STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-25-296

JOHN VENEZIANO,

Appellee

v.

ALISSA SAULNIER, ET AL.

Appellant

On Appeal from the Business and Consumer Court Docket
Docket No.: BCD-CIV-2025-00020

BRIEF OF APPELLEE JOHN VENEZIANO

Kyle M. Noonan, Bar No. 5934
Shannon R. Linnehan, Bar No. 10662
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101
knoonan@pierceatwood.com
(207) 791-1100
Attorneys for Plaintiff / Appellee John Veneziano

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INTRODUCTION

With this interlocutory appeal, Mr. Saulnier weaponizes the anti-SLAPP statute to stay all claims against him and his co-defendants on the basis that Mr. Saulnier provided testimony about an ongoing fraudulent scheme in a disclosure proceeding. As with Maine's previous anti-SLAPP statute, the newly enacted Uniform Public Expression Protection Act exists to protect against meritless lawsuits brought to deter citizens from exercising their constitutional rights. The lawsuit against Mr. Saulnier poses no such concerns: It involves the fraudulent efforts of Mr. Saulnier, his family, and his business partner to avoid a $3.5 million judgment against Mr. Saulnier. The Court should deny the appeal expeditiously and allow the claims against Mr. Saulnier and his co-defendants to proceed before the Superior Court.

STATEMENT OF THE FACTS OF THE CASE

In March 2021, Appellee John Veneziano ("Mr. Veneziano") obtained a $3.5 million judgment (the "Judgment") against Appellant Bernard Saulnier ("Mr. Saulnier") based on Mr. Saulnier's defrauding of Mr. Veneziano out of millions of dollars Mr. Veneziano invested into their joint real estate development venture. (A. 24-25.) In 2022, after receiving a single $50,000 payment toward the Judgment in 2021, Mr. Veneziano commenced a disclosure proceeding in Maine District Court against Mr. Saulnier to collect on the Judgment. (A. 25.) During that proceeding, Mr. Saulnier testified at a deposition and at the disclosure hearing. (A. 25.) In both instances, Mr. Saulnier gave testimony regarding a fraudulent scheme by Mr. Saulnier,

members of his family, and his business partner Edward Moore ("Moore") to conceal Mr. Saulnier's true income to fraudulently prevent Mr. Veneziano from collecting on the Judgment. (A. 25-36.)

Since entry of the Judgment, Mr. Saulnier has worked as a real estate developer and represented himself to City of Saco officials as a "partner" of Moore. (A. 25-26, 97, 101.) Despite claiming an income from Moore of only $40,000 per year for real estate development services, Mr. Saulnier testified in the disclosure proceeding that his income prior to his bankruptcy in 2020 for real estate development work exceeded $300,000, that he believed his work to be worth approximately $350,000, and that he had turned down a construction management job offer worth $350,000 per year. (A. 27, 102-03.) Mr. Saulnier further testified that he believed himself to be adequately compensated, despite the chasm between his official income of $40,000 and his earning capacity of $350,000, because of "everything [Mr. Moore] does for my family."[1] (A. 27, 102.) Though Mr. Saulnier represented to City of Saco officials that he was part of Moore's development team for a Saco project, and actively worked for Moore between 2022 and 2024, Mr. Saulnier testified at deposition that he was "retired" and doing no work for Moore. (A. 30-31, 101-02, 122-29, 134-35, 137-45, 148-49.)

[1] Moore pays Mr. Saulnier's wife an annual income that far exceeds the value of the services she provides, provides free or discounted residential and office rental space to Mr. Saulnier's wife and children, and purchased Mr. Saulnier's home out of bankruptcy and shortly thereafter sold it to Mr. Saulnier's wife for far below market value. (A. 28-30, 32-35, 136-37.)

At the disclosure hearing, the District Court noted what arguably "seems to be a pattern of conduct of evading collection efforts." (A. 175.) Thereafter, on March 25, 2025, to obtain relief from the coordinated effort to defraud Mr. Veneziano and avoid payment of the Judgment, Mr. Veneziano filed a civil action in York County Superior Court[2] asserting claims against Mr. Saulnier, members of his family, Moore, and various entities controlled by Moore for claims including fraudulent transfer, fraudulent concealment, fraudulent misrepresentation, and unjust enrichment. (A. 4.)

On May 19, 2025, Mr. Saulnier filed a special motion to dismiss Mr. Veneziano's civil action, asserting that the action was subject to dismissal under the Uniform Public Expression Protection Act ("UPEPA"). 14 M.R.S. §§ 731-742; (A. 5, 183-89). Mr. Veneziano opposed the motion on grounds that the conduct and testimony of Mr. Saulnier are not subject to UPEPA and that Mr. Veneziano stated a prima facie case. (A. 190-99.) Mr. Saulnier also filed a motion to dismiss all claims against him under M.R. Civ. P. 12(b)(6), which Mr. Veneziano also opposed. (A. 5.) Following a hearing on the special motion to dismiss and defendants' Rule 12(b)(6) motions to dismiss,[3] the Court denied Mr. Saulnier's special motion to dismiss and all Rule 12(b)(6) motions in full. (A. 6, 8.) Mr. Saulnier filed an interlocutory appeal from the denial of his special

[2] The action was transferred to the Business and Consumer Docket on June 3, 2025. (A. 5-6.)

[3] Co-defendants Moore, Moore's business entities, Alissa Saulnier, and Alissa Saulnier's business also filed motions to dismiss pursuant to M.R. Civ. P. 12(b)(6). (A. 5.)

motion to dismiss, and over Mr. Veneziano's objection, the Superior Court case is now stayed as to all defendants. (A. 6-7.)

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the trial court correctly conclude that the claims against Mr. Saulnier are not based on conduct or speech protected by the Maine Uniform Public Expression Protection Act?

2. Did the trial court correctly conclude that the Verified Complaint stated causes of action upon which relief can be granted against Mr. Saulnier?

SUMMARY OF THE ARGUMENT

The claims against Mr. Saulnier are not within the scope of UPEPA, for several independent reasons. First, Mr. Saulnier's testimony in the disclosure proceeding about his income, assets, and business activities was not on a matter of public concern. Second, the claims against Mr. Saulnier are not based on his testimony in the disclosure proceeding, but on the overall fraudulent scheme. Third, there is no other "immunity" or other common law principle insulating Mr. Saulnier from liability for fraud simply because he testified about his tortious activity in the disclosure proceeding.

