

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

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
I. INTRODUCTION	6
II. ARGUMENT	6
A. Mr. Sidman has an interest in upholding the Ordinance and its rules of enforcement because of the particularized negative impacts of excessive cruise ship disembarkations on him and his business, which will continue if the Ordinance cannot be enforced against Golden Anchor as a result of this litigation.	6
B. Disposition of this action may as a practical matter impair Mr. Sidman’s ability to protect his interests against the harms caused by unregulated cruise ship disembarkations.	12
C. Mr. Sidman’s interests are not adequately represented by the existing parties to the action.	14
VII. CONCLUSION	20
VIII. CERTIFICATE OF SERVICE	22

TABLE OF AUTHORITIES

CASES

<i>Animal Prot. Inst. v. Martin</i> , 241 F.R.D. 60 (D. Me. 2007).....	20
<i>APPLL v. Town of Bar Harbor</i> , 721 F. Supp. 3d 56 (D. Me. 2024)	7
<i>APPLL v. Town of Bar Harbor</i> , No. 1:22-cv-00416-LEW, 2023 WL 2273949 (D. Me. Feb. 28, 2023)	11, 12, 14
<i>B. Fernández & Hnos., Inc. v. Kellogg USA, Inc.</i> , 440 F.3d 541 (1st Cir. 2006)	14
<i>Black v. Bureau of Parks and Lands</i> , 2022 ME 58, 288 A.3d 346	8-9
<i>Briggs v. Town of York</i> , No. AP-14-028, 2015 WL 3525091 (Me. Super. Ct. May 15, 2015)	13-14
<i>Britton v. Town of York</i> , 673 A.2d 1322 (Me. 1996)	11
<i>Cabral v. L’Heureux</i> , 2017 ME 50, 157 A.3d 795	10
<i>Cayer v. Town of Madawaska</i> , 2009 ME 122, 984 A.2d 207	20
<i>Conservation Law Found. of New England, Inc. v. Mosbacher</i> , 966 F.2d 39 (1 st Cir. 1992)	15, 19
<i>Conservation Law Found. v. Town of Lincolnville</i> , No. AP-00-3, 2001 WL 1736584, (Me. Super. Ct. Feb. 28, 2001)	9

<i>Daggett v. Commission on Governmental Ethics & Election Practices</i> , 172 F.3d 104 (1st Cir. 1999)	16, 19
<i>Dimond v. District of Columbia</i> , 792 F.2d 179 (D.C. Cir. 1986)	15
<i>Fitzgerald v. Baxter State Park Authority</i> , 385 A.2d 189 (Me. 1978)	9
<i>Fox Islands Wind Neighbors v. Dep't of Env't Prot.</i> , 2015 ME 53, 116 A.3d 940.....	13
<i>Friends of Lincoln Lakes v. Town of Lincoln</i> , 2010 ME 78, 2 A.3d 284	9
<i>Gov't Oversight Comm. v. DHHS</i> , 2024 ME 81, 327 A.3d 1115.....	10
<i>In re Int'l Paper Co., Androscoggin Mill Expansion</i> , 363 A.2d 235 (Me. 1976)	9
<i>Maine v. Norton</i> , 203 F.R.D. 22 (D. Me. 2001).....	13
<i>Nergaard v. Town of Westport Island</i> , 2009 ME 56, 973 A.2d 735	9
<i>Nextel Commc'ns of Mid-Atlantic, Inc. v. Town of Hanson</i> , 311 F.Supp.2d 142 (D. Mass. 2004)	20
<i>Public Serv. Co. of N.H. v. Patch</i> , 136 F.3d 197 (1st Cir. 1998).....	7-8

<i>Richert v. City of S. Portland,</i> 1999 ME 179, 740 A.2d 1000	13
<i>Toussaint v. Town of Harpswell,</i> 1997 ME 189, 698 A.2d 1063	13
<i>United States v. City of Portsmouth,</i> No. 09-cv-283-PB, 2016 WL 3815274, (D.N.H. July 12, 2016)	11-12
<i>Upstream Watch v. City of Belfast,</i> 2023 ME 43, 299 A.3d 25	9

