

**IN THE CIRCUIT COURT OF KANKAKEE COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

<p>Concerned Citizens of Manteno, an Illinois non-profit corporation,</p> <p style="text-align:center">and</p> <p>Brian Kovaka,</p> <p style="text-align:right">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>Village of Manteno, Illinois, an Illinois municipality,</p> <p>Francis Smith, <i>in his official capacity as Chairman of the Manteno Plan Commission,</i></p> <p>333 South Spruce LLC,</p> <p style="text-align:center">and</p> <p>Gotion Inc., a California Corporation,</p> <p style="text-align:center">Defendants.</p>	<p>Case No.: 23-ch-37</p> <p>Judge: Lindsay A. Parkhurst</p> <p><b>PLAINTIFFS’ OPPOSITION TO GOTION, INC.’S MOTION TO STRIKE CERTAIN ALLEGATIONS PURSUANT TO §2-615(A)</b></p>
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Plaintiffs Concerned Citizens of Manteno (“CCM”) and Brian Kovaka (collectively, the “Plaintiffs”), as and for their Opposition to Gotion, Inc.’s Motion to Strike Certain Allegations Pursuant to §2-615(a), assert as follows:

**INTRODUCTION**

Gotion brings this Motion because it objects to true facts about its parent company’s allegiance to the Chinese Communist Party and the United States House of Representatives’ Select Committee on the Chinese Communist Party’s investigation into Gotion as a national security threat due to those ties. Notably, Gotion does not contend that any of those allegations are false.

Instead, it claims they are “xenophobic” and irrelevant to the Plaintiffs’ claims. Gotion is wrong on both counts.<sup>1</sup>

### FACTS

Gotion takes umbrage to the following true allegations contained in Plaintiffs’ Amended Complaint: Gotion, Inc. is a subsidiary of the Chinese company Guoxuan High-Tech Company, Ltd. (“GHTC”). (Amended Complaint ¶ 11.) GHTC, in turn, is a majority shareholder of Energin Guoxuan (Tangshan) New Energy Technology Co. Ltd.; a company likely subject to U.S. sanctions because it develops “military energy storage products” for “military vehicles and military ships and boats” to bolster the People’s Liberation Army. (*Id.* ¶ 12.) GHTC is required, by its Articles of Association, to create a “[Chinese Communist] Party organization and carry out Party activities in accordance with the Constitution of the Communist Party of China.” (*Id.* ¶ 13 (citing Guoxuan High-Tech Company Articles of Association, Articles 5, 9 (July 20, 2022).))

GHTC’s Articles of Association further provide:

The Party Committee of the Company *shall perform its duties in accordance with the Constitution of the Communist Party of China* and other Party regulations:

(I) Ensure and supervise the implementation of the Party’s guidelines, principles and policies in the Company, and *implement major strategic decisions of the CPC Central Committee* and the State Council as well as relevant important work arrangements of the Party organization at the higher level;

(II) Strengthen leadership and control over the selection and appointment of personnel, regulate standards, procedures, inspections, recommendations and supervision, and adhere to the principle of the Party’s supervision of

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<sup>1</sup> A section 2–615 motion to strike challenges the legal sufficiency of a pleading by alleging defects on the face of the pleading. *Dep’t of Healthcare & Fam. Servs. ex rel. Daniels v. Beamon*, 2012 IL App (1st) 110541, ¶ 15. In reviewing the sufficiency of a pleading, the court accepts as true all well-pled facts and all reasonable inferences that may be drawn from those facts. *Id.* The court also will construe the allegations in the pleading in the light most favorable to the plaintiff. *Id.* A cause of action should only be dismissed on the pleadings if it appears that no set of facts can be proved which will entitle the pleader to relief, and then only if it is apparent that even after amendment, if leave to amend is sought, no cause of action can be stated. *Id.*

cadres, the board of directors' selection of managers and the managers' exercise of the right to employ personnel in accordance with law;

(III) Study and discuss the Company's reform, development and stability, major business management issues and major issues related to the immediate interests of employees, and put forward opinions and suggestions; support the shareholders' meeting, the board of directors, the supervisory committee and the senior management in performing their duties in accordance with law; support the employee representative assembly in their work;

(IV) Assume primary responsibility for comprehensively and strictly governing the Party; *lead the ideological and political work, united front work, spiritual civilization construction, enterprise culture construction, labor union, Communist Youth League and other mass work of the Company; lead the construction of Party conduct and clean government*, and support the Commission for Discipline Inspection in earnestly fulfilling its supervisory responsibilities;

(V) Strengthen the construction of Party organization and Party members at the grass-roots level of the Company, *give full play to the role of the Party branch as a fighting fortress and the vanguard and exemplary role of Party members*, unite and lead cadres and staff to actively participate in the reform and development of the Company.

(Amended Complaint ¶ 14 (citing Articles 114-115 (emphases added)).)

