

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.

STATEMENT OF MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant(s) move for summary judgment. In support hereof, they submit the following statement of material facts.

1. The Plaintiff is a public figure, at least for the limited purpose of seeking to permit and construct a landfill on a piece of land in Dalton, New Hampshire. Second Amended Complaint at ¶¶44, 8-13.

2. Defendant Mr. Swan opposes the construction of said landfill and has conducted a lengthy public advocacy effort in opposition. Affidavit of Jon Swan at ¶2.

3. The Plaintiff has alleged that Defendant has made statements on the following subject matters/formulations that it alleges are defamatory:

- a. "Plaintiff scammed elderly residents of Dalton and Bethlehem"
- b. "Plaintiff does not recycle most of the material placed in Casella's Zero-Sort recycling bins, contributing to the collapse of the recycling market."
- c. "Plaintiff fills New Hampshire landfills with out-of-state trash."

- d. “Plaintiff illegally spilled 8,000 gallons of leachate into the Black River in Vermont.”
- e. “Plaintiff operated outside of permitted hours in regards to the accident which caused the alleged spill into the Black River.”
- f. “Plaintiff polluted the Ammonoosuc River.”
- g. “Plaintiff is ‘packing the board’ of the Bethlehem Planning Board”
- h. “Plaintiff conspired with Horizons Engineering to avoid compliance with regulatory requirements by means of a lot line adjustment.”
- i. “Plaintiff is complicit in sending in sending millions of gallons of leachate to third parties who improperly treat it and then discharge it into the Merrimack River.”
- j. “Plaintiff weaponized the legal system against [Defendant] by causing Vanessa Cardillo to request a protect order against you.”

See Email of July 8, 2021 from Morgan Tanafon, Esq. to Jeremy D. Eggleton, Esq. (summarizing statements in controversy), Appendix to Statement of Material Facts at 1 (“App. at ____” or “Appendix at ____”).¹

4. Plaintiff produced copies of any and all public statements made by Defendants corresponding to these categories of allegedly defamatory statements in response to a discovery request. Each of those statements, along with the factual context of the statements, follow. References to Exhibits that follow are to the Exhibits attached to the Affidavit of Jon Swan and their assembly in the Appendix hereto.

“Scammed Elderly Residents” statements, satirical, hyperbolic and substantially true

¹ This email is offered for the sole purpose of confirming the Plaintiff’s determination of what statements it believes are actionable.

5. On January 16, 2020, Defendants posted a comment on the Save Forest Lake Facebook feed that read as follows, quoted in full:

(This is meant to be satirical but obviously very much based on local reality)

Please talk to your friends and loved ones, especially the elderly and more vulnerable, so they don't fall victim!

An investigator learned of two different scams just this week!

The first was perpetrated on an elderly citizen of Bethlehem. It seems that a waste management company had convinced him over the past 8 months that going door to door in that town, along with posting signs throughout, at a significant cost to both his finances and reputation, would somehow convince the residents of that town that a continued relationship would [sic] that company would somehow be of benefit to the town. Please be sure to keep an eye on your loved ones so that they don't fall victim to this as well!

The second case involved an elderly citizen of the Town of Dalton. There too a waste management company had persuaded a town elder, via email, to put his reputation on the line by presenting an apparently fictitious offer of riches to the town government, with "no strings attached" (yes, he sadly fell for that one) without the realization that this could be deemed as an attempt to influence public opinion regarding a very unpopular landfill development. "Confusion" on the part of the elderly victim was cited by the waste management company representative when approached by the investigators.

Please be sure to monitor the activities, including email and social media accounts, of your elderly loved ones to protect them from such scams in the future, particularly those centered around requests by waste management companies seeking advocates to lobby the public on their behalf. This has become a favorite of waste management companies, most of whom are worth hundreds of millions of dollars and have employees capable of doing their own dirty work.

Thank you!

Swan Aff. at Exhibit A, Plaintiff's Response to Request for Production 1 at CWS 0008-0009, App. at 4.

6. On January 2, 2020, Rebecca Metcalf, Plaintiff's "Outreach Manager" emailed a resident of Dalton whom I believe to be elderly, or at least, retired, by the name of Don Mooney.

Her email stated:

John Casella has asked for my assistance is [sic] something he would like to do. He is interested in providing a gift estimated between \$50-100k for an immediate need for the people of Dalton. This is no strings attached and it would come from his own philanthropy fund.

Could you please do some thinking and let me know if there is something that the fire department, emergency services perhaps or the roads department might need?