I. INTRODUCTION

Appellant Charles Sidman submits this reply in support of his appeal from the Business and Consumer Docket's denial of his Motion to Intervene in the instant litigation. Golden Anchor's Complaint repeatedly asks for an injunction barring the Town from enforcing Chapter 52, and therefore the Ordinance's same requirements, against it, thereby allowing it to disembark cruise ship passengers en masse. Unrestrained cruise ship disembarkations deter Mr. Sidman's customers and have already caused him to close one of his downtown business locations. Golden Anchor's goal of returning to a regime of historically unbalanced and unregulated cruise ship disembarkations harms Mr. Sidman and his business. The Town's unwillingness to recognize the harmful impacts of unregulated cruise ship disembarkations on Mr. Sidman and his business is nothing new and further demonstrates that the Town does not adequately represent his interests in this litigation.

II. ARGUMENT

- A. Mr. Sidman has an interest in upholding the Ordinance and its rules of enforcement because of the particularized negative impacts of excessive cruise ship disembarkations on him and his business, which will continue if the Ordinance cannot be enforced against Golden Anchor as a result of this litigation.**

First, Mr. Sidman's business is directly harmed by the excessive cruise ship

visitation undeniably caused by Golden Anchor’s use of its property.¹ The Town now reframes the change in his customers’ behavior as a “change in business patterns” and speculates that “customers allegedly put off by cruise ships might simply come on other days.” Town Br. 22 (emphasis added). Conjecture aside, customers are deterred from coming downtown “most days of the cruise ship season,” which runs 183 days each year. *See APPLL v. Town of Bar Harbor*, 721 F. Supp. 3d 56, 73 (D. Me. 2024). The realities of customer avoidance for over half of each year – eclipsing the busy shopping season and the presence of seasonal residents vital to Mr. Sidman’s business – do not constitute a mere change in shopping patterns. It is lost business.

The Town and Golden Anchor attempt to fabricate an additional burden on Mr. Sidman beyond pleading to *quantify* the losses attributable to cruise ship visitation. Town Br. 21-23; GA Br. 36. But there is no requirement, and the parties cite no authority, that require quantitative proof of harm. In fact, “[p]otential economic harm” is all that is needed to “warrant[] serious consideration in the

¹ Golden Anchor spends the majority of its opposition mischaracterizing its substantive claims and the local laws at stake in this litigation. Through this action, Golden Anchor recasts its challenge to the Ordinance and reimagines the Federal Litigation to be advantageous to their duplicative state court challenges. GA Br. 10. Golden Anchor disingenuously states that this litigation would not impact the Ordinance, while simultaneously claiming exemption from the permitting requirements, reservation system, fines, and 1,000-disembarkations-per-day limit imposed by the Ordinance. GA Br. 26 n.13. But its brief divulges that it seeks to reraise challenges to the Ordinance itself, including “a whole spectrum of constitutional rights” claims that were already litigated in the Federal Litigation, including the commerce clause, the right to travel, and due process. GA Br. 15 n.5

interest inquiry.” *Public Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 205 (1st Cir. 1998) (emphasis added). Mr. Sidman has sufficiently pled economic harm to warrant intervention as of right.

Even if proof of economic harm was necessary to intervene, the Town’s own evidence corroborates that Mr. Sidman’s business experienced its “best year ever” in 2021 when there were no cruise ship passengers in Town as a result of Covid restrictions. (A211-14). Although the parties rely on Mr. Sidman’s marketing and customer appreciation to surmise his business’s wellbeing is unaffected by cruise ships, Town Br. 23, the fact remains that Mr. Sidman’s business has never surpassed the year with no cruise ships. Basic economic principles expect businesses to grow – yearly, quarterly even. Golden Anchor similarly speculates that cruise ship visitation could not possibly harm Mr. Sidman’s business because it has survived for 29 years. GA Br. 31, 33, 34. But in fact, Mr. Sidman closed his other location closer to Golden Anchor’s property because of the negative impacts caused by excessive cruise ship disembarkations downtown. (A107).