In any event, UPEPA does not provide an independent basis for dismissal; it simply provides an expedited procedure for weeding out *meritless* claims. Each of the claims asserted against Mr. Saulnier (for fraudulent transfer, fraudulent concealment, fraudulent misrepresentation, aiding and abetting fraud, and unjust enrichment) are viable, which provides an independent basis for denying the appeal.

ARGUMENT

I. Standard of Review

The Law Court reviews the denial of a special motion to dismiss under UPEPA de novo.[4] *Camden Nat'l Bank v. Weintraub*, 2016 ME 101, ¶ 7, 143 A.3d 788. Statutory interpretation is a question of law which this Court also reviews de novo. *See id.* When interpreting a statute, the Court looks to the statute's "plain meaning in the context of the statutory scheme." *Jones v. Cost Mgmt., Inc.*, 2014 ME 41, ¶ 12, 88 A.3d 147 (quoting *Lyle v. Mangar*, 2011 ME 129, ¶ 11, 36 A.3d 867).

UPEPA is to "be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition and the right of association guaranteed by the United States Constitution or by the Constitution of Maine." 14 M.R.S. § 741. Additionally, "[i]n applying and construing [UPEPA], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it." 14 M.R.S. § 742. Accordingly, the Legislature formally incorporated the Uniform Comments of the Uniform Law

[4] Maine's former anti-SLAPP statute (14 M.R.S. § 556) has been repealed and, effective January 1, 2025, replaced with the UPEPA, 14 M.R.S. §§ 731-742. "SLAPP" is an acronym for strategic lawsuit against public participation. *See* Unif. Pub. Expression Prot. Act [hereinafter Unif. L. Comm'n Notes] § 1, cmt. (Unif. L. Comm'n 2020). UPEPA "should be considered an anti-SLAPP act." *Id.* Thus, it is unlikely that the standard of review under UPEPA differs from the standard of review under Maine's former anti-SLAPP act, and precedent applying the repealed anti-SLAPP statute should guide the Court's interpretation of UPEPA.

Commission into UPEPA when enacting the statute. P.L. 2023, ch. 626, § 6. *See generally* Unif. L. Comm'n Notes.

II. The claims against Mr. Saulnier are not subject to the Maine Uniform Public Expression Protection Act.

Like the former anti-SLAPP statute, UPEPA exists "to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition and the right of association" guaranteed by the U.S. and Maine Constitutions. *Compare* 14 M.R.S. § 556 (2023), *with* 14 M.R.S. § 741.[5] "[A]n anti-SLAPP motion is appropriate when the plaintiff's lawsuit or claim is a retaliatory effort based solely on the moving party's petitioning conduct." *Town of Madawaska v. Cayer*, 2014 ME 121, ¶¶ 12-13, 103 A.3d 547 (noting that application of anti-SLAPP statutes "require balancing of the moving party's right to petition with the nonmoving party's right of access to the courts").

Under UPEPA, a party may file a special motion to dismiss a non-meritorious civil claim based on the person's:

> A. Communication in a legislative, executive, judicial, administrative or other governmental proceeding;

[5] Though the repealed anti-SLAPP statute focused on the "right of petition," UPEPA focuses instead on "matter[s] of public concern." *Compare* 14 M.R.S. § 556 (2023) *with* 14 M.R.S. § 733(2).

> B. Communication on an issue under consideration or review in a legislative, executive, judicial, administrative or other governmental proceeding; [or]
>
> C. Exercise of the right of freedom of speech or of the press, the right to assemble or petition or the right of association, guaranteed by the United States Constitution or by the Constitution of Maine, on a matter of public concern . . . .

14 M.R.S. § 733(2). The moving party carries the initial burden to establish that UPEPA applies by showing that "the responding party's suit arises from the movant's constitutionally protected activity" because "the conduct underlying the cause of action was 'itself' an 'act in furtherance' of the party's exercise of First Amendment rights." Unif. L. Comm'n Notes § 7, cmt. 2; *see also* 14 M.R.S. § 738(1)(A). If the moving party fails to meet that burden, the special motion to dismiss is denied; if the moving party meets its burden, the burden shifts to the responding party to demonstrate that UPEPA does not apply because its cause of action is prima facie viable. 14 M.R.S. § 738(1)(B)-(C); Unif. L. Comm'n Notes § 7, cmts. 3-4.

It is not enough that the claim merely *relate* to protected conduct or speech. *See, e.g.*, Unif. L. Comm'n Notes § 2, cmt. 1. "The anti-SLAPP statute's definitional focus is not on the form of the plaintiff's cause of action but, rather, on the defendant's *activity* that gives rise to his or her asserted liability and whether that activity constitutes protected speech or petitioning." *Id.* (internal quotation omitted) (emphasis in original).

To succeed on a special motion to dismiss, the movant must demonstrate that the "cause of action arises from the movant's exercise of First Amendment rights on a matter of public concern." Unif. L. Comm'n Notes § 2, cmt. 1. Thus, if Mr. Saulnier "cannot satisfy the first step—in other words, cannot show that the cause of action is linked to First Amendment activity on a matter of public concern—then the court will deny the motion without ever proceeding to the second or third step." *Id.* (internal quotation omitted).[6]

A. Mr. Saulnier failed to carry his burden to demonstrate that UPEPA applies to the causes of action against him.

The trial court correctly found that Mr. Saulnier failed to carry his initial burden of showing that UPEPA applies. (A. 8, 18.) UPEPA does not apply to the claims against Mr. Saulnier for three separate reasons: *first*, Mr. Saulnier's disclosure proceeding testimony is not a matter of public concern; *second*, the claims against Mr. Saulnier are not "based on" his disclosure hearing testimony; and *third*, Mr. Saulnier's disclosure hearing testimony is not otherwise privileged.

