

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. BCD-24-566

GOLDEN ANCHOR L.C.,
Plaintiff-Appellee,

v.

TOWN OF BAR HARBOR,
Defendant-Appellee,

CHARLES SIDMAN,
Proposed Intervenor Defendant-Appellant.

On Appeal from Business and Consumer Docket
Docket No. BCD-CIV-2024-00046

BRIEF OF APPELLANT

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I. INTRODUCTION

Appellant Charles Sidman appeals from the November 27, 2024 Order entered in the Business and Consumer Docket (“Business Court”), denying his Motion to Intervene (“Motion”) in the instant litigation as a defendant alongside Defendant Town of Bar Harbor (the “Town”). The litigation arises out of Plaintiff Golden Anchor L.C.’s (“Golden Anchor”) continued attempts to thwart voter-enacted legislation that limits and more beneficially regulates the number of cruise ship passengers disembarking into Bar Harbor, which currently all disembark at Golden Anchor’s property. Mr. Sidman has been instrumental in passing and defending the legislation from attacks originating from the cruise ship industry, Golden Anchor, and the Town’s own municipal government.

In this action, Golden Anchor challenges the same provisions already deemed lawful in federal court and seeks to prevent Mr. Sidman from participating in this litigation. As an owner of a downtown business directly harmed by cruise ship visitation, a frequent user of the downtown area, and the lead petitioner of the voter-enacted legislation, Mr. Sidman’s ability to protect his interests may undoubtedly be impaired by resolution of Golden Anchor’s action. Historically, the Town has been unwilling and unable to protect Mr. Sidman’s interests and, because of the divergent interests at stake in this litigation, cannot adequately represent them now. The Town’s interests are at least partially shaped by the

advocacy of the forceful pro-cruise ship faction within Bar Harbor. Mr. Sidman's interests in this litigation directly conflict with the interests of that faction. The Town's past and present actions have made it clear that it cannot adequately represent Mr. Sidman's more narrow interests as it tries to make "cruise ship tourism works for the entire community."

Accordingly, the Business Court abused its discretion and erred as a matter of law by excluding Mr. Sidman from participating in this case as an intervenor defendant or party-in-interest.

II. STATEMENT OF THE FACTS¹

A. Bar Harbor's Cruise Ship Problem

In large part because of its small-town charm, Bar Harbor serves as a popular tourist destination and has been frequented by an increasingly large number of cruise ships. These cruise ships regularly disembark thousands of people into the town on a daily basis. Golden Anchor's property is the primary, and currently only, location where cruise ship passengers disembark into the town. The influx of passengers has long created recognized and often discussed problems in the town. These problems include pollution, congestion, safety concerns, and a

¹ Many of the facts discussed below were already adjudicated in *Association to Preserve and Protect Local Livelihoods ["APPLL"] v. Town of Bar Harbor*, 721 F. Supp. 3d 56 (D. Me. 2024).

drain on municipal resources, leading many residents and visitors to avoid downtown altogether. (A107).

Mr. Sidman is a resident of Bar Harbor and owns two properties there, including a downtown commercial property located at 6 Mount Desert Street. Mr. Sidman's commercial property is located less than a quarter mile away from where Golden Anchor disembarks passengers into downtown. (A107). At his commercial property, Mr. Sidman and his wife have owned and operated the Argosy Gallery, a fine art gallery, for the past thirty (30) years. (A107). Mr. Sidman's clientele – collectors of fine art – frequently complain and refuse to come to his business, or anywhere downtown, on days when cruise ships are disembarking at Golden Anchor's property because the downtown area, including Mr. Sidman's property, is overrun with cruise ship passengers. (A107). Mr. Sidman has observed reduced client visitation on days when cruise ships disembark passengers into town. He used to operate a second commercial property located at 110 Main Street in Bar Harbor – even closer to where Golden Anchor disembarks cruise ship passengers – where he and his wife operated the original Argosy Gallery. (A107). But in 2022, the Sidmans decided to close their Main Street location because it became too much of a nuisance to navigate the crowds caused by cruise ship passengers, and it was unpleasant and impractical walking

with customers back and forth between the two locations amongst the passenger traffic. (A107).

Over the past fifteen years, the Town has imposed voluntary caps on the disembarkation of cruise ship passengers. These voluntary caps were largely the product of the Town giving the owners of Golden Anchor, the Walsh family, “carte blanche” over matters of Bar Harbor’s cruise ship policy. *APPLL v. Town of Bar Harbor*, No. 1:22-cv-00416-LEW, 2023 WL 2273949, *1 (D. Me. Feb. 28, 2023).

Many residents and local businesses opposed the daily disembarkation of passengers into their town and believed that the voluntary caps were too high. In 2022, Mr. Sidman formed a citizens’ group focused on enacting a local land use ordinance (“LUO”) to limit and more beneficially regulate the number and manner of passengers disembarking into the Town and later led a Petitioning Committee to submit a citizens’ initiative ballot to enact this change (the “Initiative”). (A108).

The Initiative limited the number of passengers from cruise ships that landowners are allowed to disembark into the Town without imposing a fine on the landowners to a maximum, in the aggregate, of 1,000 per day. The Initiative also sought to broaden participation in the landing of cruise ship passengers beyond the current monopoly controlled by Golden Anchor at a single localized portion of town. Under the Initiative and pursuant to the rules and regulations developed by the Town’s Harbor Master, property owners are required to secure a written permit

from the Town’s Code Enforcement Officer (“CEO”) before any passenger can disembark from a cruise ship onto their land. Once permitted, the property owner must abide by the reservation system developed by the Harbor Master. Rather than prohibit passengers from disembarking after the property owner’s daily reservation limit has been met, the Harbor Master reports violations to the CEO. Each violation subjects the property owner to a minimum \$100 penalty per excess unauthorized passenger disembarking at a property owner’s site.

The Town Council actively opposed the Initiative and sought to defeat it by advocating in favor of continued voluntary limits that the Council had negotiated with the cruise line industry. *Id.* at *2; *APPLL*, 721 F.Supp.3d at 71; (A108). Despite heavy campaigning from the cruise line industry, Golden Anchor, and the Town Council, on November 8, 2022, the Initiative overwhelmingly passed by a vote of 1,780 to 1,273 (58.3%) and amended the Town’s LUO pursuant to Town Charter. (A108). The ordinance took effect on December 8, 2022, and is incorporated into the LOU, Chapter 125, Article VII, § 125-77(H) (the “Ordinance”). (A108).

B. The Federal Litigation

On December 29, 2022, Golden Anchor led a group of businesses to file a lawsuit against the Town in the United States District Court for the District of Maine, challenging the constitutionality of the Ordinance. *APPLL v. Town of Bar*

Harbor, No. 1:22-cv-00416-LEW (D. Me.) (the “Federal Litigation”). (A108).

