

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Docket No. Cum-24-82

Peter Masucci et al.
Plaintiffs/Appellants/Cross-Appellees

v.

Judy's Moody, LLC et al.
Defendants/Appellants/Cross-Appellees

On appeal from the Cumberland County Superior Court

Appendix

Volume I of VI

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Dated: June 28, 2024

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Attorney for: SANDRA RADIS(DISMISSED 4/15/22)
 JOHN COON - RETAINED 04/22/2021
 ARCHIPELAGO LAW LLP
 22 FREE STREET, SUITE 403
 PORTLAND ME 04101

Attorney for: SANDRA RADIS(DISMISSED 4/15/22)
 SANDRA L GUAY - RETAINED 04/22/2021
 ARCHIPELAGO LAW LLP

22 FREE STREET, SUITE 403
PORTLAND ME 04101

Attorney for: SANDRA RADIS (DISMISSED 4/15/22)
KEITH RICHARD - RETAINED 05/11/2023
ARCHIPELAGO LAW LLP
1 DANA STREET, 4TH FLOOR
PORTLAND ME 04101

Attorney for: SANDRA RADIS (DISMISSED 4/15/22)
BENJAMIN E FORD - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
1 DANA STREET, 4TH FLOOR
PORTLAND ME 04101

AMANDA MOESER - PLAINTIFF

Attorney for: AMANDA MOESER
JOHN COON - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
22 FREE STREET, SUITE 403
PORTLAND ME 04101

Attorney for: AMANDA MOESER
SANDRA L GUAY - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
22 FREE STREET, SUITE 403
PORTLAND ME 04101

Attorney for: AMANDA MOESER
KEITH RICHARD - RETAINED 05/11/2023
ARCHIPELAGO LAW LLP
1 DANA STREET, 4TH FLOOR
PORTLAND ME 04101

Attorney for: AMANDA MOESER
BENJAMIN E FORD - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
1 DANA STREET, 4TH FLOOR
PORTLAND ME 04101

CHAD COFFIN - PLAINTIFF

Attorney for: CHAD COFFIN
JOHN COON - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
22 FREE STREET, SUITE 403
PORTLAND ME 04101

Attorney for: CHAD COFFIN
SANDRA L GUAY - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
22 FREE STREET, SUITE 403
RE-200

PORTLAND ME 04101

Attorney for: CHAD COFFIN
KEITH RICHARD - RETAINED 05/11/2023
ARCHIPELAGO LAW LLP
1 DANA STREET, 4TH FLOOR
PORTLAND ME 04101

Attorney for: CHAD COFFIN
BENJAMIN E FORD - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
1 DANA STREET, 4TH FLOOR
PORTLAND ME 04101

LORI HOWELL - PLAINTIFF

Attorney for: LORI HOWELL
JOHN COON - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
22 FREE STREET, SUITE 403
PORTLAND ME 04101

Attorney for: LORI HOWELL
SANDRA L GUAY - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
22 FREE STREET, SUITE 403
PORTLAND ME 04101

Attorney for: LORI HOWELL
KEITH RICHARD - RETAINED 05/11/2023
ARCHIPELAGO LAW LLP
1 DANA STREET, 4TH FLOOR
PORTLAND ME 04101

Attorney for: LORI HOWELL
BENJAMIN E FORD - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
1 DANA STREET, 4TH FLOOR
PORTLAND ME 04101

TOM HOWELL - PLAINTIFF

Attorney for: TOM HOWELL
JOHN COON - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
22 FREE STREET, SUITE 403
PORTLAND ME 04101

Attorney for: TOM HOWELL
SANDRA L GUAY - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
22 FREE STREET, SUITE 403
PORTLAND ME 04101

Attorney for: TOM HOWELL
KEITH RICHARD - RETAINED 05/11/2023
ARCHIPELAGO LAW LLP
1 DANA STREET, 4TH FLOOR
PORTLAND ME 04101

Attorney for: TOM HOWELL
BENJAMIN E FORD - RETAINED 04/22/2021
ARCHIPELAGO LAW LLP
1 DANA STREET, 4TH FLOOR
PORTLAND ME 04101

v.
JUDYS MOODY LLC - DEFENDANT
C/O KEITH DENNIS 3625 N POTOMAC STREET
ARLINGTON VA 22213
Attorney for: JUDYS MOODY LLC
DAVID SILK - RETAINED
CURTIS THAXTER LLC
PO BOX 7320
ONE CANAL PLAZA SUITE 1000
PORTLAND ME 04112-7320

Attorney for: JUDYS MOODY LLC
VISITING ATTORNEY - RETAINED 08/06/2021
VISITING ATTORNEY
-

Attorney for: JUDYS MOODY LLC
VISITING ATTORNEY - RETAINED 08/06/2021
VISITING ATTORNEY
-

Attorney for: JUDYS MOODY LLC
ROBERT PAPA ZIAN - RETAINED 11/14/2022
CURTIS THAXTER LLC
PO BOX 7320
ONE CANAL PLAZA SUITE 1000
PORTLAND ME 04112-7320

OA 2012 TRUST - DEFENDANT
C/O JOHN HOWE TRUSTEE 177 WESTERN AVENUE
KENNEBUNK ME 04043
Attorney for: OA 2012 TRUST
DAVID SILK - RETAINED
CURTIS THAXTER LLC
PO BOX 7320

ONE CANAL PLAZA SUITE 1000

Attorney for: OA 2012 TRUST
 ROBERT PAPA ZIAN - RETAINED 11/14/2022
 CURTIS THAXTER LLC
 PO BOX 7320
 ONE CANAL PLAZA SUITE 1000
 PORTLAND ME 04112-7320

OCEAN 503 LLC - DEFENDANT
 C/O MARK MONTESSI 55 FARMERS COURT
 CHESHIRE CT 06410
 Attorney for: OCEAN 503 LLC
 JOSEPH G TALBOT - RETAINED 05/12/2021
 PERKINS THOMPSON PA
 ONE CANAL PLAZA SUITE 900
 PO BOX 426
 PORTLAND ME 04112-0426

Attorney for: OCEAN 503 LLC
 EMILY ARVIZU - RETAINED 08/11/2022
 PERKINS THOMPSON PA
 ONE CANAL PLAZA SUITE 900
 PO BOX 426
 PORTLAND ME 04112-0426

EDWARD PAGE(DISMISSED 4/15/22) - DEFENDANT
 19 WEEZIE WAY
 HARPSWELL ME 04079
 Attorney for: EDWARD PAGE(DISMISSED 4/15/22)
 GORDON R SMITH - RETAINED 05/12/2021
 VERRILL DANA LLP
 ONE PORTLAND SQUARE

 PORTLAND ME 04101-4054

CHRISTINE PAGE(DISMISSED 4/15/22) - DEFENDANT
 19 WEEZIE WAY
 HARPSWELL ME 04079
 Attorney for: CHRISTINE PAGE(DISMISSED 4/15/22)
 GORDON R SMITH - RETAINED 05/12/2021
 VERRILL DANA LLP
 ONE PORTLAND SQUARE

 PORTLAND ME 04101-4054

JEFFERY PARENT - DEFENDANT
 1284 BACK COVE ROAD
 WALDOBORO ME 04572
 Attorney for: JEFFERY PARENT
 GORDON R SMITH - RETAINED
 VERRILL DANA LLP
 ONE PORTLAND SQUARE

PORTLAND ME 04101-4054

MARGARET PARENT - DEFENDANT
1284 BACK COVE ROAD
WALDOBORO ME 04572
Attorney for: MARGARET PARENT
GORDON R SMITH - RETAINED
VERRILL DANA LLP
ONE PORTLAND SQUARE

PORTLAND ME 04101-4054

JAMES LI(DISMISSED 4/15/22) - DEFENDANT
56 CRANBERRY ISLAND
FRIENDSHIP ME 04547
Attorney for: JAMES LI(DISMISSED 4/15/22)
GORDON R SMITH - RETAINED 05/12/2021
VERRILL DANA LLP
ONE PORTLAND SQUARE

PORTLAND ME 04101-4054

KIM NEWBY(DISMISSED 4/15/22) - DEFENDANT
56 CRANBERRY ISLAND
FRIENDSHIP ME 04547
Attorney for: KIM NEWBY(DISMISSED 4/15/22)
GORDON R SMITH - RETAINED 05/12/2021
VERRILL DANA LLP
ONE PORTLAND SQUARE

PORTLAND ME 04101-4054

ROBIN HADLOCK SEELEY(DISMISSED 4/15/22) - DEFENDANT
292 LEIGHTON POINT ROAD
PEMBROKE ME 04666
Attorney for: ROBIN HADLOCK SEELEY(DISMISSED
4/15/22)
GORDON R SMITH - RETAINED 05/12/2021
VERRILL DANA LLP
ONE PORTLAND SQUARE

PORTLAND ME 04101-4054

AARON FREY - PARTIES IN INTEREST
MAINE ATTORNEY GENERAL 6 STATE HOUSE STATION
AUGUSTA ME 04333-0006
Attorney for: AARON FREY
SCOTT W BOAK - RETAINED 05/07/2021
ATTORNEY GENERAL OFFICE OF AG
111 SEWALL STREET

RE-200

6 STATE HOUSE STATION
 AUGUSTA ME 04333-0006

Attorney for: AARON FREY
 LAUREN E PARKER - RETAINED 05/07/2021
 OFFICE OF THE ATTORNEY GENERAL
 6 STATE HOUSE STATION
 AUGUSTA ME 04333-0006

Filing Document: COMPLAINT Minor Case Type: OTHER REAL ESTATE
 Filing Date: 04/22/2021

Docket Events:

04/22/2021 FILING DOCUMENT - COMPLAINT FILED ON 04/22/2021

PLAINTIFFS' COMPLAINT FOR DECLARATORY JUDGMENT AFFIRMING MAINE'S
 TITLE TO ITS INTERTIDAL LANDS IN TRUST FOR THE PUBLIC EXCEPT FOR
 DISCRETE PARCELS ALIENATED TO FACILITATE MARINE COMMERCE.

04/22/2021 Party(s): PETER MASUCCI
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): PETER MASUCCI
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): PETER MASUCCI
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): KATHY MASUCCI
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): KATHY MASUCCI
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): KATHY MASUCCI
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): ROBERT MORSE
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): ROBERT MORSE
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): ROBERT MORSE
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): GEORGE SEAVER
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): GEORGE SEAVER
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): GEORGE SEAVER
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): GREG TOBEY
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): GREG TOBEY
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): GREG TOBEY
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): BONNIE TOBEY (DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): BONNIE TOBEY (DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): BONNIE TOBEY(DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): HALE W MILLER
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): HALE W MILLER
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): HALE W MILLER
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): JOHN W GROTON
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): JOHN W GROTON
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): JOHN W GROTON
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): LEROY GILBERT
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): LEROY GILBERT
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): LEROY GILBERT
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): JAKE WILSON

ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): JAKE WILSON
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): JAKE WILSON
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): DAN HARRINGTON
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): DAN HARRINGTON
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): DAN HARRINGTON
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): JUDITH DELOGU
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): JUDITH DELOGU
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): JUDITH DELOGU
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): WILLIAM CONNERNEY
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): WILLIAM CONNERNEY
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): WILLIAM CONNERNEY
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): WILLIAM M GRIFFITHS
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): WILLIAM M GRIFFITHS
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): WILLIAM M GRIFFITHS
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): SHEILA A JONES
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): SHEILA A JONES
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): SHEILA A JONES
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): SUSAN DOMIZI
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): SUSAN DOMIZI
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): SUSAN DOMIZI
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): BRIAN BEAL
 ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): BRIAN BEAL
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): BRIAN BEAL
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): CHARLES RADIS(DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): CHARLES RADIS(DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): CHARLES RADIS(DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): SANDRA RADIS(DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): SANDRA RADIS(DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): SANDRA RADIS(DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): AMANDA MOESER
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): AMANDA MOESER
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): AMANDA MOESER

ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): CHAD COFFIN
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): CHAD COFFIN
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): CHAD COFFIN
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): LORI HOWELL
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): LORI HOWELL
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): LORI HOWELL
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 Party(s): TOM HOWELL
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: BENJAMIN E FORD

04/22/2021 Party(s): TOM HOWELL
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: SANDRA L GUAY

04/22/2021 Party(s): TOM HOWELL
ATTORNEY - RETAINED ENTERED ON 04/22/2021

Plaintiff's Attorney: JOHN COON

04/22/2021 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 04/22/2021

HAROLD STEWART , JUSTICE

05/05/2021 Party(s): AARON FREY
 SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 04/26/2021

UPON PII AARON FREY TO LAUREN PARKER AAG

05/05/2021 Party(s): AARON FREY
 SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 04/29/2021

05/05/2021 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, BONNIE TOBEY (DISMISSED 4/15/22), HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, CHARLES RADIS (DISMISSED 4/15/22), SANDRA RADIS (DISMISSED 4/15/22), AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 04/29/2019

SUMMONS TO PII AAREN FREY

05/05/2021 Party(s): JUDYS MOODY LLC
 SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 04/23/2021

UPON DEFENDANT JUDY'S MOODY LLC TO DAVID CURRIER ESQ

05/05/2021 Party(s): JUDYS MOODY LLC
 SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 04/29/2021

05/05/2021 Party(s): OCEAN 503 LLC
 SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 04/23/2021

UPON DEFENDANT OCEAN 503 LLC TO DAVID JOHNSON ESQ

05/05/2021 Party(s): OCEAN 503 LLC
 SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 04/29/2021

05/07/2021 Party(s): MARGARET PARENT
 SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 05/01/2021

IN HAND TO DEFENDANT MARGARET PARENT.

05/07/2021 Party(s): MARGARET PARENT
 SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 05/07/2021

05/07/2021 Party(s): JEFFERY PARENT
 SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 05/01/2021

DELIVERED TO MARGARET PARENT ON BEHALF OF DEFENDANT JEFFREY PARENT.

05/07/2021 Party(s): JEFFERY PARENT
 SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 05/07/2021

- 05/07/2021 Party(s): AARON FREY
 OTHER FILING - ENTRY OF APPEARANCE FILED ON 05/07/2021

 ENTRY OF APPEARANCE OF LAUREN E PARKER, AAG & SCOTT W BOAK, AAG
 ON BEHALF OF PII AARON FREY.
- 05/07/2021 Party(s): AARON FREY
 ATTORNEY - RETAINED ENTERED ON 05/07/2021
- 05/07/2021 Party(s): AARON FREY
 ATTORNEY - RETAINED ENTERED ON 05/07/2021
- 05/07/2021 Party(s): AARON FREY
 OTHER FILING - NTS OF EMAIL FILING/RESP DEADL FILED ON 05/07/2021
- 05/18/2021 Party(s): ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
 SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 04/30/2021

 TO DEFENDANT ROBIN HADLOCK SEELEY IN HAND.
- 05/18/2021 Party(s): ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
 SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 05/11/2021
- 05/19/2021 Party(s): JUDYS MOODY LLC,OA 2012 TRUST,OCEAN 503 LLC,EDWARD PAGE(DISMISSED 4/15/22),CHRISTINE
 PAGE(DISMISSED 4/15/22),JEFFERY PARENT,MARGARET PARENT,JAMES LI(DISMISSED
 4/15/22),KIM NEWBY(DISMISSED 4/15/22),ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 05/11/2021

 CONSENTED TO MOTION TO EXTEND TIME (TO FILE ANSWER TO COMPLAINT)
 WITH INCORPORATED MEMORANDUM OF LAW OF ALL DEENDANTS WITH
 PROPOSED ORDER
- 05/19/2021 Party(s): JUDYS MOODY LLC,OA 2012 TRUST,OCEAN 503 LLC,EDWARD PAGE(DISMISSED 4/15/22),CHRISTINE
 PAGE(DISMISSED 4/15/22),JEFFERY PARENT,MARGARET PARENT,JAMES LI(DISMISSED
 4/15/22),KIM NEWBY(DISMISSED 4/15/22),ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
 OTHER FILING - NTS OF EMAIL FILING/RESP DEADL FILED ON 05/11/2021
- 05/19/2021 Party(s): OA 2012 TRUST
 SUMMONS/SERVICE - PROOF OF SERVICE SERVED ON 05/03/2021

 UPON DEFENDANT OA 2012 TO JOHN B HOWE TRUSTEE
- 05/19/2021 Party(s): OA 2012 TRUST
 SUMMONS/SERVICE - PROOF OF SERVICE FILED ON 05/11/2021
- 05/19/2021 Party(s): PETER MASUCCI,KATHY MASUCCI,ROBERT MORSE,GEORGE SEAVER,GREG TOBEY,BONNIE
 RE-200

TOBEY (DISMISSED 4/15/22), HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, CHARLES RADIS (DISMISSED 4/15/22), SANDRA RADIS (DISMISSED 4/15/22), AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 05/11/2021

05/19/2021 Party(s): AARON FREY
 LETTER - FROM PARTY FILED ON 05/12/2021

FROM PII AARON FREY INFORMING COURT THAT THEY HAVE NO OBJECTION
 TO CONSENTED TO MOTION TO ENLARGE TIME

05/19/2021 Party(s): AARON FREY
 OTHER FILING - NTS OF EMAIL FILING/RESP DEADL FILED ON 05/12/2021

05/25/2021 Party(s): JUDYS MOODY LLC, OA 2012 TRUST, OCEAN 503 LLC, EDWARD PAGE (DISMISSED 4/15/22), CHRISTINE PAGE (DISMISSED 4/15/22), JEFFERY PARENT, MARGARET PARENT, JAMES LI (DISMISSED 4/15/22), KIM NEWBY (DISMISSED 4/15/22), ROBIN HADLOCK SEELEY (DISMISSED 4/15/22)
 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 05/19/2021

JOHN H ONEIL JR, JUSTICE
 COPIES TO PARTIES/COUNSEL ON 05/25/21.

05/25/2021 Party(s): JUDYS MOODY LLC
 ATTORNEY - RETAINED ENTERED ON 05/12/2021

Defendant's Attorney: DAVID SILK

05/25/2021 Party(s): OA 2012 TRUST
 ATTORNEY - RETAINED ENTERED ON 05/12/2021

Defendant's Attorney: DAVID SILK

05/25/2021 Party(s): OCEAN 503 LLC
 ATTORNEY - RETAINED ENTERED ON 05/12/2021

Defendant's Attorney: JOSEPH G TALBOT

05/25/2021 Party(s): EDWARD PAGE (DISMISSED 4/15/22)
 ATTORNEY - RETAINED ENTERED ON 05/12/2021

Defendant's Attorney: GORDON R SMITH

05/25/2021 Party(s): CHRISTINE PAGE (DISMISSED 4/15/22)
 ATTORNEY - RETAINED ENTERED ON 05/12/2021

Defendant's Attorney: GORDON R SMITH

05/25/2021 Party(s): ROBIN HADLOCK SEELEY (DISMISSED 4/15/22)
 ATTORNEY - RETAINED ENTERED ON 05/12/2021

Defendant's Attorney: GORDON R SMITH

05/25/2021 Party(s): JAMES LI(DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 05/12/2021

Defendant's Attorney: GORDON R SMITH

05/25/2021 Party(s): KIM NEWBY(DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 05/12/2021

Defendant's Attorney: GORDON R SMITH

05/25/2021 Party(s): CHRISTINE PAGE(DISMISSED 4/15/22)
SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 05/16/2021

IN HAND TO DEFENDANT CHRISTINE PAGE.

05/25/2021 Party(s): CHRISTINE PAGE(DISMISSED 4/15/22)
SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 05/24/2021

05/25/2021 Party(s): EDWARD PAGE(DISMISSED 4/15/22)
SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 05/16/2021

IN HAND TO DEFENDANT EDWARD PAGE.

05/25/2021 Party(s): EDWARD PAGE(DISMISSED 4/15/22)
SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 05/24/2021

05/26/2021 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 05/26/2021

JOHN H ONEIL JR, JUSTICE

05/28/2021 Party(s): EDWARD PAGE(DISMISSED 4/15/22),CHRISTINE PAGE(DISMISSED 4/15/22),JAMES LI(DISMISSED 4/15/22),KIM NEWBY(DISMISSED 4/15/22),ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
OTHER FILING - ENTRY OF APPEARANCE FILED ON 05/26/2021

GORDON R. SMITH, ESQ'S ENTRY OF APPEARANCE ON BEHALF OF
DEFENDANTS EDWARD PAGE, CHRISTINE PAGE, JAMES LI, KIM NEWBY, AND
ROBIN HADLOCK SEELEY.

05/28/2021 Party(s): EDWARD PAGE(DISMISSED 4/15/22),CHRISTINE PAGE(DISMISSED 4/15/22),JAMES LI(DISMISSED 4/15/22),KIM NEWBY(DISMISSED 4/15/22),ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
MOTION - MOTION TO DISMISS FILED ON 05/26/2021

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AGAINST DEFENDANTS
EDWARD PAGE, CHRISTINE PAGE, JAMES LI, KIM NEWBY, AND ROBIN
HADLOCK SEELEY.

05/28/2021 Party(s): JUDYS MOODY LLC,OA 2012 TRUST
MOTION - MOTION TO DISMISS FILED ON 05/26/2021

OF DEFENDANTS JUDY'S MOODY, LLC AND OA2012 WITH INCORPORATED
MEMORANDUM OF LAW, PROPOSED ORDER.

05/28/2021 Party(s): OCEAN 503 LLC
MOTION - MOTION TO DISMISS FILED ON 05/26/2021

OF DEFENDANT OCEAN 503, LLC WITH INCORPORATED MEMORANDUM OF LAW,
PROPOSED ORDER.

06/03/2021 Party(s): JEFFERY PARENT
RESPONSIVE PLEADING - ANSWER FILED ON 05/28/2021

DEFENDANT JEFFREY PARENT'S ANSWER.

06/03/2021 Party(s): MARGARET PARENT
RESPONSIVE PLEADING - ANSWER FILED ON 05/28/2021

DEFENDANT MARGARET PARENT'S ANSWER.

06/14/2021 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, BONNIE
TOBEY (DISMISSED 4/15/22), HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN
HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA
A JONES, SUSAN DOMIZI, BRIAN BEAL, CHARLES RADIS (DISMISSED 4/15/22), SANDRA
RADIS (DISMISSED 4/15/22), AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 06/10/2021

PLAINTIFFS' CONSENTED TO MOTION FOR EXTENSION OF TIME FOR PARTIES
TO RESPOND TO DEFENDANTS' MOTIONS TO DISMISS, WITH PROPOSED
ORDER.

06/14/2021 CASE STATUS - CASE FILE LOCATION ON 06/14/2021

SENT TO JUSTICE O'NEIL FOR REVIEW.

06/16/2021 CASE STATUS - CASE FILE RETURNED ON 06/16/2021

06/16/2021 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, BONNIE
TOBEY (DISMISSED 4/15/22), HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN
HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA
A JONES, SUSAN DOMIZI, BRIAN BEAL, CHARLES RADIS (DISMISSED 4/15/22), SANDRA
RADIS (DISMISSED 4/15/22), AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 06/15/2021

JOHN H ONEIL JR, JUSTICE

THE CLERK IS DIRECTED TO INCORPORATE THIS ORDER IN THE DOCKET BY
REFERENCE PURSUANT TO RULE 79(A). COPIES TO PARTIES/COUNSEL
6/16/21.

06/30/2021 Party(s): EDWARD PAGE (DISMISSED 4/15/22), CHRISTINE PAGE (DISMISSED 4/15/22), JAMES LI (DISMISSED
4/15/22), KIM NEWBY (DISMISSED 4/15/22), ROBIN HADLOCK SEELEY (DISMISSED 4/15/22)
MOTION - MOTION TO DISMISS FILED ON 06/29/2021

DEFENDANTS EDWARD PAGE, CHRISTINE PAGE, JAME LI, KIM NEWBY, AND ROBIN HADLOCK SEELEY'S ANTI-SLAPP SPECIAL MOTION TO DISMISS, WITH AFFIDAVIT OF EDWARD GORDON PAGE, AFFIDAVIT OF JAMES LI & KIM NEWBY, AFFIDAVIT OR ROBIN HADLOCK SEELEY, AND ATTACHMENTS TO ALL 3 AFFIDAVITS.

06/30/2021 Party(s): ORLANDO DELOGU
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2021

PLAINTIFF ORLANDO DELOGU'S OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS.

06/30/2021 Party(s): AARON FREY
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2021

PII'S PARTIAL OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS.

06/30/2021 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, BONNIE TOBEY (DISMISSED 4/15/22), HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, CHARLES RADIS (DISMISSED 4/15/22), SANDRA RADIS (DISMISSED 4/15/22), AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2021

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS.

07/09/2021 Party(s): OCEAN 503 LLC
MOTION - MOTION FOR LEAVE FILED ON 07/09/2021

DEFENDANT OCEAN 503, LLC'S CONSENTED TO MOTION FOR LEAVE TO EXCEED PAGE LIMIT, WITH PROPOSED ORDER.

07/09/2021 CASE STATUS - CASE FILE LOCATION ON 07/09/2021

SENT TO JUSTICE O'NEIL FOR REVIEW.

07/14/2021 CASE STATUS - CASE FILE RETURNED ON 07/14/2021

07/14/2021 Party(s): OCEAN 503 LLC
MOTION - MOTION FOR LEAVE GRANTED ON 07/13/2021

JOHN H ONEIL JR, JUSTICE
DEFENDANTS ARE GRANTED LEAVE TO FILE REPLY MEMORANDUMS IN EXCESS OF THE PAGE LIMIT DESIGNATED BY M.R. CIV. P. 7(F), BUT NOT TO EXCEED 15 PAGES. IN ACCORDANCE WITH M.R. CIV. P. 79(A), AT THE SPECIFIC DIRECTION OF THE COURT, THE CLERK SHALL INCORPORATE BY REFERENCE THIS ORDER BY PROPER NOTATION ON THE DOCKET. COPIES TO PARTIES/COUNSEL 7/14/21.

07/15/2021 Party(s): JUDYS MOODY LLC
MOTION - MOTION TO ADMIT VISIT. ATTY FILED WITH AFFIDAVIT ON 07/09/2021

DEFENDANT JUDYS MOODY, LLC'S MOTION FOR ADMISSION PRO HAC VICE WITH INCORPORATED MEMORANDUM OF LAW, AFFIDVAIT OF PAIGE ELIZABETH GILLIARD, ESQ, PROPOSED ORDER.

07/15/2021 Party(s): JUDYS MOODY LLC
MOTION - MOTION TO ADMIT VISIT. ATTY FILED WITH AFFIDAVIT ON 07/09/2021

DEFENDANT JUDY'S MOODY, LLC'S MOTION FOR ADMISSION PRO HAC VICE WITH INCORPORATED MEMORANDUM OF LAW, AFFIDVAIT OF ROBERT H. THOMAS, ESQ., ATTACHED CALIFORNIA JURAT, PROPOSED ORDER.

07/19/2021 Party(s): OCEAN 503 LLC
OTHER FILING - REPLY MEMORANDUM FILED ON 07/19/2021

DEFENDANT OCEAN 503, LLC'S REPLY IN SUPPORT OF MOTION TO DISMISS.

07/20/2021 Party(s): JUDYS MOODY LLC, OA 2012 TRUST
OTHER FILING - REPLY MEMORANDUM FILED ON 07/19/2021

DEFENDANTS JUDY'S MOODY LLC'S & OA 2012 TRUST'S REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS.

07/20/2021 Party(s): ORLANDO DELOGU
OTHER FILING - OPPOSING MEMORANDUM FILED ON 07/19/2021

PLAINTIFF ORLANDO DELOGU'S OPPOSITION TO DEFENDANTS' ANTI-SLAPP SPECIAL MOTION TO DISMISS.

07/20/2021 Party(s): EDWARD PAGE (DISMISSED 4/15/22), CHRISTINE PAGE (DISMISSED 4/15/22), JAMES LI (DISMISSED 4/15/22), KIM NEWBY (DISMISSED 4/15/22), ROBIN HADLOCK SEELEY (DISMISSED 4/15/22)
OTHER FILING - REPLY MEMORANDUM FILED ON 07/20/2021

DEFENDANTS EDWARD PAGE, CHRISTINE PAGE, JAMES LI, KIM NEWBY, AND ROBIN HADLOCK SEELEY'S REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS.

07/20/2021 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, BONNIE TOBEY (DISMISSED 4/15/22), HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, CHARLES RADIS (DISMISSED 4/15/22), SANDRA RADIS (DISMISSED 4/15/22), AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
OTHER FILING - OPPOSING MEMORANDUM FILED ON 07/20/2021

PLAINTIFFS' OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO DISMISS WITH AFFIDAVIT OF JOHN W. GROTTON, EXHIBITS A-C.

08/05/2021 Party(s): EDWARD PAGE (DISMISSED 4/15/22), CHRISTINE PAGE (DISMISSED 4/15/22), JAMES LI (DISMISSED 4/15/22), KIM NEWBY (DISMISSED 4/15/22), ROBIN HADLOCK SEELEY (DISMISSED 4/15/22)
OTHER FILING - REPLY MEMORANDUM FILED ON 08/03/2021

OF DEFENDANTS' EDWARD & CHRISTINE PAGE, JAMES LI, KIM NEWBY, & ROBIN HADLOCK SEELEY IN SUPPORT OF ANTI-SLAPP SPECIAL MOTION TO DISMISS, WITH EXHIBITS 1, 2 & 3.

08/05/2021 CASE STATUS - CASE FILE LOCATION ON 08/05/2021

SENT TO JUSTICE O'NEIL FOR REVIEW.

08/09/2021 CASE STATUS - CASE FILE RETURNED ON 08/06/2021

08/09/2021 Party(s): JUDYS MOODY LLC

MOTION - MOTION TO ADMIT VISIT. ATTY GRANTED ON 08/06/2021

JOHN H ONEIL JR, JUSTICE

PAIGE ELIZABETH GILLIARD IS ADMITTED PRO HAC VICE FOR THE PURPOSE OF REPRESENTING DEFENDANT JUDY'S MOODY LLC IN ASSOCIATION WITH DAVID P. SILK OF CURTIS THAXTER LLAC IN THIS MATTER. THE CLERK IS DIRECTED TO INCORPORATE THIS ORDER IN THE DOCKET BY REFERENCE PURSUANT TO RULE 79(A). COPIES TO PARTIES/COUNSEL 8/9/21.

08/09/2021 Party(s): JUDYS MOODY LLC

MOTION - MOTION TO ADMIT VISIT. ATTY GRANTED ON 08/06/2021

JOHN H ONEIL JR, JUSTICE

ROBERT H. THOMAS IS ADMITTED PRO HAC VICE FOR THE PURPOSE OF REPRESENTING DEFENDANT JUDY'S MOODY LLC IN ASSOCIATION WITH DAVID P. SILK OF CURTIS THAXTER LLC IN THIS MATTER. THE CLERK IS DIRECTED TO INCORPORATE THIS ORDER IN THE DOCKET BY REFERENCE PURSUANT TO RULE 79(A). COPIES TO PARTIES/COUNSEL 8/9/21.

11/09/2021 Party(s): JUDYS MOODY LLC

ATTORNEY - RETAINED ENTERED ON 08/06/2021

Defendant's Attorney: VISITING ATTORNEY

11/09/2021 Party(s): JUDYS MOODY LLC

ATTORNEY - RETAINED ENTERED ON 08/06/2021

Defendant's Attorney: VISITING ATTORNEY

11/09/2021 Party(s): JUDYS MOODY LLC

OTHER FILING - OTHER DOCUMENT FILED ON 11/05/2021

NOTICE OF CHANGE OF ADDRESS OF PRO HAC VICE COUNSEL ROBERT H THOMAS, ESQ (DEFENDANT JUDY'S MOODY, LLC).

11/29/2021 CASE STATUS - CASE FILE LOCATION ON 11/29/2021

SENT TO JUSTICE O'NEIL FOR REVIEW OF PENDING MOTIONS.

12/16/2021 ORDER - COURT ORDER ENTERED ON 11/29/2021

Receipts

NANCY MILLS , JUSTICE

THE COURT TAKES THIS MATTER UNDER ADVISEMENT. IF THE COURT DETERMINES THAT ORAL ARGUMENT IS NECESSARY, THE PARTIES WILL BE ADVISED AS TO THE DATE AND TIME. THE CLERK IS DIRECTED TO INCORPORATE THIS ORDER IN THE DOCKET BY REFERENCE PURSUANT TO RULE 79(A). COPIES TO PARTIES/COUNSEL 12/16/21.

04/19/2022 CASE STATUS - CASE FILE RETURNED ON 04/15/2022

04/19/2022 Party(s): EDWARD PAGE (DISMISSED 4/15/22), CHRISTINE PAGE (DISMISSED 4/15/22), JAMES LI (DISMISSED 4/15/22), KIM NEWBY (DISMISSED 4/15/22), ROBIN HADLOCK SEELEY (DISMISSED 4/15/22)
MOTION - MOTION TO DISMISS GRANTED ON 04/15/2022

JOHN H ONEIL JR, JUSTICE

SEE SEPARATE ORDER OF SAME DATE

04/19/2022 Party(s): JUDYS MOODY LLC, OA 2012 TRUST
MOTION - MOTION TO DISMISS OTHER DECISION ON 04/15/2022

JOHN H ONEIL JR, JUSTICE

SEE SEPARATE ORDER OF SAME DATE

04/19/2022 Party(s): OCEAN 503 LLC
MOTION - MOTION TO DISMISS OTHER DECISION ON 04/15/2022

JOHN H ONEIL JR, JUSTICE

SEE SEPARATE ORDER OF SAME DATE

04/19/2022 Party(s): EDWARD PAGE (DISMISSED 4/15/22), CHRISTINE PAGE (DISMISSED 4/15/22), JAMES LI (DISMISSED 4/15/22), KIM NEWBY (DISMISSED 4/15/22), ROBIN HADLOCK SEELEY (DISMISSED 4/15/22)
MOTION - MOTION TO DISMISS MOOT ON 04/15/2022

JOHN H ONEIL JR, JUSTICE

SEE SEPARATE ORDER OF SAME DATE

04/19/2022 ORDER - COURT ORDER ENTERED ON 04/15/2022

JOHN H ONEIL JR, JUSTICE

DEFENDANTS EDWARD PAGE, CHRISTINE PAGE, JAMES LI, KIM NEWBY AND ROBIN SEELEY'S SPECIAL MOTION TO DISMISS IS GRANTED. DEFENDANTS EDWARD PAGE, CHRISTINE PAGE, JAMES LI, KIM NEWBY AND ROBIN SEELEY'S MOTION TO DISMISS FILED PURSUANT TO M.R.CIV.P. 12(B)(6) IS MOOT. DEFENDANTS JUDY'S MOODY LLC AND OA 2012'S MOTION TO DISMISS FILED PURSUANT TO CIV.P. 12(B)(6) IS GRANTED IN PART. DEFENDANT OCEAN 503 LLC'S MOTION TO DISMISS FILED PURSUANT TO M.R.CIV.P. 12(B)(6) IS GRANTED IN PART. THE CLERK IS DIRECTED TO INCORPORATE THIS ORDER INTO THE DOCKET BY REFERENCE PURSUANT TO M.R.CIV.P. 79(A). COPIES TO COUNSEL/PARTIES 4/19/2022.

04/19/2022 ORDER - SCHEDULING ORDER ENTERED ON 04/19/2022

JOHN H ONEIL JR, JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF
THE COURT. COPIES TO PARTIES/COUNSEL 4/19/22

04/19/2022 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 12/15/2022

05/12/2022 Party(s): JUDYS MOODY LLC,OA 2012 TRUST,OCEAN 503 LLC
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 04/28/2022

CONSENTED-TO

05/12/2022 CASE STATUS - CASE FILE LOCATION ON 05/12/2022

SENT TO J. O'NEIL FOR REVIEW OF CONSENT MOTION

05/12/2022 Party(s): JEFFERY PARENT,MARGARET PARENT
OTHER FILING - ENTRY OF APPEARANCE FILED ON 04/29/2022

05/12/2022 Party(s): JEFFERY PARENT
ATTORNEY - RETAINED ENTERED ON 04/29/2022

Defendant's Attorney: GORDON R SMITH

05/12/2022 Party(s): MARGARET PARENT
ATTORNEY - RETAINED ENTERED ON 04/29/2022

Defendant's Attorney: GORDON R SMITH

05/12/2022 Party(s): JEFFERY PARENT,MARGARET PARENT
MOTION - MOTION TO DISMISS FILED ON 04/29/2022

FOR FAILURE TO STATE A CLAIM AGAINST DEFS JEFFREY AND MARGARET
PARENT, WITH PROPOSED ORDER

05/20/2022 Party(s): JUDYS MOODY LLC
MOTION - OTHER MOTION FILED ON 05/12/2022

DEF. JUDY'S MOODY LLC, MOTION FOR MORE DEFINITE STATEMENT WITH
PROPOSED ORDER

05/20/2022 Party(s): OA 2012 TRUST
MOTION - OTHER MOTION FILED ON 05/12/2022

DEF. JOHN B. HOWE, TRUSTEE OF THE OA 2012 TRUST'S MOTION FOR MORE
DEFINITE STATEMENT WITH PROPOSED ORDER

05/20/2022 Party(s): OCEAN 503 LLC
MOTION - OTHER MOTION FILED ON 05/13/2022

DEF. OCEAN 503 LLC'S MOTION FOR MORE DEFINITE STATEMENT WITH
PROPOSED ORDER

05/20/2022 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 05/18/2022

CONSENTED TO MOTION FOR EXTENSION OF TIME FOR PLAINTIFFS TO RESPOND TO DEFENDANT PARENTS' MOTION TO DISMISS WITH PROPOSED ORDER

06/02/2022 CASE STATUS - CASE FILE RETURNED ON 05/26/2022

06/02/2022 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 05/26/2022

JOHN H ONEIL JR, JUSTICE

IT IS HEREBY ORDERED THAT THE DEADLINE FOR OPPOSING DEFENDANTS' MOTION TO DISMISS IS ENLARGED AND THE PARTIES SHALL HAVE UP TO AND INCLUDING 6/2/22 TO FILE AN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND THE DEFENDANTS SHALL HAVE UP TO AND INCLUDING 7/23/22 TO FILE THEIR REPLY BRIEF. COPIES TO COUNSEL/PARTIES 6/2/22

06/02/2022 Party(s): JUDYS MOODY LLC, OA 2012 TRUST, OCEAN 503 LLC
 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 05/31/2022

JOHN H ONEIL JR, JUSTICE

IT IS ORDERED THAT DEFENDANTS JUDY'S MOODY LLC, OA 2012 TRUST, AND OCEAN 503 LLC ARE GRANTED AN ENLARGEMENT OF TIME TO AND INCLUDING 6/13/22 TO SERVE THEIR RESPONSE TO COUNT 4 OF PLAINTIFFS' COMPLAINT. COPIES TO COUNSEL/PARTIES 6/2/22

06/02/2022 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/01/2022

PLAINTIFFS' OPPOSITION TO DEFENDANTS' JUDY'S MOODY LLC AND OA 2012'S MOTIONS FOR MORE DEFINITE STATEMENT

06/02/2022 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/01/2022

PLAINTIFFS' OPPOSITION TO DEFENDANTS JEFFERY AND MARGARET PARENT'S MOTION TO DISMISS

06/22/2022 Party(s): EDWARD PAGE(DISMISSED 4/15/22),CHRISTINE PAGE(DISMISSED 4/15/22),JAMES LI(DISMISSED 4/15/22),KIM NEWBY(DISMISSED 4/15/22),ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
MOTION - MOTION/AFFIDAVIT FOR ATTY FEES FILED ON 06/10/2022

REQUEST BY DEFENDANTS EDWARD PAGE, CHRISTINE PAGE, JAMES LI, KIM NEWBY & ROBIN HADLOCK SEELEY FOR ATTORNEY'S FEES PURSUANT TO ANTI-SLAPP STATUTE WITH EXHIBIT A & B

07/01/2022 Party(s): JUDYS MOODY LLC,OA 2012 TRUST,OCEAN 503 LLC
MOTION - MOTION TO RECONSIDER FINDING FILED ON 06/23/2022

DEFENDANTS OCEAN 503 LLC, JUDY'S MOODY LLC AND OA 2012 TRUST'S MOTION FOR RECONSIDERATION WITH INCORPORATED MEMORANDUM OF LAW WITH PROPOSED ORDER

07/01/2022 Party(s): JEFFERY PARENT,MARGARET PARENT
OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2022

REPLY BRIEF OF DEFENDANTS JEFFERY AND MARGARET PARENT IN SUPPORT OF RULE 12(B)(6) MOTION TO DISMISS

07/01/2022 Party(s): PETER MASUCCI,KATHY MASUCCI,ROBERT MORSE,GEORGE SEAVER,GREG TOBEY,HALE W MILLER,JOHN W GROTTON,LEROY GILBERT,JAKE WILSON,DAN HARRINGTON,ORLANDO DELOGU,JUDITH DELOGU,WILLIAM CONNERNEY,WILLIAM M GRIFFITHS,SHEILA A JONES,SUSAN DOMIZI,BRIAN BEAL,AMANDA MOESER,CHAD COFFIN,LORI HOWELL,TOM HOWELL
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2022

PLAINTIFFS' OPPOSITION TO DEFENDANTS' PETITION FOR ATTORNEY FEES

07/13/2022 CASE STATUS - CASE FILE LOCATION ON 07/05/2022

SENT TO JUSTICE O'NEIL FOR REVIEW

07/14/2022 Party(s): PETER MASUCCI,KATHY MASUCCI,ROBERT MORSE,GEORGE SEAVER,GREG TOBEY,HALE W MILLER,JOHN W GROTTON,LEROY GILBERT,JAKE WILSON,DAN HARRINGTON,ORLANDO DELOGU,JUDITH DELOGU,WILLIAM CONNERNEY,WILLIAM M GRIFFITHS,SHEILA A JONES,SUSAN DOMIZI,BRIAN BEAL,AMANDA MOESER,CHAD COFFIN,LORI HOWELL,TOM HOWELL
OTHER FILING - OPPOSING MEMORANDUM FILED ON 07/13/2022

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR RECONSIDERATION

07/14/2022 Party(s): AARON FREY
OTHER FILING - OPPOSING MEMORANDUM FILED ON 07/13/2022

ATTORNEY GENERAL'S OPPOSITON TO DEFENDANTS' MOTION FOR RECONSIDERATION

07/14/2022 Party(s): EDWARD PAGE(DISMISSED 4/15/22),CHRISTINE PAGE(DISMISSED 4/15/22),JAMES LI(DISMISSED 4/15/22),KIM NEWBY(DISMISSED 4/15/22),ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
OTHER FILING - REPLY MEMORANDUM FILED ON 07/14/2022

DEFENDANTS EDWARD PAGE, CHRISTINE PAGE, JAMES LI, KIM NEWBY AND ROBIN HADLOCK SEELEY'S REPLY TO PLAINTIFFS' OPPOSITION TO PLNS DEFENDANTS' REQUEST FOR ATTORNEY'S FEES PURSUANT TO ANTI-SLAPP STATUTE

07/20/2022 Party(s): JUDYS MOODY LLC,OA 2012 TRUST
OTHER FILING - REPLY MEMORANDUM FILED ON 07/19/2022

DEFENDANTS' OCEAN 503 LLC, JUDY'S MOODY LLC AND OA 2012 TRUST'S REPLY IN SUPPORT OF DEFENDANTS'S MOTION FOR RECONSIDERATION

07/22/2022 Party(s): PETER MASUCCI,KATHY MASUCCI,ROBERT MORSE,GEORGE SEAVER,GREG TOBEY,BONNIE TOBEY(DISMISSED 4/15/22),HALE W MILLER,JOHN W GROTTON,LEROY GILBERT,JAKE WILSON,DAN HARRINGTON,ORLANDO DELOGU,JUDITH DELOGU,WILLIAM CONNERNEY,WILLIAM M GRIFFITHS,SHEILA A JONES,SUSAN DOMIZI,BRIAN BEAL,CHARLES RADIS(DISMISSED 4/15/22),SANDRA RADIS(DISMISSED 4/15/22),AMANDA MOESER,CHAD COFFIN,LORI HOWELL,TOM HOWELL
MOTION - OTHER MOTION FILED ON 07/22/2022

PLAINTIFFS' MOTION TO STAY SCHEDULING ORDER AND RESET DEADLINES PENDING RESOLUTION OF CERTAIN MOTIONS WITH PROPOSED ORDER

08/03/2022 CASE STATUS - CASE FILE RETURNED ON 08/01/2022

08/03/2022 Party(s): JUDYS MOODY LLC,OA 2012 TRUST
LETTER - FROM PARTY FILED ON 07/27/2022

FROM DAVID SILK ESQ INFORMING COURT THAT DEFENDANTS JUDY'S MOODY AND OA2012 TRUST HAVE NO OBJ TO PLAINTIFFS' MOTION TO STAY SCHEDULING ORDER AND RESET DEADLINES PENDING RESOLUTION OF OTHER MOTIONS

08/05/2022 Party(s): JUDYS MOODY LLC,OA 2012 TRUST,OCEAN 503 LLC
MOTION - MOTION TO RECONSIDER FINDING DENIED ON 08/01/2022

JOHN H ONEIL JR, JUSTICE
SEE SEPARATE ORDER

08/05/2022 Party(s): JEFFERY PARENT,MARGARET PARENT
MOTION - MOTION TO DISMISS OTHER DECISION ON 08/01/2022

JOHN H ONEIL JR, JUSTICE
SEE SEPARATE ORDER

08/05/2022 Party(s): JUDYS MOODY LLC
MOTION - OTHER MOTION DENIED ON 08/01/2022

JOHN H ONEIL JR, JUSTICE
DEF. JUDY'S MOODY LLC, MOTION FOR MORE DEFINITE STATEMENT (SEE SEPARATE ORDER)

08/05/2022 Party(s): OA 2012 TRUST
MOTION - OTHER MOTION DENIED ON 08/01/2022

JOHN H ONEIL JR, JUSTICE
 DEF. JOHN B. HOWE, TRUSTEE OF THE OA 2012 TRUST'S MOTION FOR MORE
 DEFINITE STATEMENT (SEE SEPARATE ORDER)

08/05/2022 Party(s): OCEAN 503 LLC
 MOTION - OTHER MOTION DENIED ON 08/01/2022

JOHN H ONEIL JR, JUSTICE
 DEF. OCEAN 503 LLC'S MOTION FOR MORE DEFINITE STATEMENT (SEE
 SEPARATE ORDER)

08/05/2022 Party(s): EDWARD PAGE(DISMISSED 4/15/22),CHRISTINE PAGE(DISMISSED 4/15/22),JAMES LI(DISMISSED
 4/15/22),KIM NEWBY(DISMISSED 4/15/22),ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
 MOTION - MOTION/AFFIDAVIT FOR ATTY FEES DENIED ON 08/01/2022

JOHN H ONEIL JR, JUSTICE
 SEE SEPARATE ORDER

08/05/2022 ORDER - COURT ORDER ENTERED ON 08/01/2022

JOHN H ONEIL JR, JUSTICE
 COMBINED ORDER ON PENDING MOTIONS - DEFENDANTS JEFFREY AND
 MARGARET PARENT'S MOTION TO DISMISS IS GRANTED IN PART. THE LEGAL
 ENTITIY DEFENDANTS MOTIONS FOR MORE DEFINITE STATEMENTS ARE
 DENIED. THE PLNS DEFENDANTS REQUEST FOR ATTORNEY'S FEES AND COSTS
 UNDER THE ANTI-SLAPP STATUTE IS DENIED. THE LEGAL ENTITY
 DEFENDANTS' MOTION FOR RECONSIDERATION IS DENIED. THE CLERK IS
 DIRECTED TO INCORPORATE THIS ORDER INTO THE DOCKET BY REFERENCE
 PURSUANT TO M.R.CIV.P.79(A). COPIES TO COUNSEL/PARTIES 8/5/22

08/06/2022 Party(s): EDWARD PAGE(DISMISSED 4/15/22),CHRISTINE PAGE(DISMISSED 4/15/22),JAMES LI(DISMISSED
 4/15/22),KIM NEWBY(DISMISSED 4/15/22),ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
 OTHER FILING - AFFIDAVIT FILED ON 08/04/2022

AFFIDAVIT OF GORDON R SMITH IN SUPPORT OF REQUEST BY DEFENDANTS
 EDWARD PAGE, CHRISTINE PAGE, JAMES LI, KIM NEWBY & ROBIN HADLOCK
 SEELEY FOR ATTORNEY FEES

08/11/2022 Party(s): OCEAN 503 LLC,JEFFERY PARENT,MARGARET PARENT
 OTHER FILING - OPPOSING MEMORANDUM FILED ON 08/11/2022

DEFENDANTS MARGARET PARENT, JEFFREY PARENT AND OCEAN 503'S
 OPPOSITION TO PLAINTIFFS' MOTION TO STAY AND RESET DEADLINES

08/12/2022 Party(s): OCEAN 503 LLC
 RESPONSIVE PLEADING - ANSWER & AFFIRMATIVE DEFENSE FILED ON 08/11/2022

DEFENDANT OCEAN 503 LLC'S ANSWER AND AFFIRMATIVE DEFENSES

08/12/2022 Party(s): OCEAN 503 LLC
 ATTORNEY - RETAINED ENTERED ON 08/11/2022

Defendant's Attorney: EMILY ARVIZU

08/12/2022 Party(s): JUDYS MOODY LLC, AMANDA MOESER
 RESPONSIVE PLEADING - ANSWER FILED ON 08/11/2022

DEFENDANT JUDY'S MOODY LLC'S ANSWER TO PLAINTIFF'S COMPLAINT

08/12/2022 Party(s): OA 2012 TRUST
 RESPONSIVE PLEADING - ANSWER & AFFIRMATIVE DEFENSE FILED ON 08/11/2022

DEFENDANT JOHN B HOWE TRUSTEE OF THE OA2012 TRUST'S ANSWER AND
 AFFIRMATIVE DEFENSES FO PLAINTIFF'S COMPLAINT

08/25/2022 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN
 W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH
 DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN
 BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 OTHER FILING - REPLY MEMORANDUM FILED ON 08/17/2022

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION
 TO RESET SCHEDULING ORDER

08/25/2022 Party(s): JUDYS MOODY LLC, OA 2012 TRUST, OCEAN 503 LLC, JEFFERY PARENT, MARGARET PARENT, AARON
 FREY
 MOTION - MOTION TO WAIVE ADR FILED ON 08/18/2022

JOINT MOTION TO WAIVE ADR (OTHER THAN PLAINTIFFS) WITH PROPOSED
 ORDER

08/25/2022 CASE STATUS - CASE FILE LOCATION ON 08/25/2022
 SENT TO JUSTICE O'NEIL FOR GUIDANCE (FILE 2 ONLY)

08/31/2022 CASE STATUS - CASE FILE RETURNED ON 08/30/2022

08/31/2022 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, BONNIE
 TOBEY (DISMISSED 4/15/22), HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN
 HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA
 A JONES, SUSAN DOMIZI, BRIAN BEAL, CHARLES RADIS (DISMISSED 4/15/22), SANDRA
 RADIS (DISMISSED 4/15/22), AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 MOTION - OTHER MOTION GRANTED ON 08/30/2022

JOHN H ONEIL JR, JUSTICE
 PLAINTIFFS' MOTION TO STAY SCHEDULING ORDER IS GRANTED. THE
 CURRENT SCHEDULING ORDER IS RESET. COPIES TO COUNSEL/PARTIES
 8/31/22

08/31/2022 ORDER - SCHEDULING ORDER ENTERED ON 08/30/2022

JOHN H ONEIL JR, JUSTICE
 AMENDED SCHEDULING ORDER ENTERED. COPIES TO COUNSEL/PARTIES
 8/31/22

08/31/2022 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 02/17/2023

08/31/2022 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
LETTER - FROM PARTY FILED ON 08/24/2022

FROM BENJAMIN FORD ESQ WITH ATTACHED NOTICE OF CHANGE ADDRESS FORM INFORMING COURT THAT ARCHIPELAGO LAW HAS CHANGED ADDRESSED

09/15/2022 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
RESPONSIVE PLEADING - RESPONSE FILED ON 09/08/2022

PLAINTIFFS' RESPONSE TO PENDING MOTION TO WAIVE ADR MEDIATION.

09/15/2022 CASE STATUS - CASE FILE LOCATION ON 09/15/2022

TO JUSTIC O'NEIL FOR REVIEW OF PENDING MOTION TO WAIVE ADR MEDIATION.

09/21/2022 CASE STATUS - CASE FILE RETURNED ON 09/20/2022

09/21/2022 Party(s): JUDYS MOODY LLC, OA 2012 TRUST, OCEAN 503 LLC, JEFFERY PARENT, MARGARET PARENT, AARON FREY
MOTION - MOTION TO WAIVE ADR GRANTED ON 09/19/2022

JOHN H ONEIL JR, JUSTICE
THE COURT FINDS THAT THE ABOVE-CAPTIONED MATTER IS NOT SUITABLE FOR MEDIATION AND ACCORDINGLY WAIVES THE ALTERNATIVE DISPUTE RESOLUTION (ADR) REQUIREMENT SET FORTH IN MAINE RULE OF CIVIL PROCEDURE 16B. COPIES TO PARTIES/COUNSEL 9/21/22.

10/07/2022 Party(s): ORLANDO DELOGU
OTHER FILING - OTHER DOCUMENT FILED ON 09/28/2022

PLAINTIFF ORLANDO DELOGU'S CHANGE OF ADDRESS FORM

10/15/2022 Party(s): OA 2012 TRUST
OTHER FILING - OTHER DOCUMENT FILED ON 10/07/2022

NOTICE OF CHANGE ADDRESS FORM FOR PAIGE GILLIARD ESQ (ADMITTED PRO HACE VICE 8/26/21)

11/18/2022 Party(s): JUDYS MOODY LLC, OA 2012 TRUST
OTHER FILING - ENTRY OF APPEARANCE FILED ON 11/14/2022

OF ROBERT PAPAIZIAN ESQ ON BEHALF OF DEFENDANTS JUDY'S MOODY LLC
AND OA 2012 TRUST

11/18/2022 Party(s): JUDYS MOODY LLC
ATTORNEY - RETAINED ENTERED ON 11/14/2022

Defendant's Attorney: ROBERT PAPAIZIAN

Party(s): OA 2012 TRUST
ATTORNEY - RETAINED ENTERED ON 11/14/2022

Defendant's Attorney: ROBERT PAPAIZIAN

12/08/2022 Party(s): ORLANDO DELOGU
LETTER - FROM PARTY FILED ON 12/05/2022

LETTER FROM ORLANDO E. DELUGO, PRO SE, CORRECTING MAILING ADDRESS

02/15/2023 Party(s): JUDYS MOODY LLC,OA 2012 TRUST
MOTION - MOTION ALTER/AMEND ORDER/JUDG FILED ON 02/06/2023

DEFENDANTS JUDY'S MOODY LLC AND OA 2012 TRUST'S CONSENTED-TO
MOTION TO MODIFY SCHEDULING ORDER WITH PROPOSED ORDER.

02/15/2023 CASE STATUS - CASE FILE LOCATION ON 02/15/2023

W/ J. O'NEIL FOR REVIEW

02/25/2023 CASE STATUS - CASE FILE RETURNED ON 02/22/2023

02/25/2023 Party(s): JUDYS MOODY LLC,OA 2012 TRUST
MOTION - MOTION ALTER/AMEND ORDER/JUDG GRANTED ON 02/22/2023

JOHN H ONEIL JR, JUSTICE
THE COURT'S AMENDED SCHEDULING ISSUED 8/30/22 IS AMENDED. THE
CLERK IS DIRECTED TO INCOPORATTE THIS ORDER IN THE DOCKET BY
REFERENCE PURSUANT TO RULE 79(A) OF THE MAINE RULES OF CIVIL
PROCEDURE. COPIES TO COUNSEL/PARTIES 2/25/23

05/03/2023 Party(s): OCEAN 503 LLC
MOTION - MOTION SUMMARY JUDGMENT FILED WITH AFFIDAVIT ON 05/01/2023

DEFENDANT OCEAN 503 LLC'S MOTION FOR SUMMARY JUDGMENT WITH
INCORPORATED MEMORANDUM OF LAW ALONG WITH PROPOSED ORDER,
AFFIDAVIT OF MARK MONTESI IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT, STATEMENT OF MATERIAL FACT TOGETHER WITH EXHIBHITS.

05/03/2023 Party(s): JEFFERY PARENT,MARGARET PARENT
MOTION - MOTION SUMMARY JUDGMENT FILED ON 05/02/2023

DEFENDANTS JEFFERY E PARENT AND MARGARET G PARENT'S MOTION FOR SUMMARY JUDGMENT WITH INCORPORATED MEMORANDUM OF LAW, STATEMENT OF MATERIAL FACTS WITH EXHIBITS 1 (AFFIDAVIT OF JEFFERY AND MARGARET PARENT) AND STIPULATIONS BETWEEN PLAINTIFFS AND DEFENDANTS JEFFERY PARENT AND MARGARET PARENT.

05/05/2023 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
MOTION - MOTION SUMMARY JUDGMENT FILED ON 05/02/2023

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT WITH INCORPORATED MEMORANDUM OF LAW, PLAINTIFFS' STATEMENT OF MATERIAL FACTS WITH ATTACHED EXHIBITS A-BB AND PROPOSED ORDER.

05/05/2023 Party(s): AARON FREY
MOTION - MOTION SUMMARY JUDGMENT FILED ON 05/02/2023

PARTY-IN-INTEREST ATTORNEY GENERAL'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF PLAINTIFFS' COMPLAINT, SUPPORTING MEMORANDUM OF LAW, PROPOSED ORDER, STATEMENT OF MATERIAL FACTS AND 6 DEPOSITION TRANSCRIPTS WITH THEIR ATTACHED EXHIBITS.

05/08/2023 Party(s): OCEAN 503 LLC
MOTION - MOTION/AFFIDAVIT FOR ATTY FEES FILED WITH AFFIDAVIT ON 05/01/2023

DEFENDANT OCEAN 503 LLC'S REQUEST FOR ATTORNEY'S FEES AND COSTS ALONG WITH AFFIDAVIT IN SUPPORT AND PROPOSED ORDER.

05/08/2023 Party(s): OA 2012 TRUST
MOTION - MOTION SUMMARY JUDGMENT FILED WITH AFFIDAVIT ON 05/02/2023

DEFENDANT OA 2012 TRUST'S MOTION FOR SUMMARY JUDGMENT WITH INCORPORATED MEMORANDUM OF LAW, STATEMENT OF MATERIAL FACTS IN SUPPORT, AFFIDAVIT OF JULIE WASHBURN, AFFIDAVIT OF REBECCA KINNEY AND PROPOSED ORDER.

05/08/2023 Party(s): JUDYS MOODY LLC
MOTION - MOTION SUMMARY JUDGMENT FILED ON 05/02/2023

DEFENDANT JUDY'S MOODY LLC'S MOTION FOR SUMMARY JUDGMENT WITH INCORPORATED MEMORANDUM OF LAW, DEFENDANT JUDY'S MOODY LLC'S STATEMENT OF UNDISPUTED MATERIAL FACTS WITH ATTACHED EXHIBITS, REQUEST FOR HEARING AND PROPOSED ORDER.

05/08/2023 Party(s): ORLANDO DELOGU
OTHER FILING - OTHER DOCUMENT FILED ON 05/04/2023

PLAINTIFF ORLANDO DELOGU'S NOTICE OF JOINDER TO CO-PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND STATEMENT OF MATERIAL FACTS.

05/17/2023 OTHER FILING - OTHER DOCUMENT FILED ON 05/11/2023
RE-200

LETTER FROM BENJAMIN FORD ESQ W/COPY OF BOARD OF OVERSEERS OF THE
BAR ADMINSTRATIVE ORDER OF REINSTATEMENT

05/17/2023 OTHER FILING - OTHER DOCUMENT FILED ON 05/12/2023

LETTER FROM BENJAMIN FORD ESQ CONFIRMING THAT HE HAS BEEN
REINSTATED

05/17/2023 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, BONNIE
TOBEY (DISMISSED 4/15/22), HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN
HARRINGTON, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN
DOMIZI, BRIAN BEAL, CHARLES RADIS (DISMISSED 4/15/22), SANDRA RADIS (DISMISSED
4/15/22), AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL

OTHER FILING - ENTRY OF APPEARANCE FILED ON 05/11/2023

OF KEITH RICHARD ESQ ON BEHALF OF ALL PLAINTIFFS WITH THE
EXCEPTION OF ORLANDO DELOGU

05/17/2023 Party(s): PETER MASUCCI
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): KATHY MASUCCI
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): ROBERT MORSE
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): GEORGE SEAVER
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): GREG TOBEY
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): BONNIE TOBEY (DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): HALE W MILLER
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): JOHN W GROTTON
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): LEROY GILBERT
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): JAKE WILSON
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

05/17/2023 Party(s): DAN HARRINGTON
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): JUDITH DELOGU
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): WILLIAM CONNERNEY
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): WILLIAM M GRIFFITHS
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): SHEILA A JONES
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): SUSAN DOMIZI
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): BRIAN BEAL
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): CHARLES RADIS(DISMISSED 4/15/22)
ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): SANDRA RADIS (DISMISSED 4/15/22)
 ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

05/17/2023 Party(s): AMANDA MOESER
 ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): CHAD COFFIN
 ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): LORI HOWELL
 ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

Party(s): TOM HOWELL
 ATTORNEY - RETAINED ENTERED ON 05/11/2023

Plaintiff's Attorney: KEITH RICHARD

06/07/2023 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 OTHER FILING - OPPOSING MEMORANDUM FILED ON 05/22/2023

PLAINTIFFS' (W/EXCEPTION OF ORLANDO DELOGU) OPPOSITION TO DEFENDANT OCEAN 503'S REQUEST FOR ATTORNEY FEES

06/07/2023 Party(s): AARON FREY
 OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/01/2023

ATTORNEY GENERAL'S MEMORANDUM OF LAW IN OPPOSITION TO OA 2012 TRUST'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF PLAINTIFF'S COMPLAINT W/OPPOSING AND ADDITIONAL STATEMENT OF MATERIAL FACTS (RESPONSIVE TO OA 2012 TRUST'S STATEMENT OF MATERIAL FACTS)

06/07/2023 Party(s): AARON FREY
 OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/01/2023

ATTORNEY GENERAL'S MEMORANDUM OF LAW IN OPPOSITION TO OCEAN 503'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF PLAINTIFF'S COMPLAINT W/STATEMENT OF MATERIAL FACTS (RESPONSIVE TO OCEAN 503, LLC'S STATEMENT OF MATERIAL FACTS)T

06/07/2023 Party(s): AARON FREY

OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/01/2023

ATTORNEY GENERAL'S MEMORANDUM OF LAW IN OPPOSITION TO JUDY'S MOODY'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF PLAINTIFF'S COMPLAINT W/OPPOSING AND ADDITIONAL STATEMENT OF MATERIAL FACTS (RESPONSIVE TO DEFENDANT JUDY MOODY LLC'S STATEMENT OF MATERIAL FACTS)

06/07/2023 Party(s): ORLANDO DELOGU
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/02/2023

PLAINTIFF PRO SE ORLANDO DELOGU'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

06/07/2023 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, CHARLES RADIS (DISMISSED 4/15/22), AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/02/2023

PLTFS'S COMBINED OPPOS TO DEFS' MOTION FOR SUMMARY JUDGMENT W/PLTFS' OPPOS TO STATEMENT OF MATERIAL FACTS IN SUPPORT OF DEF OCEAN 503 LLC'S MSJ W/INCORPORATED MEMORANDUM OF LAW W/EXHS A-D, PLTFS OPPOS TO DEF JUDY'S MOODY LLC'S STATEMENT OF UNDISPUTED MATERIAL FACTS W/EXH A, PLTFS OPPOS TO DEFS JEFFREY & MARGARET PARENTS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF MSJ AND PLTFS' OPPOS TO DEF OA2012 TRUST'S STATEMENT OF MATERIAL UNDISPUTED MATERIAL FACTS W/EXHS A-F

06/07/2023 Party(s): JEFFERY PARENT, MARGARET PARENT
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/02/2023

DEFENDANTS JEFFERY E PARENT AND MARGARET G PARENT'S OPPOSITION TO PLTFS' MOTION FOR SUMMARY JUDGMENT WITH W/EXHIBITS A-G WITH OPPOSING STATEMENT OF MATERIAL FACTS (IN SEPARATE EXPANDABLE FOLDER)

06/07/2023 Party(s): OCEAN 503 LLC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/02/2023

DEFENDANT OCEAN 503 LLC'S OPPOS TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT W/INCORPORATED MEMORANDUM OF LAW W/EXHS A-J W/OPPOS TO PLTFS' STATEMENT OF MATERIAL FACTS AND DEF OCEAN 503 LLC'S ADDITIONAL STATEMENT OF MATERIAL FACTS (IN SEPARATE EXPANDABLE FOLDERS)

06/07/2023 Party(s): OCEAN 503 LLC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/02/2023

04/22/2021 Misc Fee Payments \$150.00 paid.
04/22/2021 Misc Fee Payments \$25.00 paid.

DEFENDANT OCEAN 503 LLC'S OPPOSITION TO ATTORNEY GENERAL'S MOTION FOR SUMMARY JUDGMENT W/MEMORANDUM OF LAW W/DEF OCEAN 503 LLC'S OPPOSITION TO ATTORNEY GENERAL'S STATEMENT OF MATERIAL FACTS AND DEF OCEAN 503 LLC'S ADDITIONAL STATEMENT OF MATERIAL FACTS W/EXHIBIT A (IN SEPARATE EXPANDABLE FOLDER)

06/07/2023 Party(s): JUDYS MOODY LLC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/02/2023

DEFENDANT JUDY'S MOODY LLC'S OPPOSITION TO PLTF'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF THE COMPLAINT

06/07/2023 Party(s): JUDYS MOODY LLC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/02/2023

DEFENDANT JUDY'S MOODY LLC OPPOSITION TO THE ATTORNEY GENERAL'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF THE PLAINTIFFS' COMPLAINT WITH OPPOSING STATEMENT OF MATERIAL FACTS AND STATEMENT OF ADDITIONAL FACTS W/EXHIBITS (IN SEPARATE EXPANDABLE FOLDER)

06/07/2023 Party(s): JUDYS MOODY LLC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/02/2023

DEFENDANT JUDY'S MOODY LLC'S OPPOSING STATEMENT TO PLAINTIFFS' 220 STATEMENT OF MATERIAL FACTS AND STATEMENT OF ADDITIONAL FACT W/EXHIBITS (IN SEPARATE EXPANDABLE FOLDER)

06/07/2023 Party(s): OA 2012 TRUST
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/02/2023

DEFENDANT OA 2012 TRUST'S OPPOS TO PLAINTIFF'S AND THE STATE'S MOTIONS FOR SUMMARY JUDGMENT ON COUNT IV OF THE COMPLAINT WITH DEFENDANT OA 2012 TRUST'S OPPOSING STATEMENT TO PLAINTIFF'S 220 MATERIAL FACTS AND STATEMENT OF ADD'L STATEMENT OF FACTS W/AFFIDAVITS AND EXHIBIT, DEFENDANT OA 2012 TRUST'S OPPOSING STATEMENT TO ATTORNEY GENERAL'S STATEMENT OF MATERIAL FACTS & STATEMENT OF ADD'L FACTS W/AFFIDAVITS AND EXHIBIT 1 AND REQUEST FOR HEARING (2 EXPANDABLE FOLDERS)

06/07/2023 Party(s): OCEAN 503 LLC
OTHER FILING - REPLY MEMORANDUM FILED ON 06/05/2023

DEFENDANT OCEAN 503 LLC'S REPLY IN SUPPORT OF REQUEST FOR ATTORNEY'S FEES AND COSTS W/EXHIBITS A-G

06/12/2023 Party(s): JUDYS MOODY LLC
MOTION - MOTION TO IMPOUND FILED ON 06/07/2023

DEFENDANT JUDY'S MOODY LLC'S CONSENT MOTION TO SEAL AND/OR IMPOUND W/INCORPORATED MEMORANDUM OF LAW W/PROPOSED ORDER

06/12/2023 CASE STATUS - CASE FILE LOCATION ON 06/12/2023

SENT TO JUSTICE O'NEIL FOR REVIEW (FILE 6 ONLY)

06/16/2023 CASE STATUS - CASE FILE RETURNED ON 06/14/2023

06/16/2023 Party(s): JUDYS MOODY LLC
 MOTION - MOTION TO IMPOUND GRANTED ON 06/14/2023

JOHN H ONEIL JR, JUSTICE
 ORDER. IN CONSIDERATION OF A CONSENT MOTION TO SEAL AND IMPOUND
 (JUNE 7, 2023) FILED BY DEFENDANT JUDY'S MOODY LLC'S, NO
 OBJECTION TO THE MOTION BY COUNSEL FOR THE PLAINTIFFS, THE
 ATTORNEY GENERAL, JEFFREY AND MARGARET PARENT, OA 2012 TRUST, AND
 OCEAN 503 LLC, AND PRO SE PLAINTIFF ORLANDO DELOGU, WITHOUT
 HEARING THE MOTION IS GRANTED. SEE ORDER/FILE FOR DETIALS. COPIES
 TO PARTIES/COUNSEL 6/16/23.

06/29/2023 Party(s): OCEAN 503 LLC
 OTHER FILING - REPLY MEMORANDUM FILED ON 06/21/2023

DEFENDANT OCEAN 503, LLC'S REPLY IN SUPPORT OF OCEAN 503'S MOTION
 FOR SUMMARY JUDGMENT WITH INCOPRORATED MEMORANDUM OF LAW. FILED
 WITH DEFENDANT OCEAN 503, LLC'S REPLY STATEMENT OF MATERIAL FACTS
 (AS TO PLAINTIFFS' OPPOSING STATEMENT OF MATERIAL FACTS) WITH
 EXHIBIT A AND DEFENDANT OCEAN 503, LLC'S REPLY STATEMENT OF
 MATERIAL FACTS (AS TO PARTY-IN-INTEREST'S OPPOSING STATEMENT OF
 MATERIAL FACTS) WITH EXHIBIT A.

06/29/2023 Party(s): JEFFERY PARENT,MARGARET PARENT
 OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2023

DEFENDANTS JEFFREY E. PARENT AND MARGARET G. PARENT'S REPLY TO
 PLAINTIFFS' OPPOSITION TO PARENTS' MOTION FOR SUMMARY JUDGMENT.

06/29/2023 Party(s): AARON FREY
 OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2023

ATTORNEY GENERAL'S REPLY TO OCEAN 503, LLC'S OPPOSITION TO THE
 ATTORNEY GENERAL'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF
 PLAINTIFFS' COMPLAINT. FILED WITH ATTORNEY GENERAL'S RULE
 56(H)(3) AND (I)(2) REPLY TO STATEMENT OF MATERIAL FACTS TO OCEAN
 503, LLC'S RULE 56(H)(2) OPPOSING STATEMENT OF MATERIAL FACTS
 WITH EXHIBIT A.

06/29/2023 Party(s): AARON FREY
 OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2023

ATTORNEY GENERAL'S REPLY TO JUDY'S MOODY, LLC'S OPPOSITION TO THE
 ATTORNEY GENERAL'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF
 PLAINTIFFS' COMPLAINT. FILED WITH ATTORNEY GENERAL'S RULE
 56(H)(3) AND (I)(2) REPLY STATEMENT OF MATERIAL FACTS TO JUDY'S
 MOODY'S RULE 56(H)(2) OPPOSING STATEMENT OF MATERIAL FACTS.

06/29/2023 Party(s): AARON FREY
 OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2023

ATTORNEY GENERAL'S REPLY TO OA 2012 TRUST'S OPPOSITION TO THE ATTORNEY GENERAL'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF PLAINTIFF'S COMPLAINT. FILED WITH ATTORNEY GENERAL'S RULE 56(H) (2) REPLY STATEMENT OF MATERIAL FACTS TO OA 2012 TRUST'S RULE 56(H) (2) OPPOSING STATEMENT OF MATERIAL FACTS.

06/30/2023 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2023

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT. FILED WITH PLAINTIFFS' ADDITIONAL STATEMENT OF MATERIAL FACTS WITH EXHIBITS, PLAINTIFFS' REPLY TO DEFENDANT OCEAN 503, LLC'S ADDITIONAL STATEMENT OF MATERIAL FACTS, AND PLAINTIFFS' REPLY TO DEFENDANT OA2012 TRUST'S ADDITIONAL STATEMENT OF MATERIAL FACTS.

06/30/2023 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2023

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT.

06/30/2023 Party(s): JUDYS MOODY LLC
 OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2023

DEFENDANT JUDY'S MOODY LLC'S REPLY TO THE ATTORNEY GENERAL'S OPPOSITION TO JUDY'S MOODY LLC'S MOTION FOR SUMMARY JUDGMENT WITH INCORPORATED MEMORANDUM OF LAW. FILED WITH DEFENDANT JUDY'S MOODY LLC'S RESPONSE TO THE ATTORNEY GENERAL'S OPPOSING STATEMENT OF MATERIAL FACTS AND REPLY TO THE ATTORNEY GENERAL'S STATEMENT OF ADDITIONAL FACTS WITH EXHIBITS A THROUGH D.

06/30/2023 Party(s): JUDYS MOODY LLC
 OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2023

DEFENDANT JUDY'S MOODY LLC'S REPLY TO PLAINTIFFS' COMBINED OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH INCORPORATED MEMORANDUM OF LAW. FILED WITH DEFENDANT JUDY'S MOODY LLC'S REPLY STATEMENT OF MATERIAL FACTS (AS TO PLAINTIFFS' OPPOSING STATEMENT OF MATERIAL FACTS)

06/30/2023 Party(s): OA 2012 TRUST
 OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2023

DEFENDANT OA 2012 TRUST'S REPLY TO PLAINTIFFS', ORLANDO DELOGU'S AND THE STAE OF MAINE OFFICE OF ATTORNEY GENERAL'S OPPOSING MEMORANDA TO OA 2012 TRUST'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF THE COMPLAINT. FILED WITH DEFENDANT OA 2012 TRUST'S STATEMENT OF MATERIAL FACTS, DEFENDANT OA 2012 TRUST'S OPPOSING STATEMENT TO ATTORNEY GENERAL'S ADDITIONAL STATEMENT OF MATERIAL FACTS AND DEFENDANT OA 2012 TRUST'S REPLY TO ATTORNEY GENERAL'S OPPOSING STATEMENT REPSONSIVE TO OA 2012 TRUSTS...

06/30/2023 CASE STATUS - CASE FILE LOCATION ON 06/30/2023

W/ J O'NEIL FOR REVIEW

07/03/2023 Party(s): JEFFERY PARENT,MARGARET PARENT
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2023

DEFENDANTS JEFFREY E. PARENT AND MARGARET G. PARENTS REPSONSE TO PLAINTIFFS' ADDITIONAL STATEMENT OF MATERIAL FACTS AND DEFENDANTS JEFFREY E. PARENT AND MARGARET G. PARENT'S OPPOSITION TO PLAINTIFFS' ADDITIONAL STATEMENT OF MATERIAL FACTS.

07/03/2023 Party(s): JUDYS MOODY LLC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2023

DEFENDANT JUDY'S MOODY LLC'S RESPONSE TO THE ATTORNEY GENERAL'S OBJECTIONS AND QUALIFICATIONS IN THE ATTORNEY GENERAL'S REPLY STATEMENT.

07/03/2023 Party(s): JUDYS MOODY LLC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2023

DEFENDANT JUDY'S MOODY LLC'S RESPONSE TO PLAINTIFFS' STATEMENT OF ADDITIONAL FACTS.

07/03/2023 Party(s): OA 2012 TRUST
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2023

DEFENDANT OA 2012 TRUST'S RULE 56(I)(2) REPLY AS OPPOSING PARTY TO PLAINTIFFS' DENIALS TO OA 2012'S RULE 56(H)(2) ADDITIONAL STATEMENT OF MATERIAL FACTS AND DEFENDANT OA 2012 TRUST'S RULE 56(H)(3) REPLY TO PLAINTIFFS' ADDITIONAL STATEMENT OF MATERIAL FACTS.

07/03/2023 Party(s): OA 2012 TRUST
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2023

| | | | |
|------------|-------------------|----------|-------|
| 05/26/2021 | Misc Fee Payments | \$200.00 | paid. |
| 05/26/2021 | Misc Fee Payments | \$25.00 | paid. |
| 05/26/2021 | Misc Fee Payments | \$200.00 | paid. |
| 05/26/2021 | Misc Fee Payments | \$25.00 | paid. |
| 05/26/2021 | Misc Fee Payments | \$200.00 | paid. |

DEFENDANT OA 2012'S RULE 56(I)(2) REPLY AS OPPOSING PARTY TO (I) ATTORNEY GENERAL'S OBJECTIONS TO OA 2012 TRUST'S QUALIFICATIONS AND DENIALS; AND (II) TO THE ATTORNEY GENERAL'S RULE 56(I)(2) RESPONSE TO OA 2012'S OBJECTIONS TO THE ATTORNEY GENERAL'S STATEMENTS OF MATERIAL FACT AND DEFENDANT OA 2012 TRUST'S RULE 56(I)(2) REPLY TO THE ATTORNEY GENERAL'S OPPOSING STATEMENT TO OA 2012 TRUST'S RULE 56(H)(2) ADDITIONAL STATEMENT OF MATERIAL FACTS WITH ADDENDUMS 1 AND 2.

07/03/2023 Party(s): OCEAN 503 LLC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2023

DEFENDANT OCEAN 503, LLC'S OPPOSITION TO PLAINTIFFS' ADDITIONAL STATEMENT OF MATERIAL FACTS.

07/03/2023 Party(s): OCEAN 503 LLC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/30/2023

DEFENDANT OCEAN 503, LLC'S RULE 56 (I)(2) REPLY AS OPPOSING PARTY TO (I) ATTORNEY GENERAL'S REPLY TO OCEAN 503'S ADDITIONAL STATEMENTS OF FACT; AND (II) ATTORNEY GENERAL'S OBJECTIONS TO OCEAN 503, LLC'S QUALIFICATIONS AND DENIALS WITH EXHIBITS A THROUGH E.

02/02/2024 CASE STATUS - CASE FILE RETURNED ON 01/26/2024

02/09/2024 Party(s): OCEAN 503 LLC
MOTION - MOTION SUMMARY JUDGMENT GRANTED ON 01/26/2024

JOHN H ONEIL JR, JUSTICE
(SEE SEPARATE ORDER)

02/09/2024 Party(s): AARON FREY
MOTION - MOTION SUMMARY JUDGMENT DENIED ON 01/26/2024

JOHN H ONEIL JR, JUSTICE
(SEE SEPARATE ORDER)

02/09/2024 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, ORLANDO DELOGU, JUDITH DELOGU, WILLIAM CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
MOTION - MOTION SUMMARY JUDGMENT DENIED ON 01/26/2024

JOHN H ONEIL JR, JUSTICE
(SEE SEPARATE ORDER)

02/09/2024 Party(s): JEFFERY PARENT, MARGARET PARENT
MOTION - MOTION SUMMARY JUDGMENT MOOT ON 01/26/2024

JOHN H ONEIL JR, JUSTICE
PER ORDER ON JUSTICABILITY

02/09/2024 Party(s): OA 2012 TRUST
 MOTION - MOTION SUMMARY JUDGMENT MOOT ON 01/26/2024

JOHN H ONEIL JR, JUSTICE
 PER CONSOLIDATED ORDER ON DEFENDANTS' PENDING DISPOSITIVE MOTIONS

02/09/2024 Party(s): JUDYS MOODY LLC
 MOTION - MOTION SUMMARY JUDGMENT GRANTED ON 01/26/2024

JOHN H ONEIL JR, JUSTICE
 (SEE SEPARATE ORDER)

02/09/2024 ORDER - COURT ORDER ENTERED ON 01/26/2024

JOHN H ONEIL JR, JUSTICE
 THE ATTORNEY GENERAL'S MOTION FOR SUMMARY JUDGMENT IS DENIED. THE CLERK IS DIRECTED TO INCORPORATE THIS ORDER INTO THE DOCKET BY REFERENCE M.R.CIV.P. 79(A). COPIES TO COUNSEL/PARTIES 2/9/24

02/09/2024 ORDER - COURT ORDER ENTERED ON 01/26/2024

JOHN H ONEIL JR, JUSTICE
 PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT IS DENIED. THE CLERK IS DIRECTED TO INCORPORATE THIS ORDER INTO THE DOCKET BY REFERENCE. M.R.CIV.P. 79(A). COPIES TO COUNSEL/PARTIES 2/9/24

02/09/2024 ORDER - COURT ORDER ENTERED ON 01/26/2024

JOHN H ONEIL JR, JUSTICE
 PLAINTIFFS' COUNT IV CLAIM AGAINST DEFENDANT OA 2012 TRUST IS DISMISSED AS BARRED BY THE DOCTRINE OF RES JUDICATA. CORRESPONDINGLY, DEFENDANT OA 2012 TRUST'S MOTION FOR SUMMARY JUDGMENT AS TO COUNT IV IS DISMISSED AS MOOT. DEFENDANTS JUDY'S MOODY LLC AND OCEAN 503 LLC'S RESPECTIVE MOTIONS FOR SUMMARY JUDGMENT IS GRANTED AS COUNT IV, PLAINTIFFS' LAST REMAINING CLAIM. THE CLERK SHALL INCORPORATE THIS ORDER INTO THE DOCKET BY REFERENCE. M.R.CIV.P. 79(A). COPIES TO COUNSEL/PARTIES 2/9/24

02/09/2024 ORDER - COURT ORDER ENTERED ON 01/26/2024

JOHN H ONEIL JR, JUSTICE
 ORDER ON JUSTICABILITY - ALL PLAINTIFFS LACK STANDING TO BRING SUIT AGAINST DEFENDANTS MARGARET AND JEFFREY PARENT; THUS, DEFENDANTS PARENT'S MOTION FOR SUMMARY JUDGMENT IS MOOT. THE CLERK IS DIRECTED TO INCORPORATE THIS ORDER INTO THE DOCKET BY REFERENCE. COPIES TO COUNSEL/PARTIES 2/9/24

02/16/2024 Party(s): OA 2012 TRUST
 OTHER FILING - BILL OF COSTS FILED ON 02/14/2024

BILL OF COSTS FOR OA 2012 TRUST.

02/16/2024 Party(s): OCEAN 503 LLC
 OTHER FILING - BILL OF COSTS FILED ON 02/15/2024
 FOR DEFENDANT OCEAN 503

02/16/2024 Party(s): JUDYS MOODY LLC
 OTHER FILING - BILL OF COSTS FILED ON 02/15/2024
 DEFENDANT JUDY'S MOODY, LLC

02/23/2024 Party(s): OCEAN 503 LLC
 MOTION - MOTION/AFFIDAVIT FOR ATTY FEES DENIED ON 02/16/2024
 JOHN H ONEIL JR, JUSTICE
 (SEE SEPARATE ORDER)

02/23/2024 ORDER - COURT ORDER ENTERED ON 02/16/2024
 JOHN H ONEIL JR, JUSTICE
 ORDER ON DEFENDANT OCEAN 503 LLC REQUEST FOR ATTORNEY'S FEES AND
 COSTS - THE COURT DENIES DEFENDANT'S REQUEST. THE CLERK SHALL
 INCORPORATE THIS ORDER INTO THE DOCKET BY REFERENE. M.R.CIV.P.
 79(A). COPIES TO COUNSEL/PARTIES 2/23/24

02/23/2024 FINDING - FINAL JUDGMENT CASE CLOSED ON 02/23/2024

02/23/2024 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN
 W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, JUDITH DELOGU, WILLIAM
 CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA
 MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 OTHER FILING - OBJECTION TO BILL OF COSTS FILED ON 02/20/2024
 PLAINTIFFS' CHALLENGE TO DEFENDANTS' BILL OF COSTS

02/23/2024 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN
 W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, JUDITH DELOGU, WILLIAM
 CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA
 MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 APPEAL - NOTICE OF APPEAL FILED ON 02/21/2024
 PLAINTIFFS' NOTICE OF APPEAL (W/EXCEPTION OF PLAINTIFF ORLANDO
 DELOGO) \$175 APPEAL FEE PAID

02/23/2024 Party(s): PETER MASUCCI, KATHY MASUCCI, ROBERT MORSE, GEORGE SEAVER, GREG TOBEY, HALE W MILLER, JOHN
 W GROTTON, LEROY GILBERT, JAKE WILSON, DAN HARRINGTON, JUDITH DELOGU, WILLIAM
 CONNERNEY, WILLIAM M GRIFFITHS, SHEILA A JONES, SUSAN DOMIZI, BRIAN BEAL, AMANDA
 MOESER, CHAD COFFIN, LORI HOWELL, TOM HOWELL
 APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 02/23/2024
 ALONG WITH COVERSHEET AND SUPERIOR COURT DOCKET ENTRIES; COPIES
 OF NOTICE OF APPEAL MAILED COUNSEL/PARTIES OF RECORD

- 02/23/2024 Party(s): ORLANDO DELOGU
 APPEAL - NOTICE OF APPEAL FILED ON 02/21/2024

 PLAINTIFF ORLANDO DELOGU'S NOTICE OF APPEAL \$175 APPEAL FEE PAID
- 02/23/2024 Party(s): ORLANDO DELOGU
 APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 02/23/2024

 ALONG WITH COVER SHEET AND SUPERIOR COURT ENTRIES; COPIES TO
 NOTICE OF APPEAL SENT TO COUNSEL/PARTIES OF RECORD
- 02/23/2024 Party(s): OA 2012 TRUST
 OTHER FILING - REPLY MEMORANDUM FILED ON 02/22/2024

 DEFENDANT OA 2012 TRUST'S REPLY TO PLAINTIFFS' OBJECTION TO BILL
 OF COSTS W/EXHIBITS A-C
- 02/29/2024 Party(s): OA 2012 TRUST
 APPEAL - NOTICE OF APPEAL FILED ON 02/23/2024

 DEFENDANT JOHN B HOWE TRUSTEE OF OA 2012 TRUST'S NOTICE OF APPEAL
 \$175 APPEAL FEE PAID
- 02/29/2024 Party(s): JUDYS MOODY LLC
 OTHER FILING - REPLY MEMORANDUM FILED ON 02/27/2024

 JUDY'S MOODY REPLY TO PLAINTIFFS' OBJECTION TO BILL OF COSTS WITH
 EXHIBIT A
- 03/02/2024 Party(s): OA 2012 TRUST
 APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 03/02/2024

 WITH COVER SHEET AND UPDATED DOCKET SHEET (LAST 3 PAGES ONLY);
 COPIES OF NOTICE OF APPEAL MAILED COUNSEL/PARTIES OF RECORD
 3/2/24
- 03/02/2024 Party(s): OCEAN 503 LLC
 OTHER FILING - REPLY MEMORANDUM FILED ON 02/29/2024

 DEENDANT OCEAN 503 LLC'S REPLY TO PLAINTIFFS' CHALLENGE TO
 DEFENDANTS' BILL OF COSTS W/EXHIBITS A & B
- 03/02/2024 Party(s): EDWARD PAGE(DISMISSED 4/15/22),CHRISTINE PAGE(DISMISSED 4/15/22),JAMES LI(DISMISSED
 4/15/22),KIM NEWBY(DISMISSED 4/15/22),ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
 APPEAL - NOTICE OF APPEAL FILED ON 02/29/2024

 DEFENDANTS ROBIN SEELEY, JAMES LI, KIM NEWBY, EDWARD & CHRISTIINE
 PAGES' NOTICE OF APPEAL \$175 APPEAL FEE PAID
- 03/02/2024 Party(s): EDWARD PAGE(DISMISSED 4/15/22),CHRISTINE PAGE(DISMISSED 4/15/22),JAMES LI(DISMISSED
 4/15/22),KIM NEWBY(DISMISSED 4/15/22),ROBIN HADLOCK SEELEY(DISMISSED 4/15/22)
 APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 03/02/2024

WITH COVER SHEET AND UPDATED DOCKET SHEET (LAST 3 PAGES ONLY)
COPIES OF NOTICE OF APPEAL MAILED COUNSEL/PARTIES 3/2/24

03/02/2024 Party(s): OCEAN 503 LLC
APPEAL - NOTICE OF APPEAL FILED ON 02/29/2024

DEFENDANT OCEAN 503 LLC'S NOTICE OF CROSS APPEAL \$175 APPEAL FEE
PAID (2 FORMATS (SEE COVER LETTER)

03/02/2024 Party(s): OCEAN 503 LLC
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 03/02/2024

WITH COVER SHEET AND UPDATED DOCKET SHEET (LAST 3 PAGES ONLY)
(SEE COPY OF COVER INCLUDED REGARDING SEPARATE FORMATS) COPIES OF
NOTICE OF APPEAL MAILED COUNSEL/PARTIES 3/2/24

03/02/2024 Party(s): AARON FREY
APPEAL - NOTICE OF APPEAL FILED ON 02/29/2024

PII AARON FREY IN HIS CAPACITY AS ATTORNEY GENERAL'S NOTICE OF
APPEAL WITH EXHIBIT A (APPEAL FEE NOT PAID; STATE OF MAINE EXEMPT
FROM FILING FEES) COPIES OF NOTICE OF APPEAL MAILED
COUNSEL/PARTIES 3/2/24

03/02/2024 Party(s): AARON FREY
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 03/02/2024

WITH COVER SHEET AND UPDATED DOCKET SHEET (LAST 3 PAGES
ONLY)COPIES OF NOTICE OF APPEAL MAILED COUNSEL/PARTIES 3/2/24

03/02/2024 Party(s): JUDYS MOODY LLC
APPEAL - NOTICE OF APPEAL FILED ON 03/01/2024

DEFENDANT JUDY'S MOODY LLC'S NOTICE OF APPEAL TO THE LAW COURT
\$175 APPEAL FEE PAID

03/02/2024 Party(s): JUDYS MOODY LLC
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 03/02/2024

WITH COVER SHEET AND UPDATED DOCKET SHEET (LAST 3 PAGES ONLY);
COPIES OF NOTICE OF APPEAL MAILED COUNSEL/PARTIES 3/2/24

03/16/2024 APPEAL - RECORD ON APPEAL DUE IN LAW COURT ON 03/26/2024

| | | | |
|------------|-------------------|----------|-------|
| 05/26/2021 | Misc Fee Payments | \$25.00 | paid. |
| 07/06/2021 | Misc Fee Payments | \$25.00 | paid. |
| 07/12/2021 | Misc Fee Payments | \$100.00 | paid. |
| 07/12/2021 | Misc Fee Payments | \$100.00 | paid. |
| 07/12/2021 | Misc Fee Payments | \$600.00 | paid. |

| | | | |
|------------|-------------------|----------|-------|
| 07/12/2021 | Misc Fee Payments | \$600.00 | paid. |
| 03/15/2022 | Misc Fee Payments | \$27.00 | paid. |
| 04/20/2022 | Misc Fee Payments | \$29.00 | paid. |
| 04/29/2022 | Misc Fee Payments | \$200.00 | paid. |
| 04/29/2022 | Misc Fee Payments | \$25.00 | paid. |
| 05/24/2022 | Misc Fee Payments | \$37.00 | paid. |
| 06/06/2022 | Misc Fee Payments | \$31.00 | paid. |
| 06/07/2022 | Misc Fee Payments | \$8.00 | paid. |
| 09/29/2022 | Misc Fee Payments | \$36.00 | paid. |
| 01/10/2023 | Misc Fee Payments | \$37.00 | paid. |
| 05/01/2023 | Misc Fee Payments | \$25.00 | paid. |
| 05/01/2023 | Misc Fee Payments | \$200.00 | paid. |
| 05/02/2023 | Misc Fee Payments | \$25.00 | paid. |
| 05/02/2023 | Misc Fee Payments | \$200.00 | paid. |
| 05/02/2023 | Misc Fee Payments | \$25.00 | paid. |
| 05/02/2023 | Misc Fee Payments | \$200.00 | paid. |
| 05/03/2023 | Misc Fee Payments | \$25.00 | paid. |
| 05/03/2023 | Misc Fee Payments | \$25.00 | paid. |
| 05/03/2023 | Misc Fee Payments | \$200.00 | paid. |
| 05/03/2023 | Misc Fee Payments | \$200.00 | paid. |
| 02/21/2024 | Misc Fee Payments | \$25.00 | paid. |
| 02/21/2024 | Misc Fee Payments | \$150.00 | paid. |
| 02/22/2024 | Misc Fee Payments | \$25.00 | paid. |
| 02/22/2024 | Misc Fee Payments | \$150.00 | paid. |
| 03/01/2024 | Misc Fee Payments | \$25.00 | paid. |
| 03/01/2024 | Misc Fee Payments | \$150.00 | paid. |
| 03/01/2024 | Misc Fee Payments | \$25.00 | paid. |
| 03/01/2024 | Misc Fee Payments | \$150.00 | paid. |
| 03/01/2024 | Misc Fee Payments | \$25.00 | paid. |
| 03/01/2024 | Misc Fee Payments | \$150.00 | paid. |
| 03/01/2024 | Misc Fee Payments | \$25.00 | paid. |
| 03/01/2024 | Misc Fee Payments | \$150.00 | paid. |
| 03/01/2024 | Misc Fee Payments | \$25.00 | paid. |
| 03/01/2024 | Misc Fee Payments | \$150.00 | paid. |

A TRUE COPY

ATTEST:

Shelley Sawyer

Clerk

facts underlying this case are recited first and the motions requesting dismissal are addressed in turn.

I. Parties and Counsel

In this case there are several Plaintiffs and Defendants. The named Plaintiffs are Peter Masucci, Kathy Masucci, Robert Morse, George Seaver, Greg Tobey, Bonnie Tobey, Hale Miller, John Grotton, Leroy Gilbert, Jake Wilson, Dan Harrington, Orlando Delogu, Judith Delogu, William Connerny, William Griffiths, Sheila Jones, Susan Domizi, Brian Beal, Charles Radis, Sandra Radis, Amanda Moeser, Chad Coffin, Lori Howell and Tom Howell.

The named Defendants are Judy's Moody, LLC, OA 2012 Trust, Ocean 503, LLC, Edward Page, Christine Page, Jeffrey Parent, Margaret Parent, James Li, Kim Newby, and Robin Seeley. Aaron Frey has also been named as a Party in Interest, in his capacity as the Attorney General of the State of Maine.

This large number of named parties corresponds to a sizable number of attorneys who have entered appearances. For the plaintiffs, not including pro se Plaintiff, Orlando Delogu, the following attorneys are of record: Benjamin Ford, John Coon, and Sandra Guay of Archipelago Law, LLC.

The Defendants are not so uniformly represented. Defendants Jeffrey and Margaret Parent are proceeding pro se. Gordon Smith of Verrill, represents Defendants Edward Page, Christine Page, James Li, Kim Newby, and Robin Hadlock Seeley ("PLNS Defendants"). David Silk and Curtis Thaxter, LLC represent Defendants Judy's Moody LLC and OA 2012 Trust ("JM & OA Defendants"). Robert Thomas and Paige Gilliard of Pacific Legal have also been admitted pro hac vice as part of JM & OA Defendants' defense team. Joseph Talbot and Emily Arvizu of Perkins Thompson, represent Ocean 503, LLC ("Ocean 503").

Party in Interest Aaron Frey, in his capacity as Attorney General of the State of Maine, is represented by Assistant Attorney Generals Lauren Parker and Scott Boak.

II. GENERAL BACKGROUND

This lawsuit is the latest battle in the war over the intertidal lands off Maine's coast. The intertidal zone encompasses the portion of the sea floor which lies between the mean high and low water marks of the tide. The intertidal zone has long been held to be property of the private landowners who live upland of the mean high water mark. Their ownership, however, is subject to certain public usage rights: fishing, fowling, navigation and any other uses reasonably incidental or related thereto. *Bell v. Town of Wells*, 557 A.2d 168, 169 (Me. 1989).

In their complaint, plaintiffs raise five separate counts, and pray for relief in the form of four separate declaratory judgments: (1) That the State of Maine holds title to all intertidal land, in trust for the public, without limitation to fishing, fowling, and navigation and with the exception of land previously alienated pursuant to the Submerged Land Act and for the purposes of promoting commerce; (2) That Pursuant to the Maine Statehood Act, Maine entered the Union on an equal footing with all other states, and consequently holds title to its intertidal land, except for discrete parcels alienated to facilitate marine commerce; (3) That pursuant to the Maine Constitution, only the Maine legislature has the authority to alienate State intertidal land but has never done so with respect to intertidal lands not used in maritime commerce; (4) That the alienation of all intertidal land in Maine may not be accomplished through "judicial legislation" or by adherence to pre-statehood Massachusetts case law.

The responsive pleadings which have been filed in an effort to dismiss the complaint are addressed in turn below.

DISCUSSION

First, the Court addresses whether the Plaintiffs have standing to bring the instant action. Next, it addresses PLNS Defendants' Special Motion to Dismiss, and finally, the Court addresses the various 12(b)(6) motions.

I. Standing

Since standing is a prerequisite to the jurisdiction of this Court, the Court addresses this argument, raised in the 12(b)(6) motions, first.

“Standing is a threshold issue bearing on the Court’s power to adjudicate disputes.” *Lamson v. Cote*, 2001 ME 109, ¶ 11, 775 A.2d 1134 (quoting *Franklin Prop. Trust v. Foresite, Inc.*, 438 A.2d 218, 220 (Me. 1981). “In Maine, standing jurisprudence is prudential, rather than constitutional.” *Roop v. City of Belfast*, 2007 ME 32, ¶ 7, 915 A.2d 966, 968. “While there is no set formula for determining standing, a court may limit access to the courts to those best suited to assert a particular claim.” *Id.* “In addition, the question of whether a specific individual has standing is significantly affected by the unique context of the claim.” *Id.*

For a plaintiff to have standing to raise an issue in a declaratory judgment action, the plaintiff must establish that they have “a claim of right buttressed by a sufficiently substantial interest to warrant judicial intervention.” *Annable v. Bd. of Env'tl. Prot.*, 507 A.2d 592, 595 (Me. 1986). *See also Chase v. Eastman*, 563 A.2d 1099, 1103 n.6 (Me. 1989) (“In order to have “standing” to assert a claim or cause of action, “[a] party must assert a personal stake in the outcome of the litigation and present a real and substantial controversy touching on the legal relations of parties with adverse legal interests.”)

Here, this Court concludes that the following Plaintiffs have standing to maintain an action against the named defendants: Robert Morse, George Seaver, John Grotton, Hale Miller, Leroy Gilbert, Jake Wilson, Dan Harrington, Susan Domizi, Greg Tobey, Amanda Moeser, Chad

Coffin, Lori Howell, Tom Howell, Peter Masucci, Kathy Masucci, William Connery, William Griffiths, Sheila Jones, Orlando Delogu, Judith Delogu, and Brian Beal.¹

The Plaintiffs who have standing in this action fit two general categories: (a) those who have had their access to the intertidal zone for recreational purposes significantly restricted as a result of intertidal jurisprudence (Massuccis, Connery, Griffiths, Jones, Delogus, and Beal); and (b) those who operate in Maine's marine economy and have had their business interests affected by the same (Morse, Seaver, Grotton, Miller, Gilbert, Wilson, Harrington, Domizi, Greg Tobey, Moeser, and the Howells).

For each category of Plaintiff to have standing, they must have a claim of right buttressed by a sufficiently substantial interest to warrant judicial intervention. With respect to the first group of Plaintiffs — those who live near the water and wish to access the intertidal zone for purposes other than fishing, fowling, and navigation — they hold a claim of right to the intertidal zone via the public's easement. Additionally, these plaintiffs have a substantial interest in use and enjoyment of the intertidal zone for ocean related activities.

With respect to the second group — those who have business or commercial interests in the intertidal zone — they too have a claim of right. Their claim of right is the same as the first group. The interest which buttresses it, however, is different — it is economic in nature. As the complaint notes, were these Plaintiffs to have access to the intertidal zone to carry on their trade or business, their operations would be more profitable. Thus, they have a claim of right, buttressed by a substantial interest, which potentially warrants judicial intervention.

¹ The Plaintiffs who do not have standing, Charles Radis, Sandra Radis, and Bonnie Tobey all do not have a substantial interest buttressing their claim of right to the intertidal zone. In the Radis's case, their mere existence as upland property owners who have an interest in giving the general public access to intertidal land does not warrant intervention. In Tobey's case, her general claims that her interest in her "livelihood" confers standing is equally unavailing.

Accordingly, all but three Plaintiffs have sufficient standing to bring their claims to this Courthouse's door.

II. PLNS Defendants' 14 M.R.S. § 556 Special Motion to Dismiss

The Court next addresses the PLNS Defendants' special motion to dismiss filed pursuant to Maine's statute preventing strategic lawsuits against public participation ("anti-SLAPP statute").

A. Factual Background

The following facts are derived from a review of the complaint, the special motion to dismiss, the opposition, and the various accompanying affidavits.² *See Nader v. Me. Democratic Party*, 2013 ME 51, ¶ 2, 66 A.3d 571. The PLNS Defendants are the following individuals: Edward and Christina Page (collectively "Pages"), James Li, Kim Newby (collectively "Li & Newby"), and Robin Seeley.

1. The Pages

The Pages own coastal property on an island located in Harpswell, Maine, including the intertidal zone adjacent to their upland property. This intertidal zone is covered with rockweed.

In September of 2018, Edward Page observed a rockweed harvester cutting rockweed from the intertidal zone without his, or his wife's permission. Believing that his deed gave him title to the adjacent intertidal area, he emailed Maine Marine Patrol to report what he observed. After reviewing the Pages deed to their property and speaking with a Cumberland County Assistant District Attorney, Maine Marine Patrol Officer Thompson confirmed their intertidal ownership and informed the Pages that, should they wish to prosecute the rockweed harvester,

² There were two oppositions filed to the Defendants' special motion. The Plaintiffs represented by counsel (all but one) filed an opposition, as did pro se Plaintiff Orlando Delogu. The Court has reviewed both oppositions carefully but, for the sake of clarity, refers to any arguments made by either the represented or pro se plaintiff(s) as coming from the "Plaintiffs."

they would be able to do so. The Pages decided not to prosecute and Officer Thompson spoke with local rockweed harvesters informally, letting them know that the Pages owned the rockweed located in the intertidal zone and that they did not authorize its harvest. Officer Thompson communicated his conversation with the harvesters to the Pages and indicated that the harvesters understood the situation and would avoid the Pages' property in the future.

In March of 2019, Edward Page again contacted Officer Thompson to inform him that the same rockweed harvester had been captured, on camera, removing rockweed from the intertidal zone adjacent to the Pages' property. Officer Thompson again contacted one of the harvesters he spoke with in September of 2019 and ordered him to stop harvesting rockweed from the Pages' property.

2. Li & Newby

James Li & Kim Newby live year round on an island located three miles off the Maine Coast in the Town of Friendship. The Li & Newby property includes the intertidal zone located adjacent to their property which is scattered with ledge and rockweed.

On July 13th, 2019, Li & Newby saw a mechanical seaweed harvester removing rockweed from their property. Li & Newby immediately reviewed the Law Court's recently issued *Ross* opinion and contacted the Maine Department of Marine Resources ("MDMR"), hoping to obtain some guidance regarding what may be done to prevent the continued harvest. The Director of Public Health at MDMR informed Li & Newby that, as long as their deed was clear regarding their ownership of the intertidal zone in question, they could contact Maine Marine Patrol and report the harvester for theft of their rockweed.

About three days later, on July 16th, 2019, the same seaweed harvester returned to take rockweed from the Li & Newby property. This time, Newby confronted the harvester who was

on a small skiff adjacent to the mechanical harvester and asked that they stop their harvesting activity. The harvester did not stop and Li contacted Maine Marine Patrol later that day. Officer Luellan of Maine Marine Patrol received Li & Newby's report and promptly reviewed their deed to determine whether they had ownership of the intertidal zone in question. After determining they did, Officer Luellan then identified the harvester as Leroy Gilbert, a Plaintiff in this action.

Gilbert continued to harvest rockweed from the Li & Newby property for two or so weeks after Newby initially requested that he stop. Each time, Li & Newby contacted Maine Marine Patrol but they were unable to respond. On August 3rd, 2019, Newby again approached Gilbert when he was harvesting rockweed in Li & Newby's intertidal zone. Newby again asked Gilbert to stop harvesting and again, Gilbert did not do so. Newby then contacted the Director of Marine Policy at MDMR as well as Officer Luellan of Maine Marine Patrol to report Gilbert's continued harvesting. On that day, Officer Luellan responded to the Li & Newby property by patrol boat and informed Gilbert that it was illegal to continue his harvest. Gilbert subsequently left the area.

3. Robin Seeley

Robin Seeley is a marine biologist who has been an outspoken proponent of rockweed conservation. She has submitted legislative and other testimony supporting rockweed conservation efforts in the past and has published websites and newsletters informing the public about various rockweed conservation issues. She is also the owner of coastal property located in the town of Pembroke, Maine.

B. Discussion

The PLNS Defendants claim that the instant lawsuit is premised on the lawful exercise of their right of petition pursuant to the Maine and United States Constitutions. Thus, they have

brought this special motion, invoking Maine’s anti-SLAPP statute to obtain dismissal of the Plaintiffs’ claims with respect to them.

Maine’s anti-SLAPP statute, found at 14 M.R.S. § 556 states as follows:

When a moving party asserts that the civil claims . . . against the moving party are based on the moving party's exercise of the moving party's right of petition under the Constitution of the United States or the Constitution of Maine, the moving party may bring a special motion to dismiss . . . The court shall grant the special motion, unless the party against whom the special motion is made shows that the moving party's exercise of its right of petition was devoid of any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual injury to the responding party. In making its determination, the court shall consider the pleading and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

14 M.R.S. § 556 (2021). This statutory framework for deciding special motions to dismiss results in a two step analysis that was adopted by the Law Court in *Morse Bros. v. Webster*, 2001 ME 70, ¶ 19, 772 A.2d 842, refined in *Nader v. Me. Democratic Party*, 2012 ME 57, ¶¶ 31-33, 41 A.3d 551, and refashioned in *Thurlow v. Nelson*, 2021 ME 58, ¶ 19, 263 A.3d 494.

The first step, a question of law, requires the trial court to “determine whether the claims against the moving party are based on the moving party’s exercise of the right to petition pursuant to the federal or state constitutions.” *Thurlow*, 2021 ME 58, ¶ 12, 263 A.3d 494. If the defendant/moving party establishes that the claims are premised on their petitioning activity, then the second step requires the non-moving party (usually the plaintiff) to set forth a prima facie case that the “moving party’s exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law and that the moving party’s acts caused actual injury to the responding party.” *Id.* ¶¶ 12-13.

A prima facie standard is a low one that requires proof of only enough evidence to allow the fact-trier to infer the fact at issue and rule in the party’s favor. *Id.* ¶ 13 (quoting *Nader v. Me. Democratic Party*, 2012 ME 57, ¶ 34, 41 A.3d 551.) It does not depend on the reliability or

credibility of the evidence. *Id.* Although not considered a third step in the anti-SLAPP framework, the requirement of showing actual injury is an important one. *See Weinstein v. Old Orchard Beach Family Dentistry LLC., et. al.*, 2022 ME 16, ¶ 5, --- A.3d --- (“The Plaintiff’s failure to meet either portion of their prima facie burden requires that the Court grant the special motion to dismiss with no further procedure.”).

With this two step framework in mind, and guided by the Law Court’s recent decision in *Weinstein*, this court embarks on an analysis of the Defendants’ special motion. Consistent with the Law Court’s jurisprudence, the Court severs the framework into three components: (1) Petitioning Activity; (2) Prima Facie Case that Petitioning Activity was Devoid of Reasonable Basis in Fact and Arguable Basis in Law; (3) Actual Injury.

1. Petitioning Activity

In the first step of an anti-SLAPP analysis the burden is on the moving party, the PLNS Defendants here, to establish that the Plaintiff’s lawsuit was brought because of their exercise of their right of petition. 14 M.R.S. § 556 offers an expansive definition of the phrase “a party’s exercise of its right of petition:”

As used in this section, "a party's exercise of its right of petition" means any written or oral statement made before or submitted to a legislative, executive or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

14 M.R.S. § 556 (2021).

a. The Pages and Li & Newby

Here, guided by the statute's expansive definition, there can be little doubt that the Pages and Li & Newby's reports to Maine Marine Patrol were an "exercise of their right of petition." The Court finds that these reports constitute "any written or oral statement . . . submitted to a[n] . . . executive . . . body." The question now becomes whether the current suit was premised on this activity. This Court finds that it was.

Paragraphs twenty five and twenty six of the Plaintiffs' complaint specifically mention the Pages, stating that they "wrongfully" claim title to the intertidal land that abuts their property in Harpswell, Maine and alleging that they have "called law enforcement to have seaweed harvesters . . . removed from the intertidal land [the Pages] unlawfully claim." (Compl. ¶¶ 25-26.)

Additionally, paragraphs twenty nine and thirty of the complaint state that Li & Newby "wrongfully" claim title to the intertidal zone which abuts their property in Friendship, Maine, and that they have "harass[ed] seaweed harvesters and call[ed] law enforcement" on harvesters who are "lawfully harvesting seaweed on intertidal land [Li & Newby] wrongfully claim to own." (Compl. ¶¶ 29, 30.)

With respect to the Pages and Li & Newby, it is clear that Plaintiffs' suit is based, at least in part, on their petitioning activity. Without their respective reports to Maine Marine Patrol, their presence in this case as named defendants likely would not be warranted. Accordingly, the Pages, as well as Li & Newby, have met their burden under step one of the anti-SLAPP framework.

In their opposition, the Plaintiffs claim that the Pages and Li & Newby would all be named Plaintiffs in this case regardless of their exercise of their right of petition. They contend that the decision to name them in the present lawsuit has nothing to do with their calls to marine

patrol but is instead premised on their exercise of dominion over the intertidal zone. The Pages and Li & Newby's calls to marine patrol, the Plaintiffs intimate, are merely an "exercise" of their dominion no different from "erecting a fence" or placing "ropes" around the intertidal sand. This argument is unavailing.

If the Plaintiffs' decision to name the Pages, Li, and Newby had nothing to do with their reports to Maine Marine Patrol, then it is curious why every single shorefront property owner who claims title to adjacent intertidal land is not named in this suit. The reason for the Pages and Li & Newby's involvement, as evidenced by the complaint itself, is their respective reports to Maine Marine Patrol.

b. Robin Seeley

The Court also finds that Ms. Seeley's writings and advocacy in support of rockweed conservation constitutes petitioning activity that is captured by the wide net cast by statute. Her writings and widely published conservation efforts are all "statements reasonably likely to enlist public participation in an effort to effect" legislative or judicial consideration of the issue of rockweed conservation.³

Additionally, it is clear from the complaint that the Plaintiffs' decision to name Seeley as a Defendant in the instant suit is a direct result of her rockweed conservation advocacy. Paragraphs thirty two through thirty five of the complaint all allege, as allegations supportive of their declaratory judgment requests, that Seeley has "published . . . falsely suggest[ive]" material, unlawfully empowering shorefront property owners to deny rockweed harvesters access to the intertidal zones they own which lay adjacent to their upland properties. (Compl. ¶ 32.)

³ This is best demonstrated by Seeley's involvement as a consultant in *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, 206 A.3d 283. (See Seeley Aff. ¶ 6.) Additionally, Seeley has provided testimony to state and federal governmental entities in support of rockweed conservation. (See Seeley Aff. ¶ 5.)

As is the case with the Pages and Li & Newby, although Seeley may be an owner of coastal property adjacent to an intertidal zone, she likely would not be named in this action had she not consistently engaged in written and oral rockweed conservation advocacy. Her activity in this respect likely helped the Plaintiffs identify her as a defendant. Nothing the Plaintiffs claim to the contrary dissuades this Court that this is the case. Accordingly, Seeley has also met her burden with respect to the anti-SLAPP framework's first step.

2. Prima Facie Case that Petitioning Activity was Devoid of Reasonable Basis in Law and Arguable Basis in Fact

a. Pages and Li & Newby

In the second step of the anti-SLAPP framework, the burden shifts from the moving party (carrying the burden for establishing that the lawsuit is based on an exercise of their “right of petition”) to the non-moving party — the Plaintiffs here, to establish that the “moving party’s exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law” *Thurlow*, 2021 ME 58, ¶ 12, 263 A.3d 494. Here, the non-moving party carries a prima facie burden which is a low standard that requires “only *some* evidence on every element of proof necessary to obtain the desired remedy.” *Id.* ¶ 13. (emphasis added).

In this case, the Plaintiffs have failed to meet their prima facie burden. While they have set forth some evidence that the deeds to the Pages and Li & Newby’s property do not successfully convey title to the adjacent intertidal zone, this is not enough to meet the exceptionally high standard imposed on the non-moving party by the anti-SLAPP framework’s second step. The burden on the Plaintiffs here is to set forth prima facie evidence that the Defendants’ petitioning activity was devoid of “*any reasonable* factual support or *any arguable* basis in law.” 14 M.R.S. § 556 (2021) (emphasis added).

With respect to the Pages and Li & Newby, the Defendants cannot make the required showing. The record establishes that their respective decisions to contact Maine Marine Patrol had some reasonable basis in fact and an arguable basis in law.

With respect to the Pages' decision to contact Maine Marine Patrol on two occasions, they did so because they had a reasonable factual belief that they owned the intertidal zone adjacent to their upland property. In September of 2018, the Pages observed a rockweed harvester capturing vegetation within the intertidal zone adjacent to their property. Based on this observation, and the language in their deed which conveyed "all the right, title and interest of the grantors in and to the flats and land lying between the high and low water marks on Cundys Harbor and the New Meadows River abutting and adjacent to the above described premises," they contacted Maine Marine Patrol. Later, in March of 2019, they again contacted Maine Marine Patrol again when that same harvester was captured, on camera, removing rockweed from the intertidal water. This harvester did so even after receiving a verbal warning from law enforcement. Thus, regardless of the chain of title questions raised by the Plaintiffs as to the propriety of the intertidal zone conveyance, the Pages still had a reasonable basis in fact and an arguable basis in law for their petitioning activity.

Similarly, Li & Newby also had a reasonable basis in fact and an arguable basis in law for their decision to contact Maine Marine Patrol. The record evidences that Li & Newby's decision to contact Maine Marine Patrol was informed by two things: (1) The Law Court's decision in *Ross v. Acadian Sea Plants*, 2019 ME 45, 206 A.3d 283 and (2) MDMR's guidance. In their affidavit, Li & Newby note that they first observed a rockweed harvester in their intertidal zone shortly after the *Ross* opinion was issued by the Law Court. They then obtained a copy of the *Ross* opinion to determine their options. One day later, they received direction from

MDMR's Director of Public Health, telling them that they can contact Maine Marine Patrol if their deed is clear regarding their ownership of the intertidal zone. The deed to Li & Newby's property conveys an interest in the "shore, rocks and flats" adjacent to their property. Thus, at the time Li & Newby contacted Maine Marine Patrol regarding the harvesting of Rockweed from their property, they had reviewed a recent law court opinion holding that rockweed is the private property of upland owners who have clearly been conveyed the intertidal zone via their deed's language and received guidance from MDMR to contact Maine Marine Patrol. This information and guidance form a reasonable basis in fact and an arguable basis in law for their decision to contact law enforcement.

b. Robin Seeley

With regard to Seeley, the Plaintiffs contend that the petitioning activity which serves as a partial basis for the instant suit is devoid of a reasonable basis in fact and an arguable basis in law because the deed to Seeley and her husband's property does not contain language which conveys the adjacent intertidal land to them. While this argument may have merit, such an argument is not the burden the Plaintiffs' carry.