It is implausible that the Legislature intended UPEPA to immunize a judgment debtor from tort liability simply because the judgment debtor testified about his misconduct in a disclosure hearing. Anti-SLAPP statutes exist to protect citizens from

[6] Under UPEPA, if the responding party establishes a prima facie case at "step two," then the burden shifts back to the movant to demonstrate "that the responding party failed to state a cause of action upon which relief can be granted or that there is no genuine issue as to any material fact and the party is entitled to judgment as a matter of law—in other words, that the cause of action is not *legally* sound." Unif. L. Comm'n Notes § 7, cmt. 5.

"costly litigation that chills society from engaging in constitutionally protected activity." Unif. L. Comm'n Notes, Prefatory Note. No such concerns exist here.

i. Mr. Saulnier's disclosure proceeding testimony was not a matter of public concern.

UPEPA requires the moving party to demonstrate that the "cause of action arises from the movant's exercise of First Amendment rights on a matter of public concern." Unif. L. Comm'n Notes § 2, cmt. 1; *see also* 14 M.R.S. § 738(1)(A). Mr. Saulnier cannot meet this burden.

Mr. Saulnier gave testimony in a disclosure proceeding regarding his ability to pay on the $3.5 million Judgment. Mr. Saulnier did nothing more than answer questions posed by Mr. Veneziano's counsel about Mr. Saulnier's income, assets, and business ventures. Mr. Saulnier requested no action by the government and provided no testimony of interest to anyone other than the parties to the disclosure proceeding. His testimony was "fundamentally different" from the types of statements Maine courts "have previously held to be protected by the anti-SLAPP statute." *Hearts with Haiti, Inc. v. Kendrick*, 2019 ME 26, ¶ 13, 202 A.3d 1189 (noting that anti-SLAPP cases typically arise from statements obviously related to matters of public concern, such as reports of sexual abuse, or statements seeking public input or government intervention); *see also Mabee v. Eckrote*, No. 1:19-CV-00432-JDL, 2020 WL 1171939, at *3 (D. Me. Mar. 11, 2020) ("Agreements between private parties concerning private land transactions are not the sort of conduct the anti-SLAPP statute was aimed at protecting . . . .").

Matters such as Mr. Saulnier's disclosure proceeding, between private parties, regarding private affairs, and not soliciting public response or intervention, simply do not fall within the ambit of public expression protection statutes. *See Bruno v. Corrado*, No. CV-14-429, 2015 WL 1757010, at *3 (Me. Super. Ct. Mar. 31, 2015) (letter to Governor asking for investigation of Board of Pharmacy complaint was not "petitioning activity" under anti-SLAPP statute where statements in letter were not "made in connection" with any issue under review by the governor and letter was not reasonably likely to enlist public engagement); *cf. Lane v. Franks*, 573 U.S. 228, 241 (2014) ("Speech involves matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." (citation modified)). The claims against Mr. Saulnier relate to purely private matters and they are outside the scope of UPEPA.

ii. Mr. Veneziano's claims are not "based on" Mr. Saulnier's testimony but on the defendants' overall fraudulent scheme.

UPEPA applies only to "causes of action asserted in a civil action against a person *based on* the person's" protected activities. 14 M.R.S. § 733(2) (emphasis added). It is not enough that the movant establishes that he engaged in conduct to which UPEPA applies; the movant must also show "that the moved-upon cause of action is *premised on* that conduct." Unif. L. Comm'n Notes § 7, cmt. 2 (emphasis added); 14 M.R.S. § 738(1)(A). Thus, to sustain the special motion to dismiss, Mr. Saulnier was

required to "show that the claims at issue are based on the petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities." *Cayer*, 2014 ME 121, ¶ 12, 103 A.3d 547 (internal quotation omitted).[7] Mr. Saulnier cannot make this showing.

Mr. Veneziano's suit is not "based on" Mr. Saulnier's testimony; rather, as the Verified Complaint lays out in detail, Mr. Saulnier and the other Defendants have engaged in a years-long fraudulent scheme to conceal and misrepresent Mr. Saulnier's work, earnings, and assets to prevent Mr. Veneziano from collecting on the Judgment. Mr. Saulnier provided testimony about that scheme in the disclosure proceeding, testifying, for example, that Mr. Saulnier had turned down a job paying $350,000 per year to continue working for Moore for $40,000 per year because Mr. Saulnier was fairly compensated due to "everything [Mr. Moore] does for my family." (A. 27, 102.) To be sure, Mr. Saulnier made false representations in the disclosure proceeding to prevent Mr. Veneziano from collecting on the Judgment; but Mr. Veneziano's claims are not based on Mr. Saulnier's testimony alone and have a substantial basis other than his testimony. *See Cayer*, 2014 ME 121, ¶ 12, 103 A.3d 547.

[7] UPEPA protects speech on "matters of public concern" rather than the "right to petition," as the former statute did. Even if we treat Mr. Saulnier's testimony in the disclosure proceeding as an exercise of his constitutionally protected rights (though, as noted above, his testimony is not subject to UPEPA), the claims against him are still not "based on" that testimony under *Town of Madawaska v. Cayer* and cases citing it, nor under the Uniform Law Commission comments expressly incorporated into Maine's enactment of UPEPA. *See* Unif. L. Comm'n Notes §§ 2, 7, cmts.

"[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for purposes of the anti-SLAPP statute. Moreover, that a cause of action arguably may have been 'triggered' by protected activity does not entail it as one arising from such." Unif. L. Comm'n Notes § 7, cmt. 2 (internal quotation omitted). Multiple courts have recognized the "careful distinction" in the anti-SLAPP context "between a cause of action based squarely on a privileged communication . . . and one based upon an underlying course of conduct evidenced by the communication." *Park v. Bd. of Trs. of Cal. State Univ.*, 393 P.3d 905, 909 (Cal. 2017) (internal quotation omitted); *Howard K. Bell Consulting Eng'rs, Inc. v. Ford Contracting, Inc.*, No. 2023-CA-1097-MR, 2025 WL 569146, at *7-8 (Ky. Ct. App. Feb. 21, 2025) (concluding that, although potentially protected communications appeared in complaint and were "significant to [the] allegations in establishing the events leading up to" plaintiff's injury, "the primary basis of [plaintiff's negligence] . . . cause[s] of action" was defendant's unlawful and negligent conduct). In light of this distinction, "it is appropriate for a court to begin with a determination of what allegations form the basis of each challenged cause of action and then determine whether those allegations are within the scope of UPEPA." *Howard K. Bell*, 2025 WL 569146, at *8.