The following day, the plaintiffs filed a motion for preliminary injunction. After the Town agreed not to enforce the Ordinance during the pendency of the District Court proceedings, the plaintiffs withdrew their motion for preliminary injunction. (A109). The Penobscot Bay River Pilots Association intervened as plaintiffs with the consent of the Town, and alleged additional claims challenging the legality of the Ordinance under state law. (A108).

On February 28, 2023, Mr. Sidman successfully intervened as a defendant over the objections of the plaintiffs and the Town. *APPLL*, 2023 WL 2273949. In rejecting the arguments made by the plaintiffs and the Town, the District Court found that Mr. Sidman had “more than an undifferentiated, generalized interest” in the litigation, had standing to intervene under Maine law and Article III, had “a concrete personal stake” in the litigation, and that his intervention was appropriate given the Town’s history of “boosterism for the cruise ship industry.” *Id.* at *1.

Mr. Sidman fully participated and continues to participate as an intervenor defendant in the Federal Litigation, defending the Ordinance alongside the Town. On March 1, 2024, in an Amended Decision and Order, the District Court upheld the Ordinance as lawful. *APPLL*, 721 F.Supp.3d 56 (D. Me. 2024). The plaintiffs appealed the Amended Decision and Order to the United States Court of Appeals for the First Circuit, and Mr. Sidman, but notably not the Town, cross-appealed an

issue concerning seafarer access. *APPLL v. Sidman*, Nos. 24-1317, 24-1318, 24-1385 (1st Cir.). The appeals have been briefed and argued, and the parties are awaiting a decision by the First Circuit.

C. Post District Court Developments

On March 6, 2024, five days after the District Court upheld the Ordinance, the Town Council held a special meeting where it announced that – contrary to the application date explicitly stated in the Ordinance – the Council had decided, without a vote, that the Ordinance would not apply to the vast majority of cruise ships visiting during the 2024 cruise ship season. The Council’s announcement contradicted the explicit terms of the Ordinance, resulting in an increase of cruise ship passengers disembarking into downtown during the 2024 cruise ship season beyond what the Ordinance allowed. (A115-16). The Council announced that it had ordered Town employees not to enforce the Ordinance for ships that made reservations prior to the November 8, 2022 vote – rather than the Ordinance’s explicit reservation cutoff of March 17, 2022 – resulting in an additional 34 ships disembarking an estimated 72,729 passengers in 2024.² (A110). On April 2, 2024, Mr. Sidman challenged the Town Council’s March 6 statement before the Board of Appeals and in the Business Court. His administrative appeal was dismissed for

² The Town also kept ship reservations made *after* November 8, 2022, totaling a combined 93 cruise ships disembarking an estimated 101,278 passengers into Bar Harbor in 2024 beyond what the Ordinance allowed. (A110).

lack of jurisdiction, *Sidman v. Town of Bar Harbor*, No. BCD-APP-2024-00011 (Me. B.C.D. Sept. 18, 2024 Final Judgment), and the Business Court dismissed his action as moot after the 2024 cruise ship season ended, *Sidman v. Town of Bar Harbor*, No. BCD-APP-2024-00007 (Me. B.C.D. Jan. 23, 2025 Final Judgment).

The Town Council’s March 6 statement also directed Town staff to begin drafting the rules of enforcement, as anticipated and required by the Ordinance. (A109; A115-116). These rules are codified as Chapter 52 of the Town Code and became effective July 18, 2024. (A177). Chapter 52 mirrors the provisions of the Ordinance and formalizes the permits required for landowners to disembark cruise ship passengers.

On June 13, 2024, the Town Council announced its “dual track approach” to managing cruise ship passengers. (A117-22). Although it assured the public that the Town would plan to enforce the Ordinance (Track 1), it provided an alternative “public process to create alternative path requiring amendment to the [Ordinance]” (Track 2). It turned out that Track 2 did not involve the public at all, again relied on unpopular Council-brokered caps, and required the outright repeal of the Ordinance *in toto*. Track 2 resulted in the Town Council negotiating automatically renewing, five-year contracts with Golden Anchor and the cruise line industry. (A112). The Town did not allow Mr. Sidman, or any other member of the public, to participate in those contract negotiations. (A112). But to be effective, the

public first had to repeal the Ordinance and Chapter 52 in the November 2024 election. (A123-25). Once repealed, the contracts would be incorporated into a new section of the Town Code outside of the voter-controlled LUO and would give the Town Council singular control over the Town’s cruise ship policy.³

Leading up to the November 2024 vote, members of the Town Council actively campaigned in favor of repealing the Ordinance, even attending and speaking in favor of its repeal at events organized by the plaintiffs in the ongoing Federal Litigation. Ultimately, the Town Council’s attempt to repeal the Ordinance failed by popular vote of Bar Harbor citizens.

Despite Golden Anchor’s loss in the Federal Litigation, it refused to abide by the permitting requirements of the Ordinance and Chapter 52. As a result, the CEO issued a Notice of Violation (“NOV”) against Golden Anchor for violating the Ordinance and Chapter 52. (A080). Golden Anchor filed an administrative appeal,⁴ and a Complaint for Declaratory Judgment and Injunctive Relief in the

³ The contracts purported to exempt themselves from future legislation, including citizen-led initiatives, in violation of the Reserved Powers Doctrine. *See* A150. That doctrine prohibits the government from bargaining away its police powers by contract and prevents binding the hands of future legislative bodies by virtue of existing contractual obligations. *Butchers' Union Slaughter-House & Live-Stock Landing Co. v. Crescent City Live-Stock Landing & Slaughter-House Co.*, 111 U.S. 746, 751 (1884); *In re Guilford Water Co.*, 118 Me. 367, 371 (1919).

⁴ The administrative appeal was heard by the Bar Harbor Board of Appeals on December 10 and December 18, 2024. Mr. Sidman endeavored to participate as an Interested Party before the Board. Golden Anchor opposed Mr. Sidman’s participation and the CEO took a “neutral position” on the issue. The Board refused to let Mr. Sidman participate as an Interested Party, but allowed him limited participation as a member of the public. Golden Anchor lost their administrative appeal and has brought a thirteen-count 80B action in the Business Court. *Golden Anchor v. Town of Bar Harbor*, No. BCD-APP-2025-00006. Mr. Sidman has separately appealed from the Board’s decisions denying his ability to

instant litigation. (A018). In its Complaint, Golden Anchor purports to be challenging Chapter 52 – i.e., the rules of enforcement containing the same requirements as the already-litigated Ordinance – and the NOV, which expressly cites Golden Anchor’s violations of Chapter 52 and the Ordinance.