Section 556's framework requires the Plaintiffs to make a prima facie case that Seeley's writings, which helped identify her as a Defendant in this lawsuit, were devoid of a reasonable basis in fact and an arguable basis in law. In their opposition, the Plaintiffs make no such attempt to address Seeley's advocacy. Accordingly, the Plaintiffs have also failed to establish their prima facie burden with respect to Seeley.

c. Conclusion

Because the Plaintiffs fail to meet their prima facie burden of showing that the PLNS Defendants' petitioning activity was devoid of *any* reasonable basis in fact or arguable basis in

law, the Plaintiffs' complaint cannot survive the PLNS Defendants' special motion. This would normally conclude the Court's analysis. However, given the law court's recent decision in *Weinstein* which further flushed out the actual injury requirement of the anti-SLAPP framework's second step, the Court discusses why the PLNS Defendants would also prevail under the actual injury portion of the framework's second step.

3. Actual Injury

The second half of the anti-SLAPP framework's second step also requires the non-moving party to show that the "moving party's acts caused actual injury to the responding party." *Thurlow*, 2021 ME 58, ¶ 12, 263 A.3d 494. "Actual injury means a reasonably certain monetary valuation of the injury suffered by the Plaintiff." *Weinstein*, 2022 ME 16, ¶ 7, --- A.3d ---. "Actual injury could include . . . quantifiable losses of money or other resources or identifiable special damages." *Id.*

"Complaints challenged by an anti-SLAPP special motion to dismiss differ from other civil complaints because a complaint's notice pleading may be insufficient in the face of a special motion to dismiss." *Id.* ¶ 9. While, by nature, a notice pleading is traditionally forgiving, the "special motion to dismiss procedure in anti-SLAPP matters is . . . a more precise mechanism" for which notice pleading is insufficient. *Id.* ¶ 10 (quoting *Desjardins v. Reynolds*, 2017 ME 99, ¶ 17, 162 A.3d 228). Such precision is mandated by the anti-SLAPP statute itself, which requires the opponent of a special motion to dismiss to show "that the moving party's acts caused actual injury to [them]." *Id.*

Although a Plaintiff may not always be able to foresee a challenge by way of special motion, the plaintiff may later amend his or her complaint to allege actual injury with greater specificity and may bolster any allegations of actual injury through his or her affidavit. *Id.* The existence of actual injury may be considered only to the extent that the asserted injury was both

alleged in the complaint and established on a prima facie basis in opposition to the special motion to dismiss. *Id.* ¶ 8.

In their complaint asking for multiple declaratory judgments, the Plaintiffs allege that such judgments are needed, in part, because of the economic harm the Law Court’s erroneous holdings have caused to Maine’s marine economy. Specifically, in their affidavit, the Plaintiffs allege that the PLNS Defendants prohibition of rockweed harvest within the intertidal zone costs them by increasing their fuel costs, prolonging the time spent harvesting, driving up raw material costs, affecting their marketplace competitiveness, and creating investor skepticism. Thus, the alleged harm is mostly economic in nature.

These speculative and imprecise allegations of economic harm are not enough to establish actual injury for anti-SLAPP purposes. While such notice pleading is appropriate in the context of an ordinary complaint, it does not pass muster under an anti-SLAPP challenge which, as *Weinstein* makes clear, requires more precisional pleading, and a “reasonably certain monetary valuation” for the Plaintiffs’ damages. *Weinstein*, 2022 ME 16, ¶ 7, --- A.3d ---. Such precision is not found in the Plaintiffs’ complaint, nor in their opposition.⁴ The Plaintiffs also have not sought amendment of their complaint.

Accordingly, the PLNS Defendants’ Special Motion to Dismiss is Granted. Any claims with respect to the PLNS Defendants are therefore dismissed. Because the PLNS Defendants’ special motion disposes of any claims against them, their motion filed pursuant to M.R. Civ. P. 12(b)(6) is moot.

II. 12(b)(6) Motions for Dismissal

⁴ In their opposition, the Plaintiffs state that they intend to introduce “business valuation and commodity pricing, but for the purposes of this motion, such evidence is premature.” While formal valuations and commodity pricing reports may have been premature, some quantifiable economic harm was required.

With the claims against the PLNS Defendants dismissed pursuant to their anti-SLAPP motion, what remains pending are two motions for dismissal brought pursuant to M.R. Civ. P. 12(b)(6). The motions largely raise the same legal grounds for dismissal but are premised on different factual records. As such, the factual background section of the order is separated per movant, but the legal analysis of the Plaintiffs' claims is conducted without consideration as to the separate nature of the motions.

A. Standard of Review

"A motion to dismiss pursuant to M.R. Civ. P. 12(b)(6) tests the legal sufficiency of the claim." *Seacoast Hangar Condo. II Ass'n v. Martel*, 2001 ME 112, ¶ 16, 775 A.2d 1166 (quoting *New Orleans Tanker Corp. v. Dep't of Transp.*, 1999 ME 67, ¶ 3, 728 A.2d 673). When the court reviews a motion to dismiss, "the claim is examined 'in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.'" *Lalonde v. Cent. Me. Med. Ctr.*, 2017 ME 22, ¶ 11, 155 A.3d 426. Allegations in the complaint are deemed true for the purposes of deciding a motion to dismiss. *Id.* "A dismissal should only occur when it appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that he might prove in support of his claim." *Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 7, 843 A.2d 43 (quoting *McAfee v. Cole*, 637 A.2d 463, 465 (Me. 1994)) (internal quotations omitted).

B. Factual Background

When reviewing a motion to dismiss brought pursuant to M.R. Civ. P. 12(b)(6), the Court views the factual allegations contained in the complaint in a light most favorable to the non-moving party. *See Lalonde*, 2017 ME 22, ¶ 11, 155 A.3d 426. Accordingly, the Court finds the following facts for the purposes of deciding the instant, pending motions.

I. OA & JM Defendants

The OA & JM Defendants are a group comprised of OA 2012, a Maine trust with trustee, John Howe residing in Kennebunk, Maine, and Judy's Moody, LLC, a Maine Corporation located in Wells, Maine. Both OA 2012 and Judy's Moody LLC are the record owners of beachfront property in Wells. They both claim title to the intertidal zones which abut their upland property and restrict public access to them. OA 2012 posts signs along their beachfront property which say "Private Beach, No Loitering."

Similarly, personnel associated with Judy's Moody, often approach members of the public standing on intertidal land adjacent to their upland property and request that they leave or vacate the premises because they do not have Judy's Moody's permission to be there. Judy's Moody's beachfront home is located directly across the street from Plaintiffs Peter and Kathy Masucci. Peter and Kathy Masucci claim that their access to the intertidal zone is severely restricted by Judy's Moody's signs and actions.

Both OA 2012 and Judy's Moody, the Plaintiffs here claim, are engaging in conduct that they are not legally entitled to engage in because the intertidal zone is not private property. Instead, they claim that the intertidal zone is held in trust for the public's use, as is the rest of the land seaward of the mean low water mark.

2. *Ocean 503*

Ocean 503, LLC, is a Maine Corporation with a location in Wells, Maine and is also a record owner of beachfront property within the town. As is the case with OA 2012 and Judy's Moody, Ocean 503 posts signs on its property that say "Moody Beach is a Private Beach to the low water mark. No Loitering." This sign, the Plaintiffs claim, is an improper exercise of dominion and control over the intertidal zone abutting their upland property since that land is, in fact, held in trust for the public's use.

C. Discussion

The OA & JM Defendants' Motion to Dismiss and Ocean 503's Motion to Dismiss, each raise similar legal challenges to the Plaintiff's five count complaint. Generally, the challenges raised can be broken into two categories: (2) claims regarding ownership of the intertidal zone; and (3) claims regarding the scope of the public's right to use the intertidal zone.⁵

1. Claims of Ownership

In Counts II, III and V of their Complaint, the Plaintiffs seek to establish the State of Maine's ownership, in fee, of all intertidal lands by asserting that any alienation or transfer of intertidal land which occurred after Maine was granted statehood, occurred in violation of various constitutional provisions.⁶ In Count II, the Plaintiffs claim that such alienation occurred in violation of the so called 'Equal Footing Doctrine.'⁷ See U.S. Const. art. IV, §§ 1-3. In Count III, the Plaintiffs claim that such alienation of intertidal land was a product of "judicial legislation" in violation of separation of powers principles enshrined in Maine's Constitution. See Me. Const. art. 3, §§ 1-2. In Count IV, the Plaintiffs challenge the Defendants' chains of title to their upland parcels.

a. Equal Footing Doctrine

For lack of a better phrase, the Defendants response to the Plaintiffs' second count is simple: asked and answered. This Court agrees. Even viewing the facts plead in a light most favorable to the Plaintiffs, Count II fails to state a claim as a matter of law.

⁵ As an initial matter, the Court notes that a declaratory judgment claim cannot serve as an independent cause of action. A declaratory judgment is, instead, a form of equitable relief that must accompany an independent, underlying claim which warrants the requested relief. Here, the court treats the Plaintiffs' first four counts as bringing claims arising under either the federal or Maine Constitutions. Thus, they survive this query. Count IV, however, makes a claim that can only be characterized as an action to quiet the title in the State of Maine, which under any conceivable accrual date, would have run past its statutory limitation. As such, Count IV is dismissed for its failure to state a claim.

⁶ Count I does not raise any legally cognizable claim and, instead, notice pleads the form of equitable relief requested by the Plaintiffs. Thus, the Court does not address it here.

⁷ The "equal footing" doctrine is based on the principle that new States enter the Union on an equal footing with the original thirteen States. See *Bell v. Wells*, 557 A.2d 168, 172 n.13 (Me. 1989.)

The crux of the equal footing argument made by the Plaintiffs is that, because Maine entered the union on an “equal footing” with the original thirteen colonies, the principles which governed intertidal zone ownership for those thirteen states, governed Maine’s as well. And, because title to intertidal land was held by those original states, title to Maine’s intertidal lands was also vested in the State upon its inception. *See* Orlando Delogu, *Intellectual Indifference-- Intellectual Dishonesty: The Colonial Ordinance, the Equal Footing Doctrine, and the Maine Law Court*, 42 Me. L. Rev. 43, 56, (1990) (“Maine, upon entering the Union, did so on an “equal footing” with the original states, and accordingly acquired title in 1820 to all tidelands within its jurisdictional borders.”).

However, this argument for Maine’s ownership of intertidal land was addressed and dispelled by the Law Court in *Bell v. Town of Wells (Bell II)*, 557 A.2d 168, 172 (Me. 1989), the second of two cases with the same name which addressed the scope of the public’s right to use intertidal land, *see also Bell v. Town of Wells (Bell I)*, 510 A.2d 509, 511-17 (Me. 1986). In *Bell II*, the Law Court stated that the ‘equal footing doctrine’ did not vest title to intertidal land in the State because Maine’s Constitution expressly honored any laws in full force and effect in the Massachusetts colony at the time Maine’s territory was extracted into sovereignty. *Bell II*, 557 A.2d 168, 172 (Me. 1989). One of these laws granted title to intertidal lands to the adjacent upland owners, in fee.⁸ *Id.*

⁸ In their response to the Defendants motions, the Plaintiffs also make a supremacy argument. They state that because the equal footing doctrine is a product of federal court jurisprudence and statute, it preempts this State’s constitution and the Law Court’s interpretation of such provisions. This argument also fails. “Federal preemption of state law takes three forms: express preemption, field preemption, and conflict preemption.” *Puritan Med. Prods. Co. LLC v. Copan Italia S.P.A.*, 2018 ME 90, ¶ 13, 188 A.3d 853. None of these preemptive categories are implicated here. There is no federal law regarding the equal footing doctrine’s application to Maine’s intertidal lands which Congress has “expressly defined” as preempting Maine law on the matter. *Id.* There is no state law which interferes with regulation of a field congress intended to fully occupy, and there is no evidence that state law regarding the equal footing doctrine stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Id.*

Since the *Bell II* decision, the Law Court has not revisited the equal footing doctrine's application to the issue of intertidal ownership and has not reversed its holding that the equal footing doctrine does not operate to vest title to intertidal lands in the State of Maine.

Accordingly, the Plaintiffs cannot request a declaration invalidating private, upland owner's title to intertidal land premised upon application of the 'equal footing doctrine.' Count II is dismissed.

b. Judicial Legislation

In Count III, the Plaintiffs seek a declaration from this Court deriding the Law Court's prior intertidal jurisprudence as "judicial legislation," and stating that the Law Court's decisions, beginning with *Bell I*, impermissibly usurp the legislature's authority to regulate and manage the public trust. Again, even viewed in a light most favorable to the Plaintiffs, this argument is unavailing.

In *Bell I*, the Law Court discussed the longstanding practice of Maine and Massachusetts courts to recognize the colonial ordinance, the piece of colonial era Massachusetts legislation which vests title to intertidal lands in the adjoining upland property owners, as part of the state's common law. *Bell I*, 510 A.2d at 514. The colonial ordinance was so rooted in Maine's common law, the *Bell I* court noted, that "doing away with any part of it, or failing to give it its full force and effect statewide" would be an impermissible act of judicial legislation. *Id.* (quoting *Barrows v. McDermott*, 73 Me. 441, 448-49 (1882)). Any such alteration to the colonial ordinance, the Court continued, "must be made by the "proper law making power." *Id.*

When such a law making power did attempt to alter the legal landscape painted by the colonial ordinance, via legislation, the Law Court rejected the attempt. *Bell II*, 557 A.2d 168, 176-79 (Me. 1989). In *Bell II*, the Law Court struck down a statute adding intertidal lands as an

asset to the public trust, declaring such a redistribution of intertidal land ownership an unconstitutional taking in violation of the Fifth Amendment. *Id.*

Identifying what the common law is, as the Law Court did in *Bell I*, and invalidating a legislative attempt to alter the common law that runs afoul of the Constitution, as the Law Court did in *Bell II*, is the very essence of the judicial function. Similarly, clarifying the scope of its earlier holdings as the Court did in *McGarvey v. Whittredge*, 2011 ME 97, 28 A.3d 620 and *Ross*, serves the judiciary's interpretive function. Nothing about the Law Court's line of cases addressing ownership of intertidal lands violates the separation of powers doctrine. The Law Court's jurisprudence on the topic has, in sum: identified the colonial ordinance as the common law of this state, interpreted that common law to define what rights are held by whom, and shielded the beneficiaries of this common law from legislation which offends constitutional principles.

Accordingly, Count II of the Plaintiffs' complaint also fails to state a claim upon which relief can be granted. Under no set of facts that the Plaintiffs may prove, will they be able to invalidate the prior effects of the Law Court's intertidal jurisprudence.

c. Title Challenges

In Count V of their complaint, the Plaintiffs seek a declaration quieting title to intertidal lands adjacent to the upland property owned by the Defendants, in the State of Maine.⁹

A declaratory judgment action cannot be used to create a cause of action that does not otherwise exist. *See Colquhoun v. Webber*, 684 A.2d 405, 411 (Me. 1996); *Hodgdon v. Campbell*, 411 A.2d 667, 668 (1980), it may only be brought to resolve a justiciable controversy. *Lewiston Daily Sun v. Sch. Admin. Dist. No. 43*, 1999 ME 143, ¶ 20, 738 A.2d 1239. Thus, a

⁹ While not specifically characterized as "an action to quiet title," this Court cannot see the Plaintiffs' request as anything other.

declaratory judgment action cannot be used to revive a cause of action that is otherwise barred by the passage of time. *Sold Inc. v. Town of Gorham*, 2005 ME 24, ¶ 10, 868 A.2d 172. An action to quiet title is a civil action to which the six-year statute of limitations applies. *See Efstathiou v. Aspinquid Inc.*, 2008 ME 145, ¶ 14, 956 A.2d 110; 14 M.R.S. § 752 (2021).

Based on the facts plead in the complaint, even viewed in the most favorable light possible, this action to quiet title to the intertidal lands in the State of Maine has been brought 120 years too late. The complaint mentions that the conveyances it seeks to invalidate were made in the seventeenth century. Even using the last year of that century (1899) as the date of accrual, Count V is time barred by the applicable statute of limitations.¹⁰

2. *Scope of the Public's Usage Rights*

In Count IV of their complaint, the Plaintiffs seek a declaration from this court which would expand the public's right to use the intertidal zone. Specifically, the Plaintiffs ask for declaration that the public's rights of use expand beyond fishing, fowling and navigation, the rights reserved for members of the public in *Bell II*.

Although the law of intertidal land ownership has remained unchanged in principle since *Bell II*, the scope of the public's usage rights has been pliable. The Law Court has maintained a flexible approach to determining what public uses are allowed in the intertidal area and have endorsed "uses that are somewhat related to, but not coextensive with, "fishing," "fowling," and "navigation." *McGarvey*, 2011 ME 97 ¶ 40, 28 A.3d 620. Thus, what constitutes a permissible use of the intertidal zone by the public has taken many different forms. *See id.* (discussing the ways in which uses tangentially related or unrelated to fishing, fowling and navigation have been

¹⁰ This would be true even if the Plaintiff had successfully plead the elements of an action to quiet title, *see* 14 M.R.S. § 6651 (2021).

allowed). Employing a “sympathetically generous approach” to defining the public’s rights of use in the intertidal area, the Law Court has endeavored to balance an “expansive approach” allowing certain activities which are generous to the public “against the upland owner’s rights.” *Id.*

In this case, certain Plaintiffs claim that their access to the ocean’s intertidal zone has been restricted by ether signage or verbal instruction to leave or refrain from entering the privately held intertidal zone. Plaintiffs Peter Masucci, Kathy Masucci, William Connerny, William Griffiths, Sheila Jones, Orlando Delogu, Judith Delogu, and Brian Beal all allege that their access to the intertidal zone is restricted either by signage or verbal warning and direction.

While it is not clear from the complaint itself what activities the Plaintiffs prefer to engage in, in the intertidal area, it is conceivable that the activity of the Massuccis, Connerny, Griffiths, Jones, and the Delogus includes walking, running, or some other form of movement. In Bean’s case, he is an academic researcher who seeks to access the intertidal zone to further his marine research. Whether any movement or research related activity is permissible within the intertidal zone has not been specifically addressed by the Law Court. And, given the expansive and broad approach that the Law Court has taken with regard to defining these usage rights, it is conceivable that movement related, or research based activity may be an acceptable use.¹¹

Accordingly, there is a set of facts which Plaintiffs Peter Masucci, Kathy Masucci, and William Connerny, William Griffiths, Sheila Jones, Orlando Delogu, Judith Delogu, and Brian Beal may prove in support of their claims. Accordingly, Count IV survives the 12(b)(6) motions.

¹¹ Although Count IV survives, the other plaintiffs with standing — those who seek declaratory judgments regarding their right to use the intertidal zone for the commercial purpose of harvesting marine plants — have little chance of success as to Count IV. The Law Court was clear in *Ross* that even under the flexible balancing approach the Court employs, removing marine plants from private intertidal land is not a permissible activity. *Ross*, 2019 ME 45 ¶¶ 31-32, 206 A.3d 283.

CONCLUSION

This order has, in effect, limited this lawsuit to claims against Defendants Judy's Moody LLC, OA 2012 Trust, Ocean 503, LLC, Jeffrey Parent and Margaret Parent. Pursuant to the PLNS Defendants anti-SLAPP Motion, all counts against Edward Page, Christine Page, James Li, Kim Newby, and Robin Seeley are dismissed.

Pursuant to Ocean 503, LLC, and the JM & OA Defendants' Rule 12(b)(6) motions, Counts II, III, and V against them have been dismissed. All that remains with respect to these Defendants is Count IV.

Plaintiffs Charles Radis, Sandra Radis and Bonnie Tobey do not have standing to bring this suit. Any claims prosecuted by them are dismissed.

Entry is:

Defendants Edward Page, Christine Page, James Li, Kim Newby and Robin Seeley's Special Motion to Dismiss is Granted.

Defendants Edward Page, Christine Page, James Li, Kim Newby and Robin Seeley's Motion to Dismiss filed pursuant to M.R. Civ. P. 12(b)(6) is Moot.

Defendants Judy's Moody LLC and OA 2012's Motion to Dismiss filed pursuant to M.R. Civ. P. 12(b)(6) is Granted in Part.

Defendant Ocean 503 LLC's Motion to Dismiss filed pursuant to M.R. Civ. P. 12(b)(6) is
Granted in Part.

The clerk is directed to incorporate this order into the docket by reference pursuant to M.R. Civ.
P. 79(a).

Dated:

4/15/22



John O'Neil Jr.
Justice, Maine Superior Court

Entered on the Docket: 4/15/2022

Each of the pending motions are addressed below.

I. Parents' Motion to Dismiss

The effect of this Court's April 15th Order was as follows: The PLNS Defendants had all counts against them dismissed. The Legal Entity Defendants had all counts — except for Count IV — against them, dismissed. All Counts remained against the Parents.

Presumably having seen the success of their counterparts, the Parents brought the current 12(b)(6) motion, seeking to dismiss all counts, including Count IV, against them.

A. Legal Standard

"A motion to dismiss pursuant to M.R. Civ. P. 12(b)(6) tests the legal sufficiency of the claim." *Seacoast Hangar Condo. II Ass'n v. Martel*, 2001 ME 112, ¶ 16, 775 A.2d 1166 (quoting *New Orleans Tanker Corp. v. Dep't of Transp.*, 1999 ME 67, ¶ 3, 728 A.2d 673). When the court reviews a motion to dismiss, the complaint is examined "in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Lalonde v. Cent. Me. Med. Ctr.*, 2017 ME 22, ¶ 11, 155 A.3d 426. Allegations in the complaint are deemed true for the purposes of deciding a motion to dismiss. *Id.* "A dismissal should only occur when it appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that he might prove in support of his claim." *Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 7, 843 A.2d 43 (quoting *McAfee v. Cole*, 637 A.2d 463, 465 (Me. 1994)) (internal quotations omitted).

B. Factual Background

The Parents are named as Defendants in the complaint "as individuals residing in Waldoboro, Maine." The complaint makes two factual allegations against them: "(1) They wrongfully claim title to intertidal land that abuts their property in the same town; and (2) They

have called law enforcement to remove people lawfully harvesting seaweed on land they wrongfully claim is theirs.” (Compl. ¶¶ 27-28.)

These factual allegations are incorporated into the Plaintiffs’ five counts. Count I notice pleads the form of equitable relief requested — a Declaratory Judgment. Counts II and III allege constitutional violations, Count IV seeks a declaratory judgment as to the scope of the public’s rights of use in the intertidal zone, and Count V seeks to invalidate upland owners’ title to the intertidal lands. The Parents seek to dismiss all counts against them.

C. Discussion

In this Court’s prior order, it dismissed Counts II, III, and V against the Legal Entity Defendants for failure to state a claim. The Court also dismissed all counts against the PLNS Defendants pursuant to their special motion to dismiss filed under 14 M.R.S. § 556. Importantly, the PLNS Defendants and the Legal Entity Defendants, comprise two distinct groups. The Legal Entity Defendants were named in the lawsuit for their decision to restrict access to the intertidal zone to which they have title. The PLNS defendants were named because of their decision to call law enforcement to enforce their title to the intertidal zone. The factual allegations against the Parents are similar to those levied against the PLNS Defendants.

Because the PLNS Defendants were dismissed by operation of Maine’s Anti-SLAPP statute, the Court never reached the merits of their concurrently filed 12(b)(6) motion. Had the court reached that analysis with regard to those defendants, it likely would have reached the same conclusion, dismissing all counts except Count IV against them.

With regard to Counts II, III, and V, the analysis with respect to the Parents is the same.² The Court concludes, for reasons set forth more fully in its April 15th order, that each of those

² In the April 15th order, in footnote six, the court noted it would not address Count I of the Complaint because Count I merely notice pleads the form of relief that the plaintiffs seek.

counts, as alleged against the Parents, fail to state a claim upon which relief can be granted.

Count II fails to state a claim because the Law Court has ruled that the equal footing doctrine cannot serve as a basis for vesting the State with title to the intertidal area; Count III fails to state a claim because the Law Court's intertidal jurisprudence is not improper judicial legislation that violates separation of powers principles; and Count V fails, on statute of limitations grounds, to state a quiet title claim.

In its April 15th Order, the Court permitted Count IV to survive because the Plaintiffs had properly stated a claim for a declaratory judgment expanding the public's usage rights in the intertidal area. The Court held:

In this case, certain Plaintiffs claim that their access to the ocean's intertidal zone has been restricted by ether signage or verbal instruction to leave or refrain from entering the privately held intertidal zone. Plaintiffs Peter Masucci, Kathy Masucci, William Connerny, William Griffiths, Sheila Jones, Orlando Delogu, Judith Delogu, and Brian Beal all allege that their access to the intertidal zone is restricted either by signage or verbal warning and direction.

While it is not clear from the complaint itself what activities the Plaintiffs prefer to engage in, in the intertidal area, it is conceivable that the activity of the Massuccis, Connerny, Griffiths, Jones, and the Delogus includes walking, running, or some other form of movement. In Bean's case, he is an academic researcher who seeks to access the intertidal zone to further his marine research. Whether any movement or research related activity is permissible within the intertidal zone has not been specifically addressed by the Law Court. And, given the expansive and broad approach that the Law Court has taken with regard to defining these usage rights, it is conceivable that movement related, or research based activity, may be an acceptable use.

Masucci et. al. v. Judy's Moody et. al., Order at 11, (April 15, 2022).

In its order, the Court was clear that under the Law Court's flexible, intertidal jurisprudence, it is conceivable that the declaratory relief the Plaintiffs seek is obtainable with regard to the Legal Entity Defendants. In footnote eleven of that order however, the Court also noted that with regard to those Plaintiffs who seek access to the intertidal zone to commercially

harvest sea plants, they have little chance at success — especially considering the Law Court’s decision in *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, 206 A.3d 283.

Thus, to the extent the Plaintiffs wish to obtain a declaratory judgment allowing commercial seaweed harvest in the intertidal, it is unlikely that they will succeed. However, on a 12(b)(6) motion to dismiss, an unlikelihood of success is not dispositive. The applicable standard is, whether, viewed in a light most favorable to them, the Plaintiffs complaint states a claim pursuant to any legal theory. The Court concludes, under the Law Court’s flexible approach to determining allowed intertidal activity, that there is “some legal theory” that would allow the Plaintiffs to obtain a declaratory judgment allowing either certain recreational activities or different, non-Rockweed specific, commercial activity in the intertidal zone.

Accordingly, the Parents’ 12(b)(6) Motion is granted with respect to Counts II, III, and V only.³

II. Defendants Judy’s Moody LLC, OA 2012 Trust, and Ocean 503 LLC’s Motions for More Definite Statements

After this Court’s April 15th order permitting Count IV to survive against the Legal Entity Defendants, all three entities — Judy’s Moody LLC, OA 2012 Trust, and Ocean 503 LLC — filed Motions for More Definite Statements pursuant to M.R. Civ. P. 12(e).

M.R. Civ. P. 12(e) provides:

³ The Court recognizes the discrepancy that exists between this outcome and the outcome of the prior order which dismissed all counts against the PLNS Defendants who were similarly situated to the Parents. However, to understand this discrepancy, the parties need look no further than the purposes which underlie the separate vehicles for dismissal utilized by the different subsets of Defendants

Maine’s Anti-SLAPP statute protects defendants from plaintiffs who attempt, through the courts, to infringe upon an individual’s right to petition the government. *See Thurlow v. Nelson*, 2021 ME 58, ¶ 8, 263 A.3d 494. Thus, an Anti-SLAPP Motion requires the court to focus on the reason that suit has been brought. Under 12(b)(6), the question instead is whether the complaint, as filed, has states a legally cognizable claim — these are two different standards. The application of which, here, results in different outcomes for the similarly situated Parents and PLNS Defendants.

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before filing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

M.R. Civ. P. 12(e).

In their respective Motions, the Legal Entity Defendants complain that Count IV fails to identify “(1) how the Plaintiffs are using, or intend to use, the portion of [the Legal Entity Defendants’] property located in the intertidal zone, [and] (2) how and when [the Legal Entity Defendants] prevented any of the Plaintiffs from engaging in those uses or intended uses on [the Legal Entity Defendants’] property.” (Legal Entity Defs. Mot. More. Def. Statement 2.) In response, the Plaintiffs argue that the Defendants waived their right to file a motion for a more definite statement, and that, regardless, their complaint puts the Legal Entity Defendants on fair and adequate notice of their claims.

First, the Court addresses the Plaintiffs’ threshold argument that the Legal Entity Defendants are precluded from making a Rule 12(e) motion by M.R. Civ. P. 12(g). That rule provides:

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom *any defense or objection* then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated

M.R. Civ. P. 12(g) (emphasis added).

The Plaintiffs’ threshold argument is defeated by the text of Rule 12(g) itself. Rule 12(g) requires that a party with an available *defense or objection* raise that defense or objection at the appropriate time. M.R. Civ. P. 12(e) does not provide a defense or an objection. Instead, it

provides a procedural mechanism by which a litigant may request more information from a prosecuting party in order to fully respond to the allegations levied in a pleading.⁴ Thus, the service that Rule 12(e) provides to perplexed litigants does not constitute a “defense” or “objection” within the scope of Rule 12(g).

Second, the Court takes up the Legal Entity Defendant’s claims that the Plaintiffs’ complaint is “so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading.” M.R. Civ. P. 12(e). Here, under Maine’s lax pleading standards, the Court sees no need for the Plaintiffs to file a more definite statement.

To be a proper pleading, M.R. Civ. P. 8(a) requires a Plaintiff to include “a short and plain statement of the claim showing that the pleader is entitled to relief,” and “a demand for judgment for the relief which the pleader seeks.” M.R. Civ. P. 8(a). As the Court concluded in its April 15th Order, Count IV of the Plaintiffs’ complaint seeks the following: a declaratory judgment expanding the public’s rights of use in the intertidal area to include certain recreational activities other than fishing, fowling, and navigation.

The Court understands the Legal Entity Defendants desire for more information regarding how the Plaintiffs use the intertidal area and what the Legal Entity Defendants do to prevent that usage. However, under M.R. Civ. P. 8(a), that level of specificity is not required at the pleading stage. *See Burns v. Architectural Doors & Windows*, 2011 ME 61 ¶ 21, 19 A.3d 823 (“[A]n initial pleading may be presented in general terms . . . [but later] a plaintiff must be prepared to clearly identify the asserted cause or causes of action and the elements of each claim.”) Count IV of the complaint, in its current form, contains sufficient allegations to which

⁴ The Plaintiffs argue that M.R. Civ. P. 12(g) is “in the interest of judicial economy and meant to eliminate unnecessary postponement of litigation proceedings as applied to pre-answer motions.” If anything, a motion for a more definite statement helps avoid later postponement of judicial proceedings by forcing a plaintiff to fully flush out their claims early on.

the remaining Defendants may respond. Accordingly, the Motions for a More Definite Statement are denied.

III. PLNS Defendants' Motion for Attorneys Fees Pursuant to Anti-SLAPP Statute 14 M.R.S. § 556

After obtaining a dismissal under Maine's Anti-SLAPP statute as part of this Court's April 15th order, the PLNS Defendants have returned to ask for attorney's fees and other reasonable costs associated with successfully litigating their Anti-SLAPP Motion. *See* 14 M.R.S. § 556 (2022) ("If the court grants a special motion to dismiss, the court may award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters.")

In support of their request, they assert that the Plaintiffs' claims lacked merit — especially in light of the 12(b)(6) dismissals of Counts II, III and V — and that the Plaintiffs' claims were clearly made in retaliation for the PLNS Defendants' lawful exercise of their first amendment rights. In opposition, the Plaintiffs claim that their suit was not meritless and that, given the Law Court jurisprudence on the issue, filing a claim against upland property owners exercising — what the Plaintiffs claim to be — their "unlawfully obtained intertidal rights," was their only available litigation strategy.

When assessing a request for Attorney's fees, the trial Court considers a number of factors:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions presented;
- (3) the skill required to perform the legal services;
- (4) the preclusion of other employment by the attorneys due to acceptance of the case;
- (5) the customary fee in the community;
- (6) whether the fee is fixed or contingent;
- (7) the time limitations imposed by the client or circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation and ability of the attorneys;
- (10) the undesirability of the case;
- (11) the nature and length of the professional relationship with the client; and
- (12) awards in similar cases.

Mancini v. Scott, 2000 ME 19, ¶ 10, 744 A.2d 1057. In an Anti-SLAPP case, the court may also consider the merits of the case, with a special consideration of the Anti-SLAPP statute's purposes. See *Maietta Constr. Inc. v. Wainwright*, 2004 ME 53 ¶ 6, 847 A.2d 1169 (“[The Anti-SLAPP Statute] was designed to combat litigation without merit filed to dissuade or punish the exercise of First Amendment rights of defendants.”)

In this case, neither of the parties provide arguments with respect to the *Mancini* factors. Mindful of that coextensive failure, the Court does not blindly engage in such an analysis. Instead, the Court addresses the parties' arguments regarding whether the Plaintiffs' decision to name the PLNS Defendants in the lawsuit had merit.

At the outset, the Court notes that while it may be the case that the Court dismissed most of the Plaintiffs' claims on 12(b)(6) motions, that does not mean the claims were “without merit” for the purposes of awarding attorneys fees in the Anti-SLAPP context. In this case, the Plaintiffs were clearly frustrated by Law Court decisions which restricted their ability to enjoy the intertidal area for certain recreational and/or commercial purposes. Thus, they devised a litigation strategy which involved collecting Plaintiffs who have experienced personal or professional difficulty as a result of the Law Court's decisions. Those Plaintiffs then named, as Defendants, upland property owners who have effectuated the Law Court's holdings and caused their difficulties. Unfortunately for the Plaintiffs, to cause this difficulty, the PLNS Defendants either called law enforcement, or engaged in private and public advocacy in favor of Rockweed conservation, all of which are activities protected by 14 M.R.S. § 556's broad definition of the term “petitioning activity.”

Although the decision to name the PLNS Defendants flowed from their petitioning activity, the motivation behind naming them was not to “punish” the PLNS Defendants for

“exercising their First Amendment Rights.” *Maietta Constr. Inc.*, 2004 ME 53 ¶ 6, 847 A.2d 1169. The motivation was to challenge the PLNS Defendants’ (and other shorefront owners’) ability to restrict access to the intertidal area. The PLNS Defendants were merely identifiable conduits through which the Petitioners hoped to reach their desired result.

Accordingly, the Court determines that the Plaintiffs’ suit was not filed with the malintent that the Anti-SLAPP was enacted to punish and dissuade. The Court therefore declines to exercise its discretion to award the PLNS Defendants attorney’s fees pursuant to 14 M.R.S. § 556.

IV. Defendants Judy’s Moody LLC, OA 2012 Trust, and Ocean 503 LLC’s Motion for Reconsideration

In light of the Plaintiffs’ opposition to the Legal Entity Defendants motion for a more definite statement, the Legal Entity Defendants then moved for reconsideration of this Court’s decision allowing Count IV of the Plaintiff’s complaint to survive dismissal. In support, the Legal Entity Defendants claim that the Plaintiffs opposition to the motion for a more definite statement forecloses the legal sufficiency of their claim because it clarifies that the Plaintiffs are requesting a declaratory judgment that all “public activity” be allowed in the intertidal area. (Pls.’Opp.’n Mot. More Definite Statement 5-6.) The Plaintiffs object to the Legal Entity Defendants’ motion on the grounds that the Court cannot consider the Plaintiffs’ opposition to the motion for a more definite statement in a Rule 7(b)(5) analysis. Party-in-Interest Frey also objects on similar grounds.

A. Discussion

“Motions for reconsideration of an order shall not be filed unless required to bring to the court’s attention an error, omission, or new material that could not previously have been presented.” M.R. Civ. P. 7(b)(5). Rule 7(b)(5) is intended to deter disappointed

litigants from seeking “to reargue points that were or could have been presented to the court on the underlying motion.” *Shaw v. Shaw*, 2003 ME 153, ¶ 8, 839 A.2d 714. The Rule gives the court “more leeway” when responding to motions that are frequently brought to relitigate fully presented and decided issues. *Ten Voters of City of Biddeford v. City of Biddeford*, 2003 ME 59, ¶ 11, 822 A.2d 1196.

In this case, the Court agrees with the Plaintiffs and the Party-in-Interest. On the underlying Rule 12(b)(6) motions which the Legal Entity Defendants have asked this Court to reconsider, the analysis was constrained to the legal sufficiency of the complaint. *See Lalonde*, 2017 ME 22, ¶ 11, 155 A.3d 426. An analysis the Court determined fell in favor of the Plaintiffs.

The Legal Entity Defendants cannot now, on reconsideration, ask this Court to examine a document outside the pleadings for the purposes of reexamining a 12(b)(6) order. Additionally, the Court is not persuaded by the Legal Entity Defendants’ arguments that the information contained in the Plaintiffs opposition to the Motion contains new material. Instead, that opposition contains a summary of the allegations contained in Count IV of their complaint. As discussed *supra* 5, Count IV of the complaint — in its current form — does state a legally sufficient claim upon which relief may be granted.

The Court discerns no error in its prior conclusion and identifies no omission or new information which requires a different result. The Legal Entity Defendants’ motion for reconsideration is denied.

Entry Is:

Defendants Jeffrey and Margaret Parent’s Motion to Dismiss is Granted in Part •

The Legal Entity Defendants Motions for More Definite Statements are Denied •

The PLNS Defendants request for Attorney's Fees and Costs under the Anti-SLAPP Statute is Denied.

The Legal Entity Defendants' Motion for Reconsideration is Denied.

The Clerk is directed to incorporate this order into the docket by reference pursuant to M.R. Civ. P. 79(a).

Dated:

8/1/22



John O'Neil Jr.
Justice, Maine Superior Court

Entered on the Docket: 8/5/22

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. RE-2021-0035 ✓

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|---|---|
| PETER MASUCCI, et al., |) |
| |) |
| Plaintiffs, |) |
| |) |
| v. |) |
| |) |
| JUDY'S MOODY, LLC, et al., |) |
| |) |
| Defendants, |) |
| |) |
| and |) |
| |) |
| AARON FREY, in his capacity as |) |
| Attorney General of the State of Maine, |) |
| |) |
| Party-in-interest. |) |

**CONSOLIDATED ORDER
ON DEFENDANTS' PENDING
DISPOSITIVE MOTIONS**

Before the Court are Defendants' motions for summary judgment on Count IV, Plaintiffs' sole surviving claim, and Defendant OA 2012 Trust's motion to dismiss the same.¹ See M.R. Civ. P. 8(c), 12(b)(7), 56. For the reasons below, the Court grants Defendants Judy's Moody, LLC and Ocean 503, LLC's motions for summary judgment, grants Defendant OA 2012 Trust's motion to dismiss, and dismisses Defendant OA 2012 Trust's motion for summary judgment as moot.

BACKGROUND

I. Factual Context

Defendant Judy's Moody, LLC owns property on Moody Beach at 407 Ocean Avenue in Wells, Maine. (Def. Judy's Moody's S.M.F. ¶¶ 1-2.) The property's boundaries encompass the intertidal zone, and its northerly border directly abuts a public way that provides public access to

¹ Following this Court's Order on Justiciability, the remaining plaintiffs are Kathy and Peter Masucci, Orlando Delogu, and William Connerney, and the remaining defendants are Judy's Moody, LLC, Ocean 503, LLC, and OA 2012 Trust.

the ocean. (Def. Judy's Moody's S.M.F. ¶ 3; AG's Add'l S.M.F. (Judy's Moody) ¶ 21; Def. Judy's Moody's Reply to AG's Add'l S.M.F. ¶ 21.) Keith Dennis, Judy's Moody's sole member, has posted non-permanent signs bearing phrases such as "private beach," "notice: private beach to lowest tide," and "no trespassing" on portions of Judy's Moody's seawall, and has sometimes used pieces of wood, orange cones, or raked seaweed to delineate where the property neighbors the public way. (Def. Judy's Moody's S.M.F. ¶¶ 4-5; AG's Add'l S.M.F. (Judy's Moody) ¶ 24.)

Defendant OA 2012 Trust owns property on Moody Beach at 3 Ocean Avenue in Wells, Maine and claims ownership of the seaward intertidal land. (Def. OA 2012 Trust's S.M.F. ¶ 1; AG's Add'l S.M.F. (OA 2012 Trust) ¶ 21.) The property immediately abuts Ogunquit Beach and a public right of way that provides members of the public access to it from the Town of Ogunquit's parking lot. (Def. OA 2012 Trust's S.M.F. ¶¶ 2, 6.) Defendant OA 2012 Trust has installed two signs on its seawall: the first faces the public way and reads "Moody Beach (to your left) is a private beach to the low water mark. No loitering. No dogs allowed," and the second faces the ocean and reads "Moody Beach. Private. No loitering." (Def. OA 2012 Trust's S.M.F. ¶¶ 7-8.)

Defendant Ocean 503, LLC owns property on Moody Beach at 503 Ocean Avenue in Wells, Maine and claims ownership of its intertidal land. (Def. Ocean 503's S.M.F. ¶¶ 1-3; AG's Add'l S.M.F. (Ocean 503) ¶ 21.) The property abuts a public way that provides members of the public access to the ocean. (Def. Ocean 503's S.M.F. ¶ 10.) Defendant Ocean 503 has two signs on its seawall: the first faces the public way and reads "Moody Beach is a private beach to the low water mark. No loitering," and the second says "Private Beach." (Def. Ocean 503's S.M.F. ¶¶ 9-10.)

Plaintiff Orlando Delogu has walked the length of Moody Beach's intertidal land but is not specifically aware of which portions belong to each Defendant. (*See* Def. OA 2012 Trust's S.M.F. ¶ 26; Def. Ocean 503's S.M.F. ¶¶ 25, 36; Def. Judy's Moody's S.M.F. ¶ 35.) Although Plaintiff

Delogu feels that the signs posted on Moody Beach indicate a threat to his right of public access to Maine's intertidal zone, he still walks that land despite the signs and has never been approached by anyone about his activity on or asked to leave any part of Moody Beach. (*See* Def. OA 2012 Trust's S.M.F. ¶ 26; Def. Ocean 503's S.M.F. ¶¶ 36-37; Def. Judy's Moody S.M.F. ¶¶ 34-36, 47.)

Plaintiff William Connerney is a backlot property owner who regularly walks and jogs on Moody Beach's intertidal land and has previously used it for other recreational activities. (*See* Def. OA 2012 Trust's S.M.F. ¶ 28; Def. Ocean 503's S.M.F. ¶ 22; Def. Judy's Moody's S.M.F. ¶ 45.) The private property signs and boundary demarcations on Moody Beach have negatively impacted Plaintiff Connerney's beachgoing experience; he feels unwelcome and imagines possible confrontations with upland property owners whenever he is present on the intertidal land, which detracts from otherwise relaxing walks on the beach. (*See* AG's Add'l S.M.F. (OA 2012 Trust) ¶¶ 50, 55-56, 65-66; AG's Add'l S.M.F. (Ocean 503) ¶¶ 54, 58-59; AG's Add'l S.M.F. (Judy's Moody) ¶¶ 55-59, 64-65.) Plaintiff Connerney has never been approached by anyone about his activity on or asked to leave any part of Moody Beach. (*See* Def. OA 2012 Trust's S.M.F. ¶ 46; Def. Ocean 503's S.M.F. ¶ 28; Def. Judy's Moody's S.M.F. ¶ 46.)

Plaintiffs Kathy and Peter Masucci are backlot property owners who regularly walk the length of Moody Beach's intertidal land. (*See* Def. OA 2012 Trust's S.M.F. ¶ 27; Def. Ocean 503's S.M.F. ¶¶ 23-24; Def. Judy's Moody's S.M.F. ¶¶ 38, 42.) The private property signs and boundary demarcations on Moody Beach suggest to Plaintiffs Masucci that passage over the intertidal land would be trespassing. (*See* AG's S.M.F. (OA 2012 Trust) ¶¶ 27-29, 38-39, 41; AG's S.M.F. (Ocean 503) ¶¶ 38-39, 41, 43; AG's S.M.F. (Judy's Moody) ¶¶ 28, 38, 40, 46-47.) Plaintiffs Masucci feel unwelcome on Moody Beach, intimidated, and concerned that the upland property owners will ask them to leave the intertidal zone, which detracts from their enjoyment of the beach. (AG's S.M.F.

(OA 2012 Trust) ¶¶ 30-31, 40, 42, 45-46; AG's S.M.F. (Ocean 503) ¶¶ 31-32, 34-35, 42, 44-48; AG's S.M.F. (Judy's Moody) ¶¶ 29-31, 39, 41, 48-49.) Plaintiffs Masucci have never been approached about their activity on or asked to leave any part of Moody Beach. (See Def. OA 2012 Trust's S.M.F. ¶ 27; Def. Ocean 503's S.M.F. ¶¶ 32-34; Def. Judy's Moody's S.M.F. ¶¶ 39, 43.)

II. Procedural History

On April 22, 2021, Plaintiffs filed a five-count complaint. Count I notice pleaded declaratory judgment, Plaintiffs' requested form of equitable relief. Counts II, III, and V generally aimed to establish the State's fee ownership of Defendants' intertidal lands and asserted that any pre-statehood alienation or transfer of such land occurred in violation of various constitutional provisions. In Count IV, Plaintiffs sought to expand the scope of the public's permissible activities within Maine's intertidal zone beyond fishing, fowling, and navigation, the rights of use the Law Court reserved for the public in *Bell v. Town of Wells (Bell II)*, 557 A.2d 168, 169 (Me. 1989).

On May 26, 2021, Defendant Ocean 503 individually, and Defendants Judy's Moody and OA 2012 Trust together, each filed M.R. Civ. P. 12(b)(6) motions to dismiss the complaint on largely similar grounds. On April 15, 2022, the Court granted these motions with respect to Counts I–III and V and denied them with respect to Count IV.

On May 1, 2023, Defendant Ocean 503 filed a motion for summary judgment on Count IV, and on May 2, 2023, Defendants OA 2012 and Judy's Moody individually followed suit. Each motion argues, in relevant part, that Defendants are entitled to judgment as a matter of law on Count IV in light of the Law Court's opinion in *Bell II*, 557 A.2d at 169. Defendant OA 2012 Trust's motion also piggybacks an alternative dispositive argument; namely, that the Court should dismiss Count IV on the basis of claim preclusion or Plaintiffs' failure to join indispensable parties.

DISCUSSION

I. Defendant OA 2012 Trust's Motion to Dismiss on the Basis of Res Judicata

“Res judicata ‘is a court-made collection of rules designed to ensure that the same matter will not be litigated more than once.’” *Cutting v. Down East Orthopedic Assocs., P.A.*, 2021 ME 1, ¶ 10, 244 A.3d 226 (quoting *Machias Sav. Bank v. Ramsdell*, 1997 ME 20, ¶ 11, 689 A.2d 595). There are two components to the doctrine: “collateral estoppel, also known as issue preclusion, and claim preclusion.” *Wilmington Tr. Co. v. Sullivan-Thorne*, 2013 ME 94, ¶ 7, 81 A.3d 371 (quoting *Kurtz & Perry, P.A. v. Emerson*, 2010 ME 107, ¶ 16, 8 A.3d 677).

Claim preclusion, which is at issue in the instant case, “bars the relitigation of claims if: (1) the same parties or their privies are involved in both actions; (2) a valid final judgment was entered in the prior action; and (3) the matters presented for decision in the second action were, or might have been, litigated in the first action.” *Id.* (quoting *Guardianship of Jewel M.*, 2010 ME 80, ¶ 40, 2 A.3d 301). The third element is subject to a transactional test, where the court “examin[es] the aggregate of connected operative facts that can be handled together conveniently for purposes of trial to determine if they were founded upon the same transaction, arose out of the same nucleus of operative facts, and sought redress for essentially the same basic wrong.” *Id.* ¶ 8 (quoting *Sebra v. Wentworth*, 2010 ME 21, ¶ 12, 990 A.2d 538). “What factual grouping constitutes a transaction [is] to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they [form] a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations.” *Id.* (quoting *KeyBank Nat'l Ass'n v. Sargent*, 2000 ME 153, ¶ 17, 758 A.2d 528).

The Court concludes that all three elements of claim preclusion are satisfied. First, the same parties or their privies were involved in both *Bell* and the instant case. The State represented

the public's interest in Moody Beach's intertidal land as a party-in-interest in the *Bell* opinions and participates now in the same capacity. (Def. OA 2012 Trust's S.M.F. ¶ 14); see *Bell v. Inhabitants of Wells*, No. CV-84-124, 1987 Me. Super. LEXIS 256, at *2-3 (Sept. 14, 1987); see also *Bell v. Town of Wells (Bell I)*, 510 A.2d 509, 510 nn.1-2, 519 (Me. 1986); *Bell II*, 557 A.2d at 168. It is also undisputed that Defendant OA 2012 Trust is in privity with its predecessor-in-title, Kevin Howe, who was a named plaintiff in the *Bell* litigation. (Def. OA 2012 Trust's S.M.F. ¶¶ 13, 18); see *Beal v. Allstate Ins. Co.*, 2010 ME 20, ¶ 20, 989 A.2d 733 ("Privity exists when two parties have a commonality of ownership, control, and interest in a proceeding.")

Further, although none of the present plaintiffs were named parties in *Bell*, they are in privity with several who were as a result of a common interest—calcifying their right to the recreational use and enjoyment of Moody Beach's intertidal land. See *Ne. Harbor Golf Club, Inc. v. Town of Mount Desert*, 618 A.2d 225, 227 (Me. 1992) ("[S]ubstance over form controls the inquiry into whether privity will be found."). In *Bell*, the Attorney General sought to protect the public's interest in Moody Beach by arguing that the Colonial Ordinance granted the public general recreational rights to the intertidal zones of all Maine beaches. *Bell*, 1987 Me. Super. LEXIS 256, at *2-3; see also *Bell I*, 510 A.2d at 510-11, 519; *Bell II*, 557 A.2d at 168. Separately, the defendant backlot owners in *Bell* endeavored to safeguard their access to Moody Beach by "assert[ing] that they had acquired a private and personal easement to use the intertidal zone . . . , regardless of whether the public at large enjoyed such a right." *Bell II*, 557 A.2d at 169 n.7; see *Bell*, 1987 Me. Super. LEXIS 256, at *49. The *Bell* trial court also appointed a guardian ad litem to represent all unnamed or unknown defendants not actually served with process who may have had an interest in the Moody Beach intertidal land at issue. *Bell I*, 510 A.2d at 510 n.2.

In the instant case, Plaintiff Delogu is a member of the general public and Plaintiffs

Masucci and Connerney are backlot property owners. Each of these plaintiffs regularly recreates on Moody Beach’s intertidal land and seeks a declaration that such activity is within their rights—this interest precisely mirrors that of the abovementioned *Bell* parties.² Plaintiffs and those *Bell* parties share the same stake in the outcome of both cases; accordingly, the Court concludes that their mutuality of interest is sufficient to establish privity. *See Ne. Harbor Golf Club, Inc.*, 618 A.2d at 227 (holding that a “commonality of interest” justified claim preclusion on the basis of privity where the facts supporting standing were the same for the parties in both actions).

Second, it is undisputed that *Bell* resulted in a valid final judgment. (Def. OA 2012 Trust’s S.M.F. ¶¶ 13, 32); *see Bell II*, 557 A.2d at 169 (“[T]he plaintiff oceanfront owners at Moody Beach hold title in fee to the intertidal land subject to an easement . . . permitting public use only for fishing, fowling, and navigation . . . and any other uses reasonably incidental or related thereto.”).

Lastly, this matter could have easily been—and was, largely—presented in *Bell*. As would be the case here, *Bell* involved examining the history and text of the Colonial Ordinance, as well as its incorporation into and present application under Maine common law. The parties’ conflict in *Bell* related to the same property, Moody Beach’s intertidal land, and also concerned upland owners’ attempts to prevent backlot owners and the general public from recreating on it. Indeed, the records in both cases reference substantially similar recreational activities and private property signs. Moreover, the parties in each case shared the same motivations: the upland owners strove to more broadly exclude the public from their intertidal land, while backlot owners and the general public pushed to preserve their use and enjoyment of that property. In both cases, the parties sought redress for essentially the same alleged wrong—contravention of the public trust rights of use.

² It is not dispositive that the defendant backlot owners in *Bell* sought to preserve their intertidal rights through legal theories other than the public trust doctrine. *See Sebra*, 2010 ME 21, ¶ 12, 990 A.2d 538 (noting that a claim may still be precluded even when its legal theory, requested form of relief, or evidence differs from that in the prior suit).

Consequently, Defendant OA 2012 Trust's motion to dismiss is granted on the basis of claim preclusion. The Court declines to address whether such a disposition would be similarly appropriate on the ground of Plaintiffs' alleged failure to join indispensable parties.

II. Defendants Judy's Moody and Ocean 503's Summary Judgment Motions

a. Legal Standard

The summary judgment record consists only of the parties' supported statements of material fact and the portions of the record referenced therein. *See Dorsey v. N. Light Health*, 2022 ME 62, ¶ 10, 288 A.3d 386. Summary judgment is appropriate if that record, construed in the nonmovant's favor, "demonstrates that there is no genuine issue of material fact in dispute and the moving party would be entitled to a judgment as a matter of law at trial." *Chartier v. Farm Fam. Life Ins. Co.*, 2015 ME 29, ¶ 6, 113 A.3d 234; *see* M.R. Civ. P. 56(c).

A material fact "has the potential to affect the outcome of the suit, and a genuine issue of material fact exists when a fact-finder must choose between competing versions of the truth, even if one party's version appears more credible or persuasive." *Dorsey*, 2022 ME 62, ¶ 10, 288 A.3d 386 (quoting *Yankee Pride Transp. & Logistics, Inc. v. UIG, Inc.*, 2021 ME 65, ¶ 10, 264 A.3d 1248). The evidence offered in support of a genuine issue of material fact "need not be persuasive at that stage, but . . . must be sufficient to allow a fact-finder to make a factual determination without speculating." *Est. of Smith v. Cumberland Cnty.*, 2013 ME 13, ¶ 19, 60 A.3d 759.

b. Analysis

As a threshold matter, the facts in Defendants' respective summary judgment records are largely immaterial or undisputed; thus, the core issue before the Court is whether, based on those records, Defendants would be entitled to a judgment as a matter of law on Count IV at trial.

In Count IV, Plaintiffs seek a declaratory judgment that (1) "the original drafters [of the

Colonial Ordinance] did not intend to forever limit the description of the public trust contained therein to fishing, fowling, and navigation” and, in fact, (2) “the public trust extends to whatever the state sees fit to allow and regulate exercising its sovereign police power and through its own legislative and regulatory processes.” (Pls.’ Compl. ¶¶ 105-06.) Despite Count IV’s broad language, the facts in the summary judgment records chiefly concern Plaintiffs’ recreational activity on Defendants’ intertidal land; indeed, they primarily refer to recreational walking.

The Law Court has clearly articulated that the common law rights of intertidal use derived from the Colonial Ordinance and held in public trust are limited to “fishing, fowling, and navigation . . . and any other uses reasonably incidental or related thereto,” and specifically rejected the argument that general recreational activity, including walking, is reasonably related to those categories.³ *Bell II*, 557 A.2d at 169, 173, 175-76. Consequently, it is apparent that granting Plaintiffs’ requested relief would require setting aside established precedent, which is outside the bounds of this Court’s jurisdiction. The Court grants Defendants’ motions for summary judgment.

CONCLUSION


For the aforementioned reasons, the entry is as follows:

- Plaintiffs’ Count IV claim against Defendant OA 2012 Trust is **DISMISSED** as barred by the doctrine of res judicata. Correspondingly, Defendant OA 2012 Trust’s motion for summary judgment as to Count IV is dismissed as **MOOT**.
- Defendants Judy’s Moody, LLC and Ocean 503, LLC’s respective motions for summary judgment are **GRANTED** as to Count IV, Plaintiffs’ last remaining claim.

The clerk shall incorporate this Order into the docket by reference. M.R. Civ. P. 79(a).

Dated:

1/26/24



John O’Neil, Jr.
Justice, Maine Superior Court

³ Hence, the Attorney General’s claim that the public trust includes Plaintiffs Masucci and Connerney’s right to walk unfettered across Defendants’ intertidal land also fails. (AG’s Opp. to Def. Judy’s Moody’s Mot. Summ. J. 1.)

Entered on the Docket: 2/5/2024⁹

“private beach,” “notice: private beach to lowest tide,” and “no trespassing” on the ocean-facing portions of Judy’s Moody’s seawall, and has occasionally used pieces of wood, orange cones, or raked seaweed to delineate where the property’s northerly boundary abuts the public way.

b. OA 2012 Trust

Defendant OA 2012 Trust owns property on Moody Beach at 3 Ocean Avenue in Wells, Maine and claims ownership of the seaward intertidal land. The property’s seawall bears a sign that reads “Moody Beach (to your left) is a private beach to the low water mark. No loitering. No dogs allowed.” James Howe, Defendant OA 2012 Trust’s sole beneficiary, has never tried to remove the sign and consents to its message, but no one associated with the trust has ever approached members of the public to ask them to relocate from its property.

c. Ocean 503, LLC

Defendant Ocean 503, LLC owns property on Moody Beach at 503 Ocean Avenue in Wells, Maine and claims ownership of the seaward intertidal land. Mark Montesi, a representative of Defendant Ocean 503, installed signs on the property’s seawall reading “private beach” and “Moody Beach is a private beach to the low water mark. No loitering.” No one from Defendant Ocean 503 has ever asked the public to leave its property.

d. Margaret and Jeffrey Parent

Defendants Margaret and Jeffrey Parent own waterfront property on Moody Beach in Waldoboro, Maine by deed, which describes the property’s boundary as running “to the waters of Back River Cove.” Defendants Parent claim ownership of the intertidal land seaward of their upland property and the seaweed affixed to the rocks therein. No plaintiff has ever been present or conducted any activity, including rockweed harvesting, on Defendants Parent’s intertidal land.

II. Plaintiff Information

a. Marine Industry Plaintiffs¹

Fourteen of the named plaintiffs derive income from a profession intrinsically tied to ocean resources—oyster farming, clam and seaweed harvesting, marine biology, and seaweed product manufacturing—and generally allege that upland beachfront owners’ claims of title to the intertidal portion of Maine’s coast threaten their livelihood. None of these plaintiffs have ever been on Defendants’ intertidal land, seen signage related to its use, or been denied access to it.

b. Crow’s Nest Proprietors

Plaintiffs William Griffiths and Sheila Jones, owners of the Crow’s Nest Resort in Old Orchard Beach, Maine, allege that their livelihood is threatened by Defendants’ intertidal ownership claims. Plaintiff Griffiths avers that in his eight years of owning the resort, six patrons have said they visited Moody Beach and only two or three have asked about the signs posted on it. Plaintiff Jones states that only five or six of the resort’s thousands of guests have told her they visited Moody Beach. There is no indication that any of these guests were on Defendants’ intertidal portions of Moody Beach, and no guest has ever informed Plaintiffs Griffiths or Jones that they were asked to leave the beach or would no longer stay at the resort as a result of the signage. Plaintiff Griffiths visited Moody Beach around fifty years ago, but he is uncertain whether he was on Defendants’ intertidal land, and he was never asked to leave. Plaintiff Jones has never been on Moody Beach, much less seen the signage on or been denied access to Defendants’ intertidal land.

c. Remaining Plaintiffs

Plaintiff William Connerney is a trustee of Connerney Nominee Trust, which owns property behind Moody Beach located at 130 South Tibbetts Road in Wells, Maine. While Plaintiff

¹ This group of plaintiffs includes Brian Beal, Robert Morse, George Seaver, Greg Tobey, Hale Miller, Leroy Hilbert, John Grotton, Jake Wilson, Dan Harrington, Susan Domizi, Amanda Moeser, Lori and Tom Howell, and Chad Coffin.

Connerney has never been on the intertidal portions of Moody Beach owned by Defendants Parent, he has engaged in various recreational activities on the intertidal land owned by Defendants Ocean 503, Judy's Moody, and OA 2012 Trust. Since these defendants installed private property signs on Moody Beach, Plaintiff Connerney has become concerned that they will unlawfully challenge his use of their intertidal land and ask him to leave. Plaintiff Connerney continues to use the intertidal portions of Moody Beach despite the signage, but he now attempts to limit his activity to when these defendants are not around or otherwise avoids using their intertidal land to eliminate the possibility of such a confrontation. To date, Plaintiff Connerney has never been approached by anyone associated with any of the named defendants or denied access to their intertidal land.

Plaintiffs Judith and Orlando Delogu are residents of Portland, Maine who allege that their enjoyment of Maine's coast has been curtailed by the intimidating private property signs Defendants posted on their portions of Moody Beach. Mr. Delogu has never been on the intertidal areas of Moody Beach owned by Defendants Parent, but he has walked the length of the intertidal land owned by Defendants Ocean 503, Judy's Moody, and OA 2012 Trust to better understand the character of their signs. Although Mr. Delogu feels these signs act as a barrier to his right of public access to Maine's intertidal land, he has never been approached about his activity on or asked to leave any part of Moody Beach. Mrs. Delogu has never been present on Moody Beach, seen the signage, or been denied access to Defendants' intertidal land.

Plaintiffs Kathy and Peter Masucci are co-trustees of the Masucci Trust, which owns the property they reside in year round located behind Moody Beach at 484 Ocean Avenue in Wells, Maine. Plaintiffs Masucci allege that their access to and enjoyment of the intertidal portions of Moody Beach have been unlawfully diminished by Defendants' installation of private property signs and other boundary demarcations. While Plaintiffs Masucci have never been on the intertidal

portions of Moody Beach owned by Defendants Parent, they have historically engaged in various recreational and sedentary activities on the intertidal land owned by Defendants Ocean 503, Judy's Moody, and OA 2012 Trust. Both Plaintiffs Masucci still regularly walk across these defendants' respective intertidal zones, but they no longer stop to enjoy those areas of Moody Beach for fear of being confronted and asked to leave. Defendants have neither approached Plaintiffs Masucci about the activities permissible within their intertidal zones nor denied them access to that property.

III. Procedural History

On April 22, 2021, Plaintiffs filed a five-count complaint. Count I notice pleaded declaratory judgment, Plaintiffs' requested form of equitable relief. Counts II, III, and V generally aimed to establish the State's fee ownership of Defendants' intertidal land and asserted that any pre-statehood alienation or transfer of such property occurred in violation of various constitutional provisions. In Count IV, Plaintiffs sought to expand the scope of the public's permissible activities within Maine's intertidal zone beyond fishing, fowling, and navigation, the rights of use the Law Court reserved for the public in *Bell v. Town of Wells (Bell II)*, 557 A.2d 168, 169 (Me. 1989).

On May 26, 2021, Defendant Ocean 503 individually, and Defendants Judy's Moody and OA 2012 Trust together, each filed M.R. Civ. P. 12(b)(6) motions to dismiss the complaint on largely similar grounds. On April 15, 2022, the Court granted these motions with respect to Counts I–III and V and denied them with respect to Count IV. The Court explained that Count IV survived because the Law Court, which customarily takes a flexible approach to defining intertidal usage rights, had not yet addressed whether any movement or research-based activity is permissible.

On April 28, 2022, Defendants Parent also filed a M.R. Civ. P. 12(b)(6) motion to dismiss all counts. On August 1, 2022, the Court granted the motion with respect to Counts I–III and V and denied it with respect to Count IV. Again the Court clarified that Count IV subsisted because,

given the Law Court’s historically generous approach to defining intertidal usage rights, there was “some legal theory” that would allow Plaintiffs to obtain a declaratory judgment permitting certain recreational or non-rockweed specific commercial activity in the intertidal zone.

On May 1, 2023, Defendant Ocean 503 filed a motion for summary judgment on Count IV, and on May 2, 2023, Defendants OA 2012, Parent, and Judy’s Moody followed suit. Each motion generally argues that Count IV is nonjusticiable for lack of standing or genuine controversy.²

DISCUSSION

I. Legal Standard

A complaint seeking declaratory judgment must present a justiciable controversy, or “an active dispute of real interests between the litigants.” *Hathaway v. City of Portland*, 2004 ME 47, ¶ 11, 845 A.2d 1168 (quoting *Randlett v. Randlett*, 401 A.2d 1008, 1011 (Me. 1979)). “A justiciable case or controversy involves ‘a claim of present and fixed rights, as opposed to hypothetical or future rights, asserted by one party against another who has an interest in contesting the claim.’” *Id.* (quoting *Connors v. Int’l Harvester Credit Corp.*, 447 A.2d 822, 824 (Me. 1982)); *see also Berry v. Daigle*, 322 A.2d 320, 325 (Me. 1974) (“Although the Declaratory Judgments Act expands the range of available relief, it does not relax the requirements of justiciability.”) “A decision issued on a non-justiciable controversy is an advisory opinion, which [the court has] no authority to render except on solemn occasions, as provided by the Maine Constitution.” *Flaherty v. Muther*, 2011 ME 32, ¶ 87, 17 A.3d 640 (citing *Connors*, 447 A.2d at 824).

“Standing is a condition of justiciability that a plaintiff must satisfy in order to invoke the court’s subject matter jurisdiction in the first place.” *Dubois v. Town of Arundel*, 2019 ME 21,

² To the extent that some defendants do not specifically argue standing, the Court considers it sua sponte. *See Homeward Residential, Inc. v. Gregor*, 2015 ME 108, ¶ 20, 122 A.3d 947 (explaining that a court may “notice and act on issues relating to its authority at any time, on its own motion or on the motion of a party”).

¶ 6, 202 A.3d 524 (quoting *Bank of Am., N.A. v. Greenleaf*, 2015 ME 127, ¶ 7, 124 A.3d 1122). To establish standing to seek declaratory relief, a plaintiff must show that their opponent’s “action constitutes ‘an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.’” *Madore v. Maine Land Use Regulation Comm’n*, 1998 ME 178, ¶ 13, 715 A.2d 157 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). “In Maine, standing is prudential, not constitutional,” necessitating a context-specific analysis, and “[t]he plaintiffs bear the burden of establishing standing, which is determined based on the circumstances that existed when the complaint was filed.” *Black v. Bureau of Parks and Lands*, 2022 ME 58, ¶¶ 26-27, 288 A.2d 346 (citations omitted).

II. Analysis

a. Marine Industry Plaintiffs

The Marine Industry Plaintiffs’ Count IV claim against Defendants is nonjusticiable for lack of standing because their alleged injury—economic harm—is not particularized. Rather, these plaintiffs broadly allege that upland owners’ claims to own the intertidal portion of the beach seaward of their properties, including the rockweed attached to rocks located therein, threaten their livelihoods. There is no record evidence that Defendants’ asserted ownership of their adjacent intertidal land in particular has injured the Marine Industry Plaintiffs’ ability to earn a living.³

It is not lost on this Court that the *Ross* decision significantly impacts those whose livelihoods depend on the commercial availability of rockweed. See *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 33, 206 A.3d 283 (“[R]ockweed attached to and growing in the intertidal zone

³ On October 30, 2019, Defendants Parent approached a non-party seaweed harvester cutting and removing rockweed attached within their intertidal land and informed him that he needed their permission to do so. Plaintiffs contend that this interaction generates a justiciable controversy because it presumably caused the harvester never to return, thereby injuring Plaintiffs Morse and Grotton’s economic right to purchase seaweed harvested from the rocks within Defendants Parent’s intertidal land and subject to the public trust. The record does not support this tenuous inference.

is the private property of the adjacent upland landowner. Harvesting rockweed from the intertidal land is therefore not within the collection of rights held in trust by the State.”). Nonetheless, these plaintiffs’ claims are nonjusticiable against Defendants and must be dismissed. It is at the Law Court’s discretion whether these plaintiffs should participate as amici curiae on this critical issue.

b. Crow’s Nest Proprietors

Plaintiffs Griffiths and Jones’s Count IV claims are also nonjusticiable for want of standing because their allegation that Defendants’ intertidal ownership threatens their livelihood lacks particularity. There is no record evidence, and the Court declines to speculate, that (1) the six Crow’s Nest Resort customers who visited Moody Beach were present on Defendants’ intertidal land, (2) the three customers who asked about the signs on Moody Beach were referring to those posted on Defendants’ properties, or that (3) the resort lost any patronage as a result of Defendants’ actions. Accordingly, Plaintiffs Griffiths and Jones’s claims against Defendants must be dismissed.

c. Remaining Plaintiffs

The remaining plaintiffs generally allege, in contravention of *Bell II*, that Defendants’ use of private property signs and other boundary-delineating materials to assert intertidal ownership has chilled their lawful recreational use and enjoyment of a resource held in public trust. *See Bell II*, 557 A.2d at 169 (holding that “plaintiff oceanfront owners at Moody Beach hold title in fee to the intertidal land subject to an easement, to be broadly construed, permitting public use only for fishing, fowling, and navigation . . . and any other uses reasonably incidental or related thereto.”).

Plaintiff Judith Delogu lacks standing to pursue Count IV against Defendants for her failure to establish a particularized injury. Mrs. Delogu has never been present or seen the signage on any part of Moody Beach, much less on Defendants’ intertidal land. Indeed, the only facts related to Mrs. Delogu’s intertidal activities concern her use and enjoyment of Maine’s coast in general.

Therefore, Mrs. Delogu's claim against Defendants is nonjusticiable and must be dismissed.

Plaintiffs Kathy and Peter Masucci, William Connerney, and Orlando Delogu lack standing to maintain an action against Defendants Margaret and Jeffrey Parent on the same ground. These parties stipulated that none of the named plaintiffs have ever stepped foot or engaged in any activity on Defendants Parent's intertidal land or been prevented from doing so. There are also no record facts indicating that Defendants Parent posted private property signs or otherwise demarcated the boundaries of their property. Therefore, Plaintiffs Masucci, Connerney, and Orlando Delogu's claims against Defendants Parent are nonjusticiable and must be dismissed.

In contrast, Plaintiffs Masucci, Connerney, and Orlando Delogu have established the requisite standing to pursue Count IV against Defendants Judy's Moody, Ocean 503, and OA 2012 Trust. Each of these plaintiffs evidenced their historical use of these defendants' intertidal land and specified the ways in which the private property signs and boundary markers located thereon have chilled their recreational use and enjoyment of that land. This conclusion comports with existing Law Court jurisprudence. *See Black*, 2022 ME 58, ¶ 28, 288 A.3d 346 (holding that plaintiffs who alleged no specific harm beyond a power transmission line's visibility had standing based on their history of use of the public reserved lands on which the power line was installed); *Fitzgerald v. Baxter State Park Auth.*, 385 A.2d 189, 197 (Me. 1978) (holding that plaintiffs had standing because their diminished "use and enjoyment of Baxter State Park and its resources" qualified as "a direct and personal injury" to their interest in the park). Consequently, the Court will address the merits of Plaintiffs Masucci, Connerney, and Orlando Delogu's Count IV claim against Defendants Judy's Moody, Ocean 503, and OA 2012 Trust in a separate order.


CONCLUSION

In accordance with the above, this lawsuit is now limited to Plaintiffs Kathy and Peter Masucci, Orlando Delogu, and William Connerney's Count IV claim against Defendants Judy's Moody, LLC, OA 2012 Trust, and Ocean 503, LLC. Plaintiffs Judith Delogu, William Griffiths, Sheila Jones, Brian Beal, Robert Morse, George Seaver, Greg Tobey, Hale Miller, Leroy Hilbert, John Grotton, Jake Wilson, Dan Harrington, Susan Domizi, Amanda Moeser, Lori and Tom Howell, and Chad Coffin lack standing to bring this suit against any of the named defendants.

Further, all plaintiffs lack standing to bring this suit against Defendants Margaret and Jeffrey Parent; thus, Defendants Parent's motion for summary judgment is **MOOT**. The clerk is directed to incorporate this Order into the docket by reference. M.R. Civ. P. 79(a).

Dated:

1/26/27



John O'Neil, Jr.
Justice, Maine Superior Court

Entered on the Docket: 2/9/2027

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. RE-2021-0035 ✓

PETER MASUCCI, et al.,
Plaintiffs,

v.

JUDY'S MOODY, LLC, et al,
Defendants,

and

AARON FREY, in his capacity as
Attorney General of the State of Maine,
Party-in-interest.

**ORDER ON THE ATTORNEY
GENERAL'S MOTION FOR
SUMMARY JUDGMENT**

Before the Court is a motion from Party-in-interest Aaron Frey, in his capacity as Attorney General for the State of Maine, seeking summary judgment on Count IV, Plaintiffs'¹ sole surviving claim. M.R. Civ. P. 56. For the following reasons, the Attorney General's motion is denied.

BACKGROUND

On April 22, 2021, Plaintiffs filed a five-count complaint. Count I notice pleaded declaratory judgment, Plaintiffs' requested form of equitable relief. Counts II, III, and V generally aimed to establish the State's fee ownership of Defendants'² intertidal lands and asserted that any pre-statehood alienation or transfer of such land occurred in violation of various constitutional provisions. In Count IV, Plaintiffs sought to expand the scope of the public's permissible activities

¹ Plaintiffs include Robert Morse, George Seaver, John Grotton, Hale Miller, Leroy Gilbert, Jake Wilson, Dan Harrington, Susan Domizi, Greg Tobey, Amanda Moeser, Chad Coffin, Lori Howell, Tom Howell, Peter Masucci, Kathy Masucci, William Connerney, William Griffiths, Sheila Jones, Orlando Delogu, Judith Delogu, and Brian Beal.

² Defendants include Judy's Moody, LLC, Ocean 503, LLC, OA 2012 Trust, and Jeffrey and Margaret Parent.

within Maine’s intertidal zone beyond fishing, fowling, and navigation, the rights of use the Law Court reserved for the public in *Bell v. Town of Wells (Bell II)*, 557 A.2d 168, 169 (Me. 1989).

On May 26, 2021, Defendant Ocean 503 individually, and Defendants Judy’s Moody and OA 2012 Trust together, each filed M.R. Civ. P. 12(b)(6) motions to dismiss the complaint on largely similar grounds. On April 15, 2022, the Court granted these motions with respect to Counts I–III and V and denied them with respect to Count IV. The Court explained that Count IV survived because the Law Court, which customarily takes a flexible approach to defining intertidal usage rights, had not yet addressed whether any movement or research-based activity is permissible.

On April 28, 2022, Defendants Parent also filed a M.R. Civ. P. 12(b)(6) motion to dismiss all counts. On August 1, 2022, the Court granted the motion with respect to Counts I–III and V and denied it with respect to Count IV. Again the Court clarified that Count IV subsisted because, given the Law Court’s historically generous approach to defining intertidal usage rights, there was “some legal theory” that would allow Plaintiffs to obtain a declaratory judgment permitting certain recreational or non-rockweed specific commercial activity in the intertidal zone.

On May 2, 2023, the Attorney General filed a motion for summary judgment on Count IV requesting the Court narrowly hold that, “[p]ursuant to the public trust doctrine, [Plaintiffs] Peter Masucci, Kathy Masucci, and William Connerney, as members of the public, have the right to walk unfettered upon intertidal land in Maine,” including the respective intertidal land of Defendants Ocean 503, Judy’s Moody, and OA 2012 Trust. (Att’y Gen.’s Mot. Summ. J. 1–2.)

DISCUSSION

I. Legal Standard

“[S]trict adherence to [M.R. Civ. P. 56’s] requirements is necessary to ensure that the [summary judgment] process is both predictable and just.” *Deutsche Bank Nat’l Tr. Co. v.*

Raggiani, 2009 ME 120, ¶ 7, 985 A.2d 1. The summary judgment record consists only of the parties' supported statements of material fact and the portions of the record referenced therein. See *Dorsey v. N. Light Health*, 2022 ME 62, ¶ 10, 288 A.3d 386. Summary judgment is appropriate if that record, construed in the nonmovant's favor, "demonstrates that there is no genuine issue of material fact in dispute and the moving party would be entitled to a judgment as a matter of law at trial." *Chartier v. Farm Fam. Life Ins. Co.*, 2015 ME 29, ¶ 6, 113 A.3d 234; see M.R. Civ. P. 56(c).

A material fact "has the potential to affect the outcome of the suit, and a genuine issue of material fact exists when a fact-finder must choose between competing versions of the truth, even if one party's version appears more credible or persuasive." *Dorsey*, 2022 ME 62, ¶ 10, 288 A.3d 386 (quoting *Yankee Pride Transp. & Logistics, Inc. v. UIG, Inc.*, 2021 ME 65, ¶ 10, 264 A.3d 1248). The evidence offered in support of a genuine issue of material fact "need not be persuasive at that stage, but . . . must be sufficient to allow a fact-finder to make a factual determination without speculating."³ *Est. of Smith v. Cumberland Cnty.*, 2013 ME 13, ¶ 19, 60 A.3d 759.

II. Analysis

Maine law dictates that "[i]f a party submits an unnecessarily long, repetitive, or otherwise convoluted statement of material facts that fails to achieve the Rule's requirement of a 'separate, short, and concise' statement, the court has the discretion to disregard the statement and deny the motion for summary judgment solely on that basis." *Stanley v. Hancock Cnty. Comm'rs*, 2004 ME 157, ¶ 29, 864 A.2d 169 (acknowledging that the lower court could have disregarded a 191-paragraph statement of material facts); see also *First Tracks Invs., LLC v. Murray, Plumb &*

³ Each party's statements must include a reference to the record where "facts as would be admissible in evidence" may be found. M.R. Civ. P. 56(e). A party's opposing statement of material facts "must explicitly admit, deny or qualify facts by reference to each numbered paragraph, and a denial or qualification must be supported by a record citation." *Stanley v. Hancock Cnty. Comm'rs*, 2004 ME 157, ¶ 13, 864 A.2d 169 (citation omitted).

Murray, 2015 ME 104, ¶¶ 2–3, 121 A.3d 1279 (stating that the lower court would have been “well within its discretion” to grant summary judgment to the moving party based on the opposition’s noncompliant submission of a 130-paragraph additional statement of material facts); *Oceanic Inn, Inc. v. Sloan’s Cove, LLC*, 2016 ME 34, ¶ 4 n.2, 133 A.3d 1021 (noting that the lower court could have declined to consider the opposition’s 145-paragraph additional statement of material facts).


In this case, the Attorney General’s 129-paragraph statement of material facts, which spans 21 pages, cannot be reasonably characterized as short and concise. *See* M.R. Civ. P. 56(h). The statement includes legal conclusions, personal opinions, cites to portions of the record containing inadmissible hearsay, lacks logical organization, and frequently asserts facts that are irrelevant to the instant litigation or simply repetitive. *See Stanley*, 2004 ME 157, ¶ 28, 864 A.2d 169 (stating that the Law Court “discourage[s] organizing statements of material facts by tracking the averments made in several affidavits submitted in support of the statements, where such organization results in the same fact being repeated multiple times”). Based on the manner in which the Attorney General has availed himself of the summary judgment process, the Court denies his motion for summary judgment.

CONCLUSION

Accordingly, the Attorney General’s motion for summary judgment is **DENIED**. The clerk is directed to incorporate this Order into the docket by reference. M.R. Civ. P. 79(a).

Dated:

1/26/24



John O’Neil, Jr.
Justice, Maine Superior Court

Entered on the Docket: 2/5/24

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. RE-2021-0035 /

PETER MASUCCI, et al.,

Plaintiffs,

v.

JUDY'S MOODY, LLC, et al,

Defendants,

and

AARON FREY, in his capacity as
Attorney General of the State of Maine,

Party-in-interest.

**ORDER ON PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

Before the Court is Plaintiffs'¹ motion for summary judgment on Count IV, the sole surviving claim. M.R. Civ. P. 56. For the following reasons, Plaintiffs' motion is denied.

BACKGROUND

On April 22, 2021, Plaintiffs filed a five-count complaint. Count I notice pleaded declaratory judgment, Plaintiffs' requested form of equitable relief. Counts II, III, and V generally aimed to establish the State's fee ownership of Defendants'² intertidal lands and asserted that any pre-statehood alienation or transfer of such land occurred in violation of various constitutional provisions. In Count IV, Plaintiffs sought to expand the scope of the public's permissible activities within Maine's intertidal zone beyond fishing, fowling, and navigation, the rights of use the Law

¹ Plaintiffs include Robert Morse, George Seaver, John Grotton, Hale Miller, Leroy Gilbert, Jake Wilson, Dan Harrington, Susan Domizi, Greg Tobey, Amanda Moeser, Chad Coffin, Lori Howell, Tom Howell, Peter Masucci, Kathy Masucci, William Connerney, William Griffiths, Sheila Jones, Orlando Delogu, Judith Delogu, and Brian Beal.

² Defendants include Judy's Moody, LLC, Ocean 503, LLC, OA 2012 Trust, and Jeffrey and Margaret Parent.

Court reserved for the public in *Bell v. Town of Wells (Bell II)*, 557 A.2d 168, 169 (Me. 1989).

On May 26, 2021, Defendant Ocean 503 individually, and Defendants Judy's Moody and OA 2012 Trust together, each filed M.R. Civ. P. 12(b)(6) motions to dismiss the complaint on largely similar grounds. On April 15, 2022, the Court granted these motions with respect to Counts I–III and V and denied them with respect to Count IV. The Court explained that Count IV survived because the Law Court, which customarily takes a flexible approach to defining intertidal usage rights, had not yet addressed whether any movement or research-based activity is permissible.

On April 28, 2022, Defendants Parent also filed a M.R. Civ. P. 12(b)(6) motion to dismiss all counts. On August 1, 2022, the Court granted the motion with respect to Counts I–III and V and denied it with respect to Count IV. Again the Court clarified that Count IV subsisted because, given the Law Court's historically generous approach to defining intertidal usage rights, there was "some legal theory" that would allow Plaintiffs to obtain a declaratory judgment permitting certain recreational or non-rockweed specific commercial activity in the intertidal zone.

On June 23, 2023, Plaintiffs filed a motion for summary judgment on Count IV requesting two declaratory judgments. First, that the Court should, in contravention of *Bell II*, declare the scope of permissible activity on intertidal lands consistent with public trust uses—which broadly extend to whatever the State sees fit to permit and regulate in the exercise of its sovereign police power, legislative and regulatory processes—rather than the limited Colonial Ordinance trifecta of fishing, fowling, and navigation. Second, that the Court should declare Plaintiffs' activities within the intertidal zone of Defendants' respective beach properties—recreating, conducting ocean-based research, and harvesting rockweed for commercial purposes—lawful public trust uses.

DISCUSSION

I. Legal Standard

“[S]trict adherence to [M.R. Civ. P. 56’s] requirements is necessary to ensure that the [summary judgment] process is both predictable and just.” *Deutsche Bank Nat’l Tr. Co. v. Raggiani*, 2009 ME 120, ¶ 7, 985 A.2d 1. The summary judgment record consists only of the parties’ supported statements of material fact and the portions of the record referenced therein. *See Dorsey v. N. Light Health*, 2022 ME 62, ¶ 10, 288 A.3d 386. Summary judgment is appropriate if that record, construed in the nonmovant’s favor, “demonstrates that there is no genuine issue of material fact in dispute and the moving party would be entitled to a judgment as a matter of law at trial.” *Chartier v. Farm Fam. Life Ins. Co.*, 2015 ME 29, ¶ 6, 113 A.3d 234; *see* M.R. Civ. P. 56(c).

A material fact “has the potential to affect the outcome of the suit, and a genuine issue of material fact exists when a fact-finder must choose between competing versions of the truth, even if one party’s version appears more credible or persuasive.” *Dorsey*, 2022 ME 62, ¶ 10, 288 A.3d 386 (quoting *Yankee Pride Transp. & Logistics, Inc. v. UIG, Inc.*, 2021 ME 65, ¶ 10, 264 A.3d 1248). The evidence offered in support of a genuine issue of material fact “need not be persuasive at that stage, but . . . must be sufficient to allow a fact-finder to make a factual determination without speculating.”³ *Est. of Smith v. Cumberland Cnty.*, 2013 ME 13, ¶ 19, 60 A.3d 759.

II. Analysis

Maine law dictates that “[i]f a party submits an unnecessarily long, repetitive, or otherwise convoluted statement of material facts that fails to achieve the Rule’s requirement of a ‘separate,

³ Each party’s statements must include a reference to the record where “facts as would be admissible in evidence” may be found. M.R. Civ. P. 56(e). A party’s opposing statement of material facts “must explicitly admit, deny or qualify facts by reference to each numbered paragraph, and a denial or qualification must be supported by a record citation.” *Stanley v. Hancock Cnty. Comm’rs*, 2004 ME 157, ¶ 13, 864 A.2d 169 (citation omitted).

short, and concise' statement, the court has the discretion to disregard the statement and deny the motion for summary judgment solely on that basis." *Stanley v. Hancock Cnty. Comm'rs*, 2004 ME 157, ¶ 29, 864 A.2d 169 (acknowledging that the lower court could have disregarded a 191-paragraph statement of material facts); *see also First Tracks Invs., LLC v. Murray, Plumb & Murray*, 2015 ME 104, ¶¶ 2-3, 121 A.3d 1279 (stating that the lower court would have been "well within its discretion" to grant summary judgment to the moving party based on the opposition's noncompliant submission of a 130-paragraph additional statement of material facts); *Oceanic Inn, Inc. v. Sloan's Cove, LLC*, 2016 ME 34, ¶ 4 n.2, 133 A.3d 1021 (noting that the lower court could have declined to consider the opposition's 145-paragraph additional statement of material facts).

Here, Plaintiffs' 220-paragraph statement of material facts, which spans 30 pages, cannot be reasonably characterized as short and concise. *See* M.R. Civ. P. 56(h). The statement includes legal and factual conclusions, cites to portions of the record containing inadmissible hearsay, lacks logical organization, and frequently asserts facts that are irrelevant to the instant litigation or simply repetitive. Based on the manner in which Plaintiffs have availed themselves of the summary judgment process, the Court denies their motion for summary judgment.

CONCLUSION

In accordance with the above, Plaintiffs' motion for summary judgment is **DENIED**. The clerk is directed to incorporate this Order into the docket by reference. M.R. Civ. P. 79(a).

Dated:

1/26/24



John O'Neil, Jr.
Justice, Maine Superior Court

Entered on the Docket: 2/5/2024

State of Maine
Cumberland, ss

Superior Court
Civil Action
Docket No. _____

Peter and Kathy Masucci, of Wells, ME,)
Robert Morse, of Waldoboro, ME,)
George Seaver, of Waldoboro, ME,)
Greg Tobey, of Woolwich, ME)
Bonnie Tobey, of Bath, ME)
Hale W. Miller, of Tenants Harbor, ME,)
John W. Grotton, of Augusts, ME,)
LeRoy Gilbert, of Waldoboro, ME,)
Jake Wilson, of Cushing, ME,)
Dan Harrington, of Woolwich, ME)
Orlando and Judith Delogu, of Portland, ME,)
William Connerney, of Needham, MA,)
William M. Griffiths and Sheila A. Jones, of Old Orchard Beach, ME)
Susan Domizi, of Guilford, CT)
Dr. Brian Beal, of Machiasport, ME)
Charles and Sandra Radis, of Peaks Island, ME)
Amanda Moeser, of West Bath, ME)
Chad Coffin, of Freeport, ME)
Lori and Tom Howell, of Eliot, ME)

Plaintiffs

v.

Judy's Moody LLC, of Wells, ME)
OA2012 Trust, of Wells, ME)
Ocean 503 LLC, of Wells, ME)
Edward and Christine Page, of Harpswell, ME)
Jeffery and Margaret Parent, of Waldoboro, ME)
James Li and Kim Newby (Spotted Duck Revocable Living Trust), of Friendship, ME)
Robin Hadlock Seeley, of Pembroke, ME)

Defendants

and

Aaron Frey in his capacity as the Attorney General for the State of Maine)

Party in interest

COMPLAINT

FOR DECLARATORY
JUDGMENT AFFIRMING
MAINE'S TITLE TO ITS
INTERTIDAL LANDS IN TRUST
FOR THE PUBLIC EXCEPT FOR
DISCRETE PARCELS
ALIENATED TO FACILITATE
MARINE COMMERCE
(Title to Real Estate Involved)

Plaintiffs, (more fully described below) by and through their undersigned counsel, complain and allege against the above-named Defendants as follows:

INTRODUCTION

Fifteen hundred years ago, the Emperor Justinian decreed that certain property was inalienable by the state and was to be held by the sovereign in trust for the benefit of all the people. Along with air, water, and wild animals, the so-called *jus publicum*, included the sea and all the land over which the tide flows. Such has been the law through the rise and fall of empires, kingdoms and colonies. It was the law in Maine's first European settlements. It was the law at the founding of Maine's early townships where the title to private land ran to the "seawall" or "shore," or "highwater mark." It was the law when the original states ratified the U.S. Constitution, and their people claimed the sovereign right and title to all intertidal lands. It was the law in 1820 when Maine entered the Union, on an equal footing with all other states, and no longer subject to arcane Massachusetts colonial law. It was the law in 1981 when the Maine legislature codified what everyone already knew at the time: that intertidal land was public land, held by the state in trust for all its people. It was the law until 1986 when the Maine Supreme Judicial Court, through an act of "judicial legislation"¹ stripped the people of Maine of their right to access and use land that does now, and always has, belonged to them.

The effects of this judicial legislation were initially limited. However, as coastal properties changed hands and as people who made their fortunes outside of Maine began to concentrate on the shoreline, minor conflicts from the 1980's have become threats to livelihoods for thousands of Mainers who for generations have relied on access to the bounty of the Maine coast.

¹ *Bell v. Town of Wells*, 510 A.2d 509, 514 (Me. 1986)(quoting *Barrows v. McDermott*, 73 Me. 441 (1882).

This modern form of enclosure has effects beyond simply ruining a day at the beach. Maine's economy is water-based. These enclosures threaten Maine's ability to manage and preserve the critical natural resources in the intertidal zone and secure those resources for the benefit of all Mainers. Rising sea levels threaten everyone, not just those living on the shoreline. As global warming threatens our coasts and our way of life, the Maine people must be able to respond collectively with comprehensive mitigation strategies. The people of Maine cannot do this if they must first obtain easements from each and every person erroneously claiming title to land they simply do not own.

For the last three decades, walls have been built, signs have been posted, and the people of Maine have been threatened, harassed, and chased off land that belongs to them. This case seeks to correct that 30 year old mistake and in so doing, restore to the people of Maine rights they have held for more than a millennia.

PARTIES

Plaintiffs

1. Orlando and Judith Delogu are individuals residing in Portland, Maine. For 55 years, the Delogu family has enjoyed the natural beauty of Maine's beaches and coastlines. In recent years, their enjoyment has been curtailed by threatening and intimidating "no trespassing" and "private beach" signs posted by Defendants incorrectly claiming dominion over the intertidal portion of several beaches. The Delogus intend to continue enjoying Maine's beaches, but the signs and other barriers prevent the Delogus from using beaches they are rightfully entitled to use.

2. Robert Morse is an individual residing in Waldoboro, Maine and the founder and president of Atlantic Laboratories, Inc d/b/a North Atlantic Kelp, a kelp processing facility in Waldoboro, Maine. North American Kelp processes sustainably harvested seaweed from the

coast of Maine and works with harvesters who are licensed from the State of Maine Department of Marine Resources. North American Kelp had been in the business of producing quality kelp and seaweed products for the agricultural and horticultural industries for more than 50 years and employs between 20 and 35 people in full time, well-paying jobs. Mr. Morse's livelihood is threatened by Defendants' unlawful claims to title over Maine's intertidal land.

3. George Seaver is an individual residing in Waldoboro, Maine. Mr. Seaver is part owner of Ocean Organics Corporation and has been processing seaweed since 1977. Ocean Organics products, derived from Maine seaweed, work as a natural growth stimulant and can increase crop yields without increasing the use of dangerous fertilizers and toxic chemicals. Mr. Seaver's livelihood is threatened by Defendants' unlawful claims to title over Maine's intertidal land.

4. John Grotton is an individual residing in Augusta, Maine. Mr. Grotton is a licensed seaweed harvester and a full-time employee of North American Kelp. His income is totally derived from the sustainable harvesting and processing of marine organisms found in the intertidal zone. In recent years, Mr. Grotton has seen threats to his job as a result of upland landowners' wrongful claim of title to intertidal land and attempt to remove people lawfully and sustainably harvesting this critical resource.

5. Hale W. Miller is an individual residing in Tenant's Harbor, Maine and is a licensed seaweed harvester. Mr. Miller has lived on the coast of Maine his entire life. He owns and operates two boats engaged in the sustainable harvest of Maine seaweed. The income he derives from intertidal resources sustains him and is helping put his son through college. In recent years, Mr. Miller has experienced increasing harassment from landowners who wrongfully claim to own all the marine organisms in the intertidal areas adjacent to their property.

6. Leroy W. Gilbert is an individual residing in Waldoboro, Maine and is a licensed seaweed harvester. He has made a living from coastal resources for his entire life. Like all licensed seaweed harvesters, Mr. Gilbert understands that sustainable harvesting practices are the only way to ensure that Maine's coastal resources will be available for future generations. Unfortunately, Mr. Gilbert is also cognizant of the emerging threat of landowners claiming private ownership over public resources, namely the seaweed growing in Maine's intertidal areas.

7. Jake Wilson is an individual residing in Cushing, Maine and is a licensed seaweed and clam harvester. He has made a living as a commercial lobsterman and clammer. Today he works at North American Kelp and helps produce organic fertilizers, and growth stimulants from sustainably harvested Maine seaweed. Mr. Wilson's job is threatened by upland owners unlawfully claiming title to the intertidal land and therefore ownership and absolute dominion over the seaweed growing therein.

8. Dan Harrington is an individual residing in Woolwich, Maine. Mr. Harrington is a licensed worm and seaweed harvester. Mr. Harrington's father started worming in 1965 and opened a wholesale shop in 1990. Since then, nearly his entire family has worked in the industry and derived their livelihood from Maine's intertidal resources. Now that livelihood is threatened by upland owners who are harassing people harvesting resources already found to be protected under the public trust. Nevertheless, these upland owners persist in their harassment, acting out of the confusion over the law that has been sown by Defendants.

9. Peter and Kathy Masucci are individuals residing in Wells, Maine. Ms. Masucci's family has owned property in the Moody Beach area since 1918. For over 100 years, the Masucci family had enjoyed free and unfettered access to Moody Beach, until 1989 when beach front owners began to restrict and eventually forbid access to the beach. Now to access the beach

across the street from their residence, they must obtain the permission of landowners who can revoke that permission at any time. The Masuccis intend to continue using Moody Beach, but that use is now unlawfully curtailed by Defendants.

10. William Connerney is an individual residing in Needham, Massachusetts and is the owner of property near, but not on Moody Beach in Wells, Maine. Since 1972, the Connerney family has enjoyed Moody Beach. Then beginning in 1989, the beachfront owners on Moody Beach began restricting and then forbidding access by posting signs that read “private beach,” “no loitering,” and “no trespassing.” An upland owner has approached and called the police on Mr. Connerney’s son and grandson for simply attempting to enjoy a day at the beach.

11. Susan Domizi resides in Guilford, Connecticut. She is the founder and CEO of Source, Inc. Her company has operated a subsidiary, (Source Maine) for the last 40 years. Source was founded to provide superior nutritional products for animals and people utilizing the unique micronutrients found in seaweeds. Initially Source used seaweeds from other countries, but eventually it was found that Maine seaweeds were superior. Ms. Domizi’s concern for the future of this incredible Maine resource led her and her plant manager to establish the Maine Seaweed Council. This organization is active today and consists of harvesters, processors, and scientists concerned about the future of seaweeds in Maine. Ms. Domizi’s business and livelihood is threatened by Defendants’ unlawful claims to title over Maine’s intertidal land.

12. Greg Tobey is a resident of Woolwich. The Tobey family has lived in Maine since 1859. For 160 years, the Tobey family has made a living from the bounty found on the Coast of Maine. Mr. Tobey is the General Manager of Source Maine, a company dedicated to the sustainable harvest of Maine Seaweed and the development of organic and beneficial products derived from compounds not found in any other organism. Mr. Tobey’s livelihood is threatened by Defendants’ unlawful claims to title over Maine’s intertidal land.

13. Bonnie Tobey is a resident of Bath. Ms. Tobey runs the operations at the Source Maine plant in Brunswick. She earns a good living at her job and sees herself as a steward of Maine's most precious resource and is dedicated to preserving those resources for the benefit of future generations. Unfortunately, those future generations may not see the benefits of Ms. Tobey's work as upland owners continue to lock away the coastline. Ms. Tobey's livelihood is threatened by Defendants' unlawful claims to title over Maine's intertidal land.

14. William Griffiths and Sheila Jones own the Crow's Nest Resort in Old Orchard Beach. Their guests come from as far away as Eastern Canada, drawn by the surf, the pier, and beaches and shops all along Route 1 and coastal Maine. Customers of the Crow's Nest come, expecting to find Maine's beaches open to everyone wanting to enjoy a day at the beach. Those customers are disappointed to find invisible lines in the sand and hostile signs telling them and their children to "keep out." Mr. Griffith's and Ms. Jones business and livelihood is threatened by Defendants' unlawful claim of title over Maine's intertidal land.

15. Brian Beal is a marine biologist at the University of Maine at Machias. Dr. Beal's work focuses on organisms that live in the intertidal land. Maine's treasured shellfish is under threat from stressors such as ocean acidification and invasive predators. One of those predators, the green crab has decimated the clam populations in the middle and lower regions of the intertidal land. Dr. Beal has developed processes that promise to mitigate this damage but to continue his research, he must first obtain the permission of the upland owners. Several owners have denied Dr. Beal permission and access to intertidal land they wrongfully claim.

16. Charles and Sandra Radis own shorefront property on Peaks Island in Casco Bay. The Radis' are regularly asked by people for permission to access intertidal land adjacent to their property. The Radis' do not believe they own the intertidal land and such permission is not

necessary. The Radis would like everyone who lives on or visits Peaks Island, including themselves, to be able to walk along the shore without threat or harassment.

17. Amanda Moeser is the owner and operator of Lanes Island Shellfish, L3C. Ms. Moeser currently farms oysters in Casco Bay and is hoping to diversify and sustain her business by expanding farming operations to additional species and locations in Mid-coast Maine. Climate change-related increases in severe rainfall events and prolonged harmful algae blooms affect her ability to harvest and sell her shellfish products. Her business is dependent upon the ability to pass over intertidal lands, in addition to access to shallow submerged lands and submerged land that was once intertidal for farming purposes. She is worried about the expanding interpretations of ownership of intertidal lands and existing permission requirements which can be withdrawn at any point. Ms. Moeser seeks clarity and predictability in the law so that she can make informed and strategic decisions on how and where to grow her business.

18. Chad Coffin is a lifelong fisherman and the President of the Maine Clammers Association. Mr. Coffin harvests clams on intertidal land. Despite clams being defined as “fish” and therefore within the public trust, Mr. Coffin and his associates are regularly harassed by upland owners who claim he is trespassing. These upland owners threaten clammers and often call the police who must then respond. More importantly, Maine clams are threatened by invasive species but upland owners are blocking the ability to research techniques to mitigate the damage and save this precious resource.

19. Lori and Tom Howell are the owners of Spinney Creek Shellfish. In addition to other shell fishing activities, Spinney Creek operates an oyster farming site in Eliot, Maine. Spinney Creek’s farming operations are licensed by the Maine Department of Marine Resources. As oyster farmers, the Howells depend on regular access and use of the intertidal land adjacent to the farm. The Howells, their employees, and associates have been harassed by upland owners

wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond. The Howells, their employees, and associates have been blocked from use of the intertidal land that is so critical to their business.

Littoral Upland Defendants

20. OA 2012 is a Maine trust with a trustee, John Howe, residing in Kennebunk, Maine. OA 2012 owns property in Wells, Maine and claims title to intertidal land abutting its property in the same town. OA 2012 makes this claim by posting signs that say “Private Beach, No Loitering.”

21. Judy’s Moody, LLC is a Maine corporation with a location in Wells, Maine and claims title to intertidal land abutting its property in the same town.

22. Personnel associated with Judy’s Moody, LLC approach members of the public standing on intertidal land adjacent to the property owned by Judy’s Moody, LLC and falsely claim that they own the intertidal land, and then demand that they leave.

23. Ocean 503, LLC is a Maine corporation with a location in Wells, Maine and claims title to intertidal land abutting its property in the same town. Ocean 503, LLC makes this claim by posting signs on its property that say “Moody Beach is a Private Beach to the low water mark. No Loitering.”

24. Ocean 503, LLC posts signs to create an intimidating environment and to unlawfully prohibit the public from enjoying a public beach.

25. Edward and Christine Page are individuals residing in Columbia, Illinois. Mr. and Mrs. Page wrongfully claim title to intertidal land that abuts property owned by them in Harpswell, Maine.

26. Upon information and belief, Edward and/or Christine Page have called law enforcement to have seaweed harvesters, who are duly licensed by the State of Maine, removed from the intertidal land they unlawfully claim.

27. Jeffery and Margaret Parent are individuals residing in Waldoboro, Maine and wrongfully claim title to intertidal land that abuts their property in the same town.

28. Upon information and belief, Jeffery and Margaret Parent have called law enforcement to remove people lawfully harvesting seaweed on land they wrongfully claim is theirs.

29. James and Kim Newby are individuals residing in Friendship, Maine and wrongfully claim title to intertidal land abutting them in the same town.

30. Mr. and Mrs. Newby make this claim by harassing seaweed harvesters and calling law enforcement to remove seaweed harvesters who are lawfully harvesting seaweed on intertidal land they wrongfully claim to own.

31. Robin Seeley is an individual residing in Pembroke Maine and wrongfully claims title to the intertidal land abutting her property in the same town.

32. Ms. Seeley has published websites and other media falsely suggesting that upland owners may deny permission for harvesters to cut rockweed on intertidal land abutting their property without showing that they hold title to the intertidal land abutting their upland property.

33. Ms. Seeley's activities include encouraging landowners to sign up for a so called "Rockweed Registry" where, Ms. Seeley wrongfully claims, the landowner may deny permission for harvesters to cut rockweed on intertidal land abutting their property.

34. This so-called "registry" deceptively suggests that the landowner is somehow registering their denial of permission with an entity empowered to enforce their wishes.

35. Ms. Seely's activities create confusion about the legal rights of landowners and seaweed harvesters. This activity wastes law enforcement resources by falsely suggesting that landowners dispatch wardens to stop people who are lawfully harvesting seaweed.

36. In 2019, Ms. Seely recorded an amended deed to claim she owned the intertidal land adjacent to her upland property even though she was never conveyed title to the intertidal land which was never conveyed to the original title holder of her property.

Party In Interest

37. Aaron Frey is the Attorney General for the State of Maine, which holds title to all of Maine's intertidal land by virtue of the Equal Footing Doctrine, the invalidity of the Colonial Ordinance, and all the other arguments articulated by Plaintiffs in this matter.

JURISDICTION AND VENUE

38. This Court has jurisdiction over this action pursuant to 4 MRS §105, Maine's Declaratory Judgment Act, 14 MRS §§ 5953, 5954, and 5957, and The Maine Rules of Civil Procedure, Rules 57 and 80B. Venue is proper in Cumberland County pursuant to 14 MRS §§ 501, 507, and 508 because the site is centrally located thereby serving the largest number of plaintiff and defendant parties.

FACTS

Plaintiffs who own back lots are being denied beach access

39. Peter and Kathy Masucci own a home directly across the street from the beach in Wells, Maine. For more than 60 years, the Masuccis have enjoyed unfettered access to the section of the beach seaward of the mean high-water mark.

40. In recent years, owners of houses fronting the beach have posted signs reading "no trespassing," "private beach," and "no loitering." One such sign includes the picture of a Rottweiler and the words: "Private Beach, Beware of Dog."

41. One such house displaying a sign is owned by Defendant Judy's Moody, LLC.

42. The posting of such signs demonstrates that the owners of the houses claim a right to exclusive access to the intertidal zone abutting their property.

43. The signs also create a hostile and intimidating environment thereby reducing the enjoyment of a public beach, even if the public could access it.

44. Historic pathways that once gave the public access to the beach have been narrowed or closed altogether.

45. William Connerney's family has enjoyed Moody's Beach and has owned a house there since 1979. The Connerney's house is located near Right of Way #2, a public access point.

46. Over the last few years, homeowners abutting the intertidal zone on Moody Beach have repeatedly let it be known that the Connerneys, along with other members of the public, are to remain in the narrow public access portion of the beach or risk having the police called to arrest them for trespass.

47. In one such incident, a beachfront owner called the police when he/she saw the Connerney's son and four-year-old grandson playing on what that owner claimed was their own beach. The police responded and told the Connerneys to leave the beach or risk being arrested.

Individuals and business owners are being harmed by erroneous claims of title

48. Orlando and Judy Delogu have lived in Portland, Maine for 55 years.

49. Since moving to Maine in the 1960's the Delogu family has enjoyed the peace and serenity of Maine's beaches, especially those near Portland.

50. Beginning in 1989 landowners have begun to restrict access to intertidal land erroneously claiming that the beach is now private property.

51. As a result, the number of beaches that the Delogus and the public can access has been reduced and members of the public have been funneled into smaller and more crowded sections of the beaches and designated parks.

52. These unlawful restrictions have also hurt businesses reliant upon tourism.

(Rockweed Harvesters Claims)

53. Rockweed is a marine organism and a critical natural resource in Maine.

54. Maine rockweed contains natural compounds that are very valuable for use as nutritional supplements, fertilizers, and natural agricultural growth stimulants. Products made from Maine rockweed are sold in markets around the world.

55. The Maine Department of Marine Resources estimates that the coast of Maine supports 2.2 billion pounds of rockweed and estimates that up to 17 percent of the biomass can be sustainably harvested.

56. The current annual rockweed harvest consists of less than 2 percent of the biomass.

57. For that 2 percent harvest Maine sees tens of millions in economic benefit supporting hundreds of families with well-paying jobs.

58. Rockweed has been commercially harvested on the coast of Maine for well over a century.

59. Rockweed harvesting is a heavily regulated activity. Harvesting areas, quantities, and methods are strictly controlled by the Maine Department of Marine Resources. Each harvester must be licensed, and each harvest is subject to inspection by the Marine Patrol.

60. Despite these strict controls, Defendants continue to harass harvesters by yelling at them, and by calling the wardens to have them removed from intertidal land they unlawfully claim to own.

61. The continued harassment by Defendants affects the seaweed processing companies interrupting the steady supply of clean and fresh rockweed. Which, in turn affects the ability of seaweed companies to provide a reliable source of Maine seaweed products to their customers.

62. Furthermore, some Defendants are actively promoting the harassment of rockweed harvesters by falsely claiming landowners have a right to deny them access to the intertidal land abutting their property.

Maine's Intertidal Land is Public Property

63. In Maine, intertidal land is all land intermittently flooded by action of the tides lying between the mean high watermark and the mean low watermark, or 100 rods from mean high water, whichever is shorter.

64. Submerged land in Maine is land lying seaward of the mean low watermark or 100 rods from the mean high watermark. It also includes land lying beneath navigable rivers, streams, and lakes/ponds in excess of 20 acres.

65. Title to submerged land is held by the state, except for discrete parcels alienated to facilitate "wharfing out," i.e., marine commerce. This Complaint does not challenge titles to these parcels.

Historical Title to Intertidal Land Was Held By The Public

66. Prior to the American Revolution, title to all intertidal land was held by the English sovereign in trust for the public. Certain parcels of intertidal land could be alienated by Parliament for the purposes of building wharfs and commerce, but the whole of the empire's intertidal land was considered inalienable by the King and thus remained forever in trust for all British subjects.

67. In the early colonial period before the development of reliable inland roads, beaches and shorelines were critical to support the land-based transportation of goods between villages, for the transport of livestock between grazing fields, and for the harvest of food and other resources from the ocean and rivers.

68. Title to land granted to individual settlers consistently ran from mean high water mark (or the seawall) landward.

69. In 17th century Boston, the need to build wharfs and other marine-related infrastructure created a conflict between upland owners and those reliant upon intertidal land for sustenance and economic benefit.

70. In 1647, the so called “Colonial Ordinance” was passed, not to grant title, but rather to grant a license to the adjacent upland owners for the purposes of supporting commercial development of the shorefront.

71. The Colonial Ordinance was careful to preserve a trust for the people that encompassed all the other economic uses of intertidal land, which in 1647 including lateral passage, fishing, fowling, and navigation.

72. Indeed, the idea of spending a day on the beach would be a foreign concept to early colonialists. But the idea of preserving the economic benefit from the coastline was just as pressing a concern 400 years ago as it is today.

73. Subsequent courts erroneously interpreted the terms “fishing fowling, and navigation” as a limitation of the public trust.

74. The public trust extends beyond fishing, fowling, and navigation and includes all activities and uses a state would normally allow and regulate on any other public land and waterway.

**Maine’s Title to Its Intertidal Land
Was Confirmed Upon Statehood**

75. After the revolution, the people of the United States inherited the rights formerly held by the English King, including the title to all intertidal land to be held in trust for the public.

76. Upon the founding of a new nation by thirteen colonies, now states, English common law principles with respect to intertidal and submerged lands were adopted by the new nation and by the individual states.

77. To facilitate marine commerce, discrete parcels of intertidal land were legislatively alienated, i.e., a license was granted to an adjacent upland owner to build wharves, warehouses, and transportation linkages. But the whole of a harbor, much less all intertidal land in an entire state, could not be alienated.

78. As the nation grew 37 new states were admitted into the Union on the basis that they would be equal with one another and with the 13 original states; this principle of complete equality was embodied in Art. IV §§ 1-3 of the Federal Constitution and is referred to as the “Equal Footing Doctrine.”

79. Maine, by an Act of Congress, was admitted into the Union in 1820 as the 23rd state. The concluding line in Maine’s Statehood Act proclaims: “...the state of Maine is hereby declared to be one of the United States of America and admitted into the Union on an equal footing with the original states, in all respect whatever.”

80. Applying the Equal Footing Doctrine to claims of title to intertidal lands the United States Supreme Court has consistently held that upon statehood, the state gains title within its borders to the beds of waters then navigable, or tidally influenced and that title to intertidal land never used for commercial wharfing out purposes either remains in the hands of the state or is subject to the state’s right of re-entry to reclaim its unrelinquished title.

81. To the extent any legal title was conveyed by operation of the Colonial Ordinance, such legal title was extinguished upon Maine's entry into the Union on an equal footing with all other states.

**Judicial Legislation Cannot Alienate an Entire State From Its Intertidal Land,
Especially When the Legislature Has Spoken On The Issue**

82. Maine's Constitution, Art. III, §§ 1 and 2, delineates the separation of powers and precludes the alienation of all intertidal land in the state by the Judicial branch of government.

83. The Maine Supreme Judicial Court in 1831, 1910, and again in 1989, lacking any constitutional or statutory authority, proclaimed the legal efficacy of the Colonial Ordinance as a form of "judicial legislation."

84. The Maine Court's acceptance of Massachusetts case law said to alienate all intertidal land in the state pursuant to a "judicial legislation" is error.

85. The Maine Legislature's 1975 Submerged Lands Act and the 1981 amendment thereto allowed discreet parcels of intertidal land actually filled for marine commerce to be alienated to an adjacent upland owner.

86. In passing legislation that alienated specific parcels of intertidal land, the Maine Legislature acknowledged what everyone knew to be true at the time, that the state held title to all intertidal land and land not alienated by the Submerged Lands Act would remain in the hands of the state in trust for the public.

87. Judicial rulings that such legislation would serve as an unconstitutional "taking" are in error because the littoral landowners never held title in the first place and could never have been granted title to the intertidal land by a court declaring it, "judicial legislation."

**Any Remaining Common Law Claims to Private Dominion over Intertidal Land Were
Extinguished by the Maine Legislature in 1985**

88. To the extent any Defendant claims a common law right to “own” adjacent intertidal land, such common law rights are subject to legislative action.

89. In passing the Public Trust in Intertidal Land Act, the Maine Legislature clarified what everyone knew at the time to be true, that intertidal land was held by the State in trust for the public and that the public trust is an evolving doctrine reflective of the needs, customs, traditions, heritage, and habits of the Maine people.

90. Subsequent holdings by the Maine Supreme Judicial Court that the Public Trust in Intertidal Land Act was an unconstitutional “taking” were in error and contrary to long held plie power principles defining legislative authority to regulate all property, public and private.

COUNT I
Declaratory Judgment, 14 MRS §5951 et seq.

91. Plaintiff’s repeat and reallege allegations in the preceding paragraphs as if stated fully herein.

92. The facts alleged present an actual and justiciable controversy concerning the ownership of Maine’s intertidal lands capable of resolution pursuant to 14 M.R.S.A. §§ 5953-5957.

93. The court has jurisdiction to resolve intertidal land ownership issues pursuant to 4 M.R.S.A. § 105, 14 M.R.S.A. §§ 5953-5957, and Maine Rules of Civil Procedure, Rule 57.

94. The court’s resolution of intertidal land ownership issues in favor of the Plaintiffs on the grounds raised in this Complaint have statewide effect insofar as the property interests of upland owners not party to these proceedings are identical with the property interests of the Defendants in this case.

COUNT II
The alienation of all Maine intertidal land violates Article IV, §§ 1-3 of the United States Constitution - The Equal Footing Doctrine.

95. Plaintiffs repeat and reallege allegations in the preceding paragraphs as if fully stated herein.

96. After the Revolution, and upon the founding of the Union, common law principles, holding that intertidal lands were held by the State in trust for the public, were recognized and adopted by the majority of the 13 original states (which states were co-equal with one another) and that all states subsequently admitted in the union were to be on an “equal footing” with one another and the original states.

97. “Equal footing” principles are rooted in Art. IV, §§ 1-3 of the United States Constitution, and have been sustained (with respect to intertidal lands) by an unbroken line of U.S. Supreme Court cases the most recent of which held that: “Upon statehood, the state gains title within its borders to the beds of waters then navigable, or tidally influenced.”

98. Maine case law has erroneously failed to recognize what the Statehood Act (1820) made clear, i.e., that Maine was “... admitted into the Union on an equal footing with the original States in all respects whatever”.

99. Maine then, not upland owners, holds title to its intertidal lands, except for discreet parcels alienated to facilitate marine commerce.

COUNT III
**The alienation of all Maine intertidal land by the Judicial Branch of government
violates the Maine Constitution**

100. Plaintiffs repeat and reallege allegations in the preceding paragraphs as if fully stated herein.

101. The Maine Constitution, Art. 3, §§ 1 and 2, provides that “[th]e powers of this government shall be divided into 3 distinct departments, the legislative, executive and judicial” and that “[n]o person or persons, belonging to one of these departments, shall exercise any of the

powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.”

102. The Maine Constitution, Art. 4, Pt. 3, § 1, provides that “[t]he Legislature, with the exceptions hereinafter stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States.”

103. Both the 1959 Sovereignty and Jurisdiction Act asserting Maine’s jurisdiction and ownership of offshore waters and bed areas, and the 1975 Submerged Lands Act (as amended in 1981) clarifying and establishing the Maine Legislature’s right to lease and/or alienate discrete parcels of intertidal and submerged to facilitate marine commerce evidence the Legislature’s understanding that Maine holds title to all unfilled bed areas in trust for the public.

104. In the context of deciding cases, or by acquiescence to a pre-statehood “judicial legislation” said to have alienated all intertidal land in Massachusetts, the judicial branch of government may not alienate all intertidal land in Maine to upland owners. No provision of the Maine Constitution gives the judicial branch of government this power. The constitutional separation of powers precludes this judicial conduct.

COUNT IV

The “Public Trust” extends beyond fishing, fowling, and navigation

105. To the extent the Colonial Ordinance has any legal effect in Maine, the original drafters did not intend to forever limit the description of the public trust contained therein to fishing, fowling, and navigation.

106. Rather, the public trust extends to whatever the state sees fit to allow and regulate exercising its sovereign police power and through its own legislative and regulatory processes.

