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

Concerned Citizens of Manteno, an Illinois non-profit corporation, and Brian Kovaka, Plaintiffs, v. Village of Manteno, Illinois, an Illinois municipality, Francis Smith, *in his official capacity as Chairman of the Manteno Plan Commission*, 333 South Spruce LLC, and Gotion Inc., a California Corporation, Defendants.	Case No.: 23-ch-37 Judge: Lindsay A. Parkhurst **PLAINTIFFS' CONSOLIDATED MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS OR FOR JUDGMENT ON THE PLEADINGS**

Plaintiffs Concerned Citizens of Manteno ("CCM") and Brian Kovaka (collectively, "Plaintiffs"), as and for their Consolidated Memorandum in Opposition to Defendants Village of Manteno, Illinois, ("Manteno"), Francis Smith, in his official capacity, and Gotion Inc.'s ("Gotion") Motions to Dismiss or for Judgment on the Pleadings, assert as follows:

INTRODUCTION

This action revolves around the dangerous lithium battery plant ("Gotion Plant") that Gotion plans to build at 333 South Spruce Street, Manteno, Illinois ("Gotion Property"), facilitated by Manteno's unsupportable rezoning of the Gotion Property from I-1 to I-2 and its refusal to

enforce the Manteno Code. Gotion and Manteno demonstrate the same hubris and defiance of the law in their motions that they showed in rubberstamping a clearly illegal and irrational rezoning to facilitate a dangerous, nuisance plant. They presume that, because enough money has been dumped by the State of Illinois and Manteno into advancing this hazardous lithium plant, they should be allowed to violate the law and that any opposition to this illegality must be based on inflammatory conspiracy theories.[1] Indeed, it is ironic that Gotion and Manteno repeatedly refer to inflammatory rhetoric, when it is the highly flammable and toxic nature of the lithium and other hazardous chemicals they are bringing into the community that forms the basis of this action. Plaintiffs have pled more than sufficient facts that show there was no rational basis for the rezoning, that the Gotion Plant will operate as a nuisance, and that Gotion intends to violate Manteno Code as forbidden by 65 ILCS 5/11-13-15. For all these reasons, Defendants' effort to thwart this important challenge before it gets started is improper and premature. Accordingly, the Motions to Dismiss should both be denied, and this case should proceed to discovery.

FACTS

Gotion plans to operate a lithium battery plant at the Gotion Property, which lies just 0.64 miles from the Manteno Elementary School, 0.435 miles from a preschool, and within 1200 feet of Brian Kovaka's home.[2] The Gotion Plant will also be directly adjacent to the Prairie Materials

[1] Plaintiffs address at length in their Opposition to Gotion's Motion to Strike why their allegations are accurate, well founded, and relevant. Notably, Gotion and Manteno make no effort to dispute the fact that Gotion's parent company swears fealty to the Chinese Communist Party, nor that Gotion was kicked out by the Muscle Shoals, Alabama community specifically because of national security concerns that such allegiance to an American adversary entail. (Am. Compl. ¶¶ 9-16.) This is because they cannot. So, instead, they turn to smearing the citizens of Manteno in the hopes that simply branding them with derisive labels will cause this Court to overlook their well-pleaded allegations. Such an effort should be soundly rejected by this Court. This case should be decided on the facts alleged and the applicable law – nothing more and nothing less.

[2] These facts are drawn from the November 21, 2023 Rezoning Hearing, in which Gotion laid out its plan for the Gotion Plant and Gotion Property, or from publicly available information.

quarry, which uses explosives to blast rocks; these explosives not only vibrate and rock the Gotion Plant, but rocks have actually punctured the building that will become the Gotion Plant on at least one occasion due to the explosives. (Plaintiffs' First Amended Complaint ("Am. Compl.") ¶¶ 39-42, 49, Exhibit 5.)

Despite this clear hazard, Gotion intends to use the Gotion Plant to manufacture lithium-ion batteries which, by Gotion's own admission, can burst into flames when punctured. (Am. Compl. ¶ 143.) Indeed, a similar plant being built by Gotion has already had lithium fires – even though it is not yet in operation. (Am. Compl. ¶ 83; Gotion Memorandum of Law in Support of Motion for Judgment on the Pleadings or Motion to Dismiss ("Gotion Mem.") at pdf pg. 199:16-200:14.) Manteno is not equipped with any firefighting trucks that can put out a lithium fire; Gotion claims it will use F500 fire extinguishers but does not know if the fire extinguisher has toxic chemicals. (Am. Compl. ¶¶ 65-66.) And, in the event of fire, Gotion plans to move the flaming batteries outside into a dunk tank on the Gotion Property. (Am. Compl. ¶ 87.)

Gotion has admitted that it will use lithium iron phosphate and synthetic graphite but could not answer whether it would use N-Methylpyrrolidone (NMP) or any other chemicals.[3] (Am. Compl. ¶¶ 67-69; Gotion Mem. at pdf pg. 236 – 49:16-51:4.) Lithium iron phosphate is toxic in doses as low as 1.5 to 2.5 mEq/L in blood serum, making it a highly toxic material. (Am. Compl ¶ 70.) Further, lithium iron phosphate is a teratogen in animals, and may be a teratogen in humans as well, meaning it may cause birth defects and impair fertility. (Am. Compl. ¶ 71.) The EPA specifically advises that NMP should not be released into the environment because it causes birth defects, cancer, and toxicity to the immune system and liver. (Am. Compl. ¶ 72.)

[3] Gotion points to the fact that at the public hearing, its officials claimed that synthetic graphite is not highly toxic. (Gotion Mem. at 11-12; *id.* at pdf pg. 276-211:10-212:17.) But Gotion overlooks the fact that its officials said nothing about the toxicity of lithium, NMP, or any other chemical. (*Id.*)

Gotion estimates that two hundred (200) trucks will travel to and from the Gotion Plant *every day* but does not have a hazardous route plan in place. (Am. Compl. ¶ 75.) Further, Gotion is unaware of how the materials (e.g., lithium, synthetic graphite, NMP) will be transported (e.g., truck, train) or what form the materials will be transported (e.g., liquid, dust, or solid bricks). As a result, it is unable to speak to the safety steps that will have to be adopted and implemented to protect the citizens and the environment, merely stating it will "comply with the law." (Am. Compl. ¶¶ 75-76; *see also* Gotion Mem. at pdf 268-178:11-180:9 (Gotion repeatedly refusing to answer what form the lithium will be transported in).)

The Manteno Code provides that:

> No land or building in any I-1 or I-2 district which shall be used, occupied or operated in such a manner so as to create any dangerous, *injurious, noxious or otherwise objectionable, fire, explosive or other hazard*; noise or vibration, smoke, dust, dirt or other form of air pollution; electrical or other disturbance; glare; or *other substance, condition or element in such amount as to adversely affect the surrounding area or premises at the specified point or points of the determination*.

Manteno Code §§ 9-9C-2(B)(1), 9-9C-4 (emphases added). The Manteno Code further provides that "[a]ny use that creates any external odor, smoke, dust, noise or glare or that involves the use of any radioactive or *highly toxic materials*, as determined by the code enforcement officer" is illegal. Manteno Code § 9-9B-7 (emphasis added).[4]

Ryan Marion, as the Code Enforcement Officer, was specifically asked by CCM member Annette Lamore what his determination was regarding highly toxic materials, and he responded

[4] Manteno claims that the definition of "highly toxic" is governed by Manteno Code § 8-1-13 which incorporates the 2015 International Building Code and 2015 International Fire Code. (Manteno Memorandum in Support of Motion to Dismiss ("Manteno Mem.") at 10.) But such incorporation is found nowhere in Manteno Code Article 9, and even if Article 9 does incorporate that definition, this does not change the fact that NMP and certain forms of lithium are highly toxic and that Gotion either refused or was unable to identify all the chemicals and products it will use at the Gotion Plant. Further, Manteno appears to argue that highly toxic chemicals are permissible under I-2 zoning. (Manteno Mem. at 10). This is clearly false. *See* Manteno Code § 9-9B-7.

"[t]his was discussed and presented at the public hearing to the planning commission and village board members that were in attendance." (Am. Compl. ¶ 74.) Thus, Marion ruled that, despite Gotion failing to provide any detailed information about its intended chemical use, there was no code violation.[5] Further, Manteno Code § 9-9B-9(A),(C),(H) specifically prohibits the storing or placing of hazardous material outside. *See* Manteno Code § 9-9B-9(A),(C),(H).

Moreover, while Manteno's 2006 Comprehensive Plan states that it supports the development of I-1 light manufacturing down the Route 50 corridor south of Manteno and the "promot[ion of] Manteno as a distribution center to bring light manufacturing [I-1] business", the plan nowhere states that Manteno intends to support or develop I-2 *heavy manufacturing*. (Am. Compl. ¶¶ 29-30 (citing 2006 Comprehensive Plan at 47, 53).) The 2006 Comprehensive Plan also includes, *inter alia*, a requirement for a mile long stretch from Route 45-52 to Spruce Street to serve as "new Manteno's future Main Street, emphasizing those characteristics that create an appealing and safe environment for users, including street facing buildings, pedestrian scale lighting, controlled traffic access and an interconnected sidewalk system." (Am. Compl. ¶ 28 (citing 2006 Comprehensive Plan at 67).) Manteno is bound by this Comprehensive Plan to guide its rezoning; the rezoning at issue here did not follow the Comprehensive Plan.

STANDARD OF REVIEW

A motion to dismiss brought under section 2–615 of the Illinois Code of Civil Procedure tests the legal sufficiency of a complaint. 735 ILCS 5/2–615; *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 305 (2008). A plaintiff succeeds on a section 2–615 inquiry when the allegations of the

[5] By referring Mrs. Lamore to the Plan Commission meeting on November 21, 2023, following which the Plan Commission adopted findings of facts approving the Rezoning Application, the Plan Commission effectively affirmed Marion's decision. *Goral v. Dart*, 2019 IL App (1st) 181646, ¶ 60, *aff'd*, 2020 IL 125085, ¶ 60 (finding no requirement to seek administrative appeal when doing so would be futile).

complaint are sufficient to establish a cause of action upon which relief may be granted. *Id*. When making this inquiry, the court must construe the allegations in the light most favorable to the plaintiff and take all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true. *Id.* A plaintiff is not required to set forth evidence in the complaint; rather they need only allege facts that, if proven, would be sufficient to bring a claim within a legally recognized cause of action. *Marshall v. Burger King Corp*., 222 Ill. 2d 422, 429–30 (2006). Accordingly, a claim should not be dismissed pursuant to section 2–615 unless no set of facts can be proved which would entitle the plaintiff to recover. *Napleton,* 229 Ill. 2d at 305.