III. PROCEDURAL HISTORY

Mr. Sidman timely filed his Motion to Intervene in the instant litigation on October 28, 2024. (A057). On November 12, 2024, the Town filed its “Response” to Mr. Sidman’s Motion, formally “not object[ing] to Mr. Sidman’s intervention,” while simultaneously filing fifty-five pages of briefing materials denouncing his interests in the litigation. (A156-82). Golden Anchor opposed. (A184).

On November 27, 2024, without awaiting Mr. Sidman’s reply brief, due on or before December 2, 2024, the Business Court denied his Motion to Intervene and also denied his request to participate as a party-in-interest. (A011). The Court framed the dispute as an “essentially private litigation, and to the extent Mr. Sidman’s interests are implicated, there is insufficient reason to doubt that the Town will adequately represent his interests.” (A014).

On December 2, 2024, Mr. Sidman filed a motion for reconsideration, arguing that the Business Court issued its Order without the benefit of Mr.

participate as an Interested Party and the essential findings on which the Board’s merits decision rests. *Sidman v. Town of Bar Harbor*, No. BCD-APP-2025-00005.

Sidman’s reply brief. (A068). The Town took “no position” on Mr. Sidman’s motion, (A220), while again filing an extensive narrative intimating it did not welcome Mr. Sidman as a party to the litigation, (A220-53). While waiting for the Business Court to rule on his motion for reconsideration, Mr. Sidman’s time to appeal the Order to this Court was set to expire on December 18, 2024. *See* M.R. App. P. 2B(c)(1). Mr. Sidman timely filed his Notice of Appeal on December 17, 2024, which was docketed in the Law Court on December 20, 2024. (A009). The docketing of his Appeal divested the Business Court of jurisdiction to rule on Mr. Sidman’s motion for reconsideration of its Order. *See* M.R. App. P. 3(b). Although the Business Court lacked jurisdiction, it issued an order denying Mr. Sidman’s motion for reconsideration on January 8, 2025.⁵ (A015).

IV. STATEMENT OF THE ISSUES

1. Whether the Business Court erred as a matter of law or abused its discretion in denying Mr. Sidman’s Motion to Intervene.
2. Whether Mr. Sidman has sufficient interest in the subject of the litigation to intervene as a matter of right.
3. Whether Mr. Sidman’s ability to protect his interests may, as a practical matter, be impaired or impeded by the disposition of this litigation.
4. Whether Mr. Sidman’s interests may not be adequately represented by the Town.

⁵ Accordingly, the November 27, 2024 Order is the operative Order for this Court’s review. (A011).

V. SUMMARY OF THE ARGUMENT

Mr. Sidman has an undeniable interest in upholding the validity of the Ordinance and seeing it properly enforced by virtue of his legislative efforts, regular use of the downtown area, and the harm to his downtown business caused by Golden Anchor's unpermitted and unregulated disembarkation of cruise ship passengers into downtown Bar Harbor. Mr. Sidman's ability to protect himself and his business will be compromised by an unfavorable outcome in this litigation. The Town is both unwilling and unable to adequately represent Mr. Sidman's interests in the litigation because they plainly have diverging interests. The Town, by its own admission, is balancing the competing interests of all stakeholders in the community. Mr. Sidman's interests and goals are clearly and narrowly at odds with the Town's balancing efforts. The Town's past and present actions have shown that it not only has different aims in managing cruise ship passengers, but that it readily promotes the competing interests of pro-cruise ship stakeholders.

VI. ARGUMENT

A. Jurisdiction and Standard of Review

Interlocutory appeal may be taken from the denial of a motion to intervene. *Francis v. Dana-Cummings*, 2007 ME 16, ¶ 15, 915 A.2d 412. This Court reviews a trial court's denial of a motion to intervene for errors of law and abuses of discretion. *In re Children of Mary J.*, 2019 ME 2, ¶ 8, 199 A.3d 231. If the trial

court's decision turns on a question of law, the Court reviews the issue de novo.

Id.

B. Intervention as a Matter of Right

Under Maine law, upon a timely application to a court, an applicant shall be permitted to intervene as a matter of right in a pending action when the applicant (1) claims an interest relating to the property or transaction that is the subject of the action; (2) the applicant is so situated that the disposition of the action may as a practical matter impair or impede their ability to protect their interest; and (3) the applicant's interests may not be adequately represented by the existing parties to the action. M.R. Civ. P. 24(a)(2). The elements for intervention should be liberally construed in favor of intervention. *Northrop Grumman Info Tech., Inc. v. United States*, 74 Fed. Cl. 407, 412 (Fed. Cl. 2006) (collecting cases).

The Maine rule for intervention as of right is “virtually the same” as Federal Rule of Civil Procedure 24(a)(2), and courts often review federal jurisprudence to decide whether intervention is warranted under state law. *Doe v. Roe*, 495 A.2d 1235, 1237 n.4 (Me. 1985); *see also State v. MaineHealth*, 2011 ME 115, ¶ 13, 31 A.3d 911; *Donna C. v. Kalamaras*, 485 A.2d 222, 223 (Me. 1984); *McDonough v. City of Portland*, No. 2:15-cv-00153-JDL, 2015 WL 3755289, *2 (D. Me. June 16, 2015). Indeed, amendment to M.R. Civ. P. 24(a) followed the federal rule, clarifying that the test for intervention as a matter of right is not whether “the

would-be intervenor ‘will either gain or lose by the direct legal effect of the judgment,’” but rather “the pragmatic consideration of whether the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect his interests.” M.R. Civ. P. 24, Explan. of Amends., Nov. 1, 1966; *see also* 1 Field, McKusick & Wroth, *Maine Civil Practice* at 399 (2d ed. 1970) (“1966 amendments to both the Maine and federal rules have brought them into substantial uniformity.”).

1. Mr. Sidman has an interest in the subject of the litigation.

a. The subject of the litigation is the lawfulness and application of the Ordinance and its rules of enforcement.

As an initial matter, Golden Anchor’s Complaint directly and collaterally attacks the Ordinance and the District Court’s Amended Decision. Golden Anchor’s insistence that the subject of the litigation is Chapter 52 and not the Ordinance is a flagrant misdirection and an attempt to relitigate issues already decided by the District Court.

Chapter 52 was enacted as the rules of enforcement for the Ordinance. The Ordinance provides that “[t]he Harbor Master shall develop rules and regulations” to implement the permitting and reservation scheme, the counting and tracking of persons disembarking cruise ships, procedures to report violations, and “any other provisions” deemed necessary to enforce the Ordinance. (A090, § 125-77(H)(3)). Chapter 52, in turn, states that its purpose is to “implement the purpose and intent

of § 125-77H.” (A177, § 52-1). Chapter 52 thus constitutes the rules to enforce the Ordinance, as anticipated and required by the Ordinance.