Here, even if claims were arguably "triggered" by Mr. Saulnier's false testimony, that is only because Mr. Saulnier's testimony in the disclosure proceeding revealed defendants' underlying scheme to defraud Mr. Veneziano and prevent his collection of the Judgment. *See Hearts with Haiti*, 2019 ME 26, ¶ 14, 202 A.3d 1189 ("[W]here a lawsuit

alleges a string of tortious … conduct, only a small portion of which possibly includes petitioning activity, the protections of the anti-SLAPP statute are not applicable."). Mr. Veneziano's claims are "based on" the overall fraudulent scheme and do not fall within the scope of UPEPA.

iii. Mr. Saulnier's testimony was part of a larger fraudulent scheme and is therefore not privileged at common law or under UPEPA.

Though Mr. Saulnier argues that his disclosure proceeding testimony is "absolutely privileged" or "carries absolutely immunity from suit," any privilege attaching to testimony appears, at best, to protect defamatory testimony.[8] But no "privilege" or similar principle insulates a defendant from liability for fraud. "Although the general rule is that no civil action lies for damages resulting from perjury, an exception exists which permits an action where the perjury is merely a part of a fraudulent scheme greater in scope than the issues determined in the prior proceeding." 60A Am. Jur. 2d Perjury § 8 (2025). "[W]here a plaintiff is able to establish all the necessary elements of fraud and deceit, he or she may have a day in court to seek redress for such alleged wrongful conduct as his or her cause of action is based on more than a mere giving of perjured testimony." *Id.*

[8] *See* Restatement (Second) of Torts § 588 (Am. L. Inst. 1977) ("A witness is absolutely privileged to publish defamatory matter concerning another . . . as part of a judicial proceeding in which he is testifying, if it has some relation to the proceeding.").

Mr. Saulnier relies on a string of inapposite cases in which the plaintiff sought to recover for damages that resulted from the defendant's testimony, none of which involved statements under oath that were part of a fraudulent scheme. *See Barnes v. McCrate*, 32 Me. 442 (1851) (action for defamatory testimony); *Garing v. Fraser*, 76 Me. 37, 41 (1884) (rejecting principle that "a party grieved by a judgment obtained by the perjury of a witness might, after the reversal of the judgment, recover his damages against every such person as did procure such damage against him"); *Dunbar v. Greenlaw*, 152 Me. 270, 271, 128 A.2d 218 (1956) ("The plaintiff accuses [defendant] of having erroneously certified in ancillary, emergency, insanity, detention proceedings, . . . without sufficient inquiry or examination, that the plaintiff was insane. Plaintiff was detained in a state hospital and claims resultant damage."); *Dineen v. Daughan*, 381 A.2d 663, 664-65 (Me. 1978) (action for libelous testimony given under oath).[9]

As for *Klein v. Demers-Klein*, that case parses when statements regarding suspected child abuse constitute "petitioning activity." No. CUMSC-CV-18-0377, 2019 WL 3064839, at *7-8 (Me. Super. Apr. 17, 2019). The *Klein* court's holding that out-of-court reports of suspected child abuse and in-court statements regarding those reports were "petitioning activity" protected by the anti-SLAPP law involved suspected child

[9] As for *Lane v. Franks*, the Supreme Court discussed a different set of issues—when the First Amendment protects a public employee who provides compelled truthful sworn testimony outside the scope of his ordinary job responsibilities—but noted in passing that "wrongdoing that an employee admits to while testifying may be a valid basis for termination or other discipline." 573 U.S. 228, 242 n.5 (2014).

abuse—an obvious matter of public concern. *Id.* at *7-9. *Klein* does not stand for the proposition, as Mr. Saulnier suggests, that all statements to a government body or in court, regardless of their content or purpose, are protected by anti-SLAPP laws. Rather, *Klein*'s "broad reading of 'petitioning activity'" recognized the "unique public policy considerations" at play in instances of child abuse.[10] *Mabee*, 2020 WL 1171939, at *3. Communications to a government body or within a government proceeding on *private* matters, like Mr. Saulnier's testimony in the disclosure proceeding, do not implicate such public policy considerations, and the anti-SLAPP laws do not apply. *Id.* at *1, *3. Just as "[a]greements between private parties concerning private transactions are not the sort of conduct the anti-SLAPP statute was aimed at protecting," *id.* at *3, statements regarding private business transactions and conduct do not earn the protection of UPEPA merely because they were made in a judicial proceeding or even at the request of a court.

Furthermore, where, as here, a claim of fraud is based on an ongoing fraudulent scheme and testimony is evidence of the broader fraudulent scheme, courts have long

[10] In contrast to *Klein*, the federal district court in *Mabee v. Eckrote* held that the former anti-SLAPP law did not apply in a slander of title claim in which the Bureau of Parks and Lands requested information regarding title to lands in its review of a land lease application. No. 1:19-cv-00432-JDL, 2020 WL 1171939, at *1, *3. There, the applicant submitted a letter to the Bureau in response to its request, which letter was endorsed by the defendant and clarified easements over the subject lands, and the plaintiff subsequently brought suit claiming that the letter constituted slander of title. *Id.* Though the letter was requested by a government body in connection with a government agency proceeding, and submitted in response to that request, the court recognized that, unlike the communications in *Klein*, the letter concerned only private transactions and agreements and therefore was not subject to the anti-SLAPP statute. *Id.* at *3.

