

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

SMITTYS ONLY SON ENTERPRISES
LLC,

Case No.: 2025 CA 001075

Plaintiff,

v.

MICHAEL YAWORSKY, in his official as
Insurance Commissioner, Office of
Insurance Regulation, Department of
Financial Services, State of Florida, and
BLAISE INGOGLIA, as Chief Financial
Officer, Department of Financial Services,
State of Florida, and as Fire Marshal,
Division of State Fire Marshal, Department
of Financial Services, State of Florida,

Defendants.

**DEFENDANT BLAISE INGOGLIA'S MOTION TO DISMISS AND
MEMORANDUM OF LAW**

The Defendant, Blaise Ingoglia, the Chief Financial Officer and State Fire Marshal (“Defendant”)¹, by and through undersigned counsel, pursuant to Rules 1.100(b) and 1.140(b)(6), Florida Rules of Civil Procedure, files the Defendant’s Motion to Dismiss and Memorandum of Law (“Motion to Dismiss”) in response to

¹ On July 21, 2025, Blaise Ingoglia was sworn in as the Chief Financial Officer of the State of Florida. By operation of Rule 1.260(d)(1), Florida Rules of Civil Procedure, an officer’s successor is automatically substituted as a party, making Mr. Ingoglia the proper party in this matter.

Plaintiff’s Verified Complaint for Declaratory and Other Relief (“Complaint”), for failure to state a cause of action upon which relief can be granted, and as grounds in support states the following:

1. This is an action, in part, against the Defendant for declaratory judgment (Count I) relating to the Florida Life Safety Code, which is incorporated into the Florida Fire Prevention Code, and injunctive relief (Count III) relating to the My Safe Florida Home Program.

2. Neither Count I nor Count III state a legally sufficient cause of action against the Defendant.

3. Pursuant to Rule 1.140(b)(6), a complaint or count thereof should be dismissed when it fails to state a legally sufficient cause of action.

4. As a result, the Defendant requests the entry of an Order granting the instant Motion to Dismiss under Rule 1.140(b)(6).

MEMORANDUM OF LAW

I. Background of the Florida Life Safety Code, the My Safe Florida Home Program, and the Florida Building Code.

A. Background of the Florida Life Safety Code

The Florida Life Safety Code is contained within the Florida Fire Prevention Code, which is adopted by the Florida State Fire Marshal at three-year intervals pursuant to section 633.202, Florida Statutes (2024). *See Fla. Admin. Code Ch. 69A-60.* The Florida Life Safety Code, primarily based on NFPA 101 (the National Fire

Protection Association's Life Safety Code® (2021)), is a set of regulations covering a wide range of topics designed to provide a reasonable level of safety from fire and other hazards in buildings and structures. *See* Fla. Admin. Code R. 69A-60.004.

Section 24.2.2.3.3 of the Florida Life Safety Code² states that for **one and two-family dwellings**³, the secondary means of escape or egress “shall be an outside window or door operable from the inside without the use of tools, keys, or special effort.” However, section 633.208(8)(a), Florida Statutes (2024), supersedes section 24.2.2.3.3, stating “[t]he provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, **do not apply to one-family and two-family dwellings.**” (Emphasis added).

B. Background of the My Safe Florida Home Program

Section 215.5586, Florida Statutes (2024), established the My Safe Florida Home Program (“MSFH Program”), administered by the Department of Financial Services (“Department”), to “provide **licensed inspectors**^[4] to perform hurricane

² The current edition of the Florida Life Safety Code is the 2021 edition, effective December 31, 2023. *See* Fla. Admin. Code R. 69A-60.004.

³ The Life Safety Code, section 3.3.68.1, defines a “One- and Two-Family Dwelling Unit” as “[a] building that contains not more than two dwelling units, each dwelling unit occupied by members of a single family with not more than three outsiders, if any, accommodated in rented rooms.” The Life Safety Code, section 3.3.68.2, further defines a “One-Family Dwelling Unit” as “[a] building that consists solely of one dwelling unit with independent cooking and bathroom facilities.”