Indeed, the Ordinance contains the same provisions as Chapter 52:

- The Ordinance imposes a limit of 1,000 disembarkations per day. § 125-77(H)(2). Chapter 52 imposes a limit of 1,000 disembarkations per day. § 52-6(C)(1), (4).
- The Ordinance requires property owners to obtain a permit to disembark people from cruise ships. § 125-77(H). Chapter 52 requires property owners to obtain a permit to disembark people from cruise ships. § 52-6(A).
- The Ordinance requires the Harbor Master to establish a reservation system for cruise ships disembarkations. § 125-77(H)(3). Chapter 52 requires property owners to receive reservation confirmation from the Harbor Master prior to disembarkations. § 52-6(B).
- The Ordinance requires property owners to abide by a system of permitted daily limit of disembarkations. § 125-77(H)(3), (4). Chapter 52 requires property owners to abide by a system of permitted daily limit of disembarkations. § 52-6(C).
- The Ordinance requires the Harbor Master to develop rules establishing a mechanism for counting and tracking the number of daily disembarkations. § 125-77(H)(3)(b). Chapter 52 establishes the mechanism for counting and tracking the number of daily disembarkations. § 52-7(A)-(D).
- The Ordinance requires the Harbor Master to report violations to the CEO. § 125-77(H)(3)(c). Chapter 52 requires the Harbor Master to report violations to the CEO. § 52-8(A).
- The Ordinance tasks the CEO with enforcement. § 125-77H(4). Chapter 52 tasks the CEO with enforcement. § 52-8(B).

- The Ordinance provides the penalties on property owners for any violations. § 125-77H(4). Chapter 52 imposes the same penalties on property owners. § 52-8(B).

It comes as no surprise that Chapter 52 mirrors the Ordinance. Mr. Sidman was the architect of the Ordinance and, at the request of the Town Council and staff, he collaborated with the Town and participated in fashioning Chapter 52 and the permit applications.

Golden Anchor's Complaint directly challenges the validity of the Ordinance, in addition to Chapter 52. The Complaint is replete with allegations concerning the Ordinance and its requirements. (A024-28 & A030-34 ¶¶ 18-22, 26-32, 38, 46, 54, 56, 62). The NOV being challenged unambiguously asserts Golden Anchor violated both Chapter 52 and the Ordinance.⁶ (A080-81). Count III of the Complaint alleges that Golden Anchor does not have to abide by the new permitting requirements because it has a vested right to disembark cruise ship passengers. (A041-42 ¶¶ 84-89). The permits required by Chapter 52 are the exact permits mandated by the Ordinance. Count VI alleges that the penalties for violations are unlawful. (A046-48). The penalties imposed by Chapter 52 are the same penalties mandated by the Ordinance. Count VII alleges that the permit

⁶ Counts I and II of Golden Anchor's Complaint wildly mischaracterize Chapter 52 as "chang[ing] the Ordinance's central terms, supersed[ing] all its material terms, and, without repealing it, renders the Ordinance superfluous and without force and effect." (A035 ¶ 69). While Mr. Sidman disagrees with Golden Anchor's attempts to differentiate Chapter 52, the fact remains that the subject of Counts I and II depend on the Court's interpretation of the Ordinance and its consistency with its rules of enforcement.

applications are “invalid” because they are referenced in Chapter 52. (A048-51). But again, the permits required by Chapter 52 are the exact permits mandated by the Ordinance. Count VIII alleges various constitutional claims against the daily disembarkation limit. (A051-53). The disembarkation limits required by Chapter 52 are the same limits imposed by the Ordinance.⁷ And while the relief requested by Golden Anchor focuses on invalidating and preventing the enforcement of Chapter 52, doing so would also invalidate and prevent the enforcement of the Ordinance. (A054-55).

Therefore, contrary to Golden Anchor’s conspicuous attempts to obfuscate, the subject of its Complaint is the Ordinance, as well as its rules of enforcement.

b. Mr. Sidman has an interest in the lawfulness and application of the Ordinance and its rules of enforcement.

Mr. Sidman’s has an undeniable interest in upholding the Ordinance and its rules of enforcement because of the particularized negative impacts of cruise ship disembarkations on him and his business, which will continue if the Ordinance is not enforced as a result of this litigation.⁸ Although “there is no precise and authoritative definition of the interest required to sustain a right to intervene” the

⁷ Underscoring Golden Anchor’s inherent attacks on the Ordinance itself, Counts VI, VII, VIII, and IX are barred by the doctrine of *res judicata* because these issues have already been resolved and/or waived in the Federal Litigation.

⁸ Although these arguments are fashioned to establish Mr. Sidman’s interest in the subject of the litigation, they are also relevant to the extent Mr. Sidman is required to establish standing to intervene. *See Almeder v. Town of Kennebunkport*, 2014 ME 139, ¶ 16, 106 A.3d 1099.

intervenor's interests "must bear a 'sufficiently close relationship' to the dispute between the original litigants" and "must be direct, not contingent." *Conservation Law Found. of New England v. Mosbacher*, 966 F.2d 39, 42 (1st Cir. 1992) (quoting *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 638 (1st Cir. 1989)). "[A] putative intervenor must show at a bare minimum that it has 'a significantly protectable interest.'" *Public Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 205 (1st Cir. 1998). "Potential economic harm to a would-be intervenor is a factor that warrants serious consideration in the interest inquiry." *Patch*, 136 F.3d at 205 (citing *Conservation Law Found.*, 966 F.2d at 43).

Mr. Sidman's interests represent the other side of the same coin as Golden Anchor in this litigation. Golden Anchor's business depends on more passengers downtown. Mr. Sidman's business depends on less passengers downtown. At the core of its Complaint, Golden Anchor seeks an unrestricted right to disembark unlimited passengers into downtown Bar Harbor. The unregulated disembarkation of cruise ship passengers downtown interferes with Mr. Sidman's ability to operate his business.⁹ (A107-08). Mr. Sidman's interest in the litigation is simple and direct: his business rises and falls with Golden Anchor's ability to disembark cruise ship passengers into downtown Bar Harbor.

⁹ The District Court has already adjudicated that the Ordinance is intended to remedy the harms caused by cruise ship passengers – namely congestion, overtaxed public facilities, and crowded sidewalks and businesses. *See APPLL*, 721 F. Supp. 3d at 73, 96-97. Indeed, the District Court found that many locals and visitors avoid downtown on cruise ship days because of this congestion. *Id.* at 73, 92 n.31.