COUNT V

The Defendants Do Not Hold Title to the Intertidal Land

107. In 2019, the Maine Supreme Judicial Court held that the owners of upland ocean front property only presumptively owns to the low water mark by operation of the Colonial Ordinance and that an owner only benefits from this presumption where the original grant of property specifically includes a call to the water.

108. The Court held that terms such as “Atlantic Ocean,” “ocean,” “cove,” “sea,” or “river” triggered the presumption while language such as “to” or “by” the shore, beach, bank, sea wall, or seashore may defeat the presumption.

109. Defendants each hold title to certain parcels of land in a chain of title dating back to an original conveyance from the 17th Century.

110. The original conveyances do not, and never did make reference to the ocean, cove, sea, or river.

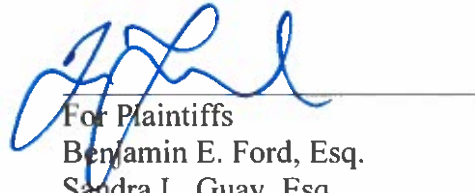
111. Accordingly, Defendants do not benefit from the presumption created by operation of the Colonial Ordinance and, in fact, do not hold title to the intertidal lands adjacent to their property.

WHEREFORE, pursuant to the Maine Declaratory Judgment Act, Plaintiffs respectfully request the court to grant judgment in their favor and declare that:

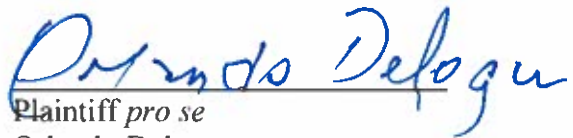
- a. The State of Maine holds title to all intertidal land, in trust for the public, without limitation to fishing, fowling, and navigation, and with the exception of land previously alienated pursuant to the Submerged Land Act and for the purposes of promoting commerce.
- b. Pursuant to the Maine Statehood Act, Maine entered the Union on an equal footing with all other states, and consequently holds title to its intertidal land, except for discrete parcels alienated to facilitate marine commerce.

- c. Pursuant to the Maine Constitution, only the Maine Legislature has the authority to alienate state intertidal land; the Maine Legislature has never alienated, is constitutionally barred from alienating all of the state's intertidal land; consequently, the state holds title to this land except for discrete parcels alienated to facilitate marine commerce.
- d. The alienation of all intertidal land in Maine may not be accomplished by a "judicial legislation," or by adhering to pre-statehood Massachusetts case law.
- e. Such further relief as the Court deems necessary and just.

Dated: April 22, 2021 at Portland, ME



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a claim, and whether their “judicial legislation” claim is not time barred, this Court simply cannot grant the declaratory relief that Plaintiffs seek given the long-standing precedent. Therefore, Plaintiffs’ claims must be dismissed.

Preliminarily, it’s important to be clear about the specific relief Plaintiffs request under Maine’s Declaratory Judgment Act, 14 M.R.S. §§ 5951-5963. (*Cf.* Pl.s’ Compl. ¶ 111 *with* ¶¶ 92-110.) They ask this Court to declare that (1) a consistent line of Law Court precedent dating back at least to 1831, and most recently reaffirmed in 2019, is and always has been wrong; and (2) that the State of Maine owns all intertidal lands, from Kittery to Calais including over 3,000 miles of tidal coastline on and over 4,000 coastal islands. Plaintiffs directly attack the established property rights of thousands of upland owners along Maine’s entire coastline, without even naming the vast majority of those landowners as parties.

It is beyond dispute that the Law Court has uniformly held that upland owners, such as Defendants, presumptively own title to the mean low-water mark, subject only to the public’s right to use the intertidal land for activities that may appropriately be defined as “fishing,” “fowling,” or “navigation” (the “Public Easement”).² *McGarvey v. Whittredge*, 2011 ME 97, ¶¶ 32-33, 28 A.3d 620; *see Bell (Bell I) v. Town of Wells*, 510 A.2d 509, 511-16 (Me. 1986) (characterizing the public’s right to use the intertidal zone as a “public easement”); *Bell (Bell II) v. Town of Wells*, 557 A.2d 168, 173 (Me. 1989) (confirming the public’s rights are “denominated as an easement” reserving only a “public easement in the intertidal zone”). The

² The “[k]ey to private ownership of intertidal lands in Maine and Massachusetts was the enactment of the Massachusetts Bay Colony’s Colonial Ordinance of 1641-47.” *McGarvey*, 2011 ME 97, ¶ 26, 28 A.3d 620 (holding that crossing the intertidal zone to scuba dive is a permitted use). The Law Court observed that the origin of private ownership of Maine’s beachfront and the legal effect of the Colonial Ordinance has already been resolved and discussed in greater detail in prior Law Court decisions extending back nearly 200 years. *Id.* ¶¶ 8-46.

Law Court has stated definitively that “the upland owners’ fee ownership of the intertidal zone is solidly established in Maine’s common law.” *McGarvey*, 2011 ME 97, ¶ 32, 28 A.3d 620.

Thus, even accepting Plaintiffs’ material allegations as true, and leaving aside standing and ripeness, and limitations on actions, the question under Rule 12(b)(6) is whether the Court can even grant the relief requested: namely, issue a judgment declaring that (1) the Law Court has been continually wrong in its numerous prior decisions regarding the Massachusetts Bay Colony’s Colonial Ordinance of 1641-47 (the “Colonial Ordinance”) as being part of the common law of Maine; and (2) as far back as 1831, the Law Court unconstitutionally transferred the intertidal zone from the State to upland owners in fee subject to the Public Easement.

Simply stated, the doctrine of *stare decisis* dictates that this Court follow Law Court precedent.³ *See Ross v. Acadian Seaplants Ltd.*, No. CV-15-022, 2017 WL 1247566, at *4 (Me. Super. Ct. Mar. 14, 2017) (refusing to reexamine the law as “*stare decisis* is the historic policy of our courts to stand by precedent and not disturb a settled point of law”) (citing *McGarvey*, 2011 ME 97, ¶¶ 63, 64, 28 A.3d 620 (discussing the policy of *stare decisis* and its effect on established property rights)). To that end, “*Bell II* was decided in 1989, and it remains binding precedent that provides a clear and reasoned explanation of the public and private rights inherent in the intertidal zone under Maine’s common law.” *McGarvey*, 2011 ME 97, ¶ 66 n.17, 28 A.3d 620.

Dismissing Plaintiffs’ Complaint is therefore warranted. If this Court granted the relief Plaintiffs seek, the Court would directly contradict the law governing ownership of Maine’s intertidal land. The Complaint asks this court to declare that the Law Court has been

³ “Legal questions affecting ownership of land, once answered, ‘should be considered no longer doubtful or subject to change.’” *McGarvey*, 2011 ME 97, ¶ 64, 28 A.3d 620 (citing *United States v. Title Ins. & Trust Co.*, 265 U.S. 472, 486-87 (1924)).

misinterpreting the law for decades, whereas the factual allegations—as they pertain to Defendants—evidence that Defendants have merely been complying with the law and enforcing their property rights.

II. STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the complaint. *State v. Weinschenk*, 2005 ME 28, ¶ 10, 868 A.2d 200. The court “examine[s] the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.”

Moody v. State Liquor & Lottery Comm’n, 2004 ME 20, ¶ 7, 843 A.2d 43.

When deciding a motion to dismiss pursuant to Rule 12(b)(6) “the material allegations of the complaint must be taken as admitted.” *Id.* ¶ 7 (citing *Livonia v. Town of Rome*, 1999 ME 39, ¶ 5, 707 A.2d 83). But the court “need not accept the complaint’s legal conclusions.” *Stevens v. Bouchard*, 532 A.2d 1028, 1030 (Me. 1987). Dismissal is warranted when it is “beyond [a] doubt that the plaintiff is entitled to no relief under any set of facts that might be proved in support of the claim.” *Richardson v. Winthrop Sch. Dept.*, 2009 ME 109, ¶ 5, 983 A.2d 400 (citation omitted).

III. COUNTS I, II, III & IV CONFLICT WITH MAINE LAW AND SHOULD BE DISMISSED

a. **Fee Ownership of the Intertidal Zone**

Two years ago, in *Ross v. Acadian Seaplants Ltd.*, 2019 ME 45, ¶ 12, 206 A.3d 283, the Law Court reaffirmed the common law’s longstanding recognition that upland owners presumptively hold title to adjacent intertidal lands subject to the public’s right to use the intertidal zone for “fishing, fowling, and navigation”:

When Maine attained statehood in 1820, by force of the Maine Constitution the arrangement of private ownership by the upland owners and the right of the public—[deriving from the Colonial Ordinance] was engrafted into Maine common law

The result is that, in Maine, there are three separate shoreland areas subject to distinct public and private rights. First, the land below the mean low-water mark is owned by the State. Second, the dry sand, above the mean high-water mark, belongs exclusively to the upland property owner. Finally, there is the area that is subject of the present dispute: the intertidal zone—the land between the mean high-water mark and the mean low-water mark up to 100 rods The intertidal zone belongs to the owner of the adjacent upland property, or some other person to whom that part of the land has been transferred by the upland owner, “subject to certain public rights.”

Id. ¶¶ 11-12 (internal citations and quotation marks omitted). Accordingly, the *Ross* decision confirmed that upland property owners own title to adjacent intertidal lands, reaffirming a line of consistent precedent dating back to 1831. *See Lapis v. Bangor Bank*, 8 Me. 85, 93 (1831).

The result of *Ross* demonstrates that there is simply no support for Plaintiffs’ contention that there is “an actual and justiciable controversy concerning ownership of Maine’s intertidal lands.” (Pl.s’ Compl. ¶ 92.) That Plaintiffs hold a belief that the Law Court all these years has wrongfully interpreted the Colonial Ordinance as engrafted into Maine’s common law does not rise to the level of creating “an actual and justiciable controversy.”

Plaintiffs necessarily concede the status of the law today, that the upland owners, not the State of Maine, hold fee title to adjacent intertidal land. Plaintiffs do not allege there is uncertainty as to the nature of those rights—rights the Law Court reaffirmed just two years ago. They allege that case and prior cases were incorrectly decided.

A “complaint seeking a declaratory judgment must establish that there is a genuine controversy between the parties” based on an “existing right and is brought by a party with standing to sue.” *Hathaway v. City of Portland*, 2004 ME 47, ¶ 11, 845 A.2d 1168; *Conservation Law Found. v. Lepage*, No. CV-18-089, 2018 WL 4223092, at *4 (Me. Super. Ct.

July 20, 2018). Justiciability is a distinct concept from that of standing. *Conservation Law Found.*, 2018 WL 4223092, at *4. The Declaratory Judgment Act “does not present an exception to the justiciability rule.” *Lewiston Daily Sun v. Sch. Admin. Dis. No. 43*, 1999 ME 143, ¶ 20, 738 A.2d 1239.

Here, Plaintiffs are not asserting an existing right to the intertidal lands. Nor do Plaintiffs allege that they have any claim of ownership in the intertidal land. Plaintiffs’ requested relief is conditioned upon this Court overturning settled law. That is clear by reading Plaintiffs’ requests for relief:

The prayer for relief in the Complaint states:

WHEREFORE, pursuant to the Maine Declaratory Judgment Act, Plaintiffs respectfully request the court to grant judgment in their favor and declare that:

- a. The State of Maine holds title to all intertidal land, in trust for the public, without limitation to fishing, fowling, and navigation, and with the exception of land previously alienated pursuant to the Submerged Land Act and for the purposes of promoting commerce.
- b. Pursuant to the Maine Statehood Act, Maine entered the Union on an equal footing will (*sic*) all other states, and consequently holds title to its intertidal land, except for discrete parcels alienated to facilitate marine commerce.
- c. Pursuant to the Maine Constitution, only the Maine Legislature has the authority to alienate state intertidal land; the Maine Legislature has never alienated, is constitutionally barred from alienating all of the state's intertidal land; consequently, the state holds title to this land except for discrete parcels alienated to facilitate marine commerce.
- d. The alienation of all intertidal land in Maine may not be accomplished by a "judicial legislation," or by adhering to pre-statehood Massachusetts case law.
- e. Such further relief as the Court deems necessary and just.

(Pl.’s Compl. at 21-22.)

It is self-evident that by any fair application of *Ross* and *Bell II*, among other cases,⁴ this Court cannot issue the requested declaration. Precedent dictates that the requested relief is not the law of the State of Maine. Put another way, there is no genuine controversy between the parties to this action. Plaintiffs' Complaint is an academic disagreement with Law Court decisions. For these reasons, the Court should dismiss the Complaint as it does not allege any claims upon which this Court can grant relief.

b. Scope of the Public Easement

Plaintiffs also aver that “the public trust extends beyond fishing, fowling, and navigation.” (Pl.s' Compl. ¶¶ 74, 99.) But Plaintiffs request no relief regarding the scope of the Public Easement. Instead, Plaintiffs ask this Court to declare, contrary to a large body of Law Court precedent, that the intertidal zone is owned by the State and, therefore, that the Public Easement's limits are legally irrelevant.

Indeed, there is no claim or request for relief that calls upon this Court to apply the Law Court's analytical framework for applying the Public Easement (fishing, fowling, and navigation). *Bell II*, 557 A.2d at 173; *see McGarvey*, 2011 ME 97, ¶¶ 40, 51-53, 28 A.3d 620 (adopting a “sympathetically broad and generous” interpretation of fishing, fowling, and navigation). Plaintiffs also seek no declaration or application of the alternative common law test discussed in *Ross* and founded on Justice Wathen's dissent in *Bell II*, a test which has never been recognized by a majority of the Law Court. *See Ross*, 2019 ME 45, ¶¶ 28-32, 206 A.3d 283. Therefore, even if that test were proper, Plaintiffs present no genuine controversy under it.

⁴ *See Conant v. Jordan*, 107 Me. 227, 230, 77 A. 938, 939 (1910) (recognizing the Colonial Ordinance is “in force in Maine” as part of the common law); *Sawyer v. Beal*, 97 Me. 356, 358, 54 A. 848, 848 (1903) (“In this state, under the Colonial Ordinance of 1641 . . . which has become the common law of this state, the owner of land upon the seashore owns to the low-water mark . . . he has all the exclusive rights of an owner.”); *Lapish*, 8 Me. at 93 (noting that the “law on this point has been considered as perfectly at rest”).

Instead, Plaintiffs’ claims to “expand” the public’s rights in the intertidal zone are premised entirely on the court overturning precedent and declaring that the upland owners do not in fact own title to the intertidal zone.

c. Counts I, II, III & IV Fail to State a Claim

With this clear framework and directive in mind, Plaintiffs’ claim for relief—unfettered public access to private intertidal land—cannot plausibly fall within the scope of the Public Easement. *Id.* ¶ 31 (requiring a “reasonable and proper demarcation between the competing interests”). As the Law Court held in *Bell II*, “a court cannot extend a public easement in the privately owned intertidal land beyond that reserved in the Colonial Ordinance and defined by over 340 years of history.” *Bell II*, 557 A.2d at 176. Such an infringement of longstanding private property rights would run afoul of the federal and state Takings Clauses. *McGarvey*, 2011 ME 97, ¶ 65, 28 A.3d 620 (Levy, J., concurring) (“The *Bell II* majority continued to respect the property rights of fee owners of intertidal lands by holding that the establishment of a public easement that exceeds uses within the scope of fishing, fowling, and navigation is an unconstitutional taking of private property without just compensation, whether the easement is created by the Legislature or the judiciary”) (citing *Bell II*, 557 A.2d at 176, 177-79, 180).

As a matter of fact, the factual allegations against Defendants evidence that Defendants have merely been complying with the law and enforcing their property rights:

- “homeowners abutting the intertidal zone on Moody Beach have repeatedly let it be known that . . . members of the public, are to remain in the narrow public access portion of the beach or risk having the police called to arrest them for trespass.” (Pl.s’ Compl. ¶ 46.)
- “OA 2012 . . . claims title to intertidal land abutting its property in the same town. OA 2012 makes this claim by posting signs that say ‘Private Beach, No Loitering.’” (Pl.s’ Compl. ¶ 20.)
- Personnel associated with Judy’s Moody, LLC approach members of the public standing on intertidal land adjacent to the property owned by

Judy's Moody, LLC and falsely claim that they own the intertidal land, and then demand that they leave." (Pl.s' Compl. ¶ 22.)

- Plaintiffs have allegedly been deprived of "unfettered access to the section of the beach seaward of the mean high-water mark." (Pl.s' Compl. ¶ 39.)

Indeed, the Complaint does not seek authority for any specific use that may reasonably fall within the scope of the Public Easement. Rather, Plaintiffs ask this Court to disregard clear and constant precedent that holds the legal effect of the Colonial Ordinance became part of Maine's common law when Maine became a State in 1820, and declare that the "State of Maine holds title to all intertidal land, in trust for the public, without limitation to fishing, fowling, and navigation" (Pl.s' Compl. at 21.)

Thus, each of Plaintiffs' claims seeking to establish state ownership of the intertidal zone fail as a matter of law and must be dismissed. Count I generally seeks a declaration resolving ownership of the intertidal lands. (Pl.s' Compl. ¶¶ 91-94.) As Plaintiffs admit, this is foreclosed by a large body of unanimous Law Court precedent affirming the common law's recognition of private ownership of the intertidal zone. *See, e.g., Ross*, 2019 ME 45, ¶¶ 11-12, 43, 206 A.3d 283; *McGarvey*, 2011 ME 97, ¶¶ 9, 24-32, 64-66, 28 A.3d 620; *Bell II*, 557 A.2d at 170-73, 184-85; *Barrows v. McDermott*, 73 Me. 441 (1882); *State v. Wilson*, 42 Me. 9, 28 (1856); *Lapish*, 8 Me. 85. Although Plaintiffs may disagree with nearly 200 years of uninterrupted precedent, their requested relief cannot be granted and Count I merits dismissal. Moreover, Plaintiffs' effort to overturn nearly two centuries of property-rights precedent raises serious constitutional concerns under the federal and state Takings Clauses. *See Bell II*, 557 A.2d at 176-79; *see also McGarvey*, 2011 ME 97, ¶ 65, 28 A.3d 620 (acknowledging that principles of *stare decisis* are especially compelling where private property is concerned).

Count II claims that the Equal Footing Doctrine of the United States Constitution precludes Maine common law's recognition of private ownership of the intertidal zone. (Pl.s'

Compl. ¶¶ 95-99.) The Equal Footing Doctrine forbids Congress from conditioning a new state's entrance into the union on the state giving up sovereignty that previous states enjoy. *Coyle v. Smith*, 221 U.S. 559, 573 (1911). Plaintiffs make no allegation that Congress imposed any such condition on Maine.

Moreover, as the Law Court has recognized, two of the original colonies recognized private ownership of the intertidal zone under their common law and that common law was unaffected by their joining the union. *See McGarvey*, 2011 ME 97, ¶ 18, 28 A.3d 620. Therefore, there can be no uniform rule that admission to the union precludes states from recognizing private ownership of the intertidal zone. Moreover, Law Court precedent forecloses Plaintiffs' Equal Footing Doctrine claim, by holding that it is contrary to the law and is raised decades too late. *See Bell II*, 557 A.2d at 172 (“Any such revisionist view of history comes too late by at least 157 years . . .”).

Indeed, the Law Court has previously established that “[w]hen Maine achieved statehood in 1820, the Act of Separation and the Maine Constitution incorporated Massachusetts common law into Maine law.” *McGarvey*, 2011 ME 97, ¶ 31, 28 A.3d 620 (citing Me. Const. art. X, §§ 3, 5). The court opined:

[I]n 1820 the Maine Constitution both confirmed the grant of the intertidal land in fee to the upland owners and took over as the law of Maine the reserved public easement limited to fishing, fowling, and navigation Over a century ago, this court emphatically rejected the argument that the court may change [that legal regime] if satisfied that it does not operate beneficially under present circumstances.

Bell II, 557 A.2d at 176 (alterations in original) (internal quotation marks and citations omitted).

Count III alleges that the Law Court violated the Maine Constitution, Art. 4, Pt. 3, § 1, by engaging in “judicial legislation” and usurping the authority of the Legislature. (Pl.s' Compl.¶¶ 100-104.) But in recognizing and applying state common law, as well as striking down

legislation contrary to the state and federal constitution, the Law Court exercised the judicial power, not the legislative power. *See Portland Pipe Line Corp. v. Envtl. Imp. Comm'n*, 307 A.2d 1, 8 (Me. 1973); *see also Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”). Moreover, the relief requested under Count III, as with Plaintiffs’ other counts, is squarely foreclosed by precedent. *See Bell II*, 557 A.2d at 173 (reaffirming private ownership of the intertidal zone), 176–79 (holding that the Public Trust in Intertidal Land Act was unconstitutional because it sought to take private property without paying just compensation). Indeed, as the Law Court has previously held, it is Plaintiffs that ask the court to engage in impermissible judicial legislation. *See Bell II*, 557 A.2d at 176 (“To declare a general recreational easement, the court would be engaging in legislating.”).

Count IV alleges that even if the Colonial Ordinance does have legal effect—an issue the Law Court has repeatedly settled in Defendants’ favor—then the Public Easement rights are equivalent to the State owning the fee to the intertidal area, in other words, “whatever the state sees fit to allow and regulate exercising its sovereign police power and through its own legislative and regulatory process.” (Pl.s’ Compl. ¶¶ 105-106.) The same uninterrupted line of precedent recognizing private ownership of the intertidal zone forecloses this argument too. Even under the broadest interpretation of the Public Easement recognized by the Law Court but not yet adopted as law by a majority, Plaintiffs’ “whatever the state sees fit to allow” theory would be foreclosed. *See Ross*, 2019 ME 45, ¶¶ 28–32, 206 A.3d 283 (explaining that even if the Public Easement is not limited by fishing, fowling, and navigation, it would not extend to harvesting rockweed in the intertidal zone), 43 (agreeing that even under the concurrence’s interpretation, the Public Easement is limited and precludes harvesting rockweed in the intertidal zone).

This Court should take the same approach that the Superior Court (Cumberland County, *Crowley, J.*) took in response to a similar request to modify and expand the Public Easement. It recognized that “this Court must follow the majority opinions in these decisions” *Flaherty v. Muther*, No. RE-08-098, 2009 WL 2703667 (Me. Super. Ct. July 30, 2009). The court informed the parties that “this Court is bound by precedent. Accordingly, the public’s easement rights in the intertidal zone are limited to fishing, fowling and navigation.” *Id.* The same reasoning supports dismissal of Plaintiffs’ claims here.

IV. LACK OF STANDING AND JUSTICIABLE CONTROVERSY

In addition to dismissing Plaintiffs’ Complaint for failure to state a claim upon which relief can be granted, Plaintiffs’ Complaint warrants dismissal because private citizens do not have the right to sue for alleged public wrongs:

an individual citizen who suffers no particularized injury from a public wrong cannot seek relief from the courts; relief vindicating public rights must be sought by the ‘proper officer,’ i.e., the Attorney General of the State of Maine.

Buck v. Town of Yarmouth, 402 A.2d 860, 861 (Me. 1979). “As has long been recognized, the Attorney General may, in [his/her] discretion, institute a court proceeding to remedy an alleged violation of a public right.” *Id.* at 863.

Plaintiffs, as the party invoking this Court’s jurisdiction, “bear[] the burden of establishing standing as of the time [they] brought this lawsuit and maintaining it thereafter.” *Carney v Adams*, 141 S. Ct. 493, 499 (2020). In order to establish standing to sue, a party must demonstrate they suffered: (1) “an injury that is fairly traceable to the challenged action and that is likely to be redressed by judicial relief sought;” and (2) that the injury is particularized, “distinct from the harm suffered by the public-at-large.” *Collins v. State*, 2000 ME 85, ¶ 6, 750 A.2d 1257 (citations omitted); see *Conservation Law Found.*, 2018 WL 4223092, at *6 (“[I]n

order to obtain judicial review of a public wrong, a potential plaintiff must have suffered a direct and personal injury that is distinct from that suffered by the public at large.”).

Here, Plaintiffs’ alleged injury is only traceable to their claim that the Law Court unconstitutionally transferred intertidal land to adjacent upland owners. (*See e.g.* Pl.s’ Compl. ¶¶ 9, 11.) Defendants are not the source of wrongdoing alleged by Plaintiffs, however. Plaintiffs arbitrarily singled out Defendants among all coastal landowners to challenge Law Court precedent dating back to 1831. Accordingly, Plaintiffs lack the requisite particularized injury.⁵

Second, and specifically with regard to Plaintiffs’ Count III, ostensibly a claim against the judicial branch itself for engaging in “judicial legislation”—causing the ownership of the intertidal zone to be wrongfully taken from the State and alienated to private persons—the six-year limitations period for civil actions are calculated from the time the cause of action accrues. *See Halliday v. Henry*, 2015 ME 61, ¶ 9, 116 A.3d 1270. According to the Plaintiffs, the Law Court’s alleged violation of the separation of powers took place in 1831 when the Law Court, in *Lapish v. Bangor*, recognized that “according to the principles of the ordinance, flats pass by a conveyance of upland as appurtenant thereto.” *Lapish*, 8 Me. at 91, 93 (“The history of it is given in *Storer v. Freeman*, 6 Mass. 435 . . . [e]ver since that decision, as well as long before, the law on this point has been considered as perfectly at rest.”). Even if there were a violation of the separation of powers claim against the Law Court’s decision, the statute of limitations for such claim was six years and time ran out long ago. (*See* Pl.s’ Compl. ¶ 83) (stating that the law Court in “1831, 1910, and again in 1989, . . . proclaimed the legal efficacy of the Colonial Ordinance as a form of ‘judicial legislation’”).

⁵ Plaintiffs cannot invoke the preventive-remedial doctrine of standing, which allows a plaintiff “to seek preventative relief against a threatened public wrong without demonstrating a particularized injury.” *Blanchard v. Town of Bar Harbor*, 2019 ME 168, ¶ 12, 221 A.3d 554 (emphasis in original) (internal quotation marks and citation omitted).

Lastly, and in addition to the issues of standing and justiciability discussed above, Plaintiffs particularly lack standing to challenge Defendants' title pursuant to Count V. (See Pl.s' Compl. ¶¶ 107-111.) Count V seeks to invoke the Declaratory Judgments Act as the procedural vehicle for challenging Defendants' title, suggesting that Defendants' source deed(s) lacks the requisite reference to the "Atlantic Ocean," "ocean," "cove," "sea," or "river."⁶ (Pl.s' Compl. ¶¶ 107-111.)

While it's true that the Declaratory Judgments Act avoids the "arcane intricacies found in the procedural requirements of [the quiet title] provisions," the Act does not create a new cause of action or "confer jurisdiction where jurisdiction would otherwise not exist." *Hodgdon v. Campbell*, 411 A.2d 667, 669 (Me. 1980) (citations omitted); *Conservation Law Found.*, 2018 WL 4223092, at *3. Accordingly, Plaintiffs lack a basis to seek relief to quiet title unless they provide the legal basis for title in their name. *Levis v. Konitzky*, 2016 ME 167, ¶ 24, 151, A.3d 20.

Here, Plaintiffs do not allege that they are in the chain of title for this property nor that "he or she has been in uninterrupted, i.e. continuous and exclusive, possession for the four years preceding the commencement of the action." *Id.* (citing 14 M.R.S. § 6651). Therefore, Count V must also be dismissed as a result of the Plaintiffs' failure to allege the requisite elements of a quiet title action.

⁶ Terms such as "Atlantic Ocean," "ocean," "cove," "sea," or "river" are calls to the water that trigger the presumption that the upland oceanfront property owners hold title to the low water mark. *Almeder v. Town of Kennebunkport*, 2019 ME 151, ¶ 37, 217 A.3d 1111.

V. CONCLUSION

For the foregoing reasons, Defendants Judy's Moody LLC and John B. Howe, Trustee of the OA 2012 Trust, respectfully request that this Court dismiss Plaintiffs' Complaint against them on all counts.

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NOTICE

Pursuant to Rule 7 of the Maine Rules of Civil Procedure, opposition to this Motion must be filed not later than 21 days after the filing of the Motion, unless another time is provided by the Rules of Court. Failure to file a timely objection will be deemed a waiver of all objections to this Motion which may be granted without further notice or hearing.

conveyancing in Maine. Fee simple ownership of intertidal land in Maine is held, absent some severance, by the adjacent upland property owner. Not a single court case or dissenting opinion states otherwise. Similarly, Plaintiffs' claim that they can lawfully take seaweed from Defendants' property without permission defies the unanimous Law Court holding issued just two years ago in *Ross v. Acadian Seaplants, Ltd.* Given the total lack of factual or legal support, these allegations of harassment and wrongful conduct are outrageous and without any good faith basis.

Plaintiffs are apparently unhappy with the law in Maine and want to change it. But they are doing so by dragging Defendants into court on claims that have absolutely no support in existing law, nor a reasonable chance of modifying existing law. As such, Plaintiffs have failed to state a cause of action or identify any legal theory under which they could be granted relief. Under M.R. Civ. P. 12(b)(6), Plaintiffs' Complaint must be dismissed on all counts.

FACTUAL BACKGROUND

Defendants are owners of coastal property in Harpswell, Friendship, and Pembroke, Maine. Pl. Compl. ¶¶ 25, 29, 31. Defendants Edward Page, Christine Page, James Li, and Kim Newby have asked seaweed harvesters to stop cutting rockweed from the intertidal land adjoining their upland and have contacted state officials regarding that activity. Pl. Compl. ¶¶ 26, 30. Defendant Robin Hadlock Seeley advocates for the conservation of rockweed, including by making landowners aware of their rights under *Ross v. Acadian Seaplants, Ltd.*, Pl. Compl. ¶ 32. The Complaint does not allege any other facts about Defendants, their property, or their conduct.

STANDARD OF REVIEW

“A complaint is properly dismissed when it is beyond doubt that the plaintiff is entitled to no relief under any set of facts that might be proven in support of the claim.” *Richardson v.*

Winthrop Sch. Dept., 2009 ME 109, ¶ 5, 983 A.2d 400, 402. The court is “not bound to accept the complaint's legal conclusions.” *Bowen v. Eastman*, 645 A.2d 5, 6 (Me. 1994). To survive a motion to dismiss, a complaint must “set forth elements of a cause of action or allege facts that would entitle the plaintiff to relief pursuant to some legal theory.” *Livonia v. Town of Rome*, 1998 ME 39, ¶ 5, 707 A.2d 83, 85. The complaint “must allege facts with sufficient particularity so that, if true, they give rise to a cause of action; merely reciting the elements of a claim is not enough.” *Meridian Medical Systems, LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 2. A complaint is insufficient when it “merely recites in conclusory fashion” necessary elements of a claim. *Ramsey v. Baxter Title Co.*, 2012 ME 113, ¶ 7.

ARGUMENT

I. PLAINTIFFS’ CLAIM (Counts II and III) THAT THE STATE OWNS ALL INTERTIDAL PROPERTY IN MAINE FAILS TO STATE A CLAIM AS A MATTER OF EXISTING LAW THAT HAS BEEN SETTLED FOR CENTURIES

Plaintiffs seek to invalidate over 370 years of established law governing title to intertidal land in Maine. The framework for intertidal land ownership in Maine was first codified by the Colonial Ordinance of 1641-1647 (“Colonial Ordinance”), which declared that “the Proprietor of the land adjoining” tidal waters “shall have propertie to the low water mark.” *Bell v. Town of Wells*, 510 A.2d 509, 512 (Me. 1986) (“*Bell I*”). That principle has been incorporated into Maine common law and been continuously affirmed for centuries by courts in Maine and Massachusetts without a single dissenting opinion.

Plaintiffs’ legal theory is not novel. The identical legal argument has been advanced in briefs filed in multiple cases before the Law Court, which has rejected or ignored it every time. *See, e.g., Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) (“*Bell II*”). Plaintiffs provide no new facts or legal argument that would distinguish the current Complaint from past attempts.

Plaintiffs acknowledge that their theory of state ownership of intertidal land is not the law in Maine. They simply assert, incorrectly, that the unbroken line of caselaw confirming private ownership of intertidal land is “in error.” Pl. Compl. ¶¶ 83-84, 87, 90, 98.

Accordingly, Counts II and III of Plaintiffs’ Complaint must be dismissed because they are contrary to Maine law and fail to state a cause of action.

A. Private Ownership of Intertidal Property Has Unambiguously Been the Law in Maine from Colonial Times to the Present

Among the many Law Court cases that have addressed the issue, *Bell I* (1986) and *Bell II* (1989) may contain the most thorough analysis of Maine’s framework for private ownership of intertidal land. After a comprehensive review of English common law, the Colonial Ordinance, and subsequent cases in Maine and Massachusetts, the *Bell I* court unanimously confirmed that:

the Colonial Ordinance was a rule of Massachusetts common law at the time of the separation of Maine from Massachusetts. By force of article X, § 3 of the Maine Constitution and of section 6 of the Act of Separation between Maine and Massachusetts, it must be regarded as incorporated into the common law of Maine. . . . under the Colonial Ordinance the owner of the upland holds title in fee simple to the adjoining intertidal zone subject to the public rights expressed in the Ordinance.

510 A.2d at 513-15.

Three years later, the *Bell II* court reached the same conclusion, stating, “The elaborate legal and historical researches reflected in the extensive briefs filed with us on this second appeal fail to demonstrate any error in the conclusions we reached less than three years ago.” 557 A.2d at 171. Even so, the *Bell II* court engaged in its own lengthy analysis and concluded, “In sum, we have long since declared that in Maine, as in Massachusetts, the upland owner's title to the shore [is] as ample as to the upland.” *Id.* at 173. Referring to the same legal theories now advanced (again) by Plaintiffs, the Court held, “Any such revisionist view of history comes too late by at least 157 years.” *Id.* at 172. The *Bell II* court’s holding regarding private title to intertidal land

was unanimous. *See id.* at 185 (Wathen, J., dissenting) (“this Court has followed the lead of Massachusetts in describing the rights of the riparian owner expansively in terms of fee simple ownership.”).

Plaintiffs focus on the *Bell* cases as having “stripped the people of Maine” of intertidal ownership. Pl. Compl. at 2. However, the *Bell* cases are only two decisions in an unwavering body of precedent explicitly affirming that fee simple ownership of intertidal land in Maine is held, absent some severance, by the adjacent upland property owner.

Addressing the ownership of intertidal land in Cape Elizabeth shortly before Maine became a state, the Massachusetts Supreme Judicial Court stated, “from [the time of the Colonial Ordinance] to the present, a usage has prevailed, which now has force as our common law, that the owner of lands bounded on the sea or salt water shall hold to low water mark.” *Storer v. Freeman*, 6 Mass. 435, 438 (1810). Eleven years after Maine statehood, the Law Court addressed the issue in *Lapish v. Bangor Bank*, 8 Me. 85 (1831). It was argued in *Lapish* that the Colonial Ordinance had never been in force in Maine. The Law Court rejected this contention, stating, “Ever since [*Storer v. Freeman*], as well as long before, the law on this point has been considered as perfectly at rest; and we do not feel ourselves at liberty to discuss it as an open question.” *Id.* at 93.

In 1882, the Law Court again declared that private intertidal ownership was the law everywhere in Maine, providing compelling reasoning particularly relevant to Plaintiffs’ claims:

[The Colonial Ordinance] has been so often and so fully recognized by the courts both in this State and in Massachusetts as a familiar part of the common law of both, throughout their entire extent, without regard to its source or its limited original force as a piece of legislation for the colony of Massachusetts Bay, that we could not but regard it as a piece of judicial legislation to do away with any part of it or to fail to give it its due force throughout the State until it shall have been changed by the proper law making power. When a statute or ordinance has thus become part of the common law of a State it must be regarded

as adopted in its entirety and throughout the entire jurisdiction of the court declaring its adoption.

It is not adopted solely at the discretion of the court declaring its adoption, but because the court find that it has been so largely accepted and acted on by the community as law that it would be fraught with mischief to set it aside.

It is not here and now a question whether this ordinance shall be adopted with such modifications as might be deemed proper under the circumstances of the country. It has been long since adopted in all its parts, acted upon by the whole community and its adoption declared by the courts; and now the argument of the plaintiff's counsel aims to have us declare either that it has not the force of law in certain parts of the State, or that the court may change it if satisfied that it does not operate beneficially under present circumstances. We cannot so view it.

Barrows v. McDermott, 73 Me. 441, 448–49 (1882) (citations omitted).

From *Lapish* to *Barrows* to *Bell* to the present, the Law Court has continuously affirmed this rule of private intertidal ownership for two centuries. *See, e.g., Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 12 (“The intertidal zone belongs to the owner of the adjacent upland property, or some other person to whom that part of the land has been transferred by the upland owner, subject to certain public rights.”); *Britton v. Donnell*, 2011 ME 16, ¶ 7 (“Under the common law, the land of the intertidal zone belongs to the owner of the adjacent upland property, subject to certain public rights.”); *Andrews v. King*, 129 A. 298, 299 (Me. 1925) (“The well-settled construction of the Colonial Ordinance, consistently adhered to by the courts of this state and Massachusetts, is this: That it vested the property of the flats in the owner of the upland in fee . . .”); *State v. Leavitt*, 72 A. 875, 876 (Me. 1909) (“By the colonial ordinance of 1641 of the Massachusetts Bay Colony, which by usage and judicial adoption is taken to be a part of the common law of this state, the title to the seashore between high and low water mark, not exceeding 100 rods, was vested in the owner of the upland.”) (internal citation omitted); *Marshall v. Walker*, 45 A. 497 (Me. 1900) (“the proprietor of the main holds the shore ... in fee, like other lands”); *Hill v. Lord*, 48 Me. 83, 94-96 (1861) (“It is argued for the defendant, with

apparent seriousness, that if the plaintiff owns the upland, he has no title to the flats, but that the latter belong to the public. . . . These flats belong to the owner of the upland, as appurtenant to it.”); *Moulton v. Libbey*, 37 Me. 472, 502 (1854) (“The colonial ordinance of 1641 was adopted by the Commonwealth of Massachusetts, and is common law there and in this State, with all the effect and force of a statute, and it has the sanction of the judicial tribunals, as having the effect of a valid and irrevocable grant of the fee in the soil to the riparian proprietors, subject only to the express reservations contained therein.”) (Hathaway, J., dissenting on other grounds); *Deering v. Proprietors of Long Wharf*, 25 Me. 51, 64 (1845) (“By the colonial ordinance of 1641, which is a part of our law, it is declared, that in all creeks, coves and other places about and upon salt water, where the sea ebbs and flows, the proprietor of the lands adjoining, shall have propriety to the low water mark”) (internal quotations omitted); *Moore v. Griffin*, 22 Me. 350, 355 (1843) (“The plaintiff having thus established his title to the farm as bounded upon the river, the ordinance of 1641 declares, that the proprietor of the land adjoining shall have propriety to the low water mark . . .”) (internal quotations omitted).

Accordingly, there is not a scintilla of uncertainty in the law on this issue.

B. Plaintiffs’ Legal Theory for Statewide Intertidal Ownership Has Been Addressed and Rejected by the Law Court, and Continues to Lack Merit

Plaintiffs argue without support that the Maine Law Court has been getting it wrong for hundreds of years in every single case discussed above. Plaintiffs allege that the Colonial Ordinance did not grant title, but rather a “license” to the adjoining upland owner. Pl. Compl. ¶ 70. Plaintiffs allege that, even if the Colonial Ordinance did grant title to the adjoining upland owner, under the “equal footing” doctrine such title was extinguished when Maine became a state. Pl. Compl. ¶¶ 81, 97-98. Plaintiffs allege that the chain of Law Court decisions cited above “lacked any constitutional or statutory authority” and constituted impermissible “judicial

legislation.” Pl. Compl. ¶¶ 83-84, 104. These arguments have already been made to and rejected by the Law Court. The *Bell II* Court stated:

[t]he brief of the amici curiae contends that the State of Maine on coming into the Union on separation from Massachusetts “obtained title to its intertidal lands under the ‘equal footing’ doctrine,” a doctrine that has been most recently discussed by the United States Supreme Court in *Phillips Petroleum Co. v. Mississippi*. Any such revisionist view of history comes too late by at least 157 years.

Bell II, 557 A.2d at 172 (citing *Lapish*, 8 Me. at 93). The amicus curiae referred to in *Bell* was Orlando Delogu, a plaintiff and a signatory of the Complaint in this action. In between *Bell II* and now, Mr. Delogu has submitted amicus briefs making the same legal argument in at least three Law Court appeals. See *Almeder*, 2019 ME 151; *McGarvey*, 2011 ME 97; *Flaherty v. Muther*, 2011 ME 32. In none of those cases did the Court find a reason to revisit Mr. Delogu’s arguments.

Plaintiffs’ principal theory for state ownership of intertidal land is the claim that, under the equal footing doctrine, “Upon statehood, the state gains title within its borders to the beds of waters then navigable, or tidally influenced.” Pl. Compl. ¶¶ 97. Plaintiffs omit that this general concept does not apply where particular states, for example Maine and Massachusetts, elected to alter the framework for intertidal property rights. See, e.g., *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 475 (1988) (“it has been long established that the individual States have the authority to define the limits of the lands held in public trust and to recognize private rights in such lands as they see fit. Some of the original States, for example, did recognize more private interests in tidelands than did others of the 13—more private interests than were recognized at common law, or in the dictates of our public trusts cases.”) (citing *Shively v. Bowlby*, 152 U.S. 1, 26 (1894)).

The Law Court easily made this distinction when it addressed the question in *Bell II*. “The *Phillips Petroleum* decision in 1988 in no way contradicts the plain and carefully explained decision in 1893 in *Shively v. Bowlby*, that Massachusetts and Maine had much earlier exercised their statehood powers over their intertidal lands and had adopted rules of real property law very different from those prevailing in many other states.” 557 A.2d at 172–73. Accordingly, Plaintiffs’ central support for state ownership of intertidal land, the “equal footing” doctrine, is inapplicable in Maine, as held by the Law Court in 1989.

Similarly, Plaintiffs’ claim that the Maine Judiciary has been violating the separation of powers doctrine for 200 years, Pl. Compl. ¶ 104, is without merit. Plaintiffs describe the numerous Law Court decisions addressing common law intertidal property rights as “judicial legislation” that is “lacking any constitutional or statutory authority.” Pl. Compl. ¶ 83. In reality, all of the cases discussed above are examples of core judicial activity, namely the adjudication of concrete property rights disputes between parties to litigation based on the interpretation of case law, statute, and constitution. Plaintiffs’ proposed remedy for what they allege is unconstitutional overreach by the judiciary is for the court to now reverse centuries of property law by issuing a declaration of “statewide effect” that would invalidate “the property interests of upland owners not party to these proceedings.” Pl. Compl. ¶ 94. A fair reading of the Complaint indicates that Plaintiffs are seeking rather than aggrieved by “judicial legislation.”

Plaintiffs are correct in one aspect: Changing the fundamental law governing the ownership of land along the entire coast of Maine is better left to the political and legislative process, within allowable constitutional parameters. The Law Court has explicitly articulated the mandate of separation of powers with respect to judicial action specifically related to the policy goal of expanding public rights in the intertidal zone:

The solution [to beach access] under our constitutional system, however, is for the State or municipalities to purchase the needed property rights or obtain them by eminent domain through the payment of just compensation, not to take them without compensation through legislative or judicial decree redefining the scope of private property rights.

Bell II, 557 A.2d at 180.

Because Plaintiffs' claim that title to all intertidal land in Maine is held by the state is contrary to centuries of completely settled law and has been heard and rejected by the Law Court, Plaintiffs fail to "set forth elements of a cause of action that would entitle them to relief pursuant to some legal theory." Accordingly, Counts II and III of Plaintiffs' Complaint must be dismissed pursuant to M.R. Civ. P. 12(b)(6).

II. PLAINTIFFS' UNSUPPORTED LEGAL CONCLUSIONS REGARDING EXPANSION OF THE PUBLIC TRUST DOCTRINE (Count IV) FAIL TO STATE A CLAIM

Without reference to any set of facts, Plaintiffs assert that the Maine public trust doctrine "extends to whatever the state sees fit to allow and regulate exercising its sovereign police power and through its own legislative and regulatory processes." Pl. Compl. ¶ 106. This sweeping legal conclusion is untethered to any actual case or controversy and untethered to Maine law on the issue. *See Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45. The *Ross* Court engaged in an exhaustive discussion of the current and potential scope of the public's rights to use the intertidal zone under the state's public trust doctrine. Under the broadest possible reading, *Ross* did not explore the idea that the public's rights were co-extensive with the state's police power.

However, *Ross* did unanimously hold that, under any conceivable framework for the public trust doctrine, the public does not have the right to harvest rockweed growing on someone else's property. *Id.* ¶¶ 33, 43. Thus, Plaintiffs' baseless legal conclusion about the scope of the

public trust doctrine does not support the allegations that Defendants have wrongfully prevented unnamed seaweed harvesters from cutting rockweed on Defendants' property.

The court is "not bound to accept the complaint's legal conclusions." *Bowen v. Eastman*, 645 A.2d 5, 6 (Me. 1994). The Superior Court is of course bound by the Law Court regarding the scope of the public trust doctrine. *See Flaherty v. Muther*, 2009 WL 2703667 (Me. Super. Ct., July 30, 2009) ("The State's request for expanding public trust rights in the intertidal zone does not fall on deaf ears; however, this Court is bound by precedent. Accordingly, the public trust rights in the intertidal zone are limited to fishing, fowling and navigation.") (Crowley, J.).

The Complaint is devoid of facts or law that would entitle Plaintiffs to relief pursuant to some legal theory about the scope of the Maine public trust doctrine. Accordingly, Count IV of Plaintiffs' Complaint must be dismissed pursuant to M.R. Civ. P. 12(b)(6).

III. PLAINTIFFS' CONCLUSORY ALLEGATIONS REGARDING DEFENDANTS' CHAIN OF TITLE (Count V) ARE INSUFFICIENT TO STATE A CLAIM

Plaintiffs' claims regarding Defendants' chain of title are similarly devoid of any concrete facts that could result in relief being granted. In a declaratory judgment action regarding title, the burden is on the plaintiff to show better title than the defendant. *Bell I*, 510 A.2d at 515 ("The plaintiffs in the instant case have the burden of proving title in themselves both to the intertidal zone and the upland."); *Hodgdon v. Campbell*, 411 A.2d 667, 671 (Me. 1980). Plaintiffs in this case fail to allege that they hold any title at all to Defendants' property.

Plaintiffs' sole factual allegations under Count V are that "Defendants each hold title to certain parcels of land in a chain of title dating back to an original conveyance from the 17th Century" and that "The original conveyances do not, and never did make reference to the ocean, cove, sea, or river." Pl. Compl. ¶¶ 109-10. These allegations, even when accepted as true, are so generic that they arguably apply to every piece of property in the state of Maine. They are

conclusions with no underlying fact. Plaintiffs do not allege any facts specific to Defendants' deeds or chain of title. Plaintiffs do not identify the specific property for which they are disputing title. Plaintiffs do not allege any facts specific to Plaintiffs' or anyone else's claim of title to the property at issue. Plaintiffs do not identify any specific title instruments or any relevant language that those instruments might contain. Plaintiffs merely state general principles of law related to deed construction. Pl. Compl. ¶¶ 107-08.

Count V of the Complaint doesn't meet even the liberal notice-pleading standard under Maine law. A complaint is insufficient when it "merely recites in conclusory fashion" necessary elements of a claim. *Ramsey*, 2012 ME 113, ¶ 7. A complaint must "allege facts sufficient to demonstrate that the complaining party has been injured in a way that entitles him or her to relief." *America v. Sunspray Condo. Ass'n*, 2013 ME 19, ¶ 20.

With respect to Count V, Plaintiffs have failed to "allege facts with sufficient particularity so that, if true, they give rise to a cause of action." *Meridian Medical Systems*, 2021 ME 24, ¶ 2. Accordingly, Count V of Plaintiffs' Complaint must be dismissed pursuant to M.R. Civ. P. 12(b)(6).

IV. PLAINTIFFS CANNOT MAINTAIN A DECLARATORY JUDGEMENT ACTION (Count I) BECAUSE THEY LACK STANDING AND THERE IS NO JUSTICIABLE CONTROVERSY

The Maine Declaratory Judgements Act "may be invoked only where there is a genuine controversy." *Patrons Oxford Mut. Ins. Co. v. Garcia*, 1998 ME 38, ¶ 4. The genuine controversy must also be justiciable. A justiciable controversy is "a claim of right buttressed by a sufficiently substantial interest to warrant judicial protection." *Sch. Comm. of Town of York v. Town of York*, 626 A.2d 935, 942 (Me. 1993) ("Justiciability requires two elements: (1) a real

and substantial controversy and (2) a plaintiff with standing to raise the issues.”). Plaintiffs have neither raised a genuine controversy, nor have they alleged standing to sue.

As discussed above in Sections I-III, Plaintiffs have not identified a live legal issue or an operative set of facts that the court could properly adjudicate. To the extent there is “controversy,” it is solely the result of Plaintiffs’ unwillingness to acknowledge the holdings of the Maine judiciary. There is no genuine legal controversy here for the purpose of invoking the Declaratory Judgments Act.

Plaintiffs also lack standing. For Plaintiffs to have standing to challenge Defendants’ title to intertidal land, they must allege some protected legal interest of their own in the disputed property. *Lamson v. Cote*, 2001 ME 109, ¶ 11. For example, “An abutter of property that is in dispute, who presents a good faith claim of title or of a statutorily or equitably created interest in the disputed property, has standing to litigate the existence of that interest.” *Id.* ¶ 12. With respect to Defendants’ property, the Complaint is devoid of any such allegation. Plaintiffs do not “present a good faith claim of title” or other interest in Defendants’ intertidal land. Plaintiffs do not allege that they themselves hold title to or any other property right. Plaintiffs allege that title to Defendants’ intertidal property is held by the State of Maine. Pl. Compl. ¶ 99. Plaintiffs fail to identify any statutory or common law private right of action that would give them the right to enforce property rights allegedly held by the state.

To the extent that Plaintiffs are alleging that they have a legally protected interest to harvest rockweed growing on and attached to Defendants’ intertidal land, that allegation is obviously contrary to Maine law. In *Ross v. Acadian Seaplants, Ltd.*, decided just over two years ago, the Law Court held that “rockweed attached to and growing in the intertidal zone is the private property of the adjacent upland landowner. Harvesting rockweed from the intertidal land

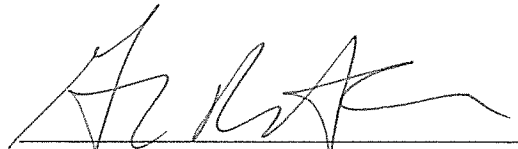
is therefore not within the collection of rights held in trust by the State, and members of the public are not entitled to engage in that activity as a matter of right.” 2019 ME 45.

When Defendants asked harvesters to stop cutting rockweed on Defendants’ property in reliance on the unequivocal holding in *Ross*, Plaintiffs allege that to be “harassment” that harms them by “interrupting the steady supply of clean and fresh rockweed.” Pl. Compl. ¶ 61. When Defendants made the *Ross* holding known to others, Plaintiffs allege that to be “actively promoting the harassment of rockweed harvesters by falsely claiming landowners have a right to deny them access.” Pl. Compl. ¶ 62. Plaintiffs’ unwillingness to accept and follow decisions of the Maine judiciary does not confer standing upon them.

CONCLUSION

As discussed above, the legal framework for ownership of intertidal property in Maine has been completely at rest, with no countervailing precedent or dissent, for centuries. The legal theories in the Complaint have been raised before and rejected by the Law Court. Plaintiffs’ Complaint fails to allege any facts or identify any law that state a claim upon which relief can be granted. Accordingly, Defendants respectfully request that the Court dismiss all counts of Plaintiffs’ Complaint with prejudice pursuant to M.R. Civ. P. 12(b)(6).

Dated at Portland, Maine this 26 day of May, 2021.



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NOTICE

Any opposition to this motion must be filed not later than twenty-one (21) days from the date this motion was filed pursuant to Rule 7(c) of the Maine Rules of Civil Procedure. Failure to file a timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-35

PETER and KATHY MASUCCI, et al.,)
)
Plaintiffs,)
)
v.)
)
JUDY’S MOODY LLC, et al.,)
)
Defendants,)
)
and)
)
AARON FREY, in his capacity as Attorney)
General for the State of Maine,)
)
Party-in-Interest.)

**DEFENDANT OCEAN 503 LLC’S
MOTION TO DISMISS AND
INCORPORATED MEMORANDUM
OF LAW**

Title to Real Estate is Involved

Pursuant to M.R. Civ. P. 12(b)(6), Defendant Ocean 503 LLC (“Ocean 503” or “Defendant”) moves for the dismissal of the April 22, 2021 Complaint for Declaratory Judgment Affirming Maine’s Title to Its Intertidal Lands in Trust for the Public Except for Discrete Parcels Alienated to Facilitate Marine Commerce (the “Complaint”) of Plaintiffs Peter and Kathy Masucci, Robert Morse, George Seaver, Greg Tobey, Bonnie Tobey, Hale W. Miller, John W. Grotton, LeRoy Gilbert, Jake Wilson, Dan Harrington, Orlando and Judith Delogu, William Connerney, William M. Griffiths and Sheila A. Jones, Susan Domizi, Dr. Brian Beal, Charles and Sandra Radis, Amanda Moeser, Chad Coffin, and Lori and Tom Howell (collectively, “Plaintiffs”). As set forth more fully below, Plaintiffs do not have standing to assert a claim of fee ownership of intertidal lands on behalf of the State of Maine. Furthermore, even if Plaintiffs do have standing, Plaintiffs have not set forth a cause of action nor alleged facts entitling them to

relief because it is settled law that (1) intertidal land is owned by the owner of the adjacent upland; and (2) the public trust doctrine does not extend limitlessly to include Plaintiffs' uses. As such, this Court should dismiss the Complaint with prejudice.

I. BACKGROUND

On April 22, 2021, Plaintiffs filed a five-count Complaint seeking a declaratory judgment, requesting the Court to declare that: (1) “[t]he State of Maine holds title to all intertidal land, in trust for the public, without limitation to fishing, fowling, and navigation”; (2) “Maine entered the Union on an equal footing will [sic] all other states, and consequently holds title to its intertidal land”; and (3) the Maine Legislature alone may alienate state intertidal land and such alienation cannot be accomplished by “judicial legislation” or “by adhering to pre-statehood Massachusetts case law.”¹ (Compl. pp. 21-22.)

Plaintiffs are individuals who engage or seek to engage in various activities on intertidal lands, including “enjoying Maine’s beaches” (Compl. ¶¶ 1, 9, 10, 14); harvesting seaweed (Compl. ¶¶, 2-8, 11-13); conducting research (Compl. ¶ 15); and harvesting clams and shellfish (Compl. ¶¶ 18, 19). Plaintiffs’ request for declaratory judgment stems from what they perceive to be “Defendants’ unlawful claims to title over Maine’s intertidal land,” (Compl. ¶ 2), which they contend interferes with their livelihood and prevents Plaintiffs from exercising their rights to the intertidal lands. (Compl. ¶¶ 1, 2).

Specific to Ocean 503, Plaintiffs allege that Defendant wrongfully “claims title to intertidal land abutting its property in [Wells, Maine] . . . by posting signs on its property that say ‘Moody Beach is a Private Beach to the low watermark. No Loitering’”, and that these signs

¹ The specific counts alleged in the Complaint are as follows: Count I – Declaratory Judgment; Count II – The alienation of all Maine intertidal land violates Article IV, §§ 1-3 of the United States Constitution – The Equal Footing Doctrine; Count III - The alienation of all Maine intertidal land by the Judicial Branch of government violates the Maine Constitution; Count IV – The “Public Trust” extends beyond fishing, fowling, and navigation; and Count V – The Defendants Do Not Hold Title to the Intertidal Land.

are designed to “create an intimidating environment and to unlawfully prohibit the public from enjoying a public beach”. (Compl. ¶¶ 23-24.) Plaintiffs do not specifically allege that Ocean 503 has prevented Plaintiffs from accessing or using the intertidal land in dispute.² (Compl. ¶¶ 1-111.)

II. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim. *State v. Weinschenk*, 2005 ME 28, ¶ 10, 868 A.2d 200; M.R. Civ. P. 12(b)(6) (providing for dismissal for “failure . . . to state a claim upon which relief can be granted.”). In determining whether a pleading is sufficient, the material allegations of the pleading are taken as true, but the court is “not bound to accept the [pleading’s] legal conclusions.” *Seacoast Hangar Condo. II Ass’n v. Martel*, 2001 ME 112, ¶ 16, 775 A.2d 1166 (quoting *Bowen v. Eastman*, 645 A.2d 5, 6 (Me. 1996)). Rather, “[t]he [pleading] must allege facts with sufficient particularity so that, if true, they give rise to a cause of action; merely reciting the elements of a claim is not enough.” *America v. Sunspray Condo. Ass’n*, 2013 ME 19, ¶ 13, 61 A.3d 1249; *see also Burns v. Architectural Doors & Windows*, 2011 ME 61, ¶ 17, 19 A.3d 823 (“A party may not, therefore, proceed on a cause of action if that party’s complaint has failed to allege facts that, if proved, would satisfy the elements of the cause of action.”). Alternatively, the pleading “must allege[] facts that would entitle the plaintiff to relief pursuant to some legal theory.” *Napieralski v. Unity Church of Greater Portland*, 2002 ME 108, ¶ 4, 802 A.2d 391 (affirming dismissal of a complaint based on a legal theory that required changing current law). “The legal sufficiency of a complaint challenged pursuant to M.R. Civ. P. 12(b)(6) is a question of law.” *Bean v. Cummings*, 2008 ME 18, ¶ 7, 939 A.2d 676.

² Ocean 503 has, in fact, never actively prevented any of the Plaintiffs from reasonably accessing, enjoying, or using the intertidal land on its property and has never made any intentional efforts to intimidate members of the public or unlawfully prohibit access to the beach area.

III. ARGUMENT

A. Plaintiffs Do Not Have Standing To Assert State Ownership Of The Intertidal Zone

Before addressing the merits of Plaintiffs' claims, it must be noted that Plaintiffs cannot satisfy the threshold requirement of standing. *Lamson v. Cote*, 2001 ME 109, ¶ 11, 775 A.2d 1134 (“[S]tanding is a threshold issue bearing on the court’s power to adjudicate disputes.”) (quoting *Franklin Prop. Trust v. Foresite, Inc.*, 438 A.2d 218, 220 (Me.1981)).

“Unless a party has standing to sue, that party’s complaint is properly dismissed.” *Estate of Robbins v. Chebeague & Cumberland Land Tr.*, 2017 ME 17, ¶ 10, 154 A.3d 1185, 1189 (citing *Nevin v. Union Tr. Co.*, 1999 ME 47, ¶¶ 41–42, 726 A.2d 694). Maine’s “standing jurisprudence is prudential, rather than constitutional.” *Roop v. City of Belfast*, 2007 ME 32, ¶ 7, 915 A.2d 966 (internal citations and quotations omitted). While the Declaratory Judgments Act, 14 M.R.S. §§ 5951-63, is to be construed liberally to allow for “a binding judicial determination of [the parties’] legal rights, status or relations”, *Hodgdon v. Campbell*, 411 A.2d 667, 669 (Me. 1980) (emphasis added); *see also Bell v. Town of Wells*, 510 A.2d 509, 515 (Me. 1986), “[t]he basic premise underlying the doctrine of standing is to ‘limit access to the courts to those best suited to assert a particular claim.’” *Roop*, 2007 ME 32, ¶ 7, 915 A.2d 966 (quoting *Halfway House, Inc. v. City of Portland*, 670 A.2d 1377, 1380 (Me.1996)).

“The ‘gist of the question of standing’ is whether the party seeking review has a sufficient personal stake in a justiciable controversy to assure the existence of that ‘concrete adverseness’ that facilitates diligent development of the legal issues presented.” *Halfway House, Inc. v. City of Portland*, 670 A.2d 1377, 1380 (Me. 1996) (citing *Flast v. Cohen*, 392 U.S. 83, 99, 88 S.Ct. 1942, 1952, 20 L.Ed.2d 947 (1968)). In order to bring a declaratory judgment action, the plaintiff, at minimum, must be “interested” in the subject matter of the action. 14 M.R.S. § 5954.

More specifically, the plaintiff must have a “judicially protected interest” at stake. *See Smith v. Allstate Ins. Co.*, 483 A.2d 344, 346–47 (Me. 1984).

Here, Plaintiffs seek a declaratory judgment that, *inter alia*, the State of Maine owns the intertidal zones at issue and holds such intertidal lands in trust for the benefit of the public, and that the public’s rights are not limited to fishing, fowling, and navigation. As such, this case presents two distinct issues: that of (1) fee ownership, the *jus privatum*, of the intertidal lands adjoining Defendants’ shorefront properties; and (2) the public’s rights, the *jus publicum*, to use those intertidal lands. And while some Plaintiffs may have standing to request a declaration of the scope of their *own* rights to use the intertidal zone, it is clear that Plaintiffs do not have standing to assert, *on behalf of the State of Maine*, a claim of fee ownership of the intertidal zone. *Cf. Almeder v. Town of Kennebunkport*, No. RE-09-111, 2010 WL 9049227 (Me. Super. Aug. 17, 2010) (vacated on other grounds) (“While the Town of Kennebunkport or the State of Maine clearly have standing to raise this claim as the public’s representative, it is far less clear that the HARRISES are similarly situated. They are private citizens who lack standing to litigate claims on behalf of the general public.”). Plaintiffs, as private citizens, lack standing to bring this claim on behalf of the State and, by extension, the general public. *See id.*

Stated plainly, Plaintiffs have no “judicially protected interest” in the fee ownership of the intertidal zone, and as such, they are not “best suited” to assert the State’s claim of title to the intertidal lands at issue here. If a claim is to be made, it is the State’s to make, and not that of the Plaintiffs. Any claim of fee ownership of the intertidal land must be asserted by the State itself. Therefore, Plaintiffs’ claim for declaration of State ownership of the intertidal lands must be dismissed due to a lack of standing.

B. Plaintiffs' Claim Regarding State Ownership Of The Intertidal Zone Fails As A Matter Of Law

Even assuming *arguendo* that Plaintiffs have standing to assert the State's ownership of the intertidal zone, the claim still fails as a matter of law. There is no legal basis to assert State ownership of the intertidal land. The law in this area has long been settled. "In Maine, we have *always* recognized private ownership of the intertidal land as a part of our common law." *McGarvey v. Whittredge*, 2011 ME 97, ¶ 23, 28 A.3d 620 (emphasis added); *see also, e.g., Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 12, 206 A.3d 283 ("The intertidal zone belongs to the owner of the adjacent upland property, or some other person to whom that part of the land has been transferred by the upland owner"); *Britton v. Donnell*, 2011 ME 16, ¶ 7, 12 A.3d 39, 42 ("Under the common law, the land of the intertidal zone belongs to the owner of the adjacent upland property, subject to certain public rights."); *Bell v. Town of Wells*, 557 A.2d 168, 173 (Me. 1989) ("[W]e have long since declared that in Maine, as in Massachusetts, the upland owner's title to the shore [is] as ample as to the upland.") (internal quotations omitted) (hereinafter "*Bell II*"); *Bell v. Town of Wells*, 510 A.2d 509, 515 (Me. 1986) ("[T]he owner of the upland holds title in fee simple to the adjoining intertidal zone subject to the public rights expressed in the [Colonial] Ordinance.") (hereinafter "*Bell I*"); *Matthews v. Treat*, 75 Me. 594, 598 (1884); *Duncan v. Sylvester*, 24 Me. 482, 486 (1844).

As the Law Court has explained:

Long before 1820 it was established in the common law of Massachusetts, applicable to its entire territory including the District of Maine, that the owner of shoreland above the mean high water mark presumptively held title in fee to intertidal land subject only to the public's right to fish, fowl, and navigate. *See Storer v. Freeman*, 6 Mass. 435 (1810) (Parsons, C.J.) (involving land in Cape Elizabeth in the District of Maine). That rule of law governing titles to intertidal land had its origin in the Colonial Ordinance of 1641–47 of the Massachusetts Bay Colony and long before the separation of Maine was received into the common law of Massachusetts by long usage and practice throughout the

jurisdiction of the Commonwealth. *Id.* at 438. Then, by force of article X, section 3 of the Maine Constitution, that property rule was confirmed as the law of the new State of Maine.

Bell II, 557 A.2d at 171. In short, “the legal regime governing the ownership of intertidal land was firmly established in the District of Maine prior to Statehood.” *Id.* at 176.

Nevertheless, Plaintiffs argue that upon admission into the Union in 1820, Maine entered on equal footing and therefore the State “gain[ed] title within its borders to the beds of waters then navigable, or tidally influenced”. (Compl. ¶¶ 79-80.) Plaintiffs contend that:

Applying the Equal Footing Doctrine to claims of title to intertidal lands the United States Supreme Court has consistently held that upon statehood, the state gains title within its borders to the beds of waters then navigable, or tidally influenced and that title to intertidal land never used for commercial wharfing out purposes either remains in the hands of the state or is subject to the state’s right of re-entry to reclaim its unrelinquished title.

(Compl. ¶ 80.) Therefore, Plaintiffs assert, “[t]o the extent any legal title was conveyed by operation of the Colonial Ordinance, such legal title was extinguished upon Maine’s entry into the Union on an equal footing with all other states.” (Compl. ¶ 81.)

But in *Bell II*, the Law Court directly addressed the equal footing doctrine as it relates to the intertidal zone in Maine and rejected the very argument posed by Plaintiffs here, stating that:

The brief of the amici curiae contends that the State of Maine on coming into the Union on separation from Massachusetts “obtained title to its intertidal lands under the ‘equal footing’ doctrine,” a doctrine that has been most recently discussed by the United States Supreme Court in *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 108 S.Ct. 791, 98 L.Ed.2d 877 (1988). Any such revisionist view of history comes too late by at least 157 years. *See Lapish v. Bangor Bank*, 8 Me. at 93 (1831). Prior to separation the Commonwealth of Massachusetts had already granted to the upland owners fee title in the intertidal land within its entire territory including the District of Maine. Contrary to the amicus argument, there was nothing in the pre-1820 Massachusetts common law governing title to the intertidal zone that was repugnant to the constitution of the new State. As already noted, in absence of such repugnance, article X, section 3 of the Maine Constitution declared that all laws in force in the District of Maine in 1820 would remain in force in the new State.

Bell II, 557 A.2d at 172. Given this decision, there is simply no merit to Plaintiffs’ argument that the equal footing doctrine provides a basis to assert State ownership of the intertidal zone.

Undeterred, Plaintiffs also allege that the Law Court engaged in impermissible judicial legislation by holding that the intertidal zone is owned in fee by the upland property owners. Plaintiffs contend that “[t]he Maine Supreme Judicial Court in 1831, 1910, and again in 1989, lacking any constitutional or statutory authority, proclaimed the legal efficacy of the Colonial Ordinance as a form of ‘judicial legislation.’” Compl. ¶ 83.) This allegation is similarly misplaced.

As the Law Court explained in *Bell I*, the Court, at no time has held that the Colonial Ordinance maintains efficacy as positive statutory law in the State of Maine, but rather, has consistently found that the principles contained therein (i.e., upland owners’ fee interest in the intertidal zone) had been in use and relied upon for so long (long before Maine achieved statehood) that they were to be “regarded as incorporated into the common law of Maine.” *Bell I*, 510 A.2d at 514.³ “When Maine achieved statehood in 1820, the Act of Separation and the Maine Constitution incorporated Massachusetts common law into Maine law.” *McGarvey v. Whittredge*, 2011 ME 97, ¶ 31, 28 A.3d 620. “Both the origin of the private ownership of intertidal land and the public’s right to use that land are a matter of common law.” *Id.* at ¶ 9. The Court’s application of common law is, and always has been, well within the sphere of authority

³ In 1882, the Court explained that the Colonial Ordinance “has been so often and so fully recognized by the courts both in this State and in Massachusetts as a familiar part of the common law of both, throughout their entire extent, without regard to its source or its limited original force as a piece of legislation for the colony of Massachusetts Bay, that *we could not but regard it as a piece of judicial legislation to do away with any part of it or to fail to give its due force . . . until it shall have been changed by the proper law making power.*” *Barrows v. McDermott*, 73 Me. 441, 448 (1882) (emphasis added).

and power of the courts in this State. As such, Plaintiffs’ “judicial legislation” claim is without merit.⁴

In sum, even accepting the material allegations of the Complaint as true, the Complaint fails to allege facts that entitle Plaintiffs to relief under the applicable precedent. The law has long been settled in this area: Defendants, not the State, hold title in fee to the intertidal land adjacent to their upland property. For this reason, this Court must dismiss the Complaint.

C. Plaintiffs’ Claim Regarding The Scope Of the Public Trust Doctrine⁵ Fails As A Matter Of Law

Plaintiffs also seek a declaration from this Court that “[t]he State of Maine holds title to all intertidal land, in trust for the public, without limitation to fishing, fowling, and navigation”. (Compl. p. 21.) They argue that “[t]he public trust extends beyond fishing, fowling, and navigation and includes *all activities and uses* a state would normally allow and regulate on any other public land and waterway.” (Compl. ¶ 74) (emphasis added). “To the extent the Colonial Ordinance has any legal effect in Maine,” Plaintiffs argue, “the public trust extends to whatever the state sees fit to allow and regulated exercising its sovereign police power” (Compl. ¶¶ 105-106.) This claim too fails as a matter of law; the issue has already been conclusively decided by this State’s highest court.

⁴ Moreover, much like the Law Court found in *Bell II* with respect to the equal footing doctrine, Plaintiffs’ allegation that the Court engaged in impermissible judicial legislation beginning in 1831 comes more than 150 years too late.

⁵ Throughout this Motion, we refer to the public’s rights within the intertidal zone as “public trust rights” or “the public easement”. It should be noted that the Law Court frequently uses the term “public trust rights”, but has stated that “we characterized the public right under the Colonial Ordinance to use the intertidal zone for navigation and fishing to be an easement. . . . Characterizing the public right to use the intertidal zone as a public easement is in accord with the doctrine, long accepted in Maine, that the public at large is capable of acquiring a non-possessory interest in land.” *Bell v. Town of Wells*, 510 A.2d 509, 516-17 (Me. 1986). The Court has not characterized the upland owners as “trustees” of intertidal land holding said land in trust for the benefit of the public. In fact, the Court expressly declined to do so. *See id.* at 517. Use of the term “public trust rights” is not to connote that the public in Maine have the same rights to use the intertidal zone as does the public in states, such as Connecticut, where the state owns the intertidal zone in trust for the public. *See McGarvey v. Whittredge*, 2011 ME 97, ¶ 17, 28 A.3d 620.

Under Maine law, the public trust doctrine protects the public’s right of “access to the ocean and tidal region” because “the public has a right to use the ocean itself, subject to certain governmental regulation.” *McGarvey v. Whittredge*, 2011 ME 97, ¶ 12, 28 A.3d 620. While the upland owner owns the intertidal zone in fee, the doctrine provides that ownership is subject to “the public trust rights generally . . . articulated in terms of activities that involve or are incidental to obtaining sustenance or economic benefits through the harvesting of the sea, usually summarized as fishing, fowling, and navigation.” *Id.* at ¶ 20.

In *Bell II*, the Law Court expressly held that the scope of the public trust doctrine is, in fact, limited to the activities of fishing, fowling, and navigation. *Bell II*, 557 A.2d at 173 (Me. 1989). In doing so, the Court explained:

The Colonial Ordinance as received into the common law of Maine and Massachusetts reserved out of the fee title granted to the upland owner a public easement only for fishing, fowling, and navigation. We have held that the public may fish, fowl, or navigate on the privately owned land for pleasure as well as for business or sustenance, *Barrows v. McDermott*, 73 Me. at 449; and we have in other ways given a sympathetically generous interpretation to what is encompassed within the terms “fishing,” “fowling,” and “navigation,” or reasonably incidental or related thereto. . . . We have never, however, decided a question of the scope of the intertidal public easement except by referring to the three specific public uses reserved in the Ordinance. **The terms “fishing,” “fowling,” and “navigation,” liberally interpreted, delimit the public’s right to use this privately owned land.**

Id. (emphasis added). By issuing this holding, the Law Court dismissed the same argument advanced by Plaintiffs – i.e., that the public rights of fishing, fowling, and navigation are not exclusive, and that the listing does not exhaust the public rights retained by the common law out of the property interest vested in the upland owner. *Id.* at 173-74. The Law Court reasoned:

Over a century ago, this court emphatically rejected the argument “that the court may change [that legal regime] if satisfied that it does not operate beneficially under present circumstances.” *Barrows v. McDermott*, 73 Me. at 449. The judicial branch is bound, just as much as the legislative branch, by the constitutional

prohibition against the taking of private property for public use without compensation.

Id. at 176.

Plaintiffs will undoubtedly point to the fact that in recent decisions examining Maine’s public trust doctrine, a split has emerged among the justices of the Law Court as to which activities are permitted under the public trust, with some justices believing that public activity is restricted to fishing, fowling, and navigation, and other justices positing that the doctrine allows for activities that fall within “a reasonable balance between private ownership of the intertidal lands and the public’s use of those lands.” *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶¶ 15-18, 206 A.3d 283; *see generally*, *McGarvey v. Whittredge*, 2011 ME 97, 28 A.3d 620. Despite this discussion, however, *Bell II*, which holds that the scope of the public trust doctrine is limited to fishing, fowling and navigation, remains the controlling law on this issue. *See Ross*, 2019 ME 45, ¶ 39, 206 A.3d 283 (Saufley, C.J., concurring in part) (acknowledging that the split concurrences in *McGarvey* resulted in “leaving in place the jurisprudence” of *Bell II*).

Moreover, to the extent that there is anything unsettled about the public trust doctrine under Maine common law, even the broadest interpretation of the public trust doctrine does not reach as far as Plaintiffs’ request. For example, despite Plaintiffs’ contention that they should be allowed to harvest seaweed from intertidal lands, the Law Court has already expressly held in multiple opinions spanning centuries that such activity does not fall within even the broadest interpretation of the doctrine. *See, e.g., Ross*, 2019 ME 45, ¶ 30, 206 A.3d 283 (“In formulating that [reasonable balance] standard, the dissent drew on a collection of our cases, including *Hill v. Lord*, 48 Me. 83, 96 (1861), which prohibited the removal of seaweed from intertidal lands belonging to another. *Bell II*, 557 A.2d at 185-89. It is significant here that even a broad view of the public trust rights explained in the *Bell II* dissent does not encompass the harvesting of

seaweed.”). Furthermore, the Court has consistently taken a case-by-case approach to analyzing whether the public’s rights include a disputed activity or use. It has never interpreted the public trust doctrine to encompass the general right to “enjoy[] free and unfettered access”, (Compl. ¶ 9), to Maine beaches. As with the requested relief of declaration of the State’s fee ownership of the intertidal zone, Plaintiffs’ request with regards to the public trust doctrine would require overturning more than one hundred fifty years of Maine common law precedent.⁶

In sum, Maine law on this issue has been conclusively decided by the Law Court, and does not support the relief requested by Plaintiffs. As such, this Court should dismiss the Complaint.

D. Plaintiffs’ Claim That Defendants Do Not Hold Title Fails As A Matter Of Law

Lastly, Plaintiffs allege that “Defendants . . . do not hold title to the intertidal lands adjacent to their property.” (Compl. ¶ 111.) Plaintiffs contend that the original conveyances for Defendants’ properties omitted the intertidal zone due to the fact that they lacked references to “the ocean, cove, sea, or river.” (Compl. ¶ 110.) Notably, Plaintiffs do not allege that they, themselves, have superior title in the disputed property, or for that matter, any ownership interest in the disputed property. *Id.* Rather, Plaintiffs only argue that Defendants do not own the intertidal portion of their properties.

⁶ And even if the Law Court were willing to entertain the notion of overturning over a century of common law, Plaintiffs’ requested relief may not provide the relief impliedly sought. As previously stated, Plaintiffs seek a declaration that the State of Maine holds title to intertidal lands in trust for the public, a trust which “extends to whatever the state sees fit to allow and regulate”. (Compl. ¶¶ 99, 106.) Even assuming that the State held title to the intertidal zone (which it does not), it is unlikely that the State would allow “free and unfettered access”, as Plaintiffs contemplate. For example, the State of Maine holds title to submerged lands subject to the public trust, but “[i]n Maine, this public trust is in the nature of an easement that preserves for the public the *rights of fishing and navigation.*” *Norton v. Town of Long Island*, 2005 ME 109, ¶ 32, 883 A.2d 889 (internal quotations omitted) (emphasis added). The *jus publicum*, the public rights, do not automatically expand to accommodate all uses simply because the State holds the *jus privatum*, the private right to title. *See id.*

In order to prevail on this claim, however, Plaintiffs must allege some interest of their own in “the intertidal lands”; Plaintiffs cannot simply attack the interest of Defendants without a recognizable interest in the property themselves.⁷ *Smith v. Varney*, 309 A.2d 229, 233 (Me. 1973) (per curiam) (“Showing no title in themselves, the plaintiffs cannot prevail even if it turned out that the defendants had no title.”); *see also* 14 M.R.S. § 6651 (requiring uninterrupted possession of the disputed property for four or more years to bring an quiet title action). The very nature of this type of claim is to determine which party has superior title to the disputed property. *See Dowley v. Morency*, 1999 ME 137, ¶ 11, 737 A.2d 1061 (stating that the Plaintiff has the burden of demonstrating superior title). Having alleged no such competing interest in the “intertidal lands”, Plaintiffs’ claim must be dismissed.

CONCLUSION

In issuing the *Bell II* decision in 1989, this State’s highest court was sympathetic to the same issues raised by Plaintiffs in the instant case. *Bell II*, 557 A.2d at 180. The Law Court recognized, “[a]s development pressures on Maine’s real estate continue, the public will increasingly seek shorefront recreational opportunities of the 20th and 21st century variety, not limited to fishing, fowling, and navigation. No one can be unsympathetic to the goal of providing such opportunities to everyone, not just to those fortunate enough to own shore frontage.” *Id.* Nevertheless, the Law Court understood that “[t]he solution under our constitutional system . . . is for the State or municipalities to purchase the needed property rights or obtain them by eminent domain through the payment of just compensation, not to take them without compensation through legislative or judicial decree redefining the scope of private property

⁷ “Although procedurally there are differences between quiet title actions . . . and declaratory judgment actions . . . a declaratory judgment action is a valid means of bringing what is functionally, a quiet title action. . . . Accordingly, our discussion of quiet title actions includes declaratory judgment actions brought for the purpose of determining rights in real property.” *Welch v. State*, 2004 ME 84, ¶ 6 n.3, 853 A.2d 214.

rights.” *Id.* Under the existing legal framework, the relief requested by Plaintiffs is simply not permissible.

WHEREFORE, Defendant, Ocean 503 LLC, respectfully requests that this Court (1) dismiss, with prejudice, Plaintiffs’ Complaint for lack of standing and failure to state claims upon which relief may be granted; (2) deny Plaintiffs’ request for Declaratory Judgment on Counts I – V of Plaintiffs’ Complaint; and (3) grant Defendant, Ocean 503 LLC, such other relief as is just and equitable.

Dated at Portland, Maine this 26th day of May, 2021.

/s/ Joseph G. Talbot

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**NOTICE OF OPPOSITION TO MOTION
PURSUANT TO M.R. CIV. P. 7(b)(1)(A)**

Pursuant to Maine Rule of Civil Procedure 7(b)(1)(A), any memorandum, supporting affidavits or other documents in opposition to this Motion must be filed with the Court, with a copy to the undersigned, not later than 21 days after the service of the Motion upon the Defendant unless another time is provided by the Rules or set by the Court. Failure to file timely opposition documents will be deemed a waiver of all objections to the Motion, which may then be granted without further notice or hearing

| | | |
|---|---|-----------------------------|
| <u>PETER AND KATHY MASUCCI, et al.,</u> |) | |
| |) | |
| Plaintiffs |) | |
| v. |) | MOTION TO DISMISS FOR |
| |) | FAILURE TO STATE A CLAIM |
| JUDY'S MOODY LLC, et al., |) | AGAINST DEFENDANTS |
| |) | JEFFERY AND MARGARET PARENT |
| Defendants |) | |
| and |) | |
| |) | |
| AARON FREY, |) | |
| Attorney General for the State of Maine |) | |
| |) | |
| Party in Interest |) | |

Pursuant to Maine Rule of Civil Procedure 12(b)(6), Defendants Jeffery Parent and Margaret Parent (collectively the “Parents”) hereby move to dismiss all counts of the Complaint against them.

The Parents each timely filed Answers to the Complaint on May 26, 2021. The Answers included the affirmative defense that Plaintiffs’ Complaint fails to state a claim for which relief can be obtained. The Parents now move to assert that defense.¹

In support, the Parents incorporate the 12(b)(6) Motion to Dismiss and supporting memoranda filed in this action by Defendants Edward Page, Christine Page, James Li, Kim Newby, and Robin Seeley, as well as the 12(b)(6) motions and supporting memoranda filed by the other defendants in this action, and further state as follows.

¹ A motion under Rule 12(b)(6) may be brought any time prior to final judgment. M.R.Civ.P. 12(H)(2) (“A defense of failure to state a claim upon which relief can be granted . . . may be made in any pleading permitted or ordered under Rule 7(a), or by a motion for judgment on the pleadings, or at the trial on the merits”); *Pederson v. Cole*, 501 A.2d 23, 25 (Me. 1985) (stating that motion for failure to state a claim under Rule 12(b)(6) may be brought any time “prior to the entry of a judgment”).

The Parents own coastal property in Waldoboro, Maine. Pl. Compl. ¶ 27. The Parents have been sued because they are alleged to have “wrongfully claimed title to intertidal land” and to have “called law enforcement” when rockweed was being harvested from their property without permission. Pl. Compl. ¶¶ 27-28, 60. The Complaint does not allege any other facts about the Parents, their property, or their conduct.

Plaintiffs’ allegations against the Parents are functionally identical to the allegations made against Defendants Edward Page, Christine Page, James Li, and Kim Newby (“PLN Defendants”). Pl. Compl. ¶¶ 25-30. All claims against the PLN Defendants (and against Defendant Robin Seeley) were dismissed pursuant to Maine’s Anti-SLAPP statute, 14 M.R.S. § 556, in the Court’s Order dated April 18, 2022 (“Order”). The Order also dismissed all of Plaintiffs’ claims (Counts II, III, and V) related to ownership of intertidal property for failure to state a claim under Maine Rule of Civil Procedure 12(b)(6).

The sole remaining claim in this action is Plaintiffs’ Count IV regarding the scope of the public’s rights to use privately owned intertidal property. As the Court noted in the Order, to the extent Plaintiffs seek to assert a public right to cut and remove living, attached rockweed from intertidal land, that argument is foreclosed by *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45. As this Court stated, “The Law Court was clear in *Ross* that even under the flexible balancing approach the Law Court employs, removing marine plants from private intertidal land is not a permissible activity.” Order at 25, n.11.

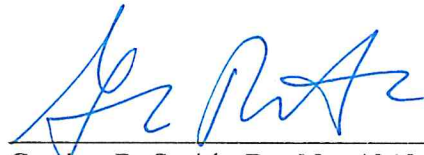
Plaintiffs’ allegations against the Parents relate solely to the commercial harvest of rockweed from the Parents’ land. Pl. Compl. ¶¶ 27-28, 60. As such, Count IV of Plaintiffs’ complaint requesting an expansion of the public’s rights to use intertidal property fails to state a

claim against the Parents, who have been sued solely because they requested, pursuant to *Ross*, that rockweed not be cut from their property.

To survive a motion to dismiss, a complaint must “set forth elements of a cause of action or allege facts that would entitle the plaintiff to relief pursuant to some legal theory.” *Livonia v. Town of Rome*, 1998 ME 39, ¶ 5, 707 A.2d 83, 85. Plaintiffs’ Complaint does not allege any facts or identify any legal theory under which relief could be granted against the Parents.

Accordingly, the Parents respectfully request that all counts in the Complaint, including Count IV, be dismissed against them for failure to state a claim pursuant to M.R.Civ.P. 12(b)(6).

Dated at Portland, Maine this 28th day of April, 2022.



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NOTICE

Any opposition to this motion must be filed not later than twenty-one (21) days from the date this motion was filed pursuant to Rule 7(c) of the Maine Rules of Civil Procedure. Failure to file a timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

Defendants bring this Special Motion to Dismiss because they have been punished for merely exercising their First Amendment rights to advocate for conservation of rockweed habitat or to contact law enforcement when their property has been taken. If the Court does not dismiss this meritless action against Defendants pursuant to Maine’s Anti-SLAPP statute, other landowners and environmental activists will very likely be chilled from similar petitioning activity.

FACTUAL BACKGROUND

1. Defendants Edward Page and Christine Page

Edward and Christine Page (the “Pages”) own coastal property on an island in Harpswell, Maine, including the intertidal flats adjacent to their upland. Page Aff. ¶¶ 3-6. The intertidal area owned by the Pages is covered with rockweed. Page Aff. ¶ 7. On September 18, 2018, Mr. Page emailed the Maine Marine Patrol to report that a rockweed harvester was cutting rockweed from the Page property without permission. Page Aff. ¶ 8. Upon request by Marine Patrol Officer Clinton Thompson, Mr. Page provided a copy of the Page’s deed. Page Aff. ¶ 8.

Officer Thompson reviewed the Page’s deed with an assistant district attorney and on September 19, 2018 informed Mr. Page by email that the “deed would be sufficient to proceed with a case if needed.” Page Aff. ¶ 11. Officer Thompson further stated that he had “personally met with the harvesters and told them that the seaweed in the intertidal zone around your property was private property and that the landowners did not want it to be harvested. Both harvesters understood and indicated that they would avoid your property in the future.” *Id.*

On March 18, 2019, Mr. Page emailed Marine Patrol Officer Thompson again based on security camera images apparently showing the same harvester cutting rockweed from the Page

property. Page Aff. ¶ 13. Mr. Page requested that Officer Thompson tell the harvester to stop. *Id.*

The next day Officer Thompson emailed Mr. Page as follows:

“I was able to contact the seaweed harvester that you observed on your security camera yesterday morning. He was one of the individuals that I warned not to take seaweed from your property last year. He admitted that he harvested seaweed from the area that I told him that he could not.

Despite the clear instructions that I provided him last year he chose not to believe that a landowner could own the seaweed. We had a semi-heated discussion regarding that the current law does provide that the seaweed is your property. I told him to think of it as a woodlot and that he could not go onto someone else’s property to cut trees.

I also explained to the harvester that the only reason that he was not being charged for the theft of your seaweed is because you did not want him prosecuted. I told him that was against my judgement as I do not generally tell people not to do something twice.”

Page Aff ¶ 14.

2. Defendants James Li and Kim Newby

James Li and Kim Newby (“Li/Newby”) own and live year-round on an island three miles off the coast of Friendship, Maine. Li/Newby Aff. ¶ 3. The Li/Newby property includes the intertidal flats adjacent to their upland. Li/Newby Aff. ¶ 5-6. The intertidal area owned by Li/Newby consists of ledge and rockweed. Li/Newby Aff. ¶ 4.

On July 13, 2019, Mr. Li and Ms. Newby saw a mechanical seaweed harvester removing rockweed from their property. Li/Newby Aff. ¶ 12. That day, they obtained and reviewed a copy of *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45. Li/Newby Aff. ¶ 13. The next day Mr. Li emailed Kohl Kanwit, Director of Public Health at the Maine Department of Marine Resources (“Maine DMR”), to request guidance. Ms. Kanwit replied by email, “you can contact Marine Patrol and let them know... they can cite the harvester for theft of property if your deed is clear and you have notified them not to harvest on your property.” Li/Newby Aff. ¶ 14.

On July 16, 2019, Mr. Li and Ms. Newby saw the same mechanical seaweed harvester come to their island and remove large amounts of rockweed from their intertidal property. Li/Newby Aff. ¶ 15. Ms. Newby went out to the harvester on a skiff and requested they stop harvesting. Li/Newby Aff. ¶ 15. The harvester continued to cut and collect rockweed from the Li/Newby property. Li/Newby Aff. ¶ 22. Mr. Li then contacted the Maine Marine Patrol and communicated to Officer John Luellen that a harvester was removing rockweed from their property without permission. Li/Newby Aff. ¶ 24. Upon Officer Luellen's request, Mr. Li and Ms. Newby provided a copy of the deed to their property. Li/Newby Aff. ¶ 27

Officer Luellen identified the harvester as Leroy Gilbert. Li/Newby Aff. ¶ 26. Leroy Gilbert is a plaintiff in this litigation. Compl. ¶ 6. For the next two weeks Mr. Li and Ms. Newby observed the harvester identified as Leroy Gilbert continue to harvest rockweed from the Li/Newby property. Li/Newby Aff. ¶ 28. Mr. Li and Ms. Newby contacted Marine Patrol each time they saw the harvester. Marine Patrol was apparently unable to respond the Li/Newby property during this time for a variety of logistical reasons. Li/Newby Aff. ¶ 29.

On August 1, 2019, Ms. Newby called Maine DMR Director of Marine Policy Deirdre Gilbert to seek further guidance. Li/Newby Aff. ¶ 31. Ms. Gilbert stated that harvesting without landowner permission was illegal and advised Ms. Newby to contact Marine Patrol. Li/Newby Aff. ¶¶ 32-33. On August 3, Ms. Newby approached the harvester Leroy Gilbert again and reiterated that he did not have permission to harvest rockweed on the Li/Newby property. Mr. Gilbert continued to harvest. Li/Newby Aff. ¶¶ 34-37. Ms. Newby then contacted Diedre Gilbert and Officer Luellen again to report the harvesting. Li/Newby Aff. ¶¶ 38-39

That day Officer Luellen responded to the Li/Newby property by patrol boat, spoke directly to Mr. Gilbert, and told him it was not legal to harvest on the Li/Newby property. Mr. Gilbert then left the area. Li/Newby Aff. ¶¶ 40-43.

3. Defendant Robin Hadlock Seeley

Robin Hadlock Seeley is a marine biologist who has been one of the most outspoken and visible advocates for rockweed conservation in Maine for the past two decades. Ms. Hadlock Seeley has submitted testimony supporting rockweed conservation in numerous state and federal governmental proceedings. Seeley Aff. ¶ 5. Ms. Hadlock Seeley was a consultant for the plaintiff landowners in *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, in which the Law Court unanimously held that rockweed harvesters could not take the rockweed growing on private intertidal land without the landowner's permission. Seeley Aff. ¶ 6. Ms. Hadlock Seeley has published websites and newsletters informing landowners and the public about various rockweed conservation issues, including intertidal landowners' rights under *Ross* to protect their rockweed. Seeley Aff. ¶ 8. Ms. Hadlock Seeley also owns coastal property, including the intertidal zone, in Pembroke, Maine. Seeley Aff. ¶ 3.

ARGUMENT

I. LEGAL STANDARD FOR ANTI-SLAPP MOTION TO DISMISS

Maine's Anti-SLAPP Statute "provides protection for a citizen's fundamental right to petition the government, a right that the Legislature has given priority by enacting the anti-SLAPP statute." *Desjardins v. Reynolds*, 2017 ME 99, ¶ 18. "The anti-SLAPP statute permits a defendant to file a special motion to dismiss a lawsuit brought with the intention of chilling or deterring the free exercise of the defendant's First Amendment right to petition the government by threatening would-be activists with litigation costs." *Gaudette v. Mainely Media, LLC*, 2017

ME 87, ¶ 12. “The purpose of the right of petition is to protect expression that seeks redress from government.” *Id.* ¶ 17.

In an Anti-SLAPP motion to dismiss, the moving party must demonstrate “that the anti-SLAPP statute applies to the conduct that is the subject of the plaintiff’s complaint by establishing that the suit was based on some activity that would qualify as an exercise of the defendant’s First Amendment right to petition the government.” *Desjardins*, 2017 ME 99, ¶ 8. Maine’s anti-SLAPP statute “very broadly defines the exercise of the right to petition.” *Schelling v. Lindell*, 2008 ME 59, ¶ 11. “Exercise of the right to petition” includes:

any written or oral statement made before or submitted to a legislative, executive or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

14 M.R.S. § 556.

If Defendants show that they have been sued based on their petitioning activity, the Court “shall grant the special motion [to dismiss],” unless Plaintiffs can demonstrate by a preponderance of the evidence that Defendants’ exercise of their right to petition “was devoid of any reasonable factual support or any arguable basis in law and that [Defendants’] acts caused actual injury to [Plaintiffs].” *Id.* (emphasis added). If Plaintiffs fail to show that Defendants’ petitioning activities were “devoid” of factual or legal support or that Defendants’ actions caused Plaintiffs actual harm, “the special motion must be granted and the case dismissed.” *Desjardins*, 2017 ME 99, ¶ 9 (emphasis added).

II. PLAINTIFFS' SUIT AGAINST DEFENDANTS SHOULD BE DISMISSED UNDER MAINE'S ANTI-SLAPP STATUTE

In this litigation Plaintiffs have targeted Defendants solely because Defendants have asked law enforcement officials for help in halting theft of their property or they have sought to enlist other landowners to do the same. Defendants' conduct is clearly protected First Amendment petitioning activity well-grounded in fact and law that Maine's Anti-SLAPP statute seeks to protect.

A. **Defendants Have Been Sued for Engaging in Protected Petitioning Activity**

Maine's Anti-SLAPP statute applies where Defendants have been sued "based on some activity that would qualify as an exercise of the defendant's First Amendment right to petition." *Franchini v. Investor's Bus. Daily, Inc.*, 981 F.3d 1, 8 (1st Cir. 2020) (certifying question to Law Court). Plaintiffs have sued Defendants solely because of Defendants' exercise of such rights.

Plaintiffs' suit against the Pages, Mr. Li, and Ms. Newby is based entirely on the fact that these Defendants contacted the Maine Marine Patrol and the Maine DMR to report seaweed harvesters removing rockweed from their intertidal property without permission. In other words, Plaintiffs have sued the Pages, Mr. Li, and Ms. Newby because these landowners sought help from law enforcement when Plaintiffs and other seaweed harvesters were taking their property.

Plaintiffs only allegations against the Pages are that the Pages claim title to intertidal property and that they "have called law enforcement" regarding seaweed harvesters' actions on that property. Compl. ¶¶ 25-26. As detailed in the Statement of Facts and in the attached Page Affidavit, Mr. Page contacted the Maine Marine Patrol on two occasions when he observed a harvester taking rockweed from the Page property without permission. In both instances, a Marine Patrol Officer responded, corroborated Mr. Page's account, and informed the harvester that he could not remove the rockweed from the Page property. Page Aff. ¶¶ 8-15.

Plaintiffs' only allegations against Mr. Li and Ms. Newby are that they claim title to intertidal property and that they are "calling law enforcement" regarding seaweed harvesters' actions on that property. Compl. ¶¶ 29-30. As detailed in the Statement of Facts and in the attached Li/Newby Affidavit, Mr. Li and Ms. Newby contacted Maine Marine Patrol and Maine DMR officials for help when Plaintiff Leroy Gilbert harvested rockweed from the Li/Newby property without permission. Ms. Newby asked Mr. Gilbert to stop harvesting, but he continued to harvest uninterrupted for over two weeks. When a Marine Patrol Officer eventually responded, the officer corroborated Mr. Li and Ms. Newby's account and told Mr. Gilbert that it was not legal to harvest rockweed from the Li/Newby property without permission. Li/Newby Aff. ¶¶ 12-42.

"There can be no legitimate argument" that reporting apparent illegal conduct to law enforcement authorities constitutes petitioning activity. *Desjardins*, 2017 ME 99, ¶ 11 (defendant's statements to sheriff's office regarding plaintiff's alleged history of driving under the influence of alcohol qualify as petitioning activity). Accordingly, the sole actions for which Plaintiffs have sued Defendants Page, Li, and Newby – reporting apparent violations of law by calling the Marine Patrol – constitute petitioning activity under the Anti-SLAPP Statute.

Plaintiffs' suit against Ms. Hadlock Seeley is based entirely on her public advocacy for the conservation of rockweed. The Complaint alleges that Ms. Hadlock Seeley "has published websites and other media" stating that landowners may deny permission for harvesters to cut rockweed. Compl. ¶ 32. The Complaint alleges that Ms. Hadlock Seeley's "activities include encouraging landowners to sign up for a so called "Rockweed Registry." Compl. ¶ 33. The Complaint alleges that Ms. Hadlock Seeley's statements "suggest that landowners dispatch wardens to stop people" who are harvesting rockweed. Compl. ¶ 35. In fact, Ms. Hadlock Seeley

has given testimony at state and federal proceedings, participated in litigation, and publicized landowners' legal rights through websites and other publications in service of her rockweed conservation goals. Seeley Aff. ¶¶ 5-8.

In short, Ms. Hadlock Seeley was sued because she has advocated for rockweed conservation by promoting Maine law that establishes intertidal rockweed as private property. These actions by Ms. Hadlock Seeley constitute "statements reasonably likely to enlist public participation in an effort to effect" consideration of rockweed protection by Maine DMR, the Marine Patrol, and other government officials. 14 M.R.S. § 556. Such activity clearly falls within the meaning of protected petitioning activity. *See Schelling v. Lindell*, 2008 ME 59, ¶ 13 (letter written to a newspaper designed to expand public consideration of a policy issue was petitioning activity under Anti-SLAPP statute).

Accordingly, Defendants have been named in this litigation solely because they contacted state officials for enforcement of existing Maine law or because they sought to encourage others to do the same. Defendants' conduct that is the subject of Plaintiffs' complaint falls within Defendants' protected exercise of their right to petition under 14 M.R.S. § 556.

B. Plaintiffs Cannot Meet Their Burden to Show that Defendants' Petitioning Activity Was Devoid of any Reasonable Factual Support or Arguable Basis in Law

Because the conduct for which Defendants have been sued by Plaintiffs constitutes protected petitioning activity, Plaintiffs' claims must be dismissed unless Plaintiffs can show that Defendants' actions had no basis in law or fact. Plaintiffs cannot make that showing.

The factual basis for the Page, Li, and Newby Defendants' statements to Maine DMR and Marine Patrol is documented and corroborated by the responding Marine Patrol Officers. Page Aff. ¶¶ 11, 14; Li/Newby Aff. ¶¶ 39-42. Plaintiffs themselves acknowledge that Defendants

contacted law enforcement because seaweed harvesters were removing rockweed from the intertidal property claimed by Defendants. Compl. ¶¶ 26, 30.

The legal support for Defendants' petitioning activity is fully set forth in Defendants' pending Rule 12(b)(6) Motion to Dismiss. In short, an unbroken line of Law Court rulings confirms that, since the 1600s, fee simple ownership of intertidal land in Maine is held, absent some severance, by the adjacent upland property owner. Plaintiffs acknowledge as much. Compl. ¶¶ 83-84, 87, 90, 98. More specifically, just two years ago the Law Court unanimously affirmed that rockweed growing in the intertidal zone is the property of the intertidal landowner and cannot be harvested by the public without permission. *Ross*, 2019 ME 45, affirming *Ross v. Acadian Seaplants, Ltd.* 2017 WL 1247566 (Me. Super. March 14, 2017).

Thus, when the Page, Li, and Newby Defendants contacted Marine Patrol and Maine DMR to report unpermitted harvesting activity, they were relying on the unambiguous holdings of the Maine judiciary. Furthermore, the legal basis for Defendants' petitioning was supported by the Maine DMR, the Maine Marine Patrol, and the Cumberland County District Attorney's Office. Page Aff. ¶¶ 11, 14; Li/Newby Aff. ¶¶ 14, 31-33, 40. Similarly, when Ms. Hadlock Seeley has stated "that landowners may deny permission for harvesters to cut rockweed on private intertidal land," Compl. ¶ 33, her petitioning activity was merely a restatement of the unanimous Law Court holding in *Ross*.

C. Defendants' Petitioning Activity Did Not Cause Actual Injury to Plaintiffs

To avoid dismissal, Plaintiffs must also show that Defendants' petitioning activity caused Plaintiffs "actual injury." 14 M.R.S. § 556. "Actual injury" requires a "reasonably certain monetary valuation of the injury" suffered by the plaintiff." *Desjardins*, 2017 ME 99, ¶ 14. Certain Plaintiffs generally allege that that their livelihood or jobs are threatened based on

unnamed “upland landowners unlawfully claiming title to the intertidal land” and the rockweed growing on it. *E.g.*, Compl. ¶¶ 7. However, to the extent that Plaintiffs are alleging that they have a legally protected interest to harvest rockweed growing on and attached to Defendants’ intertidal land, that allegation is obviously contrary to Maine law affirmed in *Ross*. Plaintiffs cannot suffer “actual injury” from Defendants’ petitioning activity where the petitioning activity has merely halted Plaintiffs from engaging in illegal rockweed harvesting.

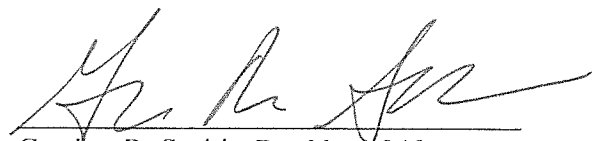
D. Defendants Are Entitled to Costs and Reasonable Attorneys’ Fees

Under Maine’s Anti-SLAPP statute, “If the court grants a special motion to dismiss, the court may award the moving party costs and reasonable attorney’s fees.” 14 M.R.S. § 556. Should this Motion be granted, Defendants will file a separate motion documenting their costs and reasonable attorneys’ fees.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court dismiss all counts of Plaintiffs’ Complaint against Defendants with prejudice pursuant to 14 M.R.S. § 556.

Dated at Portland, Maine this 29 day of June, 2021.



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NOTICE

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STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
DOCKET NO. RE-2021-0035

| | |
|---|---|
| PETER AND KATHY MASUCCI, et al., |) |
| |) |
| Plaintiffs |) |
| |) |
| v. |) |
| |) |
| JUDY’S MOODY LLC, et al., |) |
| |) |
| Defendants |) |
| and |) |
| |) |
| AARON FREY, |) |
| Attorney General for the State of Maine |) |
| |) |
| Party in Interest |) |

AFFIDAVIT OF EDWARD GORDON PAGE

I, Edward Gordon Page, do swear (affirm), under penalty of perjury, the following facts.

1. I am over 18 years of age and competent to provide this sworn statement.
2. I am a named defendant in the case Masucci v. Judy’s Moody LLC.
3. My wife, Christine Page and I own a property adjacent to Cundy Harbor which is known as Little Island. Little island is approximately 3 acres at high tide and 6 acres at low tide.
4. Our property includes all of Little Island except for one house lot.
5. We own the intertidal flats adjacent to our upland.
6. A true and accurate copy of our recorded deed is attached.
7. The shoreline around the island has multiple areas covered by rockweed which have been harvested by a number of different harvesters over the past few years despite our verbal requests to them not to harvest.

8. On September 18, 2018 we became aware of a rockweed harvester adjacent to our property and I contacted the local Maine Marine Patrol office by email.
9. Marine Patrol Sergeant Robert Beal responded stating he had passed on my request to the local Marine Patrol officer for the harvester to be requested not to harvest on our property
10. I received an email from the local Marine Patrol Officer Clinton Thompson requesting a copy our property deed and I emailed a copy of our deed to him.
11. On September 19, 2018 Marine Patrol Officer Thompson emailed me the following response:

“I was able to see an assistant district attorney today and had him review your deed. He felt that your deed would be sufficient to proceed with a case if needed. I have personally met with the harvesters and told them that the seaweed in the intertidal zone around your property was private property and that the landowners did not want it to be harvested. I explained to them the legal opinion of last year. Both harvesters understood and indicated that they would avoid your property in the future. I suspect that you will not have any problems with them and to my knowledge they are the only seaweed harvesting operation locally.”

12. A true and accurate copy of my email correspondence with Marine Patrol Sergeant Beal and Officer Thompson is attached.
13. On March 18, 2019 we saw security camera images of the same harvester who appeared to be harvesting rockweed from our property. I emailed Officer Thompson, including a copy of the photograph taken by our security camera, and requested that he tell the harvester to stop.
14. On March 19, 2019 I received the following response from Marine Patrol Officer Thompson:

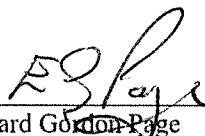
“I was able to contact the seaweed harvester that you observed on your security camera yesterday morning. He was one of the individuals that I warned not to take seaweed from your property last year. He admitted that he harvested seaweed from the area that I told him that he could not.

Despite the clear instructions that I provided him last year he chose not to believe that a landowner could own the seaweed. We had a semi-heated discussion regarding that the current law does provide that the seaweed is your property. I told him to think of it as a woodlot and that he could not go onto someone else's property to cut trees.

I also explained to the harvester that the only reason that he was not being charged for the theft of your seaweed is because you did not want him prosecuted. I told him that was against my judgement as I do not generally tell people not to do something twice. He agreed (again) not to harvest seaweed from your property.

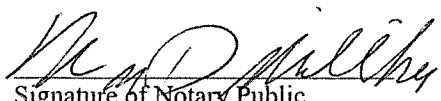
Anything else feel free to call. You will also note that there are two individuals attached to this email that you could contact if you cannot get in touch with me."

15. A true and accurate copy of my email correspondence with Officer Thompson is attached.


Edward Gordon Page

State of Maine
County of Cumberland

Subscribed and sworn to (or affirmed) before me this 23 day of June, 2021, at Brunswick, Maine, by Edward Gordon Page.


Signature of Notary Public
Name of Notary Public W D Milliken
Notary Public, State of Maine
My commission expires: 7/18/26

WILLIAM D. MILLIKEN
Notary Public, Maine
My Commission Expires July 18, 2026

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT WE, HANNA COVER STEFFIAN and BETH B. STEFFIAN, Trustees of the STEFFIAN FAMILY MAINE PROPERTY TRUST u/d/t December 19, 2007, with a mailing address of 37 Water Street, Brunswick, Maine 04011, by the powers conferred by law, and every other power, for consideration paid, GRANT to EDWARD GORDON PAGE and CHRISTINE E. PAGE, both with a mailing address of 313 W. Gundlach Street, Columbia, Illinois 62236, as joint tenants, and not as tenants in common, with WARRANTY COVENANTS, a certain lot or parcel of land and any buildings thereon located in Harpswell, Cumberland County and State of Maine, being more particularly described as follows:

A certain lot or parcel of land with the buildings thereon situated in the New Meadows River in that part of the Town of Harpswell known as Cundy's Harbor, so-called, in the County of Cumberland and State of Maine, and being all of the island know as Shepherd's Island, so-called, above high water mark; together with a right of way in common with others over land of Ernest E. Sherman, the same being a strip twenty (20) feet wide on the easterly side of said Sherman's land immediately adjoining the land of Margaret LeBourdais and leading from the "Field Road", so-called, to high water mark; and thence extending over the flats of the said Sherman following the same course and width to said conveyed island.

Also with the right to use the "Field Road", so-called, as now used, in common with others, leading from the Cundy's Harbor Road to the above mentioned right of way.

Excepting, however, from said above described premises, one lot sold to Thurl L. Wilson and Bertha Wilson, being one hundred (100) feet frontage on the shore and fifty (50) feet in depth on the northeasterly side and at the north end of the island, which deed has been duly recorded in the Cumberland County Registry of Deeds.

The above described premises are conveyed subject to easements of record.

Meaning and intending to convey and hereby conveying all the same premises conveyed to Peter Steffian and Beth B. Steffian as Trustees of the Steffian Family Maine Property Trust u/d/t dated December 19, 2007, which deed is dated December 19, 2007 and recorded at Book 25711, Page 50 in the Cumberland County Registry of Deeds.

Further reference is made to a deed from Maria L. Card a/k/a Marie L. Card, dated December 15, 1983, and recorded in the Cumberland County Registry of Deeds, in Book 6351, Page 222.

MAINE REAL ESTATE TAX PAID

Also conveying all the right, title and interest of the grantors in and to the flats and land lying between the high and low water marks on Cundys Harbor and the New Meadows River abutting and adjacent to the above described premises.

Certificate of Trust Pursuant to 18-B MRSA 1013


We, the undersigned trustees, by signing this deed, hereby certify that:


- (i) *We are the sole duly appointed and authorized trustees of the Steffian Family Maine Property Trust u/d/t December 19, 2007, as of the date of this deed (Hanna Cover Steffian having become a successor trustee upon the death of Peter Steffian on May 28, 2013);*
- (ii) *We have the power to sell real property held by the trust;*
- (iii) *We are authorized to convey the real property set forth in this deed, having been specifically directed to do so by the beneficiaries pursuant to Paragraph 3 of the Declaration of Trust; and*
- (iv) *The trust has not been revoked, modified, or amended in any manner that would cause the representations contained in this certification to be incorrect.*

IN WITNESS WHEREOF, **HANNA COVER STEFFIAN** and **BETH B. STEFFIAN**, Trustees of the **STEFFIAN FAMILY MAINE PROPERTY TRUST** have hereunto set their hand and seal this 5th day of October 2015.

WITNESS:



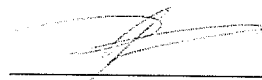

HANNA COVER STEFFIAN, Trustee of the
STEFFIAN FAMILY MAINE PROPERTY TRUST


BETH B. STEFFIAN, Trustee of the
STEFFIAN FAMILY MAINE PROPERTY TRUST

STATE OF MAINE
Cumberland, ss

October 5, 2015

Then personally appeared before me the above-named **HANNA COVER STEFFIAN** and **BETH B. STEFFIAN**, Trustees of the **STEFFIAN FAMILY MAINE PROPERTY TRUST**, and acknowledged the foregoing instrument to be their free act and deed in their said capacity and being duly sworn, attested to the truth of the statements contained herein, said statements being based upon their own personal knowledge.



 Notary Public
 Printed Name
 My Commission Expires: **EDWIN T. VOORHEES, JR.**
 Attorney-at-Law/Notary Public
 My Commission does not expire.

Received
 Recorded Register of Deeds
 Oct 07, 2015 11:38:17A
 Cumberland County
 Nancy A. Lane

RE: Seaweed Harvesting New Meadows river

Thompson, Clinton <Clinton.Thompson@maine.gov>

Tue 3/19/2019 6:37 AM

To: Eddie Page <pageeddie@hotmail.com>

Cc: LaBelle, Curtis <Curtis.LaBelle@maine.gov>; Beal, Robert L <Robert.L.Beal@maine.gov>

Mr. Page

I was able to contact the seaweed harvester that you observed on your security camera yesterday morning. He was one of the individuals that I warned not to take seaweed from your property last year. He admitted that he harvested seaweed from the area that I told him that he could not.

Despite the clear instructions that I provided him last year he chose not to believe that a landowner could own the seaweed. We had a semi-heated discussion regarding that the current law does provide that the seaweed is your property. I told him to think of it as a woodlot and that he could not go onto someone else's property to cut trees.

I also explained to the harvester that the only reason that he was not being charged for the theft of your seaweed is because you did not want him prosecuted. I told him that was against my judgement as I do not generally tell people not to do something twice. He agreed (again) not to harvest seaweed from your property.

Anything else feel free to call. You will also note that there are two individuals attached to this email that you could contact if you cannot get in touch with me.

CT

From: Eddie Page [mailto:pageeddie@hotmail.com]
Sent: Monday, March 18, 2019 10:17 AM
To: Thompson, Clinton <Clinton.Thompson@maine.gov>
Subject: Re: Seaweed Harvesting New Meadows river

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

HI Clint

Whilst I am not resident on the property at the moment I do have cameras which alerted me to the fact that the seaweeders were actually harvesting on the river side of the island this morning. Please contact them and tell them to desist

Whilst this picture only shows them passing the house (to see if we were there I suspect) I was able to watch them harvest live on my feed from one of my other cameras

Regards

Eddie PAGE

"I am prepared to meet my Maker. Whether my Maker is prepared for the great ordeal of meeting me is another matter." Sir Winston Churchill

From: Thompson, Clinton <Clinton.Thompson@maine.gov>
Sent: Wednesday, September 19, 2018 8:02 AM
To: Eddie Page; Beal, Robert L; LaBelle, Curtis
Subject: RE: Seaweed Harvesting New Meadows river

Mr. Page

I have reviewed your attached deed. I have some questions regarding conflicting statements in the deed regarding above the high water mark and below. I am obviously not a real estate attorney and therefore will be speaking with either the District Attorney's office or Attorney General's office in how to apply your deed in this situation. I will start to work on that today but I cannot give an estimate of time when I will get an answer. I understand your position and the position of the harvesters. I am also aware of the court decisions of late and will do as the courts have instructed. I am in the position where I have to balance the rights of both the landowners and harvesters and this needs to be done right. My phone number is 592-2932 and feel free to call to discuss and I will get back to you as soon as possible.

Clint Thompson

From: Eddie Page [<mailto:pageeddie@hotmail.com>]
Sent: Tuesday, September 18, 2018 11:15 AM
To: Thompson, Clinton <Clinton.Thompson@maine.gov>; Beal, Robert L <Robert.L.Beal@maine.gov>; LaBelle, Curtis <Curtis.LaBelle@maine.gov>
Subject: Re: Seaweed Harvesting New Meadows river

Hi

Thank you for your prompt response and I attach a copy of our deed which shows our ownership of the intertidal zone around our property.

I would be grateful if you could communicate our wishes to the harvesters.

I mentioned the lack of identification number decals as it meant I could not identify the owner and it was my understanding of the regulations that all vessels were required to show both decal and validation stickers. :

1-B. Operating without identification number and validation stickers. A person may not operate or give permission to operate a motorboat without the identification number and validation stickers, assigned by the commissioner and authorized by this chapter, displayed on each side of the bow in accordance with subsection 12, paragraphs A and B or section 13059, subsection 4.

Title 12: CONSERVATION

Part 13: INLAND FISHERIES AND WILDLIFE

Subpart 6: RECREATIONAL VEHICLES

Chapter 935: WATERCRAFT AND AIRMOBILES

§13056. Certificate of number, identification numbers and validation stickers

I apologize if I have misunderstood the requirements

Regards

Eddie Page

"I am prepared to meet my Maker. Whether my Maker is prepared for the great ordeal of meeting me is another matter." Sir Winston Churchill

From: Thompson, Clinton <Clinton.Thompson@maine.gov>
Sent: Tuesday, September 18, 2018 9:19 AM
To: Beal, Robert L; Eddie Page
Cc: LaBelle, Curtis
Subject: RE: Seaweed Harvesting New Meadows river

The photos are of a properly registered and licensed seaweed harvester vessel from Phippsburg. The operators are not required to wear PFDS and the boat is registered. I can see the validation sticker in the photos and recall seeing them the last time I was near them which was within the last several weeks. If the landowner can provide deed information that they do in fact own the intertidal zone I will make the harvesters aware of the owners wishes.

From: Beal, Robert L
Sent: Tuesday, September 18, 2018 9:44 AM
To: Eddie Page <pageeddie@hotmail.com>
Cc: Thompson, Clinton <Clinton.Thompson@maine.gov>; LaBelle, Curtis <Curtis.LaBelle@maine.gov>
Subject: RE: Seaweed Harvesting New Meadows river

Good morning Mr. Page –

I appreciate the information. I have attached your e-mail to MPO Curtis LaBelle (the local officer in Cundys Harbor) and MPO Clint Thompson (the local officer in Phippsburg). I anticipate one if not both of the Officers are familiar with the crew harvesting seaweed. One of them will be keeping you updated on our response to your concerns.

Have a nice day.