rejected claims of testimonial privilege. *See, e.g.*, *Dunlap v. Glidden*, 31 Me. 435, 439 (1850) ("If the judgment was obtained, as is contended, by fraud and perjury, the plaintiff has ample remedy by law," including that "[t]he witnesses, if guilty, might be indicted for perjury."); *Frist v. Gallant*, 240 F. Supp. 827, 828-29 (W.D.S.C. 1965) (holding that ex-wife could maintain claim for fraud, "[r]egardless of the general rule as to perjured testimony," where child and ex-husband in prior alimony proceeding "gave false testimony in reference to the annual income of" ex-husband as part of joint "scheme[] to defraud plaintiff"); *Morgan v. Graham*, 228 F.2d 625, 626-27 (10th Cir. 1956) (affirming judgment for fraud in favor of plaintiff against president of liability insurer based on defendant's false testimony in prior proceeding that "den[ied] the existence of an indemnity policy," because "the acts asserted in the complaint . . . if established, constitute perjury, but it does not follow therefrom that a civil action in tort for damages may not be predicated upon such testimony if all elements necessary to maintain such action are present" and "this was an action to recover damages because of the false and fraudulent acts and conduct of [defendant]"); *Alberta Gas Chem., Ltd. v. Celanese Corp.*, 497 F. Supp. 637, 639 (S.D.N.Y. 1980) (recognizing exception to rule that false testimony is immune from suit "where the perjury is merely a means to the accomplishment of a larger fraudulent scheme" (internal quotations omitted)); *cf. Niedert v. Rieger*, 200 F.3d 522, 526-27 (7th Cir. 1999) (holding that immunity extended to affidavit in defamation suit because "the only action taken by [defendant] that actually harmed [plaintiff] was the false and malicious affidavit," rather than a "continuum of

fraudulent conduct"); *Anchor Wire Corp. v. Borst*, 102 N.Y.S. 2d 871, 873 (N.Y. App. Div. 1951) (rejecting fraud claim premised on "conspiracy to commit perjury" because claim did not demonstrate "fraud over and beyond the false testimony").

Providing such testimony cannot logically confer "immunity" for underlying fraud, and such testimony is not the subject of an anti-SLAPP statute. *See, e.g., Hamilton v. Woodsum*, 2020 ME 8, ¶ 16, 223 A.3d 904 (concluding that defendant's "report of an internal investigation that had been commissioned by USM" was not petitioning activity). Mr. Saulnier enjoys no "immunity" from fraud and other tort claims simply because he testified about the conduct underlying them in his disclosure proceeding.

B. Mr. Veneziano stated a prima facie cause of action as to each claim asserted against Mr. Saulnier.

Because the claims against Mr. Saulnier do not fall within the scope of UPEPA, the Court need proceed no further. But the trial court's denial of Mr. Saulnier's special motion to dismiss can also be affirmed because each claim asserted against Mr. Saulnier is prima facie viable. Even where UPEPA applies, a movant cannot prevail on a special motion to dismiss unless he demonstrates that the respondent has failed to state a prima facie case or otherwise failed to state a cause of action upon relief which can be granted. 14 M.R.S. § 738(1)(C). "The purpose of the anti-SLAPP statute is to protect against *meritless* claims brought to delay, distract, and punish activists for speaking out." *Hearts with Haiti*, 2019 ME 26, ¶ 14, 202 A.3d 1189 (emphasis in original). Thus, UPEPA does not provide an independent basis for dismissal; rather, it sets forth an expedited

procedure to dismiss meritless claims. *See* 14 M.R.S. § 738(1)(C); Unif. L. Comm'n Notes § 7, cmt. 4 ("Anti-SLAPP laws . . . only provide a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity." (emphasis in original) (citation modified)).

To state a prima facie cause of action, the claimant must allege sufficient facts which, when viewed "in the light most favorable to the plaintiff, . . . set[] forth the elements of a cause of action or allege[] facts that would entitle the plaintiff to relief pursuant to some legal theory." *Alrig USA Acquisitions, Inc. v. MBD Realty LLC*, 2025 ME 11, ¶ 10, 331 A.3d 372 (quoting *Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 7, 843 A.2d 43); *see also Nader v. Me. Democratic Party*, 2012 ME 57, ¶ 33, 41 A.3d 551 (construing former Maine anti-SLAPP statute, "consistent with usual motion-to-dismiss practice, to permit courts to infer that the allegations in a plaintiff's complaint . . . are true.") Claims of fraud must be stated with particularity. M.R. Civ. P. 9(b); *Alrig*, 2025 ME 11, ¶ 17, 331 A.3d 372. The Law Court reviews "the legal sufficiency of a complaint de novo." *Alrig*, 2025 ME 11, ¶ 10, 331 A.3d 372. Here, the trial court correctly concluded that Mr. Veneziano stated a claim for which relief can be granted for each claim against Mr. Saulnier: fraudulent transfer; fraudulent concealment; fraudulent misrepresentation; aiding and abetting fraud; and unjust enrichment.[11]

[11] The trial court both denied Mr. Saulnier's special motion to dismiss under UPEPA and independently concluded that all counts in Mr. Veneziano's complaint survived Mr. Saulnier's Rule 12(b)(6) motion to dismiss. (A. 8, 18.)

i. Fraudulent Transfer

Mr. Veneziano has sufficiently alleged a claim for fraudulent transfers under the Uniform Fraudulent Transfer Act ("UFTA"). 14 M.R.S. §§ 3571-3582. Under UFTA, a "transfer" broadly includes "every mode, direct *or indirect*, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset." *Id.* § 3572(12) (emphasis added). A transfer is fraudulent "if the debtor made the transfer . . . [w]ith actual intent to hinder, delay or defraud any creditor of the debtor." *Id.* § 3575(1)(A). The Law Court has expressly recognized that indirect transfers by the debtor through others can constitute fraudulent transfer under section 3575(1)(A), which applies where, as here, the transfer was made with actual intent to defraud the creditor. *Huber v. Williams*, 2005 ME 40, ¶ 27, 869 A.2d 737.[12]

Mr. Veneziano has alleged that Mr. Saulnier indirectly effectuated the transfer of his property through and to his co-defendants with intent to prevent Mr. Veneziano from recovering the Judgment. (A. 36-38.) Such transfers—all of which contain additional indicia of Mr. Saulnier's intent to delay, hinder, or defraud Mr. Veneziano

[12] Many other jurisdictions similarly recognize that transfers of a debtor's property from a third party to another may be fraudulent if the debtor directed the transfer. *See, e.g.*, *Bradford v. Harford Bank of Belair*, 125 A. 719 (Md. 1924) (holding transfer fraudulent where debtor and third party pooled money to purchase property, property was placed in third party's name, and debtor directed third party to transfer property to debtor's wife); *D.H.R. Constr. Co. v. Donnelly*, 429 A.2d 908, 909-10 (Conn. 1980) (rejecting argument that conveyance was not fraudulent when carried out by non-debtor because plaintiff alleged that debtor "caused [property] to be conveyed"); *cf. Geriatrics, Inc. v. McGee*, 208 A.3d 1197, 1208 (Conn. 2019). Similarly, under analogous federal bankruptcy law, third-party transfers of the debtor's property at the direction of the debtor are "transfers," which are defined nearly identically as under the UFTA. *See, e.g.*, *In re FBN Food Serv. Inc.*, 175 B.R. 671, 683 (N.D. Ill. 1994); 11 U.S.C. § 101(54)(D).

under section 3575(2) (e.g., transfers to an insider; debtor retained possession or control of the property after the transfer)—fall comfortably within the ambit of the UFTA.