Additionally, Mr. Sidman has standing to intervene as an abutter of Golden Anchor's property and by virtue of his regular use and enjoyment of the affected downtown area. And as the principal proponent for the adoption of the Ordinance, Mr. Sidman also has a significant interest in upholding his right to independently legislate via a citizen initiative and have the results of that initiative properly enforced. Indeed, Mr. Sidman "invested a significant amount of time and . . . resources in drafting and ultimately winning the approval of the legislation at issue." *See Me. Republican Party v. Dunlap*, No. 18-cv-179-JDL, 2018 WL 2248583, *3 (D. Me. May 16, 2018) (holding intervenor committee in favor of ranked-choice voting had "a cognizable interest in the outcome of the suit [seeking to enjoin ranked-choice voting] that sets it apart from the general public."). Mr. Sidman's "injur[ies] [are] distinct from that suffered by the public at large" by virtue of his legislative efforts, regular use of the downtown area, and harm to his downtown business. *See Friends of Lincoln Lakes v. Town of Lincoln*, 2010 ME 78, ¶ 14, 2 A.3d 284. As demonstrated by the many court decisions allowing parties to establish particularized injury on lesser grounds, Mr. Sidman has sufficient interests and standing to intervene. *See, e.g., Black v. Bureau of Parks and Lands*, 2022 ME 58, ¶ 28, 288 A.3d 346; *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189 (Me. 1978); *Conservation Law Found. v. Town of Lincolnville*, No. AP-00-3, 2001 WL 1736584, *8 (Me. Super. Ct. Feb. 28, 2001);

In re Int'l Paper Co., Androscoggin Mill Expansion, 363 A.2d 235, 238-39 (Me. 1976).

In the Federal Litigation, the District Court held that Mr. Sidman had sufficient interest to intervene and defend the Ordinance. It reasoned:

[Mr. Sidman] has a concrete personal stake in the alleged harms the [O]rdinance was meant to redress. Quite unlike a party with no skin in the game who seeks to intervene solely to advocate on behalf of or against an enactment that is dividing popular opinion across a wide region, state, or nation, Mr. Sidman is connected to this very localized controversy based on a personal investment in the Town of Bar Harbor, including an investment in its commercial downtown. Given this basic reality, it is reasonable to infer that he has a concrete, personal stake in the local commons that is impacted by the influx of cruise ship passengers throughout an extended season. This is more than a mere 'undifferentiated, generalized interest. In this regard, Mr. Sidman's interest in the litigation and that of the members of the Plaintiff Association appear to occupy opposite sides of the very same coin.

APPLL, 2023 WL 2273949 at *3 . At the urging of the Town, the District Court even ruled on Mr. Sidman's standing to intervene. It reasoned:

Given the plausible scope of the impact of the land use in issue, even under Maine law Mr. Sidman appears to have viable standing given his regular actual use of the downtown area, his ownership of a business in the vicinity of the use, and the fact that he is among the persons whom the [O]rdinance is designed to protect. For these reasons, and solely to appease the Town's demand for a finding, I find that Mr. Sidman clears the Town's standing obstacle.

Id. at *3 n.3. Even if the District Court’s decision is not binding in the instant litigation, its reasoning remains true here.

Indeed, in the “virtually identical” context of intervention in federal court, those with recreational and business interests at stake are routinely allowed to intervene in litigation on the side of the government. In *Conservation Law Foundation, Inc.*, seven commercial fishing groups intervened as of right in an action brought by conservation groups against the Secretary of Commerce, alleging that the Secretary had unlawfully approved a fishery plan. 966 F.2d at 40. The District Court denied the fishing groups’ request for intervention and the fishermen appealed. *Id.* at 41.

The First Circuit noted that the inquiry into an intervenor’s interests is highly factual. *Id.* at 42. The First Circuit emphasized that the fishery plan litigation was “centered on the procedure provided for implementation of a federal regulatory scheme” and “pressed by public interest entities seeking to force an agency to alter its regulations.” *Id.* at 42 (emphasis added). It noted that any changes to the Secretary’s fishery plan would impact the fishing groups’ businesses. *Id.* at 43. Because of the private interests of the fishing groups at stake, the court found that the fishing groups had sufficient interest to intervene in the litigation to defend the fishery plan. *Id.* at 44; *see also Animal Prot. Institute v. Martin*, 241 F.R.D. 66 (D. Me. 2007) (holding sportsmen’s organizations and

various animal trappers had sufficient interests in livelihoods and recreation to intervene in litigation filed by an animal rights group alleging that the Maine Department of Inland Fisheries and Wildlife's policies violate the Endangered Species Act); *United States v. City of Portsmouth*, No. 09-cv-283-PB, 2016 WL 3815274, *6 (D.N.H. July 12, 2016) (allowing intervention of city residents in litigation over construction of wastewater treatment facility and noting that "the residents will undoubtedly be affected by the [subject of the litigation] and appear to have good faith concerns that they wish to express").

Like in *Conservation Law Foundation*, Golden Anchor's similar challenge to the Ordinance and its rules of enforcement may undeniably impact Mr. Sidman and his business. Any changes to or invalidation of the Ordinance, and its applicability to the only property in Bar Harbor disembarking passengers, will impact Mr. Sidman's interests. Therefore, Mr. Sidman has sufficient interest to intervene in this action.

The Business Court improperly framed this litigation as a "private dispute," despite the public nature of the dispute and the impacts of Golden Anchor's use of its property being felt throughout Bar Harbor. Maine courts allow intervention in all sorts of ostensibly "private" disputes that implicate third party interests. *See, e.g., Francis*, 2007 ME 16, ¶ 14, 915 A.2d 412 (vacating denial of intervention in what trial court described as "litigation involv[ing] claims that are personal to

plaintiff” over alleged taking of plaintiff’s real property by quasi-municipal defendant); *Britton v. Town of York*, 673 A.2d 1322, 1325 (Me. 1996) (noting intervenors participated in action brought by neighbors against town over denial of permit to construct pier because pier would “disturb[] and obstruct[]” intervenor’s business); *Bangor Publ. Co. v. Town of Bucksport*, 682 A.2d 227, 230 (Me. 1996) (noting that newspaper “could file a motion to intervene as a third party in the [court action between a local business and a municipality over the business’s tax abatement proceedings] pursuant to M.R. Civ. P. 24(a)”); *Buker v. Town of Sweden*, 644 A.2d 1042, 1043 (Me. 1994) (noting abutters allowed to intervene as of right in action brought by neighbor appealing municipality’s denial of permit for disallowed use); *Gorham v. Cape Elizabeth*, 625 A.2d 898, 899 & n.2 (Me. 1993) (noting twenty-four opponents to plaintiff’s application for permit were granted intervenor status in subsequent litigation against town); *Maine Human Rights Comm’n v. Allen*, 474 A.2d 853, 854-55 (Me. 1984) (noting four prison inmates intervened as of right in employment discrimination suit brought by female prison guards against Department of Corrections because no party represented the inmates’ interests); *Lippoth v. Zoning Bd. of Appeals of S. Portland*, 311 A.2d 552, 553-56 & n.1 (Me. 1973) (neighbor who opposed application for setback variance was proper intervening defendant because relief sought by applicant in his appeal from denial of variance could negatively impact intervenor as neighboring property