Next, the Town claims that Mr. Sidman “cites no authority” to support his standing to intervene by virtue of interference with his regular use and enjoyment of the affected downtown and waterfront areas, including his own property and downtown parks and sidewalks. Town Br. 24. Not true. *Black v. Bureau of Parks and Lands*, 2022 ME 58, ¶ 28, 288 A.3d 346 (“Although the[] plaintiffs allege no

specific harm beyond the transmission line’s mere visibility, their history of use of the public reserved lands . . . is sufficient to confer standing.”) (emphasis added); *Friends of Lincoln Lakes v. Town of Lincoln*, 2010 ME 78, ¶ 14, 2 A.3d 284 (“Users of affected property may have standing”); *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 197 (Me. 1978) (same); *In re Int’l Paper Co., Androscoggin Mill Expansion*, 363 A.2d 235, 238-39 (Me. 1976) (breathing same air provides standing); *Conservation Law Found. v. Town of Lincolnville*, No. AP-00-3, 2001 WL 1736584, *8 (Me. Super. Ct. Feb. 28, 2001) (standing of resident who “‘uses’ the property [by passing] by it regularly and because its unique physical characteristics are ‘critical’ to her spiritual and emotional fulfillment”).²

Third, the Town provocatively claims that Mr. Sidman had “no role whatsoever in defending . . . the ordinance” to support his interest in intervening here. Town Br. 19. But Mr. Sidman defended the Ordinance on multiple occasions. In 2022, he drafted and was instrumental in passing the Ordinance against Golden Anchor and the Town’s coordinated campaign to defeat the

² Mr. Sidman is also an abutter of the affected property. Unless an ordinance says otherwise, “‘abutter’ means a person who possesses land in close proximity to an affected piece of land, and thus is not limited to a direct abutter or adjoiner” and includes those “who own property in the same neighborhood.” *Upstream Watch v. City of Belfast*, 2023 ME 43, ¶ 17, 299 A.3d 25; *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 18, 973 A.2d 735. Mr. Sidman’s 6 Mount Desert Street property that he owns and operates his business out of is in the “same neighborhood” as Golden Anchor’s property, both properties are located in downtown Bar Harbor, and the negative impacts of Golden Anchor’s use affects the entire downtown neighborhood. Mr. Sidman’s property sits approximately one-quarter mile, just a few blocks, from Golden Anchor’s pier located at 55 West Street, and is directly impacted by its use.

measure. (A108). He intervened in the Federal Litigation to successfully defend the Ordinance, which the Town now claims sole credit for defending. (A108-09). He again defended the Ordinance from the Town Council's efforts to repeal the Ordinance in the November 2024 election. *See Golden Anchor L.C. v. Town of Bar Harbor*, No. BCD-APP-2025-00006 (Apr. 25, 2025 Mot. to Intervene, Aff. ¶ 65).³ And he defended the Ordinance in duplicative litigation brought by Golden Anchor before the Board of Appeals at the November 26 and December 10, 2024 administrative hearings. *See Golden Anchor*, No. BCD-APP-2025-00006 (Apr. 25, 2025 Mot. to Intervene, Ex. 22). The Town then turns to Chapter 52 and claims he had no more role in fashioning Chapter 52 beyond "that of any citizen offering their views and comments." Town Br. 19-20. But Chapter 52 would not exist but for the Ordinance, which required the passage of rules to enforce the Ordinance.