⁴ Section 215.5586(1)(f) provides the minimum requirements to be a wind certification entity and hurricane mitigation inspector for the MSFH Program.

mitigation inspections of eligible homes and grants to fund **hurricane mitigation projects** on those homes.” (Emphasis added); *see also* § 215.5586(1)(d), Fla. Stat. (inspections by licensed inspectors “determine what mitigation measures are needed, what insurance premium discounts may be available⁵, and what improvements to existing residential properties are needed to reduce the property’s vulnerability to hurricane damage.”). Section 215.5586 also provides that the MSFH Program “shall develop and implement a comprehensive and coordinated approach for **hurricane damage mitigation** pursuant to the requirements provided in this section.” Section 215.5586(6) requires the Department to “adopt rules . . . to govern the program; implement the provisions of this section; including **rules governing hurricane mitigation inspections and grants**, mitigation contractors, and training of inspectors and contractors; and carry out the duties of the department under this section.” (Emphasis added); *see* Fla. Admin. Code R. 69J-7.001.

The only eligible participants of the MSFH Program are homesteaded homeowners with a “single-family, detached residential property or a townhouse.” § 215.5586(1)(a)1., Fla. Stat. In determining whether a homeowner is eligible to

⁵ Before a homeowner can receive a MSFH Program grant, “[t]he homeowner must agree to provide to the department information received from the **homeowner’s insurer identifying the discounts** realized by the homeowner because of the mitigation improvements funded through the program.” § 215.5586(2)(a)6., Fla. Stat. (emphasis added).

receive a MSFH Program grant⁶, the MSFH Program compares the recommendations made by a hurricane mitigation inspector in an Initial Inspection Report⁷ with the improvements observed by a hurricane mitigation inspector in a Final Inspection Report. *See* § 215.5586(2), Fla. Stat.; Fla. Admin. Code R. 69J-7.001(8) (“Improvements must be recommended in the Initial Inspection Report and observed in the Final Inspection Report [for a homeowner] to be eligible for Grant funding.”).

There is no statutory authority granting the MSFH Program the ability to identify which products meet the definition of ‘Opening Protection’ for purposes of the State of Florida or Miami-Dade County building codes. **This authority is given to the Florida Building Commission or the local authority, respectively.** *See* § 553.842(1) and (4), Fla. Stat. (2024). However, section 215.5586 authorizes the Department to adopt rules that incorporate the Office of Insurance Regulation (“OIR”) Form OIR-B1-1802, Uniform Mitigation Verification Inspection Form (“UMVIF”)⁸, into the MSFH Program hurricane mitigation inspection process for

⁶ A MSFH Program grant can be worth up to \$10,000. *See* § 215.5586(2)(c) and (h), Fla. Stat.

⁷ If the hurricane mitigation inspector does not recommend opening protection in the Initial Inspection Report, a homeowner is not eligible for a grant for installing opening protection, even if the homeowner installs products approved by the Florida Building Commission. *See* Fla. Admin. Code R. 69J-7.001(8).

⁸ The Financial Services Commission promulgated Form OIR-B1-1802 in Rule 69O-170.0155, *Florida Administrative Code*.

grant eligibility purposes. *See generally* § 215.5586(1)(d), (1)(f), (2)(b)3., (2)(d), (2)(i)1., (6), and (10), Fla. Stat.

Thus, the Department adopted Rule 69J-7.001, attaching the UMVIF to the MSFH Program Initial Inspection Report, Form DFS-O1-002, and Final Inspection Report, Form DFS-O1-003. *See* Fla. Admin. Code R. 69J-7.001(1)(e) and (j). The licensed inspectors use the UMVIF during the Initial Inspection to assess homes' existing levels of protection and recommend improvements to mitigate hurricane damage. The licensed inspectors also use the UMVIF during the Final Inspection to determine whether the recommended improvements were made.

