of the existence of the documents in its record, that does not mean that it should accept the facts alleged in these documents as true for the purposes of a Motion to Dismiss.

In considering the § 2-615 arguments in the Motion, it is improper for Prestige to request the Court to consider alleged facts outside of the City’s Complaint. Further, with respect to Prestige’s § 2-619 arguments in the Motion, the “well pled facts” that Prestige asks the Court to consider go beyond the “affirmative matters” which Prestige argues defeat the City’s claims. This Court should not consider the factual allegations in the “Prestige Complaint,” “Pesoli Affidavit,” “Hartley Affidavit,” “DiMonte Affidavit,” or “Prestige’s September 11 Motion” when ruling on Prestige’s Motion. Rather, the Court’s review should be limited to the City’s Complaint along with the affirmative matters properly raised by Prestige as part of its § 2-619 arguments.

II. The Complaint Alleges Adequate Claims Against Prestige and Dismissal under § 2-619 is Not Warranted.

Prestige’s Motion makes two arguments for dismissal under § 2-619: (1) Counts II and III should be dismissed because the City’s attempted enforcement of City Code §§ 12-12-6 and 12-12-7 against Prestige is unconstitutional because it exceeds the City’s authority under Article VII of the Illinois Constitution and statutory authority under Section 7-4-1 of the Illinois Municipal Code, 65 ILCS 5/7-4-1; and (2) Counts I, II, and III should be dismissed because Prestige does not emit odors in detectable quantities above legally defined odor threshold levels. Both arguments fail for the reasons set forth below.

A. The City’s Enforcement of City Code §§ 12-12-6 and 12-12-7 Against Prestige is Constitutional.

In its Motion, Prestige argues that the City is attempting to extraterritorially enforce §§ 12-12-6 and 12-12-7 against Prestige and this attempt exceeds the City's authority granted in Article VII of the Illinois Constitution and in Section 7-4-1 of the Illinois Municipal Code, 65 ILCS 5/7-4-1. *Motion*, pg. 5. Prestige's argument is flawed and completely misses the point - the City is enforcing its City Code for Prestige's violations occurring *within* the City, not outside of it.

In its Complaint, the City alleges that "[t]he City is harmed by the noxious odors resulting from the Prestige Facility operations as the smell is present *within* the City's jurisdiction and rights-of-way." *Complaint*, ¶58 (emphasis added). Both §§ 12-12-6 and 12-12-7 of the City Code prohibit the emission of noxious odors and the presence of such odors within the City. While Prestige is located within the Village, the odors it generates are present within City limits due to Prestige's proximity to the City and the intensity of the odors Prestige emits. *Complaint*, ¶15-16. Therefore, extraterritorial jurisdiction is not a prerequisite for the claims in the Complaint because the City is simply enforcing the City Code against a nuisance present within City boundaries. Under Prestige's theory of this case, if an individual put a speaker on the border of a municipality and started blaring loud music far in excess of any noise limitation into the other close by municipality, the impacted municipality would have no ability to use its police powers as recourse since the device was just outside its borders. In that situation, as is the case here, a municipality has the authority to regulate nuisance activity which is present within its corporate limits, though emanates from outside its borders, in order to protect the health, safety and welfare of its residents. Prestige's argument that City enforcement efforts are unconstitutional to the extent that they constitute extraterritorially enforcement is without merit as the City is attempting to abate a nuisance present within its borders.

Additionally, even if extraterritorial jurisdiction was required for the City to proceed with the Complaint, Section 7-4-1 of the Illinois Municipal Code grants the City authority to regulate for the protection of the public health within one-half mile of its borders. 65 ILCS 5/7-4-1. Section 7-4-1 provides that the “corporate authorities in all municipalities have jurisdiction in and over all places within one-half mile of the corporate limits for the purpose of enforcing health and quarantine ordinances and regulations.” The Facility is within one-half mile of the City. *Complaint*, ¶¶ 6, 84. §§ 12-12-6 and 12-12-7 of the City Code are ordinances which squarely address health and safety. Thus, as set forth in the Complaint, the City is pursuing enforcement of ordinances against the Prestige Facility in order to protect the health and safety of its residents and businesses, bringing the City’s efforts within the reach of Section 7-4-1, to the extent the City needs extraterritorial jurisdiction for its claims. *See Complaint*, ¶¶ 71-74, 80-84, 89, 93-96, and 102.