owner and user of street impacted by variance). And if the Business Court sought to prevent the involvement of third parties in litigation involving an *enforcement action* against a neighbor, because of Golden Anchor's challenge to the NOV, that reasoning is also foreclosed by Maine law. Maine courts firmly and repeatedly recognize the rights of members of a community who can show that they are particularly injured by the unlawful use of a neighbor's property, even in the context of enforcement actions. *See, e.g., Fox Islands Wind Neighbors v. Dep't of Env't Prot.*, 2015 ME 53, 116 A.3d 940 (neighborhood organization had standing to appeal enforcement action by DEP against wind farm because neighbors demonstrated a particularized injury in experiencing excessive noise emanating from wind energy development); *Richert v. City of S. Portland*, 1999 ME 179, 740 A.2d 1000; *Toussaint v. Town of Harpswell*, 1997 ME 189, 698 A.2d 1063; *Briggs v. Town of York*, No. AP-14-028, 2015 WL 3525091 (Me. Super. Ct. May 15, 2015); *Larose v. City of Biddeford*, No. AP-02-053, 2003 WL 22100826, *2 (Me. Super. Ct. Aug. 29, 2003). Mr. Sidman has clearly met the particularized injury standard to establish his standing and established his interest in the subject of this litigation.

2. Mr. Sidman's ability to protect his interests may be impaired by the disposition of this action.

Whether an intervenor's interest in the litigation is sufficient to intervene is closely related to whether the intervenor's ability to protect his interest may be

impaired by the disposition of the action. *Conservation Law Found.*, 966 F.2d at 42. This requirement is satisfied if the disposition of the case could result in a judicially enforceable order that adversely affects an intervenor's interest. *See Daggett v. Comm'n on Governmental Ethics & Election Practices*, 172 F.3d 104, 110 (1st Cir. 1999).

Conservation Law Foundation is also instructive for this element. As the First Circuit reasoned in that case, if the conservation groups prevailed in seeking to change the Secretary's fishery plan, it would result in "a development that the fishing groups do not favor," and "affect the proposed intervenors' business, both immediately and in the future." *Conservation Law Found.*, 966 F.2d at 43. It did not matter that the conservation group did not seek to "make substantive changes to the management plan, but only require[] that [a federal statute's] procedures be followed to modify the plan," as the conservation group sought to "begin the process through which [substantive changes] would come about." *Id.* at 43. The Court found it "obvious" that "the fishing groups would be best served if they were able to stop the [conservation group's] proposal before it gets underway." *Id.* at 44; *see also Maine v. Norton*, 203 F.R.D. 22, 28 (D. Me. 2001) ("Because Plaintiffs seek declaratory and injunctive relief against [the EPA's decision to list] the Gulf of Maine Atlantic salmon population as endangered . . . the instant litigation very well

may impair or impede the Proposed Intervenors' ability to protect their interest in protecting the Gulf of Maine Atlantic salmon population.”).

Here, Mr. Sidman's ability to protect his interests against the harms caused by unregulated cruise ship disembarkations may undoubtedly be impaired by the resolution of this case. Golden Anchor is seeking a declaration that Chapter 52 (and the Ordinance) is procedurally and substantively unlawful; an injunction against the Town barring it from enforcing Chapter 52 (and the Ordinance); and a declaration that Golden Anchor is exempt from complying with Chapter 52 (and the Ordinance) because it has a vested right to disembark cruise ship passengers en masse. (A055). The Court's decision – whether to grant Golden Anchor the relief it seeks – will directly affect Mr. Sidman's “property, pecuniary, or personal rights.” *See Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 18, 973 A.2d 735.

If Golden Anchor is allowed to flout the permitting and disembarkation requirements of Chapter 52 and the Ordinance, Mr. Sidman and his business will suffer concrete harms in the loss of clientele and sales. These harms are not speculative. Golden Anchor's use of its property causes Mr. Sidman's business to become inaccessible to those wishing to visit. (A107-08). Mr. Sidman routinely sees clients turned away from patronizing his business when Golden Anchor disembarks passengers into town. (A107-08). Golden Anchor now seeks judicial

relief which would directly allow it to cause Mr. Sidman that same harm. Mr. Sidman is also deterred from using the public sidewalks when cruise ship passengers cause congestion, to the point where he closed one of his business locations to avoid the crowds. (A107-08). The outcome of this litigation may determine whether Mr. Sidman can maintain his remaining business and whether he can access his own downtown on a cruise ship day.¹⁰

3. Mr. Sidman's interests are not adequately represented by the existing parties to the action.

The Town is both unwilling and unable to represent Mr. Sidman's interests in the litigation because they have diverging interests. "An intervenor need only show that representation *may be* inadequate, not that it is inadequate."

Conservation Law Found., 966 F.2d at 44 (*citing Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)) (emphasis added). "The burden of making that showing should be treated as minimal." *Trbovich*, 404 U.S. at 538 n.10; *accord Nextel Commc'ns. of the Mid-Atlantic, Inc. v. Town of Hanson*, 311 F.Supp.2d 142, 151 (D. Mass. 2004). Although the First Circuit applies a presumption that the government will adequately represent a party seeking to intervene, that presumption "means no more in this context than calling for an adequate

¹⁰ Mr. Sidman's ability to protect his legislative interests could also be impaired by this litigation because he would not be able to defend the voter-enacted Ordinance or its rules of enforcement. *See NECEC Transmission LLC v. Bureau of Parks & Lands*, 2022 ME 48, ¶ 2, 281 A.3d 618 (noting thirteen interested organizations and voters were allowed to intervene to defend public referendum banning transmission lines through certain lands); *Dunlap*, 2018 WL 2248583 at *3.

explanation as to why what is assumed – here, adequate representation – is not so.”

State v. Director, U.S. Fish and Wildlife Service, 262 F.3d 13, 19 (1st Cir. 2001).