As to the income that has been fraudulently and indirectly transferred to Mr. Saulnier's family members, Mr. Veneziano has alleged in detail that Mr. Saulnier was performing extensive real estate development work in partnership with Moore; that Mr. Saulnier could be earning over $300,000 annually for similar work but chose not to because he is adequately compensated by all that Moore "does for [his] family;" that Moore is paying the value of the services that Mr. Saulnier is providing to Mr. Saulnier's family members to prevent Mr. Veneziano's collection of the judgment; and that Mr. Saulnier has directed this scheme to transfer his earnings to others. (A. 26-37, 100-03, 136-37.) Mr. Saulnier's argument that the "allegations are not based on evidence" (Appellant's Br. 20)[13] misses the mark, as the allegations need only be plead with sufficient particularity.

Similarly, the Complaint clearly alleges that Mr. Saulnier directed Moore to purchase the 24 North Avenue property out of bankruptcy and thereafter transfer title, through a series of complex transactions using shell entities, to Mr. Saulnier's wife for

[13] Even under heightened pleading rules, a plaintiff need not present evidence at the pleading stage to state a claim for relief; rather, he must state "'the circumstances constituting fraud . . . with particularity' so as to allow the defendant to be 'fairly apprised of the elements of the claim.'" *Stevens v. Bouchard*, 532 A.2d 1028, 1030 (Me. 1987). The Complaint, far from setting forth "hypotheses" or "theories," easily satisfies this standard. It states with unusual detail the circumstances and omissions constituting fraud by Mr. Saulnier and his co-defendants, including the specific dates, misrepresentations and omissions, and actions which form the basis of the claims. (A. 24-36.)

less than market value, as another form of illicit compensation for Mr. Saulnier.[14] (A. 32-35, 37.) Like the income paid to Mr. Saulnier's wife and children, the transfer of the home involves indicia of intent to hinder, delay, and defraud because the transfer was made to his wife (an insider) and Mr. Saulnier has retained possession of the home at all times before and since the bankruptcy sale. 14 M.R.S. § 3575(2)(B). The Complaint alleges that participants in the fraudulent transfers are Mr. Saulnier's family members or close business colleagues; that Moore provides free or discounted business and residential rental space to Mr. Saulnier's wife and children; and that Mr. Saulnier represented Moore as a "partner" and considers him a "generous benefactor" to Mr. Saulnier's family. (A. 22, 26, 30, 87.) The "extensive and close relationship" between Mr. Saulnier and his co-defendants evidences their cooperation and participation in making fraudulent transfers at his direction. *See Va. Corp. v. Galanis*, 613 A.2d 274, 279 (Conn. 1992).

The transfers of Mr. Saulnier's income and the property at 24 North Avenue, as alleged, demonstrate Mr. Saulnier's intent to transfer his property to another through a third party; in other words, the alleged transfers are exactly the type of indirect transfers the statute prohibits. *Huber*, 2005 ME 40, ¶ 27, 869 A.2d 737. Mr. Veneziano has

[14] Mr. Saulnier's argument that Mr. Veneziano should have objected to the bankruptcy trustee's sale of the home is nonsensical. That initial sale, to Sherman Holdings LLC (an entity controlled by Moore), did not result in Mr. and Mrs. Saulnier regaining title to the home; instead, it was the full set of transactions, orchestrated by Mr. and Mrs. Saulnier and Moore, which resulted in Mrs. Saulnier holding title to the home, that were fraudulent. (A. 32-36.)

therefore adequately pleaded a UFTA claim for the indirect transfer of income and real property in which Mr. Saulnier has an interest, through third parties, at Mr. Saulnier's direction.

Finally, fraudulent transfer is sufficiently alleged regarding the truck transferred by Mr. Saulnier to his sons' business. Shortly after entry of the Judgment, *see* 14 M.R.S. § 3575(2)(J) (whether "transfer occurred . . . shortly after a substantial debt was incurred" is factor in determining fraudulent intent), Mr. Saulnier transferred title of his 2022 GMC Sierra 2500 pickup truck to "his sons" or their business. (A. 32.) Thereafter, the sons' business traded the truck in for a new vehicle, which Mr. Saulnier has since used as his personal vehicle. (A. 32); 14 M.R.S. § 3575(2)(B). Nothing in the statute requires that Mr. Veneziano prove any equity in the vehicle to state a claim under the UFTA, and Mr. Saulnier cites no authority for that argument. Moreover, although one way to demonstrate a fraudulent transfer under the UFTA is to show that property was transferred "without receiving a reasonably equivalent value in exchange for the transfer," that is not all the statute covers. 14 M.R.S. § 3575(1)(B). In addition, a transfer can be fraudulent regardless of receipt of reasonably equivalent value if the transfer was made "[w]ith actual intent to hinder, delay, or defraud any creditor of the debtor." *Id.* § 3575(1)(A); (A. 37). Here, the allegations that Mr. Saulnier transferred ownership of the truck to his sons' business shortly after entry of the Judgment and retained possession of the vehicle's trade-in adequately state a claim for a fraudulent transfer regarding the truck.