Nevertheless, Prestige argues that §§ 12-12-6 and 12-12-7 do not relate to the concepts of “health” and “quarantine” as used in Section 7-4-1. Prestige goes on to argue that neither ordinance references health concerns and the allegations of the Complaint fail to assert any allegations that Prestige’s activities have a detrimental effect on the health of any resident. *Motion*, pg. 7.

However, §§ 12-12-6 and 12-12-7 address emissions of noxious and objectionable odors. The emission of odors can negatively impact one’s health in a wide variety of ways such as impact on sleep and respiratory system, as well as causing headaches and nausea. *See Chicago v. Spaulding*, 15 Ill. App. 2d 407, 412 (1st Dist. 1957) (“It appears to this court that odors which prevent people from eating their meal and which cause them to become nauseated, endanger the public health.”) As such, these ordinances may be utilized by the City as enforceable health regulations. The Complaint details how Prestige’s activities have negatively impacted the health

of City residents in substantial detail. The Complaint contains the following allegations which describe Prestige's negative impact on the health of City residents, businesses, and the general public within the City:

- ¶ 17 – The noxious odor and related conditions caused by Prestige operations create unsafe and unhealthy conditions for the City and many City residents and businesses.
- ¶ 25 – Mr. and Mrs. Kulaga have both been made sick by the odor, gagging and becoming nauseated from the smell on a regular basis. (Ex. A at ¶ 18)
- ¶ 31 – A school bus stop is located near the Kulaga residence. Previously, the Kulaga children took the bus to school, but the smell caused them to gag and pull their clothes over their noses and mouths while waiting for the bus. (Ex. A at ¶¶ 13-14)
- ¶ 32 – Other neighborhood children who use the bus stop have also been observed gagging and covering their noses and mouths while waiting for the bus. The bus driver has also made comments about the unpleasant smell in the vicinity. (Ex. A at ¶¶ 15-16)
- ¶ 43 – The children also take the bus to school from a bus stop located near the Pfisterer residence. The smell has caused Ms. Pfisterer's children to gag, pull their clothes over their noses and mouths, and request to wear face masks while waiting for the bus. (Ex. B at ¶¶ 11-12)
- ¶ 50 – Beginning in 2019, Mr. Stedman began to smell the odor emitting from the Prestige Facility. The odor has made him nauseated on several occasions and impeded his ability to work. (Ex. C at ¶¶ 3-7)
- ¶ 67 – Children have the right to be outdoors without becoming nauseous and ill from exposure to noxious odors.
- ¶ 72 – Since the start of operations at the Prestige Facility in 2019, hundreds of complaints about the effects of the noxious odor emissions from the Facility during its operations demonstrate that the Prestige Facility operations threaten the public health and safety.
- ¶ 73 – Prestige operations that continually emit noxious odors beyond the Facility and the lot lines of its property infringe on the health, safety, and welfare of the City and its residents and businesses.
- ¶ 74 – Prestige's continued operation violates the constitutionally guaranteed public right to a safe and healthy environment.
- ¶ 99 – Residents of the City, including children and business owners, living and working within one-half mile of the Prestige Facility have experienced detrimental impacts to their health and wellbeing as a result of the noxious odors emitting from the Prestige Facility.

These allegations demonstrate that the City adequately alleges that Prestige activities have a negative impact on the health of City residents. And, to the extent that the Court believes the City

must have extraterritorial jurisdiction authority to prosecute the Complaint, the allegations in the Complaint are sufficient to demonstrate that City enforcement efforts relate to the protection of “health” as that term is used in Section 7-4-1 of the Illinois Municipal Code.

B. Prestige’s Motion Fails to Establish that it Does Not Emit Actionable Odors and the Motion is Not an Appropriate Means to Resolve this Disputed Fact.