A trial court properly grants a motion for judgment on the pleadings only when the pleadings disclose no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. *State Bldg. Venture v. O'Donnell*, 239 Ill. 2d 151, 157–58 (2010) (citing *Pekin Insurance Co. v. Wilson*, 237 Ill.2d 446, 455 (2010)). "For purposes of resolving the motion, the court must consider as admitted all well-pleaded facts set forth in the pleadings of the nonmoving party, and the fair inferences drawn therefrom." *Id.* (quoting *Employers Insurance of Wausau v. Ehlco Liquidating Trust,* 186 Ill.2d 127, 138 (1999)).

When bringing a motion based on section 2–619 of the Illinois Code of Civil Procedure challenging standing, all the well-pleaded facts are deemed admitted and the moving party "admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter that avoids or defeats the claim." *Becker v. Zellner*, 292 Ill. App. 3d 116, 122 (1997) (quoting *Brock v. Anderson Road Ass'n*, 287 Ill.App.3d 16, 21 (1997)); 735 ILCS 5/2–619(a). A section 2–619 motion is only granted if "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." *Id.* Lack of standing is an affirmative matter that may be asserted in a 2–619 motion; however, a plaintiff need not allege facts establishing

standing. *Winnebago Cnty. Citizens for Controlled Growth v. Cnty. of Winnebago*, 383 Ill. App. 3d 735, 739 (2008). Rather, it is the defendant's burden to plead and prove lack of standing. *Id*.

ARGUMENT

In their Motions to Dismiss, Defendants Gotion and Manteno divert attention from the facts of the Gotion Plant development, begging this Court to believe that they have not erred in the project's development thus far, and will not err at any time in the future. Even if this Court believed Gotion's "pinky promise" that it will stay out of trouble, the Gotion Plant's development cannot overcome the existence of highly dangerous, highly toxic chemicals that are necessary to achieve its purpose of functioning as a lithium-battery manufacturing plant. Moreover, by rubber-stamping Gotion's requests for rezoning of the Gotion Property, Manteno has engaged in unconstitutional actions that clearly do not benefit the citizens of Manteno but instead reveal Manteno's blind allegiance to Gotion. Due to these underlying facts, Defendants' conclusory attacks fly in the face of Plaintiffs' well-pleaded Complaint. Defendants' Motion to Dismiss and for Judgment on the Pleadings must be denied.

I. PLAINTIFFS HAVE PLED SUFFICIENT FACTS TO CHALLENGE THE REZONING OF THE GOTION PROPERTY.

A. There Exists No Rational Basis for Manteno's Rezoning of the Gotion Property to I-2.

Gotion and Manteno make the specious claim that because Plaintiffs have attached the Plan Commission's Finding of Fact to their Complaint, they have unwittingly established a rational basis for the rezoning. But this assertion screens this Court from the underlying issue: that the Finding of Fact *itself* is inadequate to support a rational basis. Gotion's attempt to divert this Court from scrutinizing the actual bases of the rezoning decision fails, as an assessment of the underlying decision quickly shows it cannot pass the rational basis test.

1. *Manteno's rezoning advantages only a single property owner and fails to otherwise benefit the public welfare.*

At its core, Plaintiffs' Complaint alleges that in direct violation of its 2006 Comprehensive Plan, Manteno rezoned the Gotion Property to advantage a particular property owner—Gotion (through 333 South Spruce LLC)—and that the public welfare is quite clearly harmed by that decision. Because "[t]he singular focus is on whether the public welfare justifies the zoning restriction," it is irrelevant "who or how many people wanted it." *Drury v. Vill. of Barrington Hills*, 2018 IL App (1st) 173042, ¶ 91, 99. As a preliminary matter, Gotion's memorandum (really a public relations pamphlet) regarding Gotion's interest in wanting the Gotion Plant to proceed is irrelevant to this Court because, if the "*only* justification for the ordinance is that a chosen few individuals wanted it, [the Illinois] supreme court has typically invalidated that ordinance." *Id.* ¶ 99. (Gotion Mem. at 2.) Here, as Manteno admitted in passing the Rezoning, the decision can be justified only by Gotion's desire to rezone "to use the Subject Property for lithium battery manufacturing, lithium battery pack manufacturing, production of energy storage systems and other uses necessary,". (Gotion Mem. at Ex. F (Ordinance No. 23-09 recitals).)

Manteno further shot itself in the foot by rubber-stamping the Plan Commission's conclusory Findings of Fact, which are devoid of analysis. (Gotion Mem. at pdf pg. 90-96.) Just as in *Drury*, where the court identified the "findings of fact" to be short on the required facts, or rather, a "document [that] was nothing but a curt conclusion designed to satisfy the constitutional requirement that zoning ordinances bear a rational relationship to the public welfare," the findings of fact are comparatively farcical. *Drury v. Vill. of Barrington Hills*, 2018 IL App (1st) 173042, ¶ 107. Here, the Findings of Fact contain no factual assertions (except for prospective expectations of the development), no "because" statements, and no true analysis of the property conditions. (*See* Am. Compl. Ex. 4.) Neither do the Findings of Fact address any of the important, reasonable points

of concern brought up by Plaintiffs throughout the public hearing process. (*See, e.g.*, Am. Compl. ¶¶ 59, 61-62.); *see also Drury* 2018 IL App (1st) 173042 at ¶ 109 ("Still, the fact that the Board, according to the complaint, rushed through an amendment, after identifying several reasonable and important concerns but then failing to resolve them, is at least a relevant factor in determining whether Ordinance 14-19 was adopted for the public welfare or for unrelated reasons.") Thus, the rezoning ordinance was clearly adopted for reasons unrelated to public welfare.

Despite the woefully inadequate Findings of Facts, Defendants ask this Court to hold that Plaintiffs have somehow acknowledged a rational basis for Manteno's rezoning by the mere act of including those Findings of Facts as an exhibit to the Amended Complaint. (Gotion Mem. at 16-17, 23; Am. Compl., Ex. 4.) This is absurd. If it were the standard that a rational basis standard could automatically be met by simply pointing to the Findings of Fact that purport to support the challenged action, plaintiffs would simply omit findings of facts from their pleadings to survive at the pleading stage. Merely including the Findings of Facts cannot be sufficient to show a rational basis especially where, as here, those findings of facts are woefully inadequate. Here, in addition to the issues identified above, the Findings of Facts were perfunctory because Manteno applied boilerplate language that did not address a single issue raised in the multi-hour rezoning hearing, instead adopting Gotion's submission verbatim—a fact Gotion conveniently fails to direct this Court's attention to. (Am. Compl. ¶¶ 94-95, n. 13.) In fact, the Findings were so inadequate that Manteno could not even get the letterhead right (using CCM letterhead instead of Manteno letterhead). Gotion cannot circumvent the requirement for rezoning decisions to be based on a rational basis by pointing this Court to its own, self-interested Findings of Fact. (Gotion Mem. at 17.) In effect, it would be asking this Court to accept a rational basis exists because Manteno says there's a rational basis; this circular logic would obliviate the role of the Court and must be rejected.

Gotion's strong reliance upon *Strauss v. City of Chicago* to support a dismissal of the complaint is misplaced. 2021 IL App (1st) 191977, at ¶ 42, *affirmed on other grounds* 2022 IL 127149; (Gotion Mem. at 16.) In *Strauss*, the plaintiffs identified the pre-existing problems with the land zoned in its pre-existing classification in the complaint itself, which defendants could easily show served as a rational basis to rezone. *Id.* ¶ 42. Here, however, the Plaintiffs are not alleging any issues whatsoever with the pre-existing classification of the Gotion Property as I-1; they instead plead issues with Manteno's rezoning of the property to I-2. (Am. Compl. ¶ 110-17.) *Strauss* is therefore inapposite, and Plaintiffs have clearly pled a sufficient case to show the Rezoning was undertaken purely to benefit Gotion, without any corresponding public benefit.

2. *There Exists No Real or Substantial Relation Between the Rezoning Decision and any Benefit to the Public.*

Gotion and Manteno live in a fantasy world, where Plaintiffs did not plead what they pled and where their Amended Complaint does not set forth the facts that are clearly on the page. Contrary to Gotion and Manteno's arguments, Plaintiffs have pled more than sufficient facts to challenge the rezoning of the Gotion Property from I-1 to I-2 by showing that rezoning action and Manteno's underlying decision "bear[s] no real and substantial relation to the public health, safety, morals, comfort and general welfare." *La Salle Nat. Bank of Chicago v. Cook Cnty.*, 12 Ill. 2d 40, 46 (1957).

As a preliminary matter, Plaintiffs address Manteno's red herring attempt to force Plaintiffs into a "facial attack" box—despite *Napleton*'s assertion that a plaintiff must choose to advance either a "facial attack" or an "as-applied challenge", *Drury* makes clear that the distinction is meaningless as applied to pleadings. *See Drury*, 2018 IL App (1st) 173042, ¶ 116. The facial vs. as-applied classification "merely speaks to the ambitious remedy it seeks, an invalidation of the statute in all respects." *Id.; Citizens United v. Federal Election Commission*, 558 U.S. 310, 331

(2010) ("[T]he distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge."); *Paul v. County of Ogle*, 2018 IL App (2d) 170696, ¶ 28. Defendants' reliance on the outdated *Napleton* decision is misplaced in light of the United States Supreme Court's clear direction in *Citizens United*, as recognized by *Drury*. *See also As–Applied and Facial Challenges and Third–Party Standing*, 113 Harv. L.Rev. 1321, 1339 (2000) ("[O]nce a case is brought, no general categorical line bars a court from making broader pronouncements of invalidity in properly 'as-applied' cases."). Plaintiffs are challenging the Rezoning and, regardless of the form of challenge, this Court analyzes the *La Salle* factors.