Sergeant Robert L. Beal

Section II - Bremen to Freeport

Maine Marine Patrol

Cell: (207) 479-3931

Office: (207) 633-9597

robert.l.beal@maine.gov

From: Eddie Page [<mailto:pageeddie@hotmail.com>]
Sent: Tuesday, September 18, 2018 9:32 AM
To: Beal, Robert L <Robert.L.Beal@maine.gov>; Robin Hadlock Seeley <rhadlockseeley@cornell.edu>

Subject: Seaweed Harvesting New Meadows river

Hi

My wife and I own Little Island which is adjacent to Cundy Harbor. We have noticed a seaweed harvester working on the north side of the River over the past few weeks working on the shore of the Sebasco Estates

Today that harvester has started working on the Cedar Ledges adjacent to our property. Using my binoculars I noticed that the harvester is not displaying any State Registration number or decals and as I doubt that it is Federally registered I believe it is a state requirement that they should be displaying their registration on their vessel. It also begs the question as whether they are State licensed for Harvesting.

Neither of the workers on board are wearing lifejackets

It is less than eighteen months since this area was last harvested so I cant believe that that is sufficient time for regeneration

I believe this harvester is based out of the channel adjacent to Malaga Island

Please let me know what action will be taken on this information and please inform these harvesters that they do not have our permission to harvest anywhere on our property that is above low water mark on Little Island

I attach photos for your information

Regards

Eddie Page

"I am prepared to meet my Maker. Whether my Maker is prepared for the great ordeal of meeting me is another matter." Sir Winston Churchill

RE: Seaweed Harvesting New Meadows river
Thompson, Clinton <Clinton.Thompson@maine.gov>
Wed 9/19/2018 12:52 PM
To:

- Eddie Page <pageeddie@hotmail.com>;
- LaBelle, Curtis <Curtis.LaBelle@maine.gov>;
- Beal, Robert L <Robert.L.Beal@maine.gov>

Yes I saw that language.

I was able to see an assistant district attorney today and had him review your deed. He felt that your deed would be sufficient to proceed with a case if needed. I have personally met with the harvesters and told them that the seaweed in the intertidal zone around your property was private property and that the landowners did not want it to be harvested. I explained to them the legal opinion of last year. Both harvesters understood and indicated that they would avoid your property in the future. I suspect that you will not have any problems with them and to my knowledge they are the only seaweed harvesting operation locally. If you have any questions feel free to call at 592-2932. I will be writing a report about the situation. If you wish to get a copy call Jane Giegold at 633-9595 and she will either get you a copy or be able to tell you how to. The incident number is 18M016265. It probably would not be available until sometime next week.

From: Eddie Page [mailto:pageeddie@hotmail.com]
Sent: Wednesday, September 19, 2018 10:26 AM
To: Thompson, Clinton <Clinton.Thompson@maine.gov>; LaBelle, Curtis <Curtis.LaBelle@maine.gov>; Beal, Robert L <Robert.L.Beal@maine.gov>
Subject: Re: Seaweed Harvesting New Meadows river

I have spoken briefly with my attorney who asked me to point out the relevant paragraph of the deed to you in regard to your questioning the earlier comments in the deed

with regard to High Water, which states ALSO.....

He has also asked me to request that you give us an assurance that the Seaweed harvesters will be advised not to encroach upon the property until you have received a response from the State Legal offices and that we would request a copy of that response should it put into question the ownership of the intertidal zone

Please advise me of your intentions accordingly

Edward G Page

"I am prepared to meet my Maker. Whether my Maker is prepared for the great ordeal of meeting me is another matter." Sir Winston Churchill

PETER AND KATHY MASUCCI, et al.,)
)
Plaintiffs)
)
v.)
)
JUDY’S MOODY LLC, et al.,)
)
Defendants)
and)
)
AARON FREY,)
Attorney General for the State of Maine)
)
Party in Interest)

AFFIDAVIT OF JAMES LI AND KIM NEWBY

We, James Li and Kim Newby, do swear, under penalty of perjury, the following facts.

1. We are over 18 years of age and competent to provide this sworn statement.
2. We are named defendants in the case Masucci v. Judy’s Moody LLC.
3. In 2002, we purchased a home on a primitive island three miles off the coast of Friendship, Maine. Since then it has been our year-round residence.
4. Our property includes 11 acres with 2,700 feet of tidal waterfront, mainly consisting of ledge and rockweed habitats.
5. Our deed expressly conveys an interest in the “shore, rocks and flats adjacent to” the upland.
6. A true and accurate copy of our recorded deed is attached.
7. The bulk of our property is held under an Audubon conservation easement that states the property “has aesthetic, scientific and educational value in its present state as a natural area which has not been subject to exploitation.” The easement prohibits development and commercial farming on the property.

8. The easement is dedicated to “conserve and protect the animal, bird and plant population” of the property. The Audubon Society annually inspects the property to enforce the easement restrictions.
9. A true and accurate copy of the recorded conservation easement is attached.
10. The property has an abundance of shorebirds and waterfowl that rely on the shorefront and the rockweed habitat for food and nesting sites.
11. We are licensed to fish for lobsters and do so in our shoreland within the rockweed intertidal zone where we have observed juvenile and adult lobsters beneath the rockweed at low tide.
12. On the morning of July 13, 2019, shortly after Maine’s Supreme Court decision prohibiting rockweed harvesting without permission was widely published in the press, we observed a mechanical seaweed harvester (registration ME 204 LK) approach our property and begin harvesting rockweed. We photographed the harvester to record its registration number.
13. Later that day, we obtained a copy of the court decision to review what action we should take.
14. On July 14, 2019, James emailed Kohl Kanwit, Maine’s Department of Marine Resources (DMR) Director of Public Health, to ask what steps we should take. She replied by email “you can contact Marine Patrol and let them know... they can cite the harvester for theft of property if your deed is clear and you have notified them not to harvest on your property.”
15. On July 16, 2019, we observed the same mechanical seaweed harvester re-approach our property and remove large amounts of rockweed from the ledge in our intertidal zone.
16. Kim went to meet the harvester in a small skiff, identified herself as the property and shoreland owner, told the harvester that the property fell under an Audubon easement for the benefit of the habitat and associated wildlife, and asked him to stop harvesting in the protected area.

17. The harvester said that he had legal rights to harvest wherever he wanted.
18. Kim stated that the harvester first needed to ask landowners' permission before harvesting.
The harvester stated that he did not believe that was the case.
19. The harvester did not identify himself but provided a name (John) and a telephone number (480-0527) for us to contact.
20. We later learned that the telephone number the harvester provided was for John Grotton, the manager of Atlantic Laboratories, a company that purchases rockweed from harvesters.
21. The encounter lasted about ten minutes, was cordial, and was photographed.
22. The harvester continued to cut and collect rockweed from our property after our communication that he stop cutting.
23. Later that day, we watched and photographed an encounter between the same harvester and the area manager of Maine Coast Heritage Trust (MCHT), who also asked him not to harvest on the conservation land it owns that lies directly across from our property on the next island. Despite this and subsequent encounters, the harvester continued to cut rockweed.
24. On that same day, James called Marine Patrol, spoke with Officer John Luellen, and informed him of Kim's communication with the harvester.
25. Officer Luellen replied by text that he was not in the area so could not respond in person.
26. Officer Luellen stated in his text message that he had contacted the owner of the company purchasing the rockweed in Waldoboro and that the name of the harvester was Leroy Gilbert.
27. Officer Luellen requested, and we provided, a copy of our deed.
28. For the next two weeks we observed the harvester identified by Officer Luellen, Leroy Gilbert, continue to use his mechanical harvester to remove large amounts of rockweed along our (and MCHT) shorelines.

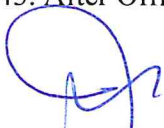
29. We called and texted Marine Patrol each time we saw the harvester. We understand that officers did not physically respond due to our remote location, other ongoing responses, manpower constraints, and harvesting after normal patrol hours.
30. On one occasion during this period we filmed the harvester working in the dark at 3 a.m. We also took photos of the bags of collected seaweed that the harvester would store in the water in front of our home.
31. On August 1, 2019, due to continued harvesting by Leroy Gilbert despite our request that he not do so on our property, Kim called DMR and had a discussion with the DMR Director of Marine Policy, Deirdre Gilbert.
32. Diedre Gilbert stated that in this situation we must contact Marine Patrol.
33. Diedre Gilbert also stated that harvesting without landowner permission was illegal.
34. On August 3, 2019, Kim approached Leroy Gilbert again and reiterated our position that he does not have permission to harvest on our land and that both Marine Patrol and the Department of Marine Resources had affirmed our position.
35. Mr. Gilbert replied that the Department of Marine Resources told him he was legal to go where he wanted.
36. Mr. Gilbert handed Kim a document prepared by North American Kelp asserting this position.
37. The encounter lasted about five minutes and Kim left with the handout.
38. Kim emailed Deirdre Gilbert at the Department of Marine Resources the overview of the conversation and the handout.
39. That day, Kim also re-contacted Marine Patrol Officer John Luellen to let him know about the harvesting despite her second direct request to stop cutting.

40. Officer John Luellen physically responded by patrol boat, spoke directly to Mr. Gilbert in his boat, and told him it was not legal to harvest on our property.

41. A true and accurate copy of a photo we took of the August 3, 2019 encounter between Officer Luellen and Mr. Gilbert is attached.

42. Also attached is a true and accurate copy of a photo we took on August 3, 2019 depicting bags containing rockweed that was harvested from our intertidal property.

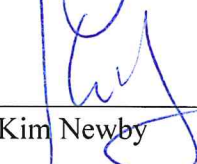
43. After Officer Luellen's response, Mr. Gilbert left the area.



James Li

June 25 2021

Date



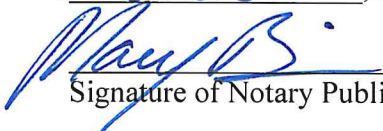
Kim Newby

June 25, 2021

Date

State of Maine
County of Lincoln

Subscribed and sworn to (or affirmed) before me this 25th day of June, 2021, at Waldoboro, Maine, by James Li.



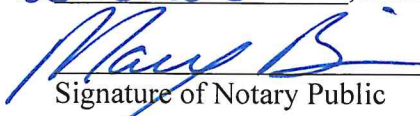
Signature of Notary Public

Mary Bischoff
Notary Public, State of Maine
My Commission Expires December 28, 2024

Name of Notary Public Mary Bischoff
Notary Public, State of Maine
My commission expires: 12/28/24

State of Maine
County of Lincoln

Subscribed and sworn to (or affirmed) before me this 25th day of June, 2021, at Waldoboro, Maine, by Kim Newby.



Signature of Notary Public

Mary Bischoff
Notary Public, State of Maine
My Commission Expires December 28, 2024

Name of Notary Public Mary Bischoff
Notary Public, State of Maine
My commission expires: 12/28/24

WARRANTY DEED

Know All By These Presents

That we, **James Li** and **Kim Newby**, of Friendship, Knox County, Maine in consideration of one dollar and other valuable consideration, do hereby grant and convey unto **James Li** and **Kim Newby** as **Trustees** of the **Spotted Duck Revocable Living Trust** under a Declaration of Trust dated February 6, 2013, the following lots and parcels of land, with all buildings and improvements thereon, all being situated in the town of Friendship in Knox County, Maine, and bounded and described as follows:

1. Cranberry Island Parcel I

Beginning at a 5/8" iron rebar set on the easterly line of the land of the grantors, Newby and Li, which said rebar is located S 64 degrees 37 minutes 45 seconds W a distance of 40 feet from the center of a well located on the common line of the grantors, Newby and Li, and land now or formerly of one Thompson; thence running N 05 degrees 58 minutes 55 seconds W along land now or formerly of Kenneth Sumner and Karen Z. Chance a distance of 738.8 feet, more or less, to a point on the shore of Muscongus Bay (which said point is located S 05 degrees 58 minutes 55 seconds E a distance of 50 feet, more or less, from a rebar set in rock adjacent to said shoreline); thence running in a general easterly, southerly and southwesterly direction along the shore of Muscongus Bay and Joslin Cove, so-called, to the northeast corner of land now or formerly of said Thompson; thence running S 62 degrees 28 minutes 00 seconds W along said Thompson land a distance of 7.5 feet to a rebar; thence continuing on said bearing of S 62 degrees 28 minutes 00 seconds W along said Thompson land a distance of 22.0 feet to an iron rebar; thence continuing on said bearing of S 62 degrees 28 minutes 00 seconds W a distance of 146.6 feet to an iron rod; thence running S 62 degrees 35 minutes 20 seconds W along said Thompson land a distance of 226.2 feet to the center of the aforesaid well; thence running S 64 degrees 37 minutes 45 seconds W a distance of 40 feet along said Thompson land to the point of beginning, being 11.4 acres, more or less.

Also conveying any interest in the shore, rocks and flats adjacent to the above-described premises.

This **Cranberry Island Parcel I** is subject to the rights granted by Nanette Mary Scott to the Lincoln Audubon Society by instrument dated May 16, 1974, and recorded in the Knox County Registry of Deeds in Book 912, Page 320.

For source of title to the above-described **Cranberry Island Parcel I** reference may be had to a conveyance from Kenneth Sumner and Karen Z. Chance to Kim Newby and James Li dated October 4, 2002, and recorded in the Knox County Registry of Deeds in Book 2846 at Page 338.

2. Cranberry Island Parcel II

Beginning at the shore at the eastern corner of land of the late Joseph Simmons; thence easterly by the shore ninety-nine (99) feet to a stake and stones; thence southwesterly to line of land of Albert Crofoot; thence North 28 degrees 30 minutes West, two hundred eighty-six (286) feet and seven (7) inches to the middle of the well; thence North 65 degrees 30 minutes East three hundred ninety-five (395) feet and six (6) inches to the place of beginning.

And also conveying the land and building thereon, which building is the southern most one on the following described real estate: bounded on the north by land now or formerly of Mollie Smith and the sea; on the east by land now or formerly of Ora Simmons; on the south by land now or formerly of heirs of Joseph Thompson; on the west by Elbridge Giles estate, now or formerly; Willie E. Wotton conveyed the above named building and one hundred (100) feet around the same, only, and no other part of the above described premises.

For source of title to the above-described **Cranberry Island Parcel II** reference may be had to a conveyance from Roger L. Jones to Kim Newby and James Li dated July 22, 2005, and recorded in the Knox County Registry of Deeds in Book 3463 Page 181.

3. Friendship Village Parcel

A certain lot or parcel of land situated in said Friendship in said County of Knox and State of Maine on the eastern side of the road leading to Davis' Point, beginning at the South corner of land now or formerly of Mertland Simmons; thence running Southeast one hundred and fifty (150) feet to stake and stones; thence running Southwest one hundred (100) feet to stake and stones; thence running Northwest one hundred and fifty (150) feet to stake and stones; thence running Northeast one hundred (100) feet to land of said Mertland Simmons and the point of beginning. Title reference: Knox County Registry of Deeds Book 305 Page 232.

Together with the right to use the private way of about twenty (20) feet, along the southern side of the lot to the main town road.

Also another certain lot or parcel of land situated in said Friendship, County of Knox and State of Maine, bounded and described as follows:

Being Lot #8 on a "Plan of Cottage Lots on Main Street owned by Elijah Davis" drawn by Frank Bullfinch in 1909, said lot described as follows:

Commencing at the northwest corner of land now or formerly of Mertland Simmons; thence, southwesterly along the Harbor Road a distance of one hundred (100) feet, more

or less, to a right of way laid out on said plan; thence southeasterly along the northeast line of said right of way a distance of one hundred fifty (150) feet to land of John Neubig; thence, northeasterly a distance of one hundred (100) feet to land of Simmons; thence northwesterly along said Simmons land a distance of one hundred fifty (150) feet to the point of beginning. Title reference: Knox County Registry of Deeds Book 731 Page 140.

Also another certain lot or parcel of land with any improvements thereon situated in the Town of Friendship, County of Knox and State of Maine, bounded and described as follows:

Beginning at the easterly corner of Lot 17 and on the northwesterly side of a certain private way as shown on survey entitled "Plan of Cottage Lots on Main Street, Friendship Village, Maine owned by Elijah M. Davis of Friendship" as prepared by Frank Bullfinch in November 1909 and recorded in Knox County Registry of Deeds, Volume 8, Sheet 54; thence southwesterly along the southerly boundary of Lot 17 and the northwesterly boundary of said private way to the southerly corner of Lot 17, being one hundred (100) feet, more or less; thence northwesterly along the westerly boundary of Lots 17 and 8 and the northeasterly boundary of said private way three hundred (300) feet, more or less, to a bolt located at the westerly corner of Lot 8 and the southeasterly boundary of Main Street, so-called; thence southwesterly forty-three (43) feet, more or less, following the southeasterly boundary of Main Street and crossing said private way to a point located at the intersection of said private way and Main Street and being other land owned now or formerly of Newbig (aka Neubig); thence southeasterly along the southwesterly boundary of said private way and other land now or formerly of Newbig (aka Neubig) three hundred forty (340) feet, more or less, to a corner in said private way; thence northeasterly one hundred forty-two (142) feet, more or less, along the southeasterly boundary of said private way to a point being the location where the easterly boundary of Lot 17 if extended in a southeasterly direction across said private way would contact the southeasterly boundary of said private way, thence northwesterly forty-five (45) feet, more or less, to the easterly corner of Lot 17 and the southerly corner of Lot 18, being the point of beginning. Title reference: Knox County Registry of Deeds Book 936 Page 219.

Meaning and intending to convey a portion of a certain private way abutting the westerly side of Lot 8 and 17 and the easterly side of Lot 17 as set forth on survey entitled "Plan of Cottage Lots on Main Street, Friendship Village, Maine owned by Elijah M. Davis of Friendship" as prepared by Frank Bullfinch in November 1909 and recorded in Knox County Registry of Deeds, Volume 8, Sheet 54. For further reference, see said survey.

For source of title to the above-described **Friendship Village Parcel** reference may be had to a conveyance from John W. Neubig to James Li and Kim Newby dated October 7, 2002, and recorded in the Knox County Registry of Deeds in Book 2856 Page 218.

Signed, Sealed, and Delivered
in the presence of

Victoria Motyka
witness

[Signature]
James Li

Vanessa Motyka
witness

[Signature]
Kim Newby

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of Maine)
County of Knox) ss.

On February 6th, 2013 before me, Joel Fearn, a notary public in and for said state, personally appeared James Li and Kim Newby, personally known to me (or proved on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entities upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Joel Fearn
Notary Public

My commission expires: Oct 27, 2013



[NOTARIAL SEAL]

KNOX SS: RECEIVED
Feb 07, 2013
at 11:16A
ATTEST: LISA J SIMMONS
REGISTER OF DEEDS

KNOW ALL MEN BY THESE PRESENTS, THAT,

WHEREAS, NANETTE MARY SCOTT, of River Road, St. James, New York, (hereinafter called the Grantor) holds title to certain real property (hereinafter called the "Protected Property") which has aesthetic, scientific and educational value in its present state as a natural area which has not been subject to exploitation, which property is all the real property now owned by the Grantor, situated on Cranberry Island, in Muscongus Bay, in or near the Town of Friendship, Knox County, State of Maine; And reference is hereby made to the following deeds: 1) deed dated 1 July 1958, recorded in Book 368, Page 37, of the Knox County, Maine, Registry of Deeds, from George J. Friou and Carolyn B. Friou to Nanette Mary Scott; 2) deed dated 1 July 1958, recorded in Book 368, Page 35, of the Knox County, Maine, Registry of Deeds, from Nanette Mary Scott to George J. Friou and Carolyn B. Friou; 3) deed dated 25 May 1953, recorded in Book 331, Page 317, of the Knox County, Maine, Registry of Deeds, from Donald Scott, Jr. to Nanette Mary Scott.

WHEREAS, LINCOLN AUDUBON SOCIETY (hereinafter called the Grantee) is a non-profit corporation incorporated under the laws of the State of Maine whose purpose is to preserve and conserve natural areas for aesthetic, scientific and educational purposes, and whose principal offices are located care of The National Audubon Society, 950 Third Avenue, New York City, New York; and

WHEREAS, the Grantee is the owner of certain real property (hereinafter called the "Benefited Property") described as follows: The island in Muscongus Bay, Town of Bremen, Lincoln County and State of Maine, known as Hog Island, under a certain deed from National Audubon Society, Inc. to the Grantee, dated March 22, 1963, recorded in Book 585, Page 265, of the Lincoln County, Maine, Registry of Deeds; and

WHEREAS, the Grantee holds the Benefited Property for the purpose of maintaining it forever in its present natural state as a preserve for indigenous flora and fauna; and

WHEREAS, the Protected Property and the Benefited Property are closely related and appurtenant to one another so that substantial changes in the natural, scenic, open and wooded condition of the Protected Property would have a deleterious effect on the natural character of the Benefited Property in terms of the view from the

latter as well as the purity of the air, water and the environment in and around the Benefited Property and the maintenance of the region as a suitable habitat for wild flora and fauna of all types; and

WHEREAS, the Grantor and the Grantee recognize the scenic, aesthetic and special character of the region in which their respective properties are located and have the common purpose of conserving the natural values of their respective properties by the conveyance of a conservation easement on, over and across the Protected Property, which shall benefit, protect and be appurtenant to the Benefited Property such as to conserve the natural values of the Protected Property and to conserve and protect the animal, bird and plant population of both the Benefited Property and the Protected Property;

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the covenants herein contained and as an absolute and unconditional gift, does hereby grant to the Grantee, its successors and assigns, forever and in perpetuity for the benefit of the Benefited Property, a Conservation Easement over the Protected Property consisting of the following:

A. The right of view of the Protected Property from the Benefited Property in its natural, scenic, open and wooded condition;

B. The right of the Benefited Property to be free of any taint, corruption or pollution of whatever character arising from any use of the Protected Property not permitted hereunder;

C. The right of the Grantee, in a reasonable manner and at reasonable times, to enter and inspect the Protected Property; and

D. The right of the Grantee to enforce by proceedings at law or in equity the covenants hereinafter set forth, and in furtherance of the foregoing affirmative rights, the Grantor makes the following covenants, on behalf of herself, her heirs and assigns, which covenants shall run with and bind the Protected Property in favor of the Benefited Property in perpetuity:

1. The Protected Property shall be used for single-family residential or conservation purposes only. No commercial, industrial or mining activities shall be permitted on the Protected Property, except the rental of the structures allowed hereunder. No apartment buildings, multi-family units, motels or hotels shall be constructed on the Protected Property.

2. Attached hereto and made a part hereof is a plot plan indicating the location of the present structures and the development area in which additional structures are permitted hereunder. The development area is that land north of a line passing through the well on course S 75°W (255°T) and south of the south-westerly edge of the marsh on the northerly point of the Protected Property. At present there are two (2) structures on the Protected Property, namely:

- a. One single-family residence
- b. One well

No additional structures of any kind, temporary or permanent, shall be located on the Protected Property, except there is retained in the Grantor, her heirs and assigns, the following rights:

A. The right to build, within the development area described on the said attached plot plan, one (1) guest cabin, two (2) docks and other non-residential structures accessory to the residence which do not materially alter the natural and scenic appearance of the landscape when viewed from offshore. No buildings or structures shall be located within the area between low and high water marks of the Protected Property or between high water mark and a line parallel to and set back 100 feet from said high water mark.

B. The right to replace, rebuild, or alter any or all of the existing structures or additional structures allowed hereunder; however, any such replacement, rebuilding, or alteration shall be done within the development area described on the attached plot plan and shall be such as not materially to alter the natural and scenic appearance of the landscape when viewed from offshore.

C. The right to perform ordinary maintenance on the structures allowed hereunder.

D. The right to install and maintain at Deep Cove ringbolts and a gangplank for the purpose of securing and boarding a vessel.

3. No alteration shall be made to the surface of the Protected Property other than that caused by the forces of nature, unless such alteration is approved in advance and in writing by the Grantee, its successors or assigns, provided, however, there is retained in the Grantor, her heirs and assigns, the following rights:

A. The right to cultivate land for non-commercial farming or personal gardens within the development area described on the attached plot plan.

B. The right to excavate in connection with the maintenance, improvement,

replacement, rebuilding, alteration or construction either of the structures authorized hereunder or of the water, sewerage and other services related to the residential use of the Protected Property.

C. The right to construct and maintain foot trails.

D. The right to maintain and operate one pit for each dwelling for the disposal of personal trash, garbage, and other discarded materials.

4. Without limiting the generality of the foregoing, telephone lines, electric power lines originating off the Protected Property, billboards, trailers, mobile homes, inter-island bridges or causeways, and bridges or causeways from the Protected Property to the mainland, or use of the Protected Property as an aircraft landing site are specifically prohibited on the Protected Property, provided, however, there is retained in the Grantor, her heirs and assigns, the following right:

A. The right to post the Protected Property to control unauthorized use.

5. The cutting of standing timber shall not be permitted, provided, however, there is retained in the Grantor, her heirs and assigns, the following rights:

A. The right to clear and restore forest cover that is damaged or disturbed by the forces of nature.

B. The right to gather, use or remove dead wood and to flatten so-called "leaners".

C. The right to prune or selectively thin trees to provide firewood for personal use and to provide or maintain views from dwellings.

D. The right to clear fields within the development area described on the attached plot plan, but any such clearing shall be done only for the purpose of active non-commercial farming or gardening.

6. Any modification, alteration, construction, or reconstruction of any waste disposal system shall be done in a manner that will prevent discharge of any waste into any salt or fresh waters located in or about the Protected Property that will at all adversely affect the purity of said waters.

7. There shall be no spraying with pesticides or insecticides, except under the supervision of a forester approved by the Grantee.

The Grantor, for herself, her heirs and assigns, covenants and agrees to pay

any and all real estate taxes levied by competent authorities on the Protected Property, or any interest therein, and to relieve the Grantee of responsibility for maintaining the Protected Property.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantee and its successors and assigns forever.

IN WITNESS WHEREOF, the said Grantor, NANETTE MARY SCOTT, divorced, has hereunto set her hand and seal this 16th day of May, 1974.

Nanette Mary Scott

STATE OF)
New York) ss.
COUNTY OF)
Suffolk

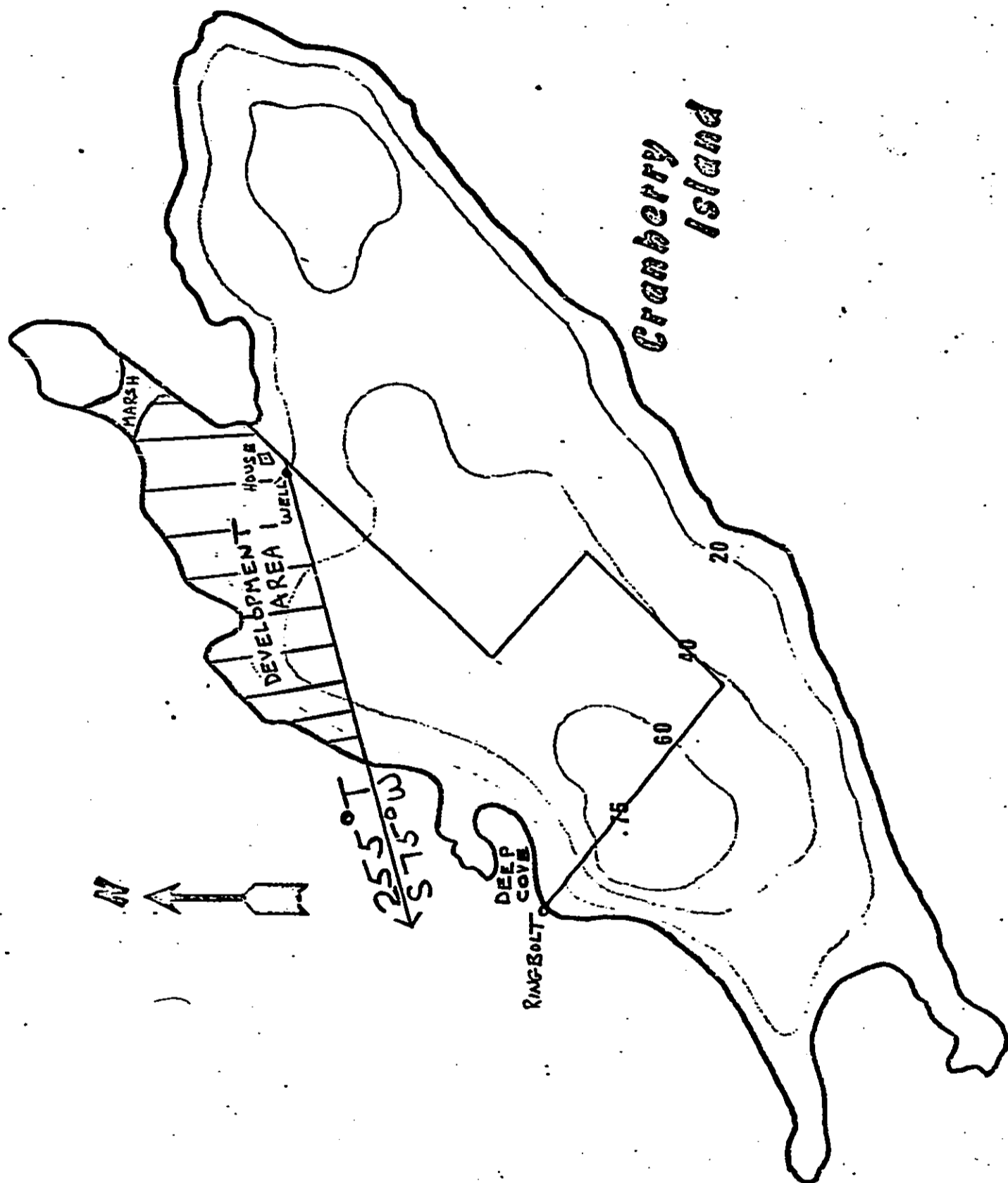
May 16, 1974

Personally appeared the above named NANETTE MARY SCOTT and acknowledged the above instrument to be her free act and deed.

Before me,

DENISE A. RYAN
NOTARY PUBLIC, State of New York
No. 52-3412212, Suffolk County
Term Expires March 30, 1975

Denise A. Ryan
Notary Public



State of Maine, Knox ss: Registry of Deeds
 Received June 29, 1983 at 3:30 P.M.
 and recorded in Book 912, Page 320.
 Attest: *Scott C. Farrell* Register.

Photo of Aug 3 Marine Patrol response to our call showing interaction with Leroy Gilbert.

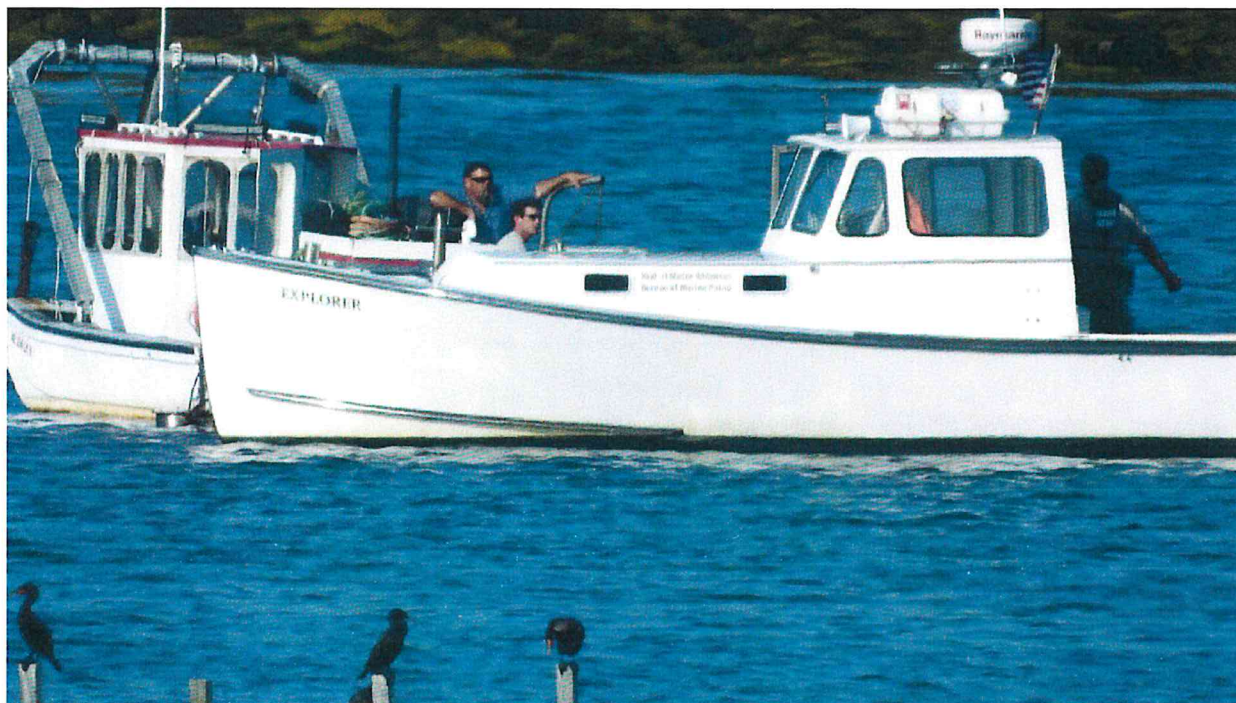


Photo from Aug 3 showing bags of rockweed harvested from our intertidal and conservation property.



STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
DOCKET NO. RE-2021-0035

PETER AND KATHY MASUCCI, et al.,)
)
 Plaintiffs)
)
 v.)
)
 JUDY'S MOODY LLC, et al.,)
)
 Defendants)
 and)
)
 AARON FREY,)
 Attorney General for the State of Maine)
)
 Party in Interest)

AFFIDAVIT OF ROBIN HADLOCK SEELEY

My name is Robin Hadlock Seeley. I hereby state under oath as follows.

1. I am over 18 years of age and competent to provide this sworn statement.
2. I am a named defendant in the case Masucci v. Judy's Moody LLC.
3. I own coastal property, including the intertidal zone, in Pembroke, Maine. A true and accurate copy of the recorded deed to my property is attached.
4. I am a Ph.D. level marine scientist. I retired from Cornell University as a Senior Research Associate in 2018. Before my retirement, I taught or conducted research over a 40-year period (1978-2018) at the Shoals Marine Laboratory (Cornell University and the University of New Hampshire). I am a Senior Ecologist certified by the Professional Board of Certification of the Ecological Society of America.
5. For the past approximately 21 years I have supported rockweed (*Ascophyllum*) habitat conservation through testimony at state and federal government proceedings, and by

talking to landowners about what they can do to protect rockweed.

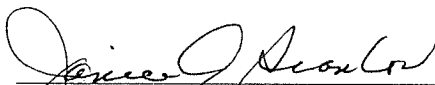
6. From 2015 to 2019, I was a consultant for the plaintiff landowners in the Ross v. Acadian Seaplants case.
7. As part of my conservation activities, I have engaged in educational activities to inform coastal landowners and the public of the value of conserving rockweed for fisheries and for wildlife.
8. As part of these activities, I have published websites and newsletters, in partnership with other conservationists, informing landowners and the public of the Maine Supreme Court decision (Ross v. Acadian Seaplants 2019) that rockweed on the intertidal shore is privately-owned and can only be harvested with the permission of the landowner who owns the intertidal shore.

Dated: June 23, 2021


ROBIN HADLOCK SEELEY

STATE OF MAINE
~~CUMBERLAND~~, ss.
Washington

Personally appeared before me this 23 day of June 2021, the above named Robin Hadlock Seeley, and made oath as to the truth of the foregoing statements by him to the best of his knowledge, information and belief and to the extent based upon his knowledge, information and belief, he believes it to be true.


Notary Public
Printed Name: Janice A. Scanlon
My commission expires: 06/08/2028

WARRANTY DEED
(Joint Tenancy)

Robert T. Howard, whose mailing address is: PO Box 1259, Port Washington, NY 11050,
for consideration paid,

grants to Thomas D. Seeley and Robin H. Seeley, whose mailing address is: 332 Hurd Road,
Ithaca, NY 14850,

with warranty covenants, as joint tenants,

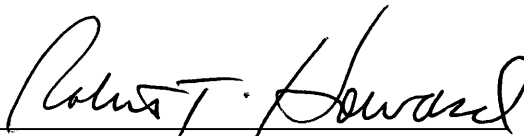
A certain lot or parcel of land situated in the Town of Pembroke, County of Washington, State of
Maine and bounded and described as follows, to wit:

See attached Exhibit A for description of property which is incorporated herein
by reference.

WITNESS my hand and seal this 26th day of August, 2010.

TRANSFER TAX PAID

Witness


Robert T. Howard

STATE OF NEW YORK
County of Nassau

Dated: 8/26/2010

Then personally appeared the above named Robert T. Howard and acknowledged the
foregoing instrument to be his free act and deed.

Before me,

GLENN CORBETT
No. 01CO4842646
Notary Public, State of New York
Qualified in Suffolk County
My Commission Expires Aug. 1, 2011

Typed or printed name of Notary Public



Notary Public

EXHIBIT A

A certain lot or parcel of land situated in the Town of Pembroke, County of Washington, State of Maine and bounded and described as follows, to wit:

Beginning at an iron pin set on the easterly sideline of the Leighton Point Road. Said pin being also the southwest corner of land now or formerly of Wayne G. and Jeanne M. Silva (Book 2846, Page 094).

Thence N 62°-45'-56" E but always following the southerly line of land of said Silva - 500.00' to an iron pin set approximately 60' westerly of the high water line of Pennamaquan Bay.

Thence N 62°-45'-56" E along land of Silva approximately 60' to the highwater line of said Pennamaquan Bay.

Thence generally southerly along the highwater line approximately 660' to a point which bears N 64°- 05'-53" E and is approximately 50' from a pipe found set on the northerly line of land now or formerly of Diane Glidden Wichtermann (Book 2923, Page 328).

Thence S 64°-05'-53" W along the north line of said Wichtermann a distance of 50' to an iron pipe found set.

A tie line between pins near the shore is: S 14°-14'-32" E and 634.16'.

Thence S 64°- 05'-53" W along the northerly line of Wichtermann 405.65' to a stone marked and painted on the easterly sideline of the aforesaid Leighton Road.

Thence N 32°- 12'- 54" W along the Easterly sideline of said road - 166.41' to a point.

Thence continuing along said highway N 27°-40'-55" W a distance of 207.90' to a point.

Thence continuing along said highway N 20°- 54'- 53" W a distance of 62.78' to a point.

Thence continuing along said highway N 13°-23'-32" W a distance of 63.43" to a point.

Thence continuing along said highway N06°-26'-01"W a distance of 118.55' to the point of beginning, containing 7.17 acres, more or less.

Meaning and hereby conveying a portion of the property described in a deed from Sondra M. Castille to Robert T. Howard, the Grantor herein, under the name of Robert Howard, dated December 28, 2004 and recorded in Book 2969, Page 276 of the Washington County Registry of Deeds.

Granting also to the Grantees herein, their heirs and assigns forever, all rights, privileges, appurtenances and easements belonging to the granted estate as intended by M.R.S.A., Title 33, Section 773.

Excepting and reserving, however, to the grantor herein, his heirs and assigns, and others with similar rights, as appurtenant to the real estate described in Book 2969, Page 276 of the Washington County Registry of Deeds, to be used in common with the Grantees herein, their heirs and assigns, a right of way described as follows:

A non-exclusive, permanent ten foot wide right of way over the existing grassy lane leading from the easterly side of Leighton Point Road to the waters of the Pennamaquan River which right of way is more fully described in the Exhibit A attached to the Affidavit of David Cook and as shown on the ROW Sketch by Cook Land Services attached as Exhibit B to said Affidavit recorded in Book 3658, Page 266, said Exhibit A being at Book 3658, Page 267, said Exhibit B being at Book 3658, Page 268 of the Washington County Registry of Deeds and which description is fully incorporated by reference herein.

Received
Recorded Register of Deeds
Aug 27, 2010 02:43:14P
Washington County
Sharon D. Strout

CORRECTIVE RELEASE DEED

SONDRA M. CASTILE, whose mailing address is 1755 York Avenue, Apt. 20, Edward, NY 10128,

for no monetary consideration, being a corrective and confirmatory deed,

grants unto THOMAS D. SEELEY and ROBIN H. SEELEY, whose mailing address is 332 Hurd Road, Ithaca, NY 14850, as joint tenants, with WARRANTY COVENANTS, all the right, title and interest of the Grantor in and to a certain lot or parcel of land situated in Pembroke, County of Washington, State of Maine, described as follows:

Being all of the area between high and low water mark of Pennamaquan Bay formed by a northeasterly extension of the northwesterly and southeasterly sidelines of that certain property described in a warranty deed from Robert Howard to Thomas D. Seeley and Robin H. Seeley, the Grantees herein, dated August 26, 2010 and recorded in Book 3663, Page 213 of the Washington County Registry of Deeds.

Grantor acquired her interest in said real estate by virtue of a warranty deed from Miriam Myers to Sondra M. Castile dated June 5, 1987 and recorded in Book 1449, Page 194 of the Washington County Registry of Deeds but said area between high and low water mark of Pennamaquan Bay was not included in the first parcel of the conveyance from Sondra M. Castile to Robert Howard dated December 28, 2004, recorded in Book 2969, Page 276 of said Registry of Deeds. The purpose of the within conveyance is to merge the title of the property within the intertidal zone in the Grantees as owners of the adjacent upland.

NO TRANSFER TAX PAID

Subject to the rights of the public and the State of Maine in accordance with Maine law.

Also conveying all rights, easements, privileges and appurtenances now belonging to the granted estate as intended by Title 33 M.R.S. Section 773.

WITNESS my hand and seal this 20 day of December, 2019.

SIGNED, SEALED AND DELIVERED

In the presence of

Takemitsu Oka
Witness

Sondra M. Castile
SONDRA M. CASTILE

STATE OF New York
County of New York

November 20th, 2019

Personally appeared the above named SONDRA M. CASTILE and acknowledged the foregoing instrument to be her free act and deed.

Before me,

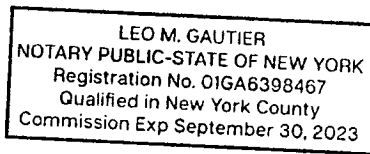
Leo Gantier

Notary Public

Leo Gantier

Type/print name of Notary Public

misc\s\secleydeed.doc



Received
Recorded Register of Deeds
Dec 02, 2019 02:18:24P
Washington County
Sharon D. Strout

**CONSERVATION EASEMENT
FOR THOMAS D. SEELEY AND ROBIN H. SEELEY
SMALLS ISLAND COVE, PEMBROKE, MAINE**

WE, **THOMAS D. SEELEY** and **ROBIN H. SEELEY**, husband and wife, and as joint tenants, having a mailing address of P.O. Box R, Pembroke, Maine 04666 (hereinafter referred to as the "Grantors," which word is intended to include, unless the context clearly indicates otherwise, the above-named Grantors, jointly and severally, their personal representatives, heirs and assigns, and any successors in interest to the Protected Property),

GRANT AS A GIFT to **DOWNEAST COASTAL CONSERVANCY**, a non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of P.O. Box 760, Machias, Maine 04654 (hereinafter referred to as the "Holder," which word shall, unless the context clearly indicates otherwise, include the Holder's successors and/or assigns),

with QUITCLAIM COVENANTS, in perpetuity, this Conservation Easement pursuant to 33 M.R.S. §§476–479-C, inclusive, as amended, over, through, under and across certain lots or parcels of land on Leighton Point Road in the Town of Pembroke, Washington County, Maine, being a portion of the property described in a deed from Robert T. Howard to Grantors herein dated August 26, 2010, and recorded at the Washington County Registry of Deeds in Book 3663, Page 213, and a deed by Sondra M. Castile, dated November 20, 2019, and recorded at said Registry in Book 4617, Page 61, and being more particularly described in **Exhibit A** and depicted on **Exhibit B**, both attached hereto and made a part hereof by reference (hereinafter referred to as the "Protected Property");

This Conservation Easement on the Protected Property is granted exclusively for the following conservation purposes:

- PURPOSE -

This Conservation Easement is intended to provide a significant public benefit by protecting and preserving in perpetuity the natural and undeveloped character of the Protected Property, protecting and preserving valuable habitat, and preserving access by shellfish and worm harvesters to the mudflats of Smalls Island Cove.

Purpose. *It is the purpose of this Conservation Easement to assure that the Conservation Property will be retained forever in its substantially undeveloped, open space, scenic, and natural condition, consistent with the terms of this Conservation Easement, including its recitals, and to prevent any use of the Conservation Property that will impair or interfere with this condition. Grantors and Holder intend that this Conservation Easement will confine the uses of the Conservation Property in perpetuity to activities which are compatible with these*

purposes and the protection of wildlife habitat and preservation of its scenic, open space and natural values, and waterfront access by lawful commercial and recreational shellfish and worm harvesters.

The following recitals more particularly describe the conservation values of the Protected Property and the significance of this grant.

WHEREAS, the Grantors are sole owners in fee simple of the Protected Property situated in the Town of Pembroke, Washington County, Maine, which consists of approximately 4.5 acres of field and forest and roughly 675 feet of shore on Smalls Island Cove in the Pennamaquan Bay, and which harbors a diversity of plant and animal life as well as a diversity of natural features and habitat, including tidal shorefront important to tidal wading birds and waterfowl; and

WHEREAS, the Protected Property has a 10-foot wide path that runs from Leighton Point Road to the shore of Smalls Island Cove that provides valuable access to Cobscook Bay for shellfish and worm harvesters; and

WHEREAS, Holder is qualified to hold conservation easements pursuant to 33 M.R.S. §476(2)(B), as amended, and is a qualified organization under the Internal Revenue Code, 26 U.S.C. §§170(h)(3) and 501(c)(3), whose purpose it is to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Protected Property is within 1,000 feet of Maine Department of Inland Fisheries and Wildlife's ("MDIFW") Smalls Island, part of the Cobscook Bay Wildlife Management Area, within 1,650 feet of The Nature Conservancy's ("TNC") Hersey Cove preserve, and within 4,500 feet of TNC's Coggins Head property; and

WHEREAS, the Protected Property is within a 2-mile radius of the 7,200-acre Edmunds Division of the Moosehorn National Wildlife Refuge, Maine Coast Heritage Trust's ("MCHT") Sipp Bay Preserve and within 5 miles of Holder's property Reversing Falls Preserve, a natural area of approximately 194 acres adjacent to highly scenic Cobscook Bay and managed by Holder for scenic and wildlife preservation including protection of the marine ecology; and

WHEREAS the Protected Property is within 5 miles of other conservation properties in Cobscook Bay, including Garnet Point/Red Point (Ross Property), MDIFW's Pattangal Cove, Red Island, Long Cove, Falls Island, and Crow's Neck, which have significant scenic and wildlife habitat qualities that are complemented by the existing substantially undeveloped conditions of nearby conservation properties; and

WHEREAS, Cobscook Bay is a substantially undeveloped marine tidal water body of the Canadian/United States border west of the Bay of Fundy and is in close proximity to the Moosehorn National Wildlife Refuge, Cobscook Bay State Park, West Quoddy Head State Park, Roosevelt Campobello International Park, the Town of Pembroke's Reversing Falls Park and other provincial parks in Canada, all of which are part of an area of spectacular beauty and significant ecological, geological, recreational and cultural value; and

WHEREAS, Cobscook Bay has been designated as the top priority focus area in Maine for the North American Waterfowl Management Plan Atlantic Coast Joint Venture, a United

States/Canada waterfowl management project developed in 1988 by MDIFW in cooperation with the U.S. Fish and Wildlife Service (USFWS), and conservation easements are noted within said plan as a recommended alternative for achieving the habitat protection goals of the said waterfowl project; and

WHEREAS, the USFWS's Gulf of Maine Coastal Program classifies the Protected Property as high value habitat and has ascertained that "the property provides important habitat for 46 of 91 USFWS priority trust species" and further "provides particularly high value habitat, in comparison with the rest of the Gulf of Maine watershed, for 32 of those 46 species;" and

WHEREAS, MDIFW has determined that the intertidal wetlands on the Protected Property provide high and/or moderate value Tidal Wading Bird and Waterfowl Habitat and provide feeding areas for shorebirds, seabirds, fish and marine mammals, and American bald eagles; and

WHEREAS, the Protected Property provides scenic enjoyment for the general public with views from Leighton Point Road to Cobscook Bay, Hersey Cove Preserve, and Smalls Island, which is part of the Pennamaquan River Estuary Scenic Area and described as a "Scenic Area" within Cobscook Bay in the *Downeast Coastal Scenic Assessment* of 2014 prepared by the Washington County Council of Governments and the Hancock County Planning Commission, and when viewed from the waters of Cobscook Bay, the Pennamaquan River estuary, TNC's Hersey Cove preserve, TNC's Coggins Head, and from Garnet Head Road in Pembroke; and

WHEREAS, land along and in close proximity to the coastline of Washington County is subject to continuing development pressure and existing land-use regulations are neither permanent nor currently sufficient to protect the scenic appearance or ecological integrity of land, as evidenced by nearby land-use patterns; and

NOW, THEREFORE, the Grantors and Holder have established this Conservation Easement on, over, and across the Protected Property consisting of the foregoing recitals and purposes, and the following terms, covenants, restrictions and affirmative rights granted Holder, its successors and assigns, which shall run with and bind the Protected Property and Grantors, their heirs and assigns, in perpetuity:

1. LAND USE & DIVISION

A. Land Use

The Protected Property may be used only for conservation, low-impact outdoor recreation, firewood collection, and natural resource management activities that do not adversely affect its important natural, ecological, scenic and habitat values.

B. Specific Prohibitions

No industrial, wind power, quarrying, surface mining activities, or drilling for oil, gas, or commercial water are permitted on the Protected Property. In addition, the use of the Protected Property for commercial outdoor recreation is prohibited, other than *de minimis* use in accordance with Internal Revenue Code, 26 U.S.C. §2031(c), and as interpreted by regulations promulgated thereunder. Without limiting the generality of the foregoing and notwithstanding the reserved

rights of Grantors herein, the following uses are prohibited: residential structures, apartment buildings, motels or hotels, campgrounds, use or storage of campers or trailers, exterior high-intensity lights, billboards, towers, antennae or other apparatus for telecommunications or radar, oil or fuel storage facilities, refineries, bridges or causeways, docks and piers, which include ramps and other structures that extend alongshore or out from the shore into a body of water and even if temporary, solid waste disposal or transfer areas, junk yards, and aircraft landing sites, except in emergency. The use of all-terrain vehicles or other similar motorized vehicles is prohibited from the Protected Property, including on the intertidal zone, except as may be required for mowing of the unforested areas.

C. Division

For the purpose of land uses permitted under this Conservation Easement, the Protected Property must remain in its current configuration as a single lot under unified ownership, which may be joint and undivided. Subdivision, partition or creation of other parcels or lots, whether by lot division, long term lease of structures (in excess of one year), condominium, time share or other manner of ownership which creates discrete parcels or separate ownership or control of portions of the Protected Property, shall be prohibited. Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to an entity that meets the qualification set forth in Paragraph 11.D. for permanent conservation ownership. Under no circumstances may the Protected Property or any portion thereof be included as part of the gross tract area of other land not subject to this Conservation Easement, for the purposes of determining density, lot coverage, or land area requirements, under otherwise applicable laws, regulations or ordinances controlling land use, building density or transfer for development rights.

2. EXISTING CONDITIONS

At the time of this grant there are no structures on the Protected Property and no surface alterations on the Protected Property except for an unpaved, approximately 10-foot wide path that is used primarily by shellfish harvesters (hereinafter "Shellfish Harvester Path"). As of the date of this grant the Protected Property consists of approximately 4 acres of open meadow and 0.5 acres of forest. All existing conditions are documented in Baseline Data, a compilation of the conditions of the Protected Property as of the date of this grant, certified as accurate by Grantors and Holder, and on file at the offices of Holder.

3. RESTRICTIONS AND RESERVED RIGHTS

It is the intention of this Conservation Easement that the Protected Area be used as conservation land for low impact outdoor recreation, nature observation and study, and that uses and improvements within the Protected Property be limited to the extent necessary or appropriate to preserve its natural and undeveloped character, including preserving its important coastal habitat, and protect access to the shore and associated mudflats for traditional marine harvesting provided, however, that no seaweed shall be harvested on the Protected Property and the Protected Property shall not be used for transporting commercially harvested seaweed. No structures, temporary or permanent, may be located or constructed on the Protected Property, and no alterations may be made to the vegetation or to the surface of the earth or to wetlands or

watercourses on the Protected Property, without the prior written consent of Holder; except that Grantors reserve the following rights:

A. Structures

Minor Structures. Grantors reserve the right to construct and maintain within the Protected Property only minor structures to accommodate low-impact outdoor recreation, nature observation, and nature study, such as: avian structures; small unlighted signs; trail kiosks; picnic tables; low barriers to discourage unauthorized access or to protect fragile resources; support and erosion control structures necessary for permitted trails; boundary markers; signs indicating end of public access trails; rustic trail improvements, including benches, hand rails, steps, and stream bridges; and temporary tents. Notwithstanding the generality of the foregoing, the following structures are not permitted in the Protected Property: buildings, sheds, storage units, gazebos, screen houses, tent platforms, docks, piers, barns, bleachers, stages, paved platforms, major recreational improvements such as swimming pools, tennis courts, athletic or sports or equestrian fields or courts or courses that require grading of the surface or extensive barring of mineral soils.

B. Surface Alterations

(i). Grantors reserve the right to alter the surface of the land, excavate and/or fill the Protected Property to the minimum extent necessary to exercise the reserved rights at Paragraphs 3.A. and 3.C., provided that in every case the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the scenic and ecological character of the Protected Property to be protected by this Conservation Easement.

(ii). Grantors reserve the right to maintain the Shellfish Harvester Path in its current configuration;

(iii). Grantors reserve the right to establish and maintain, anywhere on the Protected Property, unpaved footpaths of not more than 4 feet in combined tread width and side clearance, designed and located to prevent erosion and protect the other conservation values of the Conservation Easement.

(iv). Grantors reserve the right to permit archeological and ecological study of the Protected Property, including excavation of sites, provided that all such work must be conducted in accordance with applicable then-current professional standards, any archaeologist leading such work must meet the minimum qualifications determined by the Maine Historic Preservation Commission, and the disturbed area must be restored to its natural appearance as soon as reasonably possible after completion.

(v). Grantors may not grant additional easements, rights of way, licenses or permits over the Protected Property, nor increase the scope of existing easements, rights of way, licenses or permits without the prior written consent of Holder, based on a determination, in Holder's sole discretion, that said right or interest does not materially detract from the conservation values. Notwithstanding the foregoing, new through roads shall not be permitted on the Protected Property.

C. Vegetation Management

Within forested area of the Protected Property, it is the intention of this Conservation Easement to foster an intact, healthy forested area, and to limit the removal of wood and non-wood forest products to preserve healthy soils and habitat for wildlife and the scenic character of forested areas of the Protected Property. Within the unforested areas, it is the intention of this Conservation Easement to maintain its scenic, open space characteristics, and Grantors agree to maintain the unforested area as open field or pasture supporting grasses for scenic and ecological purposes. Maintenance of the open fields or pasture as used here shall mean, at minimum but not necessarily limited to, mowing every two to three years.

(i). Generally: Grantors reserve the right to alter vegetation anywhere in the Protected Property, to the extent necessary to exercise the rights reserved in Paragraph 3.A. and 3.B., provided that in every case the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the scenic and ecological character of the Protected Property to be protected by this Conservation Easement.

(ii). Unforested Area: Grantors reserve the right and affirmatively agree to maintain the existing open fields on the Protected Property depicted generally in Exhibit B, including the right to mow and bush hog and otherwise remove woody regeneration or standing timber thereon.

(iii). Forested Area: Grantors reserve the right to cut or otherwise harvest wood for firewood for Grantors' own use. Grantors further reserve the right to remove exotic or invasive species, and to thin, weed, clean, cut, prune and practice other measures to achieve silvicultural objectives, and to remove vegetation to address obvious threats to safety. Grantors further reserve the right to selectively cut and prune trees on the Protected Property for aesthetic purposes, provided such activities are conducted in compliance with applicable Shoreland Zoning regulations.

(iv.). Grantors further reserve the right, but only with prior written approval by Holder and pursuant to a plan approved by Holder, to alter vegetation to improve wildlife habitat.

4. WATER PROTECTION, POLLUTION CONTROL AND WASTE DISPOSAL

A. Discharge of Sewage

The direct discharge of treated or untreated sewage into surface waters on or about the Protected Property is strictly prohibited, and any such waste shall be disposed of in accordance with applicable laws and regulations.

B. Abandoned Equipment

It is forbidden to dispose of or store unserviceable or abandoned equipment, such as appliances, vehicles and parts thereof, or any other waste material on the Protected Property, except that vegetative slash and debris may be allowed to remain on the Protected Property, manure, compost and vegetative waste may be stored and/or used on the Protected Property in

accordance with applicable laws and regulations, and other waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate receptacles for removal at reasonable intervals. Nothing herein should be interpreted to prohibit the proper and legal burial of animals or humans within an area of the Protected Property designated by Grantors as a burial ground in accordance with 13 M.R.S. §1142, as amended, or successors thereof.

C. Use and Storage of Chemicals

The use, storage, discharge or runoff of chemical herbicides, pesticides, fungicides, soaps, detergents or highly acidic or alkaline agents, fertilizers and other toxic agents, including discharge of potentially toxic waste water or other toxic byproducts of permitted uses, must be limited to prevent any demonstrable adverse impact on wildlife, waters and other important conservation values to be protected by this grant, unless more intensive use is approved in advance and in writing by Holder as appropriate, in its sole and exclusive discretion, to prevent or mitigate harm to the inhabitants, natural resources or permitted uses of the Protected Property.

5. PUBLIC ACCESS

Grantors have no obligation to grant public access across the Protected Property, except that Grantors agree to permit, and will refrain from prohibiting or discouraging, use of the Shellfish Harvester Path that provides access to the mudflats of Smalls Island Cove for commercial and recreational shellfish and worm harvesters appropriately licensed in accordance with the law. Grantors retain the right to grant public access to the Protected Property for low impact outdoor recreation, nature observation and study exercised in accordance with the terms of this grant, provided that more than a *de minimis* use of the Protected Property for commercial outdoor recreation is prohibited as aforesaid and that no pets or motorized vehicles shall be permitted on said Shellfish Harvester Path.

Grantors and Holder claim all of the rights and protections against liability for injury to the public to the fullest extent of the law under 14 M.R.S. §159-A, *et seq.*, as amended and successor provision thereof, and under any other applicable provision of law and equity.

6. HOLDER'S AFFIRMATIVE RIGHTS

A. Entry and Inspection

Holder shall have the right to enter the Protected Property for inspection and monitoring purposes and for enforcement, at a reasonable time and in a reasonable manner that is consistent with the conservation purposes hereof. Except in emergency circumstances, Holder will make reasonable efforts to contact Grantors prior to entry onto any area of the Protected Property that is not then open to the public. "Emergency circumstances" shall mean that the Holder has a good-faith basis to believe a violation of the easement is occurring or is imminent.

B. Enforcement

Holder shall have the right to enforce this Conservation Easement by proceedings at law and in equity, including the right to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms

of this Easement and to require the restoration of the Property to the condition that existed prior to any such injury. Grantors agree that Holder's remedies at law for any violation of the terms of this Conservation Easement are inadequate, and that Holder shall be entitled to injunctive and equitable relief, both prohibitive and mandatory, temporary and permanent, in addition to such other relief to which Holder may be entitled, including damages and specific performance of the terms of this Conservation Easement, **all without posting of any bond or other security** and without the necessary of proving either actual damages or the inadequacy of otherwise available legal remedies.

Prior to initiation of an enforcement action, Holder shall provide Grantors with prior notice and reasonable opportunity to cure any breach, except where emergency circumstances require more immediate enforcement action.

If Holder is the prevailing party in any action against Grantors, or against Grantors' agents, employees, lessees, guests, or others for whose actions on the Protected Property Grantors are responsible, Grantors shall reimburse Holder for any reasonable costs of enforcement or defense, including court costs, mediation and, if applicable, arbitration costs, reasonable attorneys' fees, and any other payments ordered by such Court or arbitrator.

Grantors are not responsible for injury to or change in the Protected Property resulting from natural causes or environmental catastrophe beyond Grantors' control, such as fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

The terms of this Conservation Easement do not supersede or waive more restrictive applicable laws and regulations, such as shoreline zoning or any other federal, state or local laws and regulations governing current use tax classifications, waste disposal, subdivision, structures, surface alterations, vegetation management, or other activities on the Protected Property. It is Grantors' sole responsibility to be knowledgeable about and to abide by these laws and regulations.

C. Boundaries

It shall be Grantors' obligation to keep the boundaries of the Protected Property clearly marked. In the event boundaries are not adequately clear or marked and Grantors fail to accurately mark within a reasonable time after notice by Holder, Holder shall have the right to engage a professional surveyor to re-establish and re-mark boundaries of the Protected Property or any part thereof. Notwithstanding that Grantors are responsible to maintain the boundary, the costs associated with such survey work undertaken by Holder shall be paid by the Grantors only if and to the extent necessary to determine if a breach of this Conservation Easement has occurred on the Protected Property.

D. Holder Acknowledgement Signs

Holder shall have the right to install and maintain small unlighted signs visible from public vantage points and along boundary lines, to identify Holder and inform the public and abutting property owners that the Protected Property is under the protection of this grant.

E. Notification

Holder has the right to require that Grantors' reserved rights be exercised in a manner that avoids adverse impact to the conservation values to be protected by this Easement. Grantors agree to notify Holder prior to undertaking any activity or exercising any reserved right that may impair the conservation interests associated with this Conservation Easement, as required under Internal Revenue Service Regulations at 26 C.F.R. §1.170A-14(g)(5)(ii), and as specifically required in Paragraph 7.

F. Affirmative Management Rights

Holder has the right to establish and maintain, anywhere on the Protected Property, unpaved footpaths of not more than approximately 4 feet in combined tread width and side clearance, designed and located to prevent erosion and protect the other conservation values of the Conservation Easement. Holder has the same rights as Grantors to construct, establish, and maintain any structures, footpaths, signage and kiosk displays provided for in Paragraph 3.A., subject to the notification requirement in Paragraph 7.

7. NOTICES AND REQUESTS FOR APPROVAL

A. Notice and Approval Requirements

Grantors agree to notify Holder prior to undertaking any activity or exercising any reserved right that may have an adverse impact on the conservation interests associated with this grant as required under Internal Revenue Service Regulations at 26 C.F.R. §1.170A-14(g)(5)(ii), and where prior notice or approval is specifically required in this Conservation Easement. Grantors' notices must include sufficient information to enable Holder to determine whether Grantors' plans are consistent with the terms of this Easement and the conservation purposes hereof. Holder approval shall be conditioned on compliance with the terms of Paragraph 11.F.

B. Method for Notice

Any notices or requests for approval required by this Easement shall be in writing and shall be personally delivered or sent certified mail, return receipt requested, or by such commercial delivery service as provides proof of delivery, to Grantors and Holder, at the following addresses, unless one has been notified by the other of a change of address or change of ownership:

To Grantors: At the address of the owner of record as noted hereinabove or as provided by Grantors in writing, or if not provided, as set forth below.

To Holder: Downeast Coastal Conservancy, P.O. Box 760, Machias, Maine 04654.

In the event that notice mailed to Grantors at the last address on file with Holder is returned as undeliverable, the sending party shall provide notice by regular mail to Grantors' last known address on file with the Town of Pembroke, Maine, or in the case of Holder or in the case of a corporate owner, to the address on file with the Secretary of State, State of Maine, and the mailing of such notice shall be deemed compliance with the notice provisions of this Easement.

C. Time for Notice and Reply

(i) Where Grantors are required to provide notice to Holder pursuant to this Easement, such notice as described hereinabove shall be given in writing at least thirty (30) days prior to the event giving rise to the need to give notice except as otherwise specifically provided herein.

(ii) Where Grantors are required to obtain Holder's prior written consent and approval, such request as described hereinabove shall be given in writing thirty (30) days prior to undertaking the proposed activity except as otherwise specifically provided herein. Holder, upon receipt of Grantors' request, shall acknowledge receipt of the same. Following such review, Holder, shall grant, grant with conditions, or withhold its approval. Failure to approve Grantors' request within thirty (30) days shall be deemed a denial of any element of such request that is not expressly permitted under the terms of this easement. No proposed activity may proceed without Holder's written consent and approval as provided herein.

D. Notice to Grantor

Should it be necessary for Holder to provide notice to Grantors in connection with any matter relating to this Conservation Easement, notice to the record owner or owners, who are of full age and competent, of a majority interest in the Protected Property, shall be deemed notice to all the owners of the Protected Property. In the event that the Protected Property is owned by more than one person, the owners shall designate one representative to act on behalf of all such owners, for the purposes of sending and receiving any notice or other communication required or authorized under this Easement. If the Protected Property is owned by a partnership, trust, limited liability company, association, or corporate entity, notice to one general partner, one trustee, one manager, or the registered agent, shall be deemed notice to all owners. Any consent, agreement or approval made in writing by the person or persons to whom notice is required as aforesaid shall be deemed the consent, agreement or approval of Grantors and be binding on all owners of the Protected Property.

8. COSTS, TAXES, LIABILITY

A. Taxes and Liens

Grantors shall pay and discharge when due all property taxes and assessments imposed upon the Protected Property and any uses thereof, and shall avoid the imposition of any liens that may impact Holder's rights hereunder. Grantors shall also promptly notify Holder of the filing or recording of any such lien or encumbrance against the Protected Property. Holder may, at its discretion, pay any such outstanding taxes, assessments, liens or encumbrances, and shall then be entitled to reimbursement by Grantor, together with interest at the then-prevailing statutory post-judgment interest rate in Maine under 14 M.R.S. §1602-C or successor provisions thereof, calculated from the date of Holder's payment. Grantors and Holder agree that Holder shall have a lien on the Protected Property to secure Holder's right to reimbursement and that Holder may record such lien at any time. In any collection process or court action brought by Holder for

reimbursement, Holder shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorneys' fees.

B. Responsibility of Owners

Grantors acknowledge that Holder has neither possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property other than as set forth in Paragraph 6. Grantors shall retain all responsibilities and shall bear all costs and liabilities of any nature related to the ownership, operation, upkeep, improvement and maintenance of the Protected Property.

9. DISPUTE RESOLUTION

This Easement is in accordance with Maine's established public policy that encourages the use of non-litigative methods of dispute resolution. When a dispute arises between the Grantors and the Holder concerning uses or activities on the Protected Property, which they cannot resolve by informal means, the following dispute resolution procedures may be followed:

A. Conditions for Required Alternative Dispute Resolution ("ADR")

Prior to bringing an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, the parties may seek to resolve the dispute through mediation if the Holder determines that the following conditions (the "ADR Conditions") are met:

(i). The Grantors agree not to proceed with the disputed use or activity pending resolution of the dispute, and

(ii). No injury to the Protected Property has occurred or will occur while the parties are engaging in the ADR process.

B. Conditional Waiver of Right to Litigate

In submitting the dispute to mediation, the parties acknowledge they are temporarily, voluntarily waiving their rights to litigate the dispute in a court of law, so long as the ADR Conditions are being met. In the event either of the ADR Conditions is violated, the Holder shall have the immediate right to bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, as is more fully set forth in Paragraph 6.B. above.

C. Conditions for ADR by Mutual Agreement of the Holder and Grantor

Regardless of whether the ADR Conditions are met, the parties by mutual agreement may, in addition to mediation, submit the dispute to other forms of ADR such as binding or non-binding arbitration. By mutual agreement, other conditions may be set under which the process of ADR would proceed. The violation of these additional conditions by one of the parties would give the other party the right to immediately proceed with an action in law or equity.

D. Dispute Resolution

The procedure the parties shall use for mediation is as follows:

(i). Either party may serve the other with a written request for mediation. A mediation session shall be scheduled no later than 60 days after the date of the request if the Holder determines that the ADR Conditions are met or unless the parties agree otherwise.

(ii). Mediation shall be conducted by a mediator mutually agreeable to Holder and Grantors who is on the Superior Court roster maintained by the Maine Court Alternative Dispute Resolution Service (or successor or alternative entity that meets mediation standards recognized under state law).

(iii). If the parties cannot agree on a mediator, they shall each pick a mediator, and those two mediators shall select a third mediator who alone shall actually conduct the mediation.

(iv). The costs of mediation shall be shared equally by the parties unless otherwise agreed or unless reimbursement to Holder is applicable under Paragraph 6.B. herein.

10. STANDARD PROVISIONS

A. Maine Conservation Easement Act

This Conservation Easement is established pursuant to the Maine Conservation Easement Act at 33 M.R.S. §§476–479-C, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.

B. Conservation Purposes

This Conservation Easement is established exclusively for conservation purposes pursuant to the Internal Revenue Code, 26 U.S.C. §170(h)(1)–(6) and §§2031(c), 2055, and 2522, and under Internal Revenue Service Regulations, 26 C.F.R. §1.170A-14 *et seq.*, as amended.

C. Qualified Holder

The Holder is qualified to hold conservation easements pursuant to 33 M.R.S. §476(2)(B), as amended, and is a qualified donee under Internal Revenue Code, 26 U.S.C. §170(h)(3): a publicly supported, nonprofit 501(c)(3) organization with the authority to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational or open-space values of real property, and with the commitment to preserve the conservation values of the Protected Property.

D. Assignment Limitation

This Conservation Easement is assignable, but only to an entity that satisfies the requirements of the Internal Revenue Code, 26 U.S.C. §170(h)(3) (or successor provisions thereof), and the requirements of 33 M.R.S. §476(2) as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the conservation purposes of this grant.

E. Baseline Documentation

In order to establish the present condition of the Protected Property and its conservation attributes protected by this Conservation Easement, and its natural and scenic resources, so as to be able to monitor properly future uses of the Protected Property and assure compliance with the terms hereof, Holder and Grantors have prepared an inventory of the Protected Property's relevant features and conditions (the "Baseline Documentation") and have certified the same as an accurate representation, to the extent known, of the condition of the Protected Property as of the date of this grant, as required under Internal Revenue Service Regulations, 26 C.F.R. §1.170A-14, for tax deductible conservation easement gifts.

F. Liens Subordinated

Grantors represent that as of the date of this grant there are no liens or mortgages or future interests outstanding against the Protected Property. Grantors have the right to use the Protected Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Holder's rights under this Conservation Easement. Under no circumstances may Holder's rights be extinguished or otherwise affected by the recording, foreclosure or any other action taken concerning any subsequent lien or other interest in the Protected Property.

G. Value of Conservation Easement, Extinguishment, Proceeds

(i). The parties agree that the grant of this Conservation Easement creates a property right that vests immediately in Holder. The parties further agree that this property right as of the date of its creation has a fair market value that is equal to the percentage by which the fair market value of the unrestricted Property as a whole as valued in accordance with Internal Revenue Service Regulations at 26 C.F.R. §1.170-A 14(h)(3)(ii), is reduced by the terms and conditions imposed by this Conservation Easement, as of the date of the execution of this Conservation Easement (hereinafter the "Original Percentage Reduction").

(ii). This Conservation Easement may be extinguished or terminated only by judicial order in a court of competent jurisdiction. It is the intention of the parties that an extinguishment or termination be approved by a court only if all of the conservation purposes of this Conservation Easement are impossible to accomplish, and if both Grantors and Holder agree. Should this Conservation Easement be terminated or extinguished as provided in this paragraph, in whole or in part, Holder shall be entitled to be paid no less than a portion of any proceeds of sale, exchange or lease computed as to the greater of: (i) the Original Percentage Reduction; or (ii) the increase in value of the Grantors' estate resulting from such extinguishment, as determined by the court, or in the absence of such

court determination, by the agreement of the parties or, in the absence of such agreement, by an independent appraiser mutually selected by Grantors and Holder. Holder shall use its share of the proceeds or other moneys received under this paragraph in a manner consistent, as nearly as possible, with the stated, publicly beneficial purposes of this Conservation Easement. Grantors agree and authorizes Holder to record a notice of a lien on the Protected Property which lien will be effective as of the date of such extinguishment, to secure its rights under this paragraph.

H. Contemporaneous Written Acknowledgment

In compliance with Internal Revenue Code, 26 U.S.C. §170(f)(8), Holder acknowledges receipt of this Conservation Easement on the date hereof, and states that it has not provided Grantors with any goods or services in consideration, in whole or in part, for Grantors' contribution of this easement.

11. GENERAL PROVISIONS

A. Controlling Law and Interpretation

The interpretation and performance of this Easement shall be governed by the laws of the State of Maine. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the conservation purposes of this Easement and the policy and purpose of the Maine Conservation Easement Act at 33 M.R.S. §§476-479-C, inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Easement shall govern.

B. Grantor and Holder Definitions

The term "Grantor" or "Grantors" as used in this easement shall include, unless the context clearly indicates otherwise, the within-named Grantors, their personal representative, heirs, successors and assigns and any successors in interest to the Protected Property. The term "Holder" as used in this easement shall, unless the context clearly indicates otherwise, include the Holder's successors and assigns.

C. Owner's Rights and Obligations, Joint Obligation

A person's or entity's obligation hereunder as Grantor, or successor owner of the Protected Property, shall be joint and several, and will cease, only if and when such person or entity ceases to have any ownership interest in the Protected Property, but only to the extent that the Protected Property is then in compliance herewith, and provided such person or entity shall have fulfilled the requirements of Paragraph 11.D. below. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer; provided that the new owner shall also be responsible for bringing the Protected Property into compliance.

D. Subsequent Deeds and Transfers

This Easement must be incorporated by reference in any deed or other legal instrument by which Grantors convey any interest in the Protected Property, including, without limitation, a

leasehold or mortgage interest. Grantors further agree to give written notice to Holder within thirty (30) days of the transfer or conveyance of any interest in the Protected Property. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

E. Compliance/Estoppel Certificates

Upon written request by Grantor, Holder will provide Compliance/Estoppel Certificates to Grantors or third parties, indicating the extent to which, to Holder's knowledge after due inquiry, the Protected Property is in compliance with the terms of this grant. The inspection of the Protected Property for this purpose will be made by Holder at Grantors' cost within a reasonable time after Grantors' written request.

F. Discretionary Approvals and Amendments

(i). Discretionary Approvals. Grantors and Holder recognize that certain activities by the Grantors may warrant the prior discretionary approval of Holder, and that Holder has the right to issue such discretionary approvals without prior notice to any other party. Nothing in this paragraph shall require the Holder to agree to any discretionary approval.

(ii). Amendments. Grantors and Holder recognize that rare and extraordinary circumstances could arise which warrant modification of certain of the provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, Grantors and Holder have the right to agree to amendments to this Conservation Easement without prior notice to any other party, provided that in the reasonable judgment of Holder, such amendment does not violate the restrictions in Paragraph 11.F.(iii). Amendments will become effective upon recording at the Washington County Registry of Deeds. Nothing in this paragraph shall require the Grantors or the Holder to agree to any amendment or to consult or negotiate regarding any amendment.

(iii). Further Limitations on Discretionary Approval and Amendments. Notwithstanding the foregoing, except as provided by 33 M.R.S. §477-A(2), as amended, by which a Conservation Easement may be amended by court approval in an action in which the Attorney General is made a party, Holder and Grantors have no right or power to approve any action or agree to any amendment or discretionary approval, without a court order, if such approval or amendment would:

(a) materially detract from the conservation values intended to be protected under this Conservation Easement;

(b) limit the term or result in the partial or complete termination of this Conservation Easement; or

(c) adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act at 33 M.R.S. §476 *et seq.*, and the Internal Revenue Code at 26

U.S.C. §§170(h), 501(c)(3), 2522, and 2031(c), and successor provisions thereof and regulations issued pursuant thereto.

G. Economic Hardship

In making this grant, Grantors have considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Grantors and Holder that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

H. Nonwaiver

The failure or delay of the Holder, for any reason whatsoever, to do any action required or contemplated hereunder, or to discover a violation or initiate an action to enforce this Conservation Easement shall not constitute a waiver, laches, or estoppel of its rights to do so at a later time.

I. Severability, Entire Agreement, No Forfeiture

If any provision of this Conservation Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any other person or in any other circumstance, shall remain valid. This instrument and the Baseline Documentation set forth the entire agreement of the parties with respect to the Conservation Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. Nothing contained herein will result in a forfeiture of this Conservation Easement or reversion to Grantors of any rights extinguished or conveyed hereby.

J. Standing to Enforce

Only Holder and Grantors may bring an action to enforce this grant, and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, unless otherwise provided by law; nor to grant any rights in the Protected Property by adverse possession or otherwise, provided that nothing in this Easement shall affect any public rights in or to the Protected Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.

K. Captions

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

L. Independent Representation

Grantors have retained legal counsel to represent only their interest in this transaction. Grantors and Holder acknowledge and agree that they have not received and are not relying upon legal, tax, financial or other advice from each other. Grantors acknowledge that Holder has recommended that it keep independent counsel.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Holder, its successors and assigns forever.

IN WITNESS WHEREOF, We, **THOMAS D. SEELEY** and **ROBIN H. SEELEY**, husband and wife, have hereunto set our hands and seals this 18th day of March, 2020.

Signed, sealed and delivered
in the presence of:

M. Zarate
Witness

Thomas D. Seeley
Thomas D. Seeley

[Signature]
Witness

Robin H. Seeley
Robin H. Seeley

STATE OF New York
COUNTY OF Tompkins

March 18th, 2020

Then personally appeared the above-named Thomas D. Seeley and Robin H. Seeley acknowledged the foregoing instrument to be his/her/their free act and deed.

COURTNEY S. REINHART
Notary Public, State of New York
Registration no. 01RE6361796
Qualified in Tompkins County
Commission Expires July 17, 2021

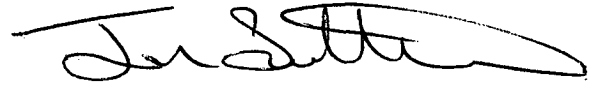
Before me,
[Signature]
Notary Public
Courtney S. Reinhar
Printed name of notary

My commission expires: July 17, 2021

HOLDER ACCEPTANCE.

The above and foregoing Conservation Easement was authorized to be accepted by **DOWNEAST COASTAL CONSERVANCY**, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through Jon Southern, its Executive Director, hereunto duly authorized, this 23rd day of March, 2020.

DOWNEAST COASTAL CONSERVANCY



by: Jon Southern
its Executive Director

STATE OF MAINE
COUNTY OF WASHINGTON

Date: 3/23/2020

Personally appeared Jon Southern, Executive Director, and authorized representative of the above-named Holder, **DOWNEAST COASTAL CONSERVANCY**, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me,


Notary Public

SAMUEL T WHITNEY

Printed name of notary

My commission expires: 01/22/2022

SEAL

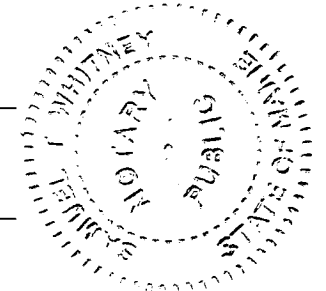


EXHIBIT A

Legal Description of the Protected Property

A certain lot or parcel of land situated on the northeasterly side of Leighton Point Road in the Town of Pembroke, Washington County, Maine, and being more particularly described as follows:

BEGINNING at a 5/8-inch rebar with surveyor's cap (South Meadow Surveying, LLC – PLS #2062) previously set on the northeasterly line of Leighton Point Road at the westerly-most corner of land now or formerly of Diane Glidden Wichtermann, as described in a deed dated August 15, 2003 and recorded at the Washington County Registry of Deeds in Book 2923, Page 328;

THENCE, N 42° 32' 38" W, along the northeasterly line of Leighton Point Road, a distance of 50.33 feet, to an unmarked point;

THENCE, northwesterly, along the northeasterly line of Leighton Point Road, and along a curve to the right, said curve having a radius of 1,975.25 feet and an arc length of 319.67 feet, to an unmarked point;

THENCE, N 33° 16' 16" W, along the northeasterly line of Leighton Point Road, a distance of 34.43 feet, to an unmarked point;

THENCE, northwesterly, along the northeasterly line of Leighton Point Road, and along a curve to the right, said curve having a radius of 375.25 feet and an arc length of 41.24 feet, to a 3/8-inch rebar with surveyor's cap (Andrew J. Pottle – PLS 2062) set;

THENCE, N 60° 40' 35" E, crossing land of Thomas D. Seeley and Robin H. Seeley, as described in a deed dated August 26, 2010, and recorded at said Registry in Book 3663, Page 213, a distance of 380.49 feet, to a second 3/8-inch rebar with surveyor's cap (Andrew J. Pottle – PLS 2062) set;

THENCE, N 22° 11' 23" W, crossing said land of Seeley, a distance of 223.52 feet, to a second 5/8-inch rebar with surveyor's cap (South Meadow Surveying, LLC – PLS #2062) previously set, on the southeasterly line of land now or formerly of Martin A. Mehall, as described in a deed dated March 11, 2011, and recorded at said Registry in Book 3724, Page 162;

THENCE, N 53° 49' 32" E, along the southeasterly line of said land of Mehall, a distance of 125.00 feet, to a third 5/8-inch rebar with surveyor's cap (South Meadow Surveying, LLC – PLS #2062) previously set;

THENCE, continuing N 53° 49' 32" E, along the southeasterly line of said land of Mehall, a distance of 35 feet, more or less, to the high water mark and waters of Pennamaquan River;

THENCE, southeasterly, along the high water mark and waters of Pennamaquan River, a distance of 710 feet, more or less, to the northwesterly line of said land of Wichtermann;

THENCE, S 54° 07' 57" W, along the northwesterly line of said land of Wichtermann, a distance of 12 feet, more or less, to a 2-inch pipe found, said 2-inch pipe being located S 23° 06' 32" E, a distance of 634.67 feet, from said third 5/8-inch rebar;

THENCE, continuing S 54° 07' 57" W, along the northwesterly line of said land of Wichtermann, a distance of 404.16 feet, to the POINT OF BEGINNING.

SUBJECT TO a 10-foot-wide right of way from the northeasterly side of Leighton Point Road, crossing the southerly portion of the above described parcel, to the waters of Pennamaquan River, as reserved in a deed from Robert T. Howard to Thomas D. Seeley and Robin H. Seeley dated August 26, 2010, and recorded at said Registry in Book 3663, Page 213, and more fully described in an affidavit recorded at said Registry in Book 3658, Page 266.

ALSO CONVEYING and subject to this Conservation Easement all that property conveyed to Thomas D. Seeley and Robin H. Seeley by deed of Sondra M. Castile, dated November 20, 2019, and recorded at said Registry in Book 4617, Page 61, "Being all of the area between high and low water mark of Pennamaquan Bay formed by a northeasterly extension of the northwesterly and southeasterly sidelines of that certain property described in a warranty deed from Robert Howard to Thomas D. Seeley and Robin H. Seeley, the Grantees herein, dated August 26, 2010 and recorded in Book 3663, Page 213 of the Washington County Registry of Deeds."

The above described easement area, containing 4.5 acres of upland (intertidal area not measured), more or less, is a portion of land conveyed to Thomas D. Seeley and Robin H. Seeley by deed of Robert T. Howard, dated August 26, 2010, and recorded at said Registry in Book 3663, Page 213, and all of the land conveyed in said deed of Castille to Grantors herein recorded at said Registry in Book 4617, Page 61.

Bearings refer to the Magnetic Meridian of 2011, as observed.

2012 Trust¹ and Ocean 503 LLC in their respective motions for summary judgment on Count IV.

PROCEDURAL AND FACTUAL BACKGROUND

On April 22, 2021, Plaintiffs filed a five-count Complaint (the “Complaint”) in this Court seeking a declaratory judgment that the State of Maine holds title to intertidal land in trust for the public, with the exception of “discrete parcels alienated to facilitate marine commerce.” *See* generally Pls.’ Compl. On May 26, 2021, Defendant Judy’s Moody filed a Motion to Dismiss Plaintiffs’ Complaint (the “Motion to Dismiss”) pursuant to Rule 12(b)(6) of the Maine Rules of Civil Procedure for failure to state a claim upon which relief may be granted. On April 15, 2022, this Court issued an order (“Order”) granting Judy’s Moody’s Motion to Dismiss with respect to Counts I, II, III, and V. Order at 26. This Court described Count IV, the only remaining Count, as follows:

In this case, certain Plaintiffs claim that their access to the ocean’s intertidal zone has been restricted by either signage or verbal instruction to leave or refrain from entering the privately held intertidal zone. Plaintiffs Peter Masucci, Kathy Masucci, William Connerney, William Griffiths, Sheila Jones, Orlando Delogu, Judith Delogu, and Brian Beal all allege that their access to the intertidal zone is restricted either by signage or verbal warning and direction.

While it is not clear from the complaint itself what activities the Plaintiffs prefer to engage in, in the intertidal area, it is conceivable that the activity of the Masuccis, Connerney, Griffiths, Jones, and the Delogus include walking, running, or some other form of movement. In Beal’s case, he is an academic researcher who seeks access to the intertidal zone to further his marine research. Whether any movement or research related activity is permissible within the intertidal zone has not been specifically addressed by the Law Court. And given the expansive and broad approach that the Law Court has taken with regarding to defining these usage rights, it is conceivable that movement related, or research based activity may be an acceptable use.

Id. at 25.

The Court dismissed for lack of standing Plaintiffs Charles Radis, Sandra Radis, and

¹ Like OA 2012 Trust, Judy’s Moody also raised as an affirmative defense Plaintiffs’ failure to include indispensable parties.

Bonnie Tobey. *Id.* at 5 n.1. The Court noted that with respect to the Radis’s “their mere existence as upland property owners who have an interest in giving the general public access to intertidal land does not warrant intervention.” *Id.* And with respect to Bonnie Tobey, “her general claims that her interest in her ‘livelihood’ confers standing is equally unavailing.” *Id.* In a footnote, this Court further noted that the Plaintiffs who seek to use the intertidal zone to harvest marine plants have little chance of success on the merits of Count IV because of the Law Court’s decision in *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, 206 A.3d 283, which held that harvesting marine plants is not a protected use within the intertidal zone. Order (Apr. 15, 2022) ¶ 25 n.11.

On May 12, 2022, Judy’s Moody filed a motion for more definite statement (the “Motion for More Definite Statement”) requesting this Court to order Plaintiffs to file a more definite statement of their legal theories and the facts supporting those theories with respect to Count IV. In its motion, Judy’s Moody stated that it could not reasonably prepare a responsive pleading because Plaintiffs’ Complaint was devoid of any information with respect to how and when Plaintiffs had used Judy’s Moody intertidal zone, and how and when Judy’s Moody had allegedly prevented Plaintiffs from engaging in those uses. *See generally* Mot. for More Definite Statement. This Court denied that motion. Order (Aug. 21, 2022). Judy’s Moody sought additional information regarding Plaintiffs’ factual basis for Count IV through discovery.

Judy’s Moody holds title to real property at 407 Ocean Avenue, Wells, Maine (“Judy’s Moody Property” or “the Property”) directly on Moody Beach. (Statement of Material Facts in Support of Judy’s Moody LLC’s Motion for Summary Judgment ¶ 1) (hereinafter “SMF”). The Property is directly next to a public way, which provides access to Moody Beach. SMF ¶ 3. Keith Dennis is the sole member of Judy’s Moody LLC. SMF ¶ 2. Mr. Dennis has occasionally posted signs that read “Private Beach,” “Notice: Private Beach to Lowest Tide,” and “No Trespassing”

along the portion of Judy's Moody's seawall that faces the ocean. SMF ¶ 4. These signs are not permanent and are sometimes removed naturally by the tide. SMF ¶ 5. They were also not unique to Judy's Moody as many of the beachfront properties on Moody Beach have signs denoting that the beach is private. SMF ¶ 6.

Through discovery, Judy's Moody learned that sixteen of the twenty-one Plaintiffs have never stepped foot on Judy's Moody's intertidal property. SMF ¶¶ 8–22, 31. One Plaintiff had been on Moody Beach but was uncertain if he had ever been on Judy's Moody's property. SMF ¶ 28. The four Plaintiffs that have been on Judy's Moody's intertidal property testified that they have never been asked to leave the area or been approached by anyone associated with Judy's Moody and asked to stop using the intertidal zone. SMF ¶¶ 36, 39, 43, 46. These Plaintiffs were aware that homes on Moody Beach have signage on their seawalls indicating the beach is private, but they still accessed the intertidal zone at Moody Beach. SMF ¶ 47.

STANDARD OF REVIEW

Summary judgment is appropriate “if the record reflects that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.” *Oceanic Inn, Inc. v. Sloan's Cove, LLC*, 133 A.3d 1021 (Me. 2016) (quoting *Doe v. Reg'l Sch. Unit 26*, 2014 ME 11, ¶ 13, 86 A.3d 600) (quotation marks omitted); *see also* M.R. Civ. P. 56(c). A fact is material if it could affect the outcome of the case. *Lewis v. Concord Gen. Mut. Ins. Co.*, 2014 ME 34, ¶ 10, 87 A.3d 732. “A genuine issue of material fact exists when a fact-finder must choose between competing versions of the truth, even if one party's version appears more credible or persuasive.” *Id.* (quoting *Angell v. Hallee*, 2014 ME 72, ¶ 17, 92 A.3d 1154) (quotation marks omitted).

ARGUMENT

I. No Justiciable Controversy Exists Between Plaintiffs and Judy's Moody— Plaintiffs Lack Standing

“Standing of a party to maintain a legal action is a ‘threshold issue’ and our [Maine’s] courts are only open to those who meet this basic requirement.” *Ricci v. Superintendent, Bureau of Banking*, 485 A.2d 645, 647 (Me. 1984). To establish standing in a declaratory action, “a party must show that the challenged action constitutes ‘an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.’” *Madore v. Me. Land Use Regul. Comm’n*, 1998 ME 178, ¶ 13, 715 A.2d 157 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). An injury is only particularized “when [the] defendant’s actions have ‘adversely and directly affected the plaintiff’s property, pecuniary or personal rights.’” *Collins v. State*, 2000 ME 85, ¶ 6, 750 A.2d 1257 (citing *Stull v. First Am. Title Ins. Co.*, 745 A.2d 975, 979 (Me. 2000)).

Ultimately, standing requires the plaintiffs to “assert a personal stake in the outcome of the litigation and present a real and substantial controversy touching on the legal relations of parties with adverse legal interests.” *Collins*, 2000 ME 85, ¶ 5, 750 A.2d 1257 (quoting *Franklin Prop. Tr. v. Foresite Inc.*, 438 A.2d 218, 220 (Me. 1981)). The injury complained of must be specific to the plaintiff and “distinct from the harm suffered by the public at large.” *Id.* 2000 ME 85, ¶ 6; *see also Buck v. Town of Yarmouth*, 402 A.2d 860, 861 (Me. 1979).

Standing and justiciability are intrinsically linked. *See, e.g., Dubois v. Town of Arundel*, 2019 ME 21, ¶ 6, 202 A.3d 524 (“Standing is a condition of justiciability that a plaintiff must satisfy in order to invoke the court’s subject-matter jurisdiction in the first place.” (quoting *Bank of Am., N.A. v. Greenleaf*, 2015 ME 127, ¶ 7, 124 A.3d 1122)). And it is beyond dispute that “a declaratory judgment action may only be brought to resolve a justiciable controversy.” *Sold, Inc. v. Town of Gorham*, 2005 ME 24, ¶ 10, 868 A.2d 172. Hypothetical or future controversies are nonjusticiable, and courts may only make decisions based on the record before them. *See Connors*

v. Int'l Harvesters Credit Corp., 447 A.2d 822, 834 (Me. 1982). And “[w]here a court attempts to act on a non-justiciable controversy, its action can not be more than advisory.” *Id.*

The undisputed material facts of this case show that the remaining Plaintiffs have not presented a real and substantial controversy—let alone a particularized injury—that is specific to them as opposed to the public at large. The Law Court’s decision in *Almeder v. Kennebunkport*, 2014 ME 139, 106 A.3d 1099, is particularly instructive here. In *Almeder*, beachfront landowners at Goose Rocks Beach sought a declaratory judgment affirming their ownership to the intertidal zone subject only to the public easement for fishing, fowling, and navigation. *Almeder*, 2014 ME 139, ¶ 3. During the proceedings below, the superior court allowed several backlot owners who use the beach recreationally to intervene in the case. *Id.* 2014 ME 139, ¶ 17. On appeal, the Law Court held that these plaintiffs should not have been granted intervention because they did not suffer a distinct and particularized injury different from the public at large and therefore were not entitled to declaratory relief. *Id.* (“Notwithstanding their proximity to the Beach, the Backlot owners did not demonstrate any interest in the Beach itself—as opposed to any paths leading to the Beach in which they might claim an interest—beyond that of any member of the public who has a history of using the Beach or, even more broadly, of any person who happens to live near a scenic location.”).

Like the backlot owners in *Almeder*, Plaintiffs here cannot demonstrate any interest in Judy’s Moody’s intertidal property “beyond that of any member of the public,” and cannot point to any instance where they have been actively prevented from using the intertidal zone. Of the twenty-one Plaintiffs remaining after this Court’s order on Defendants’ motion to dismiss, sixteen Plaintiffs have never even stepped foot on Judy’s Moody’s intertidal property. SMF ¶¶ 8–22, 31. Plaintiffs Brian Beal, Robert Morse, George Seaver, Greg Tobey, Halle W. Miller, LeRoy Gilbert,

John W. Grotton, Jake Wilson, Dan Harrington, Sheila Jones, Susan Domizi, Amanda Moeser, Lori Howell, Tom Howell, Chad Coffin, and Judith Delogu have never been on Judy's Moody's intertidal property. SMF ¶¶ 8–22, 31. Plaintiff William Griffiths has been on Moody Beach but is uncertain if he has been on Judy's Moody's intertidal property. SMF ¶ 28. Even more to the point, these Plaintiffs failed to identify any specific right to use Judy's Moody intertidal for movement-based activities beyond those that could be asserted by the public at large and failed to identify any instance where Judy's Moody directly prevented them from engaging in any movement-based activity. SMF ¶¶ 8–22, 28, 31. With respect to Jones and Griffiths, despite allegations in the Complaint that the signs at Moody Beach impacted their business, no patron has ever indicated that they will not return due to signage and Jones and Griffiths cannot even say with certainty that their patrons were on Moody Beach. SMF ¶¶ 26–27, 32–33. Because the undisputed facts show that there is no controversy between these Plaintiffs and Judy's Moody, this Court has no basis to issue declaratory relief in their favor.

The four Plaintiffs who have been on Moody Beach likewise cannot demonstrate a particularized injury traceable to Judy's Moody. Plaintiffs Peter Masucci, Kathy Masucci, William Connerney, and Orlando Delogu all testified at their depositions that they have never been asked to leave Judy's Moody's intertidal land and have never been confronted or approached while engaging in any activities while there. SMF ¶¶ 39, 43, 46, 36. Like in *Almeder*, mere use of the beach, without more, is not enough to confer standing.

Ultimately, Plaintiffs' testimony demonstrates just how removed this case is from an actual controversy between themselves and Judy's Moody. Their dispute is not with the individual Defendants, but rather with existing Maine law that recognizes private ownership of the intertidal zone subject to a limited public easement for fishing, fowling, and navigation. Plaintiff Orlando

Delogu testified that he believed *Bell I* and *Bell II* were incorrectly decided. SMF ¶ 34. And Plaintiff Peter Masucci testified that his “argument is not with the named defendants here” but “the issue is why should anybody own the sand?” SMF ¶ 40. And for her part, Judy Delogu testified that she “decided to be a Plaintiff in this suit because [she] believe[s] that Maine beaches are public property.” SMF ¶ 23. By contrast, none of the Plaintiffs could testify about any controversy between them and Judy’s Moody about movement-related activities in the intertidal zone. That is because none exists.

Plaintiffs’ unhappiness that the intertidal land is privately owned cannot manufacture a justiciable controversy between Plaintiffs and Judy’s Moody, nor does it establish standing. This Court has already held that, under longstanding Maine law, Judy’s Moody owns the intertidal zone within its property. Order (Apr. 15, 2022) at 20–24, 26. The only remaining claim is Count IV, which this Court limited to a claim seeking the expansion of the public trust easement to cover “movement...based” activities.² *Id.* at 25. But no dispute exists between Plaintiffs and Judy’s Moody over “movement...based” activities to which Judy’s Moody has never stopped these Plaintiffs from engaging in. SMF ¶¶ 39, 43, 46, 36. Since none of the Plaintiffs have established anything other than dissatisfaction with the private ownership of the intertidal zone—without having been prevented from doing movement-based activities in the area—they lack standing.

Moreover, the Law Court has consistently held that “when the common right is invaded it is a public grievance, and the remedy must be asked in behalf of the public, and by the proper

² Plaintiffs were not so cautious in their Complaint. Count IV contends that the public trust in intertidal lands is not limited to fishing, fowling, and navigation, and instead extends to “whatever the state sees fit to allow.” Pls.’ Compl. ¶ 106. It seeks a declaration that “[t]he State of Maine holds title to all intertidal land, in trust for the public, without limitation to fishing, fowling, and navigation, and with the exception of land previously alienated pursuant to the Submerged Land Act and for the purposes of promoting commerce.” Pls.’ Compl. p. 21. As Judy’s Moody notes below, the broad nature of the relief sought demonstrates not only that there is no actual controversy between Plaintiffs and Judy’s Moody, but that Plaintiffs’ claim should be dismissed on the merits.

officer, who is required by law to prosecute in the state's behalf." *Weeks v. Smith*, 81 Me. 538, 18 A. 325, 326 (1889); see also *Parker v. Town of Milton*, 726 A.2d 477, 481 (Vt. 1998) (quoting *Hazen v. Perkins*, 105 A. 249, 251 (Vt. 1918)) (holding that the State has the general responsibility to enforce the public rights in the public trust, while a plaintiff invoking the public trust doctrine must "show 'that [he has] suffered some special and substantial injury, distinct and apart from the general injury to the public.'"). As discussed above, Plaintiffs here cannot point to any specific right to use Judy's Moody's intertidal zone and they possess no interest distinct from the public at large to use the intertidal zone. In this instance, it is only the Attorney General who may seek a declaration regarding the scope of the public's rights in the intertidal zone. That he has not brought such an action against these Defendants does not give the Plaintiffs the authority to do it for him.

This Court cannot adjudicate hypotheticals or abstract wishes. Plaintiffs' wish to change law court precedent does not exempt them from the requirement to prove that they have suffered a real and particularized injury traceable to Judy's Moody. Because Plaintiffs can make no such showing, and because there is no actual controversy between these Plaintiffs and Judy's Moody, this Court should dismiss Count IV.

II. Count IV Seeks an Expansion of the Public Trust

Even if any of the Plaintiffs have standing, this Court should grant summary judgment to Judy's Moody on the merits of the only remaining claim that has not yet been dismissed—Count IV. The allegations of Count IV are fundamentally based on either a mistake of law or a demand that this Court overrule hundreds of years of Law Court precedent. Even read in the narrowest way possible, Count IV demands an expansion of the public trust beyond its traditional limits of fishing, fowling, and navigation. Not only would such an expansion contravene Law Court precedent, but it would effect a taking of private property without just compensation. Rather than go down this

road, this Court should grant summary judgment to Judy's Moody and dismiss the rest of the Complaint.

A. The Public Trust Does Not Extend Beyond Fishing, Fowling, and Navigation

Count IV alleges that “[t]he public trust extends beyond fishing, fowling, and navigation,” and that “to the extent the Colonial Ordinance has any legal effect in Maine, the original drafters did not intend to forever limit the description of the public trust contained therein to fishing, fowling, and navigation.” Pls.’ Compl. ¶¶ 105, 106. Both of these propositions border on the frivolous.

First, it is hornbook law in Maine that although the Colonial Ordinance expired with the end of colonial rule, *McGarvey v. Whittredge*, 2011 ME 97, ¶ 29, 28 A.3d 620, it was subsequently incorporated into Maine’s common law and has remained part of the common law for over two hundred years. *See, e.g., Lapish v. President, etc., of Bangor Bank*, 8 Me. 85, 93 (1831) (recognizing that the rule articulated in *Storer v. Freeman*, 6 Mass. 435 (1810) that private ownership of the intertidal zone was also part of Maine’s common law); *Barrows v. McDermott*, 73 Me 441, 447–48. (1882) (finding that the Colonial Ordinance had long been accepted by both Maine courts and the public as part of Maine’s common law, and that it would therefore be “fraught with mischief to set it aside.”); *Bell v. Town of Wells*, 510 A.2d 509, 512 (Me. 1986) (*Bell I*) (recognizing that Maine common law concerning the intertidal zone “developed ... from the Massachusetts Colonial Ordinance of 1641–47.”); *Bell v. Town of Wells*, 557 A.2d 168, 173 (Me. 1989) (*Bell II*) (stating that “[t]he Colonial Ordinance as received into the common law of Maine and Massachusetts reserved out of the fee title granted to the upland owner a public easement only for fishing, fowling, and navigation.”); *McGarvey*, 2011 ME 97, ¶ 31, 28 A.3d 620 (recognizing that Maine’s jurisprudence “regarded the Colonial Ordinance’s recognition of private rights as part of the common law of Maine by public and judicial acceptance.”); *Ross v. Acadian Seaplants, Ltd.*,

2019 ME 45, ¶ 11, 206 A.3d 283 (describing the integration of the Colonial Ordinance into Maine’s common law).

It is similarly well-established that public rights in the intertidal zone are limited to fishing, fowling, and navigation. In *Bell II*, the Law Court squarely rejected the Town of Wells’ argument that “the public rights of fishing, fowling, and navigation are not exclusive.” *Bell II*, 557 A.2d at 173. Instead, “question[s] of the scope of the intertidal public easement” must be rooted in “the three specific public uses reserved in the [Colonial] Ordinance.” *Id.* Even as the Law Court acknowledged that it had occasionally “given a sympathetically generous interpretation to what is encompassed within the terms ‘fishing,’ ‘fowling,’ and ‘navigation, or reasonably incidental or related thereto,’” *id.*, it held that “there is no basis in law or history for declaring a public easement for general recreation.” *Id.* at 176.

Ultimately, *Bell II*’s standard—moored to the original three public uses of the intertidal zone recognized in the Colonial Ordinance—has stood the test of time. In recent years, some justices have proposed different tests to determine the scope of the public easement, but none of these have eclipsed *Bell II*. In *McGarvey*, for example, all six participating justices agreed that traversing the intertidal zone to scuba dive was a permissible use of the public easement, but three of them applied *Bell II* to hold that scuba diving was a component of navigation, while the remaining three would have applied a looser standard that considered the evolving common law and custom. *Compare McGarvey*, 2011 ME 97, ¶¶ 59–62, 28 A.3d at 636–37 (opinion of Levy, J.), *with id.* ¶¶ 51–56, 28 A.3d at 635 (opinion of Saufley, C.J.). Justice Levy, who led the group applying *Bell II*, wrote that the other concurrence “would effectively overrule *Bell II*” and “bestow upon the public a general right to cross privately-owned intertidal land to gain access to the ocean—a newfound right that would exceed even the most ‘sympathetically generous’

interpretation of fishing, fowling, and navigation.” *Id.* ¶ 59, 28 A.3d at 636 (quoting *Bell II*, 557 A.2d at 173). But that approach was not adopted because only three justices endorsed it.

The same is true for the separate opinion of three justices in *Ross*, which bemoaned that *Bell II* had created a standard whereby “a member of the public has been allowed to stroll along the wet sands of Maine’s intertidal zone holding a gun or a fishing rod, but not holding the hand of a child.” *Ross*, 2019 ME 45, ¶ 34, 206 A.3d 283 (Saufley, C.J., concurring in part). The majority there applied both tests from the *McGarvey* concurrences and found that neither supported a public right to harvest rockweed from the intertidal zone. *See id.* ¶¶ 32–33, 206 A.3d at 293 (majority opinion). It therefore left *Bell II* undisturbed. *Id.* ¶ 33, 206 A.3d at 293.

Simply put, a majority of the Law Court has never held that the permitted use of the public trust easement is unmoored from the traditional three uses: fishing, fowling, and navigation. Those terms are not “shorthand or code for broader public rights untethered to these three enumerated uses.” *McGarvey*, 2011 ME 97, ¶ 61, 28 A.3d at 636 (opinion of Levy, J.). *Bell II*’s rejection of a general recreational easement controls the outcome here. Plaintiffs’ claim that “the ‘public trust’ extends beyond fishing, fowling, and navigation” to “whatever the state sees fit to allow,” is inconsistent with *Bell II* and must be rejected. Because this is the only relief Plaintiffs requested in Count IV, Judy’s Moody is entitled to summary judgment on this basis alone.

B. Expanding the Public Trust Beyond Fishing, Fowling, and Navigation Would Effect an Uncompensated Taking of Private Property for Public Use

Plaintiffs’ plea to expand the public trust easement raises grave constitutional concerns. For over three hundred years, the rights of the public in the intertidal zone have been tethered to the Colonial’s Ordinance language of fishing, fowling, and navigation. *See Infra Part II (A)*. Expanding the public easement to “whatever the state sees fit to allow” would not only destabilize established private property rights and upset owner expectations, but would also violate

constitutional prohibitions on the taking of private property without just compensation. *See* Me. Const. art. I, § 21; U.S. Const. amend. V.

Once again, *Bell II* controls. The Law Court there rejected the efforts of the legislature to expand the public easement to permit general recreation. *Bell II*, 557 A.2d at 177. Instead, the Court reasoned that the fact that “the common law already has reserved to the public an easement in intertidal land for fishing, fowling, and related uses ... does not mean that the State can, without paying compensation to the landowners, take in addition a public easement for general recreation.” *Id.* at 178. These limitations against taking private property without compensation apply to the judicial branch all the same. *Id.* at 176; *see also Stop the Beach Renourishment, Inc. v. Fla. Dep’t of Env’t Prot.*, 560 U.S. 702, 715 (2010) (plurality opinion) (“if a legislature or a court declares that what was once an established right of property no longer exists, it has taken that property”); *Webb’s Fabulous Pharmacies v. Beckwith*, 449 U.S. 155, 164 (1980) (holding that “[n]either the Florida Legislature by statute, nor the Florida courts by judicial decree” may transform the interest from an interpleader account into public money because “a State, by ipse dixit, may not transform private property into public property without compensation, even for the limited duration of the deposit in court”). Neither the legislature nor this Court may do what Plaintiffs are asking—expand the public trust beyond fishing, fowling, and navigation—without compensating the landowners, including Judy’s Moody.

A taking here would be particularly severe because it would give the public essentially unlimited rights to use the intertidal zone. Such a decree would strip Judy’s Moody and other beachfront owners of their right to exclude others from their private property. The right to exclude has long been deemed fundamental, one of the most important property rights owners possess. *See Bell II*, 557 A.2d at 178 (“if a possessory interest in real property has any meaning at all it must

include the general right to exclude others”); *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072–73 (2021) (“[T]he right to exclude is ‘universally held to be a fundamental element of the property right,’ and is ‘one of the most essential sticks in the bundle of rights that are commonly characterized as property.’” (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176, 179–80 (1979))); *Cedar Point*, 141 S. Ct. at 2077 (“We cannot agree that the right to exclude is an empty formality, subject to modification at the government’s pleasure. On the contrary, it is a ‘fundamental element of the property right’ that cannot be balanced away.” (quoting *Kaiser Aetna*, 444 U.S. at 179–180)). Granting the relief Plaintiffs seek would destroy Judy’s Moody’s right to exclude others from its private property. Even if that position had not already been rejected by the Law Court in *Bell II*, 557 A.2d at 178, the serious constitutional implications of such ruling would caution this Court against adopting it in the first instance.

C. None of the activities Plaintiffs claim to engage in are permissible under *Bell II*³

Even assuming that Count IV can be read narrowly as only a request for movement-based activities to be considered as part of fishing, fowling, and navigation—an argument that Plaintiffs themselves appear to reject—Judy’s Moody is still entitled to summary judgment as a matter of law. The activities that Plaintiffs Peter Masucci, Kathy Masucci, William Connerney, and Orlando Delogu claim to engage in on Judy’s Moody’s intertidal property are all recreational in nature and untethered from fishing, fowling, and navigation. For example, Plaintiff Peter Masucci testified at his deposition that he walks along the intertidal land, stops to observe people and wildlife, sits to read, drinks wine and beer, and plays various beach games like bocce ball, tag football, paddleball, wiffleball, and catch. SMF ¶ 38. Plaintiff Kathy Masucci testified at her deposition that the only

³ The only activities of Plaintiffs that would be allowed in the intertidal zone are digging for shellfish. But the Plaintiffs in this case who dig for shellfish have never even been on Moody Beach. SMF ¶¶15, 18–21.

activity she currently does in the intertidal zone is walk, and that over five years ago she had probably stopped and rested on the intertidal, sat in the sand to observe wildlife, ran and jogged on the intertidal land, built sandcastles, sunbathed, and boogie boarded. SMF ¶ 42. Plaintiff William Connerney testified at his deposition that today he mainly uses Moody Beach to walk and jog, and that in the past he had sat in the intertidal zone to sunbathe, surf, boogie board, build sandcastles, play frisbee, paddleboard, fly kites, play beach tennis, and look for shellfish and crabs. SMF ¶ 45. Plaintiff Orlando Delogu testified at his deposition that he has walked along Moody Beach to observe its “character” and signage. SMF ¶ 35.

Many of the activities that the above plaintiffs claim to have engaged in at some point on the intertidal zone are the very recreational activities that the Law Court in *Bell II* held were beyond the scope of the public easement. *See Bell II*, 557 A.2d at 175-76. In *Bell II*, the Town of Wells argued that the public had more rights in the intertidal zone beyond fishing, fowling, and navigation, and that historical use of Moody Beach illustrated that it was used for various recreational activities like beach games. *Id.* at 174. The *Bell II* court, however, was unpersuaded and stated that “there is no basis in law or history for declaring a public easement for general recreation.” *Id.* at 176. Here, although Plaintiffs have referenced some specific activities that they currently do or have engaged in on the intertidal zone, all can be classified as general recreational activities. Nothing has changed since *Bell II* was decided to disturb the Law Court’s decision that a general recreational easement is outside the scope of the public’s limited rights in the intertidal zone.

Moreover, even under a liberal and generous interpretation of what is included in fishing, fowling, and navigation, none of these activities are permissible in the intertidal zone. First, the words fishing, fowling, and navigation would lose all meaning if they were to include activities

such as stopping to observe wildlife, sitting, and sunbathing. At a minimum, fishing, fowling, and navigation require movement, and stopping to observe wildlife, sitting, and sunbathing are fundamentally sedentary in nature.

The various beach games like bocce ball, sand tennis, sandcastle building, and flag football, as well as walking, running, and jogging, that Plaintiffs claim to have engaged in on the intertidal zone also cannot be considered fishing, fowling, or navigation or “reasonably related or incidental thereto.” *Bell II*, 557 A.2d at 173. These activities are obviously not fishing or fowling or related to fishing and fowling as they do not involve any aquatic creatures (fishing) or any birds or game (fowling). Nor can they be considered as part of navigation or related or incidental to navigation. Justice Levy’s concurrence in *McGarvey* is particularly helpful on this point. In *McGarvey*, Justice Levy, like the majority of the law court in *Bell II*, found persuasive *Butler v. Attorney General*, 195 Mass. 79, 80 N.E. 688 (1907), a Massachusetts case that held that bathing was not included in the public’s easement in the intertidal zone. *See Bell II*, 557 A.2d at 175; *McGarvey*, 2011 ME 97, ¶¶ 73–74. Justice Levy found particularly persuasive the *Butler* court’s conclusion that key to the notion of navigation is “passing freely over and through the water without any use of the land underneath.” *Butler*, 80 N.E. at 689; *McGarvey*, 2011 ME 97 ¶¶ 73–75. Indeed, it was in part this passing over the water without use of the land below that led three members of the court in *McGarvey* to reason that scuba diving was included in navigation. *Id.* Here, unlike scuba diving, all the beach games and walking, running, and jogging occur on “the land underneath.” One would have to strain these terms beyond all recognizable meaning to expand the easement in the way Plaintiffs appear to want.

In short, even if the Court charitably interprets Count IV as a mere plea to declare certain activities part of fishing, fowling, and navigation, it should be dismissed. Judy’s Moody is entitled

to judgment as a matter of law.

CONCLUSION

For all the above reasons, Judy's Moody respectfully requests that the Court grant summary judgment dismissing the claims of the Plaintiffs as to Count IV of their Complaint.

Dated: May 2, 2023

Respectfully submitted,

/s/David P. Silk

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NOTICE TO ALL PARTIES

Pursuant to Rule 7(b)(1) of the Maine Rules of Civil Procedure, notice is hereby given to all parties in this lawsuit that all materials in opposition to the foregoing motion for summary judgment must be filed no later than 21 days after the filing of the motion, unless another time is set by the court. Failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing. In addition, any party opposing the motion must comply with the requirements of Rule 56(h) of the Maine Rules of Civil Procedure including specific responses to each numbered statement in the statement of material facts in support of the motion for summary judgment, with citations to points in the record or in affidavits filed to support the opposition. Failure to comply with Rule 56(h) in opposing the motion may result in entry of judgment without hearing.

include as parties in this action all Moody Beach property owners who are successors to those property owners who were prevailing parties in *Bell* as well as all other Moody Beach intertidal property owners whose rights will be impacted by Plaintiffs' request for declaratory relief.¹

OA 2012 also adopts as its own and as if more fully set forth herein the arguments advanced by Defendants Judy's Moody LLC and Ocean 503 LLC in their respective motions for summary judgment on Count IV.

II. PROCEDURAL AND FACTUAL BACKGROUND

In its Order dated April 15, 2022, at 25, the court expressed Plaintiffs' claim as stated in Court IV as follows:

In this case, certain Plaintiffs claim that their access to the ocean's intertidal zone has been restricted by either signage or verbal instruction to leave or refrain from entering the privately held intertidal zone. Plaintiffs Peter Masucci, Kathy Masucci, William Connerney, William Griffiths, Sheila Jones, Orlando Delogu, Judith Delogu, and Brian Beal all allege that their access to the intertidal zone is restricted either by signage or verbal warning and direction.

While it is not clear from the complaint itself what activities the Plaintiffs prefer to engage in, in the intertidal area, it is conceivable that the activity of the Massuccis, Connerney, Griffiths, Jones, and the Delogus includes walking, running, or some other form of movement. In *Bean's (sic)* case, he is an academic researcher who seeks to access the intertidal zone to further his marine research. Whether any movement or research related activity is permissible within the intertidal zone has not been specifically addressed by the Law Court. And, given the expansive and broad approach that the Law Court has taken with regard to defining these usage rights, it is conceivable that movement related, or research based activity may be an acceptable use.

In its discussion of standing, in that same Order, the court dismissed Plaintiffs Charles Radis, Sandra Radis, and Bonnie Tobey's claims for failing to allege a "substantial interest" to seek declaratory relief. The court stated:

In the Radis's case, their mere existence as upland property owners who have an interest in giving the general public access to intertidal land does not warrant

¹ OA 2012 has raised as affirmative defenses standing, *res judicata* and Plaintiffs failure to include indispensable parties.

intervention. In Tobey’s case, her general claims that her interest in her “livelihood” confers standing is equally unavailing.

Order (Aug. 15, 2022) at 5, n.1.

With respect to the remaining Plaintiffs the court stated they had standing based on the allegations in their Complaint that they “have had their access to the intertidal zone for recreational purposes significantly restricted as a result of intertidal jurisdiction.” Order at 5.

OA 2012 is a Maine trust that owns oceanfront property at Moody Beach in Wells, Maine.² Statement of Material Facts in support of OA 2012’s Motion for Summary Judgment (hereinafter “SMF”) 1. OA 2012’s property immediately abuts the Ogunquit Beach a public beach which the Village of Ogunquit acquired in its entirety by eminent domain.³ SMF at 2. OA 2012’s property is about 50 feet wide. SMF 3. The distance from the seawall at OA 2012’s property to the mean low water varies but in places is 500 to 600 feet. SMF 4. From the seawall toward the water for a distance of about 30 feet is a dry sand area. SMF 5. No Plaintiff in this case is making any claim of use of the dry sand area. SMF 5.