³ As noted in Mr. Sidman's principal brief, circumstances relevant to this appeal have continued to develop after the close of the abbreviated record that reveal Mr. Sidman's and the Town's continuing divergent interests. These actions are subject to judicial notice, as Golden Anchor has filed a nearly identical action in the Business Court, in which Mr. Sidman has filed a motion to intervene in that action with a more current record. *Golden Anchor L.C. v. Town of Bar Harbor*, No. BCD-APP-2025-00006. As indicated in Justice Horton's Order issued in this appeal denying the Town's request to permit trial court action, "the guidance that this Court would provide in its decision will be applicable to the trial court's consideration of Sidman's motion to intervene in [BCD-APP-2025-00006] and to this Court's determination of any appeal from any order in that action." Order Denying Motion to Permit Trial Court Action (May 28, 2025). Thus, judicial economy benefits from the Court's consideration of facts contained in the unabridged record in BCD-APP-2025-00006. Mr. Sidman respectfully requests that this Court take judicial notice of the relevant pleadings, dockets, and other court records, including Mr. Sidman's motion to intervene and accompanying exhibits, filed in *Golden Anchor L.C. v. Town of Bar Harbor*, No. BCD-APP-2025-00006. *See Cabral v. L'Heureux*, 2017 ME 50, ¶ 10, 157 A.3d 795; *see also Gov't Oversight Comm. v. DHHS*, 2024 ME 81, ¶ 61 n.22, 327 A.3d 1115 (Lawrence, J., concurring).

(A090). Further, unlike the role of “any citizen,” the Town Council and staff reached out to Mr. Sidman for his help in drafting Chapter 52 and permits, which he provided to ensure conformity with the Ordinance. *Golden Anchor*, No. BCD-APP-2025-00006 (Apr. 25, 2025 Mot. to Intervene, Exs. 6, 7, & 8).

Finally, the reasoning of two courts – the federal District Court (Walker, J.) and the Maine Business Court (McKeon, J.) – provides compelling reasons to grant intervention in this case. Although the Town derisively claims that Mr. Sidman “continues to cling” to the District Court’s decision, Town Br. 20, the same parties to this litigation already fought Mr. Sidman’s intervention and the District Court properly found that his participation was necessary to defend the Ordinance.

APPLL, No. 1:22-cv-00416-LEW, 2023 WL 2273949, *1 (D. Me. Feb. 28, 2023).

Mr. Sidman’s interests have not changed as the Town continues to minimize and malign them. Although the Town implies that Mr. Sidman’s interests are not direct or important enough to intervene in this case, the District Court expressly disagreed, finding that “he is among the persons whom the ordinance is designed to protect.” *Id.* at *7 n.3; *see also 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); *United States v. City of Portsmouth*, No. 09-cv-

283-PB, 2016 WL 3815274, *6 (D.N.H. July 12, 2016) (residents successfully intervened to oppose construction of wastewater facility).

Similarly, in the Maine Business Court, Justice McKeon found that Mr. Sidman had standing to challenge the Town Council's March 6, 2024 edict that largely kept intact the 2024 cruise ship season, for which Golden Anchor was the sole property disembarking passengers. Justice McKeon rejected the Town's standing arguments and found that Mr. Sidman

has sufficiently alleged particularized injury here. Sidman alleges he is a business owner in downtown Bar Harbor and that non-enforcement of the disembarkation ordinance during the 2024 season will hurt his business interests because his clientele often complain and refuse to come to his business on days cruise ship passengers are in town. The particularized injury requirement is met because Sidman has alleged that his personal, pecuniary, or property rights will be directly and adversely affected.

Sidman v. Town of Bar Harbor, No. BCD-APP-2024-0007 (July 11, 2024 Order on Pending Motions at 7).⁴ The same reasoning warrants intervention in the instant litigation.

B. Disposition of this action may as a practical matter impair Mr. Sidman's ability to protect his interests against the harms caused by unregulated cruise ship disembarkations.

