

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Casella Waste Systems, Inc.

v.

Docket #217-2023-CV-00285

Jon Swan

PLAINTIFF’S MOTION TO AMEND COMPLAINT

The plaintiff, Casella Waste Systems, Inc. (“CWS”), respectfully moves the court for leave to amend the complaint to include statements made by the defendant on August 9, August 16, and September 1, 2023. The complaint, filed on May 25, 2023, alleges that the defendant breached a settlement agreement between the parties, and these new statements each represent another breach of that agreement.

The settlement agreement at issue in the complaint requires (among other things) that Swan to identify his statements imputing conduct to CWS and its subsidiaries as expressions of opinion and to disclose the facts upon which he based this opinion. *See* Motion to File Under Seal (5/25/23), Exhibit A at p. 1, ¶2. CWS has identified three recent social media posts that violate both requirements for statements imputing conduct on CWS and thus constitute additional breaches of the settlement agreement. *See* Amended Complaint, Exhibit A, at ¶¶12-22. The amended complaint is being filed contemporaneously with this motion.

RSA 514:9 governs amendments in civil actions and provides that amendments are permissible at any stage in the proceedings “...when it shall appear to the court that it is necessary for the prevention of injustice; but the rights of third persons shall not be affected thereby.” *See also Coan v. N.H. Dept. of Environmental Svcs.*, 161 N.H. 1, 11 (2010) (amendments are permissible “so long as the changes do not surprise the opposite party,

introduce an entirely new cause of action, or call for substantially different evidence”). The statements that the plaintiff seeks to add to its complaint each constitute new, separate breaches of the settlement agreement between the parties and were published in recent weeks. The proposed amendment will not prejudice the defendant as discovery has not yet commenced and the amended complaint imposes no undue burden upon him. The defendant does not assent to the relief sought by this motion.

The parties have conferred and agreed to postpone submitting a proposed case structuring order until after the court rules on this motion to amend.

For the foregoing reasons, CWS respectfully requests that the court grant it leave to file the contemporaneously-filed amended complaint.

Respectfully submitted,

CASELLA WASTE SYSTEMS, INC.
By Its Attorneys,

Date: 9/15/23

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CERTIFICATE OF SERVICE

I hereby certify that the within pleading is being served electronically through the court’s ECF system upon counsel of record and all other parties who have entered electronic service contacts in this case.

Date: 9/15/23

/s/ Cooley A. Arroyo
Cooley A. Arroyo, Esq.