Categories A and B of the Opening Protection Level Chart on the UMVIF include “impact resistant coverings and windborne debris protection devices in the product approval system of the State of Florida or Miami-Dade County.” Category C includes “plywood/OSB meeting the requirements of Table 1609.1.2 of the FBC [Florida Building Code] 2007.” Therefore, if a product has been approved by the Florida Building Commission or a local official and meets the criteria of the Florida Building Code, then the MSFH Program will consider it eligible for grant purposes.

C. Background of the Florida Building Code

The Florida Building Code is a comprehensive set of construction standards established by the Florida Building Commission for buildings in Florida pursuant to Part IV of chapter 553, Florida Statutes. The Legislature intended the Florida

Building Code to be the “single, unified state building code . . . that appl[ies] to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state . . . which will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida.” § 553.72(1), Fla. Stat. The Florida Building Commission and the local authorities are the only entities in the state of Florida that can approve a product as opening protection. See §§ 553.842, 553.8425, Fla. Stat.

The MSFH Program licensed inspectors who provide home inspections and make recommendations to reduce a property’s vulnerability to hurricane damage rely on the Florida Building Code, local regulations, and their own education, training, and experience. The MSFH Program licensed inspectors have no obligation to comply with section 24.2.2.3.3 of the Florida Life Safety Code, which does not apply to one-family and two-family dwellings. See § 633.208(8)(a), Fla. Stat. Additionally, section 1010.1.4.6 of the Florida Building Code, 7th Edition (2020), provides that “[t]he temporary installation or closure of storm shutters, panels and other approved hurricane protection devices shall be permitted on emergency escape and rescue openings and egress doors . . . during the threat of a storm.”

II. Count I fails to state a legally sufficient cause of action because Plaintiff fails to establish that it has a bona fide dispute or justiciable question or that there is a bona fide, actual, present need for the declaration.

A. Statement of Issue

Count I asks the Court to declare whether “Storm Stoppers Opening Protection compl[ies] with Life Safety Code Section 24.2.2.3.3” and whether “Town & Country Eyewall Armor EA Hurricane Panels . . . compl[ies] with Life Safety Code Section 24.2.2.3.3.” Complaint ¶¶ 43, 49.

B. Legal Standard for Count I

To state a cause of action for declaratory judgment, Plaintiff must allege:

(1) there is a **bona fide dispute** between the parties; (2) the plaintiff has a **justiciable question** as to the existence or nonexistence of some right, status, immunity, power, or privilege, or as to some fact upon which existence of such a claim may depend; (3) the plaintiff is in doubt as to the claim; and (4) there is a **bona fide, actual, present need for the declaration**.

Ribaya v. Bd. of Trs. of the City Pension Fund for Firefighters & Police Officers in Tampa, 162 So. 3d 348, 352 (Fla. 2d DCA 2015) (emphasis added); *see also May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952).

Plaintiff must demonstrate that “there [is] ‘some immunity, power, privilege, or right of the complaining party’ dependent upon the issue to be resolved by declaration.” *MacNeil v. Crestview Hosp. Corp.*, 292 So. 3d 840, 843 (Fla. 1st DCA 2020) (quoting *May*, 59 So. 2d at 639).

C. Count I does not cite to authority to establish a bona fide dispute or justiciable question as to the existence or nonexistence of some right, status, immunity, power, or privilege, or as to some fact upon which existence of such a claim may depend.

Count I cites section 120.30(1), Florida Statutes, which does not meet the requirement for establishing a bona fide dispute or justiciable question. In 1974, section 4 of chapter 74-310, Laws of Florida, repealed section 120.30. A long-repealed statute (which has not been substantially re-enacted) cannot serve as authority for Plaintiff to establish it has a bona fide dispute or justiciable question. *See, e.g., Venice HMA, LLC v. Sarasota Cnty.*, 228 So. 3d 76, 83 (Fla. 2017); *see also* 48A Fla. Jur. 2d, *Statutes* § 202 (“Generally, where a statute is repealed without a reenactment of the repealed law in substantially the same terms, . . . the repealed statute, in regard to its operative effect, is considered as if it had never existed.”).

