

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Casella Waste Systems, Inc.

v.

Docket #217-2023-CV-00285

Jon Swan

**EMERGENCY MOTION FOR PROTECTIVE ORDER**

The plaintiff, Casella Waste Systems, Inc. (“Casella” or the “plaintiff”), respectfully moves pursuant to Super. Ct. R. 29(a) this Court to enter a protective order limiting the scope of the defendant’s, Jon Swan (“Swan” or the “defendant”), subpoenas *duces tecum* and notices of deposition propounded upon Pam Kathan, Jim Dannis, and Tammy St. Cyr (the “non-party witnesses”), and states as follows in support thereof:<sup>1</sup>

**I. Summary**

1. This Court previously denied defendant’s Motion to Compel Casella to produce certain communications between Casella and engineering firms because “the information the Defendant seeks is not relevant or reasonably calculated to lead to the discovery of admissible evidence.” Order on Motion to Compel, May 2, 2025. The court also ordered Casella to submit affidavits corroborating the search that was conducted for discoverable evidence. Casella complied with that order.

2. Having been unable to obtain irrelevant communications between Casella and non-party witnesses from Casella, defendant now seeks to obtain an even broader swath of information via the alternate route of subpoenas *duces tecum* served upon the non-party witnesses.

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<sup>1</sup> The notices of deposition provided that the depositions would be canceled if the documents were provided by June 26, 2025. As this is an incredibly short deadline, Casella and Swan have agreed that this motion should be framed as an emergency motion and Swan will provide a response over the weekend.

3. On June 17, 2025, Swan sent counsel copies of three subpoenas *duces tecum* that would be served upon Pam Kathan, Jim Dannis, and Tammy St. Cyr demanding production of certain categories of documents. *See* Subpoenas, attached hereto as Exhibits 1-3.

4. The documents demanded include communications between the non-party witnesses and any person with an @casella.com email address, communications that contain certain words, including “lawsuit,” “swan,” “save forest lake,” “landfill,” and other words that would be commonly used given the long history of Swan’s public protest of Casella, and various other wide-ranging communications.

5. These document requests only relate to Swan’s counterclaims against Casella; they have nothing to do with Casella’s claims against Swan.

6. The subpoenas *duces tecum* seek documents that are neither relevant to defendant’s case nor reasonably calculated to lead to the discovery of admissible evidence. To the contrary, they are clearly intended to annoy, embarrass, oppress, and invade the privacy rights of the non-party witnesses.

7. The subpoenas *duces tecum* are improper for two distinct reasons: (1) they seek documents from timeframes bearing no relevance to the claims made in this case; and (2) they are overbroad in terms of their scope and likewise seek documents bearing no relevance to the claims made in this case.

8. Each of the subpoenas served on the three non-party witnesses contains demands for the same four categories of documents. Three of the document categories seek information from May 1, 2023, through October 1, 2023. The fourth contains no time limitation.

9. The only time period relevant to defendant’s claim is the period between the date the settlement agreement was executed, May 11, 2023, and the date Swan alleges Casella breached

the settlement agreement, May 25, 2023. Documents that go beyond those dates are not likely to lead to the discovery of admissible information.

10. Swan's document requests also far exceed information related to this lawsuit. Rather, the document requests seek a large tranche of information that plainly has no connection to the issues in this case. Given the nature of this dispute and Swan's efforts to prevent the construction of a landfill in Dalton, these document requests appear to be an effort to harass non-parties to this lawsuit and seek information which Swan would likely use to harass other persons in Dalton.

11. Simply because Swan desires documents that he could weaponize in his online harassment campaign against Casella and others in Dalton does not entitle him to obtain them. He must show that these requests are likely to lead to the discovery of admissible evidence, a showing he is unable to make.

## **II. Standard**

12. "Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. . . ." N.H. Super. Ct. R. 29(a). The trial court is afforded discretion to limit discovery to inquiries which are reasonably calculated to lead to the discovery of admissible evidence." N.H. Ball Bearings, Inc. v. Jackson, 158 N.H. 421, 429-30 (2009). As such the trial court is "permitted to keep discovery within reasonable limits and avoid 'open-ended fishing expeditions' or harassment to ensure that discovery contributes to the orderly dispatch of judicial business." Id. at 430 (internal citations omitted).

### III. Argument

13. Swan's first two demands ask that the non-party witnesses produce: "[a]ny and all emails or text messages exchanged with Rebecca Metcalf from May 1, 2023 to October 1, 2023," and "[a]ny 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."