Or, if you know whom I might connect with? If possible he would be looking to make the donation directly to the organization in need for the item.

Exhibit B, Email of Jan. 2, 2020, Metcalf-Don & Nancy Mooney ("The Dalton Gang"), Plaintiff's Response to Req. for Production 2 at CWS 0059-60, App. at 5-6.

7. Don Mooney was active in lobbying for the Plaintiff's landfill by advocating with Townspeople and the Town decision-makers in favor of the landfill. *Id.*

8. In neighboring Bethlehem, an older gentleman named Cliff Crosby was also active in posting signs and advocating in favor of the Plaintiff's landfill expansion in that town. Exhibit DD, App. at 219-21, examples of signage by Mr. Crosby.

9. Mr. Mooney responded to Ms. Metcalf:

What a wonderful offer.

I will contact the folks involved with the Fire, Emergency and the Road Departments and have them let us know what they feel would be most needed.

When I talk with the folks in charge of these Departments, I will give them your card and explain that there is no strings attached and this would be a gift. If they are interested, they should contact you directly.

Do you feel that this would be the best way to handle this?

Exhibit B at 00059, App. at 5.

Fills New Hampshire landfills with out-of-state trash, substantially true, hyperbolic and not defamatory.

10. On February 12, 2020, Defendants posted to the Save Forest Lake Facebook page the following post, which referenced the Plaintiff's withdrawal of its application to expand its Bethlehem landfill, announced publicly by the New Hampshire Department of Environmental Services on that day at approximately 4:30 pm:

Just got this news from NH DES! This will be interesting to watch as it unfolds, for sure. Dalton has certainly proven that it does not want Casella as a business partner.

Casella may not have a home in NH sooner than we thought. NH has capacity for NH trash and the North Country Towns better start reaching out to AVRDD/Mt. Carberry soon . *Casella needs NH so it can continue to import trash from out of state, we do not need Casella and its poor management and bully tactics.* Goodbye Casella!

Exhibit C, Pl. Response to Req. for Production 1 at 0003 (emphasis added), App. at 7.

11. In its December 31, 2020 Annual Facility Report, filed with the New Hampshire Department of Environmental Services, the Plaintiff admitted to receiving 59,874.43 tons of waste from out-of-state sources at its Bethlehem, N.H. landfill. Exhibit D, Pl. Response to Request for Production 2.3/2.7 at 000232, App. at 10.

12. In its December 31, 2019 Annual Facility Report, filed with the New Hampshire Department of Environmental Services, the Plaintiff admitted to receiving 113,345.11 tons of waste from out-of-state sources at its Bethlehem, N.H. landfill. Exhibit E at 000168, App. at 26.

Does not recycle most of the material placed in Casella's Zero-Sort recycling bins, substantially true, hyperbolic and not defamatory

13. On February 3, 2020, Defendants posted to the Save Forest Lake Facebook page the following, which referenced and commented on Plaintiff's own Facebook post of January 27, 2020:

This from Casella Waste Systems FB page. Note how once again, Casella Waste Systems (that self-titled "champion of the environment and sustainability") piggy-backs off of the efforts of OTHERS to REDUCE the amount of waste going into their landfills. This is a very unscrupulous company that only cares about the bottom line and not the environment. Otherwise, they would have been leading the way to reduce what we waste. *Their "Zero-Sort" single-stream recycling program helped collapse the Asian market with its high-rate of contamination ultimately leading to more recycling product being landfilled.* Of course, Casella's business plan solely focuses on profiting from what we waste. Just wish they'd be honest about that. We do not want this poorly run garbage profiteer and polluter anywhere near Forest Lake and we look forward to their expulsion from Bethlehem in or before 2023. Unless, of course, they go back on their word, again and seek expansion there by trying to pic the Select Board. We'll see.

Exhibit F, Pl. Resp. to Req. for Production 1 at 0007-8 (emphasis added), App. at 31.

14. Plaintiff operates a zero-sort single-stream recycling program. Swan Aff. at ¶18.

15. Plaintiff admitted in marketing materials: "The average contamination rate of incoming single stream material (such as "Zero-Sort" Recycling) is 20%. Your program may be higher or lower depending upon how educated and compliant your community is with what it places in its recycling bins." Exhibit EE at 197, App. at 222.

16. Plaintiff admitted in its 2019 Annual Report for the Bethlehem landfill that "[t]he collapse of foreign recycling markets has temporarily made municipal recycling programs uneconomic." Exhibit D at 000194, App. at 19.