ii. Fraudulent Concealment

To state a claim for fraudulent concealment in the absence of any duty to disclose, the claimant must allege "active concealment of the truth" regarding a material fact. *Fitzgerald v. Gamester*, 658 A.2d 1065, 1069 (Me. 1995). The Complaint alleges numerous detailed examples of Mr. Saulnier's active concealment of his assets to avoid the Judgment,[15] including: Mr. Saulnier, in concert with his co-defendants, directed that his house be purchased out of bankruptcy by his business partner and transferred to his wife for less than market value, and details each of the many transactions carried out to accomplish that end (A. 32-36); Mr. Saulnier transferred title of his vehicle to his sons' business, but continued to use the trade-in vehicle as his personal vehicle thereafter, (A. 32); Mr. Saulnier, while stating that he is retired or earns little income, was holding himself out as a partner in a lucrative real estate development project, performing extensive real estate development services for several years following entry of the Judgment, and turned down a high-earning position for similar work because he feels adequately compensated "by all [Moore] does for [his] family," (A. 27-32). This conduct

[15] Bizarrely, Mr. Saulnier argues that the claims for fraudulent concealment of Mr. Saulnier's interest in the property at 24 North Avenue and in the vehicle transferred to his sons' business are not cognizable because fraudulent concealment does not cover "physical concealment" of property. (Appellant's Br. 23-24.) Mr. Veneziano is not alleging that Mr. Saulnier physically hid his house or car. His claims are based on the active concealment by Mr. Saulnier and his co-defendants of Mr. Saulnier's interest in those assets which, absent concealment, would be available to satisfy the Judgment against him.

It is also immaterial that vehicle transfers and home sales are matters of public record. (Appellant's Br. 24-25.) The existence of the transfers is not at issue—the fraudulent conduct that precipitated those transfers is.

was designed and intended[16] to conceal that Mr. Saulnier is performing a high-earning job and possesses valuable assets which, had they been performed or owned openly, would have been available to satisfy the Judgment against him. The Complaint alleges with sufficient particularity Mr. Saulnier's active concealment of assets to avoid Mr. Veneziano's recovery of the Judgment.

iii. Fraudulent Misrepresentation

Mr. Saulnier summarily argues, without citation, that Mr. Veneziano has failed to allege either a misrepresentation of material fact or justifiable reliance. But the Complaint specifically identifies misrepresentations by Mr. Saulnier intended to prevent Mr. Veneziano from enforcing the Judgment.[17]

Mr. Veneziano's reliance on Mr. Saulnier's misrepresentations is unavoidable: but for Mr. Saulnier and his wife's fraudulent testimony and concealment of his interests in property, Mr. Veneziano would have collected more on the Judgment. Because he has instead been blocked from collecting the money he is owed, Mr. Veneziano has necessarily relied on defendants' fraudulent conduct. (*See, e.g.*, A. 40.) It has long been established that a "debtor who concealed his assets when settling debts with his

[16] "Intent, knowledge, and 'other condition of mind . . . may be averred generally'" under M.R. Civ. P. 9(b). *Alrig USA Acquisitions LLC v. MBD Realty LLC*, 2025 ME 11, ¶ 17, 331 A.3d 372.

[17] To be sure, the fraudulent misrepresentation claim does refer to Mr. Saulnier's testimony in the disclosure proceeding. (A. 28.) But the Complaint alleges a broad array of fraud on Mr. Saulnier's part, and Mr. Saulnier does not and cannot argue that "the plaintiff's lawsuit or claim is a retaliatory effort based *solely* on the moving party's" protected speech or conduct. *Town of Madawaska v. Cayer*, 2014 ME 121, ¶ 13, 103 A.3d 547 (emphasis added).

creditors thereby committed common-law fraud." *Pasquantino v. United States*, 544 U.S. 349, 356 (2005) (citing 1 J. Story, Equity Jurisprudence § 378 (I. Redfield 10th rev. ed. 1870)). Because "fraud at common law included a scheme to deprive a victim of his entitlement to money"—precisely what Mr. Veneziano alleges—his fraud claims are viable. *Id.*

iv. Aiding and Abetting Fraud

Mr. Saulnier's only argument that Mr. Veneziano has failed to state a claim for aiding and abetting fraud is that Mr. Veneziano has failed to adequately plead an underlying fraud claim. As described above, Mr. Veneziano has adequately pleaded claims to which aiding and abetting could attach.[18] It is irrelevant that neither fraudulent transfer nor civil conspiracy claims can support aiding and abetting liability. *F.D.I.C. v. S. Prawer & Co.*, 829 F. Supp. 453, 457 (D. Me. 1993). Fraudulent concealment, in contrast, can support such liability even under *Prawer*, the decision Mr. Saulnier relies upon for dismissal of the aiding and abetting claim. *Id.*

Further, though *Prawer* states that "aiding and abetting liability did not exist under the common law, but was entirely a creature of statute," *id.*, that proposition is likely no longer good law following this Court's 2021 decision in *Meridian Medical Systems, LLC v. Epix Therapeutics, Inc.*, which formally recognized a common-law right of action for

[18] In any event, the claim against Mr. Saulnier for aiding and abetting liability is based on Mr. Saulnier's aiding and abetting the fraud of his *co-defendants*. (A. 41.) Mr. Saulnier makes no argument that the Complaint does not state viable claims for fraud against the other defendants to the action.

aiding and abetting tortious conduct. 2021 ME 24, ¶ 22, 250 A.3d 122. After *Meridian*, a common-law claim for aiding and abetting fraudulent transfers may exist, though this Court need not reach the issue considering the viability of Mr. Veneziano's traditional common law fraud claims to which aiding and abetting liability can attach.

v. Unjust Enrichment

Finally, relying on a rigid and misguided conception of a benefit "conferred," Mr. Saulnier asserts that Mr. Veneziano's claim for unjust enrichment fails because the Complaint fails to allege a benefit conferred on Mr. Saulnier by Mr. Veneziano. Unjust enrichment is not so inflexible as to require a formal "conferral" of a benefit; it allows for recovery of "the value of the benefit *retained* when there is no contractual relationship, but when, on the grounds of fairness and justice, the law compels performance of a legal and moral duty to pay." *Knope v. Green Tree Servicing, LLC*, 2017 ME 95, ¶ 12, 161 A.3d 696 (quoting *Paffhausen v. Balano*, 1998 ME 47, ¶ 6, 708 A.2d 269) (emphasis added).

