

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2020-CV-212

Casella Waste Systems, Inc.

v.

Jon Swan & Save Forest Lake, et al.

**ANSWER OF SAVE FOREST LAKE AND JON SWAN**

Plaintiff's introductory paragraph states legal assertions and does not require an answer.

To the extent there are factual allegations therein, they are denied. All answers herein are responsive to allegations about Jon Swan or Save Forest Lake and are not to be deemed responsive to allegations about other parties.

**Parties**

1. Admitted.
2. Jon Swan admits that he resides at 25 Cashman Road, Dalton, N.H. Otherwise, denied.

**Jurisdiction and Venue**

3. Admitted.
4. Admitted.
5. Admitted.
6. Denied.

### **Factual Background**

7. Defendant admits that Casella is a publicly traded company. Otherwise, the allegations in this paragraph are denied as the Defendant is without sufficient knowledge or belief to respond.

8. The allegations in this paragraph are denied as the Defendant is without sufficient knowledge or belief to respond.

9. The allegations in this paragraph are denied as the Defendant is without sufficient knowledge or belief to respond to the lengthy narrative contained therein.

10. The allegations in this paragraph are denied as the Defendant is without sufficient knowledge or belief to respond to the lengthy narrative contained therein.

11. The allegations in this paragraph are denied as the Defendant is without sufficient knowledge or belief to respond to the lengthy narrative contained therein.

12. Denied.

13. Defendant admits that he and his wife live on Forest Lake in Dalton, but denies the remaining allegations.

14. Defendant admits the first sentence, denies the remaining allegations in this paragraph.

15. Denied.

16. Denied.

17. Denied (including sub-paragraphs) insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

18. Denied (including sub paragraphs) insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

19. Denied (including sub paragraphs) insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

20. Denied (including sub paragraphs) insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

21. Denied (including sub paragraphs) insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

22. Denied insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

23. Denied insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

24. Denied (including sub paragraphs) insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

25. Denied (including sub paragraphs) insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

26. Denied insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

27. Denied insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

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38. Denied (including sub paragraphs) insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

39. Denied (including sub paragraphs) insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

40. Denied insofar as the statements set forth are either opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

### **COUNT I**

41. Defendant restates and incorporates herein by reference each and every preceding paragraph as if fully set forth herein.

42. Admitted.

43. Admitted.

44. Denied.

45. Denied.

46. Denied as a legal conclusion.

47. Denied.

48. Denied.

49. Denied.

## **COUNT II**

50. Defendant restates and incorporates herein by reference each and every preceding paragraph as if fully set forth herein.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

## **Affirmative Defenses**

A. The alleged statements are either constitutionally protected opinion, not of and concerning the Plaintiff, substantially true, hyperbole, not defamatory, or not actionable, or have been ruled not actionable by the Court in response to Defendant's prior Motion to Dismiss.

B. Defendant has a right to speak on issues of public concern, including a right to opinion that can be aggressive or colorful.

C. Plaintiff is a public figure, requiring that Defendant show knowledge of alleged falsity and an intent to publish false and defamatory statements despite that actual knowledge for a statement to be actionable.

## Counterclaims

1. The Plaintiff has admitted that this Court has jurisdiction of the matter and that this is the correct venue.
2. Plaintiff has filed this action in an effort to quash Defendant's right to speak against Plaintiff's proposed landfill in Dalton, New Hampshire.
3. Defendant has engaged in a comprehensive public advocacy campaign against the Defendant's landfill, which has involved thousands of public statements, letters, social media posts, and other forms of publication.
4. Out of the thousands or tens of thousands of statements in a public advocacy campaign lasting several years to date, Plaintiff has selected a handful of quotations that it believes are actionable.
5. For the reasons set forth in the Defendant's Answer, above, Defendant's statements are not actionable.
6. Plaintiff's lawsuit is an abuse of process in that the Plaintiff's goal or objective is to terminate Defendant's public advocacy campaign, or exact such a cost from the Defendant in terms of attorneys' fees and costs that he abandons his successful efforts to draw public scrutiny to Plaintiff's plans.

### Count I: Abuse of Process

7. The foregoing facts are restated and reincorporated herein by reference.
8. Plaintiff's lawsuit was filed with the ulterior purpose of preempting, quashing, sanctioning, or restraining speech concerning a matter of public interest.

9. This lawsuit is an effort by the Plaintiff to gain collateral advantage in its permitting battle for its proposed landfill by using this process as a threat or club to reduce opposition.

10. Defendant has been harmed or damaged by Plaintiff's abuse of process by having to expend unnecessary attorney's fees and costs and enduring the pain and anxiety of being targeted by a frivolous lawsuit and the attendant burdens it imposes.

11. Defendants' damages are in an amount within the jurisdiction of the Court.

**Count II: Attorney's Fees for Vexatious Litigation**

12. The foregoing facts are restated and reincorporated herein by reference.

13. Plaintiff's action was without foundation, and intended to vex and harass the Defendant, and to thwart his rights to free speech which are protected under the First Amendment of the U.S. Constitution and Pt. I, Art. 22 of the New Hampshire Constitution.

14. For the foregoing reasons, Defendant is entitled to attorneys' fees and costs under *Harkeem v. Adams*, 117 N.H. 687 (1977).

Respectfully Submitted,

SAVE FOREST LAKE & JON SWAN

By their Attorneys,

ORR & RENO, P.A.

Date: October 16, 2020

By: /s/ Jeremy D. Eggleton  
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**CERTIFICATION OF SERVICE**

I, Jeremy D. Eggleton, do hereby certify that this Answer was served on the parties of record in this matter on October 16, 2020, via the Court's electronic service system.

/s/ Jeremy D. Eggleton\_\_\_\_\_

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