Gotion is currently being investigated by the United States House of Representatives Select Committee on the Chinese Communist Party for threats it may pose to the national security of the United States. (*Id.* ¶ 15.)

## ARGUMENT

### **A. ALL ALLEGATIONS ABOUT GOTION'S TIES TO THE CHINESE COMMUNIST CHINESE PARTY AND THE THREATS IT POSES ARE TRUE AND REFLECT OFFICIAL UNITED STATES GOVERNMENT POLICY.**

First, Gotion forgets that this is not Twitter nor Columbia University, where undergraduates believe they can label anything they oppose as "xenophobic" and thereby avoid substantive argument. Instead, Gotion's task here is to actually prove that the facts alleged by Plaintiffs are false. This it cannot do. Gotion may accept the Chinese Communist Party's authoritarian position that it is synonymous with the Chinese people, but Plaintiffs certainly do

not. Absolutely nothing in Plaintiffs' Amended Complaint makes any reference to Chinese people, let alone evidencing any animus towards Chinese people. *See* XENOPHOBIA, Black's Law Dictionary (11<sup>th</sup> ed. 2019) ("The fear or irrational strong dislike of people from foreign countries"). Nor would Plaintiffs ever make such an allegation, as Plaintiffs concerns are motivated by valid *national security* realities, and nothing more. It is Gotion's ties to an avowed American adversary that concern Plaintiffs. In fact, Plaintiffs' position would be no different if Gotion's parent company swore allegiance to Russia, Iran, North Korea, Cuba, or any other stated adversary of the United States of America.

Put simply, Plaintiffs have made allegations that Gotion holds formal ties to the ruling political party of an authoritarian state in direct competition with the United States of America, and that constitutes a national security threat. And, beyond the Select Committee on the Chinese Communist Party, Congress and President Biden, have taken the same position as Plaintiffs with the recent MAKING EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023 AND FOR OTHER PURPOSE, Pub. L. 118-50 (April 24, 2024), which contains the PROTECTING AMERICANS FROM FOREIGN ADVERSARY CONTROLLED APPLICATIONS ACT otherwise known as the "Tik Tok Ban Bill." *Id.* (forcing the divestiture of ByteDance's app TikTok due to national security concerns related to ByteDance's control by and ties to the Chinese Communist Party). Even before the Tik Tok Ban Bill, Congress banned the use of equipment manufactured by certain Chinese manufacturers in the National Defense Authorization Act, 2024, specifically banned Chinese nationals from working in sensitive military positions, banned the export of arms to China through the International Trafficking in Arms Regulations, and placed Chinese companies on terrorists watch lists. National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31 §§ 805, 1260H; 22 C.F.R. § 126.1. With these statutes and regulations,

which represent only a sample of the numerous laws, regulations, and policy positions of the U.S. government, it is the position of the United States government that Chinese Communist Party controlled companies pose a real, legitimate, and imminent threat to the security of the United States of America. *Id.* Unless Gotion’s position is that the entirety of the United States government is xenophobic (a position that would itself demonstrate the weakness of Gotion’s position), Gotion’s hyperbolic reaction to Plaintiffs’ well-pled allegations deserves no credence from this Court and the Motion to Strike should be denied.

**B. NATIONAL SECURITY CONCERNS IMPLICATE PUBLIC SAFETY AND THUS CAN BE RAISED WITHIN THE SCOPE OF A NUISANCE OR REZONING CHALLENGE.**

This leaves Gotion’s assertion that national security is irrelevant to Plaintiffs’ claims. This is simply incorrect. Plaintiffs have brought a nuisance claim and, in Illinois, nuisance claims include the public right to safety. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 370-71, 821 N.E.2d 1099, 290 Ill. Dec. 525 (2004) (“[s]uch rights include the rights of public health, public safety, public peace, public comfort, and public convenience.”). In fact, public nuisance traditionally has been understood to cover a tremendous range of subjects.<sup>2</sup> *Michigan v. U.S. Army Corps of Engineers*, 667 F.3d 765, 771 (7th Cir. 2011); *McCarthy v. Kunicki*, 355 Ill. App. 3d 957,

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<sup>2</sup> Illinois courts recognize that nuisance “includes interferences with the public health, as in the case of a hogpen, the keeping of diseased animals, or a malarial pond; with the public safety, as in the case of the storage of explosives, the shooting of fireworks in the streets, harboring a vicious dog, or the practice of medicine by one not qualified; with public morals, as in the case of houses of prostitution, illegal liquor establishments, gambling houses, indecent exhibitions, bullfights, unlicensed prize fights, or public profanity; with the public peace, as by loud and disturbing noises, or an opera performance which threatens to cause a riot; with the public comfort, as in the case of bad odors, smoke, dust and vibration; with public convenience, as by obstructing a highway or a navigable stream, or creating a condition which makes travel unsafe or highly disagreeable, or the collection of an inconvenient crowd; and in addition, such unclassified offenses as eavesdropping on a jury, or being a common scold.” *Michigan v. U.S. Army Corps of Engineers*, 667 F.3d 765, 771–72 (7th Cir. 2011), quoting Keeton, et al., *Prosser and Keeton on Torts* § 90, at 643–45 (5th ed.1984). If problematic operas and fireworks constitute a nuisance, certainly official national security concerns validly fall within the scope of a nuisance claim as well.