The portion of the Ogunquit Beach that abuts the upland portion of OA 2012’s property to the south is a public way that provides access for a Town of Ogunquit parking lot to the Ogunquit Beach. SMF at 6. There is a sign that has been in place for some time attached to the seawall that is part of OA 2012’s property and facing the right of way that states: “Moody Beach

² As stated in *Bell*, 557 A.2d at 170: “Moody Beach is a sandy beach located within the Town of Wells. It is about a mile long and lies between Moody Point on the north, the Ogunquit town line on the south, the Atlantic Ocean on the east, and a seawall on the west. Moody Beach has a wide intertidal zone with a strip of dry sand above the mean high-water mark. More than one hundred privately owned lots front on the ocean at Moody Beach. In addition, the Town of Wells in the past has acquired by eminent domain three lots which it uses for public access to the ocean. Each plaintiff now before the court owns a house or cottage situated on one of 28 private oceanfront lots. Each lot is about 50 feet wide and is bordered on the west by Ocean Avenue. At trial, the parties stipulated that the plaintiff oceanfront owners hold title to the parcels described in their deeds in fee simple absolute and that their parcels were bounded on the Atlantic Ocean. A public beach, now known as Ogunquit Beach, lies immediately to the south of Moody Beach; the Village of Ogunquit acquired that beach by eminent domain in 1925.”

³ *Bell*, 557 A.2d at 170, 176.

(to your left) is a private beach to the low water mark no loitering no dogs allowed thank you.” SMF 7. OA 2012 has posted on its seawall facing the ocean a sign that states: “Private Beach, No Loitering.” SMF 8. During the summer season, OA 2012 places temporary signage at or near the high-water mark on its property indicating the location of various beaches, including arrows pointing to Moody Beach, a private beach and Ogunquit Beach. SMF 9. The purpose of the sign is to identify for those using the beach the demarcation between the Ogunquit Town beach and OA 2012’s private property in Wells at Moody Beach. SMF 10. OA 2012 Trust has never asked, objected to or prevented anyone from engaging in any movement-based activity for any purpose on, over or across its tidal property. SMF 19, 20.

Discovery has revealed that none of the remaining Plaintiffs have had their access to OA 2012’s intertidal land limited or restricted in any way for any movement-based activity, whether navigation related, recreational related and/or ocean based, let alone significantly restricted. SMF 19. As separate from the public at large, there are no facts suggesting that the “intertidal jurisdiction” has “restricted” any of the remaining Plaintiffs from engaging in any movement-based activity on or over OA 2012’s intertidal property. SMF at 20. While the remaining Plaintiffs may have an interest in having a court grant general public access to intertidal land for recreational purposes, a general interest in seeking such a change is insufficient to create a justiciable controversy. *Almeder v. Town of Kennebunk*, 2014 ME 139, ¶ 17, 106 A.3d 1099.

The attached SMF also shows that OA 2012’s predecessor in title Kevin Howe was a plaintiff in *Bell* and obtained a judgment that is of record through that quiet title action he owned the fee to the intertidal portion of his property (e.g., that it is private property) subject only to the public’s rights to use his intertidal property for fishing, fowling and navigation, and that those rights did not include any recreational rights. SMF 13, 32, 34(g) & (h). In *Bell*, the court stated:

We agree with the Superior Court's declaration of the state of the legal title to Moody Beach. Long and firmly established rules of property law dictate that the plaintiff oceanfront owners at Moody Beach hold title in fee to the intertidal land subject to an easement, to be broadly construed, permitting public use only for fishing, fowling, and navigation (whether for recreation or business) and any other uses reasonably incidental or related thereto. Although contemporary public needs for recreation are clearly much broader, the courts and the legislature cannot simply alter these long-established property rights to accommodate new recreational needs; constitutional prohibitions on the taking of private property without compensation must be considered.

Bell, 557 A.2d at 169. The *Bell* court expressly rejected the claim that “bathing, sunbathing, and recreational walking” could be considered fishing, fowling or navigation. *Id.* at 176. Part of the testimony at the trial in *Bell* included references to signs posted on the seawall on the Howe property, and on other seawalls, which said Moody Beach was a “private beach” and stated, “No Loitering” and/or “No Trespassing.” SMF 21, 34(f). Among claims that could have been raised in *Bell* was whether those such signs similar in kind if not identical to those at issue in this case somehow illegally restricted or limited otherwise permitted uses, and whether movement based recreational activities on and over the intertidal land could be considered a form of navigation.

The State was an actual party to that case and represented the public interest. *Bell*, 557 A.2d at 168; SMF 14, 34(a) (Docket entry 111 on page 09). Plaintiff Orlando Delogu was among the *amici*. *Bell*, 557 A.2d at 168; SMF 15. At the request of the State, a *guardian ad litem* was appointed pursuant to 14 M.R.S. § 6656 “to represent the private rights of all unnamed and unknown defendants who have not actually been served with process and who have not appeared in this action.” SMF 16, 34(a) (Docket entry 75, on page 04, entry 87, page 06). Notice in 1984 was given by publication in the local newspaper so that anyone who had an interest in the intertidal properties at Moody Beach could intervene. SMF 30, 34(a). As of 1984 Plaintiffs William Connerney, and Peter and Kathy Masucci were of adult age and spent time at Moody Beach. SMF 31.

As successor in title and in privity with Kevin Howe, SMF 18, OA 2012's intertidal property is benefited by that quiet title judgment. SMF 18, 32, 34(a) & (h) (docket entry 274 on page 32 docket sheet and recorded judgment). This Court is bound by decisions of the Law Court holding that recreational beach activities (including recreational movement-based activity such as walking) occurring on or over what is now OA 2012's intertidal property (and other Moody Beach property owners who in *Bell* obtained quiet title judgments) is not encompassed within fishing, fowling or navigation and under *res judicata* must bar the State (here only as a party in interest) and Plaintiffs from raising claims with respect to OA 2012's property that could have been raised in *Bell*.

The undisputed facts show that beach goers including those few Plaintiffs who have actually been on or over OA 2012's intertidal property do not read the sign as restricting or limiting in any way any movement-based activity, whether called recreational, navigation or ocean based. SMF 11. The signs have never caused any of the Plaintiffs to not move across OA 2012's intertidal property for any movement-based activity. The signs are practically if not in fact the same signs that were part of the trial testimony in *Bell*. As was the case when *Bell* was decided, hundreds of people every summer day engage in movement-based activity on or over OA 2012's intertidal property without restriction or interruption. SMF 12.

Finally the undisputed facts show that like many fee owners of intertidal land in Maine, OA 2012 has never objected to any movement-based activity over its intertidal property, however characterized as ocean based, navigation or recreation. SMF 19. The Law Court has noted the public's recreational use of privately owned intertidal lands, and even the day sand area, is deemed to be with a presumption of permission for "all general recreational activities." *Almeder*, 2014 ME 139, ¶ 36, 106 A.3d 1099. The Law Court stated that "[g]eneral recreational

activities include walking, sunbathing, picnicking, playing games, swimming, jet skiing, water skiing, knee boarding, tubing, surfing, windsurfing, boogie boarding, rafting, paddle boarding, snorkeling, and the like.” *Almeder*, 2014 ME 139, ¶ 36, n.23, 106 A.3d 1099.

III. STANDARD OF REVIEW

Summary judgment is proper when review of the parties’ statements of material fact and the record evidence to which they refer, considered in the light most favorable to the nonmoving party, indicates that there is no genuine issue of material fact in dispute and the moving party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *Remmes v. The Mark Travel Corp.*, 2015 ME 63, ¶ 18, 116 A.3d 466. A fact is material if it has the potential to affect the outcome of the case. *Lewis v. Concord Gen. Mut. Ins. Co.*, 2014 ME 34, ¶ 10, 87 A.3d 732. An issue is genuine if the factfinder must choose between competing versions of the truth. *Id.* When there are cross-motions of summary judgment, each motion is analyzed separately, with inferences drawn in favor of the opposing party. *F.R. Carroll, Inc. v TD Bank, N.A.*, 2010 ME 115, ¶ 8, 8 A.3d 646.

IV. ARGUMENT

A. Plaintiffs’ claims are not justiciable.

“A declaratory judgment action may only be brought to resolve a justiciable controversy.” *Black v. Bureau of Parks and Lands*, 2022 ME 58, ¶ 23, 288 A.3d 346 (quoting *Sold, Inc. v Town of Gorham*, 2005 ME 24, ¶ 10, 868 A.2d 172). If a plaintiff cannot establish that his case is justiciable, the plaintiff’s complaint must be dismissed. *See, e.g., Dubois v. Town of Arundel*, 2019 ME 21, ¶ 6, 202 A.3d 524 (“Standing is a condition of justiciability that a plaintiff must satisfy in order to invoke the court’s subject matter jurisdiction in the first place.” (quoting *Bank of Am., N.A. v. Greenleaf*, 2015 ME 127, ¶ 7, 124 A.3d 1122)). Questions of

justiciability, such as standing and ripeness, can be raised at any point in a proceeding. *See JPMorgan Chase Bank v. Harp*, 2011 ME 5, ¶ 7, 10 A.3d 718 (“standing ... may be raised at any time, including during an appeal”); *Johnson v. Crane*, 2017 ME 113, ¶¶ 8-12, 163 A.3d 832 (addressing ripeness for the first time on appeal on court's own motion). A plaintiff may not invoke the court's subject-matter jurisdiction if it does not show that it has standing. *Homeward Residential, Inc. v. Gregor*, 2015 ME 108, ¶¶ 18-19, 122 A.3d 947.

“[T]o have standing to seek ...declaratory relief, a party must show that the challenged action constitutes ‘an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.’” *Madore v. Me. Land Use Regulation Comm'n*, 1998 ME 178, ¶ 13, 715 A.2d 157 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The “basic purpose and requirements [of standing] are clear. A party must assert a personal stake in the outcome of the litigation and present a real and substantial controversy touching on the legal relations of parties with adverse legal interests.” *Collins v. State*, 2000 ME 85, ¶ 5, 750 A.2d 1257 (quoting *Franklin Prop. Trust v. Foresite, Inc.*, 438 A.2d 218, 220 (Me. 1981)). “Without this standing requirement, courts would be called upon to decide issues lacking the concrete and adversary qualities which denote a true legal controversy.” *Nichols v. City of Rockland*, 324 A.2d 295, 297 (Me. 1974).

In addition to demonstrating a definite and personal legal right at stake, *see Nichols*, 324 A.2d at 297, the plaintiff must also show that the alleged injury is specific to the plaintiff, and must seek redress for the plaintiff's own rights, not the rights of the public. *See Buck v. Town of Yarmouth*, 402 A.2d 860, 861 (Me. 1979); *Collins*, 2000 ME 85, ¶ 6, 750 A.2d 1257. The plaintiff's alleged injury must be concrete and defined by a legal harm that is “fairly traceable to the challenged action” of the adverse party. *Collins*, 2000 ME 85, ¶ 6, 750 A.2d 1257.

In this case, based on the undisputed material facts, none of the remaining Plaintiffs have presented any real and substantial controversy specific to them, as opposed to the general public, and have failed to articulate *any* injury that they have allegedly suffered, much less the requisite showing of “particularized injury” fairly traceable to the conduct of OA 2012.

Relevant here are the reasons stated in *Almeder* for the Law Court’s vacating the Superior Court’s declaration that the “public's right to fish, fowl, and navigate includes the right to cross the intertidal zone of the Beach to engage in all ‘ocean-based’ activities, which it defined as such ‘waterborne activities as jet-skiing; waterskiing; knee-boarding or tubing; surfing; windsurfing; boogie boarding; rafting; tubing; paddleboarding; and snorkeling,’ but not including “swimming, bathing or wading; walking; picnicking or playing games.”” *Almeder*, 2014 ME 139, ¶ 12, 106 A.3d 1099 (quoting the Superior Court’s vacated declaration).

First, the Law Court held that the Superior Court erred in finding that a group of back lot owners who regularly used Goose Rocks Beach for recreational purposes had rights distinct from the public at large so as to be entitled to seek declaratory relief. Rather the Law Court reasoned that “[n]otwithstanding their proximity to the Beach, the Backlot Owners did not demonstrate any interest in the Beach itself—as opposed to any paths leading to the Beach in which they might claim an interest—beyond that of any member of the public who has a history of using the Beach or, even more broadly, of any person who happens to live near a scenic location.” *Id.* 2014 ME 139, ¶ 17, 106 A.3d 1099.

Second, the Law Court stated that the State, representing the public, “did not file a claim for a declaratory judgment or any other cause of action raising the public trust doctrine.” *Id.* 2014 ME 139, ¶ 36, 106 A.3d 1099.

Based on these factors - the backlot owners' failure to show individualized injury and the absence of any claim for declaratory relief sought by the State as to the scope of public rights on or over privately owned intertidal land - the Law Court vacated the Superior Court's declaration because the Superior Court had no justiciable controversy before it, and therefor lacked jurisdiction to declare what ocean-based activities may fall with the right to navigate in the intertidal zone. *Id.*

Applying this teaching here, and now with undisputed material facts before this Court, it is clear that Plaintiffs have not presented a justiciable controversy and therefore this Court lacks jurisdiction to declare what forms of movement-based recreational activities can be considered to be navigation and thus permitted or over OA 2012's intertidal property. No matter how dressed up, the Plaintiffs' claims here are no different in kind than those of the Backlot owners in *Almeder*, and are no different than claims any member of the public could make. That the Plaintiffs here in the words of this Court view "their access to the intertidal zone for recreational purposes significantly restricted *as a result of intertidal jurisprudence*" (Order (Apr. 15, 2022) at 5 (emphasis added)), does not change the fact that the basis for the Plaintiffs' perceived "restrictions" is no different than the public at large. Moreover any causal connection between intertidal jurisprudence and Plaintiffs' perceived restrictions cannot be fairly traceable in any way to OA 2012.

With respect to OA 2012's intertidal property, plaintiffs Robert Morse, George Seaver, John Grotton, Hale Miller, LeRoy Gilbert, Jake Wilson, Dan Harrington, Susan Domizi, Greg Tobey, Amanda Moeser, Chad Coffin, Lori Howell, Tom Howell and Brian Beal have not been to Moody Beach where OA 2012's intertidal property is located, SMF 23, and their claim of a right to use OA 2012's intertidal property for movement based activities is no different than the

rights that could be asserted by any member of the public. Having never been to Moody Beach, and more particularly having never been on OA 2012's property, and having failed to identify any instance in which OA 2012 prevented or restricted them (or anyone else for that matter) from engaging in any movement-based activity on or over OA 2012 property, SMF 23, there is no basis for these Plaintiffs to show any injury or threat of injury fairly traceable to the conduct of OA 2012. As the Law Court held with respect to the Superior Court in *Almeder*, this Court has no basis to issue these Plaintiffs any declaratory relief regarding the scope of any rights they may have as members of the public over OA 2012's intertidal property.

With respect to the remaining Plaintiffs Judith Delogu and Sheila Jones have never been to Moody Beach, and therefore, have never been or attempted to engage in any movement-based activity on OA 2012 intertidal land. SMF 24. Plaintiff William Griffiths has been to Moody Beach twice, and has never been or attempted to engage any movement-based activity on OA 2012 intertidal land. SMF 25. Plaintiffs Griffiths and Jones do not know whether any of their customers had ever been on OA 2012's property or seen any signs located thereon, and could not identify an occasion when any of their customers advised them they would not return to their hotel due to any signs on OA 2012's property. SMF 29. For the reasons stated above, these Plaintiffs have not presented a justiciable controversy because their claims are not different than members of the public, and whatever they may claim as injury from "intertidal jurisprudence" cannot be fairly traceable to the conduct of OA 2012.

Plaintiff Orlando Delogu has been to Moody Beach, but is not aware of the location of OA 2012's Property, and in any event has never been prevented from engaging in any movement-based activity over the entire beach, which necessarily involves the OA 2012 Property. SMF 26. Given that the Backlot owners who visited Goose Rocks Beach every day did

not possess any claim distinct from the public, Plaintiff Orlando Delogu's few visits in connection with this lawsuit do not cloth him in any manner different than that of the public.

The same holds true for back lot owners Plaintiffs Peter and Kathy Masucci and William Connerney. The Masuccis are back lot owners and access the Moody Beach at the opposite end of Moody Beach from where OA 2012's property is located. SMF 27, 28. While they believe they have walked over OA 2012's property, they testified that they have never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's property. SMF 27, 28.

Back lot owner Plaintiff William Connerney believes he has walked across OA 2012's property, but he too testified he has never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's property. SMF 28. As held in *Almeder*, these three Plaintiffs' status as back lot owners who make use of the beach on a regular basis, without more, does not confer on them any status beyond that of the public.

In sum, based on the undisputed material facts, and the Law Court's analysis in *Almeder*, Plaintiffs' dispute stemming from their view of *Bell* was wrongfully decided lack "the concrete and adversary qualities which denote a true legal controversy." *Nichols v. City of Rockland*, 324 A.2d 295, 297 (Me. 1974). This Court therefore lacks jurisdiction to issue the declaratory relief sought by Count IV.

B. Plaintiffs' claims are barred by *res judicata*.

OA 2012 Trust's predecessor in title Kevin Howe was one of the successful plaintiffs in a quiet title action culminating in the Law Court's decision in *Bell*. SMF 13, 18, 32, 34. As noted above, the Law Court held that walking on or over the intertidal land at Moody Beach for recreational purposes is not a form of navigation. To the extent the court views Plaintiffs' claims

presented here as somehow different, there is no doubt that all of their claims could have been presented in *Bell*. Even if Plaintiffs have presented a justiciable controversy, with respect to OA 2012's intertidal land, this Court must dismiss Plaintiffs' claims on the grounds of *res judicata*.

As the Law Court recently stated in *Federal National Mortgage Association v. Deschaine*, 2017 ME 190, ¶ 15, 170 A.3d 230:

The doctrine of *res judicata* prevents "a party and its privies ... from relitigating claims or issues that have already been decided." *Portland Co. v. City of Portland*, 2009 ME 98, ¶ 22, 979 A.2d 1279. The doctrine "has two components: collateral estoppel, also known as issue preclusion, and claim preclusion." *Wilmington Tr. Co. [v. Sullivan-Thorne]*, 2013 ME 94, ¶ 7, 81 A.3d 371 (quotation marks omitted). Claim preclusion, which is the component at issue in this case, "bars the relitigation of claims if: (1) the same parties or their privies are involved in both actions; (2) a valid final judgment was entered in the prior action; and (3) the matters presented for decision in the second action were, or might have been, litigated in the first action." *Id.* (quotation marks omitted).

With respect to the first element, the same parties or privies are involved. OA 2012 is privy to Kevin Howe as successor in title, the Plaintiffs here are in privy with the defendants in *Bell*. The State was a party in *Bell*, and as articulated by the trial judge, represented the public. SMF 14. The State is a party in interest in the case. In *Bell*, named as defendants were all the users of plaintiffs' property other than those claiming under a recorded instrument. 557 A.2d at 168, n.1. At the State's request a *guardian ad litem* (Ralph Austin, Esq.) was appointed to represent that the private rights of all unnamed and unknown defendants, who may have an interest in the *Bell* plaintiffs' property. *Id.* at 168; SMF 16. Notice was published in the local paper. SMF 30, 34(a) (Docket 4, 6 19). Forty owners of non-oceanfront lots (so called Back Lot owners) located on the other side of Ocean Avenue intervened as defendants. *Bell*, 557 A.2d at 168, n.1. SMF 34(a). Privies to the defendants in *Bell* include the Plaintiffs here who as members of the public were represented by the State and to the extent here they assert non-public interests, they are successors to those users of the Moody Beach intertidal property represented

by the *guardian ad litem*. Finally, OA 2012, as predecessor in title, Kevin Howe, was a plaintiff in *Bell*. SMF 13.

On the second element there is a final judgment in *Bell*. SMF 32, 34(h).

Third, the matters for decision here, whether certain type of recreational movement-based activities could be considered navigation, was in fact raised in *Bell*, or if somehow thought otherwise, certainly could have been raised in *Bell*. Moreover, whether the signs at issue here could be viewed as unlawfully restricting access also could have been raised. At the bench trial in *Bell*, Moody Beach ocean front owners testified to long history of posting on the Howe seawall signs oriented to the abutting Ogunquit Town beach signs that stated: “Private Beach” and in general other signs including signs stating “Private Beach to low water mark, no loitering please.” SMF 21⁴. They also testified as to elsewhere at Moody Beach numerous signs were posted on seawalls and in the dry sand that stated, “no trespassing.” SMF 21, 34(f). With the signs in *Bell* being no different than the signs at issue in this case, including signs posted on the Howe property, whether these signs illegally restrict or limit in any way any movement-based activity, whether ocean based, navigation, or recreation related, on over what is now OA 2012’s property could have been litigated in *Bell*.

In *Federal National Mortgage Assoc. v. Deschaine*, 2017 ME 190, ¶¶ 18, 19, 170 A.3d 290, the Law Court applied the following standard to determine whether claims preclusion applied.

[W]e must determine whether the same cause of action was before the court in the prior case. We define a cause of action through a transactional test, which

⁴ Moody Beach ocean front property owners testified that many of the plaintiffs placed signs either in the sand [App. At 1299, 1396, 1566], or on their seawall steps [App. At 1132]; the signs carried messages such as “No Trespassing” [App. At 1299], “Private Beach to Low Water Mark, No Loitering Please” [App. at 1397], or simply “Private Property.” App. at 1565. At the southern end, near Ogunquit Beach, William Case and plaintiffs Leo Shannon and John Howe erected a sign in 1975 at Howe’s property (on the Ogunquit Beach line) which said, “Private Beach.” App. at 1566. SMF 34(f).

examines the aggregate of connected operative facts that can be handled together conveniently for purposes of trial to determine if they were founded upon the same transaction, arose out of the same nucleus of operative facts, and sought redress for essentially the same basic wrong.... Claim preclusion may apply even where a suit relies on a legal theory not advanced in the first case, seeks different relief than that sought in the first case, or involves evidence different from the evidence relevant to the first case. [*Wilmington Tr. Co.*, 2013 ME 94, ¶ 8, 81 A.3d 371] (citations, alterations, and quotation marks omitted).

Claim preclusion “is grounded on concerns for judicial economy and efficiency, the stability of final judgments, and fairness to litigants.” *Id.* ¶ 6. The doctrine promotes those goals by preventing a party “from splintering his or her claim and pursuing it in a piecemeal fashion by asserting in a subsequent lawsuit other grounds of recovery for the same claim that the litigant had a reasonable opportunity to argue in the prior action.” *Johnson [v. Samson Const. Corp.]*, 1997 ME 220, ¶ 7, 704 A.2d 866 (quotation marks omitted).

Under the doctrine of claim preclusion even if the Plaintiffs’ claims in this case are somehow viewed as different from the claims litigated in *Bell*, it is clear that those claims could have been raised and litigated in *Bell* as Plaintiffs claims here all arise out of “the same nucleus of operative facts, and sought redress for essentially the same basic wrong.” *Federal National Mortgage Assoc. v. Deschaine*, 2017 ME 190, ¶ 18, 170 A.3d 290. Accordingly, even if justiciable, Plaintiffs’ claims against OA 2012 are barred by *res judicata* and must be dismissed.

C. Plaintiffs’ claims must be dismissed for failure to include indispensable parties.

Plaintiffs have not joined in this action all of the prevailing property owners in *Bell*, their successors in interests, (SMF 33, 34(a) (reference docket entries 265 through 293)) or all other intertidal property owners at Moody Beach. Their claims must be dismissed for failure to include these indispensable parties.

“When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration and no declaration shall prejudice the rights of persons not parties to the proceeding.” 14 M.R.S. § 5963. In *Boothbay Harbor*

Condominiums, Inc. v. Department of Transp., 382 A.2d 848, 853 (Me. 1978), the Law Court held that in the absence of neighboring waterfront property owners whose fishing and flowage rights could be adversely impacted, the Superior Court could not adjudicate those rights through a declaratory judgment action.

Second, plaintiff's fishing and flowage rights may not properly be adjudicated in the absence of those persons, not here made parties to the action, required to be parties under 14 M.R.S.A. § 5963, i. e., those “. . . who have or claim any interest which would be affected by the declaration” Plaintiff's flowage rights should not be determined in the absence of other owners of land surrounding Campbell's Cove whose interests would be affected thereby. Plaintiff's fishing rights should not be determined in a proceeding to which the appropriate State agencies are not parties, the State having responsibility to regulate all fishing activities in its waters. *Woods v. Perkins*, 119 Me. 257, 110 A. 633 (1920).

Given that all of the Moody Beach intertidal property owners' rights will be affected by the declaration that Plaintiffs seek, including those plaintiffs who prevailed in *Bell*, and Plaintiffs failure to include them as parties, it would be improper to adjudicate Plaintiffs' claims under Count IV.

V. CONCLUSION

For the reasons stated above, OA 2012 requests that the court grant this motion for summary judgment and enter judgment in its favor on Count IV of Plaintiffs' Complaint, or in the alternative that said count be dismissed with prejudice, and OA 2012 be awarded its costs.

Dated: May 2, 2023

/s/David P. Silk

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NOTICE TO ALL PARTIES

Pursuant to Rule 7(b)(1) of the Maine Rules of Civil Procedure, notice is hereby given to all parties in this lawsuit that all materials in opposition to the foregoing motion for summary judgment must be filed no later than 21 days after the filing of the motion, unless another time is set by the court. Failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing. In addition, any party opposing the motion must comply with the requirements of Rule 56(h) of the Maine Rules of Civil Procedure including specific responses to each numbered statement in the statement of material facts in support of the motion for summary judgment, with citations to points in the record or in affidavits filed to support the opposition. Failure to comply with Rule 56(h) in opposing the motion may result in entry of judgment without hearing.

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Docket No. Cum-24-82

Peter Masucci et al.
Plaintiffs/Appellants/Cross-Appellees

v.

Judy's Moody, LLC et al.
Defendants/Appellants/Cross-Appellees

On appeal from the Cumberland County Superior Court

Appendix

Volume II of VI

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Dated: June 28, 2024

PETER and KATHY MASUCCI, *et al.*,)
)
 Plaintiffs)
 v.)
 JUDY'S MOODY LLC, *et al.*,)
)
 Defendants)
)
 and)
)
 AARON M. FREY, in his capacity as the)
 ATTORNEY GENERAL FOR THE)
 STATE OF MAINE,)
)
 Party in interest)

**ATTORNEY GENERAL'S
 MOTION FOR SUMMARY
 JUDGMENT ON COUNT IV OF
 PLAINTIFFS' COMPLAINT**

Now comes Party-in-interest Aaron M. Frey, in his capacity as Attorney General for the State of Maine (the AG), and moves this Court, pursuant to M.R. Civ. P. 56, to enter summary judgment in favor of Plaintiffs on Count IV of Plaintiffs' complaint.¹ As pleaded, Count IV avers that the public right to use intertidal land pursuant to the public trust doctrine is not limited to fishing, fowling, and navigation. (Pls.' Compl. ¶¶ 105-106.) Although Count IV is broadly pleaded, the AG's motion for summary judgment on Count IV is limited to walking. For the reasons set forth in his supporting memorandum of law, the AG moves this Court to include the following holding as part of an entry of summary judgment in favor of Plaintiffs on Count IV: Pursuant to the public trust doctrine, Peter Masucci, Kathy Masucci, and William Connerney, as members of the public, have the right to walk unfettered upon

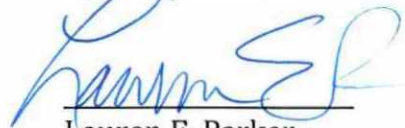
¹ Count IV is the only remaining count of Plaintiffs' complaint: In its order dated April 18, 2022 (Order), this Court dismissed Counts II, III, and V of Plaintiffs' Complaint and held that Count I does not raise any legally cognizable claim. (Order 20 n.6, 26-27.) See M.R. Civ. P. 12(b)(6).

intertidal land in Maine, including the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land. *Accord Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 41, 206 A.3d 283 (*Saufley, C.J., Mead, Gorman, JJ.*, concurring).

Dated: May 2, 2023

Respectfully submitted,

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NOTICE

Pursuant to Rule 7(b)(1), notice is hereby given that any matter in opposition must be filed no later than 21 days after the filing of the enclosed motion unless another time is provided by the Maine Rules of Civil Procedure or set by the Court. Opposition to this motion must comply with the requirements of Rule 56(h), including specific responses to each numbered statement in the moving party's statement of material facts, with citations to points in the record or in affidavits filed to support the opposition. Not complying with Rule 56(h) in opposing the motion may result in entry of judgment without hearing. Additionally, failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-35

| | | |
|--|---|-----------------------------------|
| PETER and KATHY MASUCCI, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs |) | |
| v. |) | ATTORNEY GENERAL'S |
| |) | MEMORANDUM OF LAW |
| JUDY'S MOODY LLC, <i>et al.</i> , |) | IN SUPPORT OF HIS MOTION |
| |) | FOR SUMMARY JUDGMENT |
| Defendants |) | ON COUNT IV OF PLAINTIFFS' |
| |) | COMPLAINT |
| and |) | |
| |) | |
| AARON M. FREY, in his capacity as the |) | |
| ATTORNEY GENERAL FOR THE |) | |
| STATE OF MAINE, |) | |
| |) | |
| Party in interest |) | |

INTRODUCTION

Maine’s beaches “are one of the greatest gifts the State of Maine offers the world.” *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 41, 206 A.3d 283 (*Saufley, C.J., Mead, Gorman, JJ.*, concurring). Although intertidal lands in Maine have been susceptible of private ownership since the 1640s, the public has long held common law rights to engage in certain activities on intertidal lands through the *jus publicum* and the public trust doctrine. This case asks the Court to decide whether, pursuant to the public trust doctrine, the public has the right to simply walk the intertidal land on Maine’s beautiful beaches. Using either doctrinal view espoused in *McGarvey v. Whittredge*, 2011 ME 97, 28 A.3d 620, the result is the same: The public trust doctrine affords the public the right to walk unfettered on intertidal land in Maine. No shotgun, fishing pole, or scuba diving gear required.

FACTUAL BACKGROUND

Moody Beach is an approximately 1.5-mile-long mostly sandy beach located in Wells, Maine. (AG S.M.F. ¶¶ 1-2.) Plaintiffs Peter Masucci and Kathy Masucci are married and live across the street from Moody Beach. (AG S.M.F. ¶¶ 3-5.) Peter Masucci and Kathy Masucci (collectively, the Masuccis) go to Moody Beach because it is a beautiful, peaceful, fun, and relaxing place to be. (AG S.M.F. ¶¶ 9, 11, 13, 14.) The Masuccis regularly walk the intertidal land at Moody Beach. (AG S.M.F. ¶¶ 9-10.) They sometimes stop and gaze at the water and Peter Masucci may look for birds. (AG S.M.F. ¶¶ 12, 15.) They occasionally bring their grandchildren along for such walks. (AG S.M.F. ¶ 10.) Peter Masucci walks the intertidal land at Moody Beach for enjoyment, relaxation, and stress relief. (AG S.M.F. ¶ 11.) Kathy Masucci walks the intertidal land at Moody Beach for enjoyment, physical health benefits, relaxation, and stress relief. (AG S.M.F. ¶ 14.)

Plaintiff William (Bill) Connerney also owns property across the street from Moody Beach. (AG S.M.F. ¶¶ 6-7.) Bill Connerney lives at his property from the end of May through the beginning of November. (AG S.M.F. ¶ 6.) Bill Connerney regularly walks the intertidal land at Moody Beach and does so for physical health benefits and relaxation. (AG S.M.F. ¶¶ 9, 16.)

There are four locations on land from which the public may access the intertidal land at Moody Beach (collectively, the Public Access Points). (AG S.M.F. ¶ 17.) Listed north to south, the Public Access Points are right of way (ROW) 3, ROW 2, ROW 1, and the parking lot in Ogunquit near the southern end of Moody Beach (Ogunquit Parking Lot). (AG S.M.F. ¶ 18.) To access the intertidal land at Moody Beach for walking, Peter Masucci and Kathy Masucci

typically use ROW 3 and ROW 2 and Bill Connerney typically uses ROW 2. (AG S.M.F. ¶¶ 39-47.)

Defendants Ocean 503 LLC (Ocean 503), Judy's Moody LLC (Judy's Moody), and OA 2012 Trust (OA 2012) each own oceanfront property on Moody Beach (respectively, Ocean 503's Property, Judy's Moody's Property, and OA 2012's Property). (AG S.M.F. ¶¶ 21-22, 27, 34.) Each Defendant's Property abuts or is otherwise near a Public Access Point: Ocean 503's Property abuts ROW 3, Judy's Moody's Property abuts ROW 2, and OA 2012 Trust's Property is the first oceanfront property crossed when heading north on Moody Beach from the Ogunquit Parking Lot. (AG S.M.F. ¶¶ 21, 29, 36.) Ocean 503, Judy's Moody, and OA 2012 each claim that the seaward boundary of their Property is the mean low water mark.¹ (AG S.M.F. ¶¶ 23, 28, 35.) Peter Masucci, Kathy Masucci, and Bill Connerney each walk across the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land. (AG S.M.F. ¶¶ 9, 40, 42-43, 46-47.)

At Ocean 503's Property, Judy's Moody's Property, and OA 2012's Property, there are forbidding signs or physical markers such as cones, logs, and raked seaweed, none of which inform the public that the public has the right to walk across the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Intertidal Land (or that the public has the right to fish, fowl, or navigate on that intertidal land). (AG S.M.F. ¶¶ 19-20, 25-26, 33, 37-38.)

¹ As with the Attorney General's Statement of Material Facts, this memorandum of law respectively refers to the intertidal land abutting each Defendant's Property as the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land (collectively, Defendants' Intertidal Land). (AG S.M.F. ¶¶ 23, 28, 35.)

At Ocean 503's Property, the following sign is affixed to the seawall and faces ROW 3:



(AG S.M.F. ¶ 25.) At OA 2012's Property, the following sign is affixed to the seawall and faces south toward the Ogunquit Parking Lot:



(AG S.M.F. ¶ 37.) Judy's Moody had a sign affixed to the seawall on Judy's Moody's Property that included the phrase "No Trespassing." (A.G. S.M.F. ¶ 30.) Although the No Trespassing sign was removed, Kathy Masucci and Bill Connerney saw that sign before it was removed. (AG S.M.F. ¶¶ 31-32, 86, 110-11.) Judy's Moody also occasionally uses large pieces of wood that wash ashore, cones, or seaweed raked in a line to demarcate the side property boundary line between Judy's Moody's Property and ROW 2.² (AG S.M.F. ¶ 33.)

The signs and physical markers on Defendants' Properties convey to Peter Masucci, Kathy Masucci, and Bill Connerney that they should not be on Ocean 503's Property, Judy's Moody's Property, or OA 2012's Property and that Ocean 503, Judy's Moody, and OA 2012 may ask them to leave, respectively, the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land.³ (AG S.M.F. ¶¶ 48-49, 53-54, 58-59, 71-73, 77-78, 86-89, 93-94, 98-100, 102, 109-111, 113, 116, 120.) These signs and other physical markers, along with Plaintiffs' concerns about being asked to leave the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land, elicit negative emotions and detract from Plaintiffs' experience at Moody Beach. (AG S.M.F. ¶¶ 51-52, 55, 60, 63-65, 72, 74-77, 90, 94-95, 103, 112, 119, 121-122.) The signs on Defendants'

² Ocean 503 also has an ocean-facing "Private Beach" sign affixed to the seawall at the Ocean 503 Property. (AG S.M.F. ¶ 26.) As does OA 2012. (AG S.M.F. ¶ 38.) Judy's Moody had a similar "Private Beach" sign on Judy's Moody's Property but removed it. (AG S.M.F. ¶¶ 30-31.)

³ Peter Masucci has heard stories about Ocean 503 asking people to leave the Ocean 503 Intertidal Land. (AG S.M.F. ¶ 53.) Kathy Masucci has heard similar stories about Ocean 503. (AG S.M.F. ¶ 79.) Kathy Masucci and Bill Connerney have heard stories about Judy's Moody asking people to leave the Judy's Moody Intertidal Land and Kathy Masucci has seen pictures of people being asked to leave Judy's Moody's Property. (AG S.M.F. ¶¶ 84-85, 108.) Peter Masucci and Bill Connerney have seen police on Moody Beach and Kathy has heard that the police have been called to Moody Beach. (AG S.M.F. ¶¶ 68, 83, 106-07.) These stories and experiences upset Plaintiffs and contribute to Plaintiffs' concerns about walking on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land. (AG S.M.F. ¶¶ 54-55, 69-70, 80, 89-90, 120-122.)

properties have also caused Plaintiffs to change their use of Defendants' Intertidal Land: Although Peter Masucci used to stop and gaze at the water or look for birds, Peter no longer stops on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Intertidal Land. (AG S.M.F. ¶¶ 12, 50.) Bill Connerney limits his use of the Ocean 503 Intertidal Land to when Ocean 503 is not around or otherwise tries to avoid the Ocean 503 Intertidal Land. (AG S.M.F. ¶ 101.)

Ocean 503 has never told Peter Masucci, Kathy Masucci, or Bill Connerney that they have the legal right to walk across the Ocean 503 Intertidal Land. (AG S.M.F. ¶¶ 56, 81, 104.) Neither has Judy's Moody or OA 2012 Trust. (AG S.M.F. ¶¶ 61, 66, 91, 96, 114, 117.) Nor has Ocean 503, Judy's Moody, or OA 2012 Trust ever told Peter Masucci, Kathy Masucci, or Bill Connerney that they have permission to walk across the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Intertidal Land. (AG S.M.F. ¶¶ 57, 62, 67, 82, 92, 97, 105, 115, 118.)

ARGUMENT

- I. **Per *Ross v. Acadian Seaplants*, 2019 ME 45, 206 A.3d 283, this Court must apply both doctrinal views articulated in *McGarvey v. Whittredge*, 2011 ME 97, 28 A.3d 620, to determine whether the public trust doctrine encompasses unfettered walking.**

Ross is the most recent case in which the Law Court adjudicated the public trust doctrine as it applies to intertidal land in Maine. In *Ross*, the Law Court was asked "to determine whether rockweed is private property that belongs to the adjoining upland landowner who owns the intertidal soil in fee simple, or property that is held in trust by the State through the *jus publicum* for the public to harvest." 2019 ME 45, ¶ 1, 206 A.3d 283. The Law Court held that rockweed is private property. *Id.* ¶ 33. Accordingly, it also held that the

public trust doctrine does not encompass rockweed harvesting. *Id.* To reach its holding, the Law Court applied both doctrinal views articulated in *McGarvey*; it did not limit its inquiry to “fishing, fowling, and navigation.” *Id.* ¶¶ 14, 19-32.

In *McGarvey*, the Law Court authored two concurring opinions—each joined by three justices—to determine whether the public trust doctrine encompasses crossing intertidal land to reach the ocean for scuba diving.⁴ *Ross*, 2019 ME 45, ¶¶ 13-18, 206 A.3d 283 (describing *McGarvey v. Whittredge*, 2011 ME 97, ¶¶ 1, 48-58, 59-78, 28 A.3d 620). Each concurring opinion used a different doctrinal framework for determining whether the public had the right to make a particular use of or engage in a particular activity on intertidal land. *Id.* Justice Levy’s approach requires adhering to the fishing, fowling, and navigation trilogy but interpreting those terms in a “sympathetically broad and generous” manner. *Ross*, 2019 ME 45, ¶ 18, 206 A.3d 283; *accord McGarvey*, 2011 ME 97, ¶¶ 68-77, 28 A.3d 620. Chief Justice Saufley’s approach requires “consideration of contemporary notions of usage and public acceptance in order to strike a rational and fair balance between private ownership and public rights,” but without “placing any additional burden upon the shoreowner.” *Ross*, 2019 ME 45, ¶ 30, 206 A.3d 283 (quoting *Bell II* dissent, 557 A.2d 168, 188-89 (Me. 1989)); *accord McGarvey*, 2011 ME 97, ¶¶ 48-58, 28 A.3d 620.

The public trust doctrine is part of Maine’s common law. *Ross*, 2019 ME 45, ¶¶ 9, 11, 206 A.3d 283 (recognizing that the *jus publicum* “was engrafted into Maine common law”). “The genius of the common law is its flexibility and capacity for growth and adaption.”

⁴ Although the public trust doctrine encompasses the public’s right to walk across intertidal lands to reach the ocean for purposes of scuba diving, a majority of the Law Court has not held “that scuba diving is a type of navigation.” *Ross v. Acadian Seaplants*, 2019 ME 45, ¶¶ 13, 22 n.8, 206 A.3d 283; *McGarvey v. Whittredge*, 2011 ME 97, ¶ 1, 28 A.3d 620.

Pendexter v. Pendexter, 363 A.2d 743, 749 (Me. 1976) (*Dufresne, C.J.*, concurring). By requiring a reasonable balance between public and private rights—as opposed to adhering to terms from the 1640s—Chief Justice Saufley’s reasonable balance approach better preserves the public’s ability to adapt Maine’s common law to the needs of a changing society.⁵ See *Ross*, 2019 ME 45, ¶ 16, 206 A.3d 283 (acknowledging that fishing, fowling, and navigation “may . . . too narrowly describe the public trust doctrine”); *Conant v. Jordan*, 77 A. 938, 939, 107 Me. 227 (1910) (observing that the public itself extends the common law); *Opinion of the Justices*, 437 A.2d 597, 605 (Me. 1981) (“Only the Parliament, as the public’s representative could alienate the jus publicum.”); *Gunderson v. Indiana Dept. of Natural Res.*, 90 N.E.3d 1171, 1188 (Ind. 2018) (“[T]he ‘trust doctrine’, like all common law principles, should not be considered fixed or static, but should be molded and extended to meet changing conditions and needs of the public it was created to benefit.”).

II. The public trust doctrine affords the public the right to walk unfettered on intertidal land in Maine.

Although this Court must consider both *McGarvey* doctrinal views, it should begin with the reasonable balance approach because that approach best comports with Maine’s common law. Each approach yields the same result, however: Pursuant to the public trust doctrine, Peter Masucci, Kathy Masucci, and William Connerney, as members of the public,

⁵ Despite the post-*Bell II* evolution of the analytical framework for resolving disputes over the scope of the public trust doctrine, see *Ross*, 2019 ME 45, ¶¶ 14, 21-32, 40, 206 A.3d 283, the Law Court should nevertheless expressly overrule *Bell II*, 557 A.2d 168 (Me. 1989).

have the right to walk unfettered across intertidal land in Maine, including the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land.

A. Applying the "Reasonable Balance" Approach: Unfettered Walking is a Public Trust Right

When striking "a rational and fair balance between private ownership and public rights," the Court "must avoid placing any additional burden upon the shoreowner." *Ross*, 2019 ME 45, ¶ 30, 206 A.3d 283 (quoting *Bell II* dissent, 557 A.2d at 188-89); see *Gunderson*, 90 N.E.3d at 1188 ("Where the law tips too far in favor of the littoral landowners, important public resources effectively are monopolized by a few. Where the law tilts too far in favor of the public, valuable private property rights get trampled by the many." (quotation marks omitted)). As part of the reasonable balance approach, the Court also "considers contemporary notions of usage and public acceptance." *Ross*, 2019 ME 45, ¶ 30, 206 A.3d 283.

First, the public is already allowed to walk on intertidal land as part of activities that are recognized public trust rights. The public has long been able to "pass on intertidal land to get to and from houses." *Ross*, 2019 ME 45, ¶ 22, 206 A.3d 283; accord *Deering v. Proprietors of Long Wharf*, 25 Me. 51, 65 (1845). If the public arrives on the shore at low tide, such passage necessarily involves walking across intertidal land. The public trust doctrine affords the public the right to load and unload cargo on intertidal land. *Ross*, 2019 ME 45, ¶ 22, 206 A.3d 283; accord *Deering*, 25 Me. at 65. That activity involves walking. The public has the right to fish and dig for clams. *State v. Leavitt*, 105 Me. 76, 78-80, 72 A. 875, 876-77 (1909) (clamming). Fishing an incoming tide from the wet sand entails walking across intertidal land. As does clamming the mudflats. The public has the right to pass over intertidal land to reach the ocean for scuba diving. *McGarvey*, 2011 ME 97, ¶ 1, 28 A.3d 620.

Such passage involves walking. As does bringing your kayak to the ocean at low tide. “This public right of passage, inherent in the exercise of the traditional protected uses we recognize today, would not infringe on the property rights of adjacent riparian landowners.” *Gunderson*, 90 N.E.3d at 1188.

Second, and unlike the public trust activities of unloading cargo, fishing, scuba diving, and (nonmotorized) boating, walking for the sake of walking typically does not involve transporting across intertidal land sometimes hefty objects like cargo, fishing gear, scuba diving gear, or a dinghy or kayak. Walking across intertidal land is thus less burdensome on the shoreowner than multiple activities that the Law Court has already acknowledged as being protected by the public trust doctrine. Further, walking across intertidal land does not entail removing anything from intertidal land. *Cf. Ross*, 2019 ME 45, ¶ 30, 206 A.3d (“Removing something from intertidal land may result in placing such an addition burden on intertidal land.”) (quoting *Bell II* dissent, 557 A.2d at 188-89).

Third, acknowledging that the public trust doctrine includes the public’s right to walk unfettered on intertidal land is consistent with contemporary notions of usage and public acceptance. *See Ross*, 2019 ME 45, ¶ 30, 206 A.3d 283 (noting that the “reasonable balance” approach considers “contemporary notions of usage and public acceptance”). Indeed, certain Plaintiffs and Defendants have mused that the public’s right to walk on intertidal land—without a shotgun, fishing pole, or scuba diving gear—may already be protected by the public trust doctrine. (AG S.M.F. ¶¶ 123-124, 126, 128-129.)

B. Applying the “Trilogy Broadly Interpreted” Approach: Unfettered Walking is a Public Trust Right

Broadly interpreting “navigation” yields the same result as the reasonable balance approach. “Navigation has been interpreted to involve some mode of transportation,

whether traveling over frozen intertidal water, passing on intertidal land to get to and from land or houses, or mooring vessels and loading or unloading cargo.” *Ross*, 2019 ME 45, ¶ 22, 206 A.3d 283 (internal citations omitted). Navigation is not defined exclusively in reference to the movement of ships or aircraft. Navigation means “the act or practice of navigating.” <https://www.merriam-webster.com/dictionary/navigation> (last visited May 1, 2023). Among other definitions, navigate means “get around, move” and “to make one’s way over or through; traverse.” <https://www.merriam-webster.com/dictionary/navigate> (last visited May 1, 2023). Walking is a common way in which humans get around and move. <https://www.merriam-webster.com/dictionary/walk> (defining walk as, among other definitions, “to move along on foot; advance by steps”). Indeed, one definition of navigate is “to walk.” *Navigate*, Random House Unabridged Dictionary (2d ed. 1993); *Navigate*, American Heritage Dictionary of the English Language 1206 (3d ed. 1992). Navigation, especially when interpreted broadly and generously, includes unfettered walking. *See also Gunderson*, 90 N.E.3d at 1188 (holding that walking below the ordinary high-water mark of the shores of Lake Michigan is a protected public trust use).

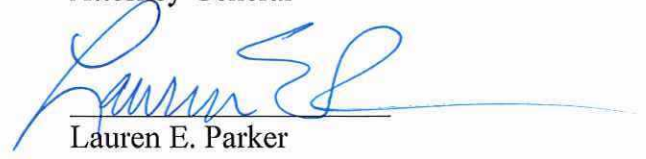
Conclusion

This Court should hold that, pursuant to the public trust doctrine, Peter Masucci, Kathy Masucci, and Bill Connerney, as members of the public, have the right to walk unfettered across intertidal land in Maine, including the Ocean 503 Intertidal Land, the Judy’s Moody Intertidal Land, and the OA 2012 Intertidal Land.

Dated: May 2, 2023

Respectfully submitted,

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STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
DOCKET NO. RE-2021-0035

PETER AND KATHY MASUCCI, et al.,)
)
 Plaintiffs)
)
 v.)
)
 JUDY’S MOODY LLC, et al.,)
)
 Defendants)
)
 and)
)
 AARON FREY,)
 Attorney General for the State of Maine)
)
 Party in Interest)

**DEFENDANTS JEFFERY E. PARENT AND
MARGARET G. PARENT’S MOTION FOR
SUMMARY JUDGMENT WITH
INCORPORATED MEMORANDUM
OF LAW**

Pursuant to M.R. Civ. P. 56, Defendants Jeffery E. Parent and Margaret G. Parent (the “Parents”) hereby move for Summary Judgment against all Plaintiffs in the above-captioned action. In support of this motion, the Parents submit the following memorandum of law and attachments.

INTRODUCTION

Plaintiffs in this action seek a sweeping declaration that the public’s right to use private intertidal land in Maine “extends to whatever the state sees fit to allow and regulate exercising its sovereign police power and through its own legislative and regulatory processes.” (Compl. ¶ 106.) Plaintiffs further state that they “are not asking for a specific activity to be allowed, but for all public activity to be allowed within the intertidal zone.” (Pls.’ Opp’n to Defs.’ Mot. More Definite Statement, June 1, 2022, at 5-6.) This request is untethered to the courts’ use-by-use adjudication of the scope of the public trust doctrine that has been ingrained in Maine and

Massachusetts for centuries. There is simply no legal authority for the wholesale erasure of intertidal common law that Plaintiffs are proposing.

Similarly untethered to any factual or legal support is Plaintiffs' selection of the Parents as Defendants in this action. No Plaintiff in this action has ever been on the Parents' intertidal property. No Plaintiff in this action has ever engaged in activity of any kind on or over the Parents' intertidal property. The Parents have never hindered any Plaintiff from conducting any intertidal activity on the Parents' property or anywhere else. The Parents have never interacted with any Plaintiff, either directly or indirectly. Apart from the removal of rockweed that requires landowner permission under *Ross v. Acadian Seaplants, Ltd.*, the Parents take no position on the public's rights to be present on or use the intertidal portion of their property.

Despite this, Plaintiffs have dragged the Parents into court and forced them to defend themselves in litigation in which they have no interest at stake, legal or otherwise. "A party seeking declaratory relief must establish that his case constitutes an active dispute of real interests between the litigants." *Hathaway v. City of Portland*, 2004 ME 47, ¶ 11. As discussed below, Plaintiffs have failed to do so with respect to the Parents. Accordingly, the Parents move for summary judgment in their favor.

FACTUAL BACKGROUND

The following facts are drawn from the Stipulations between Plaintiffs and Defendants Jeffery Parent and Margaret Parent [hereafter "Stip. Facts"] and the Parents' Statement of Material Facts in Support of their Motion for Summary Judgment [hereafter "Parent SMF"], both of which are attached to this memorandum.

The Parents own waterfront property in Waldoboro, Maine ("Parent Property"). (Stip. Facts ¶ 1.) The Parents own the Parent Property through their deed recorded at Book 4578, Page

263 at the Lincoln County Registry of Deeds (“Parent Deed”). (Parent SMF ¶ 2.) The Parent Deed describes the Parent Property boundary as running “to the waters of Back River Cove.” (Parent SMF ¶ 4.) The intertidal area of the Parent Property is covered by a type of seaweed commonly called rockweed. (Parent SMF ¶ 5).

None of the Plaintiffs in this action have harvested seaweed from the intertidal portion of the Parent Property. (Stip. Facts ¶ 7.) None of the Plaintiffs have been present on or conducted any activity on or over the intertidal portion of the Parent Property. (Stip. Facts ¶ 8.) The Parents have not personally prevented or otherwise communicated with any Plaintiff about any activity in which any Plaintiff has been engaged on or over the intertidal portion of the Parent Property. (Stip. Facts ¶ 9.)

On October 30, 2019, a rockweed harvester who is not a party to this action cut and removed living, attached rockweed from the intertidal portion of the Parent Property. (Parent SMF ¶ 6; Stip. Facts ¶ 7, 10.) The Parents walked out to speak with the harvester and stated to the harvester that he needed permission to cut and remove the attached rockweed. (Stip. Facts ¶¶ 11-12.) The harvester told the Parents to contact Maine Marine Patrol. (Stip. Facts ¶ 13.) Neither of the Parents told the harvester to stop harvesting. (Stip. Facts ¶ 14.) Afterward, Mr. Parent contacted Marine Patrol and asked a Marine Patrol Officer to explain the Parents’ rights and the harvester’s rights. (Stip. Facts ¶ 15.) The Marine Patrol Officer asked Mr. Parent to provide his deed if he wanted to pursue any action against the harvester. (Stip. Facts ¶ 16.) The Parents did not provide their deed to Marine Patrol. (Stip. Facts ¶ 17.) The Parents did not have further contact with or request any action by Marine Patrol related to the harvest of rockweed from the intertidal portion of the Parent Property. (Stip. Facts ¶ 18.)

Other than the October 30, 2019, incident of rockweed harvesting by a non-Plaintiff, the Parents have not interacted with any person or entity present on or using the intertidal portion of the Parent Property. (Parent SMF ¶ 7.) Other than the 2019 rockweed harvest occurrence, the Parents are not aware of any person or entity being present on or using the intertidal portion of the Parent Property for any purpose. (Parent SMF ¶ 8.) At no time have the Parents prevented any person or entity from being present on or using the intertidal portion of the Parent Property. (Parent SMF ¶ 9; Stip. Facts ¶ 14.) Other than rockweed harvesting, the Parents have taken no public position on the public's rights to be present on or use the intertidal portion of the Parent Property. (Parent SMF ¶ 10.)

PROCEDURAL HISTORY

Plaintiffs initiated this action against the Parents and other Defendants by Complaint dated April 22, 2021. By Order dated April 15, 2022, the Superior Court dismissed all Plaintiffs' claims except Count IV of the Complaint, which requests a declaratory judgment regarding the public's rights to use privately owned intertidal property. In allowing Count IV to proceed, the Court cautioned that assertion of a public right to cut and remove living, attached rockweed from intertidal land is inconsistent with *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45. As this Court stated, "The Law Court was clear in *Ross* that even under the flexible balancing approach the Law Court employs, removing marine plants from private intertidal land is not a permissible activity." (April 15, 2022 Order at 25, n.11.) In the same Order, the Court dismissed all claims against several Defendants similarly situated to the Parents pursuant to Maine's anti-SLAPP statute, 14 M.R.S. § 556.

On April 28, 2022, the Parents filed a Rule 12(b)(6) Motion to Dismiss on the basis that, among other things, the only allegations against the Parents related solely to the harvest of

rockweed from the Parents' intertidal land and therefore failed to state a claim under *Ross*. By Order dated August 1, 2022, the Court dismissed all claims except Count IV against the Parents. In allowing Count IV to proceed against the Parents, the Court referenced *Ross* for the proposition that "with regard to those Plaintiffs who seek access to the intertidal zone to commercially harvest sea plants, they have little chance of success." (Aug. 1, 2022 Order at 4-5.) However, the Court concluded, "under the Law Court's flexible approach to determining allowed intertidal activity, that there is 'some legal theory' that would allow the Plaintiffs to obtain a declaratory judgment allowing either certain recreational activities or different non-rockweed specific commercial activity in the intertidal zone." (Aug. 1, 2022 Order at 5.)

On November 18, 2022, the Parents served all Plaintiffs with interrogatories and requests for production of documents. On January 7, 2023, counsel for Plaintiffs requested that, in lieu of Plaintiffs responding to the Parents' discovery requests, Plaintiffs would stipulate to certain facts if the Parents would do the same. The Parents and Plaintiffs executed a set of stipulated facts dated April 12 and 13, 2023. No Plaintiff served any discovery request on the Parents.

ARGUMENT

Based on the undisputed facts stipulated by Plaintiffs and the Parents, Plaintiffs have not established that there is a genuine controversy between the parties that could support a declaratory judgment action. "[A] party seeking declaratory relief must establish that his case constitutes an active dispute of real interests *between the litigants*." *Hathaway v. City of Portland*, 2004 ME 47, ¶ 11, 845 A.2d 1168, 1171 (emphasis added) (dismissing declaratory judgment action for failure to state a claim). In this case, where Plaintiffs have identified no factual or legal nexus between themselves and the Parents, Plaintiffs have failed to establish "an active dispute of real interests between the litigants."

“Summary judgment is appropriate when the record reveals no issues of material fact in dispute.” *Lepage v. Bath Iron Works Corp.*, 2006 ME 130, ¶ 9, 909 A.2d 629. Accordingly, the Parents respectfully request that the Court dismiss Plaintiffs’ Count IV against the Parents and enter summary judgment in the Parents’ favor.

I. There Is No Justiciable Controversy to Support Plaintiffs’ Request for a Declaratory Judgement against the Parents

In order to maintain a declaratory judgment, there must be a genuine controversy for the court to adjudicate. *Patrons Oxford Mut. Ins. Co. v. Garcia*, 1998 ME 38, ¶ 4, 707 A.2d 384. “A justiciable controversy is a claim of present and fixed rights, as opposed to hypothetical or future rights, asserted by one party *against another who has an interest in contesting the claim.*” *Connors v. Int’l Harvester Credit Corp.*, 447 A.2d 822, 824 (Me. 1982) (emphasis added). For a justiciable controversy to exist in a declaratory judgment action, the plaintiff must assert a claim “*against a defendant having an adverse interest in contesting it.*” *Jones v. Maine State Highway Comm’n*, 238 A.2d 226, 228–29 (Me. 1968) (emphasis added). For declaratory judgment action to satisfy case or controversy requirement, there must be a dispute that is “definite and concrete, touching the legal relations of *parties having adverse legal interests.*” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (emphasis added).

“Although the Declaratory Judgments Act expands the range of available relief, it does not relax the requirements of justiciability necessary to present the Court with a judicable controversy.” *Berry v. Daigle*, 322 A.2d 320, 325 (Me. 1974); *see also Dream Capital Mgmt. LLC v. Deutsche Bank Nat’l Tr. Co.*, 2022 WL 1555837, at *3 (D. Me. May 17, 2022) (“The requirements for a justiciable case or controversy are no less strict in a declaratory judgment proceeding than in any other type of suit.”). In the absence of a justiciable controversy, action by the court would result in an unauthorized advisory opinion. *Connors*, 447 A.2d at 824; *Shapiro*

Bros. Shoe Co., Inc. v. Lewiston-Auburn Shoeworkers Protective Ass'n, 320 A.2d 247, 251 n.7 (Me. 1974) (declaratory judgment actions “require adverseness of interest and a ‘real controversy’ for the proper presentation of issues. Declaratory judgments are not exceptions to the Court’s lack of jurisdiction to render advisory opinions . . .”).

The stipulated record in this action is devoid of facts showing that Plaintiffs have been harmed by the Parents, or even showing any factual or legal relationship between Plaintiffs and the Parents. Accordingly, there is no justiciable controversy for the Court to adjudicate. No Plaintiff has been on or engaged in any activity on the Parents’ intertidal land. (Stip. Facts ¶ 8.) The Parents have not prevented or otherwise communicated with any Plaintiff about any activity in which any Plaintiff has been engaged on or over the intertidal portion of the Parents’ property. (Stip. Facts ¶ 9.) Thus, there are no “present and fixed rights” at stake, no “adverse legal interests,” and no justiciable controversy for the court to adjudicate between Plaintiffs and the Parents.

Plaintiffs cannot be permitted to sue a landowner with whom they have no legal or other relationship in an attempt to have a court weigh in on a novel legal theory. “Courts cannot issue opinions on questions of fact or law simply because the issues are disputed or interesting. Courts can only decide cases before them that involve justiciable controversies.” *Lewiston Daily Sun v. Sch. Admin. Dist. No. 43*, 1999 ME 143, ¶ 12, 738 A.2d 1239, 1242.

In allowing Plaintiffs’ Count IV to proceed against the Parents, this Court reasoned that “there is ‘some legal theory’ that would allow the Plaintiffs to obtain a declaratory judgment allowing either certain recreational activities or different non-rockweed specific commercial activity in the intertidal zone.” (Aug. 1, 2022 Order at 5.) Based on the stipulated record, it is undisputed that Plaintiffs have not engaged in or been prohibited from engaging in any activity

on the Parents' intertidal land, including "recreational activities or different non-rockweed specific commercial activity."

Thus, any legal theory Plaintiffs might advance against the Parents would be entirely hypothetical. Such hypothetical questions are not fit for the Court to adjudicate. "For public policy reasons deeply imbedded in the history and nature of courts, the Law Court decides only questions of live controversy, and not hypothetical, abstract or moot questions." *Lewiston Daily Sun*, 1999 ME 143, ¶ 13.

CONCLUSION

As discussed above, there is no justiciable controversy between the Parents and Plaintiffs. Accordingly, the Parents respectfully request that the Court enter summary judgment in their favor pursuant to M.R. Civ. P. 56.

Dated at Portland, Maine this 2nd day of May, 2023.



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NOTICE

Any opposition to this motion must be filed not later than twenty-one (21) days from the date this motion was filed pursuant to Rule 7(c) of the Maine Rules of Civil Procedure. Failure to file a timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

PETER and KATHY MASUCCI, et al.,)
)
Plaintiffs,)
)
v.)
)
JUDY’S MOODY LLC, et al.,)
)
Defendants,)
)
and)
)
AARON FREY, in his capacity as Attorney)
General for the State of Maine,)
)
Party-in-Interest.)

**DEFENDANT OCEAN 503, LLC’S
MOTION FOR SUMMARY
JUDGMENT WITH INCORPORATED
MEMORANDUM OF LAW**

Title to Real Estate is Involved

Pursuant to M.R. Civ. P. 7 and 56, Defendant Ocean 503, LLC (“Ocean 503”) moves for summary judgment on Count IV of the Complaint filed on April 22, 2021 (the “Complaint”) by Plaintiffs Peter and Kathy Masucci, Robert Morse, George Seaver, Greg Tobey, Hale W. Miller, John W. Grotton, LeRoy Gilbert, Jake Wilson, Dan Harrington, Orlando and Judith Delogu, William Connerney, William M. Griffiths and Sheila A. Jones, Susan Domizi, Dr. Brian Beal, Amanda Moeser, Chad Coffin, and Lori and Tom Howell (collectively, “Plaintiffs”). In support of this Motion, Defendant Ocean 503 states as follows¹:

I. FACTUAL BACKGROUND

Ocean 503 is a Maine limited liability company that holds title to real property located at 503 Ocean Avenue, Wells, Maine, (the “Ocean 503 Property” or the “Property”) on the beachfront

¹ Ocean 503 also joins in, adopts, and incorporates as its own the arguments set forth in Defendants’ Judy’s Moody LLC and OA2012 Trust’s respective motions for summary judgment on Count IV.

of Moody Beach.² (Statement of Material Facts in Support of Ocean 503, LLC’s Motion for Summary Judgment ¶ 1) (hereinafter, “SMF ¶ ___”). The Property abuts a public way leading from Ocean Avenue to Moody Beach. (SMF ¶ 10.) Mark Montesi (“Mr. Montesi”) and Corliss Montesi (“Ms. Montesi” and together with Mr. Montesi, the “Montesis”) are the only members of Ocean 503. (SMF ¶ 2.) The Montesis spend about twenty percent of the year at the Property and they do not rent out the Property to third parties. (SMF ¶¶ 6-7.)

Many beachfront properties on Moody Beach have signs indicating that Moody Beach is a private beach. (SMF ¶ 8.) On the seawall surrounding a portion of the Ocean 503 Property, there are two such signs, one of which reads “Private beach” and another which reads “Moody Beach is a private beach to the low water mark – no loitering” (the “Signs”). (SMF ¶ 9.) One of the Signs faces a public way abutting the Ocean 503 Property. (SMF ¶ 10.) The Signs were posted due, in part, to a concern that children would climb the seawall and injure themselves. (SMF ¶ 11.) Mr. Montesi defines “loitering” as “coming together for no purpose at all” and does not consider sitting on the beach “loitering.” (SMF ¶ 12.) Mr. Montesi, in fact, does not have an issue with members of the public recreating or sitting within the intertidal zone of the Ocean 503 Property for the purpose of enjoying the beach, provided that no one is breaking any laws. (SMF ¶ 13.)

In the four or so years since they purchased the Property, the Montesis and their invitees have never confronted any members of the public regarding their use of the intertidal zone of the Ocean 503 Property. (SMF ¶ 16.) They have never asked anyone to leave or to move and they have never called law enforcement regarding public activity within the intertidal zone. (SMF ¶¶ 17-18.) As a former public-school teacher with years of experience, Mr. Montesi testified that he would

² The Montesis initially purchased the Ocean 503 Property in 2018 in their capacity as trustees of the Mark J. Montesi Living Trust dated May 3, 2015, and the Corliss J. Montesi Living Trust dated May 3, 2015 (together, the “Trusts”). (SMF ¶ 4.) They transferred title of the Ocean 503 Property from the Trusts to Ocean 503 in May 2019. (SMF ¶ 5.)

never ask a child not to build a sandcastle on the Ocean 503 Property. (SMF ¶ 19.)

Despite this, Plaintiffs named Ocean 503 as a defendant in a five-count Complaint seeking a declaratory judgment under Count IV that “the public trust extends to whatever the state sees fit to allow and regulate exercising its sovereign police power and through its own legislative and regulatory processes.”³ (Pls.’ Compl. ¶ 106) (hereinafter “Count IV”). Plaintiffs did not allege specific activities in which they had engaged in the intertidal zone of the Ocean 503 Property or the ways in which Ocean 503 had prevented them from engaging in any activities, apart from having posted the two Signs on the Property. (*See generally*, Pls.’ Compl.)

Through discovery, Ocean 503 has learned that sixteen of the twenty Plaintiffs have never been to the Ocean 503 Property. (SMF ¶ 26.) Only three Plaintiffs testified that they were certain they had been physically present within the intertidal zone of the Ocean 503 Property and none of them were familiar with the Montesis.⁴ (SMF ¶¶ 21, 25-27.) Furthermore, none of the Plaintiffs have ever been confronted or asked to leave the intertidal zone of the Ocean 503 Property, despite having engaged in activities on the Property. (SMF ¶ 28.) In addition to having had no personal experiences of confrontation regarding activity within the intertidal zone of the Ocean 503 Property, Plaintiffs also do not have any personal knowledge of a single instance of Ocean 503 or anyone associated with Ocean 503 confronting any members of the public regarding their use of

³ Plaintiff Orlando Delogu (“Mr. Delogu”) testified that Plaintiffs named Ocean 503 as a defendant due to: (1) its close proximity to one of the public rights-of-way that provides access to Moody Beach; (2) the presence of the Signs; and (3) the fact that “[t]he house was larger” which “gives some indication of their inclination to be there and to utilize the beach . . . and to assert their claimed rights to exclude members of the public from use of the beach. . . . They’re not there on a shoestring. They’re not there with an intention of . . . coming and going.” (SMF ¶ 14.) Mr. Delogu also testified Ocean 503 was also named as a defendant on the basis of Plaintiffs’ belief that “they had been active, in the minds of some, at least, in asserting their claimed property right . . .”. (SMF ¶ 15.) Plaintiffs, however, have been unable to provide any specific information regarding a single instance of Ocean 503 confronting any members of the public regarding their use of the intertidal zone of the Property. (SMF ¶ 20.)

⁴ Additionally, Plaintiff Orlando Delogu (“Mr. Delogu”) testified that he did not have a specific recollection of being on the Ocean 503 Property but assumed that he had by virtue of the fact that he had walked the entire length of Moody Beach. (SMF ¶ 25.) His wife, Plaintiff Judith Delogu, testified that she had never been to Moody Beach and had not seen the Signs. (SMF ¶¶ 26, 35.)

the intertidal zone. (SMF ¶ 29.) Plaintiffs' belief that Ocean 503 had actively asserted its rights against members of the public was unsubstantiated in discovery.

Furthermore, despite their initial claims that the Signs have deterred activity, Plaintiffs testified that, in fact, the Signs had *not* deterred them from continuing to engage in activity in the intertidal zone of the Property. (SMF ¶¶ 30, 32, 34.) The three Plaintiffs who have been to the Property have continued to walk on the intertidal zone of the Property, one as recently as one week prior to his deposition. (SMF ¶¶ 22-24.) Another Plaintiff played bocce ball in the intertidal zone of the Property on numerous occasions this past summer, despite having seen the Signs. (SMF ¶ 33.) At worst, the Signs made one Plaintiff aware that he might be on the Ocean 503 Property, but this did not prevent him from continuing to engage in movement-based activity.⁵ (SMF ¶ 31.)

Similarly, although Plaintiffs Griffiths and Jones have never been on the Ocean 503 Property and could not identify the Property, they alleged that the Signs threatened their business, a resort located within a few minutes' walk to Old Orchard Beach and over twenty miles from the Ocean 503 Property. (SMF ¶¶ 38-39.) Despite their initial claims that their livelihood was threatened because their customers did not feel welcome on Moody Beach due to the signs, Plaintiffs Griffiths and Jones testified that they did not know if their customers had ever even been on the Ocean 503 Property or seen the Signs and further testified that no customers had actually informed them that they would not be returning to the resort on account of the Signs. (SMF ¶¶ 40-44.)

In short, Ocean 503 and Plaintiffs agree: Ocean 503 has not confronted or called law

⁵ Additionally, Plaintiff Orlando Delogu testified that he did not know for certain that there was a sign on the Ocean 503 Property but that signs "do not, in and of themselves, . . . prevent" the public from engaging in activity in the intertidal zone; rather, it is "the possible following through by the upland owner of calling the police, ousting me, threatening me with - - intimidating my . . . children or grandchildren who may be accompanying me . . .". (SMF ¶ 36.) As previously stated, however, Ocean 503 has never confronted any members of the public or called law enforcement. (SMF ¶¶ 16-18.)

enforcement on any members of the public, let alone any Plaintiffs, with respect to intertidal usage of the Ocean 503 Property, and the Signs have not deterred or restricted Plaintiffs from engaging in movement-based activity in the intertidal zone of the Property.

II. PROCEDURAL BACKGROUND

Following Plaintiffs' filing of the Complaint, Ocean 503 filed a Motion to Dismiss, dated May 26, 2021 (the "Motion to Dismiss"), asserting, *inter alia*, that Plaintiffs' claim with respect to Count IV failed as a matter of law. This Court issued an order dated April 18, 2022 (the "Order") in which it dismissed Counts I, II, III, and V, but denied the Motion to Dismiss as to Count IV. (Order 26.) The Court recognized the Law Court's "sympathetically generous approach" to defining the scope of the public's rights of use in the intertidal zone and held that Count IV survived the Motion to Dismiss because it conceivably stated a claim that a movement-based activity may be permissible in the intertidal zone. (Order 25.)

Ocean 503 then filed a Motion for More Definite Statement, dated May 13, 2022 (the "Motion for More Definite Statement"), requesting that the Court order Plaintiffs to file a more definite statement of the facts and legal theory supporting their claims under Count IV. Specifically, Ocean 503 stated that Plaintiffs had not alleged, and Ocean 503 was unaware of, any instances in which Ocean 503 prohibited Plaintiffs from engaging in any activity within the intertidal zone of the Ocean 503 Property and, therefore, could not appropriately respond to Plaintiffs' claims against it. (*See generally*, Mot. for More Definite Statement.) This Court denied that Motion, stating that "[t]he Court understands the Legal Entity Defendants desire for more information regarding how the Plaintiffs use the intertidal area and what the Legal Entity Defendants do to prevent that usage," but that such information was not required at the pleading stage. (Order dated August 1, 2022) (citing *Burns v. Architectural Doors & Windows*, 2011 ME

61, ¶ 21, 19 A.3d 823) (“[A]n initial pleading may be presented in general terms . . . [but later] a plaintiff must be prepared to clearly identify the asserted cause or causes of action and the elements of each claim.”).

Through discovery, Ocean 503 sought additional information regarding Plaintiffs’ claims under Count IV. Ocean 503 served each Plaintiff with interrogatories dated December 2, 2022 (the “Interrogatories”), and requests for production of documents dated December 2, 2022 (the “Requests for Production”). Plaintiffs’ responses to the Interrogatories, under oath, included statements that Ocean 503 had confronted members of the public and that the Signs had prevented Plaintiffs from engaging in activity in the intertidal zone of the Property. (*See generally*, Pls.’ Ans. to Interrogs.) Based on these responses, Ocean 503 took the depositions of seven Plaintiffs. Despite Ocean 503’s efforts to gain information regarding “what [Ocean 503] do[es] to prevent” Plaintiffs’ usage of the intertidal zone, Plaintiffs have not put forth any such information. Moreover, Plaintiffs could not substantiate the statements that Ocean 503 had confronted the public regarding intertidal use of the Property. Therefore, as more fully detailed below, Ocean 503 is entitled to summary judgment for lack of justiciable claims against it.

III. LEGAL STANDARD

“Summary judgment is properly granted if the record reflects that there is no genuine issue of material fact and the movant is entitled to a judgment as a matter of law.” *Oceanic Inn, Inc. v. Sloan's Cove, LLC*, 2016 ME 34, ¶ 25, 133 A.3d 1021, 1029 (quotation marks omitted). “A material fact is one that can affect the outcome of the case, and there is a genuine issue when there is sufficient evidence for a fact-finder to choose between competing versions of the fact.” *North East Ins. Co. v. Young*, 2011 ME 89, ¶ 17, 26 A.3d 794, 800 (quotation marks and citation omitted). When the defendants move for summary judgment, the defendants bear the initial burden of

“establish[ing] that there is no genuine dispute of fact and that the undisputed facts would entitle the defendant to judgment as a matter of law at trial.” *Oceanic Inn*, 2016 ME 34, ¶ 26, 133 A.3d 1021, 1029 (quotation marks omitted). “The nonmoving plaintiff must then demonstrate that material facts are disputed and must make out a prima facie case for its claim.” *Id.*

IV. ARGUMENT

There is no justiciable controversy between Plaintiffs and Ocean 503.

Ocean 503 is entitled to summary judgment with respect to Count IV of the Complaint because the undisputed facts demonstrate that there is no justiciable controversy between Plaintiffs and Ocean 503. “Justiciability requires that there be a real and substantial controversy, admitting of specific relief through a judgment of conclusive character as distinguished from a judgment merely advising what the law would be if, for example, this Plaintiff should someday decide to assert a right” *Connors v. Int'l Harvester Credit Corp.*, 447 A.2d 822, 824 (Me. 1982); *see also Lewiston Daily Sun v. Sch. Admin. Dist. No. 43*, 1999 ME 143, ¶ 12, 738 A.2d 1239, 1242 (“Courts cannot issue opinions on questions of fact or law simply because the issues are disputed or interesting. Courts can only decide cases before them that involve justiciable controversies.”).

The Law Court has been clear on this point:

For public policy reasons deeply imbedded in the history and nature of courts, the Law Court decides only questions of live controversy, and not hypothetical, abstract or moot questions. The demands upon this Court are too heavy for it to commit any of its limited resources of time and effort to reviewing the legal correctness of action below at the behest of a person to whom our decision in no alternative will make any real difference.

Id. (quoting *Halfway House, Inc. v. City of Portland*, 670 A.2d 1377, 1379 (Me. 1996)).

In the context of the Uniform Declaratory Judgments Act, 14 M.R.S.A. §§ 5951-5963 (2003) (the “Act”), “[j]urisdiction . . . turns upon the presence of a real controversy. The plaintiff must set forth a claim of right or obligation buttressed by a sufficiently substantial interest to

warrant judicial protection and assert it against a defendant having an adverse interest in contesting it.” *Allstate Ins. Co. v. Lyons*, 400 A.2d 349, 351 (Me. 1979). The Act requires “an active dispute of real interests *between the litigants*. . . . There must be a definite assertion of legal rights on the one side and a positive denial thereof on the other.” *Berry v. Daigle*, 322 A.2d 320, 325 (Me. 1974) (emphasis added). “The difference between an abstract proposition of law and a justiciable controversy . . . is one of the degree of adverseness of the parties and the credibility of the threat of litigation.” *Sch. Comm. of Town of York v. Town of York*, 626 A.2d 935, 943 (Me. 1993).

The undisputed facts reveal that there is no substantial controversy between Plaintiffs and Ocean 503; no assertion of legal rights by Plaintiffs and a positive denial thereof by Ocean 503. The majority of Plaintiffs have never engaged in any activity whatsoever on the Ocean 503 Property. (SMF ¶ 26.) The only three Plaintiffs who are certain they have been to the Property have never been confronted or asked to move or leave by anyone associated with Ocean 503. (SMF ¶ 28.) Plaintiffs have been unable to present any facts whatsoever regarding a single instance where Ocean 503 has confronted anyone with respect to their use of the intertidal zone of the Property. (SMF ¶ 29.) Plaintiffs have also failed to generate a dispute as to whether there is any legitimate risk that, in the future, Ocean 503 will deny any rights Plaintiffs might have. Mr. Montesi testified, and Plaintiffs have not disputed, that he does not have an issue with any members of the public engaging in movement-based activity or simply sitting on the Ocean 503 intertidal zone to enjoy the beach. (SMF ¶ 13.)

Moreover, to the extent Plaintiffs have alleged that the Signs have prevented them from exercising their rights within the intertidal zone, the undisputed facts presented through their own testimony reveal that the Signs have not actually deterred them from engaging in movement-based activity. Despite the Signs, Plaintiffs continue to walk, play games, and engage in other movement-

based activity in the intertidal zone of the Ocean 503 Property. (SMF ¶¶ 22-24, 31-34.) Plaintiffs testified that the Signs have made them aware that they are present on the Property but they continue to engage in activity despite that. (SMF ¶ 31.)

The undisputed facts also demonstrate that the Signs have not caused any injury to the Plaintiffs' pecuniary rights, as Plaintiffs Griffiths and Jones had alleged in the Complaint. Despite their allegations, Plaintiffs Griffiths and Jones testified that they are not certain their customers were ever on the Ocean 503 Property or ever saw the Signs and, even if they did, no customers have indicated that they will not be returning on account of the Signs. (SMF ¶¶ 39-44.)

Plaintiffs will likely argue that the apprehension they allegedly feel on account of the Signs is sufficient to generate a justiciable controversy. With respect to Ocean 503, however, that apprehension is unfounded and insufficient. Ocean 503 has not confronted anyone, asked anyone to move, or called the police. (SMF ¶¶ 16-18.) In *School Committee of Town of York v. Town of York*, the Law Court found a justiciable controversy where there was a "stated intention" of one party "to litigate to enforce the Charter" at issue. 626 A.2d 935, 943 (Me. 1993). But here, Ocean 503 has not stated an intention to litigate the alleged rights at issue and has even gone so far as to say it has no issue with Plaintiffs engaging in activity within the intertidal zone. Plaintiffs may feel apprehensive engaging in movement-based activity within Ocean 503's intertidal zone but that apprehension has not restricted their activity and is insufficient to generate a justiciable controversy, particularly when Ocean 503 has presented no threat of enforcement or litigation.


Ocean 503 has not denied or in any way limited Plaintiffs any right to engage in movement-based activity in the intertidal zone of the Ocean 503 Property and there is no active dispute between these litigants. A declaration that Plaintiffs may engage in movement-based activity in the intertidal zone of the Property will not make "any real difference" and, as such, the limited

resources of the Court should be preserved and this motion for summary judgment should be granted.

V. CONCLUSION

WHEREFORE, Defendant Ocean 503, LLC respectfully requests that this Court: (a) grant summary judgment in favor of Ocean 503, LLC with respect to Count IV of the Complaint; and (b) grant Ocean 503, LLC such other and further relief that this Court deems just and reasonable.

Dated at Portland, Maine this 1st day of May, 2023.



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NOTICE OF OPPOSITION TO MOTION PURSUANT TO M.R. CIV. P. 7(b)(1)(A) and 56

Pursuant to Maine Rule of Civil Procedure 7(b)(1)(A), any memorandum, supporting affidavits or other documents in opposition to this Motion must be filed with the Court, with a copy to the undersigned, not later than 21 days after the filing of the Motion unless another time is provided by the Rules or set by the Court. Failure to file timely opposition documents will be deemed a waiver of all objections to the Motion, which may then be granted without further notice or hearing.

Opposition to the Motion must also comply with the requirements of Rule 56(h) including specific responses to each numbered statement in the moving party's statement of material facts, with citations to points in the record or in affidavits filed to support the opposition. Not complying with Rule 56(h) in opposing the Motion may result in entry of judgment without hearing.

uses of land that is as broad and diverse as the people who use it. This case stretches *Bell II* to its breaking point. Let it break.

STATEMENT OF FACTS

Kathy Masucci lives year-round at 484 Ocean Avenue and makes regular use of Moody Beach. (Pl.’s S.M.F. ¶ 72-74.) Kathy walks, runs, stops and rests, stops and looks at the water, digs holes, plays bocci, plays kickball, plays baseball, sits and reads, sits and observes wildlife, builds sandcastles, and boogie boards—all on the intertidal land or water adjacent to Defendants’ property. (Pl.’s S.M.F. ¶ 76(a)-(m).) Defendants’ signage regarding the private nature of the beach has had a chilling effect on Kathy’s use and enjoyment of the beach. (Pl.’s S.M.F. ¶¶ 77-84.) Her husband Peter Masucci similarly frequents the beach year-round. (Pl.’s S.M.F. ¶ 85-86.) In the intertidal adjacent to Defendants’ property, Peter plays in the water, bodysurfs, splashes around, builds sandcastles and forts, walks, jogs, observes nature, takes in the view, sits in the sand or on a beach chair, observes children beachcombing, boogie boards, skimboards, plays bocci and a variety of games. (Pl.’s S.M.F. ¶ 90(a)-(k).) Peter also has felt a deterring effect by Defendants’ signage, that has directly impacted where and how he enjoys the beach. (Pl.’s S.M.F. ¶¶ 92-93.) Peter has witnessed Keith Dennis (of Judy’s Moody) ask people to move into the narrow public way in the intertidal zone. (Pl.’s S.M.F. ¶ 94.)

William Connerney of 130 South Tibbetts Road in Wells walks, takes in the sights, plays “all kinds of games,” body surfs, plays tennis, flies a kite, walks, jogs, picnics, and walks the dog. (Pl.’s S.M.F. ¶¶ 96-97.) William similarly described the chilling affect of signage and the assertion of private ownership of the beach and fear of confrontations, which he specifically connected to playing less hand tennis. (Pl.’s S.M.F. ¶¶ 102-107.) He considers “fowling” to include taking

pictures of birds; he considers “navigation” to include walking to a place. (Pl.’s S.M.F. ¶¶ 109-110.)

Plaintiffs William Griffith and Sheila Jones own the Crows’ Nest Resort in Old Orchard Beach, whose guests visit Maine beaches, including Moody Beach. (Pl.’s S.M.F. ¶¶ 112-115.) Their business and livelihood is dependent on public access to Maine’s beaches. (Pl.’s S.M.F. ¶ 113.)

Plaintiff Orlando Delogu has walked the intertidal zone of Moody Beach “to examine the signage designed to intimidate recreational users of the beach from engaging in [recreational] activities.” (Pl.’s S.M.F. ¶¶ 121-22.) Orlando and his wife Judith Delogu walk, sit in the sand to watch wildlife, wade in the water and swim, tread water in place, and sometimes stop to rest on the intertidal zone of Maine’s coastline. (Pl.’s S.M.F. ¶ 125-27.)

Plaintiff Amanda Moeser farms oysters and clams in the intertidal zone and is concerned about private ownership claims and their impact on aquaculture licenses. (Pl.’s S.M.F. ¶¶ 144, 146.) She has also recreated generally in the intertidal. (Pl.’s S.M.F. ¶ 145.) Plaintiff Chad Coffin clams in the intertidal and finds private claims to intertidal make his work of harvest clams more difficult because he faces harassment. (Pl.’s S.M.F. ¶¶ 152, 154.) Plaintiff Susan Domizi, Plaintiff Greg Tobey, Plaintiff Leroy Gilbert, Plaintiff John Grotton, Plaintiff Dan Harrington, and Plaintiff Jake Wilson all work or run businesses that rely upon harvesting seaweed from the intertidal zone and they all recreate on Maine beaches. (Pl.’s S.M.F. ¶¶ 140-42, 148-49, 156-57, 160-61, 164-65, 168-69) Ms. Domizi and others are concerned that the privatization of intertidal land affects their livelihood due to harassment and confrontation between landowners and harvesters. (Pl.’s S.M.F. ¶ 142.)

Defendants Ocean 503, LLC; OA 2012 Trust; Judy's Moody, LLC, each upland private property owners, each testified about public uses of the intertidal zone at Moody Beach and their attitudes and actions taken in response. Ocean 503 has posted a sign on the seawall stating: "MOODY BEACH IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING." (Pl.'s S.M.F. ¶ 12.) Ocean 503 does not consider swimming, surfing, sitting, building sandcastles, or "recreating" on the beach "loitering." Nevertheless, the sign makes no exception for those activities. (Pl.'s S.M.F. ¶ 15.) OA 2012 Property also displays a sign on the sea wall: "MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED." (Pl.'s S.M.F. ¶ 24.) Despite the existence of the sign, OA 2012 does not consider walking, running, stopping and stretching, walking slowly (meandering), surfing, playing frisbee, building a sandcastle, or sitting in the sand for 30 minutes or less to be loitering. (Pl.'s S.M.F. ¶¶ 30-34, 37-38.) According to OA 2012, "sitting with a fishing pole" is okay, "as long as you're fishing." (Pl.'s S.M.F. ¶ 35.) OA 2012's sign makes no mention of this clarification. Judy's Moody displays private beach signage stating "PRIVATE BEACH" attached to the seawall. (Pl.'s S.M.F. ¶ 51.) Judy's Moody has also posted signs stating, "Private Property, No Trespassing," and referencing "low tide." (Pl.'s S.M.F. ¶ 52.)

Plaintiff George Seaver is the co-owner of Ocean Organics in Waldoboro, Maine. Ocean Organics was established over 40 years ago. It harvests and processes rockweed to produce a proprietary extract fertilizer "for application in the agriculture and turf industries." (Pl.'s S.M.F. ¶ 172.) The fertilizer is sold to both agricultural and horticultural customers, and the business is dependent on reasonable "access to and sustainable use of the intertidal zone." (Pl.'s S.M.F. ¶ 175.) Research has shown that use of Ocean Organic's extract fertilizer "results in a 5-15% increase in yield in the face of drought, flood and heat conditions" making this Maine product uniquely able

to play a role in the growing world food crisis in light of changing climate conditions. (Pl.’s S.M.F. ¶¶ 181-82.) Maine is one of the few places where the rockweed needed to create this fertilizer can be found, as it only grows in the North Atlantic Ocean. (Pl.’s S.M.F. ¶ 186.)

Plaintiff Robert Morse is the co-owner of North American Kelp (“NAK”), also based in Waldoboro, Maine. NAK was founded in 1971 and harvests rockweed in the intertidal area for products including food ingredients, animal supplements, lawn conditioners, and seaweed extracts for uses such as gardening and landscaping. (Pl.’s S.M.F. ¶¶ 209-11.) While both Ocean Organics and NAK sustainably harvest rockweed, NAK uses a machine designed by Robert Morse that harvests rockweed in a manner that allows for “regeneration from tips of harvested growth.” (Pl.’s S.M.F. ¶ 216.) The machine allows NAK to sustainably harvest and process large volumes, which is “very capital-intensive.” (Pl.’s S.M.F. ¶ 217.) Like Ocean Organics, the uncertainty and risk created by the *Ross* decision has made potential investors ambivalent about investment, affecting both the value the businesses and the livelihood of employees. (Pl.’s S.M.F. ¶¶ 207-08, 218-19.)

STANDARD OF REVIEW

Summary judgment is appropriate “if the record reflects that there is no genuine issue of material fact and the movant is entitled to a judgment as a matter of law.” *Rommel v. City of Portland*, 2014 ME 114, ¶ 11, 102 A.3d 1168. In order to obtain summary judgment, the moving party must establish that undisputed facts support all elements of their claims, while the nonmoving party must point to disputed material facts on a defense or claim that generate an issue for trial. *See Arrow Fastener Co. v. Wrabacon, Inc.*, 2007 ME 34, ¶ 18, 917 A.2d 123 (“If facts material to the resolution of the matter have been properly placed in dispute, summary judgment based on those facts is not available except in those instances where the facts properly proffered would be flatly insufficient to support a judgment in favor of the nonmoving party as a matter of law.”). To

properly generate a disputed issue of material fact, avoiding summary judgment, a party must adduce sufficient competent evidence that would allow a factfinder to find in that party's favor on that issue or all elements of that claim at trial. *See id.*

Contrary to an "extreme remedy," summary judgment is an increasingly common method of adjudicating civil disputes, furthering judicial economy. *See, e.g., Curtis v. Porter*, 2001 ME 158, ¶ 7, 784 A.2d 18. That the record is voluminous, that there are factual disputes, or that the legal implications are significant, are not grounds to deny summary judgment, unless the specific factual disputes are (1) properly generated by the record; and (2) material to the legal issues presented to the court.

Plaintiffs present to the court statements of fact, supported by the summary judgment record and undisputed, that Plaintiffs believe are dispositive of the legal issues present to the court for judgment. *See* M.R. Civ. P. 56(c). Plaintiffs accordingly request the court enter judgment in their favor on Count IV, granting declaratory relief on the specific terms outlined below.

ARGUMENT

The issue presented to this court in Count IV is rather simple: the Public Trust is more expansive than Colonial Ordinance tripecta of fishing, fowling, and navigating. Plaintiffs assert that pursuant to Maine common law, the scope of permissible common law uses is broader than those three activities (and broader than uses connected with them) and furthermore, that "the public trust extends to whatever the state sees fit to allow and regulate exercising its sovereign police power and through its own legislative and regulatory processes." (Compl. Count IV).

This controversy presents the court with an opportunity to move beyond fishing, fowling, and navigation to declare the full scope of public uses of the intertidal zone consistent with the

public trust, vindicating a cause that has been waiting at least since Justice Wathen's *Bell II* dissent in 1989.

I. THE PUBLIC TRUST EXTENDS BEYOND THE 17th CENTURY NOTION OF FISHING, FOWLING, AND NAVIGATION

Thus, we should acknowledge the problems created by our holding in *Bell* before landowners and the public are forced through years of uncertainty and unworkable restrictions founded upon a faulty legal analysis.

Eaton v. Town of Wells, 2000 ME 176, ¶ 49, 760 A.2d 232 (Saufley, J., concurring).

A. The Common Law recognizes broader uses than fishing, fowling, and navigating.

Maine common law has long implied if not directly stated that the three Colonial Ordinance uses were simply illustrative of the many reasonable ocean-based uses that are and have long been permissible in the state's intertidal zone. That public trust uses are not circumscribed by the fishing, fowling, and navigating triumvirate is not new:

[A]lthough not expressly stated in any one opinion, our common law has regularly accommodated the public's right to cross the intertidal land to reach the ocean for ocean-based activities. The list of uses that have been accepted within the common law, but which do not fall strictly within the definitions of "fishing," "fowling," and "navigation," is significant. As we have held, the public may engage in activities that are not directly related to the three descriptors.

McGarvey v. Whittredge, 2011 ME 97, ¶ 51, 28 A.3d 620. Moreover, those three categories have been given a "sympathetically generous" interpretation, leading to recognized uses that test the limits of the seemingly strict and defined categories under which the Colonial Ordinance would place them. *See Id.* at ¶ 39, 28 A.3d 620.

For example, in several cases, "fishing" was held to include worm digging, clamming, and digging for other shellfish. *State v. Lemar*, 147 Me. 405, 409, 87 A.2d 886, 888 (1952) (worms); *State v. Leavitt*, 105 Me. 76, 78-80, 72 A. 875, 876-77 (1909) (clams); *Moulton v. Libbey*, 37 Me. 472, 489-90 (1854) (shellfish). Similarly, "navigation" was interpreted to allow the public to cross

over water that was frozen, including by horseback or on skates, *see French v. Camp*, 18 Me. 433, 434-35 (1841); *Marshall v. Walker*, 93 Me. 532, 536-37, 45 A. 497, 498 (1900); to moor a boat, drop passengers off, and load cargo, *see State v. Wilson*, 42 Me. 9, 24-25 (1856). The status required to enjoy public trust rights and the motivations for exercising one's rights and has also been given an expansive interpretation, which has in turn broadened over time. *Bell v. Wells*, 557 A.2d 168, 186 (Me. 1989) (original Colonial Ordinance only granted fishing and fowling rights "to inhabitants who were householders") (Wathen, J., dissenting). Today, any member of the public may engage in recognized public trust uses for recreation or pleasure; business or commerce; as well as for nourishment. *See Barrows v. McDermott*, 73 Me. 441, 449-50 (1882); *Andrews v. King*, 124 Me. 361, 363-64, 129 A. 298, 298-99 (1925).

As in other areas of the law, common law uses reflected society and the era in which the controversy arose. *See McGarvey*, 2011 ME at ¶ 37, 28 A.3d 620 ("[Prior to *Bell II*] our courts had consistently acknowledged that the public trust rights in the intertidal land adapted to reflect the realities of use in each era.") (citing *Bell II* and *Marshall v. Walker*). Some permissible uses of the intertidal that pre-date the Colonial Ordinance, including for pre-automobile travel and for driving and resting cattle, would appear foreign to modern beachgoers and have fallen out of favor as our transportation system and economy has modernized. *Bell II*, 557 A.2d at 173 n.15. Non-boat-based travel and walking or herding cattle in the intertidal clearly do not fit under any of the three Colonial Ordinance categories, and would fairly open up the public trust to a wide variety of uses by analogy. Non-boat-based travel and walking cattle in the intertidal zone certainly undercuts the idea that fishing, fowling, and navigating and activities connected thereto are the limits of public trust.

B. This court should adopt the rationale as expressed by Former Chief Justice Saufley's concurrence in *McGarvey*.

McGarvey split the Law Court into two concurring opinions of three justices, yielding no majority opinion. The court unanimously agreed that the trial court's judgment that scuba diving was a permissible use in the intertidal zone should be affirmed, but could not agree on the reasoning. The case brought into sharp focus the limits of interpreting fishing, fowling, and navigating when presented with a use—scuba diving—that was reasonable and long recognized along Maine's shores, but did not fit easily under the 17th century conception of “navigation.”

The Saufley concurrence (joined by Justices Mead and Jabar) would have overruled *Bell II* to the extent that opinion could be read to limit public trust uses to fishing, fowling, and navigating. Chief Justice Saufley wrote:

We must also acknowledge, as the concurrence notes, that our language in *Bell II* appears to set in stone the three talismanic activities to which the walk to the ocean must be tied: “fishing,” “fowling,” and “navigation.” See 557 A.2d at 173. Resigned to those categories in light of principles of stare decisis, the concurrence has found a way to define “navigation” generously, as including scuba diving. Rather than stretching the definitions of these three terms beyond their reasonable limits, however, we return to the roots of the common law. Ultimately, the public trust rights in the intertidal zone are not, and have never been, strictly enumerated rights. To the extent that *Bell II* can be read to forever set the public's rights in stone as related to only “fishing,” “fowling,” and “navigation,” we would expressly disavow that interpretation. We believe the better approach is to extract the principles upon which the *Bell II* opinion was decided and evaluate those principles in light of the centuries-old jurisprudence governing ownership and use of the intertidal lands. See *Shaw v. Jendzejec*, 1998 ME 208, ¶ 9, 717 A.2d 367, 371 (discussing principles involved when the Court determines whether a prior decision should be overruled).

McGarvey, 2011 ME at ¶¶ 51-53, 28 A.3d 620. Rather than the fishing, fowling, and navigating analysis, Chief Justice Saufley proposed a test that public trust rights could include ocean-based uses that, consistent with common law, strike “a reasonable balance between private ownership of the intertidal lands and the public's use of those lands.” *Id.* at ¶¶ 49, 57, 28 A.3d 620.

The Saufley concurrence did not work from a blank slate; the opinion picked up right where Justice Wathen left off in his *Bell II* dissent. In dissent, Justice Wathen stated plainly “I do not agree that public recreational rights in the Maine coast are confined strictly to ‘fishing,’ ‘fowling,’ and ‘navigation’, however ‘sympathetically generous’ the interpretation of those terms might be.” *Bell II*, 557 A.2d at 180 (Wathen, J., dissenting). He “rejected a rigid application of the terms of the Ordinance and resorted to contemporary notions of usage and public acceptance in order to strike a rational and fair balance between private ownership and public rights.” *Id.* at 188 (Wathen, J., dissenting). He concluded, citing extensive historical and common law authorities, that “[t]he rights of the public are, at a minimum, broad enough to include such recreational activities as bathing, sunbathing and walking.” *Id.* at 189 (Wathen, J., dissenting). He reached that conclusion, in part, by acknowledging that confining public trust to fishing, fowling, and navigating uses would produce seemingly arbitrary and inconsistent results:

[A] narrow view would recognize the right to picnic in a rowboat while resting on the foreshore but brand as a trespass the same activities performed while sitting on a blanket spread on the foreshore. The narrow view taken by the Massachusetts court does not exclude the public from walking on the foreshore as it purports; it merely requires that a person desiring to stroll along the foreshores of that state take with him a fishing line or net. In keeping with the apparent purpose of the Colony Ordinance and its past decisions, the Maine Supreme Judicial Court can refuse to draw such a delicate distinction between the rights expressly reserved in the ordinance and similar recreational activities. With such a refusal the court will avoid the anomalous result of declaring the same man a trespasser for bathing, who was no trespasser when up to his knees or neck in water, in search of a lobster, a crab, or a shrimp.

Id. (citation and quotation marks omitted). Justice Wathen wryly wrote, “[g]iven similar degrees of intensity of use, one would imagine that a shoreowner might prefer the presence of sunbathers, swimmers and strollers over fowlers and fishermen.” *Id.*

In *McGarvey*, the competing concurrence, authored by then-Justice Levy, instead held that scuba diving could fit within “navigation,” largely out of respect for *stare decisis*. *McGarvey*,

2011 ME at ¶ 59, 28 A.3d 620 (Levy, J., concurring). The Levy concurrence took a narrow view of the common law justification for broadening public trust rights and expressed concern about disrupting the balance between public and private rights that had existed for a long time. *Id.* at ¶¶ 59-78, 28 A.3d 620 (Levy, J., concurring).

Since *McGarvey*, the Law Court has yet to decisively choose the appropriate analysis for other recreational uses of the intertidal zone that do not neatly fit within the Colonial Ordinance triumvirate. *See, e.g., Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 20, 206 A.3d 283; *Almeder v. Town of Kennebunkport*, 2014 ME 139, ¶ 36, 106 A.3d 1099 (declining to reach public trust issue). Although not germane to the Ross decision, Chief Justice Saufley took the opportunity to author another poignant concurrence that again raised the missed opportunity to overrule *Bell II*:

In 1989, the Law Court, in a sharply divided opinion, made a regrettable error, limiting public access to the intertidal zones on Maine's beaches in *Bell v. Town of Wells (Bell II)*, 557 A.2d 168 (Me. 1989). Since that time, a member of the public has been allowed to stroll along the wet sands of Maine's intertidal zone holding a gun or a fishing rod, but not holding the hand of a child.

Id. at ¶ 34, 206 A.3d 283. She continued, “we would take this opportunity to correct the judicial error that restricted the rights of the public to engage in reasonable ocean-related activities that do not interfere with the upland owners’ peaceful enjoyment of their own property or their right to wharf out.” *Id.* at ¶ 40, 206 A.3d 283.

It is against this backdrop that the present controversy, in which the Plaintiffs are engaging in a panoply of diverse uses in the intertidal zone, that finally presents the case and begs the holding that cases concerning Moody Beach, scuba diving, Goose Rocks Beach, and rockweed harvesting could not. The court should consider then-Justice Saufley’s first concurrence in *Eaton v. Town of Wells*, before *McGarvey* and before *Ross*:

As long as the public’s legally cognizable interest in the intertidal zones remains artificially constricted by the holding in *Bell*, each time that the public and a private

landowner clash over the scope of allowed recreational use of intertidal zones, the resolution will be uncertain. If such disputes reach litigation, the public will be required to prove actual historic use of the intertidal zone at issue for “recreational” purposes. In each case, the landowner will be forced to defend against the possibility of ever-expanding prescriptive rights in the public.

Eaton v. Town of Wells, 2000 ME 176, ¶ 49, 760 A.2d 232. Now is the time to quell this uncertainty. Now is the time to overturn *Bell II*.

II. PLAINTIFFS ARE ENGAGED IN LAWFUL PUBLIC TRUST USES OF THE INTERTIDAL ZONE

A. Plaintiffs are engaged in reasonable ocean-related recreational uses that do not interfere with the upland owners’ peaceful enjoyment of their property.

In this court’s April 15, 2022 order, the court stated “it is not clear from the complaint . . . what activities the Plaintiffs prefer to engage in, in the intertidal area” (Order at 25). The issue has now been thoroughly clarified: as set forth in Plaintiffs’ supported statements of material fact, the Plaintiffs (and Defendants too) are engaging in a panoply of recreational uses in the intertidal zone, including but not limited to (1) walking, (2) sitting, (3) paddleboarding, (4) surfing, (5) building sandcastles, (6) bird watching, (7) running, (8) stretching, (9) walking slowly or meandering, (10) playing frisbee, (11) playing bocci, (12) boogie boarding, (13) body surfing, (14) resting, (15) looking at the water, (16) digging holes, (17) playing kickball, (18) reading, (19) playing baseball, (20) observing wildlife, (21) playing and splashing in the water, (22) jogging, (23) sitting in beach chairs, (24) beachcombing (looking for rocks, shells, crabs, periwinkles, etc.), (25) skimboarding, (26) playing tag football (27) playing paddleball, (28) playing Whiffle ball, (29) playing catch with various balls, (30) playing in tide pools, (31) playing hand tennis, (32) flying a kite, (33) having lunch or picnicking, (34) walking a dog, (35) wading in the water, (36) standing where waves crash. Need we go on?

The point, of course, is that these may be different activities, but ultimately, when examined altogether, or as a whole, they lack meaningful distinctions. The point is underscored when one considers their impact upon the private property owner, relative to a clammer disturbing the sand and mud to dig clams, a boater ferrying passengers and cargo, or thrill-seekers skating or riding horses over the frozen waters—all of which are firmly established public trust uses under the case law. If those are fine and reasonable, why not bocci?

Moreover, the Defendants in this case are reasonable people whose testimony is in accord with Plaintiffs. When asked, Defendants honestly conceded that the public has the right to engage in activities such as walking, running, bird watching, surfing, and building sandcastles in the intertidal zone. Though their signs state otherwise, Defendants themselves claim to not restrict those activities, which suggests that they too recognize reasonable recreational uses of the intertidal that do not fit under the fishing, fowling, and navigating framework.

Unlike in *McGarvey*, where the court had only the question of scuba diving before them, the question of a general recreation easement is squarely presented here. The court should declare that the Plaintiffs' intertidal activities are all "reasonable ocean-related activities that do not interfere with the upland owners' peaceful enjoyment of their own property or their right to wharf out," *Ross*, 2019 ME at ¶ 40, 206 A.3d 283, and that general recreation, consistent with Plaintiffs' uses, is permitted.

B. Plaintiff Professor Brian Beal's academic research activities are also reasonable ocean-related activities that do not interfere with the upland owners' peaceful enjoyment of their property.

Plaintiff Brian Beal is a professor of Marine Ecology at the University of Maine at Machias. Besides recreation and clamming, Professor Beal's "activities in the intertidal portion of the Maine coast ... include performing research on commercially important shellfish, marine worms,

rockweed, and other intertidal organisms.” PSMF ¶ 136. Privatization of Maine’s intertidal zone has had a chilling effect on Professor Beal’s research opportunities. *Id.* at ¶ 139.

The Law Court has never addressed whether research activities conducted in the intertidal zone are permitted. Like the various recreational activities above, the court would be making distinctions without a meaningful difference by trying to parse which research activities are permitted. For example, a rule that research connected to permissible public trust “fishing” uses are allowed (sea worms, shellfish), while research into rockweed (theoretically not permissible under deeply flawed ruling in *Ross*) would not be allowed, makes arbitrary distinctions in a manner that does not meaningfully further or protect the upland private property owner’s rights.

The court should hold and declare that ocean-based research activities are similarly “reasonable ocean-related activities that do not interfere with the upland owners’ peaceful enjoyment of their own property or their right to wharf out.” *Ross*, 2019 ME at ¶ 40, 206 A.3d 283.

C. Harvesting seaweed in the intertidal zone is and has been a public trust right since “time immemorial” and must be confirmed as such.

The court has expressed skepticism that the Plaintiffs engaged in the seaweed fishery will prevail in light of the Law Court’s decision in *Ross*. (Order at 25 n.11.) Not so fast! (with all due respect). This Court may set aside *Ross* for the following reasons: (1) this Court is not constrained by an erroneous factual stipulation between the parties that rockweed is a plant; (2) this Court is presented with historic common law authorities and current statutes that illustrate the Legislature has made the policy determination—consistent with longstanding common law—that seaweed is a marine organism within the ambit of resources controlled by the State under public trust; and lastly, (3) in light of (1) and (2), this Court must apply a legal analysis that does not start from the faulty assumption that seaweed is privately owned and thus harvesting seaweed unreasonably burdens private property owners.

In short, *Ross* must be set aside because it is contrary to scientific fact; upended without justification longstanding beliefs about the seaweed fishery by the Legislature, the Department of Marine Resources, and the stakeholders including Plaintiffs engaged in seaweed commerce; and either did not construe or overlooked statutory authority that illuminates historic common law recognition of seaweed as a public resource, as well as present applicable statutes.

Maine has been deemed an outlier in public trust jurisprudence by experts and academics. *See* Tarlock & Robison, *Law of Water Rights and Resources* § 8:20, n.1 (July 2020) (“[*Ross*] will probably remain unique to Maine given its twisted and unclear public trust jurisprudence.”). This case can correct and clarify the public trust once and for all.

1. *Ross* holds that removing plants from the intertidal is not a cognizable public trust right.

In *Ross*, the Law Court, based on concessions that seaweed was a plant and indistinguishable from terrestrial plants growing in beach soil, and thus not “fishing,” held that “rockweed attached to and growing in the intertidal zone is the private property of the adjacent upland landowner.” *Ross*, 2019 ME at ¶¶ 27, 33, 206 A.3d 283. The Defendant in *Ross* failed to raise relevant statutes at the trial court level and likewise failed to bring longstanding common law authority to the Court’s attention (discussed below).¹ As a result, the Law Court has not had occasion to construe the framework of existing statutory and common law public trust rights to harvest seaweed in Maine’s intertidal land.

¹ The Court avoided the issue by concluding that an argument developed by DMR and adopted by defendants had been waived: “The Department of Marine Resources, as amicus curiae, argues that 1 M.R.S. § 2(2-A) (2018), which governs State regulation of harvesting of marine resources, establishes the public’s right to harvest rockweed from the intertidal zone because the statute vests ownership of that seaweed with the State and therefore not with the upland property owners. In a one-sentence footnote in its reply brief, Acadian states that it adopts the Department’s arguments. *This contention, however, was not meaningfully developed in the trial court and is therefore not preserved for appellate consideration.*” *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 5 n.2, 206 A.3d 283 (emphasis added).

Ross is a mere four years old. The Law Court has previously found that the doctrine of *stare decisis* “is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience.” *Adams v. Buffalo Forge Co.*, 443 A.2d 932, 935 (Me. 1982) (citation omitted). “The Court’s adherence to a prior decision must be exercised with a view to whether adherence to past error or departure from precedent constitutes the greater evil to be suffered.” *Id.* See also *Eaton*, 2000 ME 176, §54-55, 760 A.2d at 249 (Saufley, J., concurring) (referring to *Adams*, “[J]udicial unease with the Bell analysis far outweighs the admittedly important policy of following precedent.”).

As matters of first impression, a review of full common law authority and statutory recognitions of Maine’s public trust interest in the harvesting of seaweed in the State’s intertidal land as a public marine resource is ripe for this court to decide.

2. Seaweed is an alga, not a plant.

The defendant in *Ross* stipulated that rockweed was a plant, but this contravenes scientific fact. Rockweed is not a plant, it is an alga which has no roots but rather secures itself by a “holdfast”, similar to oysters, mussels, barnacles and unlike terrestrial plants, derives its nutrients only from sea water. See DMR Fishery Management Plan at 4 (Rockweed attaches to the substratum by a disc-like “holdfast”); (Pl.’s S.M.F. ¶¶ 193-98); see also *The Judicial Privatization of Wild Seaweed in Maine*, Leoni, Reiter and Post, Natural Resources & Environment (ABA), Vol. 36, No. 3, Winter 2022, page 2; Sarah M. Reiter et al., *The Future of the Public Trust: The Muddied Water of Rockweed Management in Maine*, 25 Ocean & Coastal L.J. 325, 355 (2020) (“[T]he Court’s decision in *Ross v. Acadian Seaplants Ltd.* . . . lacks a scientific foundation treatment of Rockweed as a terrestrial plant fails to consider taxonomic, phylogenetic, biological, or

ecological data. Scientifically, Rockweed is not a plant.”) In addition, unlike plants, “rockweed has a sex, either male or female, and releases sperm or eggs into the sea.” (Pl.’s S.M.F. ¶ 195); DMR Fishery Management Plan at 5. Seaweed thus does not derive nutrients from the soil (*jus privatum*) but rather the sea water (*jus publicum*).

The court should hold that seaweed is a reasonable public trust use that is, consistent with taking live shellfish, squarely within the public’s rights in the intertidal zone.

3. As a matter of common law dating back to 1820 and to “time immemorial” before that, seaweed has been a public resource held in trust by the State.

This misclassification of rockweed as a rooted terrestrial plant in *Ross*, while important to that decision, has little bearing however on the ability of harvesters to access rockweed in the intertidal land under the public trust. The Maine legislature, and numerous states across the country, consider marine organisms including seaweed as public trust resources. *Reiter, supra*, at 327. “[*Ross*] strays from that norm, where states predominantly consider access to marine organisms as part of the public trust.” *Id.*

Dating back to 1820, and “from time immemorial” before that, citizens of Maine have held a public trust right to access rockweed and other sea weeds in the intertidal zone. *See* R.S. ch. III, § 5 (June 14, 1820). Similarly historic enactments confirmed this common law understanding in neighboring Massachusetts. *See* Mass. Gen. Laws Ch. 247, § 5 (1859) (“[a]ny person may take and carry away kelp or other sea-weed between high and low water mark”).²

The 1820 statute applied to Kennebunk and Wells, but evidences established common law uses and social understanding that the people of newly-formed Maine “have been accustomed” to

² Maine courts “shall take judicial notice” of the common law and statutes of every other state.” 16 M.R.S. § 402, *see also Strout v. Burgess*, 144 Me. 263, 274, 68 A.2d 241, 249-50 (1949).

“the privileges of obtaining clams, sea-weed, rockweed from the beaches or flats” from “*time immemorial*” and that those use rights shall continue. R.S. ch. III, § 5 (June 14, 1820).

The *Ross* Court’s common law analysis was also incomplete in reconciling applicable case law. The Court concluded in a footnote that several somewhat conflicting cases addressing seaweed in Maine’s jurisprudence were not dispositive. *Ross*, 2019 ME at ¶ 27 n.10, 206 A.3d 283 (discussing *Hill v. Lord* and *Marshall v. Walker*). With a more fulsome picture of the common law and science of seaweed, those cases can be easily reconciled by distinguishing the taking of live marine organisms from dead ones. *Compare Marshall*, 93 Me. at 536-37, 45 A. at 498 (harvesting live clams considered public trust right, but not to “take shells or mussel manure”), *with Hill v. Lord*, 48 Me. 83, 00 (1861) (seaweed “washed ashore by the tides...is much more analogous to the *jus alluvionis* of riparian owners”).

With reference to the full scope of common law uses the 1820 statute underscores, and without the unhelpful and scientifically erroneous assumption that seaweed is a plant, this court should hold that taking seaweed within the regulatory limits set by the state, is and has always been, a common law public trust right.

4. As a matter of affirmative statutory authority and policy, the Legislature has delegated authority to manage and regulate seaweed to the expertise of DMR.

In addition to upending common law norms, *Ross* declined to construe applicable statutory authority. In legislation dating back to 1975, the State Legislature has declared that the State of Maine alone “owns and shall control the harvesting of the living resources of the seas adjoining the coastline [c]ontrol over the harvesting of these living resources shall be by licenses or permits issued by the Department of Marine Resources.” 1 M.R.S. §2-A. The definition of these living, marine resources is further defined by statute. A “marine resource” means “all renewable

marine organisms and the entire ecology and habitat supporting those organisms.” 12 M.R.S. §6001(27). A “marine organism” is defined as “any animal, plant or other life that inhabits waters below head of tide.”³ 12 M.R.S. § 6001(26). That public right has already been established by the Maine Legislature where “any animal, plant or other life that inhabits waters below head of tide” is owned not by an upland property owner, but rather by the State of Maine.

The common law and statutory framework that over the years has allowed harvesters such as NAK and Ocean Organics to establish and grow their businesses and livelihoods along the coast of Maine, was built upon the premises that like all other marine organisms, seaweed belongs to all of Maine’s citizens, not just those who are fortunate enough to own upland property.⁴ That public trust right had been unquestioned and undisturbed until the *Ross* decision.

D. Public trust uses are better addressed by the Legislature than the Courts

As a broader point, harkening back to Justice Wathen’s *Bell II* dissent, the courts are not in the best position to create intertidal policy. That task is more appropriately the realm of the Legislature. *Bell II*, 557 A.2d at 189 (Wathen, J., dissenting) (“On the record before us it is only necessary to rule that the plaintiffs are not entitled to a declaration restricting the public rights to fishing, fowling and navigation. Any further refinement should await common law development or legislative action.”).

The current case law (*Bell II*, *Ross*) has created more confusion and controversy than solutions and has shown the limits of judicial intervention to create broadly-applicable rules. Is there is a difference between swimming which is allowed and bathing, which is not allowed? How

³ “Head of tide” has been defined as “the inland or upstream limit of water affected by the tide”, in other words, the intertidal land. 36 M.R.S. § 1132(5).

⁴ The Law Court’s later decision in *Almeder v. Town of Kennebunkport*, 2019 ME 151, ¶ 60, 217 A.3d 1111 brings additional uncertainty to the *Ross* decision where *Almeder* recognized that any purported rights an upland owner may claim in the intertidal must be proven on a case-by-case basis.

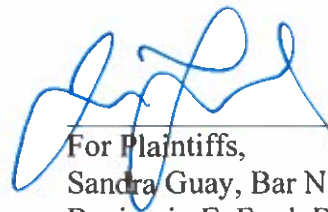
much time must a swimmer tread water before he could be considered a trespassing bather? Is body surfing navigation? How lazy can a fisherman be before she is considered a trespasser? Must her line be in the water? Must she use the right kind of bait? Can a lobsterman set a trap on the shore and wait for the tide to come in?

Ross similarly illustrates the perils of elevating legal analysis, analogy, and procedure over science and making policy without input from experts. Respectfully, judges are not scientists and courts are at a disadvantage in rendering policy decisions without the resources and data available to other branches of state government, including the Legislature and the Department of Marine Resources. The case law only highlights the need to place the public trust back where it belongs: into the hands of an elected legislature.

CONCLUSION

Plaintiffs respectfully request summary judgment on Count IV, that the court declare that the Plaintiffs are engaged in lawful recreational uses of the intertidal and that Plaintiffs engaged in the taking of live seaweed from the intertidal zone are engaged in lawful public trust uses.

Dated at Portland, Maine this 2nd day of May 2023.



