

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

217-2023-CV-00285

Casella Waste Systems, Inc.

v.

Jon Swan

**MOTION TO QUASH
DEPOSITION SUBPOENA DUCES TECUM AND NOTICE OF DEPOSITION**

NOW COMES nonparty David Leonard, by and through counsel, Sulloway & Hollis, P.L.L.C., respectfully requests that this court quash the *Deposition Subpoena Duces Tecum* and *Notice of Deposition* issued by Jon Swan (“Defendant”), through his counsel Orr & Reno, P.A. dated June 17, 2025, and order that Mr. Leonard is not required to produce documents nor to appear and provide testimony in the matter of *Casella Waste Systems, Inc. v. Jon Swan*, Case No. 217-2023-CV-00285. In support of this motion, nonparty David Leonard states as follows:

1. “A party's request for information must appear relevant and ‘reasonably calculated to lead to the discovery of admissible evidence.’ *N.H. Ball Bearings, Inc. v. Jackson*, 158 N.H. 421, 429-30 (2009); *and see* N.H. Rules Super. Ct. 21(b). “Requests for ESI shall be made in proportion to the significance of the issues in dispute.” N.H. Rules Super. Ct. 25(c). “Discovery abuse includes, but is not limited to, the following: (A) employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or undue burden or expense; (B) employing discovery methods otherwise available which result in legal expense disproportionate to the matters at issue; ...” N.H. Rules Super. Ct. 21(d)(1).

2. Case No. 217-2023-CV-00285 is an action concerning breach of a settlement agreement (the “Settlement Agreement”) between Plaintiff and Defendant, following from previous litigation between Plaintiff and Defendant, *Casella Waste Systems, Inc. v. Jon Swan f/k/a Jon Alvarez*, Case No. 217-2020-CV-212. The Second Amended Complaint in the present case was filed on or around February 22, 2024, with Answer, Defenses, and Counterclaims filed on or around April 25, 2024.

3. Defendant’s dispute in the present litigation apparently concerns whether Plaintiff disclosed the contents of the Settlement Agreement, signed on May 11, 2023, before initiating litigation on May 25, 2023. See *Second Amended Complaint; Answer, Affirmative Defenses, Counterclaims and Request for Jury Trial*.

4. Mr. Leonard is not a party to the Settlement Agreement, nor to the present litigation in case no. 217-2023-CV-00285, nor to the prior litigation in case no. 217-2020-CV-212.

5. On or around June 9, 2025, counsel for Jon Swan served a *Deposition Subpoena Duces Tecum* together with a *Notice of Deposition* (attached together as Exhibit 1) on Mr. Leonard, requiring that Mr. Leonard produce documents including:

1. Any and all emails or text messages exchanged with Rebecca Metcalf from May 1, 2023 to October 1, 2023.
2. Any and all emails or text messages exchanged with any other person using @casella.com or another casella domain as an email address from May 1, 2023 to October 1, 2023.
3. Any and all emails or text messages that mention the words: lawsuit, swan, save forest lake, NDA, gag, settlement, agreement, NCES, landfill, dismiss, and confidential, from May 1, 2023 to October 1, 2023.
4. Any and all internet communication (e.g., facebook posts, Instagram posts, chat room posts, etc.) that talk about Casella, Jon Swan, legal actions between them, settlement agreements between them, non-disclosure orders, gag orders, confidentiality).

See *Deposition Subpoena Duces Tecum, Schedule A, Requests for Production of Documents*.

6. The *Deposition Subpoena Duces Tecum* requires Mr. Leonard to appear at a legal office in North Woodstock for deposition on June 30, 2025, and “to bring with you and produce at the time aforesaid the documents listed on the attached **Schedule A** and made a part hereof by this reference”. It further states that “IF YOU PRODUCE THE REQUESTED DOCUMENTS TO [Defendant’s Counsel] ON OR BEFORE JUNE 26, 2025, YOU WILL NOT BE REQUIRED TO ATTEND THE DEPOSITION ON JUNE 30, 2025.”

7. As an initial and procedural point, this subpoena is inherently a subpoena duces tecum requiring production of documents to a lawyer’s office rather than a subpoena for deposition, with deposition intended merely as a threatened eventuality should Mr. Leonard fail to obey. See, e.g., *Legacy Global Sports, LP v. St. Pierre*, 2020 N.H. Super. LEXIS 17 (Superior Court case, nonprecedential): “The subpoenas are defective, as New Hampshire provides no rule of civil procedure allowing for a subpoena duces tecum to be served on a third-party for production to a lawyer's office but requires documents to be produced at a deposition.” Here, the inclusion of deposition as a threat should Mr. Leonard fail to comply with the desired production of documents appears to be merely a formulaic diversion from the intent of the subpoena, with an all-capitalized disclaimer asserting that deposition is to be avoided by complying with Defendant’s irregular demands. Defendant seeks to subvert the rules of the Court to permit illegitimate discovery.