Prestige argues that Counts I, II, and III should be dismissed pursuant to §2-619 because Prestige does not emit odors in detectable quantities above “legally defined” odor threshold levels. Prestige supports this argument by citing to three odor reports which purport to show that Prestige is emitting odors which are either non-detectable or at levels well below legal thresholds. *Response*, pg. 14-15.

First, as discussed in detail in Section III.B below, Prestige misconstrues the plain language of the City Code and fabricates requirements not actually included in §§ 12-12-6 or 12-12-7, such as a requirement to use a Scentometer or what is meant by “detectable.”

Second, the parties are engaged in ongoing odor monitoring and testing by an independent third party. It would be entirely improper to dismiss the Complaint solely based on three statements from unverified reports presented by one party at this stage in the litigation. The parties are currently engaged in discovery and are collecting evidence to support their claims, and expert reports and depositions will not take place for months. The City should be given the opportunity to review these odor reports with its own experts and depose and cross-examine Prestige’s expert witnesses. At this juncture, the validity and credibility of Prestige’s odor reports have not been verified; to allow them to be used at this early stage in the pleadings process would be prejudicial to the City. The Motion is not a proper vehicle for Prestige to attempt to prove the highly contested fact that the odors violate the City Code.

Finally, as set forth in further detail in Section III.B below, Illinois law does not require the City to plead violation of benchmark statistics. The Complaint must set forth the ultimate facts needed to prove the claim but not the evidentiary facts which tend to prove the ultimate facts. *Chandler v. Ill. Cent. R.R. Co.*, 207 Ill. 2d 331, 348 (2003). As set forth in Sections II.A above and III below, the Complaint sufficiently alleges specific nuisances and violations of City Code and common law which adequately puts Prestige on notice of the claims against it. This is sufficient under Illinois law for the Complaint to survive the Motion. *See Avery v. GRI Fox Run, LLC*, 2020 IL App (2d) 190382, ¶ 38 (“the law does not require plaintiffs to set forth evidence in their complaint. Through discovery, evidence can be sought concerning what testing was done and the measurements taken from plaintiffs’ property.”)

III. Prestige’s Motion Fails to Support Dismissal under § 2-615.

Prestige’s Motion makes several arguments for dismissal under § 2-615: (1) Count I should be dismissed with prejudice because the City does not factually plead common law public nuisance against Prestige; (2) Counts II and III should each be dismissed because the City does not factually plead that Prestige emits odors in detectable quantities that exceed legal thresholds, or that Prestige’s activities constitute environmental detriment or public nuisance; and (3) the Complaint fails to sufficiently plead that the City is entitled to permanently enjoin Prestige from operating at the Facility. These arguments fail for the reasons set forth below.

A. The City Properly Alleges Common Law Public Nuisance Against Prestige.

Prestige argues that the City’s alleged facts show that only a limited number of individuals in the City claim to be affected by Prestige’s operations. Preliminarily, Prestige supports this argument by attaching an order from a separate class action lawsuit brought by residents of the City against Prestige. The class action lawsuit is entirely separate from the instant action and

Prestige has failed to provide any justification as to why this Court should or could consider an order from a different lawsuit when ruling on a § 2-615 Motion to Dismiss.

The Complaint adequately alleges a common law public nuisance – the City alleges the existence of a public right (*Complaint*, ¶¶ 65-70), Prestige’s substantial and unreasonable interference with that right (*Complaint*, ¶¶ 72-75), proximate cause (*Complaint*, ¶¶ 76-78), and injury (*Complaint*, ¶ 78). In sum, the Complaint alleges that Prestige’s Facility is emitting a noxious and offensive odor that, among other things:

- Causes residents to remain inside their homes and forego use of their yards, porches, and other outdoor spaces and refrain from outdoor activities;
- Causes residents to keep doors and windows closed when weather conditions otherwise would not require them to do so;
- Deprives residents of the full value of their homes and properties;
- Causes residents the embarrassment, inconvenience, and reluctance to engage in outdoor activities and invite guests to their homes;
- Causes health concerns such as gagging, coughing and nausea; and
- Negatively impacts the operations of businesses in the vicinity.

