

**THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT**

**MERRIMACK, SS.**

**SUPERIOR COURT**

CASELLA WASTE SYSTEMS, INC.

v.

JON SWAN

No.: 217-2023-CV-00285

**ORDER ON THE DEFENDANT'S MOTION TO COMPEL**

The Plaintiff, Casella Waste Systems, Inc., brought this suit against the Defendant, Jon Swan, alleging that the Defendant breached the terms of the parties' settlement agreement (the "Agreement"). Doc. 25 (2nd Am. Compl.). The Defendant moved to compel the Plaintiff's responses to certain discovery requests. Doc. 59. The Plaintiff objected, Doc. 67, to which the Defendant replied, Doc. 71. The Court held a hearing on the motion on May 1, 2025. For the following reasons, the Defendant's motion is largely DENIED but the Plaintiff is ordered to file an affidavit specifying its discovery compliance, as detailed below.

**BACKGROUND**

The parties were previously engaged in litigation in this court. See 217-2020-CV-00212. On May 12, 2023, the parties executed the Agreement, settling the previous matter. The Agreement included a confidentiality provision, prohibiting either party from disclosing the existence or terms of the Agreement. The Agreement also included the following "Future Public Communications" provision:

Except in an instance in which Swan repeats or relays a public communication by an independent source, other than Swan, Swan agrees

that in any public communication in which he imputes conduct or intent to Casella he will (a) disclose the source of the facts on which he relies for such imputation; and (b) preface such communication with words such as “I understand”, “I think”, “In my opinion”, or similar phrasing calculated to convey that the communication is an expression of opinion or belief rather than a statement of fact. To the extent Swan intends a public communication to be satirical, Swan shall include a statement within the public communication identifying it as such.

Doc. 2, Ex. A.<sup>1</sup>

The Plaintiff brought a breach of contract claim against the Defendant, alleging that he breached the confidentiality and Future Public Communications clauses of the Agreement. The Defendant counterclaimed, asserting that, by disclosing portions of the Agreement in its complaint, the Plaintiff violated the confidentiality provision of the Agreement. The Defendant asserts a variety of defenses, including unclean hands.

The Defendant propounded discovery requests on the Plaintiff seeking information regarding: (1) communications and emails from any Casella person, employee, or agent, to a list of specific individuals, using specific email search terms for communications from January 1, 2023 to present; and (2) all memoranda, reports, studies, analyses, and test results from Sanborn Head (or any engineering firm) to Casella from 2019 to present concerning any New Hampshire project and, in particular, Casella’s Bethlehem landfill site.

In response to the first category, the Plaintiff produced one email chain for attorney’s eyes only with substantial redactions. The Plaintiff represented to counsel, and to the Court at the hearing, that the email chain was the only document responsive

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<sup>1</sup> The Agreement was filed under seal but portions of it and summaries of its provisions were included in the Plaintiff’s complaints. Such inclusion forms the basis of the Defendant’s counterclaim. The Court cites the provision in this public order because, as discussed at the hearing, the proverbial cat is out of the bag.

to the Defendant's request. The Plaintiff objected to the second search category, asserting that it is beyond the scope of discovery.

### **ANALYSIS**

The Defendant challenges the Plaintiff's representations regarding its search for information responsive to the Defendant's request for communications between Casella employees and third parties. As discussed at the hearing, the Court orders the Plaintiff to file an affidavit from a person or persons with knowledge of actions taken by Casella to search, find, and produce records responsive to the Defendant's request. Details of those actions should include, at least, who participated in the search and production, what those people did, what search terms were used, and what was found as a result of those searches. Upon review of that affidavit, the Court will determine whether further process is required.

Turning to the Defendant's requests related to information produced to Casella from engineering companies, the Court rules that such information is beyond the scope of discovery. At the hearing, the Plaintiff clarified that its claims arise solely out of the Defendant's alleged breaches of the Agreement and that it is not asserting claims for defamation.<sup>2</sup> Because the Plaintiff's claims arise only out of the Defendant's alleged breaches of the Agreement, the information the Defendant seeks is not relevant or reasonably calculated to lead to the discovery of admissible evidence. This is so because, unlike in a defamation action,<sup>3</sup> here, the truth of the Defendant's statements is irrelevant. Rather, central to whether the Defendant breached the Future Public

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<sup>2</sup> This point required clarification due to the Plaintiff's numerous references to the Defendant's alleged "false and defamatory" statements in its second amended complaint.

<sup>3</sup> See Thomas v. Telegraph Publishing Co., 155 N.H. 314, 335 (2007) (holding that a speaker cannot be liable for a defamatory statement that is true).

Communications provision is whether he was repeating or relaying a public communication by an independent source, which could include the Plaintiff. Thus, private communications between Sanborn Head or other engineering firms and the Plaintiff are not relevant.

In his motion, the Defendant also sought permission to take “unrestricted” video depositions of John Gay and Rebecca Metcalf subject to the “normal and appropriate” objections of counsel. While the Court declines to rule wholesale on whether the Defendant can depose Mr. Gay or Ms. Metcalf, the Court clarifies that, in the event the Defendant does seek those depositions, the questioning must be limited to the scope of discovery outlined above. In other words, the Defendant shall not depose any individuals about the substantive truth of his claims or about the Plaintiff’s communications with Sanborn Head or any other engineering firms.


### **CONCLUSION**

The Defendant’s motion to compel is largely DENIED. The Plaintiff is ordered to file its affidavit within 20 days of the Clerk’s notice accompanying this order.

SO ORDERED.

May 2, 2025

Date

  
Judge Martin P. Honigberg

Clerk's Notice of Decision  
Document Sent to Parties  
on 05/02/2025