Plaintiff additionally cites to section 120.565, Florida Statutes, which also does not meet the requirement to establish a bona fide dispute or justiciable question. Section 120.565 establishes a right for “[a]ny substantially affected person [to] seek a declaratory statement **regarding an agency’s opinion** as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of facts.” § 120.565(1), Fla. Stat. (emphasis added). Declaratory statements and declaratory judgments are different remedies. *Compare id. with* ch. 86, Fla. Stat.

Because Plaintiff has elected to file this action in circuit court, the Defendant cannot respond by issuing a declaratory statement. *See ExxonMobil Oil Corp. v. State, Dep’t of Agric. & Consumer Servs.*, 50 So. 3d 755, 758 (Fla. 1st DCA 2010)

("[A]n administrative agency must decline to provide a declaratory statement when the statement would address issues currently pending in a judicial proceeding."); *see also Gopman v. Dep't of Educ., State of Fla.*, 908 So. 2d 1118, 1123 (Fla. 1st DCA 2005) ("[A] declaratory statement is not an appropriate remedy where there is related pending litigation."). Count I fails to establish a bona fide dispute or justiciable question because the authorities cited do not entitle Plaintiff to the requested relief.

D. Count I has not established a bona fide, actual, present need for the declaration.

Plaintiff has not stated a legally sufficient cause of action for declaratory judgement because Plaintiff cannot demonstrate a "bona fide, actual, present need for the declaration." *Accord Ribaya*, 162 So. 3d at 352.

Paragraph 16 of the Complaint incorrectly states that "the [MSFH] Program requires all wind mitigation systems to meet the Florida Life Safety Code." The Complaint cites no authority to support this statement, which is a central premise of the Complaint. Section 633.208(8)(a) explicitly contradicts the Complaint, stating that "[t]he provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, **do not apply to one-family and two-family dwellings**^[9]." (Emphasis added).

⁹ The Life Safety Code has not applied to one-family and two-family dwellings since at least 2001. *See* ch. 98-287, § 59, p. 51, Laws of Fla. (effective July 1, 2001).

The Florida Life Safety Code (which does not apply to one-family and two-family dwellings) does not apply to the MSFH Program since the MSFH Program is exclusive to homesteaded homeowners of a “single-family home¹⁰, detached residential property or a townhouse¹¹.” § 215.5586(1)(a)1., Fla. Stat. (emphasis added). Because the MSFH Program does not require wind mitigation systems to meet the Florida Life Safety Code, Plaintiff has not established a bona fide, actual, present need for the declaration.

However, even if the Florida Life Safety Code applied to single-family dwellings—which it does not—Plaintiff’s Complaint defeats this contention in paragraph 22 by acknowledging that there is an exception to section 24.2.2.3.3 of the Florida Life Safety Code that permits opening protection to obstruct points of egress “during the threat of a storm.” *See* Fla. Bldg. Code § 1010.1.4.6, 7th Edition (2020). Because Plaintiff is not in doubt as to the relevance of the Life Safety Code

¹⁰ Single-family is defined as “[a] property assigned a ‘01’ land use code by the local county’s property appraiser pursuant to Rule 12D-8.008, F.A.C. Unless assigned a ‘01’ land use code, Single-family does not include multi-family homes (apartments, duplexes, and triplexes), condominiums, cooperatives, and retirement homes. If a property is not assigned a ‘01’ land use code, but the county-specific description of the assigned land use code contains the term ‘single-family’, ‘townhouse’ or ‘townhome’, then the property will be treated as Single-family for the purposes of the MSFH Program.” Fla. Admin. Code R. 69J-7.001(1)(t).

¹¹ Townhouse is defined in section 481.203, Florida Statutes (2024). Single-family homes that are attached to other units will be treated as a townhouse for the purposes of the MSFH Program.

with regard to opening protection for windstorms, Plaintiff cannot demonstrate a bona fide, actual, present need for the declaration.