17. Plaintiff admitted that the foreign markets were closed to recycling programs that produced too much contaminated waste: "China Enacted the National Sword Program in 2017 to cut down the amount of 'carried waste' being sent into the country as an initiative to combat

pollution. China has banned 24 types of materials that were previously entering their country as recyclables. The largest ban that has impacted the US recycling industry has been the ban on mixed paper (junk mail/scrap paper). For all other finished recyclables imported to China, the specifications are not at a .5% contamination rate, reduced from the industry standard of 3%.” Exhibit G, App. at 32, Plaintiff’s marketing newsletter “Recycling Commodity Update May 2018.”

18. In a February 20, 2020 article, Portland Press Herald, Plaintiff admitted: “China decided that it was going to set new standards for the import of recyclables and how much contamination they could contain. They chose a number of one-half of 1% or it would be rejected.” Exhibit H, App. at 35, February 20, 2020 article, Portland Press Herald, “City Working on Plan to Reduce Recycling Contamination” (quote by Plaintiff’s employee Joe Fusco).

19. Plaintiff disposes of materials that cannot be recycled for consideration. *See* Exhibit H, App. at 33-34 (“Casella Waste Systems has been charging the city roughly \$5,000 per month over the past year to dispose of unacceptable recycled material collected from recycling bins. These items have been contaminated with food waste, for example, or they are not allowed in the first place, such as electronics.”).

Illegally spilled 8,000 gallons of leachate into the Black River in Vermont, substantially true and speculative.

20. On December 29, 2019, Defendants posted to the Save Forest Lake Facebook page the following email *circulated by Plaintiff* regarding the spill of 8,000 gallons of leachate from its Coventry Vermont facility in a trucking accident involving two Casella subcontractors that occurred very close to the Black River, in Coventry, Vermont:

Dear All,

We wanted to follow up on an incident that occurred early this morning in Coventry if you have not already learned of it.

This morning an empty MBI transfer trailer jackknifed within the roadway just north of the Route 5/Route 100 intersection.

The tractor and trailer was disabled due to black ice.

While the driver was outside the truck deploying safety triangles a loaded leachate tanker travelling southbound on Route 5 whose driver could not stop the vehicle tried to maneuver the truck to safety and lost control. The loaded tanker not only hit the transfer trailer but the driver of the trailer as well. He was transported to the North Country Hospital.

Needless to say the tanker was compromised and lost several fluids, including leachate from the tanker.

Exhibit I, Pl. Resp. to Req. for Production 1 at CWS 00011-12, App. at 36-37.

21. The location of the spill was close to the Black River. *See* Exhibit J, map of junction of Route 5, Route 14, and Route 100, Vermont, showing proximity to Black River of a few hundred feet, App. at 39; Exhibit K, VT Digger, “Coventry tanker crash causes landfill contaminant spill, injures 1” Dec. 30, 2019, App. at 41.

22. Both trucks involved in the accident were Plaintiff’s subcontractors. *Id.*

23. Defendants posted a statement on the Save Forest Lake Facebook page in response to this public information, as follows: “This so-called environmental steward has apparently managed to dump 8000 gallons of leachate from its Coventry landfill into the Black River, which ultimately feeds into Lake Memphremagog (a source of drinking water for many) early on Friday Dec. 27 at around 3 am (seemingly a violation in itself as work is not supposed to begin until 6 am). Now do we need this at Forest Lake? I think not.” Exhibit I, App. at 36.

24. On December 30, 2019, the Caledonian Record, Lancaster N.H. paper, published an article under the headline, “Friday Truck Accident Caused Leachate Spill in Coventry,” which Defendants attached to a follow up post to the original post about the accident. Exhibit L, Bethlehem NH USA Local Chat (Facebook) at X (referencing and attaching Caledonian Record articles), App. at 44. Defendants’ follow up post on December 30, 2019 simply quoted the article: “A criminal investigation is ongoing into a Coventry accident early Friday morning that breached a tanker truck, spilled leachate from a nearby landfill and left one man injured. Details were not available Sunday about how much leachate, the liquid drained from the liners of the state’s only operating landfill, spilled from the truck’s cracked tank on Route 5 or whether any reached the Black River.” *Id.*

25. On December 31, 2019 the Caledonian Record published an article under the headline, “Leachate Spill Did Not Reach the Black River, DEC Official Says.” *See* Exhibit M, App. at 45.