Consider *Federal Insurance Co. v. Maine Yankee Atomic Power Co.*, in which plaintiff made payments to a third party that saved defendant "the burden of paying certain claims under [a] payment bond." 183 F. Supp. 2d 76, 82 (D. Me. 2001). An unjust enrichment claim existed even though the plaintiff did not directly confer anything on the defendant. *Id.* Consider also *Knope v. Green Tree Servicing, LLC*, in which plaintiff paid defendants' taxes, insurance, and property preservation costs due to a mistaken belief about the facts. 2017 ME 95, ¶ 18, 161 A.3d 696. In *Knope*, the plaintiff did not directly

confer anything to the defendant—instead, the payments were made by plaintiff to third parties. *Id.* So too here: Mr. Saulnier benefitted by retaining funds that should, on grounds of fairness and justice, have been paid to Mr. Veneziano to satisfy the Judgment debt owed to him. This is a straightforward and long-recognized claim for relief under Maine law. *See, e.g.*, *Carey v. Penney*, 127 Me. 304, 143 A. 100 (1928) ("An action for money had and received is equitable in its nature, and lies to recover any money in the hands or possession of the defendant, which in equity and good conscience belongs to the plaintiff.").

At the end of the day, unjust enrichment is a flexible equitable claim in which "[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other." Horton & McGehee, *Maine Civil Remedies*, § 7-1, at 142 (4th ed. 2000) (quoting Restatement (First) of Restitution § 1 (1927)). "The most significant element of the doctrine of unjust enrichment is whether the enrichment of the defendant is unjust." *Howard & Bowie, P.A. v. Collins*, 2000 ME 148, ¶ 14, 759 A.2d 707 (alterations omitted). [19] The unjust enrichment claim is adequately alleged against Mr. Saulnier.

[19] Mr. Saulnier also contends that there can be no unjust enrichment claim because his wife owes a statutory duty to support him under 22 M.R.S. § 4319 and 19-A M.R.S. § 1652, and therefore any assets she owns which should be owned by Mr. Saulnier are not "benefits conferred" but "legally required 'support.'" (Appellant's Br. 29-30.) This misunderstands the law. Section 4319 of Title 22 creates a mechanism for a municipality to seek reimbursement from a spouse for general assistance funds expended by the municipality to support an individual eligible for assistance. *Starks v. Dep't of Health & Hum. Servs.*, No. AP-05-010, 2005 WL 3340063, at *1 (Me. Super. Ct. Oct. 18, 2005). That

C. The Court should award Mr. Veneziano his fees because Mr. Saulnier's special motion to dismiss was filed solely to delay the proceeding.

Under UPEPA, "the court shall award court costs, attorney's fees and reasonable litigation expenses related to the motion … [t]o the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding." 14 M.R.S. § 740. In the past four years, Mr. Saulnier has paid a grand total of $50,000 on the $3.5 million Judgment he owes to Mr. Veneziano. Despite Mr. Saulnier's repeated claims that he is not obstructing collection of the Judgment, he has also appealed a District Court order in the disclosure proceeding compelling him to make periodic payments to Mr. Veneziano, staying the District Court's order while that appeal proceeds. *See* Law Ct. Dkt. No. BCD-25-193. The instant appeal has had the effect of staying the Superior Court action in full, leaving

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provision has no relevance here, where there is no claim or suggestion that Mr. Saulnier requires or has sought or received general assistance.

Section 1652 of Title 19-A allows a spouse to petition a court to order support from another spouse. Again, this provision is irrelevant.

Even if either statute were applicable, they would impact only the actual *amount* of unjust enrichment that Mr. Saulnier should disgorge to satisfy his debt to Mr. Veneziano while still receiving legally mandated support; they do not affect the viability of the claim itself.

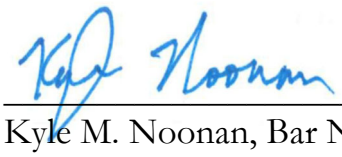
Further, although Mr. Saulnier leans on the proposition that the benefits he has received are merely "gifts," not actionable in a claim for unjust enrichment, that argument ignores the crux of Mr. Veneziano's Complaint. In a hypothetical situation in which Mr. Saulnier owed no debts to Mr. Veneziano and his family chose to shower him in valuable assets they earned and paid for, there would be no claim for unjust enrichment. But, as Mr. Veneziano has alleged, the assets that Mr. Saulnier's family appear to own are assets that should be owned by Mr. Saulnier and should be available to satisfy the Judgment.

Mr. Veneziano's motion for prejudgment attachment and preliminary injunction undecided for the duration. Mr. Saulnier's special motion, and this appeal, were filed solely for purposes of delay, and the Court should award Mr. Veneziano his fees in opposing the special motion to dismiss and in responding to Mr. Saulnier's appeal.

CONCLUSION

The Maine Uniform Public Expression Protection Act was enacted to protect against retaliatory, meritless lawsuits intended to chill exercise of constitutional rights. The claims against Mr. Saulnier, which are based on a coordinated fraudulent effort to avoid a judgment, do not fall within the protections of UPEPA and the trial court's dismissal of Mr. Saulnier's special motion to dismiss can be affirmed on that basis. Further, each claim asserted against Mr. Saulnier is prima facie viable, preventing application of UPEPA even if the claims were based on Mr. Saulnier's protected conduct or speech.

DATED: October 30, 2025



Kyle M. Noonan, Bar No. 5934
Shannon R. Linnehan, Bar No. 10662
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
207-791-1100
knoonan@pierceatwood.com

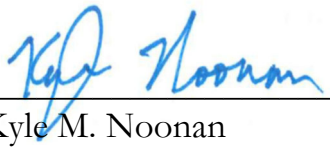
Attorneys for Plaintiff / Appellee John Veneziano

CERTIFICATE OF SERVICE

I, Kyle M. Noonan, hereby certify that an electronic copy of this Brief of Appellee was served upon counsel at the address set for below by email on the date of filing and a hard copy will be served by first class mail, postage prepaid, once the clerk has accepted the form pursuant to M.R. App. P 7(c)(4).

Jeffrey Bennett, Esq.
Legal-Ease, LLC
Two City Center, 4th Floor
Portland, ME 04101
service@legal-ease.com

Dated: October 30, 2025



Kyle M. Noonan
Bar Roll No. 5934
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
207-791-1100

Attorney for Plaintiff / Appellee
John Veneziano