E. Count I has not established a bona fide dispute between the parties.

The second request for declaratory judgment in Count I should also be dismissed because Plaintiff lacks standing to request a declaratory judgment regarding other businesses' products. *See Ribaya*, 162 So. 3d at 352 (declaratory judgment relief only available if “there is a bona fide dispute **between the parties**”) (emphasis added). There is no dispute alleged between the Defendant and Town & Country Industries, and Plaintiff has not alleged any facts demonstrating how the compliance of Town & Country Industries with the Life Safety Code affects either Plaintiff's compliance with the Life Safety Code or Plaintiff's desire for inclusion in the MSFH Program. Plaintiff has thus failed to establish there is a bona fide dispute between the parties and that there is a bona fide, actual, present need for the declaration. *See Ribaya*, 162 So. 3d at 352.

Because it would otherwise constitute a “judgment that serves no useful purpose,” declaratory relief should not be granted as to either question in Count I. *Ready v. Safeway Rock Co.*, 24 So. 2d 808, 809 (Fla. 1946). Count I should be dismissed for failure to state a legally sufficient cause of action.

III. Count II references the MSFH Program without making allegations against the Defendant.

Among other things, Count II of Plaintiff's complaint appears to ask the Court to declare "whether the OIR-B1-1802 [UMVIF] is applicable to the My Safe Florida Home Program" and whether "Opening Protection systems recommended to homeowners by Wind Mitigation Inspectors registered to the [MSFH] Program be compliant with Florida's Life Safety Code Section 24.2.2.3.3." Complaint ¶ 72, pp. 24-25. Because Count II is directed solely toward the Insurance Commissioner, the Defendant will not address it. However, to the extent Count II impacts the MSFH Program, the Defendant refers this Court to the arguments contained in this Motion.

IV. Count III fails to state a legally sufficient cause of action because Plaintiff has not pled facts demonstrating an equal protection violation or that it is entitled to injunctive relief.

A. Statement of Issue

In Count III, the first issue is whether the Defendant, through the use of the UMVIF, violates article I, section 2 of the Florida Constitution by excluding Storm Stoppers® from consideration for reimbursement in the MSFH Program. The second issue is whether this Court should grant a temporary or permanent injunction preventing the Defendant from using the UMVIF.

B. Legal Standard for Count III

To state a cause of action for violating article I, section 2 of the Florida Constitution, Plaintiff must allege that it has been treated differently from other similarly situated persons without a rational basis for the disparate treatment in the

absence of a fundamental right or protected class. *Duncan v. Moore*, 754 So. 2d 708, 712 (Fla. 2000). In other words, Plaintiff must allege the Defendant’s statute or rule, namely section 215.5586, section 627.0629, Florida Statutes (2024), Rule 69J-7.001(1)(j), or Rule 69O-170.0155, differentiates between Plaintiff and other similarly situated parties without a rational basis for doing so.¹² See *Abdool v. Bondi*, 141 So. 3d 529, 545-46 (Fla. 2014).

To establish the requirements of a temporary injunction, Plaintiff must show “(1) a substantial likelihood of success on the merits, (2) the unavailability of an adequate remedy at law, (3) irreparable harm absent entry of an injunction, and (4) that the injunction would serve the public interest.” *Fla. Dep’t of Health v. Florigrown, LLC*, 317 So. 3d 1101, 1110 (Fla. 2021); see also *Green v. Alachua Cnty.*, 323 So. 3d 246 (Fla. 1st DCA 2021). Further, absent a threat of immediate irreparable harm, a temporary injunction should not be granted without an evidentiary hearing. See, e.g., *Harambam Congregation, Inc. v. Simcha Connection, Inc.*, 84 So. 3d 1113, 1116 (Fla. 3d DCA 2012).

A substantial likelihood of success on the merits means that “good reasons for anticipating that result are demonstrated.” *City of Jacksonville v. Naegele Outdoor Advert. Co.*, 634 So. 2d 750, 753 (Fla. 1st DCA 1994). Additionally, a claim must be

¹² Section 627.0629 and Rule 69O-170.0155 are both exclusively applicable to the Office of Insurance Regulation and cannot be the basis of an injunction against Defendant. Therefore, Defendant will not address this statute and rule in this Motion.

more than just legally sufficient to support granting a temporary injunction. *Id.* (“It is not enough that a merely colorable claim is advanced.”).