Turning to the *La Salle* analysis then, though the rational basis standard is forgiving, "it's not a rubber stamp." *Drury*, 2018 IL App (1st) 173042, ¶ 14 (citing *People v. Boeckmann*, 238 Ill. 2d 1, 7 (2010)). The Illinois Supreme Court has made clear that "the validity of a zoning ordinance must be determined according to its own facts and circumstances." *La Salle Nat. Bank of Chicago*, 12 Ill. 2d at 46. To analyze those facts and circumstances, and consider whether Manteno had a rational basis to rezone, this Court balances the *La Salle* factors:

> (1) The existing uses and zoning of nearby property, (2) the extent to which property values are diminished by the particular zoning restrictions, (3) the extent to which the destruction of property values of plaintiff promotes the health, safety, morals or general welfare of the public, (4) the relative gain to the public as compared to the hardship imposed upon the individual property owner, (5) the suitability of the subject property for the zoned purposes ***, and (6) the length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the subject property.

Id. at 46-47*; see also Rodriguez v. Henderson*, 217 Ill. App. 3d 1024, 1030 (1991) (holding that a challenge to a rezoning ordinance that allows a new use is notably different than *La Salle* and so application of *La Salle* may differ). Courts also consider (1) the evidence of community need for

the use proposed and (2) the care with which the community has undertaken to plan its land use development." *Id.* (citing *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill. 2d 370, 378 (1960)). Of these, no one factor is controlling. *Id.* (citing *La Salle*, 12 Ill. 2d at 46-47.) Contrary to the tenor of Defendants' Motions, "[i]n Illinois, a pleader is not required to set forth his evidence. To the contrary, a pleading is only required to allege ultimate facts and not the evidentiary facts tending to prove such ultimate facts." *Zeitz v. Village of Glenview*, 227 Ill. App. 3d 891, 900 (1992) (citing *Board of Education v. Kankakee Federation of Teachers*, 46 Ill.2d 439, 447 (1970)). "[A] complaint does not fail simply because it does not allege facts in support of each and every factor." *Whipple v. Village of North Utica*, 2017 IL App (3d) 150547, ¶ 26 (citing *Rodriguez*, 217 Ill. App. 3d 1024, (1991)).

In fact, "[t]he *La Salle* factors have consistently been used to judge the strength of a plaintiff's case after a full presentation of evidence *at trial*;" "[n]ot all of them can even be meaningfully applied at an earlier stage." *Rodriguez*, 217 Ill. App. 3d 1024, 1030 (1991) (emphasis added). The *Rodriguez* court reversed the circuit court's dismissal of the objecting neighbors as-applied challenge of a rezoning and held that the plaintiffs did indeed meet a significant number of the *La Salle* factors and thereby stated a constitutional claim. *Id.* at 1034. The *Rodriguez* court held, "while failure of a complaint to plead a cause of action in terms of all the *La Salle-Sinclair* factors may indicate its vulnerability to dismissal, dismissal should not occur if the pleading theory otherwise supports a claim of unconstitutional arbitrariness or capriciousness." *Id.* at 1029-30. Plaintiffs have exceeded the *Rodriguez* bar.

Here, Plaintiffs pled facts supporting each *La Salle* factor, thereby presenting a sufficient case of unconstitutional arbitrariness that re-zoning to I-2 is not reasonably related to a legitimate government interest and was not a reasonable method to achieve that purpose. *See Whipple v. Vill.*

of N. Utica, 2017 IL App (3d) 150547, ¶ 26 (finding error in dismissal after *La Salle/Sinclair* criteria). First, Plaintiffs have alleged that the existing uses and zoning of nearby property is different than the newly re-zoned I-2 Gotion Property, as none of the properties surrounding the Gotion property are I-2; the surrounding lots are zoned C-2 to the north, C-2 to the east, and only two lots on the south end of the east side of Spruce Street are zoned I-1. (Am. Compl. ¶¶ 46-47, 110.) Second, Plaintiffs have alleged that property values will be diminished by the particular zoning restrictions at issue because of the use of highly toxic materials, substantial increase in truck traffic, increased risk of dangerous fires, and overall hazard risk. (*Id*. ¶¶ 104, 111, 132, 149-53 (related to property value); *see also id.* ¶¶ 63, 68, 70, 75, 89, 141-43 (regarding diminished value)). Third, Plaintiffs have alleged that the destruction of property value will not promote the "health, safety, and general welfare of the public," but in fact, do the exact opposite by exposing the citizens of Manteno to toxic and highly toxic materials, fire risk, dust, and pose a significant safety risk due to the parent company's connections to and control by the Chinese Communist Party. (*Id*. ¶¶ 70-72, 75-78, 89, 113.) Fourth, Plaintiffs have alleged that the relative hardship to Gotion is minimal because Gotion is in the preliminary stages of constructing the Gotion Plant and because the Gotion Property value will not be diminished by being zoned I-1 instead of I-2. (*Id*. ¶ 111, 145.) Fifth, Plaintiffs have alleged that the subject property is not suitable for the zoned purpose because of the adjacent quarry that frequently uses explosives, the close proximity of residential housing and schools, and the substantial rework necessary to turn a distribution center into a manufacturing plant. (*Id*. ¶¶ 39, 41, 49, 114.). Sixth, Plaintiffs have alleged that the Gotion Property has only been vacant for three years, two of which were in the depths of the Covid-19 pandemic, and the rezoning to I-2 would violate the Village's 2006 Comprehensive Plan's vision for main street, I-1 development, and the placement of industrial properties. (*Id*. ¶¶ 115-116.)

Similarly, under the *Sinclair* analysis, the first of those factors (community need) lies in favor of Plaintiffs as the community of Manteno does not need harmful, carcinogenic chemicals seeping into its ground. 19 Ill.2d at 378. Further, the community of Manteno does not need the alleged economic benefits as it is a community with ample opportunity for employment; it has flourished before the existence of the Gotion Plant and could continue to do so without it. *Id.* The second *Sinclair* factor (community care in land planning) also tips in Plaintiffs' favor, as a comprehensive plan does exist, and the rezoning ordinance blatantly violates it. *Id.*; (Am. Compl. ¶¶ 115-116.)

In sum, Plaintiffs have alleged numerous facts to support each *La Salle* and *Sinclair* factor that this Court will ultimately balance, even though it need not weigh them at this juncture. *See La Salle Nat. Bank*, 12 Ill. 2d at 46; *Sinclair Pipe Line*, 19 Ill.2d at 378. Plaintiffs have identified the ultimate facts at issue here which further support that there was no rational basis by which the Village rezoned the Gotion Property from I-1 to I-2. *See Zeitz*, 227 Ill. App. 3d at 900. Other courts have found complaints properly alleged harm by addressing the same categories of special damages. *See Vill. of Barrington Hills v. Vill. of Hoffman Estates*, 81 Ill. 2d 392, 398 (1980) (finding municipality will suffer special damages including "diminution in property value," "degradation of ambient air quality due to vehicular exhaust and the increase in sound levels resulting from . . . traffic flows."); *Vill. of Northbrook v. Cook Cnty.*, 126 Ill. App. 3d 145, (1st Dist. 1984) (finding complaint sufficiently alleged injury by stating "the proposed development is inconsistent with the residential character of the adjoining area; that property values in the Village will diminish; that roads will be more congested resulting in safety hazards; that the development will place an increased burden on well water supplies; and that there is insufficient storm water drainage on the subject property."). In fact, "while these effects of the rezoning may appear less

severe than . . . , they nevertheless portend direct, substantial and adverse effects upon the plaintiff." *Vill. of Barrington Hills*, 81 Ill. 2d at 398.

Despite this, Defendants deploy a shotgun approach, blasting an array of string cites in the hopes that it will overcome Plaintiffs' clearly sufficient pleadings. But each of these cases is clearly distinguishable. In *Station Place Townhouse Condo Ass'n v. Village of Glenview*, for example, the complaint was dismissed for "not plead[ing] sufficient facts, making conclusory allegations and allegations that were contradicted by other, more detailed allegations and exhibits." 2022 Ill. App. (1st) 211131, at ¶ 51; (Manteno Mem. at 7.) Here, by contrast, Plaintiffs have set forth sufficient, consistent facts, that conform to the remainder of the allegations and exhibits. (*See generally* Am. Compl.) The case at hand is also a far cry from *Napleton v. Village of Hinsdale*, where the plaintiff failed to set forth almost any facts, but pled only conclusory statements, including that "there was no community need for the amendments." 229 Ill. 2d at 320. Although the Court found in *Napleton* that the plaintiff's allegation that the zoning code amendments diminished her property value was conclusory, it *also* reasoned that allegation was irrelevant because of the claim's context in a facial challenge whereby it could not consider the plaintiff's individual facts and circumstances. *Id.* at n.4. Unlike in *Napleton*, Plaintiffs introduction of diminished property value allegations is relevant because the issue is not limited to the same facial attack restrictions. *Drury*, 2018 IL App (1st) 173042, ¶ 116 ("So any notion that Drury is unable to present evidence that [the Ordinance] bore no substantial relation . . . simply because his challenge is a 'facial' one, is incorrect."). Another important factor that distinguishes this case from both *Station Place* and *Napleton* is that Plaintiffs have established and incorporated facts set forth by Gotion and Manteno themselves; it is not merely Plaintiffs concocting allegations. (*See e.g.* Am. Compl. ¶ 66, 68-69, 76, 78.)

Moreover, while Defendants assert that Plaintiffs are "speculating" regarding the combination or amount of highly toxic materials at issue, any lack of clarity is due to Gotion's and Manteno's lack of transparency or ignorance—and not Plaintiffs' pleading deficiency. (Am. Compl. ¶¶ 66, 69, 75.) Indeed, Gotion's own speculation about the processes and types of chemicals it will utilize at the Gotion Plant is one of the main reasons the rezoning was clearly irrational. If Gotion is unable to specify its intended use to Manteno, then Manteno is necessarily unable to comprehend the totality of the Gotion Plant's uses. At this early stage, the Court's inquiry is limited to determining whether Plaintiffs have set forth ultimate facts supporting an as-applied challenge to Defendant's irrational zoning decision. Despite Defendant's inapposite cites to the contrary, Plaintiffs have clearly met this bar and thus the Motions to Dismiss should be denied.