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NOTICE

Pursuant to Rule 7(b)(1), notice is hereby given that any matter in opposition must be filed no later than 21 days after the filing of the enclosed motion unless another time is provided by the Maine Rules of Civil Procedure or set by the Court. Opposition to this motion must comply with the requirements of Rule 56(h), including specific responses to each numbered statement in the moving party's statement of material facts, with citations to points in the record or in affidavits filed to support the opposition. Not complying with Rule 56(h) in opposition to the motion may result in entry of judgment without hearing. Additionally, failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice of hearing.

PETER AND KATHY MASUCCI, et al.,)
)
 Plaintiffs)
)
 v.)
)
 JUDY’S MOODY LLC, et al.,)
)
 Defendants)
 and)
)
 AARON FREY,)
 Attorney General for the State of Maine)
)
 Party in Interest)

**REQUEST BY DEFENDANTS EDWARD
 PAGE, CHRISTINE PAGE,
 JAMES LI, KIM NEWBY, & ROBIN
 HADLOCK SEELEY FOR ATTORNEY’S
 FEES PURSUANT TO ANTI-SLAPP
 STATUTE, 14 M.R.S. §556**

Defendants Edward Page, Christine Page, James Li, Kim Newby, and Robin Hadlock Seeley (collectively “PLNS Defendants”), hereby submit this Request for Attorney’s Fees pursuant to Maine’s anti-SLAPP statute (“Statute”). The Statute provides, “If the court grants a special motion to dismiss, the court may award the moving party costs and reasonable attorney’s fees, including those incurred for the special motion and any related discovery matters.” 14 M.R.S. § 556. The PLNS Defendants’ anti-SLAPP special motion to dismiss was granted in its entirety by the Court’s Order dated April 18, 2022 (“Order”).

As discussed below, attorney’s fees should be awarded in this case because: 1) Petitioners’ claims against the PLNS Defendants were meritless; and 2) the conduct for which the PLNS Defendants were sued was clearly protected First Amendment petitioning activity under the Statute. The legislative purpose behind the Statute is to deter meritless lawsuits that could chill protected petitioning activity. Thus, the purpose of the Statute supports an award of attorney’s fees in this case.

1. Petitioners' Underlying Claims Against the PLNS Defendants Were Meritless

“The stated purpose of Maine’s anti-SLAPP statute is to shield defendants from the burden of meritless litigation.” *Franchini v. Investor's Bus. Daily, Inc.*, 981 F.3d 1, 7 (1st Cir. 2020); *see also Schelling v. Lindell*, 2008 ME 59, ¶ 6, 942 A.2d 1226, 1229 (anti-SLAPP statute “is designed to guard against meritless lawsuits”). “The Court is more apt to award a party its costs when the claims against it are lacking in merit.” *Stanley Cottage, LLC v. Scherbel*, 2015 WL 4977716, at *5 (Me. Super. June 10, 2015), citing *Maietta v. Wainwright*, 2004 ME 53, ¶¶ 11-14, 847 A.2d 1169.

A. Plaintiffs' Title Claims Lack Merit

The Court dismissed all Plaintiffs’ claims related to state ownership of intertidal land (Counts II, III, and V) for failure to state a claim under Maine Rule of Civil Procedure 12(b)(6). Order at 20-24. These claims must therefore be deemed meritless. Not only are they meritless, but these claims run counter to centuries of established law governing title to intertidal land that has been continuously affirmed by courts in Maine and Massachusetts without a single dissenting opinion. *See* PLNS Defendants Motion to Dismiss for Failure to State a Claim at 3-7.

Further, plaintiffs’ legal theories on these title claims are not novel. The same argument has been made by Plaintiff Orlando Delogu in multiple appeals before the Law Court, which has either rejected or ignored it. *See, e.g., Bell v. Town of Wells*, 557 A.2d 168, 172 (Me. 1989) (“*Bell II*”) (argument that “the State of Maine on coming into the Union on separation from Massachusetts obtained title to its intertidal lands under the ‘equal footing’ doctrine” . . . was a “revisionist view of history [that] comes too late by at least 157 years”); *McGarvey v. Whittredge*, 2011 ME 97; *Flaherty v. Muther*, 2011 ME 32; *Almeder v. Town of Kennebunkport*,

2019 ME 151. Plaintiffs did not provide new facts or legal argument that would distinguish the current Complaint from past attempts.

As such, Plaintiffs knew that their title claims were contrary to Maine law but raised them against the PLNS Defendants anyway.

B. Plaintiffs' Use Claim Lacks Merit against PLNS Defendants

The sole claim to survive dismissal under Rule 12(b)(6) is Plaintiffs' Count IV regarding the public's rights to use privately owned intertidal property. Plaintiffs' allegations regarding their use of the PLNS Defendants' intertidal land relate solely to the commercial harvest of rockweed. Pl. Compl. ¶¶ 25-33, 60-62. As the Court noted in the Order, Plaintiffs' claim of a public right to cut and remove living, attached rockweed from intertidal land is foreclosed by *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45. As the Court stated, "The Law Court was clear in *Ross* that even under the flexible balancing approach the Law Court employs, removing marine plants from private intertidal land is not a permissible activity." Order at 25, n.11.

As such, Count IV of Plaintiffs' complaint regarding the public's rights to use intertidal property also fails to state a claim against the PLNS Defendants, who were sued solely because they requested that rockweed not be cut from their property (Pages, Li, and Newby) or because they advocated for rockweed conservation (Seeley). Plaintiffs may not be happy with the unanimous holding in *Ross* that rockweed attached to and growing in the intertidal zone is the private property of the intertidal landowner, 2019 ME 45, ¶¶ 33, 43, but it is the law. Plaintiffs knew that but sued the PLNS Defendants anyway. There is no merit to Plaintiffs' apparent attempt to relitigate *Ross* by forcing blameless private landowners to defend themselves in this suit.

Accordingly, all of Plaintiffs' claims against the PLNS Defendants are the kind of meritless claims that the Statute seeks to deter, and an award of attorney's fees to Defendants is supported by the policy behind the Statute.

2. Defendants Were Sued for Clearly Protected Petitioning Activity under the Statute

The policy behind Maine's anti-SLAPP Statute is to "provide protection for a citizen's fundamental right to petition the government, a right that the Legislature has given priority by enacting the anti-SLAPP statute." *Desjardins v. Reynolds*, 2017 ME 99, ¶ 18. "The question of whether to award costs corresponds to the policy goals of the anti-SLAPP statute." *Stanley Cottage, LLC v. Scherbel*, 2015 WL 4977716, at *5 (Me. Super. June 10, 2015). Because the PLNS Defendants were sued for actions that were clearly protected First Amendment petitioning, an award of attorney's fees is appropriate under the Statute.

A. Defendants Pages, Li, and Newby

As stated by the Court, "there can be little doubt that the Pages and Li & Newby's reports to Marine Patrol were an exercise of their right to petition" and that "the reason for the Pages and Li & Newby's involvement [in this suit], as evidenced by the complaint itself, is their respective reports to Maine Marine Patrol." Order at 11-12; *see also Desjardins v. Reynolds*, 2017 ME 99, ¶ 11 (reporting apparent illegal conduct to law enforcement authorities constitutes petitioning activity under Statute).

The Pages, Li and Newby's reports to Marine Patrol were fully grounded in law and fact. As a legal matter, the reports to Marine Patrol were made in reliance on the Law Court's unanimous holding in *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, that seaweed harvesters cannot remove rockweed from private intertidal property without the landowner's permission.

The Law Court's decision in *Ross* was an affirmance of a 2017 Superior Court holding. *Ross v. Acadian Seaplants, Ltd.* 2017 WL 1247566 (Me. Super. March 14, 2017).

As factual matter, the Pages' deed and Li & Newby's deed both contain explicit grants of the intertidal land from which rockweed was cut and removed. Order at 14-15. The Pages, Li, and Newby all observed the rockweed being cut and removed from their property. *Id.* The Maine Department of Marine Resources and Maine Marine Patrol confirmed that the Defendants were justified in contacting Marine Patrol. *Id.*; PLNS Defendants' Special Motion to Dismiss at 2-5.

B. Defendant Seeley

Regarding Defendant Robin Seeley, "Her writings and widely published conservation efforts are all 'statements reasonably likely to enlist public participation in an effort to effect' legislative or judicial consideration of the issue of rockweed conservation." Order at 12. The Court further stated, "it is clear from the complaint that the Plaintiffs' decision to name Seeley as a Defendant in the instant suit is a direct result of her rockweed conservation advocacy." *Id.* Thus, Seeley was sued solely for engaging in protected petitioning activity.

It cannot be contested that Seeley's petitioning activity was clearly supported by law. As stated by the Court, Plaintiffs alleged that "Seeley has published falsely suggestive material, unlawfully empowering shorefront property owners to deny rockweed harvesters access to the intertidal zones they own which lay adjacent to their upland properties." Order at 12. In other words, Seeley was informing landowners that attached, intertidal rockweed cannot be harvested without the landowner's consent. In doing so, she was restating the Law Court's unanimous 2019 holding in *Ross v. Acadian Seaplants*. As the Court stated in its Order, Plaintiffs did not even attempt to claim that Seeley's advocacy lacked legal or factual support. Order at 15.

Plaintiffs' inclusion of Seeley in this litigation is particularly egregious because she was sued purely for her public advocacy. Plaintiffs did not allege that they have attempted to use Seeley's intertidal land or that Seeley has prevented Plaintiffs, or anyone else, from using her intertidal land for any purpose. She was sued because she is an environmental activist and Defendants apparently disagree with her work to conserve rockweed. Plaintiffs' suit against Seeley is therefore a textbook SLAPP suit, "brought with the intention of chilling or deterring the free exercise of the defendant's First Amendment right to petition the government by threatening would-be activists with litigation costs." *Schelling v. Lindell*, 2008 ME 59, ¶ 6, 942 A.2d 1226, 1229.

Accordingly, the PLNS Defendants were forced to defend themselves in this litigation solely for engaging in the First Amendment right of petition that the Statute seeks to safeguard. An award of attorney's fees to Defendants is therefore supported by the Statute's purpose.

3. Fees Available

An award of fees under the anti-SLAPP statute may include fees incurred in litigating the special motion to dismiss under 14 M.R.S. § 556, as well as fees incurred in litigating an associated motion to dismiss under Maine Rule of Civil Procedure 12(b)(6). *Klein v. Demers-Klein*, 2019 WL 4248248 (Me. Super. Aug. 13, 2019) (Horton, J.). This is true even where the 12(b)(6) motion is found to be moot because the action has been dismissed under the anti-SLAPP special motion to dismiss. *See id.*; *Klein v. Demers-Klein*, 2019 WL 3064839 (Me. Super. Apr. 17, 2019) (Horton, J.). It is common for both such motions to dismiss to be brought in the same litigation because both are defenses against meritless claims. *See, e.g., id.*; *Nader v. Maine Democratic Party*, 2010 WL 10031012 (Me. Super. Nov. 15, 2010); *Millett v. Atlantic Richfield Co.*, 1999 WL 35298367 (Me. Super. Aug. 30, 1999).

Under the majority rule, fees may include those associated with the merits of the motion to dismiss as well as those associated with litigating the resulting fee claim. “[F]ollow[ing] the rule of the overwhelming majority of courts that have considered the question . . . absent circumstances rendering the award unjust, fees recoverable . . . ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim.” *Ketchum v. Moses*, 17 P.3d 735, 747–48 (Cal. 2001).

Attorney’s fees may also be awarded where the prevailing party in an anti-SLAPP motion to dismiss incurs additional legal costs defending the trial court’s dismissal on appeal to the Law Court. *Klein v. Demers-Klein*, 2020 WL 5881873 (Me. Super. July 28, 2020) (Horton, J.) (awarding attorney’s fees incurred by defendants in plaintiff’s appeal to Law Court of anti-SLAPP dismissal); *Fabre v. Walton*, 802 N.E.2d 1030 (Mass. 2004) (awarding defendant appellate attorney’s fees in plaintiff’s appeal of grant of anti-SLAPP motion to dismiss).

“The amount of litigation on this issue typically lies in the plaintiff’s hands: having litigated the matter tenaciously, [plaintiff] cannot ... be heard to complain about the time necessarily spent by the [defendant] in response.” *Ketchum*, 17 P.3d at 748.

4. Fees Requested

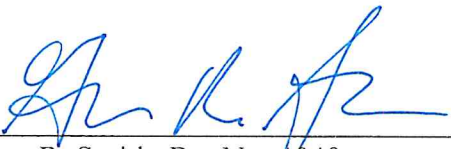
In support of this Request, Defendants attach the Affidavit of Gordon R. Smith (“Smith Affidavit”), which sets forth the attorney’s fees incurred to date by the PLNS Defendants related to the anti-SLAPP Special Motion to Dismiss granted by the Court on May 18, 2022, fees incurred by the PLNS Defendants for preparation of the associated 12(b)(6) motion to dismiss, and fees incurred in making this fee request.

As supported by the billing records attached to the Smith Affidavit, Defendants respectfully request that the Court approve and order Plaintiffs to pay Defendants \$47,204.00 in

necessary and reasonable legal fees and costs incurred to date pursuant to Maine's anti-SLAPP Statute, 14 M.R.S. § 556.

Defendants reserve the right to request additional fees incurred to defend this fee claim, including reply to Plaintiffs' opposition and participation in any hearing held by the court, as well as fees that may be incurred in any appeal brought by Plaintiffs of the Court's grant of the anti-SLAPP special motion to dismiss.

Dated: June 9, 2022

By: 
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PETER AND KATHY MASUCCI, et al.,)

Plaintiffs)

v.)

JUDY’S MOODY LLC, et al.,)

Defendants)

and)

AARON FREY,)
Attorney General for the State of Maine)

Party in Interest)

**AFFIDAVIT OF GORDON R. SMITH IN
SUPPORT OF REQUEST BY
DEFENDANTS EDWARD PAGE,
CHRISTINE PAGE, JAMES LI, KIM
NEWBY, & ROBIN HADLOCK SEELEY
FOR ATTORNEY FEES AND COSTS**

I, Gordon R. Smith, do hereby on oath depose and say:

1. I am of legal age, a member of the bar of the State of Maine, counsel at the law firm Verrill Dana, LLP, and since the commencement of litigation in the above-captioned matter, have been counsel of record for Defendants Edward Page, Christine Page, James Li, Kim Newby, and Robin Hadlock Seeley (collectively “PLNS Defendants”).

2. On April 18, 2022, this Court granted PLNS Defendants’ Special Motion to Dismiss pursuant to the Maine anti-SLAPP statute, 14 M.R.S. 556, in its entirety.

3. Attached to this Affidavit as Exhibit A are true copies of billing invoices for actual expenses incurred to date by PLNS Defendants for reasonable and necessary legal services related to: 1) the Special Motion to Dismiss; 2) PLNS Defendants’ Rule 12(b)(6) Motion to Dismiss; and 3) PLNS Defendants’ request for attorney’s fees.

4. Attached to this Affidavit as Exhibit B is a table identifying actual expenses incurred to date by PLNS Defendants for reasonable and necessary legal services related to: 1)

the Special Motion to Dismiss; 2) PLNS Defendants' Rule 12(b)(6) Motion to Dismiss; and 3) PLNS Defendants' request for attorney's fees.

5. As identified in Exhibits A and B, actual expenses incurred to date by Defendants for preparation of the anti-SLAPP Special Motion to Dismiss, Rule 12(b)(6) Motion to Dismiss, and request for attorney's fees, for reasonable and necessary legal fees attributable to Verrill Dana, LLP, are \$47,204.

6. Verrill Dana, LLP is a full-service firm with offices in Portland, Maine; Boston, Massachusetts; and Westport, Connecticut. The firm's applicable hourly rates, which went into effect on January 1, 2021, are as follows:

| | |
|-------------------|------------------------------|
| Partners/Counsel: | \$285.00 - \$905.00 per hour |
| Specialists: | \$225.00 - \$610.00 per hour |
| Associates: | \$210.00 - \$440.00 per hour |
| Paralegals: | \$140.00 - \$315.00 per hour |

7. I have practiced land use, environmental, and real estate law in Maine for over 15 years, with particular experience in land use litigation, intertidal property rights, and Maine's public trust doctrine.

8. I prepared the anti-SLAPP Special Motion to Dismiss and Rule 12(b)(6) Motion to Dismiss, including the supporting memoranda of law, in 2021. My hourly rate in 2021 was \$385.00.

9. I prepared the request for attorney's fees, including this affidavit, in 2022. My hourly rate in 2022 is \$410.00.

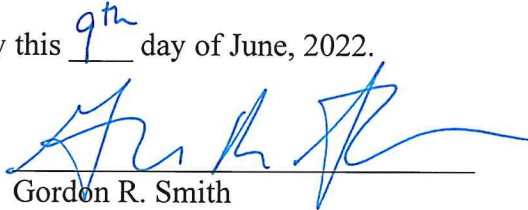
10. In addition to my services, other attorneys and support staff at Verrill Dana, LLP did work related to the anti-SLAPP Special Motion to Dismiss, Rule 12(b)(6) Motion to Dismiss, and request for attorney's fees in 2021 and 2022, including Attorneys Juliet T. Browne and Keith E. Glidden, and Paralegals Audrey B. Knight and Monica T. Tingley. Their respective hourly

rates were as follows:

Juliet T. Browne: \$455.00/hr. (2021)
Keith E. Glidden: \$415.00/hr. (2021) and \$445.00 (2022)
Audrey B. Knight: \$140.00/hr. (2021)
Monica T. Tingley: \$200.00/hr. (2022)

11. Verrill Dana, LLP prepared all legal documents and engaged all processes required to prepare the motions to dismiss with supporting memoranda of law, request for attorney's fees, and affidavit.

Signed under the penalties of perjury this 9th day of June, 2022.



Gordon R. Smith
Maine Bar No. 4040
Attorney for Defendants Edward Page,
Christine Page, James Li, Kim Newby,
Robin Hadlock Seeley

STATE OF MAINE
COUNTY OF CUMBERLAND, SS

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Gordon R. Smith, whose name is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date. Given under my hand and official seal this the 9th day of June, 2022.



NOTARY PUBLIC

My Commission Expires: _____

LESLIE G. NORTON
Notary Public, State of Maine
My Commission Expires July 06, 2026

EXHIBIT A

Verrill

One Portland Square
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000

Tax ID: 01-0176171

Edward Page, et al.
[REDACTED]

Invoice Date: June 11, 2021
Invoice Number: 582133
Matter Number: 15517-0001

*For Professional Services through **May 31, 2021***

Client: Edward Page, et al.
Matter: Intertidal Litigation

| | | |
|------------------------|----|---------------|
| Total Fees | \$ | [REDACTED] |
| Total Costs | \$ | <u>225.00</u> |
| Total Due This Invoice | \$ | [REDACTED] |

Time Detail

| <u>Date</u> | <u>Initials</u> | <u>Description</u> | <u>Hours</u> | <u>Amount</u> |
|-------------|-----------------|--|--------------|---------------|
| 05/03/21 | KEG | [REDACTED] | [REDACTED] | [REDACTED] |
| 05/04/21 | GRS | [REDACTED] | [REDACTED] | [REDACTED] |
| 05/05/21 | GRS | [REDACTED] | [REDACTED] | [REDACTED] |
| 05/06/21 | GRS | Analysis regarding deadline to file anti-SLAPP motion to dismiss; telephone conferences with Ms. Hadlock Seeley regarding [REDACTED] | 1.30 | 500.50 |
| 05/07/21 | CRS | [REDACTED] | [REDACTED] | [REDACTED] |
| 05/17/21 | CLJ | [REDACTED] | [REDACTED] | [REDACTED] |
| 05/18/21 | CLJ | [REDACTED] | [REDACTED] | [REDACTED] |
| 05/18/21 | GRS | Research and analysis regarding Anti-SLAPP motion to dismiss; [REDACTED] | 1.80 | 693.00 |
| 05/19/21 | KEG | Confer with Attorney Smith on [REDACTED] | 0.30 | 124.50 |
| 05/19/21 | GRS | Confer with Attorney Glidden regarding [REDACTED]; email correspondence with Ms. Hadlock Seeley [REDACTED] | 1.00 | 385.00 |
| 05/20/21 | GRS | [REDACTED] telephone conference and email correspondence with Ms. Hadlock Seeley regarding [REDACTED] | 0.70 | 269.50 |
| 05/21/21 | CLJ | [REDACTED] | [REDACTED] | [REDACTED] |
| 05/21/21 | GRS | Attention to Anti-SLAPP affidavits; [REDACTED] | 1.10 | 423.50 |
| 05/22/21 | GRS | Legal research and draft motion to dismiss under Maine Rule of Civil Procedure 12(b)(6) for failure to state a claim | 2.50 | 962.50 |
| 05/23/21 | GRS | Further research, analysis, and draft motion to dismiss under Maine Rule of Civil Procedure 12(b)(6) for failure to state a claim | 5.90 | 2,271.50 |
| 05/24/21 | GRS | Further research, analysis, and draft motion to dismiss under Maine Rule of Civil Procedure 12(b)(6) for failure to state a claim | 8.90 | 3,426.50 |

| <u>Date</u> | <u>Initials</u> | <u>Description</u> | <u>Hours</u> | <u>Amount</u> |
|--------------|-----------------|---|--------------|---------------|
| 05/25/21 | KEG | Confer with Attorney Smith regarding [REDACTED] | 1.10 | 456.50 |
| 05/25/21 | GRS | Further research, analysis, draft and revise motion to dismiss under Maine Rule of Civil Procedure 12(b)(6) for failure to state a claim; confer with Attorney Glidden regarding same; email clients regarding [REDACTED] | 10.90 | 4,196.50 |
| 05/26/21 | KEG | Review motion to dismiss and provide comments | 0.70 | 290.50 |
| 05/26/21 | GRS | Revise, finalize and file motion to dismiss for failure to state a claim under Maine Rule of Civil Procedure 12(b)(6); review motions to dismiss filed by other defendants | 4.40 | 1,694.00 |
| Total | | | [REDACTED] | \$ [REDACTED] |

Cost Summary

| <u>Description</u> | <u>Amount</u> |
|--------------------|-----------------|
| Filing Fee | 225.00 |
| Total | \$225.00 |



One Portland Square
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000

Tax ID: 01-0176171

Edward Page, et al.
[REDACTED]

Invoice Date: July 23, 2021
Invoice Number: 584105
Matter Number: 15517-0001

*For Professional Services through **June 30, 2021***

Client: Edward Page, et al.
Matter: Intertidal Litigation

| | | |
|------------------------|-----------|-------------------|
| Total Fees | \$ | [REDACTED] |
| Total Due This Invoice | \$ | [REDACTED] |
| Previous Balance Due | \$ | [REDACTED] |
| Amount Due | \$ | [REDACTED] |

Time Detail

| <u>Date</u> | <u>Initials</u> | <u>Description</u> | <u>Hours</u> | <u>Amount</u> |
|--------------|-----------------|---|--------------|---------------|
| 06/07/21 | KEG | [REDACTED] | [REDACTED] | [REDACTED] |
| 06/07/21 | GRS | [REDACTED] | [REDACTED] | [REDACTED] |
| 06/09/21 | GRS | [REDACTED] research and analysis regarding Anti-SLAPP motion to dismiss including review draft affidavits regarding interactions with rockweed harvesters and DMR | 1.10 | 423.50 |
| 06/21/21 | KEG | Confer with Attorney Smith regarding [REDACTED] [REDACTED] | 0.30 | 124.50 |
| 06/21/21 | GRS | Email correspondence with clients regarding [REDACTED] [REDACTED]; revise Page, Li, Newby and Hadlock Seeley affidavits | 2.40 | 924.00 |
| 06/22/21 | GRS | Attention to Page affidavit | 0.30 | 115.50 |
| 06/23/21 | GRS | Revisions to Page, Li/Newby, and Seeley affidavits | 2.10 | 808.50 |
| 06/28/21 | GRS | Legal research and draft special motion to dismiss under Maine Anti-SLAPP statute | 4.00 | 1,540.00 |
| 06/29/21 | GRS | Further analysis, draft, revise, and file special motion to dismiss and supporting memorandum of law under Maine Anti-SLAPP statute | 9.00 | 3,465.00 |
| 06/30/21 | GRS | Review plaintiffs' briefs in opposition to 12(b)(6) motions to dismiss for failure to state a claim | 0.70 | 269.50 |
| Total | | | [REDACTED] | \$ [REDACTED] |



One Portland Square
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000

Tax ID: 01-0176171

Edward Page, et al.
[REDACTED]

Invoice Date: August 6, 2021
Invoice Number: 584820
Matter Number: 15517-0001

*For Professional Services through **July 31, 2021***

Client: Edward Page, et al.
Matter: Intertidal Litigation

| | | |
|------------------------|-----------|-------------------|
| Total Fees | \$ | [REDACTED] |
| Total Due This Invoice | \$ | [REDACTED] |
| Previous Balance Due | \$ | [REDACTED] |
| Amount Due | \$ | [REDACTED] |

Time Detail

| <u>Date</u> | <u>Initials</u> | <u>Description</u> | <u>Hours</u> | <u>Amount</u> |
|--------------|-----------------|--|--------------|---------------|
| 07/06/21 | GRS | Email correspondence with Ms. Seeley [REDACTED]; review Attorney General's partial objection to 12(b)(6) motions to dismiss and email clients regarding [REDACTED] | 1.30 | 500.50 |
| 07/17/21 | GRS | Legal research and draft brief in reply to Plaintiffs' opposition to Defendants' 12(b)(6) motion to dismiss | 4.60 | 1,771.00 |
| 07/18/21 | GRS | Research, analysis, draft, and revise reply brief responding to Plaintiffs' arguments opposing 12(b)(6) motion to dismiss | 8.80 | 3,388.00 |
| 07/19/21 | GRS | Draft, revise and file reply brief addressing Plaintiffs' citation to Maine and U.S. Supreme Court case law and other arguments opposing 12(b)(6) motion to dismiss for failure to state a claim | 7.60 | 2,926.00 |
| 07/20/21 | GRS | Review reply briefs filed by Wells defendants on 12(b)(6) motions to dismiss; review Plaintiff Delogu opposition to Anti-SLAPP motion to dismiss; email client group regarding [REDACTED] | 0.90 | 346.50 |
| 07/21/21 | KEG | Confer with Attorney Smith regarding [REDACTED] | 0.50 | 207.50 |
| 07/21/21 | GRS | Review Plaintiffs' opposition to anti-SLAPP motion to dismiss; email correspondence with client group regarding [REDACTED]; confer with Attorney Glidden regarding [REDACTED] | 1.30 | 500.50 |
| 07/21/21 | ABK | Review of material for title research | 0.40 | 56.00 |
| 07/22/21 | ABK | Research in the Cumberland County Registry of Deeds | 1.00 | 140.00 |
| 07/23/21 | ABK | Research in the Knox County Registry of Deeds | 2.00 | 280.00 |
| 07/24/21 | ABK | Research in the Washington County Registry of Deeds | 1.00 | 140.00 |
| 07/25/21 | GRS | Review Li/Newby chain of title; email with Ms. Newby regarding [REDACTED]; outline reply brief in Anti-SLAPP motion | 2.80 | 1,078.00 |
| 07/26/21 | ABK | Research in the Cumberland, Knox and Washington County Registries of Deeds and e-mail to Attorney Smith | 2.60 | 364.00 |
| 07/29/21 | GRS | Confer with Paralegal Knight regarding [REDACTED] | 0.40 | 154.00 |
| 07/29/21 | ABK | Research in the Cumberland County Registry of Deeds [REDACTED] | 1.20 | 168.00 |
| 07/30/21 | ABK | Research in the Cumberland County Registry of Deeds and Title Memo to Attorney Smith | 2.50 | 350.00 |
| Total | | | [REDACTED] | \$ [REDACTED] |

Verrill

One Portland Square
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000

Tax ID: 01-0176171

Edward Page, et al.
[REDACTED]

Invoice Date: September 8, 2021
Invoice Number: 586105
Matter Number: 15517-0001

*For Professional Services through **August 31, 2021***

Client: Edward Page, et al.
Matter: Intertidal Litigation

| | | |
|------------------------|-----------|-------------------|
| Total Fees | \$ | [REDACTED] |
| Total Due This Invoice | \$ | [REDACTED] |
| Previous Balance Due | \$ | [REDACTED] |
| Amount Due | \$ | [REDACTED] |

Time Detail

| <u>Date</u> | <u>Initials</u> | <u>Description</u> | <u>Hours</u> | <u>Amount</u> |
|--------------|-----------------|--|--------------|---------------|
| 08/01/21 | GRS | Legal research and draft brief in reply to Plaintiffs' opposition to Anti-SLAPP motion to dismiss | 6.00 | 2,310.00 |
| 08/02/21 | GRS | Further legal research and draft brief in reply to Plaintiffs' opposition to Anti-SLAPP motion to dismiss; analysis regarding Page and Seeley title to intertidal land; confer with Paralegal Knight regarding [REDACTED]; telephone conference with [REDACTED] regarding [REDACTED] | 6.10 | 2,348.50 |
| 08/02/21 | ABK | Telephone conversation with Attorney Smith on [REDACTED] | 0.30 | 42.00 |
| 08/03/21 | JTB | Review draft reply brief | 0.40 | 182.00 |
| 08/03/21 | GRS | Analysis, draft, revise and file reply brief for Anti-SLAPP motion to dismiss; assemble Seeley affidavit and exhibits related to same | 6.80 | 2,618.00 |
| 08/05/21 | ABK | [REDACTED] | [REDACTED] | [REDACTED] |
| 08/06/21 | ABK | [REDACTED] | [REDACTED] | [REDACTED] |
| 08/09/21 | ABK | [REDACTED] | [REDACTED] | [REDACTED] |
| 08/10/21 | ABK | [REDACTED] | [REDACTED] | [REDACTED] |
| Total | | | [REDACTED] | \$ [REDACTED] |



One Portland Square, 10th Floor
Portland, Maine 04101-4054
(207) 774-4000

Tax ID: 01-0176171

Edward Page, et al.
[Redacted]

Invoice Date: May 16, 2022
Invoice Number: 599536
Matter Number: 15517-0001

For Professional Services through April 30, 2022

Client: Edward Page, et al.
Matter: Intertidal Litigation

| | | |
|------------------------|----|------------|
| Total Fees | \$ | [Redacted] |
| Total Costs | \$ | [Redacted] |
| Total Due This Invoice | \$ | [Redacted] |
| Less Retainer | \$ | [Redacted] |
| Previous Balance Due | \$ | [Redacted] |
| Amount Due | \$ | [Redacted] |

Time Detail

| <u>Date</u> | <u>Initials</u> | <u>Description</u> | <u>Hours</u> | <u>Amount</u> |
|-------------|-----------------|---|--------------|---------------|
| 04/20/22 | GRS | Review Superior Court order on motions to dismiss [REDACTED]; analysis of request for attorney's fees [REDACTED] | 1.90 | 779.00 |
| 04/22/22 | KEG | Confer with Attorney Smith regarding [REDACTED] | 0.60 | 267.00 |
| 04/22/22 | GRS | Confer with R. Seeley, E. Page, and C. Page regarding [REDACTED]; confer with Attorney Glidden regarding [REDACTED]; research attorney's fees provision of Anti-SLAPP statute | 1.90 | 779.00 |
| 04/25/22 | GRS | [REDACTED] | | |
| 04/25/22 | ABK | [REDACTED] | | |
| 04/25/22 | MTT | Review client invoices for time spent on Anti-SLAPP motion for attorney fees application; email Attorney Smith regarding [REDACTED] | 0.30 | 60.00 |
| 04/26/22 | KEG | Confer with Attorney Smith regarding [REDACTED] | 0.20 | 89.00 |
| 04/26/22 | GRS | [REDACTED] | | |
| 04/26/22 | ABK | [REDACTED] | | |
| 04/26/22 | MTT | Draft Application for fees and Affidavit of Gordon Smith in support of same; email both to Attorney Smith | 0.70 | 140.00 |
| 04/27/22 | KEG | [REDACTED] | | |
| 04/27/22 | GRS | Legal research, review and redact time entries, and draft request for attorney's fees and associated affidavit pursuant to grant of Anti-SLAPP special motion to dismiss [REDACTED] | 1.80 | 738.00 |
| 04/27/22 | GRS | [REDACTED] | | |
| 04/27/22 | GRS | [REDACTED] | | |
| 04/27/22 | ABK | [REDACTED] | | |

| <u>Date</u> | <u>Initials</u> | <u>Description</u> | <u>Hours</u> | <u>Amount</u> |
|--------------|-----------------|--|--------------|---------------|
| 04/28/22 | KEG | Further conference with Attorney Smith [REDACTED] | 0.50 | 222.50 |
| 04/28/22 | GRS | Further legal research and draft request for attorney's fees, affidavit, and exhibits related to grant of Anti-SLAPP special motion to dismiss | 1.90 | 779.00 |
| 04/28/22 | GRS | [REDACTED] | [REDACTED] | [REDACTED] |
| 04/28/22 | GRS | Further draft request and affidavit for attorney's fees under Anti-SLAPP motion to dismiss; attention to time entries related to same | 2.10 | 861.00 |
| Total | | | [REDACTED] | \$ [REDACTED] |

Timekeeper Summary

| <u>Name</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|--------------|--------------|-------------|---------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Total | | [REDACTED] | \$ [REDACTED] |

Cost Summary

| <u>Description</u> | <u>Amount</u> | |
|--------------------|---------------|---------------|
| [REDACTED] | [REDACTED] | |
| Total | | \$ [REDACTED] |

EXHIBIT B

EXHIBIT B
To Attorney Fee Affidavit

| Fees on Anti-SLAPP Special Motion to Dismiss | | | | |
|---|---------------------------------------|---|---------------------|--------------------|
| <u>Date</u> | <u>Attorney/ Paralegal</u> | <u>Description</u> | <u>Hours</u> | <u>Fees</u> |
| 05/06/21 | GRS | Analysis regarding deadline to file anti-SLAPP motion to dismiss; telephone conferences with Ms. Hadlock Seeley regarding [REDACTED] | .7 | \$269.50 |
| 05/18/21 | GRS | Research and analysis regarding anti-SLAPP motion to dismiss | .8 | \$308.00 |
| 05/19/21 | KEG | Confer with Attorney Smith on [REDACTED] | .3 | \$124.50 |
| 05/19/21 | GRS | Confer with Attorney Glidden regarding [REDACTED]; email correspondence with Ms. Hadlock Seeley regarding [REDACTED] | 1.00 | \$385.00 |
| 05/20/21 | GRS | Telephone conference and email correspondence with Ms. Hadlock Seeley regarding [REDACTED] | .5 | \$192.50 |
| 05/21/21 | GRS | Attention to anti-SLAPP affidavits | .6 | \$231.00 |
| 06/09/21 | GRS | Research and analysis regarding anti-SLAPP motion to dismiss including review draft affidavits regarding interactions with rockweed harvesters and DMR | .8 | \$308.00 |
| 06/21/21 | KEG | Confer with Attorney Smith regarding [REDACTED] | .3 | \$124.50 |
| 06/21/21 | GRS | Email correspondence with clients regarding [REDACTED]; revise Page, Li, Newby and Hadlock Seeley affidavits | 2.40 | \$924.00 |
| 06/22/21 | GRS | Attention to Page affidavit | .3 | \$115.50 |
| 06/23/21 | GRS | Revisions to Page, Li/Newby, and Seeley affidavits | 2.10 | \$808.50 |
| 06/28/21 | GRS | Legal research and draft special motion to dismiss under Maine anti-SLAPP statute | 4.00 | \$1,540.00 |
| 06/29/21 | GRS | Further analysis, draft, revise, and file special motion to dismiss and supporting memorandum of law under Maine anti-SLAPP statute | 9.00 | \$3,465.00 |
| 07/06/21 | GRS | Email correspondence with Ms. Seeley regarding [REDACTED] | .3 | \$115.50 |
| 07/20/21 | GRS | Review Plaintiff Delogu opposition to anti-SLAPP motion to dismiss; email client group regarding [REDACTED] | .6 | \$231.00 |
| 07/21/21 | KEG | Confer with Attorney Smith regarding [REDACTED] | .5 | \$207.50 |
| 07/21/21 | GRS | Review Plaintiffs' opposition to anti-SLAPP motion to dismiss; email correspondence with client group regarding [REDACTED]; confer with Attorney Glidden regarding [REDACTED] | 1.30 | \$500.50 |
| 07/21/21 | ABK | Review of material for title research | .4 | \$56.00 |

| <u>Date</u> | <u>Attorney/ Paralegal</u> | <u>Description</u> | <u>Hours</u> | <u>Fees</u> |
|---|--------------------------------|--|--------------|--------------------|
| 07/22/21 | ABK | Research in the Cumberland County Registry of Deeds | 1.00 | \$140.00 |
| 07/23/21 | ABK | Research in the Knox County Registry of Deeds | 2.00 | \$280.00 |
| 07/24/21 | ABK | Research in the Washington County Registry of Deeds | 1.00 | \$140.00 |
| 07/25/21 | GRS | Review Li/Newby chain of title; email with Ms. Newby regarding [REDACTED]; outline reply brief in anti-SLAPP motion | 2.80 | \$1,078.00 |
| 07/26/21 | ABK | Research in the Cumberland, Knox and Washington County Registries of Deeds and e-mail to Attorney Smith | 2.60 | \$364.00 |
| 07/29/21 | GRS | Confer with Paralegal Knight regarding [REDACTED] | .4 | \$154.00 |
| 07/29/21 | ABK | Research in the Cumberland County Registry of Deeds [REDACTED] | 1.20 | \$168.00 |
| 07/30/21 | ABK | Research in the Cumberland County Registry of Deeds and Title Memo to Attorney Smith | 2.50 | \$350.00 |
| 08/01/21 | GRS | Legal research and draft brief in reply to Plaintiffs' opposition to anti-SLAPP motion to dismiss | 6.00 | \$2,310.00 |
| 08/02/21 | GRS | Further legal research and draft brief in reply to Plaintiffs' opposition to anti-SLAPP motion to dismiss; analysis regarding Page and Seeley title to intertidal land; confer with Paralegal Knight regarding [REDACTED]; telephone conference with [REDACTED] regarding [REDACTED] | 6.10 | \$2,348.50 |
| 08/02/21 | ABK | Telephone conversation with Attorney Smith on [REDACTED] | .3 | \$42.00 |
| 08/03/21 | JTB | Review draft reply brief | .4 | \$182.00 |
| 08/03/21 | GRS | Analysis, draft, revise and file reply brief for anti-SLAPP motion to dismiss; assemble Seeley affidavit and exhibits related to same | 6.80 | \$2,618.00 |
| SUBTOTAL: Fees on Anti-SLAPP Special Motion to Dismiss | | | 59 | \$20,081.00 |

| Fees and Costs on Rule 12(b)(6) Motion to Dismiss | | | | |
|--|--------------------------------|---|--------------|-------------|
| <u>Date</u> | <u>Attorney/ Paralegal</u> | <u>Description</u> | <u>Hours</u> | <u>Fees</u> |
| 05/22/21 | GRS | Legal research and draft motion to dismiss under Maine Rule of Civil Procedure 12(b)(6) for failure to state a claim | 2.5 | \$962.50 |
| 05/23/21 | GRS | Further research, analysis, and draft motion to dismiss under Maine Rule of Civil Procedure 12(b)(6) for failure to state a claim | 5.9 | \$2,271.50 |
| 05/24/21 | GRS | Further research, analysis, and draft motion to dismiss under Maine Rule of Civil Procedure 12(b)(6) for failure to state a claim | 8.9 | \$3,426.50 |
| 05/25/21 | KEG | Confer with Attorney Smith regarding [REDACTED] | 1.1 | \$456.50 |

| <u>Date</u> | <u>Attorney/ Paralegal</u> | <u>Description</u> | <u>Hours</u> | <u>Fees</u> |
|--|--------------------------------|---|--------------|--------------------|
| 05/25/21 | GRS | Further research, analysis, draft and revise motion to dismiss under Maine Rule of Civil Procedure 12(b)(6) for failure to state a claim; confer with Attorney Glidden regarding same; email clients regarding [REDACTED] | 10.9 | \$4,196.50 |
| 05/26/21 | KEG | Review motion to dismiss and provide comments | .7 | \$290.50 |
| 05/26/21 | GRS | Revise, finalize and file motion to dismiss for failure to state a claim under Maine Rule of Civil Procedure 12(b)(6); review motions to dismiss filed by other defendants | 4.4 | \$1,694.00 |
| 05/26/21 | | Superior Court filing fee | | \$225.00 |
| 06/30/21 | GRS | Review plaintiffs' briefs in opposition to 12(b)(6) motions to dismiss for failure to state a claim | .7 | \$269.50 |
| 07/06/21 | GRS | Review Attorney General's partial objection to 12(b)(6) motions to dismiss and email clients regarding [REDACTED] | 1.0 | \$385.00 |
| 07/17/21 | GRS | Legal research and draft brief in reply to Plaintiffs' opposition to Defendants' 12(b)(6) motion to dismiss | 4.6 | \$1,771.00 |
| 07/18/21 | GRS | Research, analysis, draft, and revise reply brief responding to Plaintiffs' arguments opposing 12(b)(6) motion to dismiss | 8.8 | \$3,388.00 |
| 07/19/21 | GRS | Draft, revise and file reply brief addressing Plaintiffs' citation to Maine and U.S. Supreme Court case law and other arguments opposing 12(b)(6) motion to dismiss for failure to state a claim | 7.6 | \$2,926.00 |
| 07/20/21 | GRS | Review reply briefs filed by Wells defendants on 12(b)(6) motions to dismiss | .3 | \$115.50 |
| SUBTOTAL: Fees and Costs on Rule 12(b)(6) Motion to Dismiss | | | 57.4 | \$22,378.00 |

| Fees on Fee Request (to Date) | | | | |
|--------------------------------------|-----|--|----|----------|
| 04/20/22 | GRS | Review Superior Court order on motions to dismiss; [REDACTED]; analysis of request for attorney's fees | .7 | \$287.00 |
| 04/22/22 | KEG | Confer with Attorney Smith regarding [REDACTED] | .3 | \$133.50 |
| 04/22/22 | GRS | Confer R. Seeley, E. Page, and C. Page regarding [REDACTED]; confer with Attorney Glidden regarding [REDACTED]; research attorney's fees provision of Anti-SLAPP statute | .9 | \$369.00 |
| 04/25/22 | MTT | Review client invoices for time spent on Anti-SLAPP motion for attorney fees application; email Attorney Smith regarding [REDACTED] | .3 | \$60.00 |
| 04/26/22 | KEG | Confer with Attorney Smith regarding [REDACTED] | .2 | \$89.00 |

| <u>Date</u> | <u>Attorney/ Paralegal</u> | <u>Description</u> | <u>Hours</u> | <u>Fees</u> |
|--|--------------------------------|--|--------------|-------------|
| 04/26/22 | MTT | Draft Application for fees and Affidavit of Gordon Smith in support of same; email both to Attorney Smith | .7 | \$140.00 |
| 04/27/22 | GRS | Legal research, review and redact time entries, and draft request for attorney's fees and associated affidavit pursuant to grant of Anti-SLAPP special motion to dismiss | 1.8 | \$738.00 |
| 04/28/22 | KEG | Further conference with Attorney Smith regarding [REDACTED] | .5 | 779.00 |
| 04/28/22 | GRS | Further legal research and draft request for attorney's fees, affidavit, and exhibits related to grant of Anti-SLAPP special motion to dismiss | 1.9 | \$779.00 |
| 04/28/22 | GRS | Further draft request and affidavit for attorney's fees under anti-SLAPP motion to dismiss; attention to time entries related to same | 2.1 | \$861.00 |
| 05/05/22 | GRS | Further draft/revise request for attorney's fees | .7 | \$287.00 |
| 05/17/22 | GRS | Further legal research and draft request for attorney's fees under Anti-SLAPP statute | 1.9 | \$779.00 |
| SUBTOTAL: Fees on Fee Request (to Date) | | | 12 | \$4,745.00 |

| | | | | |
|--|--|--|-------|-------------|
| TOTAL: Hours, Fees, and Costs (to Date) | | | 128.4 | \$47,204.00 |
|--|--|--|-------|-------------|

4. Mr. Dennis has posted signs that read “Private Beach” and “Notice: Private Beach to Lowest Tide” and “No Trespassing” on the portion of Judy’s Moody’s seawall that faces the ocean. Exhibit 1, Dennis Dep. 47:4-7, 47:21-25, 48:11-15, 49:18-20.

5. None of these signs were permanent and some of them were removed naturally by the force of the ocean hitting the seawall. Exhibit 1, Dennis Dep. 48:3-6.

6. The presence of signs was not unique to Judy’s Moody and other beachfront properties on Moody Beach have signs on their seawall conveying that the beach is private. *See* Deposition of Peter Masucci (January 11, 2023) (“P. Masucci Dep.”) 146:1-5. A true copy of portions of the P. Masucci Dep. is attached hereto as Exhibit 2.

7. Plaintiffs are a group of individuals who contend that the “intertidal zone” is public property and that they are entitled to use the intertidal zone for any purpose allowed by the State. Pls.’ Compl. ¶¶ 63-65, ¶¶ 105-106. A true copy of Plaintiffs’ Complaint is attached for the Court’s convenience as Exhibit 3.

8. Plaintiff Dr. Brian Beal is a marine biologist who alleged in Plaintiffs’ Complaint that several beachfront owners denied him access to the intertidal zone. He has never been on Judy’s Moody’s intertidal property, personally observed signage on Judy’s Moody’s property, or been denied access to Judy’s Moody’s intertidal property. Exhibit 3, Pls.’ Compl. ¶ 15 and Pl. Brian Beal’s Answers to Defs.’ OA 2012 Trust’s and Judy’s Moody LLC’s First Set of Interrogatories No. 2. A true copy of Plaintiff Brian Beal’s Answers to Defs.’ OA 2012 Trust’s and Judy’s Moody LLC’s First Set of Interrogatories is attached as Exhibit 4.

9. Plaintiff Robert Morse is the president of a seaweed harvesting company who alleged in Plaintiffs’ Complaint that his business is threatened by Defendants’ claim to own the intertidal zone. He has never been on Judy’s Moody’s intertidal property, personally observed

signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 2 and Pl. Robert Morse's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Robert Morse's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 5.

10. Plaintiff George Seaver is part owner of a company that processes seaweed who alleged in Plaintiffs' Complaint that his livelihood is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls' Compl. ¶ 3 and Pl. George Seaver's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff George Seaver's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 6.

11. Plaintiff Greg Tobey is the general manager of a company that utilizes Maine Seaweed who alleged in Plaintiffs' Complaint that his livelihood is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 12 and Plaintiff Greg Tobey's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Greg Tobey's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 7.

12. Plaintiff Hale W. Miller is a seaweed harvester who alleged in Plaintiffs' Complaint that he has been harassed by landowners who claim to own the intertidal zone. Hale Miller has

never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 5 and Plaintiff Hale Miller's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Hale Miller's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 8.

13. Plaintiff LeRoy Gilbert is a seaweed harvester who alleged in Plaintiffs' Complaint that he is aware of landowners claiming ownership of the seaweed in the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 6 and Plaintiff LeRoy Gilbert's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff LeRoy Gilbert's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 9.

14. Plaintiff John W. Grotton is a seaweed harvester who alleged in Plaintiffs' Complaint that he feels his job is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal zone, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 4 and Plaintiff John Grotton's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff John Grotton's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 10.

15. Plaintiff Jake Wilson is a seaweed and clam harvester who alleged in Plaintiffs' Complaint that his job is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal zone, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 7 and

Plaintiff Jake Wilson's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Jake Wilson's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 11.

16. Plaintiff Dan Harrington is a worm and seaweed harvester who alleged in Plaintiffs' Complaint that his livelihood is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 8 and Plaintiff Dan Harrington's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Dan Harrington's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 12.

17. Plaintiff Susan Domizi is in the seaweed industry and alleged in Plaintiffs' Complaint that her livelihood is threatened by landowners claiming ownership of the intertidal zone. She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 11 and Plaintiff Susan Domizi's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Susan Domizi's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 13.

18. Plaintiff Amanda Moeser is an oyster farmer who alleged in Plaintiffs' Complaint that she is "worried about the expanding interpretations of ownership of intertidal lands" and "seeks clarity and predictability in the law." Exhibit 3, Pls.' Compl. ¶ 17. She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Plaintiff Amanda Moeser's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff

Amanda Moeser's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 14.

19. Plaintiff Lori Howell is an oyster farmer who alleged in Plaintiffs' Complaint that she has been "harassed by upland owners wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond." She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Exhibit 3, Pls.' Compl. ¶ 19 and Plaintiff Lori Howell's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Lori Howell's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 15.

20. Plaintiff Tom Howell is an oyster farmer who alleged in Plaintiffs' Complaint that he has been "harassed by upland owners wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond." He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Exhibit 3, Pls.' Compl. ¶ 19 and Plaintiff Tom Howell's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Tom Howell's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 16.

21. Plaintiff Chad Coffin is a clam harvester who alleged in Plaintiffs' Complaint that he is "regularly harassed by upland owners who claim he is trespassing." He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 18 and Plaintiff Chad Coffin's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories

No. 2. A true copy of Plaintiff Chad Coffin's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 17.

22. Plaintiff Judith Delogu has never been on Moody Beach. *See* Deposition of Judith Delogu (January 12, 2023) ("J. Delogu Dep.") 23:15-16, 25:18-20. A true copy of portions of the J. Delogu Dep. is attached hereto as Exhibit 18.

23. When questioned why she decided to be a plaintiff in this lawsuit, Ms. Delogu stated "I decided to be a plaintiff on this suit because I believe that Maine beaches are public property." Exhibit 18, J. Delogu Dep. 27:19-25, 28:1.

24. Plaintiff William Griffiths is the co-owner of the Crow's Nest Resort in Old Orchard Beach and alleged in Plaintiffs' Complaint that his "business and livelihood is threatened by Defendants' unlawful claim of title over Maine's intertidal land." Exhibit 3, Pls.' Compl. ¶ 14.

25. In the approximately eight years that Mr. Griffiths has owned the Crow's Nest Resort he estimates that roughly six patrons have told him that they were on Moody Beach and only two to three patrons asked him about the signage on Moody Beach. *See* Deposition of William Griffiths (January 12, 2023) ("Griffiths Dep.") 53:10-11, 53:22-25, 54:1. A true copy of portions of the Griffiths Dep. is attached hereto as Exhibit 19.

26. Mr. Griffiths did not verify whether these patrons were indeed on Moody Beach. Exhibit 19, Griffiths Dep. 58:22.

27. No patron of the Crow's Nest Resort has ever told Mr. Griffiths that they were asked to leave Moody Beach and no patron has ever informed Mr. Griffiths that they will no longer stay at the Crow's Nest Resort because of signage on Moody Beach. Exhibit 19, Griffiths Dep. 55:3-7, 57:18.

28. Mr. Griffiths has been on Moody Beach but is uncertain if he has ever been on

Judy's Moody's property. Exhibit 19, Griffiths Dep. 59:7-12, 59:15.

29. While on Moody Beach, Mr. Griffiths was never approached by anyone instructing him to leave. Exhibit 19, Griffiths Dep. 60:11.

30. Plaintiff Sheila Jones is a co-owner of the Crow's Nest Resort in Old Orchard Beach and alleged in Plaintiffs' Complaint that her "business and livelihood is threatened by Defendants' unlawful claim of title over Maine's intertidal land." Exhibit 3, Pls.' Compl. ¶ 14.

31. Ms. Jones has never been on Moody Beach or Judy's Moody's property. *See* Deposition of Sheila Jones (January 12, 2023) ("Jones Dep.") 32:22-24, 32:25, 33:1-2. A true copy of portions of the Jones Dep. is attached hereto as Exhibit 20.

32. Of the thousands of guests who have visited the Crow's Nest Resort, no more than five have told Ms. Jones that they visited Moody Beach and she is uncertain whether those patrons were actually at Moody Beach. Exhibit 20, Jones Dep. 31:20-23, 33:23-24.

33. No patron of the Crow's Nest Resort has ever told Ms. Jones that they were asked to leave Moody Beach and no patron has ever informed Ms. Jones that they will no longer stay at the Crow's Nest Resort because of signage on Moody Beach. Exhibit 20, Jones Dep. 33:17-21, 33:23-24, 40:21-25.

34. Plaintiff Orlando Delogu believes that *Bell I* and *Bell II* were incorrectly decided and that Maine's beaches are public property. *See* Deposition of Orlando Delogu (January 12, 2023) ("O. Delogu Dep.") 98:18, 136:3-15. A true copy of portions of the O. Delogu Dep. is attached hereto as Exhibit 21.

35. Mr. Delogu has walked along Moody Beach to observe the signage on Moody Beach and to get a feel for the "character" of Moody Beach. Exhibit 21, O. Delogu Dep. 27:17-25, 31:10.

36. While walking on Moody Beach, Mr. Delogu was never approached by anyone telling him to stop walking on Moody Beach, asking him to leave Moody Beach, or telling him that he does not belong on Moody Beach. Exhibit 21, O. Delogu Dep. 134:1-12

37. Plaintiff Peter Masucci is a backlot owner of property behind but not on Moody Beach. Exhibit 2, P. Masucci Dep. 11:4-5, 11:6-11.

38. Mr. Masucci testified at his deposition that he has engaged in the following activities on Judy's Moody's intertidal zone: walking along the intertidal, stopping in the intertidal to observe people and wildlife, sitting in the intertidal to read, drinking wine and beer in the intertidal, and playing various beach games in the intertidal like bocce ball, tag football, paddleball, wiffleball, and catch, and bodysurfing and boogieboarding along the water next to the intertidal. Exhibit 2, P. Masucci Dep. 116:17-25, 117:1, 117:23-25, 118:1-16, 118:23-25, 121:5-24, 122:1-12, 127:7-25, 128:1-3, 143:18-24.

39. Mr. Masucci has never been approached by anyone associated with Judy's Moody LLC and told to leave Judy's Moody's intertidal zone or told to stop using Judy's Moody's intertidal zone. Exhibit 2, P. Masucci Dep. 112:20-23, 113:5-10, 130:2-7.

40. Mr. Masucci testified at his deposition that "my argument is not with the named defendants here" and that he got involved in this lawsuit because he believes that the intertidal land belongs to everyone, stating, "the issue is why should anyone own the sand?" Exhibit 2, P. Masucci Dep. 151:10-20.

41. Plaintiff Kathy Masucci is a backlot owner of property behind but not on Moody Beach. *See* Deposition of Kathy Masucci (January 13, 2023) ("K. Masucci Dep.") 66:18-21, 66:23. A true copy of portions of the K. Masucci Dep. is attached hereto as Exhibit 22.

42. Ms. Masucci testified at her deposition that the only activity she currently does on

Judy's Moody's intertidal is walk, but that over five years ago she had probably stopped and rested on the intertidal zone, sat in the sand to observe wildlife, ran and jogged on the intertidal zone, built sandcastles, sunbathed, and boogie boarded on the intertidal zone. Exhibit 22, K. Masucci Dep. 68:21-24, 74:3-55, 74:10-22, 74:13-22, 75:7.

43. Ms. Masucci has never been approached by anyone associated with Judy's Moody LLC and been told to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. Exhibit 22, K. Masucci Dep. 76:13-17.

44. Plaintiff William Connerney is a backlot owner of property behind but not on Moody Beach. *See* Deposition of William Connerney (January 11, 2023) ("Connerney Dep.") 10:22-24. A true copy of the cited portions of the Connerney Dep. is attached hereto as Exhibit 23.

45. Plaintiff William Connerney testified at his deposition that today he mainly uses Moody Beach to walk and jog, and that in the past he had sat in the intertidal zone to sunbathe, surf, boogie board, build sandcastles, play frisbee, paddleboard, fly kites, play beach tennis and look for shellfish and crabs. Exhibit 23, Connerney Dep. 13:2-25, 14:1 and Plaintiff William Connerney's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 3. A true copy of Plaintiff William Connerney's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 24.

46. Mr. Connerney has never been approached by anyone associated with Judy's Moody LLC and been told to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. Exhibit 23, Connerney Dep. 72:9-12, 73:1-3.

47. Plaintiffs Orlando Delogu, Peter Masucci, Kathy Masucci, and William Connerney still walked along the intertidal zone on Moody Beach despite the presence of signs on seawalls along Moody Beach. Exhibit 21, O. Delogu Dep. 27:17-25, 31:10; Exhibit 2, P. Masucci Dep.

144:18-19, 145:4-22, 145:25; Exhibit 22, K. Masucci Dep. 70:1-3, 102:23-25; Exhibit 23, Connerney Dep. 76:23, 77:5-7, 77:22-25.

DATED at Portland, Maine on May 2, 2023.

Respectfully submitted,

/s/David P. Silk

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**Pro Hac Vice
Attorneys for Defendant
Judy's Moody LLC*

State of Maine
Cumberland, ss

Superior Court
Civil Action
Docket No. RE-2021-35

Peter and Kathy Masucci, et al.,

)

)

Plaintiffs

)

v.

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**PLAINTIFFS’ OPPOSITION TO
DEFENDANT JUDY’S MOODY,
LLC’S STATEMENT OF
UNDISPUTED MATERIAL
FACTS**

Judy’s Moody LLC, et al.,

)

)

Defendants

)

and

)

)

Aaron Frey in his capacity as the Attorney General
for the State of Maine

)

)

)

Party in interest

)

Plaintiffs, by and through undersigned counsel, replies to Defendant Judy’s Moody,
LLC’s Statement of Undisputed Material Facts (hereafter “Judy’s Moody S.M.F.”) as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Qualified. The signs on Judy’s Moody seawall were permanent in nature, but have
changed over time to feature signage with a similar message – i.e., “Private Beach.” Deposition
of Keith Dennis dated February 10, 2023, page 48:3-9 (attached hereto as “Exhibit A”) (“Dennis
Dep.”).

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Admitted.
21. Admitted.
22. Admitted.
23. Admitted.
24. Admitted.
25. Admitted.
26. Admitted.
27. Admitted.
28. Admitted.
29. Admitted.
30. Admitted.
31. Admitted.
32. Admitted.

- 33. Admitted.
- 34. Admitted.
- 35. Admitted.
- 36. Admitted.
- 37. Admitted.
- 38. Admitted.
- 39. Admitted.
- 40. Admitted.
- 41. Admitted.
- 42. Admitted.
- 43. Admitted.
- 44. Admitted.
- 45. Admitted.
- 46. Admitted.
- 47. Admitted.

Dated: June 2, 2023

Respectfully submitted,



For Plaintiffs,
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Keith P. Richard, Bar No. 5556
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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

PETER MASUCCI, ET AL.,)
)
) PLAINTIFFS,)
)
 v.)
)
) JUDY’S MOODY LLC, ET AL.,)
)
) DEFENDANTS,)
 and)
)
) AARON FREY, in his capacity as Attorney)
) General of the State of Maine,)
)
) PARTY IN INTEREST.)

**DEFENDANT JUDY’S MOODY LLC’S
REPLY STATEMENT OF MATERIAL
FACTS (AS TO PLAINTIFFS’
OPPOSING STATEMENT OF
MATERIAL FACTS)**

(Title to Real Estate Involved)

Pursuant to Rule 56(h)(3) of the Maine Rules of Civil Procedure, Defendant Judy’s Moody LLC (“Judy’s Moody”) submits this reply to Plaintiffs’ Opposing Statement of Material Facts.

RESPONSE TO PLAINTIFFS’ OPPOSING STATEMENT OF MATERIAL FACTS

5. In response to the qualification of Plaintiffs, Judy’s Moody states that the portions of the JM Deposition the Plaintiffs cite do not dispute the nonpermanent nature of the signs on Judy’s Moody’s property, but rather confirm it. *See* Exhibit A, JM Dep. 48:3-9.¹ Moreover, the Attorney General stated that the signs on Judy’s Moody’s property “have been relatively temporary.” *See* Attorney General’s Opposing and Additional Statement of Material Facts (Responsive to Defendant Judy’s Moody, LLC’s Statement of Material Facts) ¶ 5. And there are currently no signs on Judy’s Moody’s property. Exhibit A, JM Dep. 46:10–49:24-25.

¹ A true and accurate copy of the cited portions of the JM Deposition is attached as Exhibit A to Judy’s Moody’s Response to the Attorney General’s Opposing Statement of Material Facts.

Dated: June 23, 2023

Respectfully submitted,



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*Pro Hac Vice

*Attorneys for Defendant
Judy's Moody LLC*

STATE OF MAINE
CUMBERLAND SS

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-35

| | |
|-----------------------------------|---|
| PETER MASUCCI, <i>et al.</i> , |) |
| |) |
| Plaintiffs, |) |
| v. |) |
| |) |
| JUDY'S MOODY LLC, <i>et al.</i> , |) |
| |) |
| Defendants, |) |
| and |) |
| |) |
| AARON FREY, in his capacity as |) |
| ATTORNEY GENERAL OF THE STATE OF |) |
| MAINE, |) |
| |) |
| Party-in-Interest . |) |

**ATTORNEY GENERAL'S OPPOSING
AND ADDITIONAL STATEMENT OF
MATERIAL FACTS (RESPONSIVE TO
DEFENDANT JUDY MOODY, LLC'S
STATEMENT OF MATERIAL FACTS)**

(Title to Real Estate Involved)

Pursuant to M.R. Civ. P. 56(h)(2), Party-in-Interest the Attorney General (AG) opposes and objects to the material facts submitted by Defendant Judy's Moody, LLC (Judy's Moody) as follows and, in a separately titled section, sets forth additional undisputed facts.

**ATTORNEY GENERAL'S RESPONSE TO DEFENDANT JUDY'S MOODY, LLC'S
STATEMENT OF MATERIAL FACTS**

1. Judy's Moody owns beachfront property on Moody Beach at 407 Ocean Avenue, Wells, Maine. *See* Deposition of Judy's Moody, LLC 30(b)(6) via Keith Dennis (February 10, 2023) ("Dennis Dep.") 29:12-14, 45:1-10. A true copy of portions of the Dennis Dep. is attached hereto as Exhibit 1.

RESPONSE: Admitted.

2. Judy's Moody LLC is a single member LLC owned by Keith Dennis. Exhibit 1, Dennis Dep. 13:16-17.

RESPONSE: Admitted.

3. Judy's Moody's property directly abuts a public right of way that provides members of the public access to the ocean. Exhibit 1, Dennis Dep. 21:23-25, 22:1.

RESPONSE: Admitted.

4. Mr. Dennis has posted signs that read "Private Beach" and "Notice: Private Beach to Lowest Tide" and "No Trespassing" on the portion of Judy's Moody's seawall that faces the ocean. Exhibit 1, Dennis Dep. 47:4-7, 47:21-25, 48:11-15, 49:18-20.

RESPONSE: Admitted.

5. None of these signs were permanent and some of them were removed naturally by the force of the ocean hitting the seawall. Exhibit 1, Dennis Dep. 48:3-6.

RESPONSE: Qualified.

There have been iterations of similar signs saying things such as "Private Beach" and "No Trespassing" on the ocean-facing side of Judy's Moody's seawall that for various reasons have been relatively temporary, including a sign that mentioned "low tide." Dennis Dep. 46:25-49:20.

6. The presence of signs was not unique to Judy's Moody and other beachfront properties on Moody Beach have signs on their seawall conveying that the beach is private. *See* Deposition of Peter Masucci (January 11, 2023) ("P. Masucci Dep.") 146:1-5. A true copy of portions of the P. Masucci Dep. is attached hereto as Exhibit 2.

RESPONSE: Admitted.

7. Plaintiffs are a group of individuals who contend that the "intertidal zone" is public property and that they are entitled to use the intertidal zone for any purpose allowed by the State. Pls.' Compl. ¶¶ 63-65, ¶¶ 105-106. A true copy of Plaintiffs' Complaint is attached for the Court's convenience as Exhibit 3.

RESPONSE: Admitted.

8. Plaintiff Dr. Brian Beal is a marine biologist who alleged in Plaintiffs' Complaint that several beachfront owners denied him access to the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 15 and Pl. Brian Beal's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Brian Beal's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 4.

RESPONSE: Admitted.

9. Plaintiff Robert Morse is the president of a seaweed harvesting company who alleged in Plaintiffs' Complaint that his business is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 2 and Pl Robert Morse's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Robert Morse's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 5.

RESPONSE: Admitted.

10. Plaintiff George Seaver is part owner of a company that processes seaweed who alleged in Plaintiffs' Complaint that his livelihood is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's

Moody's intertidal property. Exhibit 3, Pls' Compl. ¶ 3 and Pl. George Seaver's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff George Seaver's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 6.

RESPONSE: Admitted.

11. Plaintiff Greg Tobey is the general manager of a company that utilizes Maine Seaweed who alleged in Plaintiffs' Complaint that his livelihood is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 12 and Plaintiff Greg Tobey's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Greg Tobey's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 7.

RESPONSE: Admitted.

12. Plaintiff Hale W. Miller is a seaweed harvester who alleged in Plaintiffs' Complaint that he has been harassed by landowners who claim to own the intertidal zone. Hale Miller has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 5 and Plaintiff Hale Miller's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Hale Miller's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 8.

RESPONSE: Admitted.

13. Plaintiff LeRoy Gilbert is a seaweed harvester who alleged in Plaintiffs' Complaint that he is aware of landowners claiming ownership of the seaweed in the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 6 and Plaintiff LeRoy Gilbert's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff LeRoy Gilbert's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of interrogatories is attached as Exhibit 9.

RESPONSE: Admitted.

14. Plaintiff John W. Grotton is a seaweed harvester who alleged in Plaintiffs' Complaint that he feels his job is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal zone, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 4 and Plaintiff John Grotton's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff John Grotton's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 10.

RESPONSE: Admitted.

15. Plaintiff Jake Wilson is a seaweed and clam harvester who alleged in Plaintiffs' Complaint that his job is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal zone, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 7 and Plaintiff Jake Wilson's Answers to OA 2012 Trust's and

Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Jake Wilson's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 11.

RESPONSE: Admitted.

16. Plaintiff Dan Harrington is a worm and seaweed harvester who alleged in Plaintiffs' Complaint that his livelihood is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 8 and Plaintiff Dan Harrington's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Dan Harrington's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 12.

RESPONSE: Admitted.

17. Plaintiff Susan Domizi is in the seaweed industry and alleged in Plaintiffs' Complaint that her livelihood is threatened by landowners claiming ownership of the intertidal zone. She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 11 and Plaintiff Susan Domizi's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of interrogatories No. 2. A true copy of Plaintiff Susan Domizi's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of interrogatories is attached as Exhibit 13.

RESPONSE: Admitted.

18. Plaintiff Amanda Moeser is an oyster farmer who alleged in Plaintiffs' Complaint

that she is "worried about the expanding interpretations of ownership of intertidal lands" and "seeks clarity and predictability in the law." Exhibit 3, Pls.' Compl. ¶ 17. She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Plaintiff Amanda Moeser's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Amanda Moeser's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 14.

RESPONSE: Admitted.

19. Plaintiff Lori Howell is an oyster farmer who alleged in Plaintiffs' Complaint that she has been "harassed by upland owners wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond." She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Exhibit 3, Pls.' Compl. ¶ 19 and Plaintiff Lori Howell's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of interrogatories No. 2. A true copy of Plaintiff Lori Howell's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of interrogatories is attached as Exhibit 15.

RESPONSE: Admitted.

20. Plaintiff Tom Howell is an oyster farmer who alleged in Plaintiffs' Complaint that he has been "harassed by upland owners wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond." He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Exhibit 3, Pls.'

Compl. ¶ 19 and Plaintiff Tom Howell's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Tom Howell's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 16.

RESPONSE: Admitted.

21. Plaintiff Chad Coffin is a clam harvester who alleged in Plaintiffs' Complaint that he is "regularly harassed by upland owners who claim he is trespassing." He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 18 and Plaintiff Chad Coffin's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Chad Coffin's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 17.

RESPONSE: Admitted.

22. Plaintiff Judith Delogu has never been on Moody Beach. *See* Deposition of Judith Delogu (January 12, 2023) ("J. Delogu Dep.") 23:15-16, 25:18-20. A true copy of portions of the J. Delogu Dep. is attached hereto as Exhibit 18.

RESPONSE: Admitted.

23. When questioned why she decided to be a plaintiff in this lawsuit, Kathy Delogu stated "I decided to be a plaintiff on this suit because I believe that Maine beaches are public property." Exhibit 18, J. Delogu Dep. 27:19-25, 28:1.

RESPONSE: Admitted.

24. Plaintiff William Griffiths is the co-owner of the Crow's Nest Resort in Old Orchard Beach and alleged in Plaintiffs' Complaint that his "business and livelihood is threatened by Defendants' unlawful claim of title over Maine's intertidal land." Exhibit 3, Pls.' Compl. ¶14.

RESPONSE: Admitted.

25. In the approximately eight years that Mr. Griffiths has owned the Crow's Nest Resort he estimates that roughly six patrons have told him that they were on Moody Beach and only two to three patrons asked him about the signage on Moody Beach. See Deposition of William Griffiths (January 12, 2023) ("Griffiths Dep.") 53:10-11, 53:22-25, 54:1. A true copy of portions of the Griffiths Dep. is attached hereto as Exhibit 19.

RESPONSE: Admitted.

26. Mr. Griffiths did not verify whether these patrons were indeed on Moody Beach. Exhibit 19, Griffiths Dep. 58:22.

RESPONSE: Admitted.

27. No patron of the Crow's Nest Resort has ever told Mr. Griffith's that they were asked to leave Moody Beach and no patron has ever informed Mr. Griffiths that they will no longer stay at the Crow's Nest Resort because of signage on Moody Beach. Exhibit 19, Griffiths Dep. 55:3-7, 57:18.

RESPONSE: Admitted.

28. Mr. Griffiths has been on Moody Beach but is uncertain if he has ever been on Judy's Moody's property. Exhibit 19, Griffiths Dep. 59:7-12, 59:15.

RESPONSE: Admitted.

29. While on Moody Beach, Mr. Griffiths was never approached by anyone

instructing him to leave. Exhibit 19, Griffiths Dep. 60:11.

RESPONSE: Admitted.

30. Plaintiff Sheila Jones is a co-owner of the Crow's Nest Resort in Old Orchard Beach and alleged in Plaintiffs' Complaint that her "business and livelihood is threatened by Defendants' unlawful claim of title over Maine's intertidal land." Exhibit 3, Pls.' Compl. ¶14.

RESPONSE: Admitted.

31. Kathy Jones has never been on Moody Beach or Judy's Moody's property. *See* Deposition of Sheila Jones (January 12, 2023) ("Jones Dep.") 32:22-24, 32:25, 33:1-2. A true copy of portions of the Jones Dep. is attached hereto as Exhibit 20.

RESPONSE: Admitted.

32. Of the thousands of guests who have visited the Crow's Nest Resort, no more than five have told Kathy Jones that they visited Moody Beach and she is uncertain whether those patrons were actually at Moody Beach. Exhibit 20, Jones Dep. 31:20-23, 33:23-24.

RESPONSE: Admitted.

33. No patron of the Crow's Nest Resort has ever told Kathy Jones that they were asked to leave Moody Beach and no patron has ever informed Kathy Jones that they will no longer stay at the Crow's Nest Resort because of signage on Moody Beach. Exhibit 20, Jones Dep. 33:17-21, 33:23-24, 40:21-25.

RESPONSE: Admitted.

34. Plaintiff Orlando Delogu believes that *Bell I* and *Bell II* were incorrectly decided and that Maine's beaches are public property. *See* Deposition of Orlando

Delogu (January 12, 2023) ("O. Delogu Dep.") 98:18, 136:3-15. A true copy of portions of the O. Delogu Dep. is attached hereto as Exhibit 21.

RESPONSE: Admitted.

35. Mr. Delogu has walked along Moody Beach to observe the signage on Moody Beach and to get a feel for the "character" of Moody Beach. Exhibit 21, O. Delogu Dep. 27:17- 25, 31:10.

RESPONSE: Admitted.

36. While walking on Moody Beach, Mr. Delogu was never approached by anyone telling him to stop walking on Moody Beach, asking him to leave Moody Beach, or telling him that he does not belong on Moody Beach. Exhibit 21, O. Delogu Dep. 134:1-12

RESPONSE: Admitted.

37. Plaintiff Peter Masucci is a backlot owner of property behind but not on Moody Beach. Exhibit 2, P. Masucci Dep. 11:4-5, 11:6-11.

RESPONSE: Admitted.

38. Peter Masucci testified at his deposition that he has engaged in the following activities on Judy's Moody's intertidal zone: walking along the intertidal, stopping in the intertidal to observe people and wildlife, sitting in the intertidal to read, drinking wine and beer in the intertidal, and playing various beach games in the intertidal like bocce ball, tag football, paddleball, wiffleball, and catch, and bodysurfing and boogieboarding along the water next to the intertidal. Exhibit 2, P. Masucci Dep. 116:17-25, 117:1, 117:23-25, 118:1-16, 118:23-25, 121:5-24, 122:1-12, 127:7-25,

128:1-3, 143:18-24.

RESPONSE: Admitted.

39. Peter Masucci has never been approached by anyone associated with Judy's Moody LLC and told to leave Judy's Moody's intertidal zone or told to stop using Judy's Moody's intertidal zone. Exhibit 2, P. Masucci Dep. 112:20-23, 113:5-10, 130:2-7.

RESPONSE: Qualified.

The AG admits that Peter Masucci has never personally been approached by anyone associated with Judy's Moody and verbally told to leave Judy's Moody's intertidal zone or to stop using it. But Peter Masucci has seen the signs and boundary demarcations at Judy's Moody's property that have had similar and negative effects on his beach experiences. In particular:

Peter Masucci has seen and is conscious of the signs and other physical markers on Judy's Moody's property. (P. Masucci Dep. 32:3-11, 33:15-17, 47:12-13, II¹ 52:22-54:1.) Because of such signs, Peter Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22, II 49:22-50:9.) Peter Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) Peter Masucci feels unwelcome on Judy's Moody's property when he sees boundary demarcations—wood, orange cones, raked seaweed—on Judy's Moody's property. (P. Masucci Dep. II 54:10-13.) Peter Masucci is concerned that Judy's Moody will ask him to leave the Judy's Moody intertidal land. (P. Masucci Dep. II 54:14-17.) That concern—Judy's Moody asking Peter Masucci to leave the Judy's Moody intertidal land—negatively effects Peter Masucci's beach experience. (P. Masucci Dep. II 54:18-20.)

40. Peter Masucci testified at his deposition that "my argument is not with the named defendants here" and that he got involved in this lawsuit because he believes that the intertidal land belongs to everyone, stating, "the issue is why should anyone own the sand?" Exhibit 2, P. Masucci Dep. 151:10-20.

¹ Peter Masucci's deposition was split between two days: January 11, 2023, and January 13, 2023. "P. Masucci Dep. II" or "II" refers to his deposition transcript from January 13, 2023.

RESPONSE: Qualified.

Peter Masucci views his lawsuit as an attempt to get a ruling that he, like others, “could come to Moody Beach and walk or sit anywhere” on the beach. (P. Masucci Dep. 152:6-13.) Peter Masucci feels he is “not really” able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) Peter Masucci is concerned that Judy’s Moody will ask him to leave the Judy’s Moody intertidal land. (P. Masucci Dep. II 54:14-17.) That concern—Judy’s Moody asking Peter Masucci to leave the Judy’s Moody intertidal land—negatively effects Peter Masucci’s beach experience. (P. Masucci Dep. II 54:18-20.)

41. Plaintiff Kathy Masucci is a backlot owner of property behind but not on Moody Beach. *See* Deposition of Kathy Masucci (January 13, 2023) (“K. Masucci Dep.”) 66:18-21, 66:23. A true copy of portions of the K. Masucci Dep. is attached hereto as Exhibit 22.

RESPONSE: Admitted.

42. Kathy Masucci testified at her deposition that the only activity she currently does on Judy's Moody's intertidal is walk, but that over five years ago she had probably stopped and rested on the intertidal zone, sat in the sand to observe wildlife, ran and jogged on the intertidal zone, built sandcastles, sunbathed, and boogie boarded on the intertidal zone. Exhibit 22, K. Masucci Dep. 68:21-24, 74:3-55, 74:10-22, 74:13-22, 75:7.

RESPONSE: Admitted.

43. Kathy Masucci has never been approached by anyone associated with Judy's Moody LLC and been told to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. Exhibit 22, K. Masucci Dep. 76:13-17.

RESPONSE: Qualified.

The AG admits that Kathy Masucci has never personally been approached by anyone associated with Judy's Moody and verbally told to leave Judy's Moody's intertidal zone or to stop using it. But Kathy Masucci has seen the signs and boundary demarcations at Judy's Moody's property that have had similar and negative effects on her beach experiences. In particular:

Kathy Masucci has seen the signs on the seawall at Judy's Moody's property. (K. Masucci Dep. 78:16-79:19, 124:17-24.) Kathy Masucci is aware that Judy's Moody has demarcated Judy's Moody's property using logs, cones, and raked seaweed. (K. Masucci Dep. 81:9-24, 82:9-11.) The signs and other physical markers on Judy's Moody's property intimidate Kathy Masucci and suggest to her that she should not be on those properties. (K. Masucci Dep. 20:11-22; 37:22-38:4; 124:17-127:7; 118:19-119:17, Ex. KM-9.) To Kathy Masucci, the private beach signs on Judy's Moody's property mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) For Kathy Masucci, seeing Judy's Moody's signs generates negative feelings. (K. Masucci Dep. 126:6-7.) Kathy Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) Kathy Masucci has seen pictures of people being asked to leave Judy's Moody's property. (K. Masucci Dep. 77:1-3.) Kathy Masucci has heard stories of being people to asked to leave Judy's Moody's property. (K. Masucci Dep. 28:5-9, 84:21-87:16, 91:11-92:4.) The raked seaweed, log, and orange cones on Judy's Moody's property convey to Kathy Masucci "Keep out. No trespassing." (K. Masucci Dep. 119:9-17.) Kathy Masucci is concerned that Judy's Moody may ask her to leave the Judy's Moody intertidal land. (K. Masucci Dep. 120:2-5.) That concern—being asked to leave Judy's Moody intertidal land—negatively affects Kathy Masucci's experience of walking Moody Beach. (K. Masucci Dep. 103:1-7, 120:6-10.)

44. Plaintiff William Connerney is a backlot owner of property behind but not on Moody Beach. *See* Deposition of William Connerney (January 11, 2023) ("Connerney Dep.") 10:22-24. A true copy of the cited portions of the Connerney Dep. is attached hereto as Exhibit 23.

RESPONSE: Admitted.

45. Plaintiff William Connerney testified at his deposition that today he mainly uses Moody Beach to walk and jog, and that in the past he had sat in the intertidal zone to sunbathe, surf, boogie board, build sandcastles, play frisbee, paddleboard, fly kites, play beach tennis and look for shellfish and crabs. Exhibit 23, Connerney Dep.

13:2-25, 14:1 and Plaintiff William Connerney's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 3. A true copy of Plaintiff William Connerney's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 24.

RESPONSE: Admitted.

46. Bill Connerney has never been approached by anyone associated with Judy's Moody LLC and been told to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. Exhibit 23, Connerney Dep. 72:9-12, 73:1-3.

RESPONSE: Qualified.

The AG admits that Bill Connerney has never personally been approached by anyone associated with Judy's Moody and verbally told to leave Judy's Moody's intertidal zone or to stop using it. But Bill Connerney has seen the signs and boundary demarcations at Judy's Moody's property, as well as police at Judy's Moody's intertidal land, all of which have had similar and negative effects on his beach experiences. In particular:

Bill Connerney has seen the signs on the seawall at Judy's Moody's property. (Connerney Dep. 76:24-77:18; 78:8-23.) Bill Connerney has seen the police on Judy's Moody's intertidal land. (Connerney Dep. 27:24-28:14, 79:5-24, 82:24-83:4.) Bill Connerney has heard anecdotal accounts of Judy's Moody telling people to leave Judy's Moody's intertidal land. (Connerney Dep. 29:6-20.) Seeing the signs and police on Judy's Moody's property have negatively impacted Bill Connerney's experience of walking the intertidal land at Moody Beach. (Connerney Dep. 13:6-8, 13:20-25, 78:8-79:4; 82:14-18.) Bill Connerney has seen the orange cones, wood, and raked seaweed demarcating the boundary of Judy's Moody's property and ROW 2. (Connerney Dep. 71:13-15.) Bill Connerney feels unwelcome on Judy's Moody's property when he sees those boundary demarcations—wood, cones, raked seaweed—on Judy's Moody's Property. (Connerney Dep. 25:20-26:4, 119:6-17.) Bill Connerney understands that landowners with signs such as Judy's Moody can choose at any moment to take action against someone who is walking across the intertidal land and ask them not to walk there. (Connerney Dep. 25:20-26:4; 116:24-118:6.) Bill Connerney thinks about the possibility of a confrontation with landowners such as Judy's Moody when he is on the intertidal land. (Connerney Dep. 25:20-26:4, 117:15-24). The possibility of a confrontation with landowners such as Judy's Moody detracts from what would otherwise be a relaxing walk on the beach for Bill Connerney.

(Connerney Dep. 117:15-118:6.)

47. Plaintiffs Orlando Delogu, Peter Masucci, Kathy Masucci, and William Connerney still walked along the intertidal zone on Moody Beach despite the presence of signs on seawalls along Moody Beach. Exhibit 21, O. Delogu Dep. 27:17-25, 31:10; Exhibit 2, P. Masucci Dep. 144:18-19, 145:4-22, 145:25; Exhibit 22, K. Masucci Dep. 70:1-3, 102:23-25; Exhibit 23, Connerney Dep. 76:23, 77:5-7, 77:22-25.

RESPONSE: Qualified.

The AG admits this fact as to Peter Masucci and Kathy Masucci, but qualifies it as to William Connerney. Bill Connerney attempts to limit his use of Defendants' intertidal land to when the landowners are not around, or he otherwise tries to avoid such intertidal land, to eliminate confrontations with the landowners. (Connerney Dep. 117:15-118:6, 26:10-27:8, 30:10-14).

ATTORNEY GENERAL'S ADDITIONAL STATEMENT OF MATERIAL FACTS²

1. Moody Beach is a mostly sandy beach located in Wells, Maine. (P. Masucci Dep. 95:3-12, 96:24-97:15, II³ 38:17-39:5.)
2. Moody Beach is approximately 1.5 miles long and is generally oriented north (Wells)-south (Ogonquit). (P. Masucci Dep. 94:23-95:4, II 10:16-23.)
3. Plaintiffs Peter Masucci and Kathy Masucci (collectively, the Masuccis) are married. (P. Masucci Dep. 73:20; K. Masucci Dep. 12:2-6, 93:24-94:2.)

² The AG provided full copies of the relevant deposition transcripts in support of the AG's Motion for Summary Judgment on Count IV. The AG is not providing duplicate copies of the same deposition transcripts in support of its separate statement of additional material facts, but instead refers the Court to the deposition transcripts already provided.

³ Peter Masucci's deposition was split between two days: January 11, 2023, and January 13, 2023. "P. Masucci Dep. II" or "II" refers to his deposition transcript from January 13, 2023.

4. The Masuccis own and reside at the property located at 484 Ocean Avenue in Wells, Maine (the Masuccis' Property). (P. Masucci Dep. 11:1-5, Ex. PM-5; K. Masucci Dep. 12:8-10, 12:23-13:1, 13:10-11, 65:12-15, Ex. KM-5.)
5. The Masuccis' Property is across the street from the Moody Beach; it is not oceanfront property. (P. Masucci Dep. 11:6-11, Ex. PM-5; K. Masucci Dep. 66:16-23, Ex. KM-5.)
6. Plaintiff William (Bill) Connerney owns the property at 130 South Tibbetts in Wells, Maine (the Connerney Property) and lives there from the last weekend in May through November 1. (Connerney Dep. 10:21-11:2, 11:21-12:3.)
7. The Connerney Property is across the street from Moody Beach; it is not oceanfront property. (Connerney Dep. 11:3-10; 105:23, 107:7-22, Ex. Connerney-6.)
8. Peter Masucci, Kathy Masucci, and Bill Connerney (collectively, the Plaintiffs) each generally understand "intertidal land" to mean the land between the mean low-water mark and the mean high-water mark. (P. Masucci Dep. 101:6-103:16, II 13:5-13; K. Masucci Dep. 68:3-20; Connerney Dep. 57:12-22.)
9. Peter Masucci, Kathy Masucci, and Bill Connerney each regularly walk the length of Moody Beach on the intertidal land at Moody Beach. (P. Masucci Dep. 13:1-8, 13:22-14:7, 14:16-17, 19:15-21:16, 60:1-4, 116:23-117:1, II 43:22-44:5; K. Masucci Dep. 16:20-17:6, 28:21-23, 35:21-36:5, 68:21-69:1, 97:11-25, 108:1-4, 126:25-127:2; Connerney Dep. 13:6-8, 13:20-25, 17:13-18:5, 19:17-24, 25:20-21, 32:22-33:17, 90:15-93:18, 96:9-11.)
10. Peter Masucci and Kathy Masucci sometimes bring their grandson along when they walk the intertidal land at Moody Beach. (P. Masucci Dep. 19:15-20:3, 117:6-16; K. Masucci Dep. 50:9-16.)

11. Peter Masucci walks the intertidal land at Moody Beach for enjoyment, relaxation, and stress relief. (P. Masucci Dep. II 37:4-12.)
12. When Peter Masucci walks the intertidal land at Moody Beach he sometimes stops to gaze at the water or look for birds. (P. Masucci Dep. 121:1-10, II 46:11-14.)
13. Kathy Masucci likes going to the beach because it is beautiful, peaceful, and fun and because the beach is a wonderful place to think, observe, and be grateful. (K. Masucci Dep. 107:12-15.)
14. Kathy Masucci walks the intertidal land at Moody Beach for enjoyment, physical health benefits, and mental health benefits like stress relief and relaxation. (K. Masucci Dep. 107:16-25.)
15. When Kathy Masucci walks the intertidal land at Moody Beach, she sometimes stops to look at the water. (K. Masucci Dep. 108:1-4.)
16. Bill Connerney walks the intertidal land at Moody Beach for relaxation and physical health. (Connerney Dep. 118:4-9.)
17. There are four locations on land from which the public may access on foot the intertidal land at Moody Beach (the Public Access Points).⁴ (P. Masucci Dep. 13:9-19, 20:18-22, 27:11-22, 109:4-10, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:18, Ex. KM-5.)
18. Listed north to south, the Public Access Points are right of way 3 (ROW 3), right of way 2 (ROW 2), right of way 1 (ROW 1), and the parking lot in Ogunquit near the southern end of Moody Beach (Ogunquit Parking Lot). (P. Masucci Dep. 27:11-22, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:16, Ex. KM-5.)

⁴ The public may also access the intertidal land at Moody Beach from the water.

19. There is forbidding signage or other physical markers at each Public Access Point. (P. Masucci Dep. 23:9-14, 23:22-24:3, 26:17-32:11, II 48:19-49:5, II 50:16-51:12, II 54:21-55:3, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:24-112:9, 112:16-17, 113:14-17, 114:12-25, 115:8-10, 117:13-118:4, 118:21-119:17, 121:20-122:1, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 18:18-19:5, 21:20-22:4, 23:14-21, 25:10-16, 30:14, 43:6, 75:10-76:19, 109:17-110:2.)

20. None of the signs or physical markers inform the public that walking, navigation, fishing, or fowling is allowed on the intertidal land. (P. Masucci Dep. II 44:12-45:6, II 48:12-49:11, II 50:19-51:12, II 52:4-54:1, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:22-112:15, 114:17-115:7, 117:13-118:11, 118:19-119:17, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 110:3-111:6, 111:12-112:10, 113:33, Ex. Connerney-7, Ex. Connerney-8.)

21. Judy's Moody claims ownership of the intertidal land on Moody Beach between Judy's Moody's Property and the low water mark of the Atlantic Ocean (the Judy's Moody Intertidal Land). (JM Dep. 19:10-21:25, 22:4-23:2, 39:25-40:4, Ex. Judy's-2, Ex. Judy's-3.)

22. Judy's Moody's Property abuts ROW 2: When accessing Moody Beach from ROW 2 and heading south along the intertidal land, the first property crossed is Judy's Moody's Property. (JM Dep. 21:2-23:2, 45:1-13, Ex. Judy's-2, Ex. Judy's-6; P. Masucci Dep. 20:17-21:1, 110:25-111:4, 112:4-10, 137:7-9, Ex. PM-5; K. Masucci Dep. 66:24-67:3, 118:19-119:1, Ex. KM-5; Connerney Dep. 75:10-17.)

23. Judy's Moody removed the "No Trespassing" sign for safety reasons; not because it disagreed with the content of the sign. (JM Dep. 48:12-49:5, 50:5-7, 103:6-16.)

24. Judy's Moody occasionally uses large pieces of wood that wash ashore, cones, or seaweed raked in a line to demarcate the side property boundary line shared by Judy's Moody Property and ROW 2. (JM Dep. 92:17-93:12, 93:21-94:10; P. Masucci Dep. II 52:4-25, II 53:16-54:1; K. Masucci Dep. 80:4-82:11, 118:19-119:12; Connerney Dep. 71:13-16, 75:10-76:12, 119:6-120:7.)

25. If the Masuccis want to walk Moody Beach at or near high tide, they typically walk down ROW 2, turn south, and then cross the Judy's Moody Intertidal Land. (P. Masucci 20:18-21:4, 106:3-107:14, 117:8-16; K. Masucci Dep. 21:10-21.)

26. In the winter, the Masuccis typically walk the entire length of Moody Beach down to Ogunquit Beach, crossing Judy's Moody Intertidal Land in the process. (P. Masucci Dep. 13:1-14:17; 18:11-20, 19:15-21:16, 116:23-117:16, II 10:9-15, II 15:23-16:7, II 33:6-8, II 43:22-44:5; K. Masucci Dep. 16:3-17:6, 35:21-36:5, 58:22-25, 68:21-69:1, 70:1-3, 97:11-98:5).

27. When Bill Connerney accesses Moody Beach from ROW 2 and walks south he crosses the Judy's Moody Intertidal Land. (Connerney Dep. 13:6-8, 13:20-25, 75:10-77:4.

28. Peter Masucci is conscious of the signs and other physical markers on Judy's Moody's Property. (P. Masucci Dep. 32:3-11, 33:15-17, II 52:22-54:1.)

29. Peter Masucci feels unwelcome on Judy's Moody's Property when he sees the boundary demarcations—wood, orange cones, raked seaweed—on Judy's Moody's Property. (P. Masucci Dep. II 54:10-13.)

30. Peter Masucci is concerned that Judy's Moody will ask him to leave the Judy's Moody Intertidal Land. (P. Masucci Dep. II 54:14-17.)

31. That concern—Judy's Moody asking Peter Masucci to leave the Judy's Moody Intertidal Land—negatively effects Peter Masucci's beach experience. (P. Masucci Dep. II 54:18-20.)
32. Judy's Moody has never told Peter Masucci that he has the legal right to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:2-8; P. Masucci Dep. II 54:2-5.)
33. Judy's Moody has never told Peter Masucci that he has Judy's Moody permission to walk on the Judy's Moody Intertidal Land. (P. Masucci Dep. II 54:6-9.)
34. Peter Masucci has personally seen police on Moody Beach. (P. Masucci Dep. 113:11-19, II 55:19-23.)
35. Peter Masucci feels discouraged, angry, and uncomfortable when he sees the police on Moody Beach. (P. Masucci Dep. II 55:24-56:1.)
36. Peter Masucci is concerned that if he stops along the intertidal land of Moody Beach—for example, to make a phone call—he might be confronted by the police. (P. Masucci Dep. II 56:2-8.)
37. Kathy Masucci has seen the signs on the seawall at Judy's Moody's Property. (K. Masucci Dep. 78:16-79:19, 124:17-24.)
38. The signs on Defendants' properties suggest to Kathy Masucci that she should not be on Defendants' properties. (K. Masucci Dep. 20:11-22.)
39. The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.)

40. To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)
41. For Kathy Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.)
42. Kathy Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.)
43. Kathy Masucci has seen pictures of people being asked to leave Judy's Moody's Property. (K. Masucci Dep. 77:1-3.)
44. Kathy Masucci has heard stories of being people to asked to leave Judy's Moody's Property. (K. Masucci Dep. 28:5-9, 84:21-87:16, 91:11-92:4.)
45. The stories Kathy Masucci has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)
46. Kathy Masucci is aware that Judy's Moody has demarcated Judy's Moody's Property using logs, cones, and raked seaweed. (K. Masucci Dep. 81:9-24, 82:9-11.)
47. The raked seaweed, log, and orange cones on Judy's Moody's Property, convey to Kathy Masucci "Keep out. No trespassing." (K. Masucci Dep. 119:9-17.)
48. Kathy Masucci is concerned that Judy's Moody may ask her to leave the Judy's Moody Intertidal Land. (K. Masucci Dep. 120:2-5.)
49. That concern—being asked to leave Judy's Moody Intertidal Land—negatively affects Kathy Masucci's experience of walking Moody Beach. (K. Masucci Dep. 103:1-7, 120:6-10.)
50. Judy's Moody has never told Kathy Masucci that she has the legal right to walk on the Judy's Moody Intertidal Land. (K. Masucci Dep. 119:18-21.)

51. Judy's Moody has never told Kathy Masucci that she has Judy's Moody's permission to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:9-12, 120:8-10; Kathy Masucci Dep. 119:22-120:1.)
52. Bill Connerney has seen the police on the Judy's Moody Intertidal Land. (Connerney Dep. 27:24-28:14, 79:5-24, 82:24-83:4.)
53. Bill Connerney has seen the police on Moody Beach at areas other than the Defendants' properties. (Connerney Dep. 83:5-9.)
54. Bill Connerney has heard anecdotal accounts of Judy's Moody telling people to leave Judy's Moody Intertidal Land. (Connerney Dep. 29:6-20.)
55. Bill Connerney has seen the orange cones, wood, and raked seaweed demarcating the boundary of Judy's Moody's Property and ROW 2. (Connerney Dep. 71:13-15.)
56. Bill Connerney has seen the signs that used to be on the seawall at Judy's Moody's Property. (Connerney Dep. 76:24-77:18.)
57. Bill Connerney was aware of those signs on Judy's Moody's Property as soon as he enters the beach. (Connerney Dep. 78:17-23.)
58. The signs that were on Judy's Moody's Property have negatively impacted Bill Connerney's experience of walking the intertidal land at Moody Beach. (Connerney Dep. 13:6-8, 13:20-25, 78:17-79:4, 82:14-18.)
59. Bill Connerney feels unwelcome on Judy's Moody's Property when he sees those boundary demarcations—wood, cones, raked seaweed—on Judy's Moody's Property. (Connerney Dep 25:20-26:4, 119:10-17.)
60. Judy's Moody has never told Bill Connerney that he has the legal right to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:13-16.)

61. Judy's Moody has never told Bill Connerney that he has Judy's Moody's permission to walk on the Judy's Moody Intertidal Land. (Connerney Dep. 118:23-119:1.)
62. Bill Connerney would feel better about walking on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land if their signage specified that walking is allowed. (Connerney Dep. 115:5-10.)
63. Bill Connerney understands that Judy's Moody could choose at any moment to ask someone who is walking across the Judy's Moody Intertidal Land to leave or move along. (Connerney Dep. 116:24-117:14.)
64. Bill Connerney thinks about the possibility of a confrontation with landowners such as Judy's Moody when he is on the Judy's Moody Intertidal Land. (Connerney Dep. 25:20-26:4, 117:15-24).
65. The possibility of a confrontation with landowners such as Judy's Moody detracts from what would otherwise be a relaxing walk on the beach for Bill Connerney. (Connerney Dep. 117:15-118:6.)
66. Kathy Masucci thinks that walking and running and moving could be considered navigation. (K. Masucci Dep. 76:4-8.)
67. Bill Connerney thinks that walking could be considered navigation. (Connerney Dep. 65:16-66:20, 114:11-25, 115:13-116:6.)
68. When people are engaging in activities other than fishing, fowling, and navigating on the Judy's Moody Intertidal Land, Judy's Moody understands that it has the right to ask people to leave. (JM Dep. 122:2-11.)
69. Judy's Moody thinks that there are times when navigation includes walking. (JM Dep. 123:8-11.)

Dated: June 1, 2023

Respectfully submitted,

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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

PETER MASUCCI, ET AL.,)
)
) PLAINTIFFS,)
)
 v.)
)
) JUDY’S MOODY LLC, ET AL.,)
)
) DEFENDANTS,)
)
 and)
)
) AARON FREY, in his capacity as Attorney)
) General of the State of Maine,)
)
) PARTY IN INTEREST.)

**DEFENDANT JUDY’S MOODY LLC’S
RESPONSE TO THE ATTORNEY
GENERAL’S OPPOSING
STATEMENT OF MATERIAL FACTS
AND REPLY TO THE ATTORNEY
GENERAL’S STATEMENT OF
ADDITIONAL FACTS**

(Title to Real Estate Involved)

Pursuant to Rule 56(h)(3) of the Maine Rules of Civil Procedure, Defendant Judy’s Moody LLC (“Judy’s Moody”), submits this Reply Statement of Material Facts. The following admissions and responses are intended solely for purposes of Judy’s Moody’s Motion for Summary Judgment and for no other purpose, and shall have no preclusive effect at trial or any other proceeding.

**RESPONSE TO OPPOSING STATEMENT OF MATERIAL FACTS
OF PARTY-IN-INTEREST ATTORNEY GENERAL**

5. In response to the qualification of the Party-in-Interest Attorney General (“Attorney General”), Judy’s Moody states that the Attorney’s General’s statement reads more as an admission. The Attorney General’s statement admits that the signs “have been relatively temporary.” The portions of the JM Deposition the Attorney General cites do not dispute the nonpermanent nature of the signs on Judy’s Moody’s property. *See* JM Dep. 46:25–49:20 (True and accurate excerpts of the Judy’s Moody deposition cited by Judy’s Moody are attached as **Exhibit A.**).

39. In response to the qualification of the Attorney General, Judy's Moody states as follows: Regarding the statement that Mr. Masucci is aware and "uncomfortable" due to "signs and other physical markers on Judy's Moody's property," Judy's Moody maintains there are no signs currently on Judy's Moody's property. Exhibit A, JM Dep. 46:10–49:24-25. Physical markers are there only occasionally and are often not placed by Judy's Moody. Exhibit A, JM Dep. 92:17–93:12, 93:21–94:10.

Regarding the Attorney General's statement that Peter Masucci does not stop on intertidal land, that qualification/statement is inaccurate. Mr. Masucci testified at his deposition that he has engaged in a host of recreational activities on Judy's Moody's intertidal property that logically include stopping, including walking on the intertidal, stopping in the intertidal to observe people and wildlife, sitting in the intertidal to read, drinking wine and beer in the intertidal, and playing various beach games in the intertidal like bocce ball, tag football, paddleball, wiffleball, and catch, and bodysurfing and boogieboarding along the water next to the intertidal. P. Masucci Dep. 116:17-25, 117:1, 117:23-25, 118:1-16, 118:23-25, 121:5-24, 122:1-12, 127:7-25, 128:1-3, 143:18-24; 144:18-19. (True and accurate excerpts of the P. Masucci deposition cited by Judy's Moody are attached as **Exhibit B**.)

Regarding the Attorney General's statement that Mr. Masucci feels intimidated by the signs and stories of people being asked to leave, Judy's Moody repeats that there are no signs currently on Judy's Moody's property. Exhibit A, JM Dep. 46:10–49:24-25. With respect to the anecdotal stories of people being asked to leave, this Court should not consider this qualification/statement because it is hearsay and requires the admission of evidence excluded under the Maine Rules of Evidence (MRE). Under MRE 801 and 802, out-of-court statements may not be offered to prove

the truth of the matter asserted. The Attorney General has impermissibly offered such statements. Exhibit B, P. Masucci Dep. 151:1-6.

With respect to the Attorney General's qualification/statement that Mr. Masucci is "concerned" that he will be asked to leave Judy's Moody's intertidal property, that concern is unfounded. As the Attorney General admits, Mr. Masucci has never been asked to leave Judy's Moody's intertidal zone, nor has he ever been told to stop using Judy's Moody's intertidal zone. See Exhibit B, P. Masucci Dep. 112:20-23, 113:5-10, 130:2-7. Moreover, that supposed "concern" has not prevented Mr. Masucci from walking across Judy's Moody's intertidal land. Exhibit B, P. Masucci Dep. 144:18-19.

40. In response to the qualification/statement of the Attorney General, Judy's Moody states as follows: Regarding the qualification/statement that Mr. Masucci feels he is "not really able to use the intertidal zone in the way he should be," and that he is "intimidated" by the signs, Judy's Moody submits that there are no signs currently on Judy's Moody's property, Exhibit A, JM Dep. 46:10-49:24-25, and that Mr. Masucci's feelings are not the law. The Law Court in *Bell v. Town of Wells*, 557 A.2d 168, 173-74 (Me. 1989) (*Bell II*), held that general recreational activities such as "bathing, sunbathing," and "recreational walking" on "privately owned intertidal land" at Moody Beach, including the intertidal land owned by Judy's Moody, are not public rights included within the public rights of fishing, fowling, and navigation in the Colonial Ordinance.

Moreover, Mr. Masucci testified at his deposition that he has engaged in a host of recreational activities on Judy's Moody's intertidal property including walking on the intertidal, stopping in the intertidal to observe people and wildlife, sitting in the intertidal to read, drinking wine and beer in the intertidal, and playing various beach games in the intertidal like bocce ball, tag football, paddleball, wiffleball, and catch, and bodysurfing and boogieboarding along the water

next to the intertidal. *See* Exhibit B, P. Masucci Dep. 116:17-25, 117:1, 117:23-25, 118:1-16, 118:23-25, 121:5-24, 122:1-12, 127:7-25, 128:1-3, 143:18-24; 144:18-19.

With respect to the Attorney General's qualification/statement that Mr. Masucci is "concerned" that he will be asked to leave Judy's Moody's intertidal property, that concern is unfounded. As the Attorney General admits, Mr. Masucci has never been asked to leave Judy's Moody's intertidal zone, nor has he been told to stop using Judy's Moody's intertidal zone. *See* Exhibit B, P. Masucci Dep. 112:20-23, 113:5-10, 130:2-7. Moreover, that supposed "concern" has not prevented Mr. Masucci from walking across Judy's Moody's intertidal land. Exhibit B, P. Masucci Dep. 144:18-19.

43. In response to the qualification/statement of the Attorney General, Judy's Moody states as follows: With respect to the Attorney General's statement that the signs and physical markers "intimidate" Mrs. Masucci and that she is "concerned" that she may be asked to leave, Judy's Moody maintains that there are no signs currently on Judy's Moody's property. Exhibit A, JM Dep. 46:10–49:24-25. Physical markers are there only occasionally and are often not placed by Judy's Moody. Exhibit A, JM Dep. 92:17–93:12, 93:21–94:10. Moreover, Mrs. Masucci's "concern" is unfounded. Mrs. Masucci has never been asked to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. *See* K. Masucci Dep. 76:13-17 (True and accurate excerpts of the Kathy Masucci deposition cited by Judy's Moody are attached as **Exhibit C**.) The Attorney General admits this but attempts to qualify based on Mrs. Masucci's "feelings," which are not the law. And, Mrs. Masucci still walks on Judy's Moody's intertidal. Exhibit C, K. Masucci Dep. 70:1-3, 102:23-25.

Moreover, with respect to the anecdotal stories of police being called and people being asked to leave, this Court should not consider this qualification/statement because it is hearsay and

as such requires the admission of evidence excluded under the Maine Rules of Evidence (MRE). Under MRE 801 and 802, out-of-court statements may not be offered to prove the truth of the matter asserted. The Attorney General has impermissibly offered such statements. *See* Exhibit C, K. Masucci Dep. 29:15–30:25, 28:5-9, 84:21–87:16, 91:11–92:4.

46. In response to the qualification/statement of the Attorney General, Judy’s Moody states as follows: With respect to the Attorney General’s statement that the signs on Judy’s Moody’s property have negatively impacted Mr. Connerney’s experience, Judy’s Moody submits that there are no signs currently on Judy’s Moody’s property. Exhibit A, JM Dep. 46:10–49:24-25. Physical markers are there only occasionally and are often not placed by Judy’s Moody. Exhibit A, JM Dep. 92:1–93:12, 93:21–94:10.

Regarding the anecdotal stories of people being asked to leave Judy’s Moody’s intertidal land, this Court should not consider this qualification/statement because it is hearsay and as such requires the admission of evidence excluded under the Maine Rules of Evidence (MRE). Under MRE 801 and 802, out-of-court statements may not be offered to prove the truth of the matter asserted. The Attorney General has impermissibly offered such statements. *See* Connerney Dep. 29:6-20 (True and accurate excerpts of the William Connerney deposition cited by Judy’s Moody are attached as **Exhibit D.**).

With respect to the Attorney General’s qualification/statement that “Mr. Connerney understands that landowners with signs such as Judy’s Moody can choose at any moment to take action against someone who is walking across the intertidal land and ask them not to walk there,” Judy’s Moody submits that Mr. Connerney is not competent to testify as to the current state of the law with respect to the scope of the public easement on the intertidal zone in Maine. As a matter of law, Judy’s Moody retains the right to exclude the public engaging in activities not protected

under Maine law. *See Bell II*, 557 A.2d at 177–79. This statement constitutes opinion evidence by a lay witness (MRE 701) and should be disregarded.

Regarding Mr. Connerney’s concern about hypothetical confrontations with landowners, that concern is unfounded. Judy’s Moody has never told Mr. Connerney to leave the Judy’s Moody’s intertidal property or asked him to stop using the Judy’s Moody intertidal property. *See* Exhibit D, Connerney Dep. 72:9-12, 73:1-3. The Attorney General admits this, but attempts to qualify based on Mr. Connerney’s “feelings,” which are not the law. Moreover, Mr. Connerney continues to walk the intertidal land on Moody Beach today, including on Judy’s Moody’s property. Exhibit D, Connerney Dep. 13:2-25, 14:1, 72:9-12, 73:1-3.

47. In response to the qualification/statement of the Attorney General, Judy’s Moody states as follows: Mr. Connerney testified at his deposition that he uses the intertidal land at Moody Beach today, including on Judy’s Moody’s property. Exhibit D, Connerney Dep. 13:2-25, 14:1, 72:9-12, 73:1-3.

**OPPOSING STATEMENT TO THE ATTORNEY GENERAL’S ADDITIONAL
STATEMENT OF MATERIAL FACTS**

General Objection to the Attorney General’s Additional Statement of Material Facts

Given the Court in its April 15, 2022, order (“Order”) at 25 limited Count IV to whether “any movement or research related activity” is permissible on or over Judy’s Moody intertidal property, statement of material facts with respect to non-movement-based activities are irrelevant.

Because the Law Court in *Bell v. Town of Wells*, 557 A.2d 168, 173 (Me. 1989) (*Bell II*), held that general recreational activities such as “bathing, sunbathing,” and “recreational walking” on “privately owned intertidal land” at Moody Beach, including the intertidal land owned by Judy’s Moody, are not public rights included within the public rights of fishing, fowling, and navigation in the Colonial Ordinance, any facts offered regarding the use of Judy’s Moody’s intertidal property for movement-based recreational activities, including bathing, sunbathing, and recreational walking, are not relevant. Decisions of the Law Court are binding on the Superior Court. *Myrick v. James*, 444 A.2d 987, 997–98 (Me. 1982) (quoting *Oregon v. Mellenberger*, 95 P.2d 709, 719–20 (Or. 1939)); *see also Shaw v. Jendzejec*, 1998 ME 208, ¶ 8, 717 A.2d 367, 370 (quoting *Myrick*).

RESPONSES¹

1. Moody Beach is a mostly sandy beach located in Wells, Maine. (P. Masucci Dep. 95:3-12, 96:24-97:15, 112 38:17-39:5.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

2. Moody Beach is approximately 1.5 miles long and is generally oriented north (Wells)-south (Ogonquit). (P. Masucci Dep. 94:23-95:4, II 10:16-23.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

3. Plaintiffs Peter Masucci and Kathy Masucci (collectively, the Masuccis) are married. (P. Masucci Dep. 73:20; K. Masucci Dep. 12:2-6, 93:24-94:2.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

4. The Masuccis own and reside at the property located at 484 Ocean Avenue in Wells, Maine (the Masuccis' Property). (P. Masucci Dep. 11:1-5, Ex. PM-5; K. Masucci Dep. 12:8-10, 12:23-13:1, 13:10-11, 65:12-15, Ex. KM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

5. The Masuccis' Property is across the street from the Moody Beach; it is not oceanfront property. (P. Masucci Dep. 11:6-11, Ex. PM-5; K. Masucci Dep. 66:16-23, Ex. KM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does

¹ The AG stated that he provided full copies of the relevant deposition transcripts in support of the AG's Motion for Summary Judgment on Count IV and would not provide duplicate copies of the same deposition transcripts. For the Court's convenience, Judy's Moody is providing copies of the deposition excerpts that Judy's Moody cites in its responses.

not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

6. Plaintiff William (Bill) Connerney owns the property at 130 South Tibbetts in Wells, Maine (the Connerney Property) and lives there from the last weekend in May through November 1. (Connerney Dep. 10:21-11:2, 11:21-12:3.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

7. The Connerney Property is across the street from Moody Beach; it is not oceanfront property. (Connerney Dep. 11:3-10; 105:23, 107:7-22, Ex. Connerney-6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

8. Peter Masucci, Kathy Masucci, and Bill Connerney (collectively, the Plaintiffs) each generally understand "intertidal land" to mean the land between the mean low-water mark and the mean high-water mark. (P. Masucci Dep. 101:6-103:16, II 13:5-13; K. Masucci Dep. 68:3-20; Connerney Dep. 57:12-22.)

Objection: Judy's Moody objects on the ground that "intertidal land" has a legal definition in Maine and it is that definition, rather than Plaintiffs' understanding, that governs in this case. *See Bell II*, 557 A.2d at 169 n.3 (citing 12 M.R.S.A. § 572 (Supp. 19880). MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

9. Peter Masucci, Kathy Masucci, and Bill Connerney each regularly walk the length of Moody Beach on the intertidal land at Moody Beach. (P. Masucci Dep. 13:1-8, 13:22-14:7, 14:16-17, 19:15-21:16, 60:1-4, 116:23-117:1, II 43:22-44:5; K. Masucci Dep. 16:20-17:6, 28:21-23, 35:21-36:5, 68:21-69:1, 97:11-25, 108:1-4, 126:25-127:2; Connerney Dep. 13:6-8, 13:20-25, 17:13-18:5, 19:17-24, 25:20-21, 32:22-33:17, 90:15-93:18, 96:9-11.)

Objection: Judy's Moody incorporates by reference the general objection stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

10. Peter Masucci and Kathy Masucci sometimes bring their grandson along when they walk the intertidal land at Moody Beach. (P. Masucci Dep. 19:15-20:3, 117:6-16; K. Masucci Dep. 50:9-16.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

11. Peter Masucci walks the intertidal land at Moody Beach for enjoyment, relaxation, and stress relief. (P. Masucci Dep. II 37:4-12.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

12. When Peter Masucci walks the intertidal land at Moody Beach he sometimes stops to gaze at the water or look for birds. (P. Masucci Dep. 121:1-10, II 46:11-14.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

13. Kathy Masucci likes going to the beach because it is beautiful, peaceful, and fun and because the beach is a wonderful place to think, observe, and be grateful. (K. Masucci Dep. 107:12-15.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

14. Kathy Masucci walks the intertidal land at Moody Beach for enjoyment, physical health benefits, and mental health benefits like stress relief and relaxation. (K. Masucci Dep. 107:16-25.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

15. When Kathy Masucci walks the intertidal land at Moody Beach, she sometimes stops to look at the water. (K. Masucci Dep. 108:1-4.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

16. Bill Connerney walks the intertidal land at Moody Beach for relaxation and physical health. (Connerney Dep. 118:4-9.)

Objection: Judy's Moody incorporates by reference the general objections states above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

17. There are four locations on land from which the public may access on foot the intertidal land at Moody Beach (the Public Access Points). (P. Masucci Dep. 13:9-19, 20:18- 22, 27:11-22, 109:4-10, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:18, Ex. KM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

18. Listed north to south, the Public Access Points are right of way 3 (ROW 3), right of way 2 (ROW 2), right of way 1 (ROW 1), and the parking lot in Ogunquit near the southern end of Moody Beach (Ogunquit Parking Lot). (P. Masucci Dep. 27:11-22, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:16, Ex. KM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

19. There is forbidding signage or other physical markers at each Public Access Point. (P. Masucci Dep. 23:9-14, 23:22-24:3, 26:17-32:11, II 48:19-49:5, II 50:16-51:12, II 54:21- 55:3, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:24-112:9, 112:16-17, 113:14-17, 114:12-25, 115:8-10, 117:13-118:4, 118:21-119:17, 121:20-122:1, Ex. KM-6, ExKM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 18:18-19:5, 21:20-22:4, 23:14-21, 25:10-16, 30:14, 43:6, 75:10-76:19, 109:17-110:2.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody also objects to the extent Paragraph 19 purports to characterize the signage at each Public Access Point, which speaks for itself. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody's property abuts ROW 2. No signs regarding the beach are currently up on Judy's Moody's property. Exhibit A, JM Dep. 46:10-49:24-25.

20. None of the signs or physical markers inform the public that walking, navigation, fishing, or fowling is allowed on the intertidal land. (P. Masucci Dep. II 44:12-45:6, II 48:12-49:11, II 50:19-51:12, II 52:4-54:1, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:22-112:15, 114:17-115:7, 117:13-118:11, 118:19-119:17, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 110:3-111:6, 111:12-112:10, 113:33, Ex. Connerney-7, Ex. Connerney-8.)

Objection: Judy's Moody objects on the grounds that Maine law currently does not permit recreational walking on private intertidal land. *See Bell II*, 557 A.2d at 175-76. Indeed, that is the very question the Attorney General asks this Court to reconsider. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by law witnesses).

Response: Qualified. No signs regarding the beach are currently up on Judy's Moody's property. Exhibit A, JM Dep. 46:10-49:24-25.

21. Judy's Moody claims ownership of the intertidal land on Moody Beach between Judy's Moody's Property and the low water mark of the Atlantic Ocean (the Judy's Moody Intertidal Land). (JM Dep. 19:10-21:25, 22:4-23:2, 39:25-40:4, Ex. Judy's-2, Ex. Judy's-3.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody also objects to this characterization. Judy's Moody's ownership of the intertidal zone is a matter of settled Maine law, rather than a mere claim. *See Bell II*, 557 A.2d at 173. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

22. Judy's Moody's Property abuts ROW 2: When accessing Moody Beach from ROW 2 and heading south along the intertidal land, the first property crossed is Judy's Moody's Property. (JM Dep. 21:2-23:2, 45:1-13, Ex. Judy's-2, Ex. Judy's-6; P. Masucci Dep. 20:17-21:1, 110:25-111:4, 112:4-10, 137:7-9, Ex. PM-5; K. Masucci Dep. 66:24-67:3, 118:19-119:1, Ex. KM-5; Connerney Dep. 75:10-17.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

23. Judy's Moody removed the "No Trespassing" sign for safety reasons; not because it disagreed with the content of the sign. (JM Dep. 48:12-49:5, 50:5-7, 103:6-16.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

24. Judy's Moody occasionally uses large pieces of wood that wash ashore, cones, or seaweed raked in a line to demarcate the side property boundary line shared by Judy's Moody Property and ROW 2. (JM Dep. 92:17-93:12, 93:21-94:10; P. Masucci Dep. II 52:4-25, II 53:16-54:1; K. Masucci Dep. 80:4-82:11, 118:19-119:12; Connerney Dep. 71:13-16, 75:10-76:12, 119:6-120:7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. The cited portions of the JM Dep. make clear that often these objects were placed by someone other than Judy's Moody. *See* Exhibit A, JM Dep. 92:17-93:12; 93:21-94:10.