Complaint, ¶¶ 46, 87, and 100. Contrary to Prestige’s claim, the Complaint does not allege that a small number of individuals have been impacted, but instead states that the City has received “hundreds of complaint about the effects of the noxious odor emissions from the Facility.” *Complaint*, ¶¶ 72.

The Complaint sufficiently alleges common law public nuisance and Prestige’s Motion, with respect to Count I, should be denied.

B. The City Properly Alleges a Violation of § 12-12-6 of the City Code.

Prestige argues that Count II, which alleges that Prestige's current operations violate § 12-12-6 of the City Code, should be dismissed as the City fails to allege facts that Prestige emits odors in quantities that exceed legal thresholds. *Motion*, pg. 11-12. Prestige, without citation to any authority, claims that in order to prove a violation of § 12-12-6, the City must allege that "Prestige is releasing odors detectable in the ambient air after it is diluted with 24 (or even 8) of odor free air as measured by a Scentometer pursuant to 35 IAC 245.121, which is so aptly called 'Objectionable Odor Nuisance Determination.'" *Motion*, pg. 11-12. However, the City Code does not contain this requirement nor does the Complaint need to plead these facts.

§ 12-12-6 states, in full, that "[e]mission of noxious, objectionable or annoying odor in such quantities as to be detectable at any point along a lot boundary is prohibited." "Municipal ordinances are interpreted using the same general rules of statutory interpretation." *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 7 (2009) The intent of the municipality is best shown by the plain language of the ordinance. *Pikovsky v. 8440-8460 N. Skokie Boulevard Condominium. Ass'n, Inc.*, 2011 IL App (1st) 103742, ¶ 17. If the language is clear and unambiguous, there is no need for extrinsic aids of statutory construction. *Id.* Ordinances must be given "the fullest, rather than the narrowest, possible meaning to which they are susceptible." *Landis v. Marc Realty, LLC*, 235 Ill. 2d at 11.

There is nothing in § 12-12-6 requiring the City to establish that a certain level, dilution, or measurement by a Scentometer is reached. Rather, the City's regulation unambiguously states that the emission of a noxious, objectionable, or annoying odor (such as the one being emitted by Prestige) that is detectable at any point along a lot boundary is prohibited. The Complaint is replete with allegations of complaints relating to the Prestige odor and City residents and businesses

detecting the odor on their own properties within the City, which is certainly beyond the Prestige boundary line. *See Complaint*, ¶¶ 14, 19, and 20-54.

Further, even if the Court were to agree that the City Code requires testing using the Scentometer requirement noted by Prestige in its Motion (which the Court should not), Illinois law does not require that the City plead violation of benchmark data. *In Stop North Point, LLC v City of Joliet*, 2024 IL App (3d) 220517, plaintiffs argued that a proposed business park would endanger the health, safety, and welfare of the public along the route of the increased traffic. 2024 IL App (3d) 220517 ¶ 13. The circuit court dismissed the public nuisance claims. However, the appellate court reversed the dismissal finding that plaintiffs had met their pleading burden by alleging specific harm would result from increased truck traffic. Notably, the appellate court rejected the defendant's claim that the plaintiffs had failed to allege that the proposed business park would "violate any noise or air pollution regulations" stating that while this would be a factor at an evidentiary hearing on the claim, it was not a "pleading requirement." 2024 IL App (3d) 220517 ¶ 64- 65 ("We do not agree with the need for specific benchmark statistics at the pleading stage").

As the Complaint sufficiently pleads that Prestige is emitting noxious, objectionable, or annoying odors in quantities that are detectable beyond its property, and thus violating § 12-12-6 of the City Code, Count II should not be dismissed.

C. The City Properly Alleges a Violation of § 12-12-7 of the City Code.

Prestige argues that the City fails to allege the Facility creates an "environmental detriment" or "public nuisance" within the meaning of § 12-12-7 of the City Code. *Motion*, pg. 12-14. Count III of the Complaint alleges a violation of § 12-12-7, which states that "[n]o use shall be operated or maintained which creates an environmental detriment or public nuisance, including,

but not limited to, visual clutter created by excessive signage, lighting, or outdoor storage; noise or odors as defined herein; or other noise and odors such as those created by pets or garbage.”