8. Ultimately, the Defendant’s sole genuine query appears to be whether the Plaintiff disclosed information regarding the contents of the Settlement Agreement to Mr. Leonard before the initiation of the lawsuit.

9. Defendant requests communications by Mr. Leonard from May 1, 2023, to October 1, 2023, some five months, for three of his requests, and from all time for his fourth request. The relevant period for Plaintiff’s alleged disclosure is limited to the two weeks between the date of

the Settlement Agreement on May 11, 2023, and the start of litigation on May 25, 2023. Defendant's requests are irrelevant to the issue he claims he seeks to prove and are not "reasonably calculated to lead to the discovery of admissible evidence." *N.H. Ball Bearings, Inc. v. Jackson*, 158 N.H. 421, 429-30 (2009); *and see* N.H. Rules Super. Ct. 21(b).

10. Communications by Plaintiff to a non-party could be acquired by discovery requests served upon Plaintiff, rather than upon the nonparty.

11. Moreover, even if Defendant has the right to discover this information from a nonparty instead of the Plaintiff in this matter, discovering whether Plaintiff had communicated such information to Mr. Leonard would easily be achievable through an affidavit, or at most a deposition. Requiring extensive production of communications that concern the Defendant or his interests extends far beyond the limits of a request reasonably calculated to lead to the discovery of admissible evidence, and appears intended instead to harass and intimidate Mr. Leonard, who has had adverse relations with the Defendant, and to identify others with whom Mr. Leonard has communicated regarding Defendant.

12. On information and belief, Defendant's conflict with Plaintiff has, largely at Defendant's contrivance, become a public spectacle. Demanding production of all online comments ever made by a nonparty to the present litigation, mentioning Plaintiff or Defendant in any regard, is patently overbroad and likely to exert a chilling effect on Mr. Leonard's speech.

13. The expansive nature of these requests is entirely out of proportion to the significance of the issues in dispute, seeking instead to discover Mr. Leonard's private communications with regard to Defendant, Plaintiff, and issues of interest in the community in which Mr. Leonard resides. N.H. Rules Super. Ct. 25(c).

14. By burdening Mr. Leonard with unnecessary and extraneous production and seeking to expose Mr. Leonard's private communications on matters of interest to the Defendant, this *Deposition Subpoena Duces Tecum* and *Notice of Deposition* causes unwarranted annoyance, embarrassment, or undue burden or expense. N.H. Rules Super. Ct. 21(d)(1)(A). To the extent that these discovery methods are otherwise available, in this instance they demand legal expense disproportionate to the matters at issue. N.H. Rules Super. Ct. 21(d)(1)(B). Given the ease with which the purported aim of this *Deposition Subpoena Duces Tecum* and *Notice of Deposition* could be alternatively achieved through simple affidavit, it appears that this harassment and burden is the principal intent, rather than an undesired side-effect.

15. Through counsel, Defendant has acknowledged regarding this *Deposition Subpoena Duces Tecum* and *Notice of Deposition* that "[t]he terms are intentionally broad to foster the most complete discovery..." and further states that "[i]f it is later determined that the communications are not admissible, so be it." See Defendant's *Objection to Motion for Protective Order*, pp. 4.

16. Defendant thus admits that the "terms are intentionally broad" and takes a cavalier attitude as to whether his demand seeks inadmissible communications. This is transparently an "open-ended fishing expedition" into communications by Mr. Leonard irrelevant to the claims made by and against the Defendant. Such expeditions are unduly burdensome, unreasonable, and prohibited under New Hampshire law. See *Robbins v. Kalwall Corp.*, 120 N.H. 451, 453 (1980); *Staargaard v. Pub. Serv. Co.*, 96 N.H. 17, 19 (1949); *Hartford Accident &c. Co. v. Cutter*, 108 N.H. 112, 114 (1967); *Riddle Spring Realty Co. v. State*, 107 N.H. 271, 278 (1966).

17. For the foregoing reasons, the Court should quash the *Deposition Subpoena Duces Tecum* and *Notice of Deposition*.

18. Defendant's assent to this Motion has not been sought due to the nature of the relief requested.

WHEREFORE, David Leonard, nonparty, prays that this Court:

- A. Quash the *Deposition Subpoena Duces Tecum* and *Notice of Deposition* directed to David Leonard and attached hereto as Exhibit 1; and
- B. As this *Deposition Subpoena Duces Tecum* and *Notice of Deposition* are frivolous, oppressive, and intended to harass and intimidate, grant David Leonard his attorney's fees in opposing this motion (see RSA 507:15; and see *Harkeem v. Adams*, 117 N.H. 687 (1977)); and
- C. Grant such other and further relief as may be deemed just and equitable.

Respectfully submitted,

DAVID LEONARD

By His Attorneys,

SULLOWAY & HOLLIS, P.L.L.C.