14. As set forth above these requests seek communications made both before the settlement agreement was executed and after Swan alleges that Casella breached the contract. Communications made before the settlement agreement was executed cannot be relevant to its breach. Likewise, communications occurring after the alleged breach likewise cannot support defendant's claim. Temporally, the only relevant time period is from May 11 to May 25, 2023.

15. Further, these subpoenas contain no limitation on the subject matter of the emails. The only limitation is the identity of the persons the non-party witnesses communicated with. If complied with as written, the requests would likely scoop up information that has nothing to do with this case. The sheer breadth of the subpoenas demonstrates that Swan is engaging in a fishing expedition; there is no basis for him to demand production of such a broad swath of documents.<sup>2</sup>

16. The third request demands "[a]ny 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." This request contains the same temporal overbreadth as the first two – it is completely unconnected to the time at which Swan alleges Casella breached the settlement agreement. Likewise, this request is wildly overbroad. The

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<sup>2</sup> To the extent that Swan is permitted to propound subpoena *duces tecum* upon the three non-parties, Casella suggests that the scope of the requests be limited in a similar fashion in line with this court's prior orders.

subpoena seeks information between town residents to which no person related to Casella is a party. Rather than attempt to tailor his request to information related to his claims, Swan instead seeks to gather intelligence about what his Dalton neighbors are saying about him, about the landfill, and about other topics having nothing to do with this case. The persons the subpoenas are directed to are not parties to this case. While these persons may discuss Swan or the proposed landfill in Dalton, no reasonable person could conclude that those discussions would be admissible or even lead to the discovery of admissible information.

17. The final request seeks “[a]ny and all internet communications (e.g., facebook [sic] 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)[sic].”

18. This fourth request contains *no* time limitation *whatsoever* – he seeks *any* internet communications the subpoenaed persons *ever* made about him. Any claim of entitlement to such far-reaching is simply preposterous.

19. Moreover, the fourth request also seeks information or communications that are completely disconnected from Casella itself.

20. These subpoenas perfectly illustrate Swan’s illegitimate and improper strategy. Instead of seeking documents that would support his counterclaim, such as internet communications tending to show a Casella agent or employee discussed the settlement agreement with a third-party, Swan seeks every single internet communication where his name or Casella’s name is mentioned throughout all time. This is beyond the pale.

21. Swan’s counterclaim against Casella only alleges a breach of the confidentiality portion of the settlement agreement. The only issues that are relevant and that these witnesses

could provide any information about are: (1) what they knew about the settlement agreement; and (2) where they obtained that information.<sup>3</sup> Anything else would have no bearing on Swan's ability to prove his unfounded allegations.

22. Here a protective order preventing these subpoenas from having any effect is warranted. Swan seeks information, as described above, that has no bearing on this case. And he has made no effort whatsoever to tailor the subpoenas *duces tecum* to issues pertinent to his claims. Indeed, it appears that the primary purpose for which Swan seeks the expansive scope of information is not to further his case but rather to obtain information he can weaponize for use in this ongoing campaign against Casella and the persons he has subpoenaed.

### **Conclusion**

23. For the reasons stated above, this Court should issue a protective order that Pam Kathan, Jim Dannis, and Tammy St. Cyr are not required to comply with the subpoenas or deposition subpoenas *duces tecum*. To the extent that the court is inclined to allow some discovery from these third parties, Casella respectfully requests that this Court issue an order appropriately limiting the scope of Swan's requests as described in the Proposed Order, attached hereto as Exhibit 4.

WHEREFORE, plaintiff Casella Waste Systems, Inc. respectfully moves that this Honorable Court:

- A. Grant this motion for a protective order;
  - B. Relieve the non-party witnesses from any obligation to comply with the subpoenas;
- and

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<sup>3</sup> It should be noted that when parties file stipulated docket markings, as the parties did here, it is an open secret that there is a settlement agreement. Similarly, it would be reasonable to infer that a settlement agreement that is not filed with the court is subject to a confidentiality clause. Swan's entire premise for this discovery is based on one thread on a Facebook post which posits exactly that.