26. Upon learning of this fact, Defendants published the following additional post in the conversation beneath the original post about the accident: “Thank goodness, talk about a close call and a lot of nasty stuff! Now let’s see what kinds of violations DEC comes up with. COVENTRY—An estimated 8,000 gallons of leachate from the landfill in Coventry spilled from a breached tanker truck early Friday morning in an accident that left one man seriously injured. The leachate, liquid that is drained from within the liners of the landfill on Airport Road, contaminated soils around Route 5 where the accident occurred but did not reach the nearby Black River, said Shawn Donovan, spill manager for the Vermont Department of Environmental Conservation.” Exhibit L (referencing and attaching Caledonian Record articles), App. at 44.

Polluted the Ammonoosuc River, substantially true and fairly reported

27. Defendants posted the following on the Save Forest Lake Facebook page on December 17, 2020, together with a link to a video clip: “Video from 2018 announcing the lawsuit vs. Casella/NCES over violating the Federal Clean Water Act. The lawsuit alleges illegal discharges of pollutants from the companies’ Bethlehem landfill into the Ammonoosuc River. *A drainage channel at the landfill, operated by NCES, collects landfill pollutants and discharges those pollutants into the Ammonoosuc River, without a discharge permit as required by the federal Clean Water Act.* Casella and NCES sought to have the case dismissed on three grounds: that Community Action Works and Conservation Law Foundation did not have standing to bring suit; that the discharges from the drainage channel to did not require a Clean Water Act permit; and that Casella is not a proper defendant. U.S. District Court Judge Paul Barbadoro denied the Motion to dismiss on all three grounds.” Exhibit EE, App. at 223.

28. This post was a summary of the allegations and defenses in the lawsuit identified. The lawsuit is a public court filing, a copy of which is attached as Exhibit N hereto (*see* ¶¶55-65). *See* App. at 47, 55-58.

29. Plaintiff has alleged that Defendants’ statement, “Something to keep in mind as DES decides whether or not to permit a 2d PFAS emitting mega-dump upstream of the Ammonoosuc River and Littleton” is defamatory. *See* Exhibit O, Pl. Resp. to Request for Production 1 (February 16, 2020 Facebook post), App. at 78.

30. The N.H. DES has identified a host of pollutants that are or have been identified in surface and ground water sampling at the Plaintiff’s Bethlehem landfill site, which lies close to the Ammonoosuc River. Exhibit P, DES Waste Management Division July 2020 Tri-Annual

Water Quality Monitoring Results at, *e.g.* 14-26 (detecting, *e.g.*, 1-4 dioxane, PFAS, Arsenic, Bromide, Barium, Iron, Manganese and other substances in groundwater sampling and surface water sampling), App. at 98-110; *id.* at 40 (showing proximity of Bethlehem landfill to Ammonoosuc River, approx. 800 feet), App. at 118.

31. The state of Vermont has tied leachate from Plaintiff's Coventry Vermont landfill to additional chemical and environmental pollutants. Exhibit Q, at 13-14 ("The metals [(arsenic, manganese, nickel)] with statistical GES exceedances are common naturally-occurring compounds in Vermont groundwater. However, the standards exceedances are generally greater in magnitude in the down-gradient wells, reflecting impacts from the unlined landfill and/or impacts from changes in the redox regime as groundwater travels the long distance beneath the lined phases. The VOC's and/or PFAS with statistical GES exceedances between landfills and downgradient of Unlined Areas A&B are likely the result of migration of leachate from the Unlined landfill Areas A&B."), App. at 131-32; *see id.* at 24 (identifying PFAS in leachate from the Coventry landfill), App. at 142; *id.* at 29-31 (summarizing upward trends of, *e.g.*, PFAS, Arsenic, Manganese, Nickel, Chloride in ground and surface water), App. at 147-49.

Operated outside of permitted hours in regards to the accident which caused the alleged spill into the Black River, substantially true.

32. Plaintiff alleges that Defendants' statements suggesting that the trucks shipping leachate out of Coventry landfill at 3:00 AM were doing so outside operating hours were defamatory. *See* Exhibit R, App. at 159 ("Fully loaded, 8000 gallon MBI leachate truck leaving the Casella Waste Systems landfill in Coventry VT before 3am in icy conditions, *surely outside the permitted hours of operation.*")(emphasis added).

33. The permitted operation hours for the Coventry landfill are 7:00 AM to 4:00 PM, Monday through Friday and 7:00 AM to 11:30 AM on Saturday. Exhibit CC, State of Vermont Land Use Permit, Case No. 7R0841-13 at ¶17, App. at 212. Trucks may queue as of 6:00 AM. *Id.* 3:00 AM is not within that range.