Conservation Law Foundation is again helpful in explaining the possibility of diverging interests between the government and private intervenors. There, the First Circuit found that the fishing groups were not adequately represented by the Secretary of Commerce. *Conservation Law Found.*, 966 F.2d at 44. Noting that “[t]he Secretary’s judgments are necessarily constrained” by its view of the public welfare and that the Secretary “may well believe that what best serves the public welfare will also best serve the overall interests of fishermen,” the Court found the Secretary’s broad purposes incompatible with the “more parochial” interests of the fishermen. *Id.* Indeed, the Court noted that the governmental entity “might shirk its duty were it to advance the narrower interest of a private entity” like the fishermen. *Id.* Because of this tension between the Secretary’s duty to the general public, it found that “viewed objectively, it is unlikely that the fishing groups’ interests, as those interests are perceived and understood by them, would or perhaps even should be adequately protected by the Secretary.” *Id.* at 45; *see also Francis*, 2007 ME 16, 915 A.2d 412 (vacating denial of intervention under M.R. Civ. P. 24(a) because intervening defendant “may have a position and interests that are separate from and independent of the position of other parties to the litigation,” including those of quasi-municipal defendant); *Northeast Patients Grp. v. Me.*

Dep't of Admin. & Fin. Servs., 2021 U.S. Dist. LEXIS 55122 at *6 n.2 (D. Me. Mar. 23, 2021); *Wyman v. Secretary of State*, 625 A.2d 307, 309 (Me. 1993).

Here, the Town similarly finds itself in a position of trying to represent the collective interests of the community – including those aligned with the cruise line industry – in this litigation, and not the more specific interests of Mr. Sidman. Because the Town, by its own admission, is balancing the interests of “all individuals, parties, and stakeholders to ensure that the regulation of cruise ship tourism works for the entire community,” (A116), it is “on its face impossible” for the Town to adequately represent the narrower interests of Mr. Sidman and his business. *See Conservation Law Found.*, 966 F.2d at 44-45. And while it may be improper for the Town to advance the narrower interests of any one private individual or entity, the Town has proven itself to be far too supportive of the competing interests of the pro-cruise ship stakeholders, contrary to the repeatedly expressed demands of Mr. Sidman and the voting public.

First, the Town Council actively campaigned against the enactment of the Ordinance. (A108). Second, the Town opposed Mr. Sidman’s intervention in the Federal Litigation while simultaneously welcoming more plaintiffs to intervene to challenge the lawfulness of the Ordinance. (A108). Third, the Town voluntarily suspended the enforcement of the Ordinance while the District Court case was pending, all while delaying any progress towards enacting the Ordinance’s rules

until after the Federal Litigation was over. (A109; A115; A122). Fourth, five days after the District Court ruled that the Ordinance was lawful, the Town Council announced that it would keep the vast majority of the 2024 cruise ship season intact, unapologetically contradicting the explicit terms of the Ordinance. (A115). Fifth, the Town Council attempted to repeal the Ordinance and Chapter 52 in November 2024. (A123). Sixth, the Town Council sought to replace the Ordinance with contracts negotiated directly with Golden Anchor and the cruise line industry that purported to immunize the contracting parties from any future legislation enacted by the Town’s citizens. (A123-55). Seventh, the Town Council is currently seeking to disembark cruise ship passengers at the Town Pier during the 2025 cruise ship season to keep the flow of passengers into downtown uninterrupted. Additionally, a sitting member of the Town Council even targeted Mr. Sidman directly for his efforts to stem cruise ship visitation, publicly stating “F*ck that guy! And you can quote me,” echoing a popular refrain of the pro-cruise ship faction.¹¹ If these actions do not show diverging interests sufficient to raise doubt about the Town’s ability to protect Mr. Sidman’s interests in this litigation, it is hard to imagine what actions would satisfy this inquiry.

¹¹ Lincoln Millstein, *Vulgarity mars final days of Bar Harbor campaign*, The Quietside Journal, June 1, 2024, available at <https://theqsjournal.substack.com/p/vulgarity-mars-final-days-of-bar> (last visited Mar. 30, 2025).

In the Federal Litigation, the District Court recognized these diverging interests and found:

[Mr. Sidman's] request for intervention is appropriate given the Town's history of boosterism for the cruise ship industry. Indeed, there is a strong showing in the record so far adduced that the Town has long given over to one or more agents of the Walsh family enterprises (i.e., [owners of Golden Anchor and] most of the nominal plaintiffs) what appears (upon first impression) to be carte blanche in matters of Bar Harbor's informal and voluntary cruise ship policy.

APPLL, 2023 WL 2273949 at *1. The District Court also found that any presumption that the Town would adequately defend Mr. Sidman's interests had been overcome. *Id.* at *1.

It appears that the Town is only now yielding to public pressure to enforce the Ordinance after having failed twice to defeat it. On its face, it seems the newfound goals of the Town align, at least partially, with that of Mr. Sidman: to uphold the validity of the Ordinance and Chapter 52 and enforce their provisions against Golden Anchor. But agreement on the shared goal of upholding a regulation as lawful “does not necessarily ensure agreement in all particular respects.” *Conservation Law Found.*, 966 F.2d at 44 (quoting *Natural Resources Defense Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977)). Courts consider three factors to determine whether a shared ultimate goal will result in adequate representation:

(1) Are the interests of a present party in the suit sufficiently similar to that of the absentee such that the legal arguments of the latter will undoubtedly be made by the former; (2) is that present party capable and willing to make such arguments; and (3) if permitted to intervene, would the intervenor add some necessary element to the proceedings which would not be covered by the parties in the suit?

United Nuclear Corp. v. Cannon, 696 F.2d 141, 144 (1st Cir. 1982) (quoting *Blake v. Pallan*, 554 F.2d 947, 954-55 (9th Cir. 1977)).

The Town's strategic interests – already presenting themselves in the how and why of its defense – vary drastically from Mr. Sidman's defense against Golden Anchor's claims. For instance, to combat Golden Anchor's allegations that it has a lawful nonconforming use to disembark cruise ship passengers, (A041), Mr. Sidman argues that Golden Anchor could never have a lawful nonconforming use because the LUO does not and has *never* allowed the disembarkation of cruise ship passengers in the Shoreland General Development I District, where Golden Anchor sits.¹² The Town has no interest in adopting this argument for two reasons, both of which manifest its goal of continuing cruise ship disembarkations downtown. First, to accommodate Golden Anchor and other stakeholders, the Town does not want Golden Anchor to be prohibited from disembarking cruise

¹² See LUO § 125-47 (not listing "Cruise Ship Disembarkation Facility" and/or "Passenger Terminal" as an allowed use in the Shoreland General Development I District); LUO § 125-7 ("[A]ny use not specifically allowed . . . is specifically prohibited.").

ship passengers in the District, where certain businesses cater to the crowds of disembarking passengers. Second, for self-interested reasons, the Town also wants disembarkations to occur in the District. Indeed, on January 7, 2025, the Town revealed its plan to allow the use of the Town Pier – sitting adjacent to Golden Anchor’s property and also in the Shoreland General Development I District – to disembark cruise ship passengers.¹³ In essence, the Town has never stopped wanting cruise ship passengers to come downtown at any cost, even if that means ignoring the explicit prohibitions of the LUO’s allowable uses in the District. Mr. Sidman’s goals are considerably different.