C. Grant such other relief as may be just and proper.

Respectfully submitted,

CASELLA WASTE SYSTEMS, INC.,

By Its Attorneys,

Date: June 20, 2025

By: /s/ Jacob M. Rhodes

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Lehmann Major List PLLC

6 Garvins Falls Road

Concord, NH 03301

(603) 212-4099

#### 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: June 20, 2025

By: /s/ Jacob M. Rhodes

Jacob M. Rhodes, 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: Pam Kathan  
241 Harriman Road  
Dalton, NH 03598

You are required to appear before a Justice of the Peace and/or Notary Public from Avicore Reporting to give your deposition testimony at the offices of **Parnell, Michels & McKay, PLLC, 137 Main St, North Woodstock, New Hampshire** on **Monday, June 30, 2025 at 9:00 a.m.**, or as soon thereafter as called and to continue from day to day, to testify to your knowledge relating to the above captioned matter which is currently pending and will be tried in the Merrimack County Superior Court, State of New Hampshire.



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.

**IF YOU PRODUCE THE REQUESTED DOCUMENTS TO ORR & RENO, ATTN: BETH E. VENUTI, PARALEGAL, P.O. BOX 3550, CONCORD, NH 03302 ON OR BEFORE JUNE 26, 2025, YOU WILL NOT BE REQUIRED TO ATTEND THE DEPOSITION ON JUNE 30, 2025.**

HEREOF FAIL NOT, as you will answer your default under the penalties prescribed by law.

Dated at Concord, New Hampshire, the 17th day of June, 2025.

  
\_\_\_\_\_  
Jeremy D. Eggleton, NH Bar #18170  
Orr & Reno, P.A.  
[jeggleton@orr-reno.com](mailto: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 \_\_\_\_\_, 2025, I, the undersigned, being over the age of 18, served the within Subpoena Duces Tecum on Pam Kathan 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: \_\_\_\_\_

\_\_\_\_\_  
Name:

Address for Service:

Pam Kathan  
241 Harriman Road  
Dalton, NH 03598

## EXHIBIT 2

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: Jim Dannis  
117 Mc Ginty Road  
Dalton, NH 03598

You are required to appear before a Justice of the Peace and/or Notary Public from Avicore Reporting to give your deposition testimony at the offices of **Parnell, Michels & McKay, PLLC, 137 Main St, North Woodstock, New Hampshire on Monday, June 30, 2025 at 10:00 a.m.**, or as soon thereafter as called and to continue from day to day, to testify to your knowledge relating to the above captioned matter which is currently pending and will be tried in the Merrimack County Superior Court, State of New Hampshire.



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HEREOF FAIL NOT, as you will answer your default under the penalties prescribed by law.

Dated at Concord, New Hampshire, the 17th day of June, 2025.

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

  
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**PROOF OF SERVICE**

On \_\_\_\_\_, 2025, I, the undersigned, being over the age of 18, served the within Subpoena Duces Tecum on Jim Dannis 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: \_\_\_\_\_

\_\_\_\_\_  
Name:

Address for Service:

Jim Dannis  
117 Mc Ginty Road  
Dalton, NH 03598

## EXHIBIT 3



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: Tammy St. Cyr  
434 Blakslee Road  
Dalton, NH 03598

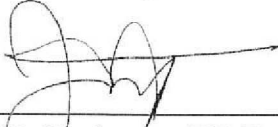
You are required to appear before a Justice of the Peace and/or Notary Public from Avicore Reporting to give your deposition testimony at the offices of **Parnell, Michels & McKay, PLLC, 137 Main St, North Woodstock, New Hampshire** on **Monday, June 30, 2025 at 11:00 a.m.**, or as soon thereafter as called and to continue from day to day, to testify to your knowledge relating to the above captioned matter which is currently pending and will be tried in the Merrimack County Superior Court, State of New Hampshire.

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HEREOF FAIL NOT, as you will answer your default under the penalties prescribed by law.

Dated at Concord, New Hampshire, the 17th day of June, 2025.

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

  
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Justice of the Peace/Notary Public  
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**PROOF OF SERVICE**

On \_\_\_\_\_, 2025, I, the undersigned, being over the age of 18, served the within Subpoena Duces Tecum on Tammy St. Cyr 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: \_\_\_\_\_

\_\_\_\_\_  
Name:

Address for Service:  
Tammy St. Cyr  
434 Blakslee Road  
Dalton, NH 03598

## EXHIBIT 4

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Casella Waste Systems, Inc.

v.

Docket #217-2023-CV-00285

Jon Swan

**PROPOSED ORDER**

1. The subpoenas *duces tecum* are limited temporally from May 11, 2023 through May 25, 2023.

2. The subject matter of the subpoenas *duces tecum* are limited to any documents or communications which reference or refer to a settlement agreement between the Casella and Swan.

SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Justice