B. The Rezoning was Illegal Contract Zoning because Gotion Received State and Local Incentive Packages and Manteno Officials, Bound by NDAs, Rezoned in Response.

Plaintiffs have alleged sufficient grounds to support a contract zoning challenge: (1) the existence of contracts between Gotion and the State of Illinois that require Gotion to meet certain criteria to receive money; (2) NDAs signed by Manteno officials that obscure whether additional contracts exist between Gotion and Manteno; and (3) the *La Salle* factors are not met by the rezoning. As such, Defendants' premature Motions to Dismiss the contract zoning claim must fail. *See Chicago Title & Tr. Co. v. Cook Cnty*., 120 Ill. App. 3d 443, 456 (1983) (evaluating contract zoning claim on a judgment as a matter of law); *see also Soc'y of Am. Bosnians & Herzegovinians v. City of Des Plaines*, No. 13 C 6594, 2017 WL 748528, at *9 (N.D. Ill. Feb. 26, 2017) (determining this issue on summary judgment, not a motion to dismiss).

Defendants' contention that Plaintiffs' contract zoning claim is "underdeveloped" is both incorrect and an improper basis for a motion to dismiss. While contract zoning is not *per se* illegal

in Illinois, *Goffinet v. County of Christian,* 65 Ill.2d 40 (1976), the rezoning must still meet the *La Salle* factors and failure to do so mandates reverting the zoning to its original classification. *Lurie v. Vill. of Skokie*, 64 Ill. App. 3d 217, 225 (1978) (holding that whether an ordinance is contract zoning "is to be determined by the tests set out in *La Salle*[.]"); *Am. Nat. Bank & Tr. Co. of Chicago v. Vill. of Arlington Heights*, 115 Ill. App. 3d 342, 345–46 (1983). Here, Plaintiffs alleged in detail, and have expounded at length above in this memorandum why the *La Salle* factors were not met by the rezoning at issue. Accordingly, this claim is more than "developed." *See supra* Section (I)(A); *see also People ex rel. Aurora Nat. Bank v. City of Batavia*, 91 Ill. App. 3d 716, 721–22 (1980) (finding contract zoning where zoning decision indicated that the zoning conditions "were not considered basic to the city's long range plan").

Turning to the contracts behind the contract zoning claim, "[i]llegal contract zoning occurs when a zoning decision is conditioned on collateral agreements whereby a local government barters its legislative discretion for benefits with no bearing on the merits of the zoning application at issue." *Keystone Montessori Sch. v. Vill. of River Forest*, 2021 IL App (1st) 191992, ¶ 39. Here, Plaintiffs have alleged that Manteno and the State of Illinois granted numerous incentives to Gotion (prior to most Manteno officials even knowing the company that was receiving the benefits) to induce it to build the Gotion Plant within Manteno boundaries, and that the rezoning was another step in the large-scale incentive plan.[6] (Am. Compl. ¶¶ 52-56.); *see Hedrich v. Vill. of Niles*, 112 Ill. App. 2d 68, 77–79 (1969) (noting courts are permitted to look into motive of rezoning in contract zoning cases). Further, because Manteno officials have entered NDAs, there is a

[6] *See also* Gotion Mem. at pdf pg 243 – 79:7-17 ("Incentive requirements. Through their [REV] agreement, Gotion is also required to have a contract with a recycling facility or demonstrate its own recycling capabilities and report on that annually. They are also required by that rev act to have a signed **project** labor agreement with the building trades and between the building trades [] and owner and the contractor.").

possibility of additional, undisclosed contracts that would support a contract zoning challenge. *Lys v. Vill. of Mettawa*, 2023 IL App (2d) 220255-U, ¶ 24, *as modified on denial of reh'g* (Oct. 10, 2023), *appeal denied*, 226 N.E.3d 34 (Ill. 2024) ("Here, simply put, this was not a case of illegal secret contract zoning, but rather an example of valid conditional zoning after a public hearing."). This shows (and evidence will affirm), that the "zoning [was] conditioned upon collateral agreements" such that "[t]here is no indication in the record that the rezoning was necessary or that it was granted only after a consideration of the appropriate use of the land within the total zoning scheme of the community." *Cederberg v. City of Rockford*, 8 Ill. App. 3d 984, 987 (1972) (striking down rezoning when it was based on incentives offered by property owner and not public health, safety, comfort, morals, or welfare).

If, as Plaintiffs allege, Manteno rezoned the Gotion Property solely to facilitate the construction of the Gotion Plant in light of Illinois' multi-billion-dollar incentives and Manteno's own tax incentives, and not because the rezoning actually met the *La Salle* factors, then the rezoning necessarily constitutes an illegal contract rezoning. *See Lurie v. Vill. of Skokie*, 64 Ill. App. 3d 217, 225 (1978); *Lys*, 2023 IL App (2d) 220255-U, ¶¶ 23-26. Because Plaintiffs have sufficiently pled the *La Salle* factors and have pled sufficient allegations as to illegal contract zoning contracts, this claim should proceed to discovery.

C. Plaintiffs Have Sufficiently Pled Illegal Spot Zoning Because the Rezoning Violates the 2006 Comprehensive Plan.

Defendants next assert that spot zoning fails as a claim because there are residential and commercial zones near the Gotion Property. However, this ignores the thrust of Plaintiff's argument: that the rezoning was illegal spot zoning because it violates the zoning structure created and envisioned by the 2006 Comprehensive Plan. *Thornber v. Vill. of N. Barrington*, 321 Ill. App. 3d 318, 328–29 (2001) ("The test for determining unlawful spot zoning is whether the change is

in harmony with a comprehensive plan for use of property in the locality.") (citing *Goffinet v. Christian Cnty.*, 65 Ill. 2d 40, 54 (1976)).

Spot zoning is defined as "a change in zoning applied to a small area." *Id.* "Spot zoning is unlawful when the change violates a zoning pattern that is homogenous, compact, and uniform." *Id.* (citing *Bossman v. Village of Riverton,* 291 Ill.App.3d 769, 775 (1997)). A plaintiff will succeed on a spot zoning challenge where it provides "clear and convincing evidence that the amendments to the zoning ordinances violated a comprehensive plan for use of the property in the locality." *Id.*

First and foremost, the case law is clear that whether spot zoning has occurred is an evidentiary question, inappropriate for the motion to dismiss stage. *Id.; see also Hanna v. City of Chicago*, 331 Ill. App. 3d 295, 307 (2002), *overruled on other grounds by Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296 (2008) (holding trial court erred in dismissing spot zoning claim where Plaintiff alleged violation of comprehensive plan and that special district was surrounded by commercial properties). Second, and more pertinent, rezoning the Gotion Property from I-1 to I-2 violates the 2006 Comprehensive Plan. *Cf. Goffinet*, 65 Ill. 2d at 54, 357 N.E.2d at 449 (holding no illegal spot zoning of rezoning from agriculture to industrial where "the [comprehensive] plan has emphasized the importance of shifting from agriculture to industry in the future."). Here, the 2006 Comprehensive Plan does not envision I-2 Zoning at all. Instead, it promotes continuing Manteno as a warehousing center, and specifically envisions I-1 uses placed at a different part of the Village, several miles from the Gotion Property. (Am. Compl. ¶¶ 28-30.) In contrast to this, the Gotion Property is in an area that is envisioned to be a new Main Street for pedestrians, which is of course incompatible with an I-2 zoned, heavy industrial plant using highly toxic lithium and other chemicals. (*Id*.) Third, and finally, the Gotion Property is small enough to constitute spot zoning. *Fifteen Fifty North State Building Corp. v. City of Chicago*, 15 Ill.2d 408, 419 (1958).

As such, Plaintiffs have sufficiently alleged illegal spot zoning so as to warrant denying Defendants' motions to dismiss. *See Hanna*, 331 Ill. App. 3d at 307 ("Given these allegations, which must be taken as true for purposes of a motion to dismiss, we find that the trial court erred in dismissing Hanna's constitutional claim premised upon improper spot zoning.").

II. PLAINTIFFS HAVE SUFFICIENTLY PLED PUBLIC AND PRIVATE NUISANCE CLAIMS BECAUSE THE GOTION PLANT IS HIGHLY PROBABLE TO LEAD TO A NUISANCE.

By arguing that Plaintiffs' public or private nuisance claims are not yet ripe, Gotion misses the fact that a prospective nuisance claim—and injunctive relief—is available when a harmful activity is "highly probable" to lead to a nuisance. *See Whipple v. Vill. of N. Utica*, 2017 IL App (3d) 150547, ¶ 47 (citing *Village of Wilsonville v. SCA Services, Inc.*, 86 Ill.2d 1, 30 (1981)). Because nuisance may affect both a public and private right at the same time, such claims are not mutually exclusive, and both may be brought simultaneously. *Stop NorthPoint, LLC v. City of Joliet*, 2024 WL 208351, ¶ 40.

Plaintiffs pled—and Gotion has acknowledged—that it will engage in using highly toxic chemicals, manufacturing highly combustible batteries, and significantly increasing the use of semi-truck traffic. These uncontested facts create both a public and private nuisance to Plaintiffs.

A. A Nuisance that is "Highly Probable" to Occur is Prospective, not Speculative.

Gotion's own actions have set forth a sequence of actions exposing the fact that a nuisance is highly probable to occur on the Gotion Property. In attempting to dismiss this claim, Gotion obfuscates the concept of speculation with that of immediacy. Just because the harm is not *immediately* occurring, does not indicate harm is not impending. *See* Prosser & Keeton on Torts § 89, at 640–41, W. Page Keeton, et al. (5th ed. 1984) (A "defendant may be restrained from entering upon an activity where it is highly probable that it will lead to a nuisance, although if the possibility is merely uncertain or contingent he may be left to his remedy of damages until after the nuisance

has occurred."). As a result, Illinois cases recognize that "a prospective nuisance may be enjoined where it clearly appears a nuisance will necessarily result." *Fink v. Board of Trustees of Southern Illinois University*, 71 Ill. App. 2d 276, 281 (1966). This makes sense, as waiting for harm to occur precludes the purpose of bringing a prospective nuisance claim. *Village of Wilsonville*, 86 Ill.2d at 27. ("A court does not have to wait for it to happen before it can enjoin such a result."). Instead, where the "defendant is engaged in a hazardous undertaking at an unsuitable location, which seriously and imminently poses a threat to the public health," the court can enjoin the harm before it occurs. *Id*., 86 Ill.2d at 30 (finding plaintiffs sufficiently established that a chemical-waste-disposal site was a current and prospective nuisance because of threat of chemical migration). Even where the company is not yet operating the harmful facility, the activity can be enjoined when a plaintiff can show it is "highly probable" that the activity will cause harm. *Id.* at ¶ 47.

