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
("EXPERT" TESTIMONY FROM DEFENDANT SWAN)

1. The Plaintiff seeks to bar the Defendant, Mr. Swan, from "providing opinion testimony regarding any matter that requires scientific or technical expertise, including but not limited to whether or not the statements the Defendant made about the landfill are substantively true or false." Motion at 1.

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 objects because the statements at issue are universally made together with a prompting document, publication, press release, or photograph that must be considered with the allegedly offending statement—whether a post fulfills the "statement of opinion" obligations of the Settlement Agreement is a question of the totality of the post in question. The jury can only interpret whether the post was reasonably or substantially compliant with the Settlement Agreement if Mr. Swan is permitted to testify about the document, publication, press release or photograph that he was responding to with his statement. If Mr. Swan is not permitted to place the entirety of a given post—and not merely certain words of his parsed carefully by the Plaintiff—before the jury, then the trial will be proceeding based on an error. The Plaintiff's testimony about what the underlying document he is responding to says is necessary to explain the context of his words. This is not about proving the truth of Mr. Swan's statement or not; these documents and their meaning are integral to the allegedly violative statements. By understanding what the documents state, or show, a jury can assess whether the statement reasonably and substantially met the Settlement Agreement's requirements about "opinion" and imputing conduct to the Plaintiff. *See* Order on Motion for Partial Summary Judgment at 5-6 (concluding that the reasonableness of Mr. Swan's statements is best left for a jury).

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." *Id.* This analysis would be impossible, and the Defendant's rights denied, if he were not permitted to explain the full context of his statements, including the tagged, posted, incorporated documents his words were reacting to. His recitation of the content

of those public documents is not "expert opinion" but rather, important factual information relevant to the content of his allegedly violative words.

5. For these reasons, the Defendant requests that the Court deny the Plaintiff's Motion to Preclude "Expert" 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