The Town briefly addresses this element to intervention, and concludes that

⁴ Mr. Sidman respectfully requests that this Court take judicial notice of the orders in *Sidman v. Town of Bar Harbor*, No. BCD-APP-2024-0007 (July 11, 2024 Order on Pending Motions) and *APPLL*, No. 1:22-cv-00416-LEW, 2023 WL 2273949 (D. Me. Feb. 28, 2023).

because this is an appeal from an enforcement action, nothing is at stake for Mr. Sidman. Town Br. 25. The Town's argument simultaneously reveals its shortsightedness and the inadequacy of its representation of Mr. Sidman's interests in this litigation. Golden Anchor is not merely appealing from the NOV (which cited violations of the Ordinance and Chapter 52). *See* GA Br. 21. Rather, it seeks 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 lawful preexisting right to disembark cruise ship passengers en masse. (A055). Given that Golden Anchor has historically held a monopoly on cruise ship disembarkations in Bar Harbor, its success in this litigation would defeat the very purpose of the Ordinance and Chapter 52 and allow it to continue harming Mr. Sidman and his business. *See Maine v. Norton*, 203 F.R.D. 22, 28 (D. Me. 2001). For purposes of defeating Mr. Sidman's intervention, the Town myopically overlooks these consequences of Golden Anchor's claims to minimize the stakes of this litigation.⁵

⁵ Even if this case did simply involve an appeal from an enforcement action, such an action could still impair Mr. Sidman's ability to protect his interests. *See, e.g., Fox Islands Wind Neighbors v. Dep't of Env't Prot.*, 2015 ME 53, 116 A.3d 940; *Richert v. City of S. Portland*, 1999 ME 179, 740 A.2d 1000 (abutter permitted to appeal CEO's enforcement decision regarding neighboring property's legally existing nonconforming use); *Toussaint v. Town of Harpswell*, 1997 ME 189, 698 A.2d 1063 (abutters appealed to the zoning board and Superior Court the enforcement decision of CEO regarding the neighboring property's operation of dog kennel); *Briggs v. Town*

C. Mr. Sidman’s interests are not adequately represented by the existing parties to the action.

The Town argues that because it has brought an enforcement action against Golden Anchor, *ipso facto*, it adequately represents Mr. Sidman’s interests. But the Town continues to undermine Mr. Sidman’s interests in this litigation and beyond by advancing the interests of stakeholders aligned with the cruise line industry. The Town appears to argue that Mr. Sidman must show some conspiracy that “the Town is secretly in league with the cruise ship industry” for his interests to not be adequately represented by the Town. Town Br. 34, 36. That is not the standard and is not the basis for Mr. Sidman’s arguments. *B. Fernández & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 547 (1st Cir. 2006) (“[Intervenor’s] attempt to overcome the presumption of adequate representation should not have been limited to showing adversity, collusion or nonfeasance.”). Mr. Sidman simply recognizes the institutional interests at play in the Town and in this litigation that make his interests inadequately represented. *See APPLL*, 2023 WL 2273949 at *1. The Town has candidly admitted that it seeks a solution to placate all stakeholders, including owners of downtown gift shops, Golden Anchor, the Pilots, and others aligned with the cruise line industry. (A116). Given these conflicting interests, the Town cannot adequately protect the “more narrow and ‘parochial’ financial

of York, No. AP-14-028, 2015 WL 3525091 (Me. Super. Ct. May 15, 2015) (finding abutters had standing to appeal board decision over CEO’s notice of violation to neighboring marijuana farm).

interests” of Mr. Sidman and his business. *See Dimond v. District of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986); *accord Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992).

The Town attempts to denigrate Mr. Sidman’s diverging interests as something akin to *selfishness*. Town Br. at 36-37. But what the Town’s characterizations reveal is that in balancing the interests of “all individuals, parties, and stakeholders to ensure that the regulation of cruise ship tourism works for the entire community,” it privileges certain business interests over others. (A116). In fact, Town officials continue to discuss their aversion to upholding the Ordinance and Chapter 52. In a recent interview, the Chair of the Town Council described the Town government’s reluctance to regulate cruise ship visitation: “We could see this coming from a long ways away, and we let it get too far, get to the point of petitions, and then forcing the town’s hand in really uncomfortable ways.”⁶

The differences between the Town’s and Mr. Sidman’s interests cannot be reduced to a minor schism in litigation strategy. The practical effect of excluding Mr. Sidman from this case prevents adjudication of the bona fide issues at the heart of this litigation, including legally nonconforming uses, abandonment of vested