In *Village of Wilsonville*, the court found at trial, after full fact development and introduction of expert witnesses, that a chemical-waste-disposal site would be "highly probable" to lead to a public nuisance and substantial injury if "through either an explosive interaction, migration, subsidence . . . the highly toxic chemical wastes deposited at the site escape and contaminate the air, water, or ground around the site." *Village of Wilsonville*, 86 Ill.2d at 27. Likewise, here, Plaintiffs have supported that the Gotion Plant will bring about a substantial injury and constitute a prospective public nuisance. In fact, Gotion itself has engaged in procuring contracts, tax abatements, and tax incentives (receiving $125 million in capital funding) to ensure the Gotion Plant will be constructed and run as a lithium-battery manufacturing plant. (Am. Compl. ¶¶ 1, 19, 53, 54.) Notably, as a condition of its receipt of $536 million, Gotion *must* create 2,600 full-time jobs, which it has revealed it plans to do by building the Gotion Plant. (*Id*. ¶ 54 (emphasis added).) Where a contract actualizes a nuisance, it is improper to dismiss such prospective harm

as speculative. *See Stop NorthPoint, LLC*, No. 3-22-0517, 2024 WL 208351, at ¶ 59 (Ill. App. Ct., Jan. 19, 2024) ("It makes little sense to foreclose a prospective nuisance action simply because the enabling contract will be actualized in phases or over a period of years.") (citing *Whipple*, 2017 IL App (3d) 150547, ¶ 52. In *Whipple*, the court found that an executed agreement which allowed certain activities constituted a prospective nuisance and established a basis for not viewing allegations of prospective harm as merely uncertain or speculative. *Id.* (nuisance defendant was "allowed to conduct silica sand mining operations 24 hours a day, seven days a week, and to use explosive devices during daylight hours").

In this case, Gotion has already laid out its planned activities for the Gotion Plant in numerous agreements and admitted to nuisance-causing activities in Manteno board meetings. (Am. Compl. ¶¶ 63, 68, 75, 76, 87; Gotion Mem. at Ex. D 21:9-10, 27:9-10, 50:9-17) Similar to *Whipple*, Plaintiffs' prospective nuisance allegations are grounded in the facts Defendants set forth in their agreement, as well as Defendants' own admissions to the Manteno Plan Commission. (*Id.*) Without injunctive relief being granted, Gotion may procure construction permits at any point hereafter and engage in the exact activity it threatens has not yet occurred. (Am. Compl. ¶ 101.) Moreover, the grant of injunctive relief need not be based on entirely objective harm. *See e.g.*, *Fink v. Bd. of Trustees of S. Illinois Univ.*, 71 Ill. App. 2d 276 (1966) (affirming grant of injunctive relief while recognizing harm was largely subjective).

Here, Gotion has acknowledged that it plans to operate whilst a quarry, that uses explosives at a frequent interval, is located adjacent to the property. (*Id*. ¶¶ 39, 41, 84.) That same quarry had previously caused a blast that caused rocks and clay debris to penetrate the roof and create a gaping hole in the then Kmart property building. (*Id*. ¶ 42, Ex. 5.) Because Gotion intends to produce lithium batteries, and lithium batteries can combust spontaneously or when punctured, the risk of

dangerous fires is significantly heightened. (*Id*. ¶ 143); *Midlantic Nat. Bank v. New Jersey Dep't of Env't Prot.*, 474 U.S. 494, 499 n.3 (1986) (chemicals that lead to heightened risk of fire are a danger to the public). Moreover, Gotion has admitted to using highly toxic chemicals in its production process, and that, despite its intention for a "closed loop system," there will be water evaporation into the atmosphere, and it may need 300,000 gallons of water a day from the local water utility. (Am. Compl. ¶¶ 67-68, 76, 78); *Baity v. Gen. Elec. Co.*, 86 A.D.3d 948, 951, (N.Y. Sup. 2011) (holding that "it is well settled that the seepage of chemical wastes into a public water supply constitutes a public nuisance").

Thus, the Gotion Plant will leak lithium, NMP, synthetic graphite, and other harmful and dangerous chemicals into the Manteno community, including the lakes and rivers surrounding the Manteno boundaries. (Am. Compl. ¶ 142.); *Baity*, 86 A.D.3d at 951. And where defendants have presented conflicting evidence regarding the risk of harm, and plaintiffs have established that it was "highly probable" that toxic chemicals could escape through "explosions, migration, subsidence of the site itself, or groundwater," preliminary injunctions have been granted. *Village of Wilsonville*, 86 Ill.2d at 27; *see also Fink*, 71 Ill.App.2d at 282 (enjoining discharge of sewage).

At minimum, this Court has the power to enjoin Gotion's use of highly toxic chemicals and storage of flammable, lithium batteries at the Gotion Plant:

> While, as a general proposition, an injunction will be granted only to restrain an actual, existing nuisance, a court of equity may enjoin a threatened or anticipated nuisance, where it clearly appears that a nuisance will necessarily result from the contemplated act or thing which it is sought to enjoin. This is particularly true where the proof shows that the apprehension of material injury is well grounded upon a state of facts from which it appears that the danger is real and immediate. While care should be used in granting injunctions to avoid prospective injuries, there is no requirement that the court must wait until the injury occurs before granting relief.

Fink v. Board of Trustees of Southern Illinois University, 71 Ill.App.2d 276, 281-82 (1966). Thus, even if this Court finds it does not have the power to prevent the construction of the Gotion Plant, it may prospectively enjoin the use of the harmful, highly toxic chemicals that Defendants admittedly will be using. (Am. Compl. ¶ 67-68.)

Gotion's argument to the contrary is flawed. (Gotion Mem. at 23-24 (citing *Mills v. Village of Milan*, 68 Ill.App.63 (1996)) The *Mills* court found that because the plaintiffs merely pled *an* allegation that there would be a proposed dumping which would emanate odor, and because that activity was presumptively valid and legal, the plaintiffs' complaint was dismissed. 68 Ill.App.2d 63, 69 (1966). Unlike the plaintiff in *Mills*, Plaintiffs here have alleged that not only would the proposed activity emanate pollution by highly toxic chemicals, but the use of such highly toxic chemicals is illegal. (Am. Compl. ¶¶ 87-89, 98-101.) This specific, highly probable injury stands in stark contrast to the speculation of what the dumping site would entail in *Mills*, because here, Gotion has admitted to at least some of the harm that is destined to occur. (Am. Compl. ¶ 68; Gotion Mem. at Ex. D, 27:9-10, 50:9-17.) Again, dissimilar to *Mills*, the activities concerned in this matter are not "presumptively valid and legal" as they were in *Mills* because the planned use of the Gotion Plant violates Manteno Code. (Am. Compl. ¶¶ 87-89, 98-101.)

For similar reasons, Gotion's reliance on *Village of Willow Springs v. Village of Lemont* also misses the mark. 2016 IL App (1st) 152670, ¶ 51. Unlike in *Village of Willow Springs*, where the complaint contained truly general allegations like the "roads will be more congested," Plaintiffs here have established specific facts to support that conclusion—that up to two-hundred additional trucks traversing to the Gotion Plant *per day*, as set forth by Gotion itself. *Id.*; (Am. Compl. ¶ 75.) Whereas in *Willow Springs* the Court dismissed the allegations of prospective harm, noting "at most, a possibility of future harm that is dependent on the specific ways in which the property may

be used;" here, all parties in this matter (Plaintiffs, Gotion, and Manteno) agree that the Gotion Plant will be used for lithium battery manufacturing, as evidenced by Manteno's own rezoning ordinance. (Gotion Mem. at Ex. F (citing to Gotion's planned use in recitals of Ordinance No. 23-09).) In sum, Gotion's planned use as a lithium battery plant is categorically distinct from *Willow Springs*, where the planned use was not certain. 2016 IL App (1st) 152670, ¶¶ 4, 51.

Moreover, Gotion cannot hollowly rely upon the statements contained in the Plan Commission and Village Board's Findings of Fact (which Gotion itself drafted), to suggest that it will *never* cause a public nuisance because those Findings are not binding, and do not require Gotion to abide by them in the future. (Gotion Mem. at 22.) Nor does the involvement of government or promise that government will have oversight of the nuisance negate the ability for a plaintiff to claim nuisance. *Whipple v. Vill. of N. Utica*, 2017 IL App (3d) 150547, ¶ 45, citing *Village of Bensenville v. City of Chicago*, 389 Ill. App.3d 446, 494 (2009) ("Moreover, the existence of possible government oversight does not prevent nuisance or provide the appropriate recourse under a prospective nuisance claim.").

In sum, courts have indeed enjoined prospective nuisances before, and can do so under the facts presented here. *See Village of Wilsonville v. SCA Services, Inc*., 86 Ill.2d 1, 30 (1981) (injunction affirmed against the operation of a chemical-waste-disposal site).

B. Kovaka and CCM Have a Sufficient Possessory Property Interest Adjacent to or Nearby the Gotion Property to Bring a Public Nuisance Claim.