25. If the Masuccis want to walk Moody Beach at or near high tide, they typically walk down ROW 2, turn south, and then cross the Judy's Moody Intertidal Land. (P. Masucci 20:18-21:4, 106:3-107:14, 117:8-16; K. Masucci Dep. 21:10-21.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

26. In the winter, the Masuccis typically walk the entire length of Moody Beach down to Ogunquit Beach, crossing Judy's Moody Intertidal Land in the process. (P. Masucci Dep. 13:1-14:17; 18:11-20, 19:15-21:16, 116:23-117:16, II 10:9-15, II 15:23-16:7, II 33:6-8, II 43:22-44:5; K. Masucci Dep. 16:3-17:6, 35:21-36:5, 58:22-25, 68:21-69:1, 70:1-3, 97:11-98:5).

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

27. When Bill Connerney accesses Moody Beach from ROW 2 and walks south he crosses the Judy's Moody Intertidal Land. (Connerney Dep. 13:6-8, 13:20-25, 75:10-77:4.

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

28. Peter Masucci is conscious of the signs and other physical markers on Judy's Moody's Property. (P. Masucci Dep. 32:3-11, 33:15-17, II 52:22-54:1.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. There are no signs currently on Judy's Moody's property. Exhibit A, JM Dep. 46:10-49:24-25. Physical markers are there only occasionally and are often not placed by Judy's Moody. Exhibit A, JM Dep. 92:17-93:12, 93:21-94:10.

29. Peter Masucci feels unwelcome on Judy's Moody's Property when he sees the boundary demarcations-wood, orange cones, raked seaweed-on Judy's Moody's Property. (P. Masucci Dep. II 54:10-13.)

Objection: Judy's Moody incorporates the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mr. Masucci's feelings, Judy's Moody repeats that boundary demarcations have often not been placed by any representative of Judy's Moody. Exhibit A, JM Dep. 92:17-93:12, 93:21-94:10.

30. Peter Masucci is concerned that Judy's Moody will ask him to leave the Judy's Moody Intertidal Land. (P. Masucci Dep. II 54:14-17.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. While Judy's Moody cannot dispute Mr. Masucci's feelings, no representative of Judy's Moody has ever asked Mr. Masucci to leave Judy's Moody's intertidal land. Exhibit B, P. Masucci Dep. I 112:20-23, 113:5-10, 130:2-7.

31. That concern-Judy's Moody asking Peter Masucci to leave the Judy's Moody Intertidal Land-negatively effects Peter Masucci's beach experience. (P. Masucci Dep. II 54:18-20.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice). MRE 602 (need for personal knowledge).

Response: Qualified. While Judy's Moody cannot dispute Mr. Masucci's feelings, no representative of Judy's Moody has ever asked Mr. Masucci to leave Judy's Moody's intertidal land. Exhibit B, P. Masucci Dep. I 112:20-23, 113:5-10, 130:2-7.

32. Judy's Moody has never told Peter Masucci that he has the legal right to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:2-8; P. Masucci Dep. II 54:2-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody has never prevented Mr. Masucci from walking on Judy's Moody's intertidal land. Exhibit B, P. Masucci Dep. 112:20-23, 113:5-10, 130:2-7.

33. Judy's Moody has never told Peter Masucci that he has Judy's Moody permission to walk on the Judy's Moody Intertidal Land. (P. Masucci Dep. II 54:6-9.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody has never prevented Mr. Masucci from walking on Judy's Moody's intertidal land. Exhibit B, P. Masucci Dep. I 112:20-23, 113:5-10, 130:2-7.

34. Peter Masucci has personally seen police on Moody Beach. (P. Masucci Dep. 113:11-19, II 55:19-23.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

35. Peter Masucci feels discouraged, angry, and uncomfortable when he sees the police on Moody Beach. (P. Masucci Dep. II 55:24-56:1.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

36. Peter Masucci is concerned that if he stops along the intertidal land of Moody Beach—for example, to make a phone call—he might be confronted by the police. (P. Masucci Dep. II 56:2-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mr. Masucci's feelings, he has never had the police called on him for being on Judy's Moody's intertidal land. Exhibit B, P. Masucci Dep. 113:2-10.

37. Kathy Masucci has seen the signs on the seawall at Judy's Moody's Property. (K. Masucci Dep. 78:16-79:19, 124:17-24.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody does not dispute that Ms. Masucci saw signs in the past. However, no signs regarding the beach are currently up on Judy's Moody's property. Exhibit A, JM Dep. 46:10–49:24-25; K. Masucci Dep. 79:11.

38. The signs on Defendants' properties suggest to Kathy Masucci that she should not be on Defendants' properties. (K. Masucci Dep. 20:11-22.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mrs. Masucci's feelings, there are no signs on Judy's Moody's property. Exhibit A, JM Dep. 46:10–49:24-25.

39. The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mrs. Masucci's feelings, there are no signs currently on Judy's Moody's property. Exhibit A, JM Dep. 46:10–49:24-25. Judy's Moody otherwise incorporates the responses of the other Defendants.

40. To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mrs. Masucci's feelings, there are no signs currently on Judy's Moody's property. Exhibit A, JM Dep. 46:10–49:24-25. Nor has Mrs. Masucci ever been asked by Judy's Moody to leave its intertidal property. Exhibit C, K. Masucci Dep. 76:13-17. Judy's Moody otherwise incorporates the responses of the other Defendants.

41. For Kathy Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mrs. Masucci's feelings, there are no signs currently on Judy's Moody's property. Exhibit A, JM Dep. 46:10–49:24-25. Nor

has Mrs. Masucci ever been asked by Judy's Moody to leave its intertidal property. Exhibit C, K. Masucci Dep. 76:13-17.

42. Kathy Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.)

Objection: Inadmissible as hearsay is offered to prove the truth of the matter asserted—that police actually have been called to Moody Beach. MRE 801(c); MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Admitted.

43. Kathy Masucci has seen pictures of people being asked to leave Judy's Moody's Property. (K. Masucci Dep. 77:1-3.)

Objection: A picture cannot possibly convey whether someone was being asked to leave the intertidal land of Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. Judy's Moody does not dispute that Mrs. Masucci has seen pictures, but cannot possibly ascertain whether these pictures actually show anyone being asked to leave Judy's Moody's intertidal land, much less whether Judy's Moody's representatives were responsible. However, Mrs. Masucci has never been asked by Judy's Moody to leave its intertidal property. Exhibit C, K. Masucci Dep. 76:13-17.

44. Kathy Masucci has heard stories of being people to asked to leave Judy's Moody's Property. (K. Masucci Dep. 28:5-9, 84:21-87:16, 91:11-92:4.)

Objection: Inadmissible as hearsay if offered to prove the truth of the matter asserted—that these stories from unnamed declarants are true. MRE 801(c); MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. Judy's Moody cannot dispute that Mrs. Masucci has heard stories. However, Mrs. Masucci has never been asked by Judy's Moody to leave its intertidal property. Exhibit C, K. Masucci Dep. 76:13-17.

45. The stories Kathy Masucci has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement as hearsay. MRE 802 (hearsay); MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody cannot dispute that Mrs. Masucci has heard stories. However, Mrs. Masucci has never been asked by Judy's Moody to leave its intertidal property. Exhibit C, K. Masucci Dep. 76:13-17.

46. Kathy Masucci is aware that Judy's Moody has demarcated Judy's Moody's Property using logs, cones, and raked seaweed. (K. Masucci Dep. 81:9-24, 82:9-11.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody cannot dispute that Mrs. Masucci is aware of physical demarcations. As noted above, these physical markers are there only occasionally and are often not placed by Judy's Moody. Exhibit A, JM Dep. 92:17-93:12, 93:21-94:10.

47. The raked seaweed, log, and orange cones on Judy's Moody's Property, convey to Kathy Masucci "Keep out. No trespassing." (K. Masucci Dep. 119:9-17.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mrs. Masucci's feelings, Judy's Moody repeats that boundary demarcations have often not been placed by any representative of Judy's Moody. Exhibit A, JM Dep. 92:17-93:12, 93:21-94:10.

48. Kathy Masucci is concerned that Judy's Moody may ask her to leave the Judy's Moody Intertidal Land. (K Masucci Dep. 120:2-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. While Judy's Moody cannot dispute Mrs. Masucci's feelings, no representative of Judy's Moody has ever asked Mrs. Masucci to leave Judy's Moody's intertidal land. Exhibit C, K. Masucci Dep. 76:13-17.

49. That concern—being asked to leave Judy's Moody Intertidal Land—negatively affects Kathy Masucci's experience of walking Moody Beach. (K Masucci Dep. 103:1-7, 120:6-10.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mrs. Masucci's feelings, no representative of Judy's Moody has ever asked Mrs. Masucci to leave Judy's Moody's intertidal land. Exhibit C, K. Masucci Dep. 76:13-17.

50. Judy's Moody has never told Kathy Masucci that she has the legal right to walk on the Judy's Moody Intertidal Land. (K Masucci Dep. 119:18-21.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody has never prevented Mrs. Masucci from walking on Judy's Moody's intertidal land. Exhibit C, K. Masucci Dep. 76:13-17.

51. Judy's Moody has never told Kathy Masucci that she has Judy's Moody's permission to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:9-12, 120:8-10; Kathy Masucci Dep. 119:22-120:1.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody has never prevented Mrs. Masucci from walking on Judy's Moody's intertidal land. Exhibit C, K. Masucci Dep. 76:13-17.

52. Bill Connerney has seen the police on the Judy's Moody Intertidal Land. (Connerney Dep. 27:24-28:14, 79:5-24, 82:24-83:4.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

53. Bill Connerney has seen the police on Moody Beach at areas other than the Defendants' properties. (Connerney Dep. 83:5-9.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

54. Bill Connerney has heard anecdotal accounts of Judy's Moody telling people to leave Judy's Moody Intertidal Land. (Connerney Dep. 29:6-20.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody also objects as inadmissible hearsay if offered to prove the truth of the matter asserted—that these stories are true. MRE 801(c); MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. Judy's Moody cannot dispute that Mr. Connerney has heard stories. However, Mr. Connerney has never been asked by Judy's Moody to leave its intertidal property. Exhibit D, Connerney Dep. 72:9-12, 73:1-3.

55. Bill Connerney has seen the orange cones, wood, and raked seaweed demarcating the boundary of Judy's Moody's Property and ROW 2. (Connerney Dep. 71:13-15.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. As noted above, these physical markers are there only occasionally and are often not placed by Judy's Moody. Exhibit A, JM Dep. 92:17-93:12, 93:21-94:10.

56. Bill Connerney has seen the signs that used to be on the seawall at Judy's Moody's Property. (Connerney Dep. 76:24-77:18.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

57. Bill Connerney was aware of those signs on Judy's Moody's Property as soon as he enters the beach. (Connerney Dep. 78:17-23.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

58. The signs that were on Judy's Moody's Property have negatively impacted Bill Connerney's experience of walking the intertidal land at Moody Beach. (Connerney Dep. 13:6-8, 13:20-25, 78:17-79:4, 82:14-18.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody cannot dispute Mr. Connerney's feelings, but he has never been asked to leave the intertidal zone by Judy's Moody and he continues to use Judy's Moody's intertidal land today. Exhibit D, Connerney Dep. 13:2-25, 14:1, 72:9-12, 73:1-3. And there are no signs currently on Judy's Moody's property. Exhibit A, JM Dep. 46:10-49:24-25.

59. Bill Connerney feels unwelcome on Judy's Moody's Property when he sees those boundary demarcations—wood, cones, raked seaweed—on Judy's Moody's Property. (Connerney Dep 25:20-26:4, 119:10-17.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody cannot dispute Mr. Connerney's feelings, but repeats that these physical markers are there only occasionally and are often not placed by Judy's Moody. Exhibit A, JM Dep. 92:17-93:12, 93:21-94:10. Further, he has never been asked to leave

the intertidal zone by Judy's Moody and he continues to use Judy's Moody's intertidal land today. Exhibit D, Connerney Dep. 13:2-25, 14:1, 72:9-12, 73:1-3.

60. Judy's Moody has never told Bill Connerney that he has the legal right to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:13-16.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody has never prevented Mr. Connerney from walking on Judy's Moody's intertidal land. Exhibit D, Connerney Dep. 72:9-12, 73:1-3.

61. Judy's Moody has never told Bill Connerney that he has Judy's Moody's permission to walk on the Judy's Moody Intertidal Land. (Connerney Dep. 118:23-119:1.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody has never prevented Mr. Connerney from walking on Judy's Moody's intertidal land. Exhibit D, Connerney Dep. 72:9-12, 73:1-3.

62. Bill Connerney would feel better about walking on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land if their signage specified that walking is allowed. (Connerney Dep. 115:5-10.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects on the ground that Maine law currently does not permit recreational walking on private intertidal land. *See Bell II*, 557 A.2d at 175-76. Indeed, that is the very question the Attorney General asks this Court to reconsider. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. No signs regarding the beach are currently on Judy's Moody's property. Exhibit A, JM Dep. 46:10-49:24-25. Judy's Moody incorporates the responses of the other Defendants with respect to signage on or adjacent to their property.

63. Bill Connerney understands that Judy's Moody could choose at any moment to ask someone who is walking across the Judy's Moody Intertidal Land to leave or move along. (Connerney Dep. 116:24-117:14.)

Objection: Mr. Connerney is not competent to testify as to the current state of the law with respect to the scope of the public easement on the intertidal zone in Maine. As a matter of law, Judy's Moody retains the right to exclude the public engaging in activities not protected under Maine law. *See Bell II*, 557 A.2d at 177-79. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

64. Bill Connerney thinks about the possibility of a confrontation with landowners such as Judy's Moody when he is on the Judy's Moody Intertidal Land. (Connerney Dep. 25:20-26:4, 117:15-24.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody cannot dispute that Mr. Connerney thinks about hypothetical confrontations. However, Judy's Moody has never prevented Mr. Connerney from walking on Judy's Moody's intertidal land. Exhibit D, Connerney Dep. 72:9-12, 73:1-3.

65. The possibility of a confrontation with landowners such as Judy's Moody detracts from what would otherwise be a relaxing walk on the beach for Bill Connerney. (Connerney Dep. 117:15-118:6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody cannot dispute Mr. Connerney's feelings. However, Judy's Moody has never prevented Mr. Connerney from walking on Judy's Moody's intertidal land. Exhibit D, Connerney Dep. 72:9-12, 73:1-3.

66. Kathy Masucci thinks that walking and running and moving could be considered navigation. (K. Masucci Dep. 76:4-8.)

Objection: Mrs. Masucci is not competent to testify as to the current state of the law in Maine regarding whether walking or running or moving is considered navigation. As a matter of law, the public easement does not include recreational walking on private intertidal land. *See Bell II*, 557 A.2d at 175-76. Indeed, that is the very question the Attorney General asks this Court to reconsider. MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

67. Bill Connerney thinks that walking could be considered navigation. (Connerney Dep. 65:16-66:20, 114:11-25, 115:13-116:6.)

Objection: Mr. Connerney is not competent to testify as to the current state of the law in Maine regarding whether walking or running or moving is considered navigation. As a matter of law, the public easement does not include recreational walking on private intertidal land. *See Bell II*, 557 A.2d at 175-76. Indeed, that is the very question the Attorney General asks this Court to reconsider. MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

68. When people are engaging in activities other than fishing, fowling, and navigating on the Judy's Moody Intertidal Land, Judy's Moody understands that it has the right to ask people to leave. (JM Dep. 122:2-11.)

Objection: Neither Judy's Moody nor Keith Dennis is competent to testify regarding the current state of the law regarding what the public is permitted to do on private intertidal land. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

69. Judy's Moody thinks that there are times when navigation includes walking. (JM Dep. 123:8-11.)

Objection: Neither Judy's Moody nor Keith Dennis is competent to testify regarding the current state of the law regarding what the public is permitted to do on private intertidal land. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

Dated: June 23, 2023

Respectfully submitted,



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varies but in places is 500 to 600 feet. Washburn Aff., Exhibit A (Howe Depo. at 22, 24-25); Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20.

5. From the seawall toward the ocean for a distance of about 30 feet is a dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 121-122). No Plaintiff is making any claim of use to the dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 95, 101), Exhibit D (Peter I Depo. at 15, 18), Exhibit E (Peter II Depo. at 13-15).

6. The portions of the Ogunquit Beach that abuts the upland portion of OA 2012's property to the south is a public way that provides access for a Town of Ogunquit parking lot to the Ogunquit Beach. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20; Washburn Aff., Exhibit A (Howe Depo. at 55-56, 60) & Exhibit E (Peter II Depo. at 40, 42).

7. There is a sign that has been in place for some time attached to the seawall facing the right of way that states: "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." Washburn Aff., Exhibit A (Howe Depo. at 39 & Exhibit 5) & Exhibit D (Peter I Depo. at 27-28).

8. OA 2012 has posted on its seawall that faces the ocean a sign that states: "Moody Beach, Private, No Loitering." Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40; Washburn Aff., Exhibit A (Howe Depo. at 47-49 & Exhibit 6) & Exhibit D (Peter I Depo. at 27-28).

9. During the summer season, OA 2012 places temporary signage at or near the high water mark on its property indicating the location of various beaches including arrows pointing to Moody Beach, a private beach, and the Ogunquit Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-48, 51-52 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

10. The purpose of the signage is to identify for those using the beach the demarcation between the Ogunquit Town beach and OA 2012's property in Wells at Moody Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-49, 51-52, 55-56, 60 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

11. Beach goers including those few Plaintiffs who have actually been on or over OA 2012's intertidal property do not read the sign as restricting or limiting in any way any movement-based activity, whether recreational, navigation or ocean based related. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103).

12. As was the case when Bell was decided, hundreds of people every summer day engage in movement-based activity on or over OA 2012's intertidal property without restriction or interruption. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64); Kinney Aff. ¶¶ 3, 4 and Exhibit B-6.

13. OA 2012's predecessor in title Kevin Howe was a plaintiff in the *Bell v. Town of Wells*, Maine Superior Court (York) CV-84-125, and Law Court Docket YOR-87-430, reported at *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) (collectively both the Superior Court action on and Law Court decision in *Bell* are referred to herein as the "*Bell Action*") and obtained a judgment that is of record through that quiet title action that he owned the fee to the intertidal portion of his property (e.g., that it is private property) subject only to the public's rights to use his intertidal property for fishing, fowling and navigation, and that those rights did not include any recreational rights. Kinney Aff. ¶¶ 3, 4 and Exhibits A, B-1 (at 332), B-2, B-6, B-7 & B-8; Washburn Aff., Exhibit A (Howe Depo. at 26-27).

14. The State was an actual party in the *Bell Action* and represented the public interest. Kinney Aff. ¶ 4 & Exhibits B-1, B-3 B-7 & B-8; see also *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

15. Plaintiff Orlando Delogu was among the amici in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

16. In the *Bell Action*, at the request of the State, a guardian ad litem was appointed pursuant to 14 M.R.S. § 6656 "to represent the private rights of all unnamed and unknown defendant who have not actually been served with process and who had not appeared in this action." Kinney Aff. ¶ 4 & Exhibit B-5.

17. The testimony at trial in the *Bell Action* included references to signs posted on the seawall on the Howe property and on other seawalls that said Moody Peach was a private beach and stated, "No Loitering" and/or "No Trespassing." Kinney Aff. ¶ 4 & Exhibit B-6.

18. OA 2012 is successor in title and in privity with Kevin Howe. Kinney Aff. ¶¶ 3, 4 & Exhibits A, B-1 & B-8.

19. None of the Plaintiffs have had their access to OA 2012's intertidal land limited or restricted in any way for any movement-based activity, whether navigation related, recreational related and/or ocean base, let alone significantly restricted. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38 & 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

20. There are no facts suggesting that the "intertidal jurisdiction" has "restricted" any of the Plaintiffs from engaging in any movement-based activity on or over OA 2012's intertidal property. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38, 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

21. In the *Bell Action*, there was testimony that many of the ocean-front property owners placed signs either in the sand, or on their seawall steps; the signs carried messages such as “No Trespassing”, “Private Beach to Low Water Mark, No Loitering Please” [App. at 1397], or simply “Private Property.” At the southern end, near Ogunquit Beach, William Case and plaintiffs Leo Shannon and John Howe erected a sign in 1975 at Howe’s property (on the Ogunquit Beach line) which said, “Private Beach.” Kinney Aff. ¶ 4 and Exhibit B-6.

22. OA 2012 has never objected to any movement-based activity over its intertidal property, however characterized as ocean based, navigation or recreation. Washburn Aff., Exhibit A (Howe Depo. at 39, 45, 71).

23. With respect to OA 2012’s intertidal zone Plaintiffs Robert Morse, George Seaver, John W. Grotton, Hale Miller, LeRoy Gilbert, Jake Wilson, Dan Harrington, Susan Domizi, Greg Tobey, Amanda Moeser, Chad Coffin, Lori Howell, Tom Howell and Brian Beal have not been to Moody Beach where OA 2012’s intertidal property is located and have never been on OA 2012’s property, and have not to identified any instance in which OA 2012 prevented or restricted them (or anyone else for that matter) from engaging in any movement-based activity on or over OA 2012 property. Washburn Aff., Exhibit J (Plaintiff Robert Morse’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff George Seaver’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff John W. Grotton’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 31, 2022); Plaintiff Hale Miller’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff LeRoy Gilbert’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 30, 2022); Plaintiff Jake Wilson’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Dan Harrington’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 19, 2022); Plaintiff Susan Domizi’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (signed & dated Jan. 4, 2023); Plaintiff Greg Tobey’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Amanda Moeser’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 26, 2022); Plaintiff Chad Coffin’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Lori Howell’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (Dec. 12, 2022); Plaintiff Tom Howell’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories Nos. 2, 3 (Dec. 12, 2022); Plaintiff Brian Beal’s Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories No. 2 (signed & dated Dec. 28, 2022)).

24. Plaintiffs Judith Delogu and Sheila Jones have never been to Moody Beach, and have never been or attempted to engage any movement-based activity on OA 2012 intertidal land. Washburn Aff., Exhibit G (J. Delogu Depo. 13, 18, 21, 30) & Exhibit I (Jones Depo. at 32, 43).

25. Plaintiff William Griffiths has been to Moody Beach twice, and has never been or attempted to engage any movement-based activity on OA 2012 intertidal land. Washburn Aff., Exhibit F (Griffith's Depo. 10, 59, 66-67) & Exhibit K (Plaintiff William Griffiths' Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories No. 2 (signed & dated Dec. 21, 2022)).

26. Plaintiff Orlando Delogu has been to Moody Beach, but is not aware of the location of OA 2012's Property, and in any event has never been prevented from engaging in any movement-based activity over the entire beach, which necessarily involves the OA 2012 Property. Washburn Aff., Exhibit H (O. Delogu Depo. at 140-142, 148).

27. Plaintiffs Peter and Kathy Masucci are back lot owners and access the beach at the opposite end of Moody Beach from where OA 2012's property is located. Washburn Aff., Exhibit B (K. Masucci Depo. at 97-101) & Exhibit E (Peter II Depo. at 16-18). While they believe they have walked over OA 2012's property, they have never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's Property. *Id.*

28. Back lot owner Plaintiff William Connerney believes he has walked across the OA 2012's property, but he has never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's property. Washburn Aff., Exhibit C (Connerney Depo. at 69, 72-73, 97-98, 103).

29. Plaintiffs Griffiths and Jones do not know whether any of their customers had ever been on OA 2012's property or seen any signs located thereon, and could not identify an occasion when any of their customers advised them they would not return to their hotel due to any signs on OA 2012's property. Washburn Aff., Exhibit F (Griffiths Depo. at 25, 29-30, 35-36) & Exhibit I (Jones Depo. at 22-23, 38).

30. In the *Bell Action* an Order for Alternative Service was published in the local York County newspaper that said in part "...it is hereby Ordered that any defendant or his attorney who wishes to oppose this lawsuit must prepare and file a written answer to the complaint on or by May 7, 1984.". Kinney Aff. ¶ 4 and Exhibit B-4 (at entries numbered 4, 6 19).

31. As of 1984, Plaintiffs Peter and Kathy Masucci and William Connerney were of legal age and spent time at Moody Beach. Washburn Aff., Exhibit B (K. Masucci Depo. at 65), Exhibit C (Connerney Depo. at 53) & Exhibit D (Peter I Depo. at 12, 18-19).

32. A final judgment was issued in the *Bell Action*. Kinney Aff. ¶ 4 and Exhibits B-7 and B-8 (docket entries at 9/15/87 Brodrick, J. decision/judgment, 09/30/87 Brodrick, J. amendment of findings of fact, & 10/01/87 declaration of “judgment be entered for the plaintiff, Kevin J. Howe”, Apx. at pp. 29-30, 32) *infra*; *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

33. Plaintiffs have not joined in this action all of the prevailing plaintiffs in *Bell Action* or their successors in interests. Kinney Aff. ¶ 4 and Exhibit B-1 (at docket entries 265 through 293, Apx. at pp. 30-34) *infra*.

34. The Appendix filed by the parties in the Law Court in the *Bell Action*, Law Court Docket No. YOR-87-430 contained over 1600 pages, including, as follows:

- a. Exhibit B-1: Superior Court Docket Entries (Sheets 1 through 18), Appendix (“Apx.”) at pp. 01-36;
- b. Exhibit B-2: Pleadings: Complaint and its Exhibit A (Mar. 7, 1984) and First Amendment to Complaint (Aug. 9, 1985); Apx. at pp. 37-58 & 78-85;
- c. Exhibit B-3: Defendant State of Maine Bureau of Lands’ Answer (Apr. 11, 1984), State Defendants’ Answer to Amendments to Plaintiffs’ Complaint (July 1, 1986), Apx. At pp. 59-67 & 86-88;
- d. Exhibit B-4: Superior Court Docket Entries evidencing filing and entry of Plaintiffs’ Motion for Alternative Service and Order, Apx. at 01-02;
- e. Exhibit B-5: Superior Court Docket Entries reflecting filing and entry of State’s Motion for Appointment of Guardian Ad Litem (Nov. 2, 1984) and Order (Mar. 1, 1985), Apx. 04 & 06;
- f. Exhibit B-6: Excerpts of trial transcript regarding signage of Moody Beach (Edward Haseltine, Richard Kenary, Betty Stirling, & William Case);
- g. Exhibit B-7: Superior Court decision (Sept. 14, 1987)(Brodrick, J.) and Amendment of Findings of Fact (Sept. 30, 1987)(Brodrick, J.); and
- h. Exhibit B-8: Superior Court Docket Entries evidencing entry of Final Judgment (Sept. 14, 1987)(Brodrick, J.) and (29) Finding Judgments and Declaration of Title (Oct. 1, 1987).

True copies of the above-identified excerpts of the Appendix are attached to the Affidavit of Rebecca Kinney. *See* Kinney Aff. ¶ 4 and Exhibits B-1, B-2, B-3, B-4, B-5, B-6, B-7 & B-8, respectively.

Dated: May 2, 2023

/s/David P. Silk

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State of Maine
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Superior Court
Civil Action
Docket No. RE-2021-35

Peter and Kathy Masucci, et al.,)
)
Plaintiffs)
)
v.)
)
Judy’s Moody LLC, et al.,)
)
Defendants)
)
and)
)
Aaron Frey in his capacity as the Attorney General)
for the State of Maine)
)
Party in interest)

**PLAINTIFFS’ OPPOSITION TO
DEFENDANT OA2012 TRUST’S
STATEMENT OF UNDISPUTED
MATERIAL FACTS**

Plaintiffs, by and through undersigned counsel, replies to Defendant OA Trust’s
Statement of Undisputed Material Facts (hereafter “OA Trust S.M.F.”) as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. The distance from seawall at OA 2012’s Property to the mean low water may varies with the tides and may at times be equivalent to a distance of 500 to 600 feet, but OA Trust has provided no evidence supporting such a drastic tidal flux. *See* Peter Masucci dated January 13, 2023, Volume II, page 14:2-24 (attached hereto as “Exhibit A”) (“P. Masucci Dep. V. II”).
5. Qualified. The dry sand area between the seawall and the ocean varies with the tides and may at times be equivalent to a distance of 30 feet. *Id.*
6. Admitted.

7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Denied. William Connerney “felt hindered in what [he] would do” and is now “very cautious” when traversing and recreating Moody Beach intertidal lands due to claims of private ownership and Private Property signage. *See* Deposition of William Connerney dated January 11, 2023, pages 25:23, 26:1-4, 36:5-12, 69:6-9 (attached hereto as “Exhibit B”) (“Connerney Dep.”). Confrontations with private property owners and private property signage has “cause [William Connerney] and [his family] to become concerned that if [they] should occupy any portion of the intertidal land seaward of any of the Defendant’s property, then [they] would be approached and told to leave.” *See* Plaintiff William Connerney’s Response to Ocean 503’s First Set of Interrogatories dated December 19, 2023, response 11 (attached hereto as “Exhibit C”) (“Connerney Resp. Ocean 503 Int.”); Plaintiff William Connerney’s Answers to Defendants OA Trust’s and Judy’s Moody LLC’s First Set of Interrogatories dated January 5, 2023, response 3 (attached hereto as “Exhibit D”) (“Connerney Resp. Judy’s Moody Int.”).
12. Denied. Public activity within the intertidal on private property is restricted to fishing, fowling, and navigation. *See* Defendant OA 2012 Trust’s Statement of Undisputed Material Facts dated May 2, 2023, paragraph 23 (Def.’s S.M.F.); *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).
13. Denied. The judgment in *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) speaks for itself. OA 2012’s predecessor in title Kevin Howe was a plaintiff in *Bell v. Town of Wells* who obtained a judgment that his intertidal land was subject only to the public’s rights to use his

intertidal property for fishing, fowling and navigation, and those rights include recreational rights fitting into those broad categories. *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Denied. The OA 2012 Property displays private beach signage stating “MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED” attached to a seawall limiting and restricting Plaintiff and public access to the intertidal on its property. Howe Dep. Ex. 5 (attached hereto as “Exhibit E”); *see* Connerney Dep. 37:11-16; Connerney Resp. Ocean 503 Int., ¶ 6; Connerney Resp. Judy’s Moody Int., ¶ 4.

20. Denied. The OA 2012 Property displays private beach signage stating “MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED” attached to a seawall relying on intertidal jurisdiction to restrict Plaintiff and public access to the intertidal on its property. *Id.*; *see* Connerney Dep. 37:11-16; Connerney Resp. Ocean 503 Int., ¶ 6; Connerney Resp. Judy’s Moody Int., ¶ 4.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Denied. Plaintiff William Griffiths has been to Moody Beach twice, once playing football on the beach, which is undoubtedly a movement-based activity. Deposition of William Griffiths dated January 12, 2023, pages 59:7-12 (attached hereto as "Exhibit F") ("Griffiths Dep.").

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

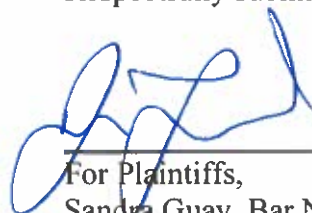
32. Admitted.

33. Admitted.

34. Admitted.

Dated: June 2, 2023

Respectfully submitted,



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Peter Masucci dated January 13, 2023, Volume II, page 14:2-24 (attached hereto as "Exhibit A") ("P. Masucci Dep. V. II").

OA 2012's Reply: Plaintiffs have not controverted SMF 4. The cited deposition pages do not support the denial. Plaintiffs' citation to page 14:2-24 of Mr. Masucci's deposition is his testimony as to his claim to use OA2012 Trust's property landward above the mean high water mark, high tide mark, and not to testimony of any measurement by him from the seawall at OA 2012's Property to the mean low water. Hence the citation reference does not support the denial that. Plaintiffs provide no support for their statement ("OA Trust has provided no evidence supporting such a drastic tidal flux.") or otherwise that show in any way that OA Trust cited references do not support the statement of fact. .

SMF 5: From the seawall toward the ocean for a distance of about 30 feet is a dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 121-22). No Plaintiff is making any claim of use to the dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 95, 101), Exhibit D (Peter I Depo. at 15, 18), Exhibit E (Peter II Depo. at 13-15).

Plaintiffs' Response SMF 5: Qualified. The dry sand area between the seawall and the ocean varies with the tides and may at times be equivalent to a distance of 30 feet. *Id.* [citing to P. Masucci Dep. Vol. II 14:2-24.]

OA 2012 Reply: Plaintiffs have not controverted SMF 5. The cited deposition pages do not support the denial. Plaintiffs' citation to page 14:2-24 of Mr. Masucci's deposition is his testimony as to his claim to use OA2012 Trust's property landward above the mean high-water mark, high tide mark, and not to testimony of any measurement by him from the seawall at OA 2012's Property to the mean low water. Hence the citation reference does not support the denial that.

SMF 11: Beach goers including those few Plaintiffs who have actually been on or over OA 2012's intertidal property do not read the sign as restricting or limiting in any way any movement-based activity, whether recreational, navigation or ocean based related. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103).

Plaintiffs' Response SMF 11: Denied. William Connerney "felt hindered in what [he] would do" and is now "very cautious" when traversing and recreating Moody Beach intertidal lands due to claims of private ownership and Private Property signage. See Deposition of William Connerney dated January 11, 2023, pages 25:23, 26:1-4, 36:5-12, 69:6-9 (attached hereto as "Exhibit B") ("Connerney Dep."). Confrontations with private property owners and private property signage has "cause [William Connerney] and [his family] to become concerned that if [they] should occupy any portion of the intertidal land seaward of any of the Defendant's property, then [they] would be approached and told to leave." See Plaintiff William Connerney's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 11 (attached hereto as "Exhibit C") ("Connerney Resp. Ocean 503 Int."); Plaintiff William Connerney's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 3 (attached hereto as "Exhibit D") ("Connerney Resp. Judy's Moody Int.").

OA 2012's Reply: Plaintiffs have not controverted SMF 11. No beach front owner confronted Mr. Connerney and asked him to leave the beach and no one from OA 2012 ever asked him to stop what he was doing on the intertidal area of its property. (Connerney Dep.¹ 17:16-18:6; 18:12-23; 27:6-16; 72:10-12; 73:1-3.) Mr. Connerney testified he is aware of "a sign

¹ True and correct excerpts of the Deposition of William Connerney are attached hereto as Addendum 1.

on [the] wall that tells you that the beach is private, *no trespassing*” and he “feels uncomfortable and that his comfort level has been impacted in utilizing the beach.” *Id.* 100:25-101:6 (emphasis added); 101:18-22; 103:6-10.

There is no sign on OA 2012’s property that states: “no trespassing.” The two signs on OA 2012’s property state: “MOODY BEACH PRIVATE NO LOITERING” and “MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED”. *See* Defendant OA 2012 Trust’s Statement of Undisputed Material Facts (May 2, 2023) (“OA 2012 SMF”) ¶¶ 7, 8, 9; Plaintiffs’ Opposition to Defendant OA212 Trust’s Statement of Undisputed Material Facts (June 2, 2023) ¶¶ 7 (“Admitted”), 8 (“Admitted”) & 9 (“Admitted”); Howe Depo. 37:10-21² (identifying seawall at OA 2012 Property and identifying sign depicted in Howe Depo. Ex. 5). *See also* Defendant OA 2012 Trust’s Opposing Statement to Attorney General’s Statement of 129 Material Facts and Statement of Additional Facts, *Exhibit 2*³ (Affidavit of James Howe) ¶ 5.

SMF 12: As was the case when *Bell* was decided, hundreds of people every summer day engage in movement-based activity on or over OA 2012’s intertidal property without restriction or interruption. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64); Kinney Aff. ¶¶ 3, 4 and Exhibit B-6.

Plaintiffs’ Response SMF 12: Denied. Public activity within the intertidal on private property is restricted to fishing, fowling, and navigation. *See* Defendant OA 2012 Trust’s Statement of Undisputed Material Facts dated May 2, 2023, paragraph 23 (Def.’s S.M.F.); *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

² True and correct excerpts of the deposition transcript of James Howe are attached hereto as Addendum 2.

³ For the Court’s convenience, true copy of Exhibit 2 (Affidavit of James Howe) is attached to this reply as Addendum 3.

OA 2012's Reply: Plaintiffs have not controverted SMF 12. SMF is a statement of fact, regarding the number of people every summer who cross OA 2012's intertidal property and that do so without restriction or interruption. Defendant OA 2012's statement of material fact, paragraph 23, does not support Plaintiffs' denial. *See also* Addendum 2 hereto (Aff. James Howe) ¶¶ 2, 12, 13.

SMF 13: OA 2012's predecessor in title Kevin Howe was a plaintiff in the *Bell v. Town of Wells*, Maine Superior Court (York) CV-84-125, and Law Court Docket YOR-87-430, reported at *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) (collectively both the Superior Court action on and Law Court decision in Bell are referred to herein as the "*Bell Action*") and obtained a judgment that is of record through that quiet title action that he owned the fee to the intertidal portion of his property (e.g., that it is private property) subject only to the public's rights to use his intertidal property for fishing, fowling and navigation, and that those rights did not include any recreational rights. Kinney Aff. ¶¶ 3, 4 and Exhibits A, B-1 (at 332), B-2, B-6, B-7 & B-8; Washburn Aff., Exhibit A (Howe Depo. at 26-27).

Plaintiffs' Response SMF 13: Denied. The judgment in *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) speaks for itself. OA 2012's predecessor in title Kevin Howe was a plaintiff in *Bell v. Town of Wells* who obtained a judgment that his intertidal land was subject only to the public's rights to use his intertidal property for fishing, fowling and navigation, and those rights include recreational rights fitting into those broad categories. *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989)

OA 2012's Response: Plaintiffs have not controverted SMF 13. *See* Plaintiffs' Admission to OA 2012's SMF ¶ 18. *See also* Addendum 2 hereto (Aff. James Howe) ¶¶ 2, 12, 13.

SMF 19: None of the Plaintiffs have had their access to OA 2012's intertidal land limited or restricted in any way for any movement-based activity, whether navigation related, recreational related and/or ocean base, let alone significantly restricted. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38 & 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

Plaintiffs' Response SMF 19: Denied. The OA 2012 Property displays private beach signage stating "MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED" attached to a seawall limiting and restricting Plaintiff and public access to the intertidal on its property. Howe Dep. Ex. 5 (attached hereto as "Exhibit E"); see Connerney Dep. 37:11-16; Connerney Resp. Ocean 503 Int. ¶ 6; Connerney Resp. Judy's Moody Int. ¶ 4.

OA 2012 Reply: Plaintiffs have not controverted SMF 19. The record citation to Connerney Dep. 37:11-16; responses to interrogatories of Ocean 503 (¶ 6 (Dec. 19, 2022): "Describe in detail any and all instances in which Ocean 503 has in any way prevented, prohibited, forbid, restricted and/or discouraged your movement within the intertidal zone of the Property [Def. Ocean 503 LLC's First Set of Interrogatories (Dec. 2, 2022) ¶ 4 defined the "Property" as 503 Ocean Avenue, Wells, Maine] and/or otherwise denied you access to the intertidal zone of the Property...ANSWER: None."); and response to interrogatory No. 4 of Judy's Moody (Jan. 6, 2023) (answering as to the property of "Defendant's property is that as described in Plaintiff's Complaint" (Definitions ¶¶ 3 & 4)) do not support the denial of SMF 19 as to the property of OA 2012. See Pl. Opp. OA 2012 SMF, Exhibit C ¶¶ 4, 6. See also true copies of Judy's Moody Interrogatory No. 4 and page 1 (definitions) attached hereto as

Addendum 4. The citation to the Connerney deposition is again to the property of Ocean 503 and not to the property OA 2012. *See* Pl. Opp. OA 2012 SMF, Exhibit B (Connerney Dep. 37:10). *See also* OA 2012's REPLY to Plaintiffs' Response to SMF 11, above.

SMF 20: There are no facts suggesting that the "intertidal jurisdiction" has "restricted" any of the Plaintiffs from engaging in any movement-based activity on or over OA 2012's intertidal property. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38, 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

Plaintiffs' Response SMF 20: Denied. The OA 2012 Property displays private beach signage stating "MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED" attached to a seawall relying on intertidal jurisdiction to restrict Plaintiff and public access to the intertidal on its property. *Id.*; *see* Connerney Dep. 37:11-16; Connerney Resp. Ocean 503 Int. ¶ 6; Connerney Resp. Judy's Moody Int. ¶ 4.

OA 2012's Reply: Plaintiffs have not controverted SMF 20. The record citation to Connerney Dep. 37:11-16; responses to interrogatories of Ocean 503 (¶ 6 (Dec. 19, 2022): "Describe in detail any and all instances in which Ocean 503 has in any way prevented, prohibited, forbid, restricted and/or discouraged your movement within the intertidal zone of the Property [Def. Ocean 503 LLC's First Set of Interrogatories (Dec. 2, 2022) ¶ 4 defined the "Property" as 503 Ocean Avenue, Wells, Maine] and/or otherwise denied you access to the intertidal zone of the Property...ANSWER: None."); and response to interrogatory No. 4 of Judy's Moody (Jan. 6, 2023) (answering as to the property of "Defendant's property is that as described in Plaintiff's Complaint" (Definitions ¶¶ 3 & 4)) do not support the denial of SMF 19

as to the property of OA 2012. *See* Pl. Opp. OA 2012 SMF, Exhibit C, ¶¶ 4, 6. *See also* Addendum 4 (Judy’s Moody interrogatory paragraph 4 and page 1). The citation to the Connerney deposition is again to the property of Ocean 503 and not to the property OA 2012. *See* Pl. Opp. OA 2012 SMF, Exhibit B (Connerney Dep. 37:10). *See also* OA 2012’s REPLY to Plaintiffs’ Response to SMF 11, above.

SMF 25: Plaintiff William Griffiths has been to Moody Beach twice, and has never been or attempted to engage any movement-based activity on OA 2012 intertidal land. Washburn Aff., Exhibit F (Griffith’s Depo. 10, 59, 66-67) & Exhibit K (Plaintiff William Griffiths’ Answers to Defendants OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories No. 2 (Dec. 12, 2022)).

Plaintiffs’ Response SMF 25: Denied. Plaintiff William Griffiths has been to Moody Beach twice, once playing football on the beach, which is undoubtedly a movement-based activity. Deposition of William Griffiths dated January 12, 2023, pages 59:7-12 (attached hereto as "Exhibit F") ("Griffiths Dep.").

OA 2012’s Reply: Plaintiffs have not controverted SMF 25. William Griffiths has been to Moody Beach twice: one 50 years ago playing football and a second time more recently for a press release related to the instant case. (Griffiths Dep. 15:16-23 (referring to property owned by Ocean 503); 21:7-13 ("[T]wo times that you’ve been to Moody Beach, which was 50 years ago...Are there any other times that you recall being on Moody Beach? A. No.)) Griffiths at deposition stated in response to the question: “if you went down to Moody Beach and [were asked] to point out ... which property is the property owned by OA 2012 Trust, could you do that? A. No.” (Griffiths Dep. 66:4-9.) And “the only other time in the last 50 years you’ve been at Moody Beach, today, is to attend a press conference in 2021; is that right? A. That’s correct.”

(Griffiths Dep. 66:25-67:4.) True and correct copies of Griffiths Dep. 15, 21, 66-67 are attached hereto as Addendum 5.

Dated: June 23, 2023



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Attorney for the Defendant OA 2012 Trust

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-35

| | |
|-----------------------------------|---|
| PETER MASUCCI, <i>et al.</i> , |) |
| |) |
| Plaintiffs, |) |
| v. |) |
| |) |
| JUDY'S MOODY LLC, <i>et al.</i> , |) |
| |) |
| Defendants, |) |
| and |) |
| |) |
| AARON M. FREY, in his capacity as |) |
| ATTORNEY GENERAL OF THE STATE OF |) |
| MAINE, |) |
| |) |
| Party-in-Interest |) |

**ATTORNEY GENERAL'S OPPOSING
AND ADDITIONAL STATEMENT OF
MATERIAL FACTS (RESPONSIVE TO
OA 2012 TRUST'S STATEMENT OF
MATERIAL FACTS)**

(Title to Real Estate Involved)

Pursuant to M.R. Civ. P. 56(h)(2) and 56(i), Party-in-Interest the Attorney General (AG) opposes and objects to the material facts submitted by Defendant OA 2012 Trust (OA 2012) as follows and, in a separately titled section, sets forth additional facts.

ATTORNEY GENERAL'S OPPOSING STATEMENT OF MATERIAL FACTS

1. OA 2012 is a Maine Trust and owns ocean front property at Moody Beach in Wells, Maine as described in a deed from Kevin J. Howe, Trustee of the Kevin J. Howe 1988 Trust, to John B. Howe, Trustee of the OA 2012 Trust dated December 10, 2012, and recorded December 18, 2012, in the York County Registry of Deeds at Book 16487, Page 844. *See* Affidavit of Rebecca Kinney ("Kinney Aff.") ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer (Aug. 11, 2022) ("OA 2012 Answer") ¶ 20; Affidavit of Julie Washburn ("Washburn Aff."), Exhibit A (Howe Depo. at 25-26, 71).

RESPONSE: Admitted.

2. OA 2012's property immediately abuts the Ogunquit Beach. Kinney Aff. ¶ 3 & Exhibit

A; Compl. ¶ 20; OA 2012 Answer ¶ 20.; Washburn Aff., Exhibit B (K. Masucci Depo. at 98).

RESPONSE: Admitted.

3. OA 2012's property is about 50 feet wide. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20; Washburn Aff., Exhibit A (Howe Depo. at 24) & Exhibit D (Peter I Depo. at 95).

RESPONSE: Admitted.

4. The distance from the seawall at OA 2012's property to the mean low water varies but in places is 500 to 600 feet. Washburn Aff., Exhibit A (Howe Depo. at 22, 24-25); Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20.

RESPONSE: Admitted.

5. From the seawall toward the ocean for a distance of about 30 feet is a dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 121-122). No Plaintiff is making any claim of use to the dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 95, 101), Exhibit D (Peter I Depo. at 15, 18), Exhibit E (Peter II Depo. at 13-15).

RESPONSE: Admitted.

6. The portions of the Ogunquit Beach that abuts the upland portion of OA 2012's property to the south is a public way that provides access for a Town of Ogunquit parking lot to the Ogunquit Beach. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20; Washburn Aff., Exhibit A (Howe Depo. at 55-56, 60) & Exhibit E (Peter II Depo. at 40, 42).

RESPONSE: Admitted.

7. There is a sign that has been in place for some time attached to the seawall facing the right of way that states: "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." Washburn Aff., Exhibit A (Howe Depo. at 39 &

Exhibit 5) & Exhibit D (Peter I Depo. at 27-28).

RESPONSE: Admitted.

8. OA 2012 has posted on its seawall that faces the ocean a sign that states: "Moody Beach, Private, No Loitering." Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40; Washburn Aff., Exhibit A (Howe Depo. at 47-49 & Exhibit 6) & Exhibit D (Peter I Depo. at 27-28).

RESPONSE: Admitted.

9. During the summer season, OA 2012 places temporary signage at or near the high water mark on its property indicating the location of various beaches including arrows pointing to Moody Beach, a private beach, and the Ogunquit Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-48, 51-52 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

RESPONSE: Admitted.

10. The purpose of the signage is to identify for those using the beach the demarcation between the Ogunquit Town beach and OA 2012's property in Wells at Moody Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-49, 51-52, 55-56, 60 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

RESPONSE: Objection.

Objection: As to the purpose of OA 2012's signage, this fact is unsupported as to the Masuccis, Bill Connerney, and other members of the public. Subject to this objection:

Qualified. The AG admits that this may be a purpose for which OA 2012 posts the signage. But, to Peter Masucci, Kathy Masuccis, and Bill Connerney, OA 2012's signs have a different purpose and meaning. In particular:

To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, KM-7.) The signs and physical markers on Defendants' properties indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Bill Connerney

understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

11. Beach goers including those few Plaintiffs who have actually been on or over OA 2012's intertidal property do not read the sign as restricting or limiting in any way any movement-based activity, whether recreational, navigation or ocean based related. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103).

RESPONSE: Objection.

Objection: This fact is unsupported as to the Masuccis. Subject to this objection:

Qualified. The AG admits that people continue to engage in movement-based activity on or over OA 2012's intertidal property without physical interruption or physical restriction. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a

confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

12. As was the case when Bell was decided, hundreds of people every summer day engage in movement-based activity on or over OA 2012's intertidal property without restriction or interruption. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64); Kinney Aff. ¶¶ 3, 4 and Exhibit B-6.

RESPONSE: Objection.

Objection: This fact is unsupported by the citations. Subject to this objection:

Qualified. The AG admits that people engage in movement-based activity in the summer on or over OA 2012's intertidal property without physical interruption or physical restriction. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (Peter Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

13. OA 2012's predecessor in title Kevin Howe was a plaintiff in the *Bell v. Town of Wells*,

Maine Superior Court (York) CV-84-125, and Law Court Docket YOR-87-430, reported at *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) (collectively both the Superior Court action on and Law Court decision in *Bell* are referred to herein as the “*Bell Action*”) and obtained a judgment that is of record through that quiet title action that he owned the fee to the intertidal portion of his property (e.g., that it is private property) subject only to the public’s rights to use his intertidal property for fishing, fowling and navigation, and that those rights did not include any recreational rights. Kinney Aff. ¶¶ 3, 4 and Exhibits A, B-1 (at 332), B-2, B-6, B-7 & B-8; Washburn Aff., Exhibit A (Howe Depo. at 26-27).

RESPONSE: Objection.

Objection: The characterization of the judgment in YOR-CV-84-125 is unsupported by the citation. That judgment speaks for itself, and OA 2012’s intertidal property remains subject to Maine’s common law public trust doctrine. Subject to this objection:

Qualified. The AG admits that OA 2012’s predecessor, Kevin J. Howe, obtained a judgment in 1987 in YOR-CV-84-125 stating that title was “subject only to” the public trust doctrine, which judgment the Law Court affirmed. Kinney Aff. Exhibit B (Final Judgment and Declaration of Title dated Sep. 30, 1987, at 1); *see also id.* (docket entry for Oct. 1, 1987 (identified in handwriting as “274”)(same)). The AG admits that OA 2012’s property remains subject to Maine’s common law public trust doctrine.

14. The State was an actual party in the *Bell Action* and represented the public interest. Kinney Aff. ¶ 4 & Exhibits B-1, B-3 B-7 & B-8; *see also Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

RESPONSE: Admitted.

15. Plaintiff Orlando Delogu was among the amici in the *Bell Action*. *See Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

RESPONSE: Admitted.

16. In the *Bell Action*, at the request of the State, a guardian ad litem was appointed pursuant to 14 M.R.S. § 6656 “to represent the private rights of all unnamed and unknown

defendant who have not actually been served with process and who had not appeared in this action.” Kinney Aff. ¶ 4 & Exhibit B-5.

RESPONSE: Admitted.

17. The testimony at trial in the *Bell Action* included references to signs posted on the seawall on the Howe property and on other seawalls that said Moody Peach was a private beach and stated, “No Loitering” and/or “No Trespassing.” Kinney Aff. ¶ 4 & Exhibit B-6.

RESPONSE: Admitted.

18. OA 2012 is successor in title and in privity with Kevin Howe. Kinney Aff. ¶¶ 3, 4 & Exhibits A, B-1 & B-8.

RESPONSE: Admitted.

19. None of the Plaintiffs have had their access to OA 2012’s intertidal land limited or restricted in any way for any movement-based activity, whether navigation related, recreational related and/or ocean base, let alone significantly restricted. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38 & 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

RESPONSE: Objection.

Objection: This fact is unsupported as to Bill Connerney. This fact is also unsupported as to Kathy Masucci’s and Peter Masucci’s respective understandings of the term navigation, which they understand to include walking. (Connerney Dep. 65:16-66:3, 66:13-20, 114:13-16, 115:13; K. Masucci Dep. 76:4-8, P. Masucci Dep. 128:22-129:5). Subject to this objection:

Qualified. The AG admits that OA 2012 has not physically restricted Plaintiffs from accessing or engaging in movement-based activity on OA 2012’s intertidal land. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012’s signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.) For Kathy Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.) The sign on the seawall at OA 2012's property that faces the Ogunquit Parking Lot makes Kathy Masucci feel uncomfortable, sad, angry, and frustrated, and generates concern that the police may be called on her. (K. Masucci Dep. 103:1-7, 114:21-115:16, KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.) When Mr. Masucci sees the sign on OA 2012's property that faces the Ogunquit Parking Lot he feels discouraged and angry. (P. Masucci Dep. II 49:21-24, Ex. PM-8.) OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11, II 50:6-12, Ex. PM-8.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) OA 2012 has not told him that he has the right or permission to walk on OA 2012's intertidal land. (OA 2012 Dep. 72:12-15, 72:24-73:3; Connerney Dep. 118:19-22.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

Bill Connerney, Kathy Masucci, and Peter Masucci each understand the term navigation, with respect to intertidal usage, to include walking. (Connerney Dep. 65:16-66:3, 66:13-20, 114:13-16, 115:13; K. Masucci Dep. 76:4-8; P. Masucci Dep. 128:22-129:5).

20. There are no facts suggesting that the "intertidal jurisdiction" has "restricted" any of the Plaintiffs from engaging in any movement-based activity on or over OA 2012's intertidal property. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38, 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68),

Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

RESPONSE: Qualified.

The AG admits that OA 2012 has not physically restricted Plaintiffs from engaging in movement-based activity on OA 2012's intertidal property. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

21. In the *Bell Action*, there was testimony that many of the ocean-front property owners placed signs either in the sand, or on their seawall steps; the signs carried messages such as "No Trespassing", "Private Beach to Low Water Mark, No Loitering Please" [App. at 1397], or simply "Private Property." At the southern end, near Ogunquit Beach, William Case and plaintiffs Leo Shannon and John Howe erected a sign in 1975 at Howe's property (on the Ogunquit Beach line) which said, "Private Beach." Kinney Aff. ¶ 4 and Exhibit B-6.

RESPONSE: Admitted.

22. OA 2012 has never objected to any movement-based activity over its intertidal property, however characterized as ocean based, navigation or recreation. Washburn Aff., Exhibit A (Howe Depo. at 39, 45, 71).

RESPONSE: Qualified.

The AG admits that no individual on behalf of OA 2012 has verbally objected to any movement-based activity over OA 2012's intertidal property. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

23. With respect to OA 2012's intertidal zone Plaintiffs Robert Morse, George Seaver, John W. Grotton, Hale Miller, LeRoy Gilbert, Jake Wilson, Dan Harrington, Susan Domizi, Greg Tobey, Amanda Moeser, Chad Coffin, Lori Howell, Tom Howell and Brian Beal have not been to Moody Beach where OA 2012's intertidal property is located and have never been on OA

2012's property, and have not to identified any instance in which OA 2012 prevented or restricted them (or anyone else for that matter) from engaging in any movement- based activity on or over OA 2012 property. Washburn Aff., Exhibit J (Plaintiff Robert Morse's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff George Seaver's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff John W. Grotton's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 31, 2022); Plaintiff Hale Miller's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff LeRoy Gilbert's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 30, 2022); Plaintiff Jake Wilson's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Dan Harrington's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 19, 2022); Plaintiff Susan Domizi's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Jan. 4, 2023); Plaintiff Greg Tobey's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Amanda Moeser's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 26, 2022); Plaintiff Chad Coffin's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Lori Howell's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 12, 2022); Plaintiff Tom Howell's Answers to Defendants OA

2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 12, 2022); Plaintiff Brian Beal's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories No. 2 (signed & dated Dec. 28, 2022)).

RESPONSE: Admitted.

24. Plaintiffs Judith Delogu and Sheila Jones have never been to Moody Beach, and have never been or attempted to engage any movement-based activity on OA 2012 intertidal land. Washburn Aff., Exhibit G (J. Delogu Depo. 13, 18, 21, 30) & Exhibit I (Jones Depo. at 32, 43).

RESPONSE: Admitted.

25. Plaintiff William Griffiths has been to Moody Beach twice, and has never been or attempted to engage any movement-based activity on OA 2012 intertidal land. Washburn Aff., Exhibit F (Griffith's Depo. 10, 59, 66-67) & Exhibit K (Plaintiff William Griffiths' Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories No. 2 (signed & dated Dec. 21, 2022)).

RESPONSE: Admitted.

26. Plaintiff Orlando Delogu has been to Moody Beach, but is not aware of the location of OA 2012's Property, and in any event has never been prevented from engaging in any movement-based activity over the entire beach, which necessarily involves the OA 2012 Property. Washburn Aff., Exhibit H (O. Delogu Depo. at 140-142, 148).

RESPONSE: Admitted.

27. Plaintiffs Peter and Kathy Masucci are back lot owners and access the beach at the opposite end of Moody Beach from where OA 2012's property is located. Washburn Aff., Exhibit B (K. Masucci Depo. at 97-101) & Exhibit E (Peter II Depo. at 16-18). While they believe they have walked over OA 2012's property, they have never been prevented or

restricted from engaging in any movement-based activity on or over OA 2012's Property. *Id.*

RESPONSE: Qualified.

The AG admits that the Masuccis have walked over OA 2012's property. The AG admits that OA 2012 has not physically restricted the Masuccis from engaging in movement-based activity on OA 2012's intertidal property. But, to Peter Masucci and Kathy Masucci, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

28. Back lot owner Plaintiff William Connerney believes he has walked across the OA 2012's property, but he has never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's property. Washburn Aff., Exhibit C (Connerney Depo. at 69, 72-73, 97-98, 103).

RESPONSE: Qualified.

The AG admits that Mr. Connerney has walked over OA 2012's property. The AG admits that OA 2012 has not physically restricted Mr. Connerney from engaging in movement-based activity on OA 2012's intertidal property. But, to Bill Connerney, OA 2012's signs convey restrictions or limitations on his use of the OA 2012 intertidal property. In particular:

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) OA 2012 has not told him that he has the right or permission to walk on OA 2012's intertidal land. (OA 2012 Dep. 72:12-

15, 72:24-73:3; Connerney Dep. 118:19-22.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

29. Plaintiffs Griffiths and Jones do not know whether any of their customers had ever been on OA 2012's property or seen any signs located thereon, and could not identify an occasion when any of their customers advised them they would not return to their hotel due to any signs on OA 2012's property. Washburn Aff., Exhibit F (Griffiths Depo. at 25, 29-30, 35-36) & Exhibit I (Jones Depo. at 22-23, 38).

RESPONSE: Admitted.

30. In the *Bell Action* an Order for Alternative Service was published in the local York County newspaper that said in part "...it is hereby Ordered that any defendant or his attorney who wishes to oppose this lawsuit must prepare and file a written answer to the complaint on or by May 7, 1984.". Kinney Aff. ¶ 4 and Exhibit B-4 (at entries numbered 4, 6 19).

RESPONSE: Admitted.

31. As of 1984, Plaintiffs Peter and Kathy Masucci and William Connerney were of legal age and spent time at Moody Beach. Washburn Aff., Exhibit B (K. Masucci Depo. at 65), Exhibit C (Connerney Depo. at 53) & Exhibit D (Peter I Depo. at 12, 18-19).

RESPONSE: Admitted.

32. A final judgment was issued in the *Bell Action*. Kinney Aff. ¶ 4 and Exhibits B-7 and B-8 (docket entries at 9/15/87 Brodrick, J. decision/judgment, 09/30/87 Brodrick, J. amendment of findings of fact, & 10/01/87 declaration of "judgment be entered for the plaintiff, Kevin J. Howe", Apx. at pp. 29-30, 32) *infra*; *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

RESPONSE: Qualified.

Several judgments were issued in YOR-CV-84-125 involving different individuals. The AG admits that OA 2012's predecessor, Kevin J. Howe, obtained a judgment in 1987 in YOR-CV-84-125, which judgment the Law Court affirmed, stating that title was "subject only to" the public trust doctrine. Kinney Aff. Exhibit B (Final Judgment and Declaration of Title dated Sep. 30, 1987, at 1); *see also id.* (docket entry for Oct. 1, 1987 (identified in handwriting as "274")(same)). The AG admits that OA 2012's property remains subject to Maine's common law public trust doctrine.

33. Plaintiffs have not joined in this action all of the prevailing plaintiffs in *Bell Action* or their successors in interests. Kinney Aff. ¶ 4 and Exhibit B-1 (at docket entries 265 through 293, Apx. at pp. 30-34) *infra*.

RESPONSE: Admitted.

34. The Appendix filed by the parties in the Law Court in the *Bell Action*, Law Court Docket No. YOR-87-430 contained over 1600 pages, including, as follows:

- a. Exhibit B-1: Superior Court Docket Entries (Sheets 1 through 18), Appendix ("Apx.") at pp. 01-36;
- b. Exhibit B-2: Pleadings: Complaint and its Exhibit A (Mar. 7, 1984) and First Amendment to Complaint (Aug. 9, 1985); Apx. at pp. 37-58 & 78-85;
- c. Exhibit B-3: Defendant State of Maine Bureau of Lands' Answer (Apr. 11, 1984), State Defendants' Answer to Amendments to Plaintiffs' Complaint (July 1, 1986), Apx. At pp. 59-67 & 86-88;
- d. Exhibit B-4: Superior Court Docket Entries evidencing filing and entry of Plaintiffs' Motion for Alternative Service and Order, Apx. at 01-02;
- e. Exhibit B-5: Superior Court Docket Entries reflecting filing and entry of State's Motion for Appointment of Guardian Ad Litem (Nov. 2, 1984) and Order (Mar. 1, 1985), Apx. 04 & 06;

- f. Exhibit B-6: Excerpts of trial transcript regarding signage of Moody Beach (Edward Haseltine, Richard Kenary, Betty Stirling, & William Case);
- g. Exhibit B-7: Superior Court decision (Sept. 14, 1987)(Brodrick, J.) and Amendment of Findings of Fact (Sept. 30, 1987)(Brodrick, J.); and
- h. Exhibit B-8: Superior Court Docket Entries evidencing entry of Final Judgment (Sept. 14, 1987)(Brodrick, J.) and (29) Finding Judgments and Declaration of Title (Oct. 1, 1987).

RESPONSE: Admitted.

ATTORNEY GENERAL'S ADDITIONAL STATEMENT OF MATERIAL FACTS¹

1. Moody Beach is a mostly sandy beach located in Wells, Maine. (P. Masucci Dep. 95:3-12, 96:24-97:15, II² 38:17-39:5.)
2. Moody Beach is approximately 1.5 miles long and is generally oriented north (Wells)-south (Ogonquit). (P. Masucci Dep. 94:23-95:4, II 10:16-23.)
3. Plaintiffs Peter Masucci and Kathy Masucci (collectively, the Masuccis) are married. (P. Masucci Dep. 73:20; K. Masucci Dep. 12:2-6, 93:24-94:2.)
4. The Masuccis own and reside at the property located at 484 Ocean Avenue in Wells, Maine (the Masuccis' Property). (P. Masucci Dep. 11:1-5, Ex. PM-5; K. Masucci Dep. 12:8-10, 12:23-13:1, 13:10-11, 65:12-15, Ex. KM-5.)

¹ The AG provided full copies of the relevant deposition transcripts in support of the AG's Motion for Summary Judgment on Count IV. The AG is not providing duplicate copies of the same deposition transcripts in support of its separate statement of additional material facts, and refers the Court to the deposition transcripts already provided.

² Peter Masucci's deposition was split between two days: January 11, 2023, and January 13, 2023. "P. Masucci Dep. II" or "II" refers to his deposition transcript from January 13, 2023.

5. The Masuccis' Property is across the street from the Moody Beach; it is not oceanfront property. (P. Masucci Dep. 11:6-11, Ex. PM-5; K. Masucci Dep. 66:16-23, Ex. KM-5.)
6. Plaintiff William (Bill) Connerney owns the property at 130 South Tibbetts in Wells, Maine (the Connerney Property) and lives there from the last weekend in May through November 1. (Connerney Dep. 10:21-11:2, 11:21-12:3.)
7. The Connerney Property is across the street from Moody Beach; it is not oceanfront property. (Connerney Dep. 11:3-10,107:7-22, Ex. Connerney-6.)
8. Peter Masucci, Kathy Masucci, and Bill Connerney each generally understand "intertidal land" to mean the land between the mean low-water mark and the mean high-water mark. (P. Masucci Dep. 101:6-103:16, II 13:5-13; K. Masucci Dep. 68:3-20; Connerney Dep. 57:12-22.)
9. Peter Masucci, Kathy Masucci, and Bill Connerney each regularly walk the length of Moody Beach on the intertidal land at Moody Beach. (P. Masucci Dep. 13:1-8, 13:22-14:7, 14:16-17, 19:15-21:16, 60:1-4, 116:23-117:1, II 43:22-44:5; K. Masucci Dep. 16:20-17:6, 28:21-23, 35:21-36:5, 68:21-69:1, 97:11-25, 108:1-4, 126:25-127:2; Connerney Dep. 13:6-8, 13:20-25, 17:13-18:5, 19:17-24, 25:20-21, 32:22-33:17, 90:15-93:18, 96:9-11.)
10. Peter Masucci and Kathy Masucci sometimes bring their grandson along when they walk the intertidal land at Moody Beach. (P. Masucci Dep. 19:15-20:3, 117:6-16; K. Masucci Dep. 50:9-16.)
11. Peter Masucci walks the intertidal land at Moody Beach for enjoyment, relaxation, and stress relief. (P. Masucci Dep. II 37:4-12.)
12. When Peter Masucci walks the intertidal land at Moody Beach he sometimes stops to gaze at the water or look for birds. (P. Masucci Dep. 121:1-10, II 46:11-14.)

13. Kathy Masucci likes going to the beach because it is beautiful, peaceful, and fun and because the beach is a wonderful place to think, observe, and be grateful. (K. Masucci Dep. 107:12-15.)
14. Kathy Masucci walks the intertidal land at Moody Beach for enjoyment, physical health benefits, and mental health benefits like stress relief and relaxation. (K. Masucci Dep. 107:16-25.)
15. When Kathy Masucci walks the intertidal land at Moody Beach, she sometimes stops to look at the water. (K. Masucci Dep. 108:1-4.)
16. Bill Connerney walks the intertidal land at Moody Beach for relaxation and physical health. (Connerney Dep. 118:4-9.)
17. There are four locations on land from which the public may access on foot the intertidal land at Moody Beach (the Public Access Points).³ (P. Masucci Dep. 13:9-19, 20:18-22, 27:11-22, 109:4-10, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:18, Ex. KM-5.)
18. Listed north to south, the Public Access Points are right of way 3 (ROW 3), right of way 2 (ROW 2), right of way 1 (ROW 1), and the parking lot in Ogunquit near the southern end of Moody Beach (Ogunquit Parking Lot). (P. Masucci Dep. 27:11-22, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:16, Ex. KM-5.)
19. There is forbidding signage or other physical markers at each Public Access Point. (P. Masucci Dep. 23:9-14, 23:22-24:3, 26:17-32:11, II 48:19-49:5, II 50:16-51:12, II 54:21-55:3, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:24-112:9, 112:16-17, 113:14-17, 114:12-25, 115:8-10, 117:13-118:4, 118:21-119:17, 121:20-122:1, Ex. KM-6, Ex.

³ The public may also access the intertidal land at Moody Beach from the water.

KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 18:18-19:5, 21:20-22:4, 23:14-21, 25:10-16, 30:14, 43:6, 75:10-76:19, 109:17-110:2.)

20. None of the signs or physical markers inform the public that walking, navigation, fishing, or fowling is allowed on the intertidal land. (P. Masucci Dep. II 44:12-45:6, II 48:12-49:11, II 50:19-51:12, II 52:4-54:1, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:22-112:15, 114:17-115:7, 117:13-118:11, 118:19-119:17, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 110:3-111:6, 111:12-112:10, Ex. Connerney-7, Ex. Connerney-8.)

21. OA 2012 claims ownership of the intertidal land on Moody Beach between OA 2012's Property and the low water mark of the Atlantic Ocean (the OA 2012 Intertidal Land). (OA 2012 Dep. 25:3-26:6.)

22. OA 2012's Property is near the Ogunquit Parking Lot: When accessing Moody Beach from the Ogunquit Parking Lot and walking north, the first property crossed is OA 2012's Property. (OA 2012 Dep. 38:20-39:16, 55:20-56:2, 60:9-10, Ex. OA2012-4; P. Masucci Dep. II 48:13-25, Ex. PM-5; K. Masucci Dep. 98:6-9, 114:15-20, Ex. KM-5; Connerney Dep. 89:10-91:23.)

23. The following sign is affixed to the seawall on OA 2012's Property and faces the Ogunquit Parking Lot:



(OA 2012 Dep. 37:16-39:9, 46:22-25, Ex. OA2012-5; P. Masucci Dep. II 48:12-49:5, Ex. PM-8.)

24. The following sign is affixed to the seawall on OA 2012's Property and faces the ocean:



(OA 2012 Dep. 47:3-48:3, Ex. OA2012-6.)

25. In the winter, the Masuccis typically walk the entire length of Moody Beach down to Ogunquit Beach, crossing OA 2012 Intertidal Land in the process. (P. Masucci Dep. 13:1-

14:17; 18:11-20, 19:15-21:16, 116:23-117:16, II 10:9-15, II 15:23-16:7, II 33:6-8, II 43:22-44:5; K. Masucci Dep. 16:3-17:6, 35:21-36:5, 58:22-25, 68:21-69:1, 70:1-3, 97:11-98:5).

26. When Bill Connerney accesses Moody Beach from ROW 2 and walks south he crosses the OA 2012 Intertidal Land. (Connerney Dep. 13:6-8, 13:20-25, 90:15-91:23, 92:17-93:18.)

27. Peter Masucci has seen the signs on OA 2012's Seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.)

28. Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.)

29. The signs and physical markers on Defendants' properties indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.)

30. When Peter Masucci sees the sign on OA 2012's Property that faces the Ogunquit Parking Lot he feels discouraged and angry. (P. Masucci Dep. II 49:21-24, Ex. PM-8.)

31. OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11, II 50:6-12, Ex. PM-8.)

32. Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

33. OA 2012 has not told Peter Masucci that he has the legal right to walk on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:12-15.)

34. OA 2012 has not told Peter Masucci that he has OA 2012's permission to walk on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:16-20; OA 2012 Dep. 72:16-19.)

35. Peter Masucci has personally seen police on Moody Beach. (P. Masucci Dep. 113:11-19, II 55:19-23.)

36. Peter Masucci feels discouraged, angry, and uncomfortable when he sees the police on Moody Beach. (P. Masucci Dep. II 55:24-56:1.)
37. Peter Masucci is concerned that if he stops along the intertidal land of Moody Beach—for example, to make a phone call—he might be confronted by the police. (P. Masucci Dep. II 56:2-8.)
38. Kathy Masucci has seen the sign on the OA 2012's Seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.)
39. The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.)
40. The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.)
41. To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)
42. For Kathy Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.)
43. Kathy Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.)
44. The stories Kathy Masucci has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

45. The sign on the seawall at OA 2012's Property that faces the Ogunquit Parking Lot makes Kathy Masucci feel uncomfortable, sad, angry, and frustrated, and generates concern that the police may be called on her. (K. Masucci Dep. 103:1-7, 114:21-115:16, KM-7.)
46. Kathy Masucci's concern that OA 2012 may ask her to leave the OA 2012 Intertidal Land negatively impacts her experience of walking Moody Beach. (K. Masucci Dep. 115:25-116:9.)
47. OA 2012 has not told Kathy Masucci that she has the right to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:7-9; K. Masucci Dep. 115:17-20.)
48. OA 2012 has not told Kathy Masucci that she has OA 2012's permission to walk on the OA 2012 Intertidal Land. (K. Masucci Dep. 115:21-24.)
49. Bill Connerney has seen the police on Moody Beach at areas other than the Defendants' properties. (Connerney Dep. 83:5-9.)
50. Bill Connerney has seen the signs on the seawall at OA 2012's Property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.)
51. OA 2012 has not told Bill Connerney that he has the right to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:12-15.)
52. OA 2012 has not told Bill Connerney that he has OA 2012's permission to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:24-73:3; Connerney Dep. 118:19-22.)
53. Bill Connerney would feel better about walking the OA 2012 Intertidal Land if its signage specified that walking is allowed. (Connerney Dep. 115:5-10.)
54. Bill Connerney understands that OA 2012 could choose at any moment to ask someone who is walking across the OA 2012 Trust Intertidal Land to leave or move along. (Connerney Dep. 116:24-117:14.)

55. Bill Connerney thinks about the possibility of a confrontation with landowners when he is walking on the OA 2012 Intertidal Land. (Connerney Dep. 25:20-26:4, 117:15-24).

56. The possibility of a confrontation with landowners, such OA 2012, detracts from what would otherwise be a relaxing walk on the beach for Bill Connerney. (Connerney Dep. 117:15-118:3.)

57. OA 2012 understands that it has the right to ask someone to leave the OA 2012 Intertidal Land but not if the person is just walking. (OA 2012 Dep. 70:22-71:4, 71:20-23.)

58. Kathy Masucci thinks that walking and running and moving could be considered navigation. (K. Masucci Dep. 76:4-8.)

59. Bill Connerney thinks that walking could be considered navigation. (Connerney Dep. 65:16-66:20, 114:11-25, 115:13-116:6.)

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Respectfully submitted,

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P.2d 709, 719–20 (Or. 1939)); *see also Shaw v. Jendzejec*, 1998 ME 208, ¶ 8, 717 A.2d 367, 370 (quoting *Myrick*).

OA 2012 further objects to any claim of the State of use of OA 2012’s intertidal property by the public at-large on the basis the State is barred by *res judicata* from asserting such a claim against OA 2012, given that the State representing the public at-large fully participated in *Bell v. Town of Wells*, 557 A.2d 176 (Me. 1989) (hereinafter “*Bell I*”), and OA 2012 is in privity with Kevin Howe who was a successful plaintiff in *Bell II*, that the State litigated, or had the opportunity to litigate, the issues here, that the court expressly declared that the public does not have the right under the Colonial Ordinance to cross OA 2012’s actual intertidal land for recreational walking, and as such the State is barred from seeking to relitigate against OA 2012 that same issue in this case.

OA 2012 RESPONSE’S

1. Moody Beach is a mostly sandy beach located in Wells, Maine. (P. Masucci Dep. 95:3- 12, 96:24-97:15, II 38:17-39:5.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The North end of the beach, most of the time, is all rock. (P. Masucci Dep. 97:7-15; P. Masucci Dep. II 39:2-5.)

2. Moody Beach is approximately 1.5 miles long and is generally oriented north (Wells)- south (Ogonquit). (P. Masucci Dep. 94:23-95:4, II 10:16-23.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

3. Plaintiffs Peter Masucci and Kathy Masucci (collectively, the Masuccis) are married. (P. Masucci Dep. 73:20; K. Masucci Dep. 12:2-6, 93:24-94:2.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

4. The Masuccis own and reside at the property located at 484 Ocean Avenue in Wells, Maine (the Masuccis' Property). (P. Masucci Dep. 11:1-5, Ex. PM-5; K. Masucci Dep.12:8-10, 12:23-13:1, 13:10-11, 65:12-15, Ex. KM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Denied in part and admitted in part. The 484 Ocean Avenue property, Wells, Maine is owned in the name of a trust known as the Kathy E. Masucci Trust (the “Masucci Trust Property”) and Peter and Kathy Masucci are trustees of the trust and live at the Masucci Trust Property year-round since 2002. (K. Masucci Dep. 12:8-10, 12:24-13:1, 13:8-11;

P. Masucci Dep. 11:4-5, 20-23, 78:12-16.)

5. The Masuccis' Property is across the street from the Moody Beach; it is not oceanfront property. (P. Masucci Dep. 11:6-11, Ex. PM-5; K. Masucci Dep. 66:16-23, Ex. KM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The Masucci Trust Property is a “back lot” across the street on Ocean Avenue and not directly on the water. (P. Masucci Dep. 11:5-11, 62:7-10, 83:24-84:1; K. Masucci Dep. 66:22-23.) See General Response, supra.

6. Plaintiff William (Bill) Connerney owns the property at 130 South Tibbetts in Wells, Maine (the Connerney Property) and lives there from the last weekend in May through November 1. (Connerney Dep. 10:21-11:2, 11:21-12:3.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The Connerney property at 130 South Tibbetts, Wells, Maine and is a back lot at Moody Beach. (Connerney Dep. 10:21-11:10.)

7. The Connerney Property is across the street from Moody Beach; it is not oceanfront property. (Connerney Dep. 11:3-10, 107:7-22, Ex. Connerney-6.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The Connerney Property is one street back of Ocean Avenue and is not oceanfront property. (Connerney Dep. 11:3-10, 107:7-22, Ex. Connerney-6.)

8. Peter Masucci, Kathy Masucci, and Bill Connerney each generally understand "intertidal land" to mean the land between the mean low-water mark and the mean high-water mark. (P. Masucci Dep. 101:6-103:16, II 13:5-13; K. Masucci Dep. 68:3-20; Connerney Dep. 57:12-22.)

Objection: OA 2012 incorporates by reference the general objections stated above. The cited reference does not in any way indicate the location of the intertidal land of OA 2012 and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. Peter Masucci understands the intertidal land to mean the sand or rocks that lie between high tide point and low tide. (P. Masucci Dep. 101:6-14.) Kathy Masucci understands the intertidal land to mean “from the high-tide mark to the low-tide mark.” (K. Masucci Depo. 68:3-8.) Bill Connerney understands the intertidal land to mean “from high tide to low tide. The mean high tide to the mean low tide ... and in between there is intertidal land.” (B. Connerney Dep. 57:16-22.)

9. Peter Masucci, Kathy Masucci, and Bill Connerney each regularly walk the length of Moody Beach on the intertidal land at Moody Beach. (P. Masucci Dep. 13:1-8, 13:22-14:7, 14:16-17, 19:15-21:16, 60:1-4, 116:23-117:1, II 43:22-44:5; K. Masucci Dep. 16:20-17:6, 28:21-23, 35:21-36:5, 68:21-69:1, 97:11-25, 108:1-4, 126:25-127:2; Connerney Dep.13:6-8, 13:20-25, 17:13-18:5, 19:17-24, 25:20-21, 32:22-33:17, 90:15-93:18, 96:9-11.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

10. Peter Masucci and Kathy Masucci sometimes bring their grandson along when they walk the intertidal land at Moody Beach. (P. Masucci Dep.19:15-20:3, 117:6-16; K. Masucci Dep. 50:9-16.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. Peter Masucci and Kathy Masucci testified only that on their most recent walk they brought their grandson with them on a walk on the intertidal zone. (P. Masucci Dep. 19:15-20:3, 117:6-16; K. Masucci Dep. 50:9-16.)

11. Peter Masucci walks the intertidal land at Moody Beach for enjoyment, relaxation, and stress relief. (P. Masucci Dep. 1137:4-12.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

12. When Peter Masucci walks the intertidal land at Moody Beach he sometimes stops to gaze at the water or look for birds. (P. Masucci Dep. 121:1-10, II 46:11-14.)

Objection: OA 2012 incorporates by reference the general objections stated above.

OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

13. Kathy Masucci likes going to the beach because it is beautiful, peaceful, and fun and because the beach is a wonderful place to think, observe, and be grateful. (K. Masucci Dep. 107:12-15.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

14. Kathy Masucci walks the intertidal land at Moody Beach for enjoyment, physical health benefits, and mental health benefits like stress relief and relaxation. (K. Masucci Dep. 107:16-25.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

15. When Kathy Masucci walks the intertidal land at Moody Beach, she sometimes stops to look at the water. (K. Masucci Dep. 108:1-4.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

16. Bill Connerney walks the intertidal land at Moody Beach for relaxation and physical health. (Connerney Dep. 118:4-9.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

17. There are four locations on land from which the public may access on foot the intertidal land at Moody Beach (the Public Access Points).³ (P. Masucci Dep. 13:9-19, 20:18-22, 27:11-22, 109:4-10, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:18, Ex. KM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Denied. There are three public access ways and the "southern one is an access point to get to Ogunquit Beach." (K. Masucci Dep. 120:21-121:18; P. Masucci Dep. 27:14-18, II 39:24-40:5.)

18. Listed north to south, the Public Access Points are right of way 3 (ROW 3), right of way 2 (ROW 2), right of way 1 (ROW 1), and the parking lot in Ogunquit near the southern end of Moody Beach (Ogunquit Parking Lot). (P. Masucci Dep. 27:11-22, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:16, Ex. KM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

19. There is forbidding signage or other physical markers at each Public Access Point. (P. Masucci Dep. 23:9-14, 23:22-24:3, 26:17-32:11, II 48:19-49:5, II 50:16-51:12, II 54:21- 55:3, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:24-112:9, 112:16-17, 113:14-17, 114:12-25, 115:8-10, 117:13-118:4, 118:21-119:17, 121:20-122:1, Ex. KM-6, Ex.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. OA 2012 admits that there is signage at the access point at OA 2012's property, the sign states "MOODY BEACH PRIVATE NO LOITERING" is attached to the seawall of OA 2012. Howe Dep. 37:10-21 (identifying seawall at OA 2012 property and identifying sign depicted in Howe Dep. Ex. 5). The second signage states "Moody Beach Private No Loitering" is marked deposition exhibit 6. (Howe Dep. 47:8-20; Howe Dep. 37:10-25; 38:1, 17-19 refer to Howe Dep. Ex. 5.). The signs speak for themselves. OA 2012 denies that they contain "forbidding" language as the signs accurately reflect the Law Court's decision in *Bell*. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs on its property inform the reader of what is not permitted, and in so doing the signs inform the reader what is permitted. OA 2012 understands "loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the sign only says no loitering, OA 2012 understands the sign to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions on the sign stated are no loitering and no dogs, OA 2012 understands that its signs inform all users of its intertidal property of OA 2012 has given legal permission to the public to engage in these activities. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including the Masuccis and Mr. Connerney, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

20. None of the signs or physical markers inform the public that walking, navigation, fishing, or fowling is allowed on the intertidal land. (P. Masucci Dep. JI 44:12-45:6, 11 48:12-49:11, II 50:19-51:12, II 52:4-54:1, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:22-112:15, 114:17-115:7, 117:13-118:11, 118:19-119:17, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 110:3-111:6, 111:12-112:10, Ex. Connerney-7, Ex. Connerney-8.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits the signs do not have words on them that state that "walking, navigation, fishing, or fowling is allowed on the intertidal land" but denies that the signs do not inform a reasonable reader that that walking, navigation, fishing, or fowling is allowed on the OA 2012's intertidal land. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42,

43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs on its property inform the reader of what is not permitted, and in so doing the signs inform the reader what is permitted. OA 2012 understands “loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the sign only says no loitering, OA 2012 understands the sign to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions on the sign stated are no loitering and no dogs, OA 2012 understands that its signs inform all users of its intertidal property of OA 2012 has given legal permission to the public that it can engage in these activities. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including the Masuccis and Mr. Connerney have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

21. OA 2012 claims ownership of the intertidal land on Moody Beach between OA 2012's Property and the low water mark of the Atlantic Ocean (the OA 2012 Intertidal Land). (OA 2012 Dep. 25:3-26:6.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Admitted as to OA 2012. Qualified. OA 2012 incorporates by reference Ocean 503, LLC and Judy’s Moody LLC’s response to that portion of the statement directed to them.

22. QA 2012's Property is near the Ogunquit Parking Lot: When accessing Moody Beach from the Ogunquit Parking Lot and walking north, the first property crossed is OA 2012's Property. (OA 2012 Dep. 38:20-39:16, 55:20-56:2, 60:9-10, Ex. OA2012-4; P. Masucci Dep. II 48:13-25, Ex. PM-5; K. Masucci Dep. 98:6-9, 114:15-20, Ex. KM-5; Connerney Dep. 89:10-91:23.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted. The citation OA 2012 Dep. 38:20-39:6, 55:20-56:2, 60:9-10 or P. Masucci Dep. 48:13-25 do not support the statement. The citation K. Masucci Dep. 98:6-9 is Mrs. Masucci understanding that the OA 2012 trust property is at the very end of the south end of the beach.

23. The following sign is affixed to the seawall on OA 2012's Property and faces the Ogunquit Parking Lot:



(OA 2012 Dep. 37:16-39:9, 46:22-25, Ex. OA2012-5; P. Masucci Dep. II 48:12-49:5, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Howe Dep. 37:10-21 (identifying seawall at OA 2012 property and identifying sign depicted in Howe Dep. Ex. 5); 39:7-9 (sign is next to a public right-of-way).

24. The following sign is affixed to the seawall on OA 2012's Property and faces the ocean:



(OA 2012 Dep. 47:3-48:3, Ex. OA2012-6.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

25. In the winter, the Masuccis typically walk the entire length of Moody Beach down to Ogunquit Beach, crossing OA 2012 Intertidal Land in the process. (P. Masucci Dep. 13:1-14:17; 18:11-20, 19:15-21:16, 116:23-117:16, II 10:9-15, II 15:23-16:7, II 33:6-8, II 43:22-44:5; K. Masucci Dep. 16:3-17:6, 35:21-36:5, 58:22-25, 68:21-69:1, 70:1-3, 97:11-98:5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. Mr. Masucci testified they "would often walk the entire length of the beach down to Ogunquit Beach." (P. Masucci Dep. 14:5-7; II 43:22-25; K. Masucci 35:25-36:2, 97:15-21.) During the summer, he walked the full length of the beach. (P. Masucci Dep. II 10:9-15.) And because he walks up and down the beach he must necessarily cross on to and go over the defendants' intertidal property. (P. Masucci Dep. II 16:2-7; II 44:3-5.) "[T]he only time we [the Masuccis] have been at OA 2012 is while walking." (P. Masucci Dep. II 33:7-8.)



26. When Bill Connerney accesses Moody Beach from ROW 2 and walks south he crosses the OA 2012 Intertidal Land. (Connerney Dep.13:6-8, 13:20-25, 90:15-91:23, 92:17-93:18.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Mr. Connerney testified he "walk[s] the beach down to Ogunquit Beach." (Connerney Dep. 13:6-8.) "I then walk to Ogunquit Beach." (Connerney Dep. 90:22-24.) Mr. Connerney understands the OA Trust property is the last structure.

(Connerney Dep. 90:25-91:3, 19-23.) Mr. Connerney doesn't "walk the beach [at high tide] because you're walking sideways." (Connerney Dep. 93:5-7.) and OA 2012 incorporate herein by reference and Judy's Moody LLC's responses to the statement as directed to it.

27. Peter Masucci has seen the signs on OA 2012's Seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

28. Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Admitted as to OA 2012. OA 2012 incorporates by reference Ocean 503, LLC's and Judy's Moody LLC's responses to the statement as directed to them.

29. The signs and physical markers on Defendants' properties indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. The record citation P. Masucci 23:3-17 relates only to Ocean 503 LLC. No record citations were provided in support of statement of material fact as to OA 2012 nor Judy's Moody's signage. OA 2012 admits Peter Masucci stated that he reads the signage at Ocean 503, LLC's property to say that if crosses over intertidal land at Moody Beach, he believes he would be trespassing but denies that the signs and physical markers can reasonably be viewed as indicating to anyone that if they crossed OA 2012's intertidal land that they would be trespassing. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). Relative to OA 2012, OA 2012 understands the signs on its property and similar signs elsewhere to mean that other uses, other than loitering, are permitted on and over OA 2012 and others' intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands

that everyone crossing its beach intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that OA 2012 has given legal permission to the public to engage in these activities. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signs. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

30. When Peter Masucci sees the sign on OA 2012's Property that faces the Ogunquit Parking Lot he feels discouraged and angry. (P. Masucci Dep. II 49:21-24, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: When asked if Mr. Masucci was “ever concerned that OA2012 Trust may ask you to leave the intertidal zone in front of that property,” Mr. Masucci testified “at this far end of the beach we’re usually just walking to and from our end. So I wouldn’t expect that to be the case because we wouldn’t stop there.” (P. Masucci Dep. II 50:2-9.). OA 2012 denies its signs can reasonably be read to cause anger or discouragement. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). Relative to the sign facing the path that runs from the Town of Ogunquit parking lot to the Ogunquit Town Beach, OA 2012 understands the sign that says “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the sign says only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James

Howe, dated June 2, 2023, ¶¶s 12, 13).

31. OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. 1133:6-11, II 50:6-12, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Denied. When asked if Mr. Masucci was “ever concerned that OA2012 Trust may ask you to leave the intertidal zone in front of that property,” Mr. Masucci testified “at this far end of the beach we’re usually just walking to and from our end. So I wouldn’t expect that to be the case because we wouldn’t stop there.” (P. Masucci Dep. II 50:2-9.) OA 2012 denies that its signage can reasonably be read in a way that negatively detracts from the beach experience of walking over OA 2012’s intertidal land. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). Relative to the sign facing the path that runs from the Town of Ogunquit parking lot to the Ogunquit Town Beach, OA 2012 understands “loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). OA 2012 understands the sign that says “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the sign says only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

32. Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Objection: OA 2012 incorporates by reference the general objections stated above.

OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore as to that property is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference P. Masucci Dep. 57:15-22 does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.

Response: Denied. The record citation P. Masucci Dep. 57:15-22 relates to Ocean 503's property. When asked if Mr. Masucci was "ever concerned that OA 2012 Trust may ask you to leave the intertidal zone in front of that property," Mr. Masucci testified "at this far end of the beach we're usually just walking to and from our end. So I wouldn't expect that to be the case because we wouldn't stop there." (P. Masucci Dep. II 50:2-9.). Relative to the signs on OA 2012's upland property, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the signs on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that OA 2012 has given legal permission to the public that it can engage in these activities. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

33. OA 2012 has not told Peter Masucci that he has the legal right to walk on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:12-15.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Peter Masucci that he has the legal right to walk on OA 2012's intertidal land. But OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material

Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking, and based on that permission they have a right to be on the intertidal land. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

34. OA 2012 has not told Peter Masucci that he has OA 2012's permission to walk on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:16-20; OA 2012 Dep. 72:16-19.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Peter Masucci that he has permission right to walk on OA 2012's intertidal land. But OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

35. Peter Masucci has personally seen police on Moody Beach. (P. Masucci Dep. 113:11- 19, II 55:19-23.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property if any that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Admitted.

36. Peter Masucci feels discouraged, angry, and uncomfortable when he sees the police on Moody Beach. (P. Masucci Dep. II 55:24-56:1.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Admitted.

37. Peter Masucci is concerned that if he stops along the intertidal land of Moody Beach- for example, to make a phone call-he might be confronted by the police. (P. Masucci Dep. II 56:2-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 admits that Peter Masucci is concerned that if he stops along the intertidal land of Moody Beach—for example, to make a phone call—he might be confronted by the police but denies that it is a reasonable concern. OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering,

OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

38. Kathy Masucci has seen the sign on the OA 2012's Seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

39. The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: OA 2012 admits that that signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on OA 2012's intertidal land but denies that the signs and other physical markers on OA 2102's property suggest to any reasonable person that they mean they should not be on OA 2102's intertidal property. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal

property for any reason, including based on the sign. See Additional Statement of Facts ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

40. The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep.127:3-7, Ex. KM-6, Ex. KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: OA 2012 admits that that Kathy Masucci feels intimidated by signs and other physical markers on Defendants' properties but denies that the signs and other physical markings are intimidating. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

41. To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: OA 2012 admits that that Kathy Masucci reads the signs to say that she is trespassing and is at risk of the landowner telling her to move but denies is what the

signs say. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

42. For Kathy Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The record citation states Mrs. Masucci testified “it’s not a good feeling.” (K. Masucci Dep. 126:6-7.). OA 2012 admits that for Kathy Masucci seeing the signs generates for her a negative feeling but denies that the signs can reasonable be read to generate a negative feeling. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no

loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

43. Kathy Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. OA 2012 further objects to the statement on the basis of hearsay.

Response: Admitted.

44. The stories Kathy Masucci has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep.122:18-123:10)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to the statement that the "stories" Mrs. Masucci heard are hearsay.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

45. The sign on the seawall at OA 2012's Property that faces the Ogunquit Parking Lot makes Kathy Masucci feel uncomfortable, sad, angry, and frustrated, and generates concern that the police may be called on her. (K. Masucci Dep. 103:1-7, 114:21-115:16, KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 admits that for Kathy Masucci seeing the signs makes her uncomfortable, sad, angry, and frustrated, and generates concern that the police may but denies that the signs can reasonable be read to cause any reasonable person to feel uncomfortable, sad, angry, and frustrated. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by

the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

46. Kathy Masucci's concern that OA 2012 may ask her to leave the OA 2012 Intertidal Land negatively impacts her experience of walking Moody Beach. (K. Masucci Dep. 115:25- 116:9.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 admits Kathy Masucci is concerned that OA 2012 may ask her to leave OA 2012's intertidal land that her concern negatively impacts her experience of walking Moody Beach but denies OA 2012's signs can reasonable be read to cause any reasonable person to believe that OA 2012 may ask her to leave OA 2012's intertidal land and would in any negatively impact a reasonable person's experience of walking over OA 2012's intertidal land. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA

2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

47. OA 2012 has not told Kathy Masucci that she has the right to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:7-9; K. Masucci Dep. 115:17-20.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Kathy Masucci that she has the right to walk on OA 2012's intertidal land. But OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given the public the right to use its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

48. OA 2012 has not told Kathy Masucci that she has OA 2012's permission to walk on the OA 2012 Intertidal Land. (K. Masucci Dep. 115:21-24.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Kathy Masucci that she has permission right to walk on OA 2012's intertidal land. But OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-

4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

49. Bill Connerney has seen the police on Moody Beach at areas other than the Defendants' properties. (Connerney Dep. 83:5-9.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

50. Bill Connerney has seen the signs on the seawall at OA 2012's Property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

51. OA 2012 has not told Bill Connerney that he has the right to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:12-15.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Bill

Connerney that he has the right to walk on OA 2012's intertidal land. But OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given the public the right to use its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Bill Connerney, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

52. OA 2012 has not told Bill Connerney that he has OA 2012's permission to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:24-73:3; Connerney Dep.118:19-22.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Bill Connerney that he has permission to walk on OA 2012's intertidal land. But OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given the public the right to use its intertidal land for recreational

purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Bill Connerney, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

53. Bill Connerney would feel better about walking the OA 2012 Intertidal Land if its signage specified that walking is allowed. (Connerney Dep. 115:5-10.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. OA 2012 admits that Bill Connerney stated he would feel better if the signage specified that walking is allowed but denies that the signage can reasonable be read to say that walking is not allowed. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Bill Connerney, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

54. Bill Connerney understands that OA 2012 could choose at any moment to ask someone who is walking across the OA 2012 Trust Intertidal Land to leave or move along. (Connerney Dep.116:24-117:14.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: As to OA 2012, admitted. As to that portion of the statement directed to

Ocean 503, LLC and Judy's Moody LLC, OA 2012 incorporates by reference their respective response to the statement.

55. Bill Connerney thinks about the possibility of a confrontation with landowners when he is walking on the OA 2012 Intertidal Land. (Connerney Dep. 25:20-26:4, 117:15-24.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The citation Connerney Dep. 25:20-26:4 does not support the statement (testified as to "other properties"). Further OA 2012 denies that its signage can cause any reasonable person to think about the possibility of a confrontation with OA 2012 with respect to walking across OA 2012's intertidal property. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 has had same signage for some time, signage that from OA 2012's perspective gives legal permission for Mr. Connerney to walk across OA 2012's property and eliminates any possibility of confrontation. Affidavit of James Howe, dated June 2, 2013 at ¶ 13. OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Mr. Connerney have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13). For that portion of the statement directed to Ocean 503, LLC and Judy's Moody LLC, OA 2012 incorporates by reference their respective response to the statement.

56. The possibility of a confrontation with landowners, such OA 2012, detracts from what would otherwise be a relaxing walk on the beach for Bill Connerney. (Connerney Dep. 117:15-118:3.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 admits for Mr. Connerney he thinks that his risk of confrontation with OA 2012 detracts from what would otherwise be a relaxing walk on the beach for him but denies that any reasonable person who is walking across OA 2012's intertidal distracted from a relaxing walk over OA2012's intertidal property. OA 2012 has had same signage for some time, signage that from OA 2012's perspective gives permission for Mr. Connerney to walk across OA 2012's property and eliminates any possibility of confrontation. OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Mr. Connerney have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13). For that portion of the statement directed to Ocean 503, LLC and Judy's Moody LLC, OA 2012 incorporates by refence their respective response to the statement.

57. OA 2012 understands that it has the right to ask someone to leave the OA 2012 Intertidal Land but not if the person is just walking. (OA 2012 Dep. 70:22-71:4, 71:20-23.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Admitted.

58. Kathy Masucci thinks that walking and running and moving could be considered navigation. (K. Masucci Dep. 76:4-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not

properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Denied. See *Bell v. Town of Wells, supra*.

59. Bill Connerney thinks that walking could be considered navigation. (Connerney Dep. 65:16-66:20, 114:11-25, 115:13-116:6.)

Objection: OA 2012 incorporates by reference the general objections stated above. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012’s intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Denied. See *Bell v. Town of Wells, supra*.

**DEFENDANT OA 2012 TRUST’S REPLY TO
ATTORNEY GENERAL’S OPPOSING STATEMENT RESPONSIVE
TO OA 2012 TRUST’S STATEMENT OF MATERIAL FACTS**

Defendant OA 2012 Trust (" OA 2012 ") respectfully submits this Reply Statement of Material Facts pursuant to Maine Rule of Civil Procedure 56(h)(3) in response to the Attorney General’s Qualifications (June 1, 2023) to OA 2012’s Statements of Material Facts (May 2, 2023). The following admissions and responses are intended solely for the purpose of OA 2012’s Motion for Summary Judgment and for no other purpose and shall have no preclusive effect at trial or in any other proceeding.

OA 2012 restates its General Objections to the State’s Statement of 129 Material Facts as follows:

Given the Law Court in *Bell v. Town of Wells*, 557 A.2d 168, 173 (Me. 1989) held that general recreational activities such as “bathing, sunbathing,” and “recreational walking” on “privately owned intertidal land” at Moody Beach, including the intertidal land now owned by OA 2012, are not public rights included within the public rights of fishing, fowling and navigation in the Colonial Ordinance, any facts offered regarding the use of OA 2012’s intertidal property for movement based recreational activities, including bathing sunbathing and recreational walking, are not relevant. Decisions of the Law Court are binding on the Superior Court. *Myrick v. James*, 444 A.2d 987, 997–98 (Me. 1982) (quoting *State v. Mellenberger*, 95 P.2d 709, 719–20 (Or. 1939)); see also *Shaw v. Jendzejec*, 1998 ME 208, ¶ 8, 717 A.2d 367, 370 (quoting *Myrick*).

OA 2012 further objects to any claim of the State of use of OA 2012's intertidal property by the public at-large on the basis the State is barred by *res judicata* from asserting such a claim against OA 2012, given that the State representing the public at-large fully participated in *Bell v. Town of Wells*, 557 A.2d 176 (Me. 1989) (hereinafter "*Bell I*"), and OA 2012 is in privity with Kevin Howe who was a successful plaintiff in *Bell II*, that the State litigated, or had the opportunity to litigate, the issues here, that the court expressly declared that the public does not have the right under the Colonial Ordinance to cross OA 2012's actual intertidal land for recreational walking, and as such the State is barred from seeking to relitigate against OA 2012 that same issue in this case.

Reply to Attorney General's Qualifications
To OA 2012's Statements of Material Facts ("SMF")

SMF 10: The purpose of the signage is to identify for those using the beach the demarcation between the Ogunquit Town beach and OA 2012's property in Wells at Moody Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-49, 51-52, 55-56, 60 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

AG'S RESPONSE TO SMF 10: Objection.

Objection: As to the purpose of OA 2012's signage, this fact is unsupported as to the Masuccis, Bill Connerney, and other members of the public. Subject to this objection:

Qualified. The AG admits that this may be a purpose for which OA 2012 posts the signage. But, to Peter Masucci, Kathy Masuccis, and Bill Connerney, OA 2012's signs have a different purpose and meaning. In particular:

To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21- 126:6, Ex. KM-6, KM-7.) The signs and physical markers on Defendants' properties indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012 REPLY TO AG'S RESPONSE TO SMF 10:

The AG admits SMF 10 as to OA 2012.

The AG's qualification does not controvert SMF 10.

The record citations as to Mrs. Masucci do not support the qualification. Mrs. Masucci testified “*It’s not a prevention. It’s a feeling ... and I know you don’t like the word trespassing and I know it’s not on the sign* – but it is a feeling that you are trespassing every time you go onto that beach.” (K. Masucci Dep. 37:22-38:4 (emphasis added).) OA 2012’s signs do not state “trespassing.” *Id.*; AG admission to OA 2012 SMF 7, 8. OA 2012’s signs state: “Moody Beach, Private, No Loitering” and “Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you.” AG admission to OA 2012 SMF 7, 8; (K. Masucci Dep. 125:21- 126:6 (“Right now what it means, private beach...”), Ex. KM-6, KM-7.)

The record citations (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8) do not support the statement “[T]he signs and physical markers on Defendants’ properties indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law.” The record citation “P. Masucci Dep. 23:3-17” is Mr. Masucci’s testimony as to the property of Ocean 503 LLC and not to OA 2012. Exhibit PM-6 depicts the property of Ocean 503 LLC and not OA 2012. *See* P. Masucci Vol. II, 44:8-45:22 (identifying Exhibit 6)¹. Mr. Masucci identified Exhibit PM-8 as a sign on the property OA 2012 and that he “feel[s] when he see[s] that sign? A. It’s discouraging to me having been at the beach for over 50 years, discouraging but kind of makes me angry.” *See* P. Masucci, Vol. II, 48:6-49:24, at Addendum 2.

Bill Connerney testified that “What I know is the police don’t prosecute if you walk through the Property.” (Connerney Dep. 117:4-5.) As a member of the public, Mr. Connerney understands, referring to being asked to leave, “if you walk through the ... property ...” the Defendants as “the owner, ... choose at any moment to enforce it” to ask someone who is walking across their intertidal land to leave or move along. (Connerney Dep. 116:24-117:14.) And “[i]f they’re not going to enforce it, it doesn’t bother me. If they’re going to enforce it, that would bother me.” (Connerney Dep. 117:10-13.)

SMF 11: Beach goers including those few Plaintiffs who have actually been on or over OA 2012's intertidal property do not read the sign as restricting or limiting in any way any movement-based activity, whether recreational, navigation or ocean based related. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103).

AG’S RESPONSE TO SMF 11: Objection.

Objection: This fact is unsupported as to the Masuccis. Subject to this objection:

Qualified. The AG admits that people continue to engage in movement-based activity on or over OA 2012's intertidal property without physical interruption or physical restriction. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

¹ True copies of excerpts of the deposition of Peter Masucci are attached hereto as Addendum 2.

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012 REPLY TO AG'S RESPONSE TO SMF 11:

The AG's qualification does not controvert SMF 11.

OA 2012's reply to the AG's "[i]n particular:" The sign "on OA 2012's seawall that faces the Ogunquit Parking Lot" and that Kathy Masucci sees has not stopped her from walking up and down the beach. See AG's citation to K. Masucci Dep. 102 at lines 23-25 ("has that sign ever --- ever stopped you from walking up and down the beach? A. No."), 114:9-25, Ex. KM-7.

The AG responds that the signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. The AG's citations in support of this response to K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4; 44:15-17; 46:4-7; Ex. KM-6 are to Mrs. Masucci's testimony relating to the property of Ocean 503 LLC and not to the property of OA 2012. The AG's citation to Exhibit KM-7 is to a picture OA 2012's sign stating: "MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWS *Thank You*". See AG admission to OA 2012 SMF 7, 8.

The AG responds that the signs on Defendants' properties intimidate Kathy Masucci and in support of its statement cites to K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7. Mrs. Masucci still walks the entirety of Moody Beach. (K. Masucci Dep. 126:25-127:2.)

The AG responds that to Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move and cites to K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7. Again, the AG's records citations in support of this response to K. Masucci Dep. 37:22-38:4; Ex. KM-6 are to Mrs. Masucci's testimony relating to the property of Ocean 503 LLC and not to the property of OA 2012. The AG's record citation to K. Masucci Dep. 125:21-125:6 is to Mrs. Masucci's testimony to her feeling that she is "trespassing on their property." However, Mrs. Masucci testified "*It's not a prevention. It's a feeling ... and I know you don't like the word trespassing and I know it's not on the sign* – but it is a feeling that you are trespassing every time you go onto that beach." (K. Masucci Dep. 37:22-38:4 (emphasis added).) OA 2012's signs do not state "trespassing." *Id.*; AG admission to OA 2012 SMF 7, 8. OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012 SMF 7, 8; (K. Masucci Dep. 125:21-126:6 ("Right now what it means, private beach..."), Ex. KM-6, KM-7.)

The AG responds that Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8- 24, 32:3-11, 33:15-17, Ex. PM-8.) **The AG admits that Peter Masucci "has seen the signs on OA 2012's seawall."** (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.)

The AG responds that the "signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law." (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) **The AG's record citations P. Masucci Dep. 23:3-17 and Ex. PM-6 does not support its qualification.** The property is to that of Ocean 503 LLC and not to the property of OA 2012. **Mr. Masucci testified that he didn't "recall those words [trespassing, no trespassing] on a sign" at Moody Beach. See Addendum 2 (P. Masucci Dep. II, 29:13-17).**

The AG responds that "because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)" **The AG's record citation does not support the statement.** Mr. Masucci testified that he "wouldn't expect that to be the case because we wouldn't stop there" because "at this far end of the beach we're usually just walking to and from our end." See P. Masucci Dep. II 50:6-9. Mr. Masucci testified no one has ever asked him to not walk up and down the intertidal zone of the entire length of the beach, including OA 2012's property. See Addendum 2 (P. Masucci Dep. II, 16:24-17:15).

The AG cites to Exhibit PM-8 in support of its qualification. Mr. Masucci identified Exhibit PM-8 as a sign on the property OA 2012 and that he "feel[s] when he see[s] that sign? A. It's discouraging to me having been at the beach for over 50 years, discouraging but kind of makes me angry." See P. Masucci, Vol. II, 48:6-49:24, at Addendum 2.

The AG responded that Bill Connerney has seen the signs on the seawall at OA 2012's property and provided record citations to Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7; and that Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land.

(Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24). Bill Connerney testified that “What I know is the police don’t prosecute if you walk through the Property.” (Connerney Dep. 117:4-5.) As a member of the public, Mr. Connerney understands, referring to being asked to leave, “if you walk through the ... property ...” the Defendants as “the owner, ... choose at any moment to enforce it” to ask someone who is walking across their intertidal land to leave or move along. (Connerney Dep. 116:24-117:14.) And “[i]f they’re not going to enforce it, it doesn’t bother me. If they’re going to enforce it, that would bother me.” (Connerney Dep. 117:10-13.) No one from OA 2012 has asked Mr. Connerney to leave the property of OA 2012. *See* Addendum 3 (Connerney Dep. 98:5-9.)

SMF 12: As was the case when Bell was decided, hundreds of people every summer day engage in movement-based activity on or over OA 2012's intertidal property without restriction or interruption. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64); Kinney Aff. ¶¶ 3, 4 and Exhibit B-6.

AG’S RESPONSE TO SMF 12: Objection.

Objection: This fact is unsupported by the citations. Subject to this objection:

Qualified. The AG admits that people engage in movement-based activity in the summer on or over OA 2012's intertidal property without physical interruption or physical restriction. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property.

In particular: Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (Peter Masucci Dep. 26:17-27:24, 1127:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with

Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012 REPLY TO AG'S RESPONSE TO SMF 12:

The AG's qualification does not controvert SMF 12. Peter Masucci, Kathy Masucci and Bill Connerney are members of the public whose interest the State represented in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989); AG's admission to OA 2012 SMF 14, 16. OA 2012 incorporates its reply to the AG's Response to SMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to SMF 12. The signs at OA Trust's property do not say "No trespassing." K. Masucci Dep. 37:22-38:4. AG admission to OA 2012 SMF 7, 8. OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012 SMF 7, 8.

SMF 13: OA 2012's predecessor in title Kevin Howe was a plaintiff in the *Bell v. Town of Wells*, Maine Superior Court (York) CV-84-125, and Law Court Docket YOR-87-430, reported at *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) (collectively both the Superior Court action on and Law Court decision in *Bell* are referred to herein as the "*Bell Action*") and obtained a judgment that is of record through that quiet title action that he owned the fee to the intertidal portion of his property (e.g., that it is private property) subject only to the public's rights to use his intertidal property for fishing, fowling and navigation, and that those rights did not include any recreational rights. Kinney Aff. ¶¶ 3, 4 and Exhibits A, B-1 (at 332), B-2, B-6, B-7 & B-8; Washburn Aff., Exhibit A (Howe Depo. at 26-27).

AG'S RESPONSE TO SMF 13: Objection.

Objection: The characterization of the judgment in YOR-CV-84-125 is unsupported by the citation. That judgment speaks for itself, and OA 2012's intertidal property remains subject to Maine's common law public trust doctrine. Subject to this objection:

Qualified. The AG admits that OA 2012's predecessor, Kevin J. Howe, obtained a judgment in 1987 in YOR-CV-84-125 stating that title was "subject only to" the public trust doctrine, which judgment the Law Court affirmed. Kinney Aff. Exhibit B (Final Judgment and Declaration of Title dated Sep. 30, 1987, at 1); see also *id.* (docket entry for Oct. 1, 1987 (identified in handwriting as "274")(same)). The AG admits that OA 2012's property remains subject to Maine's common law public trust doctrine.

OA 2012 REPLY TO AG'S RESPONSE TO SMF 13:

See general objection above.

SMF 19: None of the Plaintiffs have had their access to OA 2012's intertidal land limited or restricted in any way for any movement-based activity, whether navigation related, recreational related and/or ocean base, let alone significantly restricted. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38 & 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

AG'S RESPONSE TO SMF 19: Objection.

Objection: This fact is unsupported as to Bill Connerney. This fact is also unsupported as to Kathy Masucci's and Peter Masucci's respective understandings of the term navigation, which they understand to include walking. (Connerney Dep. 65:16-66:3, 66:13-20, 114:13-16, 115:13; K. Masucci Dep. 76:4-8, P. Masucci Dep. 128:22-129:5). Subject to this objection:

Qualified. The AG admits that OA 2012 has not physically restricted Plaintiffs from accessing or engaging in movement-based activity on OA 2012's intertidal land. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.) For Kathy Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.) The sign on the seawall at OA 2012's property that faces the Ogunquit Parking Lot makes Kathy Masucci feel uncomfortable, sad, angry, and frustrated, and generates concern that the police may be called on her. (K. Masucci Dep. 103:1-7, 114:21-115:16, KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be

trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.) When Mr. Masucci sees the sign on OA 2012's property that faces the Ogunquit Parking Lot he feels discouraged and angry. (P. Masucci Dep. II 49:21-24, Ex. PM-8.) OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11,1150:6-12, Ex. PM-8.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) OA 2012 has not told him that he has the right or permission to walk on OA 2012's intertidal land. (OA 2012 Dep. 72:12- 15, 72:24-73:3; Connerney Dep. 118:19-22.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

Bill Connerney, Kathy Masucci, and Peter Masucci each understand the term navigation, with respect to intertidal usage, to include walking. (Connerney Dep. 65:16-66:3, 66:13- 20, 114:13-16, 115:13; K. Masucci Dep. 76:4-8; P. Masucci Dep. 128:22-129:5).

OA 2012 REPLY TO AG'S RESPONSE TO SMF 19:

The AG's qualification does not controvert SMF 19. Peter Masucci, Kathy Masucci, and Bill Connerney are members of the public whose interest the State represented in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989); AG's admission to OA 2012 SMF 14, 16. OA 2012 incorporates its reply to the AG's Response to SMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to SMF 19.

In reply to the AG's statement: Bill Connerney, Kathy Masucci, and Peter Masucci each understand the term navigation, with respect to intertidal usage, to include walking. (Connerney Dep. 65:16-66:3, 66:13- 20, 114:13-16, 115:13; K. Masucci Dep. 76:4-8; P. Masucci Dep. 128:22-129:5). The signs at OA Trust's property do not say "No trespassing." K. Masucci Dep. 37:22-38:4. AG admission to OA 2012 SMF 7, 8. OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012 SMF 7, 8;. OA 2012 restates its General Objections to the State's Statement of 129 Material Facts as set forth above.

SMF 20: There are no facts suggesting that the "intertidal jurisdiction" has "restricted" any of the Plaintiffs from engaging in any movement-based activity on or over OA 2012's intertidal property. Washburn Aft, Exhibit B (K. Masucci Depo. at 37-38, 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

AG'S RESPONSE TO SMF 20: Qualified.

The AG admits that OA 2012 has not physically restricted Plaintiffs from engaging in movement-based activity on OA 2012's intertidal property. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012 REPLY TO AG'S RESPONSE TO SMF 20:

The AG's qualification does not controvert SMF 20. Peter Masucci, Kathy Masucci, and Bill Connerney are members of the public whose interest the State represented in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989); AG's admission to OA 2012 SMF 14, 16. OA 2012 incorporates its reply to the AG's Response to SMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to SMF 20. The AF offered not facts that suggest "intertidal jurisprudence" has in any way prevented anyone, including Peter Masucci, Kathy Masucci, and Bill Connerney, from engaging in any movement-based activity on and over OA2012's intertidal land. The signs at OA Trust's property do not say "No trespassing." K. Masucci Dep. 37:22-38:4. AG admission to OA 2012 SMF 7, 8. OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012 SMF 7, 8.

SMF 22: OA 2012 has never objected to any movement-based activity over its intertidal property, however characterized as ocean based, navigation or recreation. Washburn Aff., Exhibit A (Howe Depo. at 39, 45, 71).

AG'S RESPONSE TO SMF 22: Qualified.

The AG admits that no individual on behalf of OA 2012 has verbally objected to any movement-based activity over OA 2012's intertidal property. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012 REPLY TO AG'S RESPONSE TO SMF 22:

The AG's qualification does not controvert SMF 22. Peter Masucci, Kathy Masuccis, and Bill Connerney are members of the public whose interest the State represented in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989); AG's admission to OA 2012 SMF 14, 16. OA 2012 incorporates its reply to the AG's Response to SMF 11, above, its entirety as if restated in full herein in reply to the AG's Response to SMF 22. The signs at OA Trust's property do not say "No trespassing." K. Masucci Dep. 37:22-38:4. AG admission to OA 2012 SMF 7, 8. OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to

your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012 SMF 7, 8.

SMF 27: Plaintiffs Peter and Kathy Masucci are back lot owners and access the beach at the opposite end of Moody Beach from where OA 2012's property is located. Washburn Aff., Exhibit B (K. Masucci Depo. at 97-101) & Exhibit E (Peter II Depo. at 16-18). While they believe they have walked over OA 2012's property, they have never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's Property. Id.

AG'S RESPONSE TO SMF 27: Qualified.

The AG admits that the Masuccis have walked over OA 2012's property. The AG admits that OA 2012 has not physically restricted the Masuccis from engaging in movement-based activity on OA 2012's intertidal property. But, to Peter Masucci and Kathy Masucci, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, 1127:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

OA 2012 REPLY TO AG'S RESPONSE TO SMF 27:

The AG's qualification does not controvert SMF 27. Peter Masucci and Kathy Masuccis are members of the public whose interest the State represented in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989); AG's admission to OA 2012 SMF 14, 16. OA 2012 incorporates its reply to the AG's Response to SMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to SMF 27. The signs at OA Trust's property do not say "No trespassing." K. Masucci Dep. 37:22-38:4. AG admission to OA 2012 SMF 7, 8. OA

2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012 SMF 7, 8.