A temporary injunction is only proper when a plaintiff has no other legal or equitable remedy. *See Wilson v. Sandstorm*, 317 So. 2d 732, 736 (Fla. 1975). “Irreparable injury is defined as injury that cannot be cured by money damages.” *Holland M. Ware Charitable Found. v. Tamez Pine Straw, LLC*, 343 So. 3d 1285, 1289 (Fla. 1st DCA 2022). Generally, loss of business or other monetary damages cannot be considered irreparable injury. *Id.*

A court may only enter a permanent injunction after the case is at issue, and the court has complied with the requirements of the procedural rule governing setting an action for trial. *See Skyway Trap & Skeet Club, Inc. v. SW. Fla. Water Mgmt. Dist.*, 854 So. 2d 676, 679-80 (Fla. 2d DCA 2003).

C. Count III fails to state a cause of action under article I, section 2 of the Florida Constitution as Plaintiff fails to allege the Defendant had no rational basis to differentiate between Plaintiff and other similarly situated persons.

Plaintiff asserts that it is treated differently than other manufacturers of hurricane mitigation products. Plaintiff does not allege that it is a member of a protected class or that a fundamental right is involved, so the rational basis test is the applicable standard. *See Duncan v. Moore*, 754 So. 2d at 712. Because “[t]he party that alleges that a statute violates equal protection bears the burden to demonstrate that there is no rational basis for the classification[,]” Plaintiff bears the burden of

demonstrating that the MSFH Program's use of the UMFIF has no rational basis. *Abdool*, 141 So. 3d at 546.

However, Plaintiff fails to allege any facts or advance any argument that section 215.5586, Rule 69J-7.001, or the UMFIF do not have a rational basis to differentiate between Plaintiff and other product manufacturers. Therefore, Plaintiff's claim of a violation of article I, section 2 of the Florida Constitution fails on its face and must be dismissed.

D. Count III fails to state a cause of action under article I, section 2 of the Florida Constitution as it fails to allege facts demonstrating that a purported conflict of interest constitutes an equal protection violation.

Plaintiff asserts that there are licensed hurricane mitigation inspectors with the appearance of a conflict of interest because they have pecuniary interests in companies that provide opening protection or roofing services. Other than this conclusory allegation, Plaintiff pleads no facts demonstrating that this purported conflict of interest results in different treatment of Plaintiff at all, much less that there is no rational basis for said treatment. Therefore, Plaintiff fails to state a cause of action for an equal protection violation.

E. Count III fails to state a cause of action for injunctive relief.

Plaintiff fails to state a cause of action for injunctive relief because Plaintiff has not demonstrated a substantial likelihood of success on the merits, has other

adequate legal remedies, will not suffer irreparable harm, and public interest disfavors granting such an injunction.

First, Plaintiff has not demonstrated a substantial likelihood of success on the merits. The Complaint fails to allege that section 215.5586 and Rule 69J-7.001 do not have a rational basis for differentiating between Plaintiff and other similarly situated product manufacturers. An allegation which is not legally sufficient cannot support a temporary injunction. *Cf. Naegele Outdoor*, 634 So. 2d at 753.

Second, Plaintiff has other legal remedies. The UMFIF describes three categories of protection (A, B, and C), and a recommended improvement in any of those three categories would be reimbursed under the MSFH Program. **If Plaintiff simply sought and received approval of its product as opening protection from either the Florida Building Commission or a local authority, then a homeowner could seek a MSFH Program grant for Plaintiff's product. In fact, the Florida Fifth District Court of Appeal has already issued an opinion stating that a company selling Storm Stoppers® must seek local approval to market the product in Florida for hurricane, windstorm, or impact protection. See *Keddo Enterprises LLC v. Fla. Bldg. Comm'n*, 175 So. 3d 346 (Fla. 5th DCA 2015).** When Plaintiff asked the Fifth District Court of Appeals to declare Storm Stoppers® as entitled to the same Florida Building Code exemption status as plywood, the Fifth DCA declined to do so, ruling that the appropriate course of action was for the business to seek an exemption from local

authorities. *Id.* While Plaintiff emphasizes its voluntary compliance with the Life Safety Code, its true issue is with the Florida Building Code, which is enforced by the Florida Building Commission and local authorities.