A prospective nuisance claim can be brought by plaintiffs that allege "a possessory interest in property adjacent to or nearby" the site of the nuisance. *See Whipple v. Vill. of N. Utica*, 2017 IL App (3d) 150547, ¶ 18; *see also Stop NorthPoint, LLC*, 2024 IL App (3d) 220517 at ¶ 50 (finding only those plaintiffs that specifically allege to "possess property interests that would neighbor" the site or otherwise "be directly impacted by it in some way," have standing to bring these nuisance

claims). Because Plaintiffs hold possessory interests that either neighbor or are adjacent to the Gotion Property, each has sufficiently pled standing. *See* ADJACENT, Black's Law Dictionary (11th ed. 2019) (noting the definition of "adjacent" means to be "lying near or close to, but not necessarily touching."); *see also* Section III, *infra* (discussing Plaintiffs' standing). Likewise, here, Plaintiff Kovaka owns and resides at a parcel of real estate that lies within 1200 feet of the Gotion Plant—undeniably near or close to the property. (Am. Compl. ¶ 5.) In addition, numerous individuals who are members of CCM, including Kovaka, live near or close to the Gotion Plant. (Am. Compl. ¶ 4.) At this stage, the nearness of Kovaka and additional CCM individuals to the Gotion Plant is sufficient for this Court to find each has standing to bring the prospective public nuisance claim. (Am. Compl. ¶¶ 4-5.)

C. The Public Has a Right To Be Free From the Dangerous Conditions that the Gotion Plant Will Necessarily Create.

Contrary to Defendants' attack, even a cursory read of Plaintiffs' Amended Complaint reveals numerous allegations describing the existence of these public rights at issue. *City of Chicago v. Beretta U.S.A. Corp*., 213 Ill. 2d 351, 370-71 (2004) (identifying "the existence of a public right" as the first element in a public nuisance claim). The public generally has a right to "public health, public safety, public peace, public comfort, and public convenience." *Id*. In turn, case law in Illinois recognizes that the public right of safety cases usually involve the storage of explosives, blasting, or the presence of unsafe buildings. *Id.* The right to public comfort is disrupted by "odors, fumes, dust, and other sources of pollution." *Id.* at 372. Though a plaintiff need not set forth the exact right it wishes to opine on, Plaintiffs have sufficiently pled the existence of a public right of safety and of public comfort—rights commonly shared by the public.

For example, Plaintiffs have established the dangerous components that Gotion will use, which will substantially and unreasonably interfere with Plaintiffs' right to safety and to comfort.

(*See* Am. Compl. ¶ 64 ("lithium-ion batteries combust when punctured); ¶¶ 67-68 (stating that Gotion will be using highly toxic chemicals, including lithium iron phosphate and synthetic graphite, and potentially N-methylpyrrolidone; ¶ 76 (Gotion admitting that there will be water evaporation into the atmosphere); ¶ 78 (Gotion claiming it will need 300,000 gallons of water from local water utility that will be directed to the regular sewer mains); *Baity*, 86 A.D.3d at 951; *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 206 (1997) (describing a nuisance as "smoke, fumes, dust, vibration, or noise produced by defendant on his own land"); *People ex rel Traiteur v. Abbott*, 27 Ill. App.3d 277, 282 (1975) (alleged invasion consisted of noise and odors); *Woods v. Khan*, 95 Ill.App.3d 1087, 1090 (1981) (alleged invasion consisted of odors and flies). Plaintiffs then connect those dangerous elements to the impending effects.[7] (*See* Am. Compl. ¶ 143 ("heightened risk of dangerous fires . . . because, by Gotion's own admission, lithium batteries can combust spontaneously or when punctured."); ¶ 141 ("in operation, [the Gotion Plant] will degrade the air and water of the community . . . significantly increasing the risk and prevalence of liver disease); ¶ 89 (alleging west winds will blow the "evaporated water, toxic fumes, and other chemical issues over the core of Manteno)).

Far less compelling facts have survived the motion to dismiss stage for a public nuisance claim. *See Stop NorthPoint, LLC v. City of Joliet*, 2024 IL App (3d) 220517 (plaintiffs survived a motion to dismiss by pleading there would be a "significant increase in semi-truck traffic, which will lower plaintiffs' property values and generate constant noise, vibration, and light pollution, rendering plaintiffs' homes unhealthy and untenantable," as well as "the increased truck traffic will

[7] In addition, Plaintiffs have pled that the national security risks posed by Defendants' involvement with the Chinese Community Party have caused additional grounds for public nuisance. Plaintiffs have a right to public safety, which is violated by the construction of the Gotion Plant in their community. *City of Chicago*, 213 Ill. 2d at 370-71. This claim is further supported in Plaintiffs' Opposition to Gotion's Motion to Strike. (*See* Pl. Opp. to Gotion's Motion to Strike.)

substantially increase environmental pollutants, in the form of smoke, fumes, and soot"). Here, Plaintiffs have pled entirely similar facts; that, by Gotion's own admission, there will be approximately two hundred (200) trucks traveling to and from the Gotion Plant per day. (Am. Compl. ¶ 75.) This significant increase in semi-truck traffic will lower plaintiffs' property values, generate constant noise, vibration, and light pollution, and render plaintiffs' home unhealthy and untenable. *Stop NorthPoint, LLC*, 2024 IL App (3d) 220517, at ¶ 43 (finding the same conditions created a prospective public nuisance that deserved injunctive relief to prevent its harm); *see also Avery v. GRI Fox Run, LLC*, 2020 IL App (2d) 190382, ¶ 44, 160 N.E.3d 155, 169 ("Common examples of a private nuisance are smoke, fumes, dust, vibration, or noise produced by the defendant on its own land and impairing the use and enjoyment of the neighboring land."). And that is only part of Plaintiffs' claims, as Plaintiffs have further alleged additional facts of prospective air and water pollution, amongst others. *Id.* (air pollution constitutes nuisance). Clearly, Plaintiffs have far exceeded the threshold for supporting their prospective public nuisance claims, and this Court must find that an injunction is necessary to prevent any occurrence of irreparable harm.

D. Gotion's Use of Highly Toxic Materials Will Invade and Impair Plaintiff Kovaka's Use and Enjoyment of His Adjacent Property.

Gotion's attempt to dismiss Kovaka's private nuisance claim based on Kovaka allegedly having a "subjective and unsupported fear" amounts to a premature and inappropriate assessment of reasonableness. Yet again, to wait until the private nuisance has occurred in this matter would be too late to act. *See Village of Wilsonsville v. SCA Services, Inc.*, 86 Ill. 2d 1, 25 (1981) ("[A]n anticipated nuisance may be enjoined preemptively if its threatened or potential harm is highly probable."). Here, Kovaka has pled sufficient grounds to establish a private nuisance claim and can bring a prospective private nuisance claim.

A private nuisance is the substantial invasion of a person's interest in the use and enjoyment of his property. *Helping Others Maintain Env. Standards v. Bos*, 406 Ill.App.3d 669, 689 (2010). Whether particular conduct constitutes a "nuisance" is determined by the conduct's effect on a reasonable person. *Whipple v. Village of North Utica*, 2017 IL App (3d) 150547 ¶ 45. A "nuisance must be physically offensive to the senses to the extent that it makes life uncomfortable." *Dobbs v. Wiggins*, 401 Ill.App.3d 367, 375–76 (2010); *see also In re Chicago Flood Litigation*, 176 Ill.2d at 205–06 (2010) (finding a nuisance to be "noise, smoke, vibration, dust, fumes, and odors produced on the defendant's land and impairing the use and enjoyment of neighboring land").

To have standing on a prospective *private* nuisance claim, the plaintiff "must allege a property interest under threat of invasion." *Stop NorthPoint*, 2024 IL App (3d) 220517, ¶ 48. Here, yet again, Kovaka has specifically alleged that he has a property interest because he possesses property that would neighbor the Gotion Plant (Am. Compl. ¶¶ 5, 97,) and/or would be directly impacted by the Gotion Plant in some way. (*Id*. ¶¶ 104, 111, 132.) Then, moving to the substantive allegations, Kovaka has set forth specific facts to support his prospective private nuisance claim because Gotion's use of highly toxic materials, in addition to approximately two hundred (200) semi-trucks egressing to the Gotion Property each day, would reasonably affect his use and enjoyment of his property. (*Id*. ¶ 75.)

In *Stop Northpoint, LLC v. City of Joliet*, the court held that plaintiffs sufficiently pled a prospective nuisance by alleging a significant increase in semi-truck traffic, which would generate additional pollution and lower property values. 2024 IL App (3d) 220517, ¶ 43. The *Stop Northpoint , LLC* court did not require plaintiffs to support their claims—at the motion to dismiss stage—with exact reports of property value evaluations. *Id.* Such an estimation would be impractical at this stage of litigation, as Gotion itself is apparently incapable of identifying which

highly toxic chemicals, and in what quantities, will be used, making it impossible to estimate the extent of the pollution damage. (Am. Comp. ¶ 75.) Instead, the *Stop NorthPoint, LLC* court focused on the risk to the population by considering a public health study, "indicating that constant exposure to even low levels of air pollution increases the mortality risk for older individuals," and finding that would disproportionately subject neighboring individuals to alleged pollutants and raise a sufficient public nuisance claim. *Id.* Likewise, here, Plaintiffs have included multiple resources demonstrating the dangers of each chemical, including that lithium carbonate may be a teratogen in humans, and with long-term exposure, may damage the kidneys, and that NMP should not be released into the environment because "it causes birth defects, cancer, and toxicity to the immune system and liver." (*See* Am. Compl. ¶¶ 70-72.) Though the decrease in value of Plaintiffs' property is cause for concern, the value of Kovaka's ability to live safely and healthily in his home is even more distressing. The substantive merits of the nuisance claims are therefore sufficiently pled.

Because these claims are sufficiently pled for this procedural stage, this action should proceed to discovery, as "[w]hether the complained-of activity constitutes a nuisance is generally a question of fact." *Dobbs v. Wiggins*, 401 Ill. App. 3d 367, 376 (2010); *Pasulka v. Koob*, 170 Ill.App.3d 191, 209 (1988) (same). *Stop NorthPoint, LLC v. City of Joliet*, 2024 IL App (3d) 220517, ¶ 59 ("The court should not attempt, at the pleading stage, to weigh the threatened harm on a 'reasonableness scale.' In resolving a section 2-615 motion to dismiss, the court may not assess whether truck-traffic congestion will necessarily result in a substantial and unreasonable interference with the neighboring residents' property interests."). Because Kovaka has set forth elements of a private nuisance claim, this Court need not assess the reasonability of those facts at this stage. Count V of the Amended Complaint must not be dismissed.