Prestige’s limited reading of § 12-12-7 runs afoul to the rules of statutory construction. As noted above, ordinances must be given “the fullest, rather than the narrowest, possible meaning to which they are susceptible.” *Landis, LLC*, 235 Ill. 2d at 11. § 12-12-7 not only prohibits creation of an environmental detriment or public nuisance but also includes a list of such nuisances which contains “odors as defined herein.” Prohibited odors are further defined within the City Code in § 12-12-6 as “[e]mission of noxious, objectionable or annoying odor in such quantities as to be detectable at any point along a lot boundary is prohibited.” As discussed in Section III.B above, the Complaint sufficiently alleges that Prestige emits odors that are prohibited under the City Code.

Alternatively, if the Court agrees that the City must allege that Prestige’s Facility creates an “environmental detriment” or “public nuisance,” as summarized in Section III.A above, the Complaint sufficiently alleges a claim for common law public nuisance. As such, the City has sufficiently alleged that Prestige’s activities violate § 12-12-7 and constitute a “public nuisance.”

Further, even if this Court finds that the City has not met the requirement for common law public nuisance, Count III includes a claim for a violation of a City ordinance, not a common law claim. As such, in order to state a claim, the City need only allege that Prestige creates a “public nuisance” under the standards of the City Code or other standards or policies created by the City. As the Complaint adequately pleads that Prestige’s odor constitutes a nuisance under the City Code, Count III is sufficiently pled and should not be dismissed.

D. The City Properly Requests Injunctive Relief.

At various points in its Motion, Prestige argues that the City improperly requests injunctive relief. Specifically, Prestige states that in Counts I, II, and III, the City fails to plead clear and ascertainable rights in need of protection, irreparable harm and inadequate remedy at law.

Importantly, as the City has express statutory authorization to seek injunctive relief, the traditional equitable elements for injunctive relief need not be satisfied. *City of Rock Falls v. Aims Industrial Services, LLC*, 2024 IL 129164 at ¶ 20; *People ex. rel. v. Sherman v. Cryns*, 203 Ill.2d 264, 277 (2003). As the court explained in *City of Highland Park v. Cook County*, 37 Ill.App.3d 15, 20 (1st Dist. 1975), requiring a party to allege irreparable harm as a basis for injunction may be a “sound theory” where a private party brings the action, but “it is not when a city or other public body brings the action alleging violation of its ordinances and state statutes, with resulting damages to its residents.” Further, the Illinois Supreme Court has distinguished claims seeking injunctive relief pursuant to a court’s inherent equitable authority as opposed to claims seeking relief pursuant to a statute. The Illinois Supreme Court explained:

In the latter situation, the equities have, in effect, already been balanced by the legislative body, and that balance is reflected in the policy choices contained within the statute. A court is not free to disregard or ‘rebalance’ the policy determinations made by a legislative body. Accordingly, when a trial court is confronted with a continuing violation of statutory law, it has no discretion or authority to balance the equities so as to permit that violation to continue.

City of Rock Falls v. Aims Industrial Services, LLC, 2024 IL 129164, ¶ 21 (internal citations omitted).

The City Code provides that the City may seek injunctive relief in response to violations of the City Code. *See e.g.* §§ 1-4-3; 5-3-4; 5-4-7, 2-11-11; 12-4-6 and 12-4-9. As the City has sufficiently alleged that Prestige has violated various City ordinances, the City does not have to

satisfy the traditional elements required for a permanent injunction, including irreparable harm and lack of an adequate remedy at law.

Although not required under Illinois law, a review of the allegations in the Complaint demonstrate that the City has, in fact, sufficiently alleged clear and ascertainable rights in need of protection, irreparable harm and inadequate remedy at law. Therefore, the requests for injunctive relief in Counts I, II, and III are properly pled and should not be stricken.

Conclusion

This Court should deny Prestige's Combined § 2-619.1 Motion to Dismiss the City's Verified Complaint in its entirety. Alternatively, if this Court grants all or a part of the Motion to Dismiss, the City requests leave to file an amended complaint.

CITY OF DES PLAINES

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