⁶ *Golden Anchor*, No. BCD-APP-2025-00006 (May 29, 2025 Reply Br. in Support of Mot. to Intervene, Ex. 25) (also available at Katherine Rose, *Three years after vote, questions remain for Maine town’s cruise future*, KCAW, May 27, 2025, available at <https://www.kcaw.org/2025/05/27/three-years-after-vote-questions-remain-for-maine-towns-cruise-future/> (last visited July 14, 2025)).

rights, and *res judicata*. See *Daggett v. Commission on Governmental Ethics & Election Practices*, 172 F.3d 104 (1st Cir. 1999) (holding that intervenors' interests would be practically impaired even if they would not be bound by decision "in a strict *res judicata* sense"). The Town now states that Mr. Sidman's exclusion from this litigation does not prevent him from litigating these issues in a different proceeding. Town Br. 39. But the Town has repeatedly sought to preclude Mr. Sidman from litigating these very issues. *Sidman v. Town of Bar Harbor*, No. BCD-APP-2025-00005 (May 16, 2025 Mot. to Dismiss at 7, 8) (Town insisting Mr. Sidman can litigate same issues as an intervenor in Golden Anchor's redundant appeal and his own administrative challenge to the same restrictions on use of the Town-owned pier); *Golden Anchor*, No. BCD-APP-2025-00006 (May 16, 2025 Town's Opp. to Mot. to Intervene at 11) (Town opposing Mr. Sidman's intervention and insisting he can challenge same restrictions in administrative challenge to use of Town-owned pier); Bar Harbor, Me., Board of Appeals, No. AB-2025-04 (June 30, 2025 Board Decision) (Town preventing Mr. Sidman from challenging use of Town-owned pier on standing grounds after limiting argument to two minutes). It is clear by the Town's evasive contrivances that it seeks to prevent judicial review of the principal defenses against Golden Anchor's instant claims because of its conflicting interests in continuing to disembark passengers downtown.

The Town continues to dispute several of Mr. Sidman’s characterizations of its past actions. Town Br. 27. First, the Town disputes that it “welcomed” the Pilots as plaintiffs in the Federal Litigation. Town Br. 27. However, the Town responded it “ha[d] no objection” to the Pilots intervening and even “request[ed] that [the District Court] grant such relief” sought by the Pilots. *APPLL*, No. 1:22-cv-00416-LEW, Doc. 37 (Jan. 18, 2023 Town Response to Pilot’s Mot. to Intervene).⁷ Next, the Town denies voluntarily suspending enforcement of the Ordinance pending the outcome of the Federal Litigation. Town Br. 28. But according to *APPLL*, the Town’s discussions with *APPLL* and the Pilots “revealed a common interest among the parties” and “the Town officially conveyed its decision not to enforce the Ordinance” until resolution of the Federal Litigation. *APPLL*, No. 1:22-cv-00416-LEW, Doc. 83 (Mar. 24, 2023 *APPLL* Notice of Withdrawal of Mot. for Preliminary Injunction). The Town also denies delaying drafting and implementing the Ordinance’s rules of enforcement until after the Federal Litigation was over. Town Br. 28. However, on March 6, 2024, five days after the District Court upheld the Ordinance, the Council issued a press release “hereby direct[ing] the Town Manager to prepare draft rules for Council consideration.” (A115; A122); *see also* GA Br. 12 (“When the Amended Decision

⁷ Mr. Sidman respectfully requests that this Court take judicial notice of the relevant filings in the Federal Litigation, No. 1:22-cv-00416-LEW.

was issued . . . the Town had done nothing.”). The practical effect of this delay salvaged the 2023 cruise ship season and most of the 2024 season to placate the pro-cruise ship stakeholders.

The Town also attempts to strip the Town Council’s March 6, 2024 statement to anodyne insignificance. Town Br. 29-30. But the March 6 statement speaks for itself: five days after the District Court upheld the Ordinance, the Town Council acted to preserve “at least [] 80%” of the 2024 cruise ship season by unlawfully changing the explicit application date of the Ordinance and issuing unlawful orders to Town employees to selectively enforce the Ordinance. (A115). The practical effect of this was to salvage another year of cruise ship visitation to protect stakeholders.