Third, Plaintiff will not suffer irreparable harm. Even if Storm Stoppers® was deemed an approved product under the Florida Building Code, a contractor is not eligible for a MSFH Program grant. Thus, Plaintiff cannot show irreparable harm. Plaintiff's assertion that it would receive business if its product were approved for participation in the MSFH Program is speculative. The MSFH Program inspectors do not recommend specific products or even product types (for example, they do not make recommendations that homeowners purchase impact-resistant windows over hurricane shutters). Instead, the inspectors recommend improvements in categories of protection, such as opening protection. Additionally, homeowners have their choice of what products to buy from what businesses, so Plaintiff would not be guaranteed to receive business even if Storm Stoppers® were an "approved" item on the UMFIF.

Plaintiff's inability to access grant funding from MSFH Program participants, which it has never been entitled to, does not constitute irreparable harm. Irreparable harm is defined so as to exclude loss of business, which can be cured by monetary damages. *Ware Charitable Found.*, 343 So. 3d at 1289. Plaintiff failed to allege any harm to itself other than a loss of business through an inability to participate in the

MSFH Program. While Plaintiff argues that homeowners who have hurricane mitigation products that do not comply with the Life Safety Code may suffer harm if they experience a fire, Plaintiff does not have standing to assert harms on behalf of third parties. Because Plaintiff's alleged injury can be cured by monetary damages, it cannot be "irreparable harm." *See id.*

Fourth, granting Plaintiff's proposed injunction would be against public interest. As previously mentioned, Plaintiff is required to seek local approval that its product complies with the Florida Building Code to market the product in Florida for hurricane, windstorm, or impact protection. *See Keddo Enterprises*, 175 So. 3d at 348-49; *see also* § 553.842(5), Fla. Stat. If Plaintiff has not done so, then it could not legally advertise its product to MSFH Program participants without potentially violating the Florida Deceptive and Unfair Trade Practices Act. *See Keddo*, 175 So. 3d at 348. It would be against public policy to require the Department to expend taxpayer funds reimbursing such products. Not only that, enjoining the Department from administering the MSFH Program would be against public policy as it would deny grant funds to at-risk homeowners.

Because Plaintiff has not demonstrated that it is entitled to temporary injunctive relief, it necessarily follows that Plaintiff is also not entitled to permanent injunctive relief; such relief would be premature given that the merits of the case have not been tested. *See Skyway Trap & Skeet Club*, 854 So. 2d at 679-80.

CONCLUSION

WHEREFORE, the Defendant respectfully requests this Court to enter an Order Granting the instant Motion to Dismiss, dismissing Plaintiff's Complaint for failure to state a cause of action under Rule 1.140(b)(6), and for any and all further relief that this Court deems just and appropriate.

CERTIFICATE OF CONFERRAL

I certify that conferral prior to filing is not required under Rule 1.202, Florida Rules of Civil Procedure.

Respectfully submitted on July 22, 2025.

/s/ Nathan Koch

Nathan Koch

Florida Bar Number 84399

Katie Privett

Florida Bar Number 105492

Department of Financial Services

Office of the General Counsel

200 East Gaines Street

Tallahassee, Florida 32399-0333

Phone Number: (850) 413-4165

Fax Number: (850) 487-4907

Nathan.Koch@MyFloridaCFO.com

Katie.Privett@MyFloridaCFO.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished to all parties of record via the E-filing Portal on July 22, 2025.

/s/ Nathan Koch
Nathan Koch
Attorney for Respondent
Florida Bar Number: 84399
Department of Financial Services
Office of the General Counsel
200 East Gaines Street
Tallahassee, Florida 32399-0333
Phone Number: (850) 413-4165
Fax Number: (850) 487-4907
Nathan.Koch@MyFloridaCFO.com