964–65, 823 N.E.2d 1088, 1095 (2005). Gotion offers no legitimate basis for excluding national security from the scope of the definition of public safety. *See* PUBLIC SAFETY, Black's Law Dictionary (11th ed. 2019) (“The welfare and protection of the general public, usu. expressed as a governmental responsibility.”); *see also* NATIONAL SECURITY, Black's Law Dictionary (11th ed. 2019) (“The safety of a country and its governmental secrets, together with the strength and integrity of its military, seen as being necessary to the protection of its citizens.”).

Gotion claims that no zoning case has involved national security (Gotion Memorandum in Support of Motion to Strike at ¶ 10), but this misses that the allegations also implicate the nuisance challenge and, more pertinent, simply reveals the highly unusual and unprecedented nature of what is occurring here. Courts of the past never had to face the Soviet Union attempting to operate dangerous plants in small-town America. Courts of today, including this one, do. In fact, contrary to Gotion’s position, it would be illogical to claim that national security is *not* encompassed within public safety and vice versa; as much as the public has a right to be free from crime, dangerous chemicals, pollution, etc., it has a right to national security. *See Trump v. Hawaii*, 585 U.S. 667, 685 (2018) (“Based on that review, the President found that it was in the national interest to restrict entry of aliens who could not be vetted with adequate information—both to protect national security and public safety, and to induce improvement by their home countries.”); *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1909–10, (2019) (Ginsburg, J. concurring) (“The Federal Government regulates much of this process, primarily to protect public health and safety from radiation, but also for national security reasons.”); *United States v. Leahy*, 169 F.3d 433, 444 (7th Cir. 1999) (“If national security, public health, or safety was significantly endangered, the court may increase the sentence above the guideline range to reflect the nature and circumstances of the offense.”); *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789,

822 (1984) (Brennan, J., dissenting) (“As a consequence of this subjectivity, laws defended on aesthetic grounds raise problems for judicial review that are not presented by laws defended on more objective grounds—such as national security, public health, or public safety.”).

Public safety is national security. And by raising allegations that Gotion represents a threat to national security, Plaintiffs have brought a valid claim for nuisance on those grounds. *Gilmore v. Stanmar, Inc.*, 261 Ill. App. 3d 651, 661, 633 N.E.2d 985, 993 (1994) (“The pleading requirements [for nuisance] are not strenuous because the concept of common law public nuisance eludes precise definition and the existence of a nuisance depends on the peculiar facts presented by each case.”) (internal alternations and cites omitted; brackets supplied). That no Illinois court has yet had to face this unprecedented situation in no way diminishes the merits of Plaintiffs’ allegations. *Kirksey v. R.J. Reynolds Tobacco Co.*, 168 F.3d 1039, 1041-1042 (7th Cir. 1999) (“a claim should not be dismissed out of hand just because it is so novel that it cannot be fitted into an existing legal category.”), see also *United States v. Benabe*, 654 F.3d 753, 767 (7th Cir. 2011) (“Our intention is not to quash the presentation of creative legal arguments or novel legal theories asserted in good faith”); *Pa. Chiropractic Ass’n v. Blue Cross Blue Shield Ass’n*, 188 F. Supp. 3d 776, 782 (N.D. Ill. 2016) (“[A] legal theory can be novel without being unjustified; indeed, all legal theories, from the frivolous to the meritorious, must get their start somewhere”). This Court is faced with well-pled, well-developed allegations about an imminent national security concern arising from the Gotion Plant. It should allow these claims, as alleged, to proceed.

### **CONCLUSION**

Gotion bases its Motion to Strike on a mistaken premise that opposition to the Chinese Communist Party is, *despite being the official position of the United States government*, somehow xenophobic, and from that erroneously asserts that national security cannot be a part of public

safety. Despite a hyperbolic brief that at times reads more like an undergraduate's tweets than a legal argument, Gotion fails to even assert that such allegations about its connections to the Chinese Communist Party are, in fact, false. Gotion submits that Plaintiffs are attempting to insert fearmongering into this proceeding, but Plaintiffs are simply attempting to prevent a real threat to their community and public safety. This is a perfectly acceptable and welcome use of a nuisance claim, and this Court should not strike such well-founded pleadings simply because Gotion contests to the truth being submitted to the Court. The Motion to Strike therefore should be denied and this action advanced to discovery.

Respectfully submitted:

ECKLAND & BLANDO LLP

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he caused the above document to be served electronically to all counsel of record for the parties in the above-captioned case by operation of the Court's filing system.

/s/ Robert T. Dube Jr., Attorney