III. PLAINTIFFS HAVE STANDING TO BRING THEIR CLAIMS.

Defendants, not Plaintiffs, bear the burden of establishing a lack of standing. *International Union of Operating Engineers, Local 148 v. Department of Employment Security*, 215 Ill. 2d 37, 45 (2005) (citing *Wexler v. Wirtz Corp.*, 211 Ill.2d 18, 22 (2004); *Chicago Teachers Union, Local 1 v. Board of Education of the City of Chicago*, 189 Ill.2d 200, 206, (2000)). Where standing is challenged by way of a motion to dismiss, a court must accept as true all well-pleaded facts in the plaintiff's complaint and all inferences that can reasonably be drawn in the plaintiff's favor." *Id.* (citing *In re Estate of Schlenker*, 209 Ill.2d 456, 461 (2004)).

Defendants focus much of their efforts on parsing the exact amount of distance between Kovaka's property and the Gotion Plant to assert that Kovaka does not have standing. (Manteno Mem. at 15.) This is an erroneous approach to the issue of standing in rezoning and nuisance claims and invites this Court to embark on a fool's errand of assessing just how close one must be to be affected by lithium fires, toxic chemicals, increased truck traffic, unpotable water and poisoned soil. Whatever that distance may be, it certainly is met by Kovaka, who lives within 1200 feet of the Gotion Plant. (Am. Compl. ¶ 97.) As to CCM, Defendants assert that CCM does not have standing because it is not a property owner, completely failing to recognize CCM's organizational standing in this matter. Each Plaintiff has standing to bring their claims and the Motions to Dismiss on these grounds should be denied.

A. Kovaka Has Standing to Bring Each Claim Asserted.

1. Kovaka has standing to bring his rezoning and nuisance claims because he resides in close proximity to the Gotion Property and has sufficiently alleged the harms he will suffer.

Kovaka has established the substantive grounds for why he can bring his rezoning and nuisance claims in Sections I-II, *supra*, and as such Plaintiffs will not repeat those arguments here.

Aside from its premature substantive arguments against this claim, Manteno also exhumes a clearly inapposite 1907s case in an attempt to claim Kovaka lacks standing because he only lives 1,105 feet from the Gotion Plant. (Manteno Mem. at 15 (citing *lmhurst-Chicago Stone Co. v. Village of Bartlett*, 26 Ill. App. 3d 1021, 1024-25 (1975).) Such an assertion should be laughable on its face: if 1200 feet is sufficient, in the Illinois Assembly's mind, to challenge violations of municipal code that affect a landowner, it is sufficient to have that same violator be a nuisance to the landowner.

Assuming living only 1,105 feet from the Gotion Plant was somehow insufficient, such facts are not properly before this Court. It is well settled that under section 2-619, any grounds for dismissal not appearing on the face of the complaint must be supported by affidavit. *Becker v. Zellner*, 292 Ill. App. 3d 116, 124 (1997). When a defendant grounds their standing argument on extrinsic facts that are not submitted via affidavit, a 2—619 motion is legally insufficient. *Id*. Ignoring this, Manteno asks this Court to rule Kovaka is "too far away, too disconnected" to have standing based on a judicially-noticed map. (Manteno Mem. at 15.) To support this, it points the Court to an inapposite criminal case involving heroin possession, *People v. Clark*, 406 Ill. App. 3d 622, 633-34 (2010), and omits a key part of the language, "while courts will take judicial notice of geographical facts such as the fact that a certain city is located within a certain county, *they generally will not take judicial notice of the precise location of a single city lot or subdivision within city lines*." *Id.* (italicized language omitted by Manteno). Thus, Manteno asks this court to take judicial notice of precisely what it is not supposed to take judicial notice of, under the shadow of an affidavit requirement it makes no attempt to meet. *Becker*, 292 Ill. App. 3d at 124. Any argument as to Kovaka's property distance from the Gotion Plant must therefore be disregarded for failure to comply with Section 2-619's express requirement to provide complaint-external information via affidavit.

2. Kovaka meets the statutory requirements to bring a 65 ILCS 5/11-13-15 claim.

It is not clear to Plaintiffs whether Defendants are challenging Kovaka's standing as to his 65 ILCS 5/11-13-15 claim based on the physical location of his property as they are with his rezoning and nuisance claims. However, it is undisputed that Kovaka lives within 1,200 feet of the Gotion Property and thus may bring suit under for any violations of the Manteno Code. 65 ILCS 5/11-13-15 ("[A]ny owner or tenant of real property, within 1200 feet in any direction of the property on which the building or structure in question is located who shows that his property or person will be substantially affected by the alleged violation"). Notably, 65 ILCS 5/11-13-15 does not require a landowner to be adjacent, adjoining, or abutting the violating property. But even if it required Kovaka to be "adjacent," he is in fact an adjacent landowner and thus has standing to bring his claim. ADJACENT, Black's Law Dictionary (11th ed. 2019) ("Lying near or close to, but not necessarily touching.").

B. CCM Has Organizational Standing to Bring Every Claim Alleged.

CCM has pled sufficient facts to show that it has organizational standing sufficient to bring the rezoning and nuisance claims. To have organizational standing, "(a) [CCM's] members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *International Union*, 215 Ill.2d at 47 (quoting *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)). Here, CCM meets all three of the elements. *People for a Safer Soc'y v. Vill. of Niles*, 2017 IL App (1st) 160674-U, ¶ 26 (finding organizational standing to challenge rezoning decision).

First, Kovaka is a member of CCM; as he meets the adjoining property owner requirement, his standing is imputed onto CCM. *Shoub Properties, LLC v. Vill. of Glen Ellyn*, 2021 IL App (2d)

200342-U, ¶¶ 66-70 (finding standing where "Shoub, a member of Citizens [a non-profit group], is an adjoining property owner); (Affidavit of Brian Kovaka ¶¶ 13-14.) Second, CCM's mission is opposition to the Gotion Plant on "environmental, national security, health, safety, and good governance reasons" (Am. Compl. ¶ 4) and as such "its interest in the [Gotion Plant] and the [Gotion Plant's] effects" on Manteno "is germane to its purpose." *Id.* (finding not-for-profit corporation had standing to challenge alleged violations of a village's code). Finally, nothing about a zoning challenge or a nuisance challenge requires the participation of individual members as the facts necessary for such a violation "can be established through Village records and ordinances, review of applicable statutes, local officials, and other competent witnesses." *Id.* ("As such, participation of individual members is not necessary.").[8]

IV. GOTION'S PLANNED USE OF HIGHLY TOXIC CHEMICALS AND STORAGE OF HAZARDOUS WASTE PROVIDE A SUFFICIENT BASIS FOR KOVAKA TO ENJOIN THE GOTION PLANT'S CONSTRUCTION AND OPERATION UNDER 65 ILCS 5/11-13-15.

A plain reading of Plaintiffs' Amended Complaint shows the specific violations of the Manteno Code Kovaka is asserting constitute a violation actionable under 65 ILCS 5/11-13-15. Despite this, Defendants' basis for asserting that Kovaka's 65 ILCS 5/11-13-15 claim should be dismissed is that it is too "speculative." (Manteno Mem. at 10-11; Gotion Mem. at 15, 21.) First,

[8] Manteno asserts mandamus is an improper remedy for overturning rezoning; this is not why mandamus was brought. Mandamus was brought in this case as an alternative claim in the event the Court found that an injunction or declaratory judgment was not the proper remedy for any of Plaintiffs' claims, but rather that a discrete, non-discretionary act had to be compelled or enjoined. *Beauchamp v. Dart*, 2022 IL App (1st) 210091, ¶ 17 (quoting *Heastie v. Roberts*, 226 Ill. 2d 515, 557-58 (2007)) ("Illinois law unquestionably allows litigants to plead alternative grounds for recovery"). Plaintiffs envision mandamus most likely being necessary if and when the Court orders Manteno to enforce the Manteno Code and prevent the use of highly toxic chemicals, the storage of those chemicals outside, or the prevention of unreasonable fire, noxious fumes, and other risks pursuant to Manteno Code §§ 9-9C-2(B)(1), 9-9C-4. It is for this reason that Francis Smith, as Chairman of the Plan Commission, was included as a party, as the Plan Commission has authority over Ryan Marion, the Code Enforcement Officer whose cursory "investigation" limited itself to stating that Gotion answered all questions about chemicals at the Plan Commission meeting.

if Defendants are arguing that prospective violations of the Manteno Code cannot serve as violations under 65 ILCS 5/11-13-15, such an assertion is clearly erroneous under basic tools of statutory construction and case law. Second, Defendants are simply wrong; Kovaka has sufficiently pled the violations, a task that was made exceedingly difficult in light of Manteno's utter failure to obtain, and Gotion's refusal and inability to provide, sufficient detail as to how Gotion will transport, use, store, and dispose of the highly toxic and flammable chemicals it intends to ship into Manteno, or even what chemicals it intends to use.

A. Kovaka is Not Bringing a 65 ILCS 5/11-13-15 Claim Against Manteno.

Manteno asserts that Kovaka cannot bring a 65 ILCS 5/11-13-15 claim against it as a municipality. (Manteno Mem. at 3.) Kovaka agrees, which is why a careful reading of Count I will show that Kovaka only brought this claim against "Gotion or any other owner or operator[.]" (Am. Compl. ¶ 107.) Should Manteno become an owner of the Gotion Property and proceed to build or operate a dangerous lithium battery plant, then Kovaka will be within his rights to sue Manteno as well. Because this claim was not brought against Manteno, Manteno has no standing to argue for its dismissal and all its arguments to this effect should be disregarded. *Hunt Int'l Res. Corp. v. Binstein*, 98 F.R.D. 689, 690 (N.D. Ill. 1983) ("Unless a party can demonstrate a personal right or privilege with respect to the subject matter of the deposition, the party to the action lacks standing to halt the deposition").

