

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Case No: 217-2023-CV-00285

Casella Waste Systems, Inc.

v.

Jon Swan

OBJECTION TO MOTION IN LIMINE
(SUBJECTIVE INTENT TESTIMONY FROM DEFENDANT SWAN)

1. The Plaintiff seeks to bar the Defendant, Mr. Swan, from “testifying regarding his subjective intent when making the statements at issue in this case.” Motion at 1. The Defendant objects because a jury is going to make the factual determinations in this case and they are entitled to hear his thought process, interpretation and explanation and weigh that as they evaluate whether any given statement in this case breaches the terms of the Settlement Agreement.

2. At the outset, it is important to observe that the jury questions in this case are not limited only to “whether the posts impute conduct or intent onto the Plaintiff.” Motion at 1. While the Court did say, in its Order on Plaintiff’s Motion for Partial Summary Judgment, that this question gives rise to a factual dispute, it also recognized that the posts are “replete with discretionary determinations that must be made by a jury.” Order on Motion for Partial Summary Judgment at 5 (quoting Defendant’s argument about the discretionary issues that needed to be resolved by a jury). The Court denied the summary judgment motion in its entirety. It did not grant any aspect of it. Thus, to the extent that the Plaintiff now construes the Court’s summary judgment ruling to foreclose an argument that the words or posts taken as a

whole, in their entirety, meet the Defendant's obligations for reasonable conduct under the Settlement Agreement, then the Plaintiff is mistaken.

3. The Defendant's subjective intent, his belief as to what a reasonable person would interpret those Statements to mean, and to whom any actions or omissions were attributed, are all evidence relevant to a jury determination on the question whether the Defendant breached the Settlement Agreement. It is difficult to understand what Mr. Swan would testify about if barred from testifying about those things. Since the Court denied the Plaintiff's summary judgment motion in its entirety, then the Court clearly contemplated that the Defendant would be able to tell the jury his story. If the Court felt that this matter could be decided on the basis of the statements alone, it would not have denied summary judgment.

4. The Court was correct when it said that the key question for the jury is how a reasonable person would have understood the Defendant's posts, which is a reasonableness determination "best left for a jury." What the Defendant thought about the posts, the words he used, what he meant, and what the context of his posts was, are all relevant to a jury's determination about the reasonableness of his conduct, *i.e.*, the writings he made that are alleged to have breached the Settlement Agreement.

5. Furthermore, Mr. Swan's subjective intent is integral to the jury determination about whether the parties agreed to a \$5,000 liquidated damages clause per violation or per action. Although the law of New Hampshire requires the Plaintiff to prove that this liquidated damages figure approximates the amount of damages it actually suffered if it is to be upheld as a liquidated damages provision, as opposed to an unlawful and impermissible penalty, to even get to

that analysis, the meaning of the contractual damages provision, which is ambiguous on its face, requires subjective testimony about the parties' intent at the time of the Settlement Agreement.

6. Lastly, disentangling Mr. Swan's subjective impressions of his own conduct, his own recollections, his own explanations for what led him to say what he said, would be repetitive, unwieldy and prejudicial to Mr. Swan.

7. For these reasons, the Defendant requests that the Court deny the Plaintiff's Motion to Preclude Testimony from the Defendant.

Respectfully submitted,

JON SWAN

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Dated: January 15, 2026

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded, this day, to counsel of record, via the Court's electronic file & serve system.

/s/ Jeremy D. Eggleton
Jeremy D. Eggleton