Conspired with Horizons Engineering to avoid compliance with regulatory requirements by means of a lot line adjustment, substantially true and opinion.

34. Plaintiff alleges that Defendants defamed it with the following statement:

I am writing to file an ethics complaint against Mr. Eric Pospesil and his engineering/surveying company, Horizons Engineering located in Franconia, N.H. At the April 3rd 2019 Town of Dalton Planning Board meeting, Mr. Pospesil and his company, representing Casella Waste Systems, knowingly attempted to deceive the Planning Board, abutters, and public regarding an attempt by Casella Waste Systems of Rutland VT to adjust property lines for 300+ acres of land, intended to become a garbage landfill, in such a way as to avoid having to notify abutting landowners, including the NH Dept of Parks as the land in question borders Forest Lake State Park. An attempt was made to create a 50 foot border of land encompassing the proposed landfill site, which said border would remain in the name of the seller, Douglas Ingerson, Jr., this allowing Casella Waste Systems to proceed with plans for the development of the garbage landfill without notification of said abutters.

Exhibit S, April 24, 2019 Facebook Post, Pl. Responses to Request for Production 1, App. at 161.

35. Defendants went on to characterize this effort by Plaintiff's engineers, in collaboration with the Plaintiff and the seller of the land in question, as an attempt to circumvent statutory notice requirements for abutting municipalities, as deceptive, as unethical, as unscrupulous, as professional malfeasance, as a knowing attempt to mislead. *Id.*

36. Plaintiff has identified and desires to buy, or has contracted to purchase, all or a portion of certain parcels in Dalton belonging to one J.W. Chipping, Inc., principal Doug Ingerson. Swan Aff. at ¶42.

37. J.W. Chipping and/or Mr. Ingerson owned Tax Map 406 Lots 1, 2.1, 2.3, 2.4, 2.5, 3, 3A, 5 and 33. Plaintiff and/or J.W. Chipping and/or Mr. Ingerson, with the assistance of Horizon's Engineering, submitted to the Dalton Planning Board a proposed Lot Line Adjustment Plan proposing a new lot configuration for these lots, in which a new lot would be formed from parts of the other lots. Exhibit T, Lot Line Adjustment Plan (new lot in bold), App. at 163.

38. On the plan, where existing Lots 2.1, 33 and 3 all abut the State of New Hampshire's Forest Lake State Park, Dalton Tax Map 408, Lot 6, the proposed configuration would create a new Lot 2.1 with a boundary fifty feet inset from, and parallel to, the State Park boundary. The land between the new Lot 2.1 and the State Park would be conjoined to adjacent Lots 33 and 3, and the new Lot 2.1 would no longer abut the State Park or certain other property owners. *Id.*

Alleged Plaintiff was “packing the board” of the Bethlehem Planning Board.

39. Plaintiff alleges that the following statement Defendants made on a Facebook post on May 28, 2019 is defamatory: “We also know Casella is trying to pack the Town of Bethlehem Planning Board in an attempt to try, yet again, and against the will of the voters, to seek further expansion in that town.” Exhibit U, Plaintiff's Responses to Request for Production 1 at CWS 00038, App. at 164.

40. In 2013, the Town of Bethlehem appointed Plaintiff's landfill manager, Kevin Roy, to be an alternate on the Planning Board. Exhibit V, Blechl, Robert, “Bethlehem: Landfill Manager Appointed as Planning Board Alternate,” Caledonian Record (June 18, 2013), App. at 165.

41. In 2018, James Martin ran, with the support of a pro-landfill action group named “Believe in Bethlehem” for an empty seat on the Planning Board. Exhibit W, Believe in Bethlehem Facebook post, March 10, 2018, App. at 169. Mr. Martin is or was then an employee of Plaintiff at the Bethlehem landfill.

42. It was reported by the Caledonian Record that when a user joins the email list associated with “Believe in Bethlehem,” the physical address associated with Believe in Bethlehem’s MailChimp account is the same address as Plaintiff’s Northeastern regional office in Saco-Biddeford, Maine. Exhibit X, Blechl, Robert, “Bethlehem: Casella-Funded Group Proposes Landfill Expansion,” Caledonian Record (Nov. 14, 2017), App. at 170. In the article, Plaintiff’s spokesperson, Mr. Fusco, acknowledged that Plaintiff would provide financial and other support to “Believe in Bethlehem.” *Id.*; App. at 171.