The Town also denies that the Council “attempted to repeal the Ordinance and Chapter 52 in November 2024” and replace the Ordinance with contracts negotiated directly with Golden Anchor and the cruise line industry. Town Br. 31. But the Chair of the Town Council *actively campaigned* in favor of repealing the Ordinance, even attending as a panelist and speaking in favor of its repeal at events organized by APPLL, the plaintiffs in the ongoing Federal Litigation. *Golden Anchor*, No. BCD-APP-2025-00006 (Apr. 25, 2025 Mot. to Intervene, Aff. ¶¶ 62-

63). The Town waves away this aversion to the Ordinance as a “pragmatic approach to . . . enforcement.” Town Br. 33.⁸

The Town attempts to distinguish *Conservation Law Foundation v. Mosbacher*, 966 F.2d 39 (1st Cir. 1992) by claiming that the government in that case was not defending the suit, pointing to a proposed consent decree. Town Br. 38. But the danger of inadequate representation “can be discerned from actions that an existing party has already taken, and sometimes it can be reasonably predicted.” *Daggett*, 172 F.3d at 112 (cleaned up) (discussing *Conservation Law Foundation* in both contexts – “acquiescence in consent decree” and when “government has conflicting interests in the matter”). Moreover, the consent decree at issue in *Conservation Law Foundation* would not have resolved the underlying dispute, but would “merely begin the process through which [changes] would come about,” which was enough to warrant intervention to defend the plan. *Conservation Law Found.*, 966 F.2d at 43. Golden Anchor makes a similar challenge to the rules of enforcement here, with the goal of ultimately neutering the Ordinance, warranting Mr. Sidman’s intervention.

⁸ The Town also seeks to neutralize the disparaging public comments made about Mr. Sidman while he was running for Town Council as a “personal comment” made by a then-sitting Council Member. Town Br. 34-35. However, the public comment was made from the Council Member’s official Town Councilor Facebook page – “Matthew Hochman Bar Harbor Town Councilor.” *Golden Anchor*, No. BCD-APP-2025-00006 (Apr. 25, 2025 Mot. to Intervene, Ex. 3).

Even in litigation where there is no consent decree at the time of intervention, an intervening party is often necessary to avoid the possibility that the existing parties may seek to resolve the litigation as the case progresses. *See, e.g., Animal Prot. Inst. v. Martin*, 241 F.R.D. 60, 70 n.6 (D. Me. 2007); *Nextel Commc'ns of Mid-Atlantic, Inc. v. Town of Hanson*, 311 F.Supp.2d 142, 153 (D. Mass. 2004). Given the Town's efforts to find its way around the Ordinance during the 2023, 2024, and 2025 cruise ship seasons, it is more than plausible that it again attempts to compromise to "ensure that the regulation of cruise ship tourism works for the entire community." (A116). In fact, Golden Anchor has recently acknowledged that it expects resolution of this litigation through "some other structured settlement" resulting in the return of the cruise lines. *Golden Anchor*, No. BCD-APP-2025-00006 (May 29, 2025 Reply Br. to Mot. to Intervene, Ex. 25). Without Mr. Sidman's intervention, he cannot adequately defend against the parties' efforts to bury this dispute. *See Cayer v. Town of Madawaska*, 2009 ME 122, ¶¶ 4-6, 984 A.2d 207 (chronicling lengthy lawsuit against reticent town with court vacating earlier consent agreement and citing abutter's later failure to challenge consent judgment).

VII. CONCLUSION

For the foregoing reasons, Mr. Sidman respectfully requests that this Court reverse the Business Court's Order denying Mr. Sidman's Motion to Intervene.

Dated: July 16, 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 July 16, 2025, I caused electronic service of a pdf of the foregoing REPLY BRIEF OF APPELLANT to be served on counsel for each party to the appeal identified below, addressed as follows:

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