B. 65 ILCS 5/11-13-15 Specifically Envisions Prospective Challenges.

Gotion erroneously argues that this claim is premature because it has yet to seek permits or begin operation of the plant and Kovaka is attempted to stop potential uses. (Gotion Mem. at 15, 24.) 65 ILCS 5/11-13-15 specifically contemplates halting Code violations before they occur, and Illinois courts have consistently upheld this understanding. *Greer v. Illinois Housing*

Development Authority, 150 Ill. App. 3d 357, 385 (1986) (neighbors alleging that a proposed development violated a zoning ordinance); *Nonnenmann v. Lucky Stores, Inc.*, 53 Ill. App. 3d 509, 512 (1977) (plaintiff contesting the defendant's proposed use of the property); *Shoub Properties, LLC v. Vill. of Glen Ellyn*, 2021 IL App (2d) 200342-U, ¶¶ 42-45 ("We therefore agree that the plaintiffs need not wait until construction has commenced to bring this suit.").

The primary concern of the court when interpreting a statute is to give effect to the intent of the legislature. *People v. Glisson*, 202 Ill. 2d 499, 504 (2002). To accomplish this, the Court should apply the "plain and ordinary meaning of the statutory language." *Id.* (citing *People ex rel. Devine v. $30,700.00 United States Currency*, 199 Ill.2d 142, 150 (2002)). Where a statute is clear and unambiguous, courts cannot read into the statute limitations, exceptions, or other conditions not expressed by the legislature. *People ex rel. Devine,* 199 Ill.2d at 150–51. The court should construe a statute to give a reasonable meaning to all words and sentences so that no part is rendered superfluous. *Sylvester v. Industrial Comm'n,* 197 Ill.2d 225, 232 (2001). With these principles in hand, an application of statutory interpretation tools demonstrates that 65 ILCS 5/11-13-15 permits prospective challenges. 65 ILCS 5/11-13-15 provides:

> In case any *building or structure*, including fixtures, is *constructed, reconstructed, altered, repaired, converted, or maintained, or any building or structure, including fixtures, or land, is used in violation of an ordinance or ordinances adopted under Division 13, 31 or 31.1 of the Illinois Municipal Code*, or of any ordinance or other regulation made under the authority conferred thereby, the proper local authorities of the municipality, or any owner or tenant of real property, within 1200 feet in any direction of the property on which the building or structure in question is located who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, *may institute any appropriate action or proceeding* (1) *to prevent the unlawful construction*, *reconstruction, alteration, repair, conversion, maintenance, or use*, (2) to prevent the occupancy of the building, structure, or land, (3) *to prevent any illegal act, conduct, business, or use in or about the premises*, or (4) *to restrain, correct, or abate the violation*. When any such action is instituted by an owner or tenant, notice of such action shall be served upon the

> municipality at the time suit is begun, by serving a copy of the complaint on the chief executive officer of the municipality, no such action may be maintained until such notice has been given.

(emphases added).[9] The unambiguous language of the statute shows that the Illinois Legislature intended to equip municipalities, landowners, and tenants with a tool stop violations of municipal codes. To do so, the statute specifically uses the word "prevent" in addition to "restrain, correct, or abate." While the latter implies an already existing violation, the word "prevent" is prospective, indicating an action taken prior to the violation itself. PREVENT, Black's Law Dictionary (11th ed. 2019) ("To stop from happening; to hinder or impede."). Thus, under the plain meaning of the word "prevent," 65 ILCS 5/11-13-15 allows for challenges to prospective violations.

Illinois courts have agreed. *See Greer*, 150 Ill. App. 3d at 385; *Nonnenmann*, 53 Ill. App. 3d at 512; *Shoub Properties, LLC*, 2021 IL App (2d) 200342-U, ¶¶ 42-45. Therefore, Kovaka's 65 ILCS 5/11-13-15 claim cannot be dismissed on the basis that he challenges Gotion's planned violation of the Manteno Code—especially in light of the fact that Gotion has made clear that it *will* proceed with its actions unless enjoined.

C. Kovaka's Claims are Not Speculative and Any Speculation is Due to Gotion's Refusal or Inability to Answer Questions About its Intended Operation of the Gotion Plant.

Kovaka's grounds for his 65 ILCS 5/11-13-15 claim is straightforward: Gotion's use of lithium, NMP, and undisclosed chemicals violates Manteno Code § 9-9B-7's prohibition on highly toxic chemicals and Gotion's production of extremely flammable lithium batteries violates Manteno Code §§ 9-9C-2(B)(1), 9-9C-4's prohibition on uses in I-2 that create dangerous, injurious, or otherwise objectionable fire, explosive or other hazard. It is simply nonsense to claim

[9] Defendants do not contest that the Manteno Code was adopted under Divis 13, 31, or 31.1 of the Illinois Municipal Code. And there can be no dispute that the Gotion Plant is a building, nor that Gotion intends to substantially alter and convert it to house a lithium battery plant.

that these violations are speculative when Gotion itself admitted it will use those chemicals and that lithium batteries are highly flammable when punctured. (Am. Compl. ¶¶ 63, 68; Gotion Mem. at Ex. D 27:9-10, 29:11-21, 50:9-17.) As explained, that Gotion has not begun operation of the Gotion Plant does not preclude this claim. Stripped of this clearly invalid argument, Defendants are left raising premature and erroneous evidentiary arguments in an unavailing attempt to convince this Court to dismiss Kovaka's well-pled claim.

First, Manteno asserts that "[t]he [P]laintiffs do not allege the code enforcement officer has decided that any of the materials identified are 'highly toxic.'" (Manteno Mem. at 10.) This misframes the issue – Plaintiffs have alleged that Marion *failed to make an assessment at all, despite being asked to do so*. (Am. Compl. ¶¶ 73-74.) Instead, Marion referred to the rezoning hearing, wherein Gotion admitted it would be using chemicals Kovaka alleges are highly toxic, admitted that its lithium batteries are highly flammable, and admitted that a similar factory had already experienced four fires before going into operation. (*Id*. ¶¶ 63-64, 83; Gotion Mem. at Ex. D 27:9-10, 29:11-21, 50:9-17) This abdication of responsibility is reviewable by this Court; it cannot be the case that a property owner can be permitted to violate municipal codes so long as a municipal officer refuses to do their job. And, by relying on testimony showing a violation, Marion has in fact implicitly determined that highly toxic chemicals will be used.

Second, Manteno attempts to insert an impermissible evidentiary requirement to Kovaka's pleading, claiming that he had to identify the Material Safety Data Sheet in the pleadings to show the chemicals will be highly toxic. (Manteno Mem. at 10.) This requirement is found nowhere in the statute and Manteno cites no case law to support its contention that such a pleading is required. If the chemicals are not highly toxic, this will provide an possible evidentiary basis for a dismissal. As it stands, this Court must accept Kovaka's assertions as pleaded.

Third, Gotion impermissibly attempts to elevate the injunctive pleadings required by Kovaka at this stage by claiming Kovaka did not adequately pled harm, show no other adequate remedy at law, or rights in need of protection. (Gotion Mem. at 21.) But Kovaka is not required to make such pleadings at this stage: The language in section 11–13–15 to the effect that an owner need not prove specific, special, unique, or adverse damage is intended to abolish case law, predating the relevant statutory amendment to this section, in which it was held that an owner, in order to obtain the injunctive relief provided for in the section, was obligated to prove that the alleged zoning violation amounted to a nuisance. *Greer v. Illinois Hous. Dev. Auth.*, 150 Ill. App. 3d 357, 389, (1986), *aff'd*, 122 Ill. 2d 462 (1988). In other words, Kovaka does not have to show specific harm, he simply has to show that the Manteno Code is, or will be, violated.

He has alleged that such a violation will occur and thus has met this pleading requirement. *Vill. of Riverdale v. Allied Waste Transp., Inc.*, 334 Ill. App. 3d 224, 235 (2002) ("In addition, the Village has alleged that this is the type of case where an extreme risk to the public health and safety, as well as to property and the environment, exists if defendants' operations continue."). Further, an injunction is the proper remedy for a 65 ILCS 11-13-15 violation; Kovaka need not show that he has an inadequate remedy at law. *Id.* at 231 ("First, the language of section 11–13–15 of the Illinois Municipal Code (65 ILCS 5/11–13–15 (West 2000)) *specifically* provides authority for the court with jurisdiction "to issue a restraining order, or a preliminary injunction, as well as a permanent injunctions."). Finally, Kovaka has rights under 65 ILCS 11-13-15 to have the Manteno Code enforced; this action is the proper mechanism for upholding a violation of the same. *Dunlap v. Village of Schaumburg*, 394 Ill.App.3d 629, 638 (2009). Gotion fundamentally misunderstands this point, claiming that "Section 11-13-15 is not an appropriate vehicle to challenge Manteno's approval of the rezoning of the Gotion Property." (Gotion Mem. at 15.) But

Kovaka is not challenging the rezoning via 65 ILCS 11-13-15; he is challenging Gotion's use of highly toxic chemicals and manufacturing of extremely flammable lithium batteries. *But see* (Gotion Mem. at 15 ("In other words, Plaintiffs allege that the Gotion Project, once operational, will violate certain provisions of the Manteno Code related to highly toxic chemicals and fire safety."). This is exactly the kind of challenge envisioned by 65 ILCS 11-13-15.

CONCLUSION

Defendants fall victim to the same trap that have befallen countless litigants before them: they ask this Court to make premature judgments on Plaintiffs' claims based on evidentiary assertions improperly introduced at a motion to dismiss. Plaintiffs have alleged that Gotion will employ highly toxic chemicals that have severe health effects on humans and animals. Plaintiffs have further alleged that Gotion will use these materials to produce extremely flammable lithium batteries in a location next to schools and homes, including Plaintiff Brian Kovaka's home. These allegations provide more than sufficient support for Plaintiffs' zoning, nuisance, and 65 ILCS 11-13-15 claims. In addition, Kovaka lives within 1200 feet of the Gotion Plant and has alleged more than enough facts to establish that he has standing, which is imputed to Concerned Citizens of Manteno as an organization of which he is a member and whose mission is protecting Manteno from dangerous developments such as the Gotion Plant. As such, every ground raised by Defendants in seeking to dismiss Plaintiffs' claims or obtain judgment on the pleadings fails. This important case, which will determine the future of Manteno and its citizens, should not be smothered at this premature phase; instead Defendants' Motions to Dismiss should be denied and this action should proceed to the merits.

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Dated: April 29, 2024

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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.

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