Is complicit in sending in sending millions of gallons of leachate to third parties who improperly treat it and then discharge it into the Merrimack River.

43. Plaintiff alleges that the following statement Defendants made in a November 24, 2019 facebook post is defamatory: “PA and landfill and WWTP [(Waste Water Treatment Plant)] runoff ... May 2019. How much longer will NH allow for Casella to ship its millions of gallons of leachate to the Concord and Franklin WWTP’s despite their inability to treat it effectively before it is emptied into the Merrimack River?” Exhibit Y, Plaintiff’s Responses to Request for Production 1 at CWS 00032, App. at 174.

44. The Facebook post in question referenced and incorporated an article from the Pittsburg Post-Gazette entitled, “Pa. Attorney General to investigate landfill runoff problems in Westmoreland County.” *Id.*; App. at 175. In the article, published May 23, 2019, the writer describes how the Pennsylvania Attorney General obtained an injunction to terminate the

treatment of landfill leachate at a Westmoreland County wastewater treatment plant because it threatened to discharge harmful materials into the Monongahela River. *Id.*; App. at 175-77.

45. The United States Geological Survey has published research into leachate that is treated by wastewater facilities, concluding that “Landfills are often not the final repository for leachate which can be discharged to surface waters following onsite or offsite wastewater treatment.” Exhibit Z, Nov. 13, 2015, “Landfill Leachate Released to Wastewater Treatment Plants and Other Environmental Pathways Contains a Mixture of Contaminants Including Pharmaceuticals,” App. at 178, 180.

46. Plaintiff produces approximately 32,000 gallons of leachate daily (more than 10 million gallons annually) that is treated at the Concord or Franklin wastewater treatment facilities. *See* Exhibit AA (samples of reports for both treatment facilities produced by Plaintiff in response to Requests for Production of Documents), App. at 188, 198.

47. Studies have been published noting that “Co-treatment of leachate in municipal wastewater treatment plants (WWTPs) is a commonly practiced method for leachate management. However, changing characteristics of leachate and more stringent discharge limits in WWTPs have led to questions about sustainability of co-treatment.” *See* Exhibit BB, Dereli, Clifford and Casey, “Co-treatment of leachate in municipal wastewater treatment plants: Critical issues and emerging technologies,” 51 *Critical Reviews in Environmental Science and Technology* 1079-1128 (April 20, 2020) (abstract), App. at 204.

Weaponized the legal system against you by causing Vanessa Cardillo to request a protect order against me.

48. Plaintiff alleges that Defendants made a defamatory statement when they stated on June 7, 2021, on a Twitter post, “When Casella weaponizes the legal system: A sad reality,

meant to silence those who oppose them.” Exhibit GG, Plaintiff’s Supplemental Response to Request for Production 1; App. at 224. The post referenced a copy of a stalking petition filed against Mr. Swan by Vanessa Cardillo, girlfriend of Doug Ingerson, owner of the land that Plaintiff intends to buy and construct a landfill on. *Id.*

49. Ms. Cardillo’s stalking petition was filed the day before the annual Dalton Town Meeting, at which Mr. Swan was going to canvass voters because he was on the ballot for an elected office. Swan Aff. at ¶¶59-60. The Petition identified conduct that allegedly occurred months before, yet she elected to file the petition and have it served the day before the election. *Id.* Mr. Swan was able to have the petition amended by the Court to permit him to attend the Town Meeting. *Id.* Subsequently, after the merits hearing, the Petition was dismissed outright because at all times Mr. Swan was engaged in protected speech. *Id.* The judge wrote:

Per the statutory definition of course of conduct, such course of conduct shall not include constitutionally protected activity, nor shall it include conduct that was necessary to accomplish a legitimate purposes independent of making contact with the targeted person. While Defendant did post videos of Plaintiff online, these videos were made during a public town meeting. Other people also videotape these meetings and broadcast or post them online. There was no testimony that Defendant threatened the safety of the Plaintiff or that he committed any other acts included in the definition of course of conduct. The case is DISMISSED.

Aff. of Swan at ¶60; *see* Exhibit HH, App. at 225-26.

Respectfully Submitted,

SAVE FOREST LAKE & JON SWAN

By their Attorneys,

ORR & RENO, P.A.

Date: April 14, 2022

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CERTIFICATION OF SERVICE

I, Jeremy D. Eggleton, do hereby certify that a copy of the foregoing was forwarded, this day, to counsel of record, via the Court's electronic service system.

/s/ Jeremy D. Eggleton

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