Dated: July 2, 2025

By: /s/ Patrick T. Grene
Patrick T. Grene, Esq., NHB #276330
9 Capitol Street
Concord, NH 03301
(603) 223-2800
pgrene@sulalloway.com

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July, 2025, a copy of the foregoing document was filed through the New Hampshire Superior Court's ECF system, in accordance with the Rules of New Hampshire Superior Court.

By: /s/ Patrick T. Grene
Patrick T. Grene, Esq.

Exhibit 1

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Case Number: 217-2023-CV-00285

Casella Waste Systems, Inc.

v.

Jon Swan

DEPOSITION SUBPOENA DUCES TECUM

To: Dave Leonard
367 Jefferson Road
Whitefield, NH 03598

You are hereby commanded to appear for your deposition and testify to what you know relating to the above captioned matter before a court reporter from Avicore Reporting Services. This deposition will be taking place at the Law Offices of **Parnell, Michels & McKay, PLLC, 137 Main Street, North Woodstock, New Hampshire** on **June 25, 2025 beginning at 9:00 am** and continuing until completed.

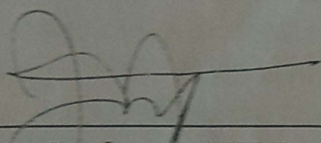
You are required to bring with you and produce at the time aforesaid the documents listed on the attached Schedule A and made a part hereof by this reference.

Failure to appear according to the command of this Subpoena will subject you to a penalty, damages in a Civil Suit and punishment for contempt of Court.

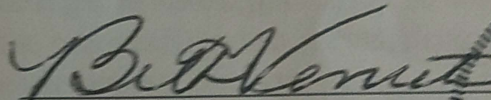
Upon receipt of this Subpoena, please contact Attorney Jeremy D. Eggleton at (603) 223-9122 or by email at jeggleton@orr-reno.com to confirm your attendance.

HEREOF fail not, as you will answer your default under the penalties prescribed by law.

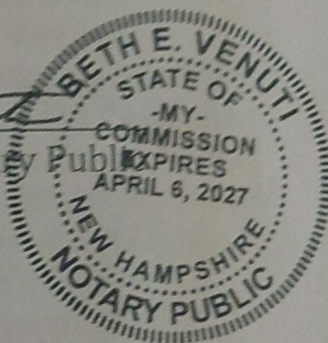
Dated at Concord, New Hampshire, the 5th day of June, 2025.



Jeremy D. Eggleton, NH Bar #18170
Orr & Reno, P.A.
jeggleton@orr-reno.com
45 S. Main Street, Suite 400
P.O. Box 3550
Concord, N.H. 03302-3550
Phone: (603) 224-2381



~~Justice of the Peace~~/Notary Public
My Commission Expires:



SCHEDULE A

REQUESTS FOR PRODUCTION OF DOCUMENTS

Definitions

1. "Document" means any recording of information in any hard-copy format whatsoever. This term includes information that is handwritten, typed, drawn, sketched, printed, recorded, or fixed in any medium by any physical or mechanical means whatsoever. This term specifically includes, but is not limited to, the following: letters, memoranda, correspondence, electronic mail, instant messages, voicemail, facsimiles, telegrams, diaries, address books, calendars, journals, task lists, appointment books, notes, notebooks, notes of meetings, minutes of meetings, pictures, photographs, drawings, diagrams, blue prints, architectural documents, engineering documents, designs, schematics, prints, books, manuals, texts, publications, white papers, business plans, advertising plans or materials, promotion plans or materials, marketing plans or materials, financial statements, tax returns, records, papers, invoices, accounts, statements, checks, drafts, written memorials of oral communications, and computer printouts. Every copy of a document that differs in any way from an analogous document is a separate and different version of the same document that should be produced. As used herein, the term "document" specifically includes "electronically stored information" as defined in these Definitions.

You are requested to produce all documents concerning the following:

1. Any and all emails or text messages exchanged with Rebecca Metcalf from May 1, 2023 to October 1, 2023.
2. Any and all emails or text messages exchanged with any other person using @casella.com or another casella domain as an email address from May 1, 2023 to October 1, 2023.
3. Any and all emails or text messages that mention the words: lawsuit, swan, save forest lake, NDA, gag, settlement, agreement, NCES, landfill, dismiss, and confidential, from May 1, 2023 to October 1, 2023.
4. Any and all internet communications (e.g., facebook posts, Instagram posts, chat room posts, etc.) that talk about Casella, Jon Swan, legal actions between them, settlement agreements between them, non-disclosure orders, gag orders, confidentiality).

PROOF OF SERVICE

On June 9, 2025, I, the undersigned, being over the age of 18, served the within Deposition Subpoena on Dave Leonard on behalf of the Defendant, Jon Swan.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 6/9/25

W Green
Name:

Address for Service:
Dave Leonard
367 Jefferson Road
Whitefield, NH 03598