The Town’s divergent goals have been on display in prior and current litigation between Mr. Sidman and the Town. A “former adversary relationship between the government and proposed intervenors may raise questions about adequacy” of representation in the instant litigation. *Fish and Wildlife Service*, 262 F.3d at 20. After the Town Council’s March 6, 2024 announcement that it would

¹³ While these developments fall outside of the appellate record, Mr. Sidman notes the inherent dilemma in showing that the Town’s interests are not only historically, but *presently* divergent from his when developments occur after the closing of the abbreviated record in an interlocutory appeal. Mr. Sidman respectfully asks that the Court take judicial notice of the Town’s stated intentions to disembark cruise ship passengers at the Town Pier, or alternatively remand the matter to the Business Court for consideration of these developments. See Bar Harbor Town Council workshop agenda, Jan. 7, 2025, § 3.2, available at https://www.barharbormaine.gov/AgendaCenter/ViewFile/Agenda/_01072025-3528 (last visited Mar. 30, 2025); Bar Harbor Harbor Committee Agenda, Jan. 13, 2025, Item 5(c), available at https://www.barharbormaine.gov/AgendaCenter/ViewFile/Agenda/_01132025-3530 (last visited Mar. 30, 2025); Bar Harbor Town Council Agenda, Mar. 18, 2025, Item II, available at https://www.barharbormaine.gov/AgendaCenter/ViewFile/Agenda/_03182025-3583 (last visited Mar. 30, 2025); Bar Harbor Town Council Order, Mar. 18, 2025, at 28-29, available at https://www.barharbormaine.gov/AgendaCenter/ViewFile/Agenda/_04012025-3595, (last visited Mar. 30, 2025).

keep the vast majority of the 2024 cruise ship season intact despite the explicit terms of the Ordinance, Mr. Sidman challenged the Council’s action before the Board of Appeals and the Business Court. Although the substance of his claims were never adjudicated by function of the mootness doctrine, the dispute reveals that while the Town is willing to accommodate the interests of Golden Anchor and other pro-cruise ship stakeholders, Mr. Sidman remains steadfast in his opposition to unlawful and excessive cruise ship disembarkations.¹⁴

Indeed, Mr. Sidman adds a “necessary element to the proceedings which would not be covered by the parties to the suit.” *See United Nuclear*, 696 F.2d at 144. That element is “an uncompromising opposition” to Golden Anchor’s unfettered disembarkation of cruise ship passengers into downtown Bar Harbor. *See Nextel Commc’ns*, 311 F.Supp.2d at 152 (allowing abutters to intervene because municipal defendant “might change or soften [its present opposition to project] based on its broader geographic and institutional interests”).

Relatedly, Mr. Sidman’s intervention would reduce the likelihood of the Town settling the dispute with Golden Anchor. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 807 F.3d 472, 477 (1st Cir. 2015)

¹⁴ Mr. Sidman also notes the Town’s previous opposition to his intervention in the Federal Litigation and unwillingness to join Mr. Sidman’s cross-appeal of the seafarer-access issue in the First Circuit, which has implications for other pro-cruise ship stakeholders – the intervening pilots’ association. Mr. Sidman also has an 80B and declaratory judgment action pending in the Business Court against the Town and party-in-interest Golden Anchor involving cruise passenger disembarkations. *Sidman v. Town of Bar Harbor*, No. BCD-APP-2025-00005.

(fear of settlement provides reason to intervene if intervention would reduce the likelihood of settlement). Given the Town's prior actions, including voluntarily suspending enforcement of the Ordinance during the 2023 cruise ship season and the Town Council's edict to preserve the 2024 season, Mr. Sidman's "fear [of settlement] is not unreasonable." *See Nextel Commc'ns*, 311 F.Supp.2d at 152. Mr. Sidman's presence in the instant litigation could block any attempt to settle the dispute. *See Conservation Law Found.*, 966 F.2d at 43-45 (allowing fishing groups to intervene to challenge consent decree); *Animal Prot. Inst.*, 241 F.R.D. at 70 n.6 (noting that although "there is no consent decree at this point in the litigation . . . it is not unforeseeable that [the existing parties] would seek to resolve this matter through a consent decree similar to the one [in *Conservation Law Foundation*]"); *Nextel Commc'ns*, 311 F.Supp.2d at 153 ("There are virtually unlimited ways in which . . . the existing parties might compromise in a manner prejudicial to the [would-be intervenor's] interests.").

Finally, the Town's apathetic response to Mr. Sidman's proposed intervention in this litigation reveals their divergent interests. Although the Business Court *credited* the Town for not objecting to Mr. Sidman's intervention in this case, (A014), the Town's response indicates that it "is less than wholeheartedly dedicated to opposing [Golden Anchor's] aims," or at the very least that the Town does not share the same interests as Mr. Sidman. *See Conservation Law Found.*,

966 F.2d at 44. This issue, too, was discussed in *Conservation Law Foundation*. The First Circuit found that the Secretary’s “candor in taking no position on the petition for intervention” indicated that the fishing groups’ interests were not adequately represented, and that the “Secretary’s silence on any intent to defend the fishing groups’ special interests is deafening.” *Id.* at 44. Here, not only did the Town take a cavalier position as to Mr. Sidman’s intervention, similar to the “no position” it took in response Mr. Sidman’s motion for reconsideration, it simultaneously devoted six pages of briefing, an extensive affidavit, and forty-three pages of exhibits dedicated to undermining Mr. Sidman’s interests in the litigation. Rather than being commended for its calculated response to Mr. Sidman’s proposed intervention, this Court should be left with the undeniable sense that the Town may not adequately represent Mr. Sidman’s interests in this litigation.

VII. CONCLUSION

For the foregoing reasons, Mr. Sidman respectfully requests that this Court reverse the Business Court’s November 27, 2024 Order denying Mr. Sidman’s Motion, and remand the matter back to the Business Court with instructions to allow Mr. Sidman to intervene as a full-fledged defendant in this litigation, or alternatively, as a party-in-interest.

Respectfully submitted,

Dated: April 2, 2025

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VIII. CERTIFICATE OF SERVICE

I, Robert J. Papazian, pursuant to Rules 1E(d)(1) and 7(c)(2) of the Maine Rules of Appellate Procedure, certify that on April 2, 2025, I caused electronic service of a pdf of the foregoing BRIEF OF APPELLANT to be served on counsel for each party to the appeal identified below, addressed as follows:

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