SMF 28: Back lot owner Plaintiff William Connerney believes he has walked across the OA 2012's property, but he has never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's property. Washburn Aff., Exhibit C (Connerney Depo. at 69, 72-73, 97-98, 103).

AG'S RESPONSE TO SMF 28: Qualified.

The AG admits that Mr. Connerney has walked over OA 2012's property. The AG admits that OA 2012 has not physically restricted Mr. Connerney from engaging in movement-based activity on OA 2012's intertidal property. But, to Bill Connerney, OA 2012's signs convey restrictions or limitations on his use of the OA 2012 intertidal property. In particular:

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) OA 2012 has not told him that he has the right or permission to walk on OA 2012's intertidal land. (OA 2012 Dep. 72:12- 15, 72:24-73:3; Connerney Dep. 118:19-22.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012 REPLY TO AG'S RESPONSE TO SMF 28:

The AG's qualification does not controvert SMF 28. Bill Connerney is a member of the public whose interest the State represented in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989); AG's admission to OA 2012 SMF 14, 16. OA 2012 incorporates its reply to the AG's Response to SMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to SMF 28. The signs at OA Trust's property do not say "No trespassing." K. Masucci Dep. 37:22-38:4. AG admission to OA 2012 SMF 7, 8. OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012 SMF 7, 8.

SMF 32: A final judgment was issued in the Bell Action. Kinney Aff. ¶ 4 and Exhibits B-7 and B-8 (docket entries at 9/15/87 Brodrick, J. decision/judgment, 09/30/87 Brodrick, J. amendment of findings of fact, & 10/01/87 declaration of "judgment be entered for the plaintiff,

Kevin J. Howe", Apx. at pp. 29-30, 32) *infra*; *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

AG'S RESPONSE TO SMF 32: Qualified.

Several judgments were issued in YOR-CV-84-125 involving different individuals. The AG admits that OA 2012's predecessor, Kevin J. Howe, obtained a judgment in 1987 in YOR-CV-84-125, which judgment the Law Court affirmed, stating that title was "subject only to" the public trust doctrine. Kinney Aff. Exhibit B (Final Judgment and Declaration of Title dated Sep. 30, 1987, at 1); *see also id.* (docket entry for Oct. 1, 1987 (identified in handwriting as "274")(same)). The AG admits that OA 2012's property remains subject to Maine's common law public trust doctrine.

OA 2012 REPLY TO AG'S RESPONSE TO SMF 32:

OA 2012 restates its General Objections to the State's Statement of 129 Material Facts as set forth above.

Dated: June 23, 2023



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4. The Masuccis own and reside at the property located at 484 Ocean Avenue in Wells, Maine (the Masuccis' Property). (P. Masucci Dep. 11:1-5, Ex. PM-5; K. Masucci Dep. 12:8-10, 12:23-13:1, 13:10-11, 65:12-15, Ex. KM-5.)
5. The Masuccis' Property is across the street from the Moody Beach; it is not oceanfront property. (P. Masucci Dep. 11:6-11, Ex. PM-5; K. Masucci Dep. 66:16-23, Ex. KM-5.)
6. Plaintiff William (Bill) Connerney owns the property at 130 South Tibbetts in Wells, Maine (the Connerney Property) and lives there from the last weekend in May through November 1. (Connerney Dep. 10:21-11:2, 11:21-12:3.)
7. The Connerney Property is across the street from Moody Beach; it is not oceanfront property. (Connerney Dep. 11:3-10; 105:23, 107:7-22, Ex. Connerney-6.)
8. Peter Masucci, Kathy Masucci, and Bill Connerney (collectively, the Plaintiffs) each generally understand "intertidal land" to mean the land between the mean low-water mark and the mean high-water mark. (P. Masucci Dep. 101:6-103:16, II 13:5-13; K. Masucci Dep. 68:3-20; Connerney Dep. 57:12-22.)
9. Each Plaintiff regularly walks the length of Moody Beach on the intertidal land at Moody Beach. (P. Masucci Dep. 13:1-8, 13:22-14:7, 14:16-17, 19:15-21:16, 60:1-4, 116:23-117:1, II 43:22-44:5; K. Masucci Dep. 16:20-17:6, 28:21-23, 35:21-36:5, 68:21-69:1, 97:11-25, 108:1-4, 126:25-127:2; Connerney Dep. 13:6-8, 13:20-25, 17:13-18:5, 19:17-24, 25:20-21, 32:22-33:17, 90:15-93:18, 96:9-11.)
10. Peter Masucci and Kathy Masucci sometimes bring their grandson along when they walk the intertidal land at Moody Beach. (P. Masucci Dep. 19:15-20:3, 117:6-16; K. Masucci Dep. 50:9-16.)

11. Peter Masucci walks the intertidal land at Moody Beach for enjoyment, relaxation, and stress relief. (P. Masucci Dep. II 37:4-12.)
12. When Peter Masucci walks the intertidal land at Moody Beach he sometimes stops to gaze at the water or look for birds. (P. Masucci Dep. 122:7-12, II 46:11-14.)
13. Kathy Masucci likes going to the beach because it is beautiful, peaceful, and fun and because the beach is a wonderful place to think, observe, and be grateful. (K. Masucci Dep. 107:12-15.)
14. Kathy Masucci walks the intertidal land at Moody Beach for enjoyment, physical health benefits, and mental health benefits like stress relief and relaxation. (K. Masucci Dep. 107:21-25.)
15. When Kathy Masucci walks the intertidal land at Moody Beach, she sometimes stops to look at the water. (K. Masucci Dep. 108:1-4.)
16. Bill Connerney walks the intertidal land at Moody Beach for relaxation and physical health. (Connerney Dep. 118:4-9.)

Public Access Points to the Intertidal Land at Moody Beach

17. There are four locations on land from which the public may access on foot the intertidal land at Moody Beach (the Public Access Points).² (P. Masucci Dep. 13:9-19, 20:18-22, 27:11-22, 109:4-10, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:18, Ex. KM-5.)
18. Listed north to south, the Public Access Points are right of way 3 (ROW 3), right of way 2 (ROW 2), right of way 1 (ROW 1), and the parking lot in Ogunquit near the southern end of Moody Beach (Ogunquit Parking Lot). (P. Masucci Dep. 27:11-22, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:16, Ex. KM-5.)

² The public may also access the intertidal land at Moody Beach from the water.

19. There is forbidding signage or other physical markers at each Public Access Point. (P. Masucci Dep. 23:9-14, 23:22-24:3, 26:17-32:11, II 48:19-49:5, II 50:16-51:12, II 54:21-55:3, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:24-112:9, 112:16-17, 113:14-17, 114:12-25, 115:8-10, 117:13-118:4, 118:21-119:17, 121:20-122:1, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 18:18-19:5, 21:20-22:4, 23:14-21, 25:10-16, 30:14, 43:6, 75:10-76:19, 109:17-110:2.)

20. None of the signs or physical markers inform the public that walking, navigation, fishing, or fowling is allowed on the intertidal land. (P. Masucci Dep. II 44:12-45:6, II 48:12-49:11, II 50:19-51:12, II 52:4-54:1, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:22-112:15, 114:17-115:7, 117:13-118:11, 118:19-119:17, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 110:3-111:6, 111:12-112:10, 113:33, Ex. Connerney-7, Ex. Connerney-8.)

Defendants' Property, Signs, and Other Physical Markers

21. Each Defendant owns oceanfront property at Moody Beach near a Public Access Point. (P. Masucci Dep. 32:19-21, II 41:19-43:4, Ex. PM-5; K. Masucci Dep. 66:24-67:3, Ex. KM-5; Ocean 503 Dep. 14:21-15:10, 16:20-21, 17:9-11; Ex. Ocean 503-2, Ex. Ocean 503-3; OA 2012 Dep. Ex. OA2012-2, Ex. OA2012-3; Judy's Moody Dep. Ex. Judy's-2, Ex. Judy's-4.)

Ocean 503, LLC

22. Defendant Ocean 503, LLC (Ocean 503) owns oceanfront property at Moody Beach located at 503 Ocean Avenue in Wells, Maine (Ocean 503's Property). (Ocean 503 Dep. 12:7-13, 13:13-14:3, 14:21-15:10, 16:15-17:14, 33:16-25, Ex. Ocean 503-2, Ex. Ocean 503-3.)

23. Ocean 503 claims ownership of the intertidal land on Moody Beach between Ocean 503's Property and the low water mark of the Atlantic Ocean (the Ocean 503 Intertidal Land).

(Ocean 503 Dep. 17:9-14, 18:22-25, 21:18-22:6.)

24. Ocean 503's Property abuts ROW 3: When accessing Moody Beach from ROW 3 and heading south along the intertidal land, the first property crossed is Ocean 503's Property.

(Ocean 503 Dep. 16:15-21, 34:11-14, 41:10-12, Ex. Ocean 503-2, Ex. Ocean 503-4; P. Masucci Dep. 15:15-19, 18:11-20, 19:15-20:3, Ex. PM-5.)

25. The following sign is affixed to the seawall on Ocean 503's Property and faces ROW

3:





(Ocean 503 Dep. 35:1-5, 36:9, 40:4-18, 41:9-11, Ex. Ocean 504-4³, Ex. Ocean 503-5; P. Masucci Dep. 23:3-24:3, II 44:8-45:10, Ex. PM-6; K. Masucci Dep. 26:1-27:1, Ex. KM-2, Ex. KM-6; Connerney Dep. 111:12-25, Ex. Connerney-8.)

³ The photo images that appear in the AG's statement of material facts ¶¶ 25-26 and ¶¶ 37-38 (and also in the AG's supporting memorandum of law) are deposition exhibits Ocean 503-4, Ocean 503-5, OA2012-5, and OA-2012-6. When copying those deposition exhibits and pasting them into this document and the AG's memorandum of law, the deposition exhibit stickers did not transfer with the rest of the image.

26. The following "PRIVATE BEACH" sign is affixed to the seawall on Ocean 503's Property and faces the ocean:



Ocean 503 Dep. 19:8-17, 34:1-3, 34:11-20, 35:1-4, 36:9, 36:21-37:4, Ex. Ocean 503-4; P. Masucci Dep. 23:3-25:9, II 46:22-47:8, Ex. PM-7.)

Judy's Moody, LLC

27. Defendant Judy's Moody, LLC (Judy's Moody) owns oceanfront property at Moody Beach located at 407 Ocean Avenue in Wells, Maine (Judy's Moody's Property). (Judy's Moody (JM) Dep. 13:22-14:3, 16:21-17:18, 19:10-23:2, 45:1-10, Ex. Judy's-2, Ex. Judy's-3, Ex. Judy's-4, Ex. Judy's-6.)

28. Judy's Moody claims ownership of the intertidal land on Moody Beach between Judy's Moody's Property and the low water mark of the Atlantic Ocean (the Judy's Moody Intertidal Land). (JM Dep. 19:10-21:25, 22:4-23:2, 39:25-40:4, Ex. Judy's-2, Ex. Judy's-3.)

29. Judy's Moody's Property abuts ROW 2: When accessing Moody Beach from ROW 2 and heading south along the intertidal land, the first property crossed is Judy's Moody's Property. (JM Dep. 21:2-23:2, 45:1-13, Ex. Judy's-2, Ex. Judy's-6; P. Masucci Dep. 20:17-21:1, 110:25-111:4, 112:4-10, 137:7-9, Ex. PM-5; K. Masucci Dep. 66:24-67:3, 118:19-119:1, Ex. KM-5; Connerney Dep. 75:10-17.)

30. There have been signs affixed to the seawall on Judy's Moody's Property that read "PRIVATE BEACH" and "No Trespassing" or "Private Beach, No Trespassing." (JM Dep. 46:25-49:21, 103:5-16, 117:18-24; P. Masucci Dep. 32:3-11; K. Masucci Dep. 78:16-79:21, 124:17-23; Connerney Dep. 77:5-78:16.)

31. Judy's Moody removed the "No Trespassing" sign for safety reasons; not because it disagreed with the content of the sign. (JM Dep. 48:12-49:5, 50:5-7, 103:6-16.)

32. Judy' Moody's "PRIVATE BEACH" sign was likely removed by the ocean. (JM Dep. 46:16-18, 47:17-48:6.)

33. Judy's Moody occasionally uses large pieces of wood that wash ashore, cones, or seaweed raked in a line to demarcate the side property boundary line shared by Judy's Moody Property and ROW 2. (JM Dep. 92:17-93:12, 93:21-94:10; P. Masucci Dep. II 52:4-25, II 53:16-54:1; K. Masucci Dep. 80:4-82:11, 118:19-119:12; Connerney Dep. 71:13-16, 75:10-76:12, 119:6-120:7.)

OA 2012 Trust

34. Defendant OA 2012 Trust (OA 2012) owns oceanfront property at Moody Beach located at 3 Ocean Ave, Wells, Maine (OA 2012's Property). (OA 2012 Dep. 20:17-21:6, 24:22-25:2, Ex. OA2012-2, Ex. OA2012-4.)

35. OA 2012 claims ownership of the intertidal land on Moody Beach between OA 2012's Property and the low water mark of the Atlantic Ocean (the OA 2012 Intertidal Land). (OA 2012 Dep. 25:3-26:6.)

36. OA 2012's Property is near the Ogunquit Parking Lot: When accessing Moody Beach from the Ogunquit Parking Lot and walking north, the first property crossed is OA 2012's Property. (OA 2012 Dep. 38:20-39:16, 55:20-56:2, 60:9-10, Ex. OA2012-4; P. Masucci Dep. 48:13-25, Ex. PM-5; K. Masucci Dep. 98:6-9, 114:15-20, Ex. KM-5; Connerney Dep. 89:10-91:23.)

37. The following sign is affixed to the seawall on OA 2012's Property and faces the Ogunquit Parking Lot:



(OA 2012 Dep. 37:16-39:9, 46:22-25, Ex. OA2012-5; P. Masucci Dep. II 48:12-49:5, Ex. PM-8.)

38. The following sign is affixed to the seawall on OA 2012's Property and faces the ocean:



(OA 2012 Dep. 47:3-48:3, Ex. OA2012-6.)

Plaintiffs' Route(s) to the Intertidal Land at Moody Beach

39. The Masuccis live near ROW 3. (P. Masucci Dep. 13:9-21, Ex. PM-5; K. Masucci Dep. 13:12-14:1, Ex. KM-5.)

40. If the Masuccis want to walk Moody Beach at low tide or mid tide, they typically walk down ROW 3, turn south, and then cross the Ocean 503 Intertidal Land. (P. Masucci 13:9-21, 18:11-20, 19:3-8, 19:15-20:10, 21:2-22, 117:8-16; Ex. PM-5; K. Masucci Dep. 21:10-21, 67:12-16, Ex. KM-5.)

41. At or near high tide, there is more dry sand at the southern end of Moody Beach than at the northern end of Moody Beach. (P. Masucci Dep. 20:22-25, II 12:20-13:3; Connerney Dep. 91:24-92:14.)

42. If the Masuccis want to walk Moody Beach at or near high tide, they typically walk down ROW 2, turn south, and then cross the Judy's Moody Intertidal Land. (P. Masucci 20:18-21:4; 106:3-107:14, 117:8-16; K. Masucci Dep. 21:10-21.)

43. In the winter, the Masuccis typically walk the entire length of Moody Beach down to Ogunquit Beach and cross the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land. (P. Masucci Dep. 13:1-14:17; 18:11-20, 19:15-21:16, 116:23-117:16, II 10:9-15, II 15:23-16:7, II 33:6-8, II 43:22-44:5; K. Masucci Dep. 16:3-17:6, 35:21-36:5, 58:22-25, 68:21-69:1, 70:1-3, 97:11-98:9).

44. Mr. Connerney's property is located near ROW 2. (Connerney Dep. 11:11-14, 107:23-108:5, Ex. Connerney-6.)

45. Mr. Connerney typically accesses Moody Beach using ROW 2. (Connerney Dep. 14:9-10, 76:25-77:4, 107:23-108:1.)

46. When Mr. Connerney accesses Moody Beach from ROW 2 and walks south he crosses the Judy's Moody Intertidal Land and the OA 2012 Intertidal Land. (Connerney Dep. 13:6-8, 13:20-25, 75:10-77:4, 90:15-91:23, 92:17-93:18.)

47. When Mr. Connerney walks north along Moody Beach, Mr. Connerney crosses the Ocean 503 Intertidal Land. (Connerney Dep. 17:13-18:1, 19:17-24, 20:2-8, 32:24-33:17.)

Defendants' Signs and Other Physical Markers Impact Plaintiffs

Peter Masucci

48. Peter Masucci is conscious of the signs and other physical markers on Ocean 503's Property, on Judy's Moody's Property, and on OA 2012's Property. (P. Masucci Dep. 23:7-24:3, 27:8-24, 32:3-11, 33:15-17, 47:12-13, II 52:22-54:1, Ex. PM-6, Ex. PM-8.)

49. The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over each of the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.)

50. Because of the signs on Defendants' properties, such as those on Ocean 503's Property, Peter Masucci does not stop on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Intertidal Land. (P. Masucci Dep. 57:15-22, II 49:22-50:9.)

51. The sign on Ocean 503's seawall that faces ROW 3 stands out to Peter Masucci because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.)

52. The sign on Ocean 503's seawall that faces ROW 3 makes Peter Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-147, Ex. PM-6.)

53. Peter Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.)

54. Peter Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.)

55. That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Peter Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

56. Ocean 503 has never told Peter Masucci that he has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:9-12; P. Masucci Dep. II 45:15-18.)

57. Ocean 503 has never told Peter Masucci that he has Ocean 503's permission to walk on Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:13-15; P. Masucci Dep. 16:12-17:21, II 45:19-22.)

58. Peter Masucci feels unwelcome on Judy's Moody's Property when he sees the boundary demarcations—wood, orange cones, raked seaweed—on Judy's Moody's Property. (P. Masucci Dep. II 54:10-13.)
59. Peter Masucci is concerned that Judy's Moody will ask Peter to leave the Judy's Moody Intertidal Land. (P. Masucci Dep. II 54:14-17.)
60. That concern—Judy's Moody asking Peter Masucci to leave the Judy's Moody Intertidal Land—negatively effects Peter Masucci's beach experience. (P. Masucci Dep. II 54:18-20.)
61. Judy's Moody has never told Peter Masucci that he has the legal right to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:2-8; P. Masucci Dep. II 54:2-5.)
62. Judy's Moody has never told Peter Masucci that he has Judy's Moody permission to walk on the Judy's Moody Intertidal Land. (P. Masucci Dep. II 54:6-9.)
63. Peter Masucci has seen the signs on OA 2012's Seawall. (Peter Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.)
64. When Peter Masucci sees the sign on OA 2012's Property that faces the Ogunquit Parking Lot he feels discouraged and angry. (P. Masucci Dep. II 49:21-24, Ex. PM-8.)
65. OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11, II 50:6-12, Ex. PM-8.)
66. OA 2012 has not told Peter Masucci that he has the legal right to walk on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:12-15.)
67. OA 2012 has not told Peter Masucci that he has OA 2012's permission to walk on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:16-20; OA 2012 Dep. 72:16-19.)

68. Peter Masucci has personally seen police on Moody Beach. (P. Masucci Dep. 113:11-19, II 55:19-23.)

69. Peter Masucci feels discouraged, angry, and uncomfortable when he sees the police on Moody Beach. (P. Masucci Dep. II 55:24-56:1.)

70. Peter Masucci is concerned that if he stops along the intertidal land of Moody Beach—for example, to make a phone call—he might be confronted by the police. (P. Masucci Dep. II 56:2-8.)

Kathy Masucci

71. The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on Defendants' properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.)

72. The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.)

73. To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

74. For Kathy Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.)

75. The sign on Ocean 503's Property that faces ROW 3 makes Kathy Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.)

76. Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.)

77. When Kathy Masucci sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 Intertidal Land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.)
78. Although she only walks across the Ocean 503 Intertidal Land, Kathy Masucci is concerned that Ocean 503 may ask her to leave the Ocean 503 Intertidal Land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.)
79. Kathy Masucci has heard stories of Ocean 503 approaching members of the public about using the Ocean 503 Intertidal Land. (K. Masucci Dep. 28:5-9, 29:7-10.)
80. The stories Kathy Masucci has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)
81. Ocean 503 has never told Kathy Masucci that she has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:13-16; K. Masucci Dep. 113:6-9.)
82. Ocean 503 has never told Kathy Masucci that Kathy Masucci has Ocean 503's permission to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:16-18; K. Masucci Dep. 113:10-13.)
83. Kathy Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.)
84. Kathy Masucci has seen pictures of people being asked to leave Judy's Moody's Property. (K. Masucci Dep. 77:1-3.)
85. Kathy Masucci has heard stories of being people to asked to leave Judy's Moody's Property. (K. Masucci Dep. 28:5-9, 84:21-87:16, 91:11-92:4.)
86. Kathy Masucci has seen the signs on the seawall at Judy's Moody's Property. (K. Masucci Dep. 78:16-79:19, 124:17-24.)

87. Kathy Masucci is aware that Judy's Moody has demarcated Judy's Moody's Property using logs, cones, and raked seaweed. (K. Masucci Dep. 81:9-24, 82:9-11.)
88. The raked seaweed, log, and orange cones on Judy's Moody's Property, convey to Kathy Masucci "Keep out. No trespassing." (K. Masucci Dep. 119:19-17.)
89. Kathy Masucci is concerned that Judy's Moody may ask her to leave the Judy's Moody Intertidal Land. (K. Masucci Dep. 120:2-5.)
90. That concern—being asked to leave Judy's Moody Intertidal Land—negatively affects Kathy Masucci's experience of walking Moody Beach. (K. Masucci Dep. 103:1-7, 120:6-10.)
91. Judy's Moody has never told Kathy Masucci that she has the legal right to walk on the Judy's Moody Intertidal Land. (K. Masucci Dep. 119:18-21.)
92. Judy's Moody has never told Kathy Masucci that she has Judy's Moody's permission to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:17-120:10; Kathy Masucci Dep. 119:22-120:1.)
93. Kathy Masucci has seen the sign on the OA 2012's Seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.)
94. The sign on the seawall at OA 2012's Property that faces the Ogunquit Parking Lot makes Kathy Masucci feel uncomfortable, sad, angry, and frustrated, and generates concern that the police may be called on her. (K. Masucci Dep. 103:1-7, 114:21-115:16, KM-7.)
95. Kathy Masucci's concern that OA 2012 may ask her to leave the OA 2012 Intertidal Land negatively impacts her experience of walking Moody Beach. (K. Masucci Dep. 115:25-116:9.)
96. OA 2012 has not told Kathy Masucci that she has the right to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:7-9; K. Masucci Dep. 115:17-20.)

97. OA 2012 has not told Kathy Masucci that she has OA 2012's permission to walk on the OA 2012 Intertidal Land. (K. Masucci Dep. 115:21-24.)

William (Bill) Connerney

98. Bill Connerney has seen the signs on Ocean 503's Seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.)

99. Bill Connerney understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's Property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.)

100. Bill Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that the Ocean 503 Intertidal Land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.)

101. Because of Bill Connerney's understanding that Ocean 503 does not want people on its property, Bill Connerney now limits his use of the Ocean 503 Intertidal Land to when Ocean 503 is not around or otherwise tries to avoid the Ocean 503 Intertidal Land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.)

102. Bill Connerney is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.)

103. Bill Connerney's concern that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land negatively effects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

104. Ocean 503 has never told Bill Connerney that he has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:17-21.)

105. Ocean 503 has never told Bill Connerney that he has Ocean 503's permission to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:19-21; Connerney Dep. 119:2-5.)
106. Bill Connerney has seen the police on the Judy's Moody Intertidal Land. (Connerney Dep. 27:24-28:14, 79:5-24, 82:24-83:4.)
107. Bill Connerney has seen the police on Moody Beach at areas other than the Defendants' properties. (Connerney Dep. 83:5-9.)
108. Bill Connerney has heard anecdotal accounts of Judy's Moody telling people to leave Judy's Moody Intertidal Land. (Connerney Dep. 29:6-20.)
109. Bill Connerney has seen the orange cones, wood, and raked seaweed demarcating the boundary of Judy's Moody's Property and ROW 2. (Connerney Dep. 71:13-15.)
110. Bill Connerney has seen the signs that used to be on the seawall at Judy's Moody's Property. (Connerney Dep. 76:24-77:18.)
111. Bill Connerney was aware of those signs on Judy's Moody's Property as soon as he enters the beach. (Connerney Dep. 78:17-23.)
112. The signs that were on Judy's Moody's Property have negatively impacted Bill Connerney's experience of walking the intertidal land at Moody Beach. (Connerney Dep. 13:6-8, 13:20-25, 78:17-79:4; 82:14-18.)
113. Bill Connerney feels unwelcome on Judy's Moody's Property when he sees those boundary demarcations—wood, cones, raked seaweed—on Judy's Moody's Property. (Connerney Dep 25:20-26:4, 119:10-17.)
114. Judy's Moody has never told Bill Connerney that he has the legal right to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:13-16.)

115. Judy's Moody has never told Bill Connerney that he has Judy's Moody's permission to walk on the Judy's Moody Intertidal Land. (Connerney Dep. 118:23-119:1.)
116. Bill Connerney has seen the signs on the seawall at OA 2012's Property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.)
117. OA 2012 has not told Bill Connerney that he has the right to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:12-15.)
118. OA 2012 has not told Bill Connerney that he has OA 2012's permission to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:24-73:3; Connerney Dep. 118:19-22.)
119. Bill Connerney would feel better about walking on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land if their signage specified that walking is allowed. (Connerney Dep. 115:5-10.)
120. Bill Connerney understands that Ocean 503, Judy's Moody, and OA 2012 could choose at any moment to ask someone who is walking across, respectively, the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Trust Intertidal Land to leave or move along. (Connerney Dep. 116:24-117:14.)
121. Bill Connerney thinks about the possibility of a confrontation with Ocean 503, Judy's Moody, and OA 2012 when he is on, respectively, the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land. (Connerney Dep. 25:20-26:4, 117:15-24).
122. The possibility of a confrontation with Ocean 503, Judy's Moody, and OA 2012 detracts from what would otherwise be a relaxing walk on the beach for Bill Connerney. (Connerney Dep. 117:15-118:3.)

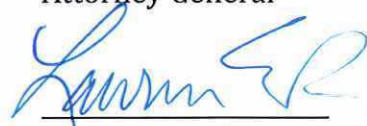
Whether the Public has the Right to Walk on Intertidal Land Pursuant to the Public Trust Doctrine

123. Kathy Masucci thinks that walking and running and moving could be considered navigation. (K. Masucci Dep. 76:4-8.)
124. Bill Connerney thinks that walking could be considered navigation. (Connerney Dep. 65:16-66:20, 114:11-25, 115:13-116:6.)
125. Ocean 503 understands “fowling” to include bird watching. (Ocean 503 Dep. 38:17-18, 39:25-40:3.)
126. Ocean 503 understands “navigation” to mean traversing the beach, which means walking back and forth on the beach. (Ocean 503 Dep. 38:18-39:2, 39:22-24.)
127. When people are engaging in activities other than fishing, fowling, and navigating on the Judy’s Moody Intertidal Land, Judy’s Moody understands that it has the right to ask people to leave. (JM Dep. 122:2-11.)
128. Judy’s Moody thinks that there are times when navigation includes walking. (JM Dep. 123:8-11.)
129. OA 2012 understands that it has the right to ask someone to leave the OA 2012 Intertidal Land but not if the person is just walking. (OA 2012 Dep. 70:22-71:4, 71:20-23.)

Dated: May 2, 2023

Respectfully submitted,

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enabling the court to decide a summary judgment motion without engaging in an exhaustive review of the record.” *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 8, 742 A.2d 933, 938. *See also First Tracks Investments, LLC v. Murray, Plumb & Murray*, 2015 ME 104, ¶ 2, 121 A.3d 1279, 1280–82 (affirming trial court’s denial of a summary judgment motion where the plaintiff submitted 257 individual facts).

Given the Court in its April 15, 2022, Order (“Order”) at 25 limited Count IV to whether “any movement or research related activity” is permissible on or over Judy’s Moody’s intertidal property, statement of material facts with respect non-movement-based activities are irrelevant.

Because the Law Court in *Bell v. Town of Wells*, 557 A.2d 168, 173 (Me. 1989) (*Bell II*) held that general recreational activities such as “bathing, sunbathing,” and “recreational walking” on “privately owned intertidal land” at Moody Beach, including the intertidal land now owned by Judy’s Moody, are not public rights included within the public rights of fishing, fowling and navigation in the Colonial Ordinance, any facts offered regarding the use of Judy’s Moody’s intertidal property for movement based recreational activities, including bathing sunbathing and recreational walking, are not relevant. Decisions of the Law Court are binding on the Superior Court. *Myrick v. James*, 444 A.2d 987, 997–98 (Me. 1982) (quoting *State v. Mellenberger*, 95 P.2d 709, 719–20 (Or. 1939)); *see also Shaw v. Jendzejec*, 1998 ME 208, ¶ 8, 717 A.2d 367, 370 (quoting *Myrick*).

RESPONSES

1. Moody Beach is a mostly sandy beach located in Wells, Maine. (P. Masucci Dep. 95:3- 12, 96:24-97:15, IP 38:17-39:5.)

Objection: Judy’s Moody incorporates by reference the general objections stated above.

Response: Admitted.

2. Moody Beach is approximately 1.5 miles long and is generally oriented north (Wells)-south (Ogonquit). (P. Masucci Dep. 94:23-95:4, II 10:16-23.)

Objection: Judy’s Moody incorporates by reference the general objections stated above.

Response: Admitted.

3. Plaintiffs Peter Masucci and Kathy Masucci (collectively, the Masuccis) are married. (P. Masucci Dep. 73:20; K. Masucci Dep. 12:2-6, 93:24-94:2.)

Objection: Judy’s Moody incorporates by reference the general objections stated above.

Response: Admitted.

4. The Masuccis own and reside at the property located at 484 Ocean Avenue in Wells, Maine (the Masuccis’ Property). (P. Masucci Dep. 11:1-5, Ex. PM-5; K. Masucci Dep. 12:8-10, 12:23-13:1, 13:10-11, 65:12-15, Ex. KM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

5. The Masuccis' Property is across the street from the Moody Beach; it is not oceanfront property. (P. Masucci Dep. 11:6-11, Ex. PM-5; K. Masucci Dep. 66:16-23, Ex. KM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

6. Plaintiff William (Bill) Connerney owns the property at 130 South Tibbetts in Wells, Maine (the Connerney Property) and lives there from the last weekend in May through November 1. (Connerney Dep. 10:21-11:2, 11:21-12:3.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

7. The Connerney Property is across the street from Moody Beach; it is not oceanfront property. (Connerney Dep. 11:3-10; 105:23, 107:7-22, Ex. Connerney-6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

8. Peter Masucci, Kathy Masucci, and Bill Connerney (collectively, the Plaintiffs) each generally understand "intertidal land" to mean the land between the mean low-water mark and the mean high-water mark. (P. Masucci Dep. 101:6-103:16, 1113:5-13; K. Masucci Dep. 68:3-20; Connerney Dep. 57:12-22.)

Objection: Judy's Moody objects on the ground that "intertidal land" has a legal definition in Maine and it is that definition, rather than Plaintiffs' understanding, that governs in this case. *See Bell II*, 557 A.2d at 169 n.3 (citing 12 M.R.S.A. § 572 (Supp. 1988)). MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

9. Each Plaintiff regularly walks the length of Moody Beach on the intertidal land at Moody Beach. (P. Masucci Dep. 13:1-8, 13:22-14:7, 14:16-17, 19:15-21:16, 60:1-4, 116:23-117:1, II 43:22-44:5; K. Masucci Dep. 16:20-17:6, 28:21-23, 35:21-36:5, 68:21-69:1, 97:11-25, 108:1-4, 126:25-127:2; Connerney Dep. 13:6-8, 13:20-25, 17:13-18:5, 19:17-24, 25:20-21, 32:22-33:17, 90:15-93:18, 96:9-11.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

10. Peter Masucci and Kathy Masucci sometimes bring their grandson along when they walk the intertidal land at Moody Beach. (P. Masucci Dep. 19:15-20:3, 117:6-16; K. Masucci Dep. 50:9-16.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

11. Peter Masucci walks the intertidal land at Moody Beach for enjoyment, relaxation, and stress relief. (P. Masucci Dep. II 37:4-12.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

12. When Peter Masucci walks the intertidal land at Moody Beach he sometimes stops to gaze at the water or look for birds. (P. Masucci Dep. 122:7-12, II 46:11-14.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

13. Kathy Masucci likes going to the beach because it is beautiful, peaceful, and fun and because the beach is a wonderful place to think, observe, and be grateful. (K. Masucci Dep. 107:12-15.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

14. Kathy Masucci walks the intertidal land at Moody Beach for enjoyment, physical health benefits, and mental health benefits like stress relief and relaxation. (K. Masucci Dep. 107:21-25.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

15. When Kathy Masucci walks the intertidal land at Moody Beach, she sometimes stops to look at the water. (K. Masucci Dep. 108:1-4.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

16. Bill Connerney walks the intertidal land at Moody Beach for relaxation and physical health. (Connerney Dep. 118:4-9.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

17. There are four locations on land from which the public may access on foot the intertidal land at Moody Beach (the Public Access Points). (P. Masucci Dep. 13:9-19, 20:18- 22, 27:11-22, 109:4-10, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:18, Ex. KM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

18. Listed north to south, the Public Access Points are right of way 3 (ROW 3), right of way 2 (ROW 2), right of way 1 (ROW 1), and the parking lot in Ogunquit near the southern end of Moody Beach (Ogunquit Parking Lot). (P. Masucci Dep. 27:11-22, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:16, Ex. KM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

19. There is forbidding signage or other physical markers at each Public Access Point. (P. Masucci Dep. 23:9-14, 23:22-24:3, 26:17-32:11, II 48:19-49:5, II 50:16-51:12, II 54:21- 55:3, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:24-112:9, 112:16-17, 113:14-17, 114:12-25, 115:8-10, 117:13-118:4, 118:21-119:17, 121:20-122:1, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 18:18-19:5, 21:20-22:4, 23:14-21, 25:10-16, 30:14, 43:6, 75:10-76:19, 109:17-110:2.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody also objects to the extent Paragraph 19 purports to characterize the signage at each Public Access Point, which speaks for itself. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the responses of the other defendants with respect to signage on or adjacent to their property. Judy's Moody's property abuts ROW 2. No signs regarding the beach are currently up on Judy's Moody's property. Dennis Dep. 46:10-49:24-25.

20. None of the signs or physical markers inform the public that walking, navigation, fishing, or fowling is allowed on intertidal land.

Objection: Judy's Moody objects on the ground that Maine law currently does not permit recreational walking on private intertidal land. *See Bell II*, 557 A.2d at 175-76. Indeed, that is the very question the Attorney General asks this Court to reconsider. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the responses of the other defendants with respect to signage on or adjacent to their property. No signs regarding the beach are currently up on Judy's Moody's property. Dennis Dep. 46:10-49:24-25.

21. Each Defendant owns oceanfront property at Moody Beach near a Public Access Point. (P. Masucci Dep. 32:19-21, II 41:19-43:4, Ex. PM-5; K. Masucci Dep. 66:24-67:3, Ex. KM-5; Ocean 503 Dep. 14:21-15:10, 16:20-21, 17:9-11; Ex. Ocean 503-2, Ex. Ocean 503-3; OA 2012 Dep. Ex. OA2012-2, Ex. OA2012-3; Judy's Moody Dep. Ex. Judy's-2, Ex. Judy's-4.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted as to Judy's Moody. As to the other Defendants, Judy's Moody incorporates each of their responses.

22. Defendant Ocean 503, LLC (Ocean 503) owns oceanfront property at Moody Beach located at 503 Ocean Avenue in Wells, Maine (Ocean 503's Property). (Ocean 503 Dep. 12:7-13, 13:13-14:3, 14:21-15:10, 16:15-17:14, 33:16-25, Ex. Ocean 503-2, Ex. Ocean 503-3.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

23. Ocean 503 claims ownership of the intertidal land on Moody Beach between Ocean 503's Property and the low water mark of the Atlantic Ocean (the Ocean 503 Intertidal Land). (Ocean 503 Dep. 17:9-14, 18:22-25, 21:18-22:6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

24. Ocean 503's Property abuts ROW 3: When accessing Moody Beach from ROW 3 and heading south along the intertidal land, the first property crossed is Ocean 503's Property. (Ocean 503 Dep. 16:15-21, 34:11-14, 41:10-12, Ex. Ocean 503-2, Ex. Ocean 503-4; P. Masucci Dep. 15:15-19, 18:11-20, 19:15-20:3, Ex. PM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

25. The following sign is affixed to the seawall on Ocean 503's Property and faces ROW:



(Ocean 503 Dep. 35:1-5, 36:9, 40:4-18, 41:9-11, Ex. Ocean 504-43, Ex. Ocean 503-5; P. Masucci Dep. 23:3-24:3, II 44:8-45:10, Ex. PM-6; K. Masucci Dep. 26:1-27:1, Ex. KM-2, Ex. KM6; Connerney Dep. 111:12-25, Ex. Connerney-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

26. The following "PRIVATE BEACH" sign is affixed to the seawall on Ocean 503's Property and faces the ocean:



(Ocean 503 Dep. 19:8-17, 34:1-3, 34:11-20, 35:1-4, 36:9, 36:21-37:4, Ex. Ocean 503-4; P. Masucci Dep. 23:3-25:9, II 46:22-47:8, Ex. PM-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

27. Defendant Judy's Moody, LLC (Judy's Moody) owns oceanfront property at Moody Beach located at 407 Ocean Avenue in Wells, Maine (Judy's Moody's Property). (Judy's Moody QM) Dep. 13:22-14:3, 16:21-17:18, 19:10-23:2, 45:1-10, Ex. Judy's-2, Ex. Judy's-3, Ex. Judy's-4, Ex. Judy's-6.)

Response: Admitted.

28. Judy's Moody claims ownership of the intertidal land on Moody Beach between Judy's Moody's Property and the low water mark of the Atlantic Ocean (the Judy's Moody Intertidal Land). (JM Dep. 19:10-21:25, 22:4-23:2, 39:25-40:4, Ex. Judy's-2, Ex. Judy's-3.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody also objects to this characterization. Judy's Moody's ownership of the intertidal zone is a matter of settled Maine law, rather than a mere claim. *See Bell II*, 557 A.2d at 173. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

29. Judy's Moody's Property abuts ROW 2: When accessing Moody Beach from ROW 2 and heading south along the intertidal land, the first property crossed is Judy's Moody's Property. (JM Dep. 21:2-23:2, 45:1-13, Ex. Judy's-2, Ex. Judy's-6; P. Masucci Dep. 20:17-21:1, 110:25-111:4, 112:4-10, 137:7-9, Ex. PM-5; K. Masucci Dep. 66:24-67:3, 118:19-119:1, Ex. KM-5; Connerney Dep. 75:10-17.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

30. There have been signs affixed to the seawall on Judy's Moody's Property that read "PRIVATE BEACH" and "No Trespassing" or "Private Beach, No Trespassing." (JM Dep. 46:25-49:21, 103:5-16, 117:18-24; P. Masucci Dep. 32:3-11; K. Masucci Dep. 78:16-79:21, 124:17-23; Connerney Dep. 77:5-78:16.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

31. Judy's Moody removed the "No Trespassing" sign for safety reasons; not because it disagreed with the content of the sign. (JM Dep. 48:12-49:5, 50:5-7, 103:6-16.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

32. Judy' Moody's "PRIVATE BEACH" sign was likely removed by the ocean. (JM Dep. 46:16-18, 47:17-48:6.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

33. Judy's Moody occasionally uses large pieces of wood that wash ashore, cones, or seaweed raked in a line to demarcate the side property boundary line shared by Judy's Moody Property and ROW 2. (JM Dep. 92:17-93:12, 93:21-94:10; P. Masucci Dep. II 52:4-25, II 53:16-54:1; K. Masucci Dep. 80:4-82:11, 118:19-119:12; Connerney Dep. 71:13-16, 75:10-76:12, 119:6-120:7.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. The cited portions of the Dennis deposition make clear that often these objects were placed by someone other than Defendant Judy's Moody LLC. See JM Dep. 92:17-93:12, 93:21-94:10; P. Masucci Dep. II 52:4-25, II 53:16-54:1; K. Masucci Dep. 80:4-82:11, 118:19-119:12; Connerney Dep. 71:13-16, 75:10-76:12, 119:6-120:7.

34. Defendant OA 2012 Trust (OA 2012) owns oceanfront property at Moody Beach located at 3 Ocean Ave, Wells, Maine (OA 2012's Property). (OA 2012 Dep. 20:17-21:6, 24:22-25:2, Ex. OA2012-2, Ex. OA2012-4.).

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

35. OA 2012 claims ownership of the intertidal land on Moody Beach between OA 2012's Property and the low water mark of the Atlantic Ocean (the OA 2012 Intertidal Land). (OA 2012 Dep. 25:3-26:6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any

claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody LLC incorporates the response of OA 2012

36. OA 2012's Property is near the Ogunquit Parking Lot: When accessing Moody Beach from the Ogunquit Parking Lot and walking north, the first property crossed is OA 2012's Property. (OA 2012 Dep. 38:20-39:16, 55:20-56:2, 60:9-10, Ex. OA2012-4; P. Masucci Dep. 48:13-25, Ex. PM-5; K. Masucci Dep. 98:6-9, 114:15-20, Ex. KM-5; Connerney Dep. 89:10-91:23.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of OA 2012.

37. The following sign is affixed to the seawall on OA 2012's Property and faces the Ogunquit Parking Lot:



(OA 2012 Dep. 37:16-39:9, 46:22-25, Ex. OA2012-5; P. Masucci Dep. II 48:12-49:5, Ex. PM-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only

against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of OA 2012.

38. The following sign is affixed to the seawall on OA 2012's Property and faces the ocean:



(OA 2012 Dep. 47:3-48:3, Ex. OA2012-6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of OA 2012.

39. The Masuccis live near ROW 3. (P. Masucci Dep. 13:9-21, Ex. PM-5; K. Masucci Dep. 13:12-14:1, Ex. KM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

40. If the Masuccis want to walk Moody Beach at low tide or mid tide, they typically walk down ROW 3, turn south, and then cross the Ocean 503 Intertidal Land. (P. Masucci 13:9-21, 18:11-20, 19:3-8, 19:15-20:10, 21:2-22, 117:8-16; Ex. PM-5; K. Masucci Dep. 21:10-21, 67:12-16, Ex. KM-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

41. At or near high tide, there is more dry sand at the southern end of Moody Beach than at the northern end of Moody Beach. (P. Masucci Dep. 20:22-25, II 12:20-13:3; Connerney Dep. 91:24-92:14.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

42. If the Masuccis want to walk Moody Beach at or near high tide, they typically walk down ROW 2, turn south, and then cross the Judy's Moody Intertidal Land. (P. Masucci 20:18- 21:4; 106:3-107:14, 117:8-16; K. Masucci Dep. 21:10-21.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

43. In the winter, the Masuccis typically walk the entire length of Moody Beach down to Ogunquit Beach and cross the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land. (P. Masucci Dep. 13:1-14:17; 18:11-20, 19:15-21:16, 116:23-117:16, II 10:9-15, II 15:23-16:7, II 33:6-8, II 43:22-44:5; K. Masucci Dep. 16:3-17:6, 35:21-36:5, 58:22-25, 68:21-69:1, 70:1-3, 97:11-98:9).

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

44. Mr. Connerney's property is located near ROW 2. (Connerney Dep. 11:11-14, 107:23-108:5, Ex. Connerney-6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

45. Mr. Connerney typically accesses Moody Beach using ROW 2. (Connerney Dep. 14:9-10, 76:25-77:4, 107:23-108:1.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

46. When Mr. Connerney accesses Moody Beach from ROW 2 and walks south he crosses the Judy's Moody Intertidal Land and the OA 2012 Intertidal Land. (Connerney Dep. 13:6-8, 13:20-25, 75:10-77:4, 90:15-91:23, 92:17-93:18.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

47. When Mr. Connerney walks north along Moody Beach, Mr. Connerney crosses the Ocean 503 Intertidal Land. (Connerney Dep. 17:13-18:1, 19:17-24, 20:2-8, 32:24-33:17.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

48. Peter Masucci is conscious of the signs and other physical markers on Ocean 503's Property, on Judy's Moody's Property, and on OA 2012's Property. (P. Masucci Dep. 23:7-24:3, 27:8-24, 32:3-11, 33:15-17, 47:12-13, II 52:22-54:1, Ex. PM-6, Ex. PM-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. There are no signs currently on Judy's Moody's property. Dennis Dep. 46:10-49:24-25. Physical markers are there only occasionally and are often not placed by Judy's Moody. Dennis Dep. 92:17-93:12, 93:21-94:10. Judy's Moody otherwise incorporates the response of the other Defendants.

49. The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over each of the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. There are no signs currently on Judy's Moody's property. Dennis Dep. 46:10–49:24-25. Physical markers are there only occasionally and are often not placed by Judy's Moody. Dennis Dep. 92:17-93:12, 93:21-94:10. No representative of Judy's Moody has ever asked Mr. Masucci to leave Judy's Moody's intertidal land. P. Masucci Dep. 112:20-23, 113:5-10, 130:2-7. Judy's Moody otherwise incorporates the response of the other Defendants.

50. Because of the signs on Defendants' properties, such as those on Ocean 503's Property, Peter Masucci does not stop on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the QA 2012 Intertidal Land. (P. Masucci Dep. 57:15-22, II 49:22-50:9.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Paragraph 12 of this Statement of Material Facts states that Mr. Masucci "sometimes stops to gaze at the water or look for birds" while walking in the intertidal zone. He also testified in his deposition that he has engaged in all sorts of recreational activities on the intertidal land, far beyond stopping to look at birds. P. Masucci Dep. I 116:17-25, 117:1, 117:23-25, 118:1-16, 118:23-25, 121:5-24, 122:1-12, 127:7-25, 128:1-3, 143:18-24.

51. The sign on Ocean 503's seawall that faces ROW 3 stands out to Peter Masucci because it says, "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody LLC incorporates the response of Defendant Ocean 503.

52. The sign on Ocean 503's seawall that faces ROW 3 makes Peter Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-147, Ex. PM-6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

53. Peter Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

54. Peter Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

55. That concern-Ocean 503 asking him to leave the Ocean 503 Intertidal Land negatively affects Peter Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

56. Ocean 503 has never told Peter Masucci that he has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:9-12; P. Masucci Dep. II 45:15-18.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

57. Ocean 503 has never told Peter Masucci that he has Ocean 503's permission to walk on Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:13-15; P. Masucci Dep. 16:12-17:21, II 45:19-22.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

58. Peter Masucci feels unwelcome on Judy's Moody's Property when he sees the boundary demarcations-wood, orange cones, raked seaweed-on Judy's Moody's Property. (P. Masucci Dep. II 54:10-13.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mr. Masucci's feelings, Judy's Moody repeats that boundary demarcations have often not been placed by any representative of Judy's Moody. Dennis Dep. 92:17-93:12, 93:21-94:10.

59. Peter Masucci is concerned that Judy's Moody will ask Peter to leave the Judy's Moody Intertidal Land. (P. Masucci Dep. II 54:14-17.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. While Judy's Moody cannot dispute Mr. Masucci's feelings, no representative of Judy's Moody has ever asked Mr. Masucci to leave Judy's Moody's intertidal land. (P. Masucci Dep. I 112:20-23, 113:5-10, 130:2-7.)

60. That concern-Judy's Moody asking Peter Masucci to leave the Judy's Moody Intertidal Land-negatively effects Peter Masucci's beach experience. (P. Masucci Dep. II 54:18-20.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. While Judy's Moody cannot dispute Mr. Masucci's feelings, no representative of Judy's Moody has ever asked Mr. Masucci to leave Judy's Moody's intertidal land. P. Masucci Dep. I 112:20-23, 113:5-10, 130:2-7.

61. Judy's Moody has never told Peter Masucci that he has the legal right to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:2-8; P. Masucci Dep. II 54:2-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody has never prevented Mr. Masucci from walking on Judy's Moody's intertidal land. P. Masucci Dep. I 112:20-23, 113:5-10, 130:2-7.

62. Judy's Moody has never told Peter Masucci that he has Judy's Moody permission to walk on the Judy's Moody Intertidal Land. (P. Masucci Dep. II 54:6-9.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody has never prevented Mr. Masucci from walking on Judy's Moody's intertidal land. P. Masucci Dep. I 112:20-23, 113:5-10, 130:2-7.

63. Peter Masucci has seen the signs on OA 2012's Seawall. (Peter Masucci Dep. 26:17- 27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

64. When Peter Masucci sees the sign on OA 2012's Property that faces the Ogunquit Parking Lot he feels discouraged and angry. (P. Masucci Dep. II 49:21-24, Ex. PM-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody LLC incorporates the response of Defendant OA 2012.

65. OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11, II 50:6-12, Ex. PM-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only

against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

66. OA 2012 has not told Peter Masucci that he has the legal right to walk on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:12-15.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody LLC incorporates the response of Defendant OA 2012.

67. OA 2012 has not told Peter Masucci that he has OA 2012's permission to walk on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:16-20; OA 2012 Dep. 72:16-19.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody LLC incorporates the response of Defendant OA 2012

68. Peter Masucci has personally seen police on Moody Beach. (P. Masucci Dep. 113:11-19, II 55:19-23.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

69. Peter Masucci feels discouraged, angry, and uncomfortable when he sees the police on Moody Beach. (P. Masucci Dep. II 55:24-56:1.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

70. Peter Masucci is concerned that if he stops along the intertidal land of Moody Beach, for example, to make a phone call-he might be confronted by the police. (P. Masucci Dep. II 56:2-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. While Judy's Moody cannot dispute Mr. Masucci's feelings, he has never had the police called on him for being on Judy's Moody's intertidal. P. Masucci Dep. I 113:2-10.

71. The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on Defendants' properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mrs. Masucci's feelings, there are no signs currently on Judy's Moody's property. Dennis Dep. 46:10-49:24-25. Physical markers are there only occasionally and are often not placed by Judy's Moody. Dennis Dep. 92:17-93:12, 93:21-94:10. Judy's Moody otherwise incorporates the response of the other Defendants.

72. The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Ms. Masucci's feelings, there are no signs currently on Judy's Moody's property. Dennis Dep. 46:10-49:24-25. Judy's Moody otherwise incorporates the response of the other Defendants.

73. To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mrs. Masucci's feelings, there are no signs currently on Judy's Moody's property. Dennis Dep. 46:10-49:24-25. Nor has Ms. Masucci ever been asked by Judy's Moody to leave its intertidal property. K. Masucci Dep. 76:13-17. Judy's Moody otherwise incorporates the response of the other Defendants.

74. For Kathy Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody LLC cannot dispute Mrs. Masucci's feelings, there are no signs currently on Judy's Moody LLC's property. Dennis Dep. 46:10-50:2. Nor has Ms. Masucci ever been asked by Judy's Moody to leave its intertidal property. (K. Masucci Dep. 76:13-17.) Judy's Moody LLC otherwise incorporates the response of the other Defendants.

75. The sign on Ocean 503's Property that faces ROW 3 makes Kathy Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

76. Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

77. When Kathy Masucci sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 Intertidal Land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

78. Although she only walks across the Ocean 503 Intertidal Land, Kathy Masucci is concerned that Ocean 503 may ask her to leave the Ocean 503 Intertidal Land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

79. Kathy Masucci has heard stories of Ocean 503 approaching members of the public about using the Ocean 503 Intertidal Land. (K. Masucci Dep. 28:5-9, 29:7-10.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. Defendant Judy's Moody incorporates the response of Defendant Ocean 503.

80. The stories Kathy Masucci has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. Defendant Judy's Moody incorporates the response of Defendant Ocean 503.

81. Ocean 503 has never told Kathy Masucci that she has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:13-16; K. Masucci Dep. 113:6-9.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

82. Ocean 503 has never told Kathy Masucci that Kathy Masucci has Ocean 503's permission to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:16-18; K. Masucci Dep. 113:10-13.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

83. Kathy Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.)

Objection: Inadmissible as hearsay if offered to prove the truth of the matter asserted—that police actually have been called to Moody Beach. MRE 801(c), MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Admitted.

84. Kathy Masucci has seen pictures of people being asked to leave Judy's Moody's Property. (K. Masucci Dep. 77:1-3.)

Objection: A picture cannot possibly convey whether someone was being asked to leave the intertidal land of Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. Judy's Moody does not dispute that Ms. Masucci has seen pictures, but cannot possibly ascertain whether these pictures actually show anyone being asked to leave Judy's Moody's intertidal land, much less whether Judy's Moody representatives were responsible. However, Ms. Masucci has never been asked by Judy's Moody to leave its intertidal property. K. Masucci Dep. 76:13-17.

85. Kathy Masucci has heard stories of being people to asked to leave Judy's Moody's Property. (K. Masucci Dep. 28:5-9, 84:21-87:16, 91:11-92:4.)

Objection: Inadmissible as hearsay if offered to prove the truth of the matter asserted—that these stories from unnamed declarants are true. MRE 801(c), MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. Judy's Moody cannot dispute that Ms. Masucci has heard stories. However, Ms. Masucci has never been asked by Judy's Moody to leave its intertidal property. K. Masucci Dep. 76:13-17.

86. Kathy Masucci has seen the signs on the seawall at Judy's Moody's Property. (K. Masucci Dep. 78:16-79:19, 124:17-24.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody does not dispute that Ms. Masucci saw signs in the past. However, no signs regarding the beach are currently up on Judy's Moody's property. Dennis Dep. 46:10-49:24-25; K. Masucci Dep. 79:11.

87. Kathy Masucci is aware that Judy's Moody has demarcated Judy's Moody's Property using logs, cones, and raked seaweed. (K. Masucci Dep. 81:9-24, 82:9-11.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody cannot dispute that Ms. Masucci is aware of physical demarcations. As noted above, these physical markers are there only occasionally and are often not placed by Judy's Moody. Dennis Dep. 92:17-93:12, 93:21-94:10.

88. The raked seaweed, log, and orange cones on Judy's Moody's Property, convey to Kathy Masucci "Keep out. No trespassing." (K. Masucci Dep. 119:19-17.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. While Judy's Moody cannot dispute Ms. Masucci's feelings, Judy's Moody repeats that boundary demarcations have often not been placed by any representative of Judy's Moody. Dennis Dep. 92:17-93:12, 93:21-94:10.

89. Kathy Masucci is concerned that Judy's Moody may ask her to leave the Judy's Moody Intertidal Land. (K. Masucci Dep. 120:2-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. While Judy's Moody cannot dispute Ms. Masucci's feelings, no representative of Judy's Moody has ever asked Ms. Masucci to leave Judy's Moody's intertidal land. K. Masucci Dep. 76:13-17.

90. That concern-being asked to leave Judy's Moody Intertidal Land-negatively affects Kathy Masucci's experience of walking Moody Beach. (K. Masucci Dep. 103:1-7, 120:6-10.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. While Judy's Moody cannot dispute Ms. Masucci's feelings, no representative of Judy's Moody has ever asked Ms. Masucci to leave Judy's Moody's intertidal land. K. Masucci Dep. 76:13-17.

91. Judy's Moody has never told Kathy Masucci that she has the legal right to walk on the Judy's Moody Intertidal Land. (K. Masucci Dep.119:18-21.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody has never prevented Ms. Masucci from walking on Judy's Moody's intertidal land. K. Masucci Dep. 76:13-17.

92. Judy's Moody has never told Kathy Masucci that she has Judy's Moody's permission to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:17-120:10; Kathy Masucci Dep. 119:22-120:1.)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. Judy's Moody has never prevented Ms. Masucci from walking on Judy's Moody's intertidal land. K. Masucci Dep. 76:13-17.

93. Kathy Masucci has seen the sign on the OA 2012's Seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

94. The sign on the seawall at OA 2012's Property that faces the Ogunquit Parking Lot makes Kathy Masucci feel uncomfortable, sad, angry, and frustrated, and generates concern that the police may be called on her. (K. Masucci Dep. 103:1-7, 114:21-115:16, KM-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

95. Kathy Masucci's concern that OA 2012 may ask her to leave the OA 2012 Intertidal Land negatively impacts her experience of walking Moody Beach. (K. Masucci Dep. 115:25- 116:9.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

96. OA 2012 has not told Kathy Masucci that she has the right to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:7-9; K. Masucci Dep. 115:17-20.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

97. OA 2012 has not told Kathy Masucci that she has OA 2012's permission to walk on the OA 2012 Intertidal Land. (K. Masucci Dep. 115:21-24.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

98. Bill Connerney has seen the signs on Ocean 503's Seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

99. Bill Connerney understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's Property. (Connerney Dep.18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

100. Bill Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that the Ocean 503 Intertidal Land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

101. Because of Bill Connerney's understanding that Ocean 503 does not want people on its property, Bill Connerney now limits his use of the Ocean 503 Intertidal Land to when Ocean 503 is not around or otherwise tries to avoid the Ocean 503 Intertidal Land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503

102. Bill Connerney is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that

does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

103. Bill Connerney's concern that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land negatively effects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

104. Ocean 503 has never told Bill Connerney that he has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:17-21.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

105. Ocean 503 has never told Bill Connerney that he has Ocean 503's permission to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:19-21; Connerney Dep. 119:2-5.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503.

106. Bill Connerney has seen the police on the Judy's Moody Intertidal Land. (Connerney Dep. 27:24-28:14, 79:5-24, 82:24-83:4.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

107. Bill Connerney has seen the police on Moody Beach at areas other than the Defendants' properties. (Connerney Dep. 83:5-9)

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

108. Bill Connerney has heard anecdotal accounts of Judy's Moody telling people to leave Judy's Moody Intertidal Land. (Connerney Dep. 29:6-20.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody also objects as inadmissible as hearsay if offered to prove the truth of the matter asserted—that these stories from unnamed declarants are true. MRE 801(c), MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. Judy's Moody cannot dispute that Mr. Connerney has heard stories. However, Mr. Connerney has never been asked by Judy's Moody to leave its intertidal property. Connerney Dep. 72:9-12, 73:1-3.

109. Bill Connerney has seen the orange cones, wood, and raked seaweed demarcating the boundary of Judy's Moody's Property and ROW 2. (Connerney Dep. 71:13-15.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. As noted above, these physical markers are there only occasionally and are often not placed by Judy's Moody. Dennis Dep. 92:17-93:12, 93:21-94:10.

110. Bill Connerney has seen the signs that used to be on the seawall at Judy's Moody's Property. (Connerney Dep. 76:24-77:18.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

111. Bill Connerney was aware of those signs on Judy's Moody's Property as soon as he enters the beach. (Connerney Dep. 78:17-23.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

112. The signs that were on Judy's Moody's Property have negatively impacted Bill Connerney's experience of walking the intertidal land at Moody Beach. (Connerney Dep. 13:6-8, 13:20-25, 78:17-79:4; 82:14-18.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody cannot dispute Mr. Connerney's feelings, but he has never been asked to leave the intertidal zone by Judy's Moody and he continues to use Judy's Moody's intertidal land today. Connerney Dep. 13:2-25, 14:1, 72:9-12, 73:1-3.

113. Bill Connerney feels unwelcome on Judy's Moody's Property when he sees those boundary demarcations-wood, cones, raked seaweed-on Judy's Moody's Property. (Connerney Dep 25:20-26:4, 119:10-17.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody cannot dispute Mr. Connerney's feelings, but repeats that these physical markers are there only occasionally and are often not placed by Judy's Moody. Dennis Dep. 92:17-93:12, 93:21-94:10. Further, he has never been asked to leave the intertidal zone by Judy's Moody and he continues to use Judy's Moody's intertidal land today. Connerney Dep. 13:2-25, 14:1, 72:9-12, 73:1-3.

114. Judy's Moody has never told Bill Connerney that he has the legal right to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:13-16.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody has never prevented Mr. Connerney from walking on Judy's Moody's intertidal land. Connerney Dep. 72:9-12, 73:1-3.

115. Judy's Moody has never told Bill Connerney that he has Judy's Moody's permission to walk on the Judy's Moody Intertidal Land. (Connerney Dep. 118:23-119:1.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody has never prevented Mr. Connerney from walking on Judy's Moody's intertidal land. Connerney Dep. 72:9-12, 73:1-3.

116. Bill Connerney has seen the signs on the seawall at OA 2012's Property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

117. OA 2012 has not told Bill Connerney that he has the right to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:12-15.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

118. OA 2012 has not told Bill Connerney that he has OA 2012's permission to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:24-73:3; Connerney Dep. 118:19-22.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012.

119. Bill Connerney would feel better about walking on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land if their signage specified that walking is allowed. (Connerney Dep. 115:5-10.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects on the ground that Maine law currently does not permit recreational walking on private intertidal land. *See Bell II*, 557 A.2d at 175-76. Indeed, that is the very question the Attorney General asks this Court to reconsider. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualify. Judy's Moody incorporates the responses of the other defendants with respect to signage on or adjacent to their property. No signs regarding the beach are currently up on Judy's Moody's property. Dennis Dep. 46:10-49:24-25.

120. Bill Connerney understands that Ocean 503, Judy's Moody, and OA 2012 could choose at any moment to ask someone who is walking across, respectively, the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Trust Intertidal Land to leave or move along. (Connerney Dep. 116:24-117:14.)

Objection: Mr. Connerney is not competent to testify as to the current state of the law with respect to the scope of the public easement on the intertidal zone in Maine. As a matter of law, Judy's Moody LLC retains the right to exclude the public engaging in activities not protected under Maine law. *See Bell II*, 557 A.2d at 177–79. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admit as to Judy's Moody. With respect to the other Defendants, Judy's Moody incorporates their responses.

121. Bill Connerney thinks about the possibility of a confrontation with Ocean 503, Judy's Moody, and OA 2012 when he is on, respectively, the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land. (Connerney Dep. 25:20-26:4, 117:15-24).

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody cannot dispute that Mr. Connerney thinks about these confrontations. However, Defendant Judy's Moody has never prevented Mr. Connerney from walking on Judy's Moody's intertidal land. Connerney Dep. 72:9-12, 73:1-3. Judy's Moody incorporates the responses of the other Defendants.

122. The possibility of a confrontation with Ocean 503, Judy's Moody, and OA 2012 detracts from what would otherwise be a relaxing walk on the beach for Bill Connerney. (Connerney Dep. 117:15-118:3.)

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody cannot dispute Mr. Connerney's feelings. However, Judy's Moody has never prevented Mr. Connerney from walking on Judy's Moody's intertidal land. Connerney Dep. 72:9-12, 73:1-3. Judy's Moody incorporates the responses of the other Defendants.

123. Kathy Masucci thinks that walking and running and moving could be considered navigation. (K. Masucci Dep. 76:4-8.)

Objection: Ms. Masucci is not competent to testify on the current state of the law in Maine regarding whether walking or running is considered navigation. As a matter of law, the public easement does not include recreational walking on private intertidal land. *See Bell II*, 557 A.2d at 175–76. Indeed, that is the very question the Attorney General asks this Court to reconsider. MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

124. Bill Connerney thinks that walking could be considered navigation. (Connerney Dep. 65:16-66:20, 114:11-25, 115:13-116:6.)

Objection: Mr. Connerney is not competent to testify on the current state of the law in Maine regarding whether walking is considered navigation. As a matter of law, the public easement does not include recreational walking on private intertidal land. *See Bell II*, 557 A.2d at 175–76. Indeed, that is the very question the Attorney General asks this Court to reconsider. MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

125. Ocean 503 understands “fowling” to include bird watching. (Ocean 503 Dep. 38:17- 18, 39:25-40:3.)

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses)

Response: Qualified. Judy’s Moody incorporates the response of Defendant Ocean 503.

126. Ocean 503 understands “navigation” to mean traversing the beach, which means walking back and forth on the beach. (Ocean 503 Dep. 38:18-39:2, 39:22-24.)

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy’s Moody incorporates the response of Defendant Ocean 503.

127. When people are engaging in activities other than fishing, fowling, and navigating on the Judy’s Moody Intertidal Land, Judy’s Moody understands that it has the right to ask people to leave. (JM Dep. 122:2-11.)

Objection: Neither Judy’s Moody nor Keith Dennis is competent to testify regarding the current state of the law regarding what the public is permitted to do on private intertidal land. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

128. Judy’s Moody thinks that there are times when navigation includes walking. (JM Dep. 123:8-11.)

Objection: Neither Judy's Moody nor Keith Dennis is competent to testify regarding the current state of the law regarding what the public is permitted to do on private intertidal land. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

129. OA 2012 understands that it has the right to ask someone to leave the OA 2012 Intertidal Land but not if the person is just walking. (OA 2012 Dep. 70:22-71:4, 71:20-23.)

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Judy's Moody incorporates the response of Defendant OA 2012.

STATEMENT OF ADDITIONAL MATERIAL FACTS

1. Judy's Moody owns beachfront property on Moody Beach at 407 Ocean Avenue, Wells, Maine. *See* Deposition of Judy's Moody, LLC 30(b)(6) via Keith Dennis (February 10, 2023) ("Dennis Dep.") 29:12-14, 45:1-10. A true copy of portions of the Dennis Dep. is attached hereto as Exhibit 1.

2. Judy's Moody LLC is a single member LLC owned by Keith Dennis. Exhibit 1, Dennis Dep. 13:16-17.

3. Judy's Moody's property directly abuts a public right of way that provides members of the public access to the ocean. Exhibit 1, Dennis Dep. 21:23-25, 22:1.

4. Mr. Dennis has posted signs that read "Private Beach" and "Notice: Private Beach to Lowest Tide" and "No Trespassing" on the portion of Judy's Moody's seawall that faces the ocean. Exhibit 1, Dennis Dep. 47:4-7, 47:21-25, 48:11-15, 49:18-20.

5. None of these signs were permanent and some of them were removed naturally by the force of the ocean hitting the seawall. Exhibit 1, Dennis Dep. 48:3-6.

6. The presence of signs was not unique to Judy's Moody and other beachfront properties on Moody Beach have signs on their seawall conveying that the beach is private. *See* Deposition of Peter Masucci (January 11, 2023) ("P. Masucci Dep.") 146:1-5. A true copy of portions of the P. Masucci Dep. is attached hereto as Exhibit 2.

7. Plaintiffs are a group of individuals who contend that the "intertidal zone" is public property and that they are entitled to use the intertidal zone for any purpose allowed by the State. Pls.' Compl. ¶¶ 63-65, ¶¶ 105-106. A true copy of Plaintiffs' Complaint is attached for the Court's convenience as Exhibit 3.

8. Plaintiff Dr. Brian Beal is a marine biologist who alleged in Plaintiffs' Complaint

that several beachfront owners denied him access to the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 15 and Pl. Brian Beal's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Brian Beal's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 4.

9. Plaintiff Robert Morse is the president of a seaweed harvesting company who alleged in Plaintiffs' Complaint that his business is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl., ¶2 and Pl. Robert Morse's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Robert Morse's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 5.

10. Plaintiff George Seaver is part owner of a company that processes seaweed who alleged in Plaintiffs' Complaint that his livelihood is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls' Compl., ¶3 and Pl. George Seaver's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff George Seaver's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 6.

11. Plaintiff Greg Tobey is the general manager of a company that utilizes Maine

Seaweed who alleged in Plaintiffs' Complaint that his livelihood is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl., ¶12 and Plaintiff Greg Tobey's Answers to QA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Greg Tobey's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 7.

12. Plaintiff Hale W. Miller is a seaweed harvester who alleged in Plaintiffs' Complaint that he has been harassed by landowners who claim to own the intertidal zone. Hale Miller has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl., 5 and Plaintiff Hale Miller's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Hale Miller's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 8.

13. Plaintiff LeRoy Gilbert is a seaweed harvester who alleged in Plaintiffs' Complaint that he is aware of landowners claiming ownership of the seaweed in the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl., 6 and Plaintiff LeRoy Gilbert's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff LeRoy Gilbert's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 9.

14. Plaintiff John W. Grotton is a seaweed harvester who alleged in Plaintiffs'

Complaint that he feels his job is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal zone, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl., 4 and Plaintiff John Grotton's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff John Grotton's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 10.

15. Plaintiff Jake Wilson is a seaweed and clam harvester who alleged in Plaintiffs' Complaint that his job is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal zone, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 7 and Plaintiff Jake Wilson's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Jake Wilson's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 11.

16. Plaintiff Dan Harrington is a worm and seaweed harvester who alleged in Plaintiffs' Complaint that his livelihood is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 8 and Plaintiff Dan Harrington's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Dan Harrington's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 12.

17. Plaintiff Susan Domizi is in the seaweed industry and alleged in Plaintiffs' Complaint that her livelihood is threatened by landowners claiming ownership of the intertidal

zone. She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 11 and Plaintiff Susan Domizi's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Susan Domizi's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 13.

18. Plaintiff Amanda Moeser is an oyster farmer who alleged in Plaintiffs' Complaint that she is "worried about the expanding interpretations of ownership of intertidal lands" and "seeks clarity and predictability in the law." Exhibit 3, Pls.' Compl., ¶ 17. She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Plaintiff Amanda Moeser's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Amanda Moeser's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 14.

19. Plaintiff Lori Howell is an oyster farmer who alleged in Plaintiffs' Complaint that she has been "harassed by upland owners wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond." She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Exhibit 3, Pls.' Compl., 19 and Plaintiff Lori Howell's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Lori Howell's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 15.

20. Plaintiff Tom Howell is an oyster farmer who alleged in Plaintiffs' Complaint that he has been "harassed by upland owners wrongfully claiming ownership of the intertidal land and

who call law enforcement and local officials who must then respond.” He has never been on Judy’s Moody’s intertidal property, personally observed signage on Judy’s Moody’s property, or been denied access to Judy’s Moody’s property. Exhibit 3, Pls.’ Compl., 19 and Plaintiff Tom Howell’s Answers to OA 2012 Trust’s and Judy’s Moody LLC’s First Set of Interrogatories No. 2. A true copy of Plaintiff Tom Howell’s Answers to Defs.’ OA 2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories is attached as Exhibit 16.

21. Plaintiff Chad Coffin is a clam harvester who alleged in Plaintiffs’ Complaint that he is “regularly harassed by upland owners who claim he is trespassing.” He has never been on Judy’s Moody’s intertidal property, personally observed signage on Judy’s Moody’s property, or been denied access to Judy’s Moody’s intertidal property. Exhibit 3, Pls.’ Compl., 18 and Plaintiff Chad Coffin’s Answers to OA 2012 Trust’s and Judy’s Moody LLC’s First Set of Interrogatories No. 2. A true copy of Plaintiff Chad Coffin’s Answers to Defs.’ OA2012 Trust and Judy’s Moody LLC’s First Set of Interrogatories is attached as Exhibit 17.

22. Plaintiff Judith Delogu has never been on Moody Beach. *See* Deposition of Judith Delogu (January 12, 2023) (“J. Delogu Dep.”) 23:15-16, 25:18-20. A true copy of portions of the J. Delogu Dep. is attached hereto as Exhibit 18.

23. When questioned why she decided to be a plaintiff in this lawsuit, Ms. Delogu stated “I decided to be a plaintiff on this suit because I believe that Maine beaches are public property.” Exhibit 18, J. Delogu Dep. 27:19-25, 28:1.

24. Plaintiff William Griffiths is the co-owner of the Crow’s Nest Resort in Old Orchard Beach and alleged in Plaintiffs’ Complaint that his “business and livelihood is threatened by Defendants’ unlawful claim of title over Maine’s intertidal land.” Exhibit 3, Pls.’ Compl., ¶14.

25. In the approximately eight years that Mr. Griffiths has owned the Crow's Nest Resort he estimates that roughly six patrons have told him that they were on Moody Beach and only two to three patrons asked him about the signage on Moody Beach. *See* Deposition of William Griffiths (January 12, 2023) ("Griffiths Dep.") 53:10-11, 53:22-25, 54:1. A true copy of portions of the Griffiths Dep. is attached hereto as Exhibit 19.

26. Mr. Griffiths did not verify whether these patrons were indeed on Moody Beach. Exhibit 19, Griffiths Dep. 58:22.

27. No patron of the Crow's Nest Resort has ever told Mr. Griffiths that they were asked to leave Moody Beach and no patron has ever informed Mr. Griffiths that they will no longer stay at the Crow's Nest Resort because of signage on Moody Beach. Exhibit 19, Griffiths Dep. 55:3-7, 57:18.

28. Mr. Griffiths has been on Moody Beach but is uncertain if he has ever been on Judy's Moody's property. Exhibit 19, Griffiths Dep. 59:7-12, 59:15.

29. While on Moody Beach, Mr. Griffiths was never approached by anyone instructing him to leave. Exhibit 19, Griffiths Dep. 60:11.

30. Plaintiff Sheila Jones is a co-owner of the Crow's Nest Resort in Old Orchard Beach and alleged in Plaintiffs' Complaint that her "business and livelihood is threatened by Defendants' unlawful claim of title over Maine's intertidal land." Exhibit 3, Pls.' Compl.

31. Ms. Jones has never been on Moody Beach or Judy's Moody's property. *See* Deposition of Sheila Jones (January 12, 2023) ("Jones Dep.") 32:22-24, 32:25, 33:1-2. A true copy of portions of the Jones Dep. is attached hereto as Exhibit 20.

32. Of the thousands of guests who have visited the Crow's Nest Resort, no more than five have told Ms. Jones that they visited Moody Beach and she is uncertain whether those

patrons were actually at Moody Beach. Exhibit 20, Jones Dep. 31:20-23, 33:23-24.

33. No patron of the Crow's Nest Resort has ever told Ms. Jones that they were asked to leave Moody Beach and no patron has ever informed Ms. Jones that they will no longer stay at the Crow's Nest Resort because of signage on Moody Beach. Exhibit 20, Jones Dep. 33:17-21, 33:23-24, 40:21-25.

34. Plaintiff Orlando Delogu believes that *Bell I* and *Bell II* were incorrectly decided and that Maine's beaches are public property. See Deposition of Orlando Delogu (January 12, 2023) ("O. Delogu Dep.") 98:18, 136:3-15. A true copy of portions of the O. Delogu Dep. is attached hereto as Exhibit 21.

35. Mr. Delogu has walked along Moody Beach to observe the signage on Moody Beach and to get a feel for the "character" of Moody Beach. Exhibit 21, O. Delogu Dep. 27:17- 25, 31:10.

36. While walking on Moody Beach, Mr. Delogu was never approached by anyone telling him to stop walking on Moody Beach, asking him to leave Moody Beach, or telling him that he does not belong on Moody Beach. Exhibit 21, O. Delogu Dep. 134:1-12.

37. Plaintiff Peter Masucci is a backlot owner of property behind but not on Moody Beach. Exhibit 2, P. Masucci Dep. 11:4-5, 11:6-11.

38. Mr. Masucci testified at his deposition that he has engaged in the following activities on Judy's Moody's intertidal zone: walking along the intertidal, stopping in the intertidal to observe people and wildlife, sitting in the intertidal to read, drinking wine and beer in the intertidal, and playing various beach games in the intertidal like bocce ball, tag football, paddleball, wiffleball, and catch, and bodysurfing and boogieboarding along the water next to the intertidal. Exhibit 2, P. Masucci Dep. 116:17-25, 117:1, 117:23-25, 118:1-

16, 118:23-25, 121:5-24, 122:1-12, 127:7-25, 128:1-3, 143:18-24.

39. Mr. Masucci has never been approached by anyone associated with Judy's Moody LLC and told to leave Judy's Moody's intertidal zone or told to stop using Judy's Moody's intertidal zone. Exhibit 2, P. Masucci Dep. 112:20-23, 113:5-10, 130:2-7.

40. Mr. Masucci testified at his deposition that "my argument is not with the named defendants here" and that he got involved in this lawsuit because he believes that the intertidal land belongs to everyone, stating, "the issue is why should anyone own the sand?" Exhibit 2, P. Masucci Dep. 151:10-20.

41. Plaintiff Kathy Masucci is a backlot owner of property behind but not on Moody Beach. *See* Deposition of Kathy Masucci (January 13, 2023) ("K. Masucci Dep.") 66:18-21, 66:23. A true copy of portions of the K. Masucci Dep. is attached hereto as Exhibit 22.

42. Ms. Masucci testified at her deposition that the only activity she currently does on Judy's Moody's intertidal is walk, but that over five years ago she had probably stopped and rested on the intertidal zone, sat in the sand to observe wildlife, ran and jogged on the intertidal zone, built sandcastles, sunbathed, and boogie boarded on the intertidal zone. Exhibit 22, K. Masucci Dep. 68:21-24, 74:3-55, 74:10-22, 74:13-22, 75:7.

43. Ms. Masucci has never been approached by anyone associated with Judy's Moody LLC and been told to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. Exhibit 22, K. Masucci Dep. 76:13-17.

44. Plaintiff William Connerney is a backlot owner of property behind but not on Moody Beach. *See* Deposition of William Connerney (January 11, 2023) ("Connerney Dep.") 10:22-24. A true copy of the cited portions of the Connerney Dep. is attached hereto as Exhibit

23.

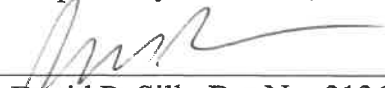
45. Plaintiff William Connerney testified at his deposition that today he mainly uses Moody Beach to walk and jog, and that in the past he had sat in the intertidal zone to sunbathe, surf, boogie board, build sandcastles, play frisbee, paddleboard, fly kites, play beach tennis and look for shellfish and crabs. Exhibit 23, Connerney Dep. 13:2-25, 14:1 and Plaintiff William Connerney's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 3. A true copy of Plaintiff William Connerney's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 24.

46. Mr. Connerney has never been approached by anyone associated with Judy's Moody LLC and been told to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. Exhibit 23, Connerney Dep. 72:9-12, 73:1-3.

47. Plaintiffs Orlando Delogu, Peter Masucci, Kathy Masucci, and William Connerney still walked along the intertidal zone on Moody Beach despite the presence of signs on seawalls along Moody Beach. Exhibit 21, O. Delogu Dep. 27:17-25, 31:10; Exhibit 2, P. Masucci Dep. 144:18-19, 145:4-22, 145:25; Exhibit 22, K. Masucci Dep. 70:1-3, 102:23-25; Exhibit 23, Connerney Dep. 76:23, 77:5-7, 77:22-25.

Dated: June 2, 2023

Respectfully submitted,



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**Pro Hac Vice Attorneys for Defendant Judy's
Moody LLC*

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Docket No. Cum-24-82

Peter Masucci et al.
Plaintiffs/Appellants/Cross-Appellees

v.

Judy's Moody, LLC et al.
Defendants/Appellants/Cross-Appellees

On appeal from the Cumberland County Superior Court

Appendix

Volume III of VI

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Attorneys for Appellants

Dated: June 28, 2024

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-35

| | |
|--|---|
| PETER and KATHY MASUCCI, <i>et al.</i> , |) |
| |) |
| Plaintiffs, |) |
| v. |) |
| |) |
| JUDY'S MOODY, LLC, <i>et al.</i> , |) |
| |) |
| Defendants, |) |
| and |) |
| |) |
| AARON M. FREY, in his capacity as the |) |
| ATTORNEY GENERAL OF THE STATE OF |) |
| MAINE, |) |
| |) |
| Party-in-Interest |) |

**ATTORNEY GENERAL'S
RULE 56(h)(3) and (i)(2) REPLY
STATEMENT OF MATERIAL FACTS
TO JUDY'S MOODY'S
RULE 56(h)(2) OPPOSING
STATEMENT OF MATERIAL FACTS**

(Title to Real Estate Involved)

Pursuant to M.R. Civ. P. 56(h)(3) and (i)(2), the Attorney General (AG) replies to Defendant Judy's Moody's additional facts, objects to Judy's Moody's qualifications of the AG's statements of material fact, and responds to Judy's Moody's objections to the AG's statements of material fact as follows.

THE AG'S REPLY TO JUDY'S MOODY'S ADDITIONAL STATEMENTS OF FACT

1. Judy's Moody owns beachfront property on Moody Beach at 407 Ocean Avenue, Wells, Maine. *See* Deposition of Judy's Moody, LLC 30(b)(6) via Keith Dennis (February 10, 2023) ("Dennis Dep.") 29:12-14, 45:1-10. A true copy of portions of the Dennis Dep. is attached hereto as Exhibit 1.

Admitted.

2. Judy's Moody LLC is a single member LLC owned by Keith Dennis. Exhibit 1, Dennis Dep. 13:16-17.

Admitted.

3. Judy's Moody's property directly abuts a public right of way that provides members of

the public access to the ocean. Exhibit 1, Dennis Dep. 21:23-25, 22:1.

Admitted.

4. Mr. Dennis has posted signs that read "Private Beach" and "Notice: Private Beach to Lowest Tide" and "No Trespassing" on the portion of Judy's Moody's seawall that faces the ocean. Exhibit 1, Dennis Dep. 47:4-7, 47:21-25, 48:11-15, 49:18-20.

Admitted.

5. None of these signs were permanent and some of them were removed naturally by the force of the ocean hitting the seawall. Exhibit 1, Dennis Dep. 48:3-6.

Qualified. There have been iterations of similar signs saying things such as "Private Beach" and "No Trespassing" on the ocean-facing side of Judy's Moody's seawall" that for various reasons have been relatively temporary, including a sign that mentioned "low tide." Dennis Dep. 46:25-49:20.

6. The presence of signs was not unique to Judy's Moody and other beachfront properties on Moody Beach have signs on their seawall conveying that the beach is private. *See* Deposition of Peter Masucci (January 11, 2023) ("P. Masucci Dep.") 146:1-5. A true copy of portions of the P. Masucci Dep. is attached hereto as Exhibit 2.

Admitted.

7. Plaintiffs are a group of individuals who contend that the "intertidal zone" is public property and that they are entitled to use the intertidal zone for any purpose allowed by the State. Pls.' Compl. ¶¶ 63-65, ¶¶ 105-106. A true copy of Plaintiffs' Complaint is attached for the Court's convenience as Exhibit 3.

Admitted.

8. Plaintiff Dr. Brian Beal is a marine biologist who alleged in Plaintiffs' Complaint that several beachfront owners denied him access to the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 15 and Pl. Brian Beal's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Brian Beal's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 4.

Admitted.

9. Plaintiff Robert Morse is the president of a seaweed harvesting company who alleged in Plaintiffs' Complaint that his business is threatened by Defendants' claim to own

the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 2 and Pl Robert Morse's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Robert Morse's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 5.

Admitted.

10. Plaintiff George Seaver is part owner of a company that processes seaweed who alleged in Plaintiffs' Complaint that his livelihood is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls' Compl. ¶ 3 and Pl. George Seaver's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff George Seaver's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 6.

Admitted.

11. Plaintiff Greg Tobey is the general manager of a company that utilizes Maine Seaweed who alleged in Plaintiffs' Complaint that his livelihood is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 12 and Plaintiff Greg Tobey's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Greg Tobey's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 7.

Admitted.

12. Plaintiff Hale W. Miller is a seaweed harvester who alleged in Plaintiffs' Complaint that he has been harassed by landowners who claim to own the intertidal zone. Hale Miller has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 5 and Plaintiff Hale Miller's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Hale Miller's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 8.

Admitted.

13. Plaintiff LeRoy Gilbert is a seaweed harvester who alleged in Plaintiffs' Complaint that he is aware of landowners claiming ownership of the seaweed in the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage

on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 6 and Plaintiff LeRoy Gilbert's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff LeRoy Gilbert's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of interrogatories is attached as Exhibit 9.

Admitted.

14. Plaintiff John W. Grotton is a seaweed harvester who alleged in Plaintiffs' Complaint that he feels his job is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal zone, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 4 and Plaintiff John Grotton's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff John Grotton's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 10.

Admitted.

15. Plaintiff Jake Wilson is a seaweed and clam harvester who alleged in Plaintiffs' Complaint that his job is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal zone, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 7 and Plaintiff Jake Wilson's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Jake Wilson's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 11.

Admitted.

16. Plaintiff Dan Harrington is a worm and seaweed harvester who alleged in Plaintiffs' Complaint that his livelihood is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 8 and Plaintiff Dan Harrington's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Dan Harrington's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 12.

Admitted.

17. Plaintiff Susan Domizi is in the seaweed industry and alleged in Plaintiffs' Complaint that her livelihood is threatened by landowners claiming ownership of the intertidal zone. She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 11 and Plaintiff Susan Domizi's Answers to OA 2012 Trust's and

Judy's Moody LLC's First Set of interrogatories No. 2. A true copy of Plaintiff Susan Domizi's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of interrogatories is attached as Exhibit 13.

Admitted.

18. Plaintiff Amanda Moeser is an oyster farmer who alleged in Plaintiffs' Complaint that she is "worried about the expanding interpretations of ownership of intertidal lands" and "seeks clarity and predictability in the law." Exhibit 3, Pls.' Compl. ¶ 17. She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Plaintiff Amanda Moeser's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Amanda Moeser's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 14.

Admitted.

19. Plaintiff Lori Howell is an oyster farmer who alleged in Plaintiffs' Complaint that she has been "harassed by upland owners wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond." She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Exhibit 3, Pls.' Compl. ¶ 19 and Plaintiff Lori Howell's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of interrogatories No. 2. A true copy of Plaintiff Lori Howell's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of interrogatories is attached as Exhibit 15.

Admitted.

20. Plaintiff Tom Howell is an oyster farmer who alleged in Plaintiffs' Complaint that he has been "harassed by upland owners wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond." He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Exhibit 3, Pls.' Compl. ¶ 19 and Plaintiff Tom Howell's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Tom Howell's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 16.

Admitted.

21. Plaintiff Chad Coffin is a clam harvester who alleged in Plaintiffs' Complaint that he is "regularly harassed by upland owners who claim he is trespassing." He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 18 and Plaintiff Chad Coffin's Answers to OA 2012 Trust's and Judy's Moody

LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Chad Coffin's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 17.

Admitted.

22. Plaintiff Judith Delogu has never been on Moody Beach. See Deposition of Judith Delogu (January 12, 2023) ("J. Delogu Dep.") 23:15-16, 25:18-20. A true copy of portions of the J. Delogu Dep. is attached hereto as Exhibit 18.

Admitted.

23. When questioned why she decided to be a plaintiff in this lawsuit, Kathy Delogu stated "I decided to be a plaintiff on this suit because I believe that Maine beaches are public property." Exhibit 18, J. Delogu Dep. 27:19-25, 28:1.

Admitted.

24. Plaintiff William Griffiths is the co-owner of the Crow's Nest Resort in Old Orchard Beach and alleged in Plaintiffs' Complaint that his "business and livelihood is threatened by Defendants' unlawful claim of title over Maine's intertidal land." Exhibit 3, Pls.' Compl. ¶ 14.

Admitted.

25. In the approximately eight years that Mr. Griffiths has owned the Crow's Nest Resort he estimates that roughly six patrons have told him that they were on Moody Beach and only two to three patrons asked him about the signage on Moody Beach. See Deposition of William Griffiths (January 12, 2023) ("Griffiths Dep.") 53:10-11, 53:22-25, 54:1. A true copy of portions of the Griffiths Dep. is attached hereto as Exhibit 19.

Admitted.

26. Mr. Griffiths did not verify whether these patrons were indeed on Moody Beach. Exhibit 19, Griffiths Dep. 58:22.

Admitted.

27. No patron of the Crow's Nest Resort has ever told Mr. Griffiths that they were asked to leave Moody Beach and no patron has ever informed Mr. Griffiths that they will no longer stay at the Crow's Nest Resort because of signage on Moody Beach. Exhibit 19, Griffiths Dep. 55:3-7, 57:18.

Admitted.

28. Mr. Griffiths has been on Moody Beach but is uncertain if he has ever been on Judy's

Moody's property. Exhibit 19, Griffiths Dep. 59:7-12, 59:15.

Admitted.

29. While on Moody Beach, Mr. Griffiths was never approached by anyone instructing him to leave. Exhibit 19, Griffiths Dep. 60:11.

Admitted.

30. Plaintiff Sheila Jones is a co-owner of the Crow's Nest Resort in Old Orchard Beach and alleged in Plaintiffs' Complaint that her "business and livelihood is threatened by Defendants' unlawful claim of title over Maine's intertidal land." Exhibit 3, Pls.' Compl. ¶ 14.

Admitted.

31. Kathy Jones has never been on Moody Beach or Judy's Moody's property. See Deposition of Sheila Jones (January 12, 2023) ("Jones Dep.") 32:22-24, 32:25, 33:1-2. A true copy of portions of the Jones Dep. is attached hereto as Exhibit 20.

Admitted.

32. Of the thousands of guests who have visited the Crow's Nest Resort, no more than five have told Kathy Jones that they visited Moody Beach and she is uncertain whether those patrons were actually at Moody Beach. Exhibit 20, Jones Dep. 31:20-23, 33:23-24.

Admitted.

33. No patron of the Crow's Nest Resort has ever told Kathy Jones that they were asked to leave Moody Beach and no patron has ever informed Kathy Jones that they will no longer stay at the Crow's Nest Resort because of signage on Moody Beach. Exhibit 20, Jones Dep. 33:17-21, 33:23-24, 40:21-25.

Admitted.

34. Plaintiff Orlando Delogu believes that Bell I and Bell II were incorrectly decided and that Maine's beaches are public property. See Deposition of Orlando Delogu (January 12, 2023) ("O. Delogu Dep.") 98:18, 136:3-15. A true copy of portions of the O. Delogu Dep. is attached hereto as Exhibit 21.

Admitted.

35. Mr. Delogu has walked along Moody Beach to observe the signage on Moody Beach and to get a feel for the "character" of Moody Beach. Exhibit 21, O. Delogu Dep. 27:17- 25, 31:10.

Admitted.

36. While walking on Moody Beach, Mr. Delogu was never approached by anyone telling him to stop walking on Moody Beach, asking him to leave Moody Beach, or telling him that he does not belong on Moody Beach. Exhibit 21, O. Delogu Dep. 134:1-12

Admitted.

37. Plaintiff Peter Masucci is a backlot owner of property behind but not on Moody Beach. Exhibit 2, P. Masucci Dep. 11:4-5, 11:6-11.

Admitted.

38. Peter Masucci testified at his deposition that he has engaged in the following activities on Judy's Moody's intertidal zone: walking along the intertidal, stopping in the intertidal to observe people and wildlife, sitting in the intertidal to read, drinking wine and beer in the intertidal, and playing various beach games in the intertidal like bocce ball, tag football, paddleball, wiffleball, and catch, and bodysurfing and boogieboarding along the water next to the intertidal. Exhibit 2, P. Masucci Dep. 116:17-25, 117:1, 117:23-25, 118:1-16, 118:23-25, 121:5-24, 122:1-12, 127:7-25, 128:1-3, 143:18-24.

Admitted.

39. Mr. Masucci has never been approached by anyone associated with Judy's Moody LLC and told to leave Judy's Moody's intertidal zone or told to stop using Judy's Moody's intertidal zone. Exhibit 2, P. Masucci Dep. 112:20-23, 113:5-10, 130:2-7.

Qualified. The AG admits that Peter Masucci has never personally been approached by anyone associated with Judy's Moody and verbally told to leave Judy's Moody's intertidal zone or to stop using it. But Peter Masucci has seen the signs and boundary demarcations at Judy's Moody's property that have had similar and negative effects on his beach experiences. In particular:

Peter Masucci has seen and is conscious of the signs and other physical markers on Judy's Moody's property. (P. Masucci Dep. 32:3-11, 33:15-17, 47:12-13, II¹ 52:22-54:1.) Because of such signs, Peter Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22, II 49:22-50:9.) Peter Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) Peter Masucci feels unwelcome on Judy's Moody's property when he sees boundary demarcations—wood, orange cones, raked seaweed—on Judy's Moody's property. (P. Masucci Dep. II 54:10-13.) Peter Masucci is concerned that Judy's Moody will ask him to leave the Judy's Moody intertidal land. (P. Masucci Dep. II 54:14-17.) That concern—Judy's Moody asking Peter Masucci to leave the Judy's Moody intertidal land—negatively effects Peter Masucci's beach experience. (P. Masucci Dep. II 54:18-20.)

40. Mr. Masucci testified at his deposition that "my argument is not with the named defendants here" and that he got involved in this lawsuit because he believes that the intertidal land belongs to everyone, stating, "the issue is why should anyone own the sand?" Exhibit 2, P. Masucci Dep. 151:10-20.

Qualified. Peter Masucci views his lawsuit as an attempt to get a ruling that he, like others, "could come to Moody Beach and walk or sit anywhere" on the beach. (P. Masucci Dep. 152:6-13.) Peter Masucci feels he is "not really" able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) Peter Masucci is concerned that Judy's Moody will ask him to leave the Judy's Moody intertidal land. (P. Masucci Dep. II 54:14-17.) That concern—Judy's Moody asking Peter Masucci to leave the Judy's Moody intertidal land—negatively effects Peter Masucci's beach experience. (P. Masucci Dep. II 54:18-20.)

41. Plaintiff Kathy Masucci is a backlot owner of property behind but not on Moody Beach. *See* Deposition of Kathy Masucci (January 13, 2023) ("K. Masucci Dep.") 66:18-21, 66:23. A true copy of portions of the K. Masucci Dep. is attached hereto as Exhibit 22.

Admitted.

42. Ms. Masucci testified at her deposition that the only activity she currently does on Judy's Moody's intertidal is walk, but that over five years ago she had probably stopped and rested on the intertidal zone, sat in the sand to observe wildlife, ran and jogged on the intertidal zone, built sandcastles, sunbathed, and boogie boarded on the intertidal zone. Exhibit 22, K. Masucci Dep. 68:21-24, 74:3-55, 74:10-22, 74:13-22, 75:7.

Admitted.

43. Ms. Masucci has never been approached by anyone associated with Judy's Moody LLC and been told to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. Exhibit 22, K. Masucci Dep. 76:13-17.

Qualified. The AG admits that Kathy Masucci has never personally been approached by anyone associated with Judy's Moody and verbally told to leave Judy's Moody's intertidal zone or to stop using it. But Kathy Masucci has seen the signs and boundary demarcations at Judy's Moody's property that have had similar and negative effects on her beach experiences. In particular:

Kathy Masucci has seen the signs on the seawall at Judy's Moody's property. (K. Masucci Dep. 78:16-79:19, 124:17-24.) Kathy Masucci is aware that Judy's Moody has demarcated Judy's Moody's property using logs, cones, and raked seaweed. (K. Masucci Dep. 81:9-24, 82:9-11.) The signs and other physical markers on Judy's Moody's property intimidate Kathy Masucci and suggest to her that she should not be on those properties.

(K. Masucci Dep. 20:11-22; 37:22-38:4; 124:17-127:7; 118:19-119:17, Ex. KM-9.) To Kathy Masucci, the private beach signs on Judy's Moody's property mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) For Kathy Masucci, seeing Judy's Moody's signs generates negative feelings. (K. Masucci Dep. 126:6-7.) Kathy Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) Kathy Masucci has seen pictures of people being asked to leave Judy's Moody's property. (K. Masucci Dep. 77:1-3.) Kathy Masucci has heard stories of being people to asked to leave Judy's Moody's property. (K. Masucci Dep. 28:5-9, 84:21-87:16, 91:11-92:4.) The raked seaweed, log, and orange cones on Judy's Moody's property convey to Kathy Masucci "Keep out. No trespassing." (K. Masucci Dep. 119:9-17.) Kathy Masucci is concerned that Judy's Moody may ask her to leave the Judy's Moody intertidal land. (K. Masucci Dep. 120:2-5.) That concern—being asked to leave Judy's Moody intertidal land—negatively affects Kathy Masucci's experience of walking Moody Beach. (K. Masucci Dep. 103:1-7, 120:6-10.)

44. Plaintiff William Connerney is a backlot owner of property behind but not on Moody Beach. *See* Deposition of William Connerney (January 11, 2023) ("Connerney Dep.") 10:22-24. A true copy of the cited portions of the Connerney Dep. is attached hereto as Exhibit 23.

Admitted.

45. Plaintiff William Connerney testified at his deposition that today he mainly uses Moody Beach to walk and jog, and that in the past he had sat in the intertidal zone to sunbathe, surf, boogie board, build sandcastles, play frisbee, paddleboard, fly kites, play beach tennis and look for shellfish and crabs. Exhibit 23, Connerney Dep. 13:2-25, 14:1 and Plaintiff William Connerney's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 3. A true copy of Plaintiff William Connerney's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 24.

Admitted.

46. Mr. Connerney has never been approached by anyone associated with Judy's Moody LLC and been told to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. Exhibit 23, Connerney Dep. 72:9-12, 73:1-3.

Qualified. The AG admits that Bill Connerney has never personally been approached by anyone associated with Judy's Moody and verbally told to leave Judy's Moody's intertidal zone or to stop using it. But Bill Connerney has seen the signs and boundary demarcations at Judy's Moody's property, as well as police at Judy's Moody's intertidal land, all of which have had similar and negative effects on his beach experiences. In particular:

Bill Connerney has seen the signs on the seawall at Judy's Moody's property. (Connerney

Dep. 76:24-77:18; 78:8-23.) Bill Connerney has seen the police on Judy's Moody's intertidal land. (Connerney Dep. 27:24-28:14, 79:5-24, 82:24-83:4.) Bill Connerney has heard anecdotal accounts of Judy's Moody telling people to leave Judy's Moody's intertidal land. (Connerney Dep. 29:6-20.) Seeing the signs and police on Judy's Moody's property have negatively impacted Bill Connerney's experience of walking the intertidal land at Moody Beach. (Connerney Dep. 13:6-8, 13:20-25, 78:8-79:4; 82:14-18.) Bill Connerney has seen the orange cones, wood, and raked seaweed demarcating the boundary of Judy's Moody's property and ROW 2. (Connerney Dep. 71:13-15.) Bill Connerney feels unwelcome on Judy's Moody's property when he sees those boundary demarcations—wood, cones, raked seaweed—on Judy's Moody's Property. (Connerney Dep. 25:20-26:4, 119:6-17.) Bill Connerney understands that landowners with signs such as Judy's Moody can choose at any moment to take action against someone who is walking across the intertidal land and ask them not to walk there. (Connerney Dep. 25:20-26:4; 116:24-118:6.) Bill Connerney thinks about the possibility of a confrontation with landowners such as Judy's Moody when he is on the intertidal land. (Connerney Dep. 25:20-26:4, 117:15-24). The possibility of a confrontation with landowners such as Judy's Moody detracts from what would otherwise be a relaxing walk on the beach for Bill Connerney. (Connerney Dep. 117:15-118:6.)

47. Plaintiffs Orlando Delogu, Peter Masucci, Kathy Masucci, and William Connerney still walked along the intertidal zone on Moody Beach despite the presence of signs on seawalls along Moody Beach. Exhibit 21, O. Delogu Dep. 27:17-25, 31:10; Exhibit 2, P. Masucci Dep. 144:18-19, 145:4-22, 145:25; Exhibit 22, K. Masucci Dep. 70:1-3, 102:23-25; Exhibit 23, Connerney Dep. 76:23, 77:5-7, 77:22-25.

Qualified. The AG admits this fact as to Peter Masucci and Kathy Masucci, but qualifies it as to William Connerney. Bill Connerney attempts to limit his use of Defendants' intertidal land to when the landowners are not around, or he otherwise tries to avoid such intertidal land, to eliminate confrontations with the landowners. (Connerney Dep. 117:15-118:6, 26:10-27:8, 30:10-14.)

THE AG'S OBJECTIONS TO JUDY'S MOODY QUALIFICATIONS OF THE AG'S STATEMENTS OF MATERIAL FACT

Judy's Moody qualifies most of the AG's statements of material fact. The AG objects to only the following category of Judy's Moody's qualifications:

Judy's Moody's qualification through incorporation of other Defendants' responses: AG S.M.F ¶¶ 19-26, 34-38, 48, 49, 51-57, 63-67, 71-82, 93-105, 116-122, 125, 126, 129.

Objection: Judy's Moody supports its qualifications of these AG statements of material fact through incorporation by reference to other Defendants' responses, and not by a specific citation to the record. Because Judy's Moody's qualifications therefore do not comply with M.R. Civ. P. 56(h)(2) and (4), Judy's Moody has not properly controverted these statements of fact. M.R. Civ. P. 56(h)(2), (4).

**THE AG'S RULE 56(i)(2) RESPONSE TO JUDY'S MOODY'S OBJECTIONS TO
THE AG'S STATEMENTS OF MATERIAL FACT**

Judy's Moody generally objects to the AG's statements of material fact. (Judy's Moody Opp. S.M.F. 1-2.) Such general objections are inconsistent with M.R. Civ. P. 56(i)(1) because they are not tailored to specific factual assertions. Thus, this Court should disregard Judy's Moody's general objections.

Otherwise, Judy's Moody's objections fall into one of five categories, which the AG addresses accordingly:

- A. Judy's Moody's M.R. Evid. 401 relevance objections to facts that pertain to property that does not belong to Judy's Moody: AG S.M.F. ¶¶ 4-17, 19-26, 28, 34-40, 44, 45, 47-67, 71-85, 93-105, 107, 108, 116-120, 123, 125-129.**

AG's response: Judy's Moody's relevancy objections are unpreserved because they "belong in the party's memorandum of law, not its statement of material facts." *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15 n.5, 951 A.2d 821. These AG statements of fact either address Moody Beach in its entirety—including the Masuccis' and Connerney's use of and access to Moody Beach—or specifically address other defendants' property on Moody Beach. Either way, these facts are relevant to Judy's Moody because the Judy's Moody Intertidal Land is part of Moody Beach and, although Moody Beach consists of many parcels of land, the Masuccis and Connerney experience Moody Beach as a whole. (AG S.M.F. ¶¶ 8-16, 39-47.) In addition to the impact that each defendant's signs or other physical barriers have on the Masuccis and Connerney, those signs and other physical barriers—especially because they are located at Public Access Points—also have a cumulative effect. (*E.g.*, AG S.M.F. ¶¶ 48-50, 71-74, 119-122.)

- B. Judy's Moody's M.R. Evid. 403 prejudice objections: AG S.M.F. ¶¶ 4-17, 19-26, 28, 34-40, 44, 45, 47-67, 71-85, 89, 91-105, 107, 108, 116-120, 123-129.**

AG's response: Judy's Moody objects to these AG statements of material fact based on M.R. Evid. 403. But Judy's Moody does not identify any prejudice that it would suffer from the Court considering these facts, much less explain how the allegedly prejudicial effect of these facts would "substantially outweigh" their probative value. *See* M.R. Evid. 403.

C. Judy's Moody's M.R. Evid. 801 and 802 objections to alleged hearsay statements: AG S.M.F. ¶¶ 53, 79, 80, 83-85, 108.

AG's response: Judy's Moody objects to these AG statements of material fact because it assumes that the AG offers these facts for the truth of the matter. To the contrary, the AG offers these facts to establish their effect on the hearer—the Masuccis and Connerney. See M.R. Evid. 801(c) (defining hearsay). What the Masuccis and Connerney see (photographs) and hear about defendants from neighbors impacts the Masuccis' and Connerney's impression of defendants and their calculus of the risks of walking across defendants' intertidal land (*e.g.*, will Judy's Moody verbally confront me or call the police on me?). (*E.g.*, AG S.M.F. ¶¶ 59-62, 85, 88-90.) Further, these facts speak to Ocean 503's and Judy's Moody's reputation within the local community, and thus would be admissible even if offered for the truth of the matter. See M.R. Evid. 803(20), (21).

D. Judy's Moody's M.R. Evid. 602 objections to facts about the Masuccis and Connerney: AG S.M.F. ¶¶ 8, 53, 59-62, 79-85, 89, 91, 92, 108, 119, 120, 123-129.

AG's response: Without explanation, Judy's Moody objects to these AG statements of material fact based on M.R. Evid. 602. M.R. Evid. 602 prohibits a witness from "testify[ing] to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." These facts establish what the Masuccis and Connerney personally see, hear, feel, and understand regarding their use of the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, the OA 2012 Intertidal Land, Moody Beach as a whole, and intertidal land in Maine. The Masuccis and Connerney have personal knowledge of what they see, hear, feel, and understand.

E. Judy's Moody's M.R. Evid. 701 objections to facts related to intertidal land: AG S.M.F. ¶¶ 8, 20, 119-20, 123-129.

AG's response: AG statements of material fact ¶¶ 8, 20, 119-20 are rationally based on the Masuccis' and Connerney's perceptions as members of the public who use the intertidal land at Moody Beach and are helpful to understand the Masuccis' and Connerney's deposition testimony. AG statements of material facts ¶¶ 123-29 are rationally based on the deponents' perception and are offered to inform this Court's "consideration of 'contemporary notions of usage and public acceptance.'" See *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶¶ 28-30, 206 A.3d 283 (identifying "'contemporary notions of usage and public acceptance'" as a criterion of the reasonable balance approach). The AG is not offering facts ¶¶ 123-29 as a substitute for this Court's legal analysis and conclusions of law.

Dated: June 23, 2023

Respectfully submitted,

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requirement). A burdensome and rambling statement of facts “needlessly complicates the summary judgment process,” *id.*, ¶ 28, 864 A.2d at 179, and defeats the purpose of Rule 56(h). That rule is “designed to force litigants to narrowly frame their summary judgment contentions, enabling the court to decide a summary judgment motion without engaging in an exhaustive review of the record.” *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 8, 742 A.2d 933, 938. *See also First Tracks Investments, LLC v. Murray, Plumb & Murray*, 2015 ME 104, ¶ 2, 121 A.3d 1279, 1280–82 (affirming trial court’s denial of a summary judgment motion where the plaintiff submitted 257 individual facts).

Given the Law Court in *Bell v. Town of Wells*, 557 A.2d 168, 173 (Me. 1989) held that general recreational activities such as “bathing, sunbathing,” and “recreational walking” on “privately owned intertidal land” at Moody Beach, including the intertidal land now owned by OA 2012, are not public rights included within the public rights of fishing, fowling and navigation in the Colonial Ordinance, any facts offered regarding the use of OA 2012’s intertidal property for movement based recreational activities, including bathing sunbathing and recreational walking, are not relevant. Decisions of the Law Court are binding on the Superior Court. *Myrick v. James*, 444 A.2d 987, 997–98 (Me. 1982) (quoting *State v. Mellenberger*, 95 P.2d 709, 719–20 (Or. 1939)); *see also Shaw v. Jendzejec*, 1998 ME 208, ¶ 8, 717 A.2d 367, 370 (quoting *Myrick*).

OA 2012 further objects to any claim of the State of use of OA 2012’s intertidal property by the public at-large on the basis the State is barred by *res judicata* from asserting such a claim against OA 2012, given that the State representing the public at-large fully participated in *Bell v. Town of Wells*, 557 A.2d 176 (Me. 1989) (hereinafter “*Bell II*”), and OA 2012 is in privity with Kevin Howe who was a successful plaintiff in *Bell II*, that the State litigated, or had the opportunity to litigate, the issues here, that the court expressly declared that the public does not have the right under the Colonial Ordinance to cross OA 2012’s actual intertidal land for recreational walking, and as such the State is barred from seeking to relitigate against OA 2012 that same issue in this case.

RESPONSES¹

1. Moody Beach is a mostly sandy beach located in Wells, Maine. (P. Masucci Dep. 95:3- 12, 96:24-97:15, II² 38:17-39:5.)

Objection: OA 2012 incorporates by reference the general objections stated above.

¹ OA 2012 understands the Ocean 503, LLC has supplied to the court complete copies of all of the deposition transcripts so at this point the court has before it the information needed for any citations to the depositions. To avoid needless duplicity, OA 2012 is not doing the same as the court has the transcripts to use for the record citations set forth in this Response. The Affidavit of James Howe, dated June 2, 2023 referenced in the Response is attached hereto with the Additional Statement of Facts as Ex.2.

² Peter Masucci’s deposition was split between two days: January 11, 2023, and January 13, 2023. “P. Masucci Dep. II” or “II” refers to his deposition transcript from January 13, 2023.

Response: Admit.

Response: Qualified. The North end of the beach, most of the time, is all rock. (P. Masucci Dep. 97:7-15; P. Masucci Dep. II 39:2-5.)

2. Moody Beach is approximately 1.5 miles long and is generally oriented north (Wells)-south (Ogunquit). (P. Masucci Dep. 94:23-95:4, II 10:16-23.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

3. Plaintiffs Peter Masucci and Kathy Masucci (collectively, the Masuccis) are married. (P. Masui Dep. 73:20; K. Masucci Dep. 12:2-6, 93:24-94:2.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

4. The Masuccis own and reside at the property located at 484 Ocean Avenue in Wells, Maine (the Masuccis' Property). (P. Masucci Dep. 11:1-5, Ex. PM-5; K. Masucci Dep. 12:8-10, 12:23-13:1, 13:10-11, 65:12-15, Ex. KM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Denied in part and admitted in part. The 484 Ocean Avenue property, Wells, Maine is owned in the name of a trust known as the Kathy E. Masucci Trust (the "Masucci Trust Property") and Peter and Kathy Masucci are trustees of the trust and live at the Masucci Trust Property year-round since 2002. (K. Masucci Dep. 12:8-10, 12:24-13:1, 13:8-11; P. Masucci Dep. 11:4-5, 20-23, 78:12-16.)

5. The Masuccis' Property is across the street from the Moody Beach; it is not oceanfront property. (P. Masucci Dep. 11:6-11, Ex. PM-5; K. Masucci Dep. 66:16-23, Ex. KM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The Masucci Trust Property is a "back lot" across the street on Ocean Avenue and not directly on the water. (P. Masucci Dep. 11:5-11, 62:7-10, 83:24-84:1; K. Masucci Dep. 66:22-23.) *See* General Response, *supra*.

6. Plaintiff William (Bill) Connerney owns the property at 130 South Tibbetts in Wells, Maine (the Connerney Property) and lives there from the last weekend in May through November 1. (Connerney Dep. 10:21-11:2, 11:21-12:3.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The Connerney property at 130 South Tibbetts, Wells, Maine and is a back lot at Moody Beach. (Connerney Dep. 10:21-11:10.)

7. The Connerney Property is across the street from Moody Beach; it is not oceanfront property. (Connerney Dep. 11:3-10; 105:23, 107:7-22, Ex. Connerney-6.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The Connerney Property is one street back of Ocean Avenue and is not oceanfront property. (Connerney Dep. 11:3-10, 107:7-22, Ex. Connerney-6.)

8. Peter Masucci, Kathy Masucci, and Bill Connerney (collectively, the Plaintiffs) each generally understand "intertidal land" to mean the land between the mean low-water mark and the mean high-water mark. (P. Masucci Dep. 101:6-103:16, II 13:5-13; K. Masucci Dep. 68:3-20; Connerney Dep. 57:12-22.)

Objection: OA 2012 incorporates by reference the general objections stated above. The cited reference does not in any way indicate the location of the intertidal land of OA 2012 and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. Peter Masucci understands the intertidal land to mean the sand or rocks that lie between high tide point and low tide. (P. Masucci Dep. 101:6-14.) Kathy Masucci understands the intertidal land to mean "from the high-tide mark to the low-tide mark." (K. Masucci Depo. 68:3-8.) Bill Connerney understands the intertidal land to mean "from high tide to low tide. The mean high tide to the mean low tide ... and in between there is intertidal land." (B. Connerney Dep. 57:16-22.)

9. Each Plaintiff regularly walks the length of Moody Beach on the intertidal land at Moody Beach. (P. Masucci Dep. 13:1-8, 13:22-14:7, 14:16-17, 19:15-21:16, 60:1-4, 116:23-117:1, II 43:22-44:5; K. Masucci Dep. 16:20-17:6, 28:21-23, 35:21-36:5, 68:21-69:1, 97:11-25, 108:1-4, 126:25-127:2; Connerney Dep. 13:6-8, 13:20-25, 17:13-18:5, 19:17-24, 25:20-21, 32:22-33:17, 90:15-93:18, 96:9-11.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

10. Peter Masucci and Kathy Masucci sometimes bring their grandson along when they walk the intertidal land at Moody Beach. (P. Masucci Dep. 19:15-20:3, 117:6-16; K. Masucci Dep. 50:9-16.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the

stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. Peter Masucci and Kathy Masucci testified only that on their most recent walk they brought their grandson with them on a walk on the intertidal zone. (P. Masucci Dep. 19:15-20:3, 117:6-16; K. Masucci Dep. 50:9-16.)

11. Peter Masucci walks the intertidal land at Moody Beach for enjoyment, relaxation, and stress relief. (P. Masucci Dep. II 37:4-12.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

12. When Peter Masucci walks the intertidal land at Moody Beach he sometimes stops to gaze at the water or look for birds. (P. Masucci Dep. 122:7-12, II 46:11-14.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

13. Kathy Masucci likes going to the beach because it is beautiful, peaceful, and fun and because the beach is a wonderful place to think, observe, and be grateful. (K. Masucci Dep. 107:12-15.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

14. Kathy Masucci walks the intertidal land at Moody Beach for enjoyment, physical health benefits, and mental health benefits like stress relief and relaxation. (K. Masucci Dep. 107:21-25.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

15. When Kathy Masucci walks the intertidal land at Moody Beach, she sometimes stops to look at the water. (K. Masucci Dep. 108:1-4.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

16. Bill Connerney walks the intertidal land at Moody Beach for relaxation and physical health. (Connerney Dep. 118:4-9.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

17. There are four locations on land from which the public may access on foot the intertidal land at Moody Beach (the Public Access Points).³ (P. Masucci Dep. 13:9-19 [ROW 3], 20:18-22 [ROW 2 Judy's Moody], 27:11-22, 109:4-10, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:18, Ex. KM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

³ The public may also access the Intertidal land at Moody Beach from the water. Response: Denied. No record citations were provided for this statement of material fact footnote.

Response: Denied. There are three public access ways and the “southern one is an access point to get to Ogunquit Beach.” (K. Masucci Dep. 120:21-121:18; P. Masucci Dep. 27:14-18, II 39:24-40:5.)

18. Listed north to south, the Public Access Points are right of way 3 (ROW 3), right of way 2 (ROW 2), right of way 1 (ROW 1), and the parking lot in Ogunquit near the southern end of Moody Beach (Ogunquit Parking Lot). (P. Masucci Dep. 27:11-22, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:16, Ex. KM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012’s and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012’s intertidal property.

Response: Admitted.

19. There is forbidding signage or other physical markers at each Public Access Point. (P. Masucci Dep. 23:9-14, 23:22-24:3, 26:17-32:11, II 48:19-49:5, II 50:16-51:12, II 54:21- 55:3, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:24-112:9, 112:16-17, 113:14-17, 114:12-25, 115:8-10, 117:13-118:4, 118:21-119:17, 121:20-122:1, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 18:18-19:5, 21:20-22:4, 23:14-21, 25:10-16, 30:14, 43:6, 75:10-76:19, 109:17-110:2.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. OA 2012 admits that there is signage at the access point at OA 2012’s property, the sign states "MOODY BEACH PRIVATE NO LOITERING" is attached to the seawall of OA 2012. Howe Dep. 37:10-21 (identifying seawall at OA 2012 property and identifying sign depicted in Howe Dep. Ex. 5). The second signage states “Moody Beach Private No Loitering” is marked deposition exhibit 6. (Howe Dep. 47:8-20; Howe Dep. 37:10-25; 38:1, 17-19 refer to Howe Dep. Ex. 5.). The signs speak for themselves. OA 2012 denies that they contain “forbidding” language as the signs accurately reflect the Law Court’s decision in *Bell*. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs on its property inform the reader of what is not permitted, and in so doing the signs inform the reader what is permitted. OA 2012 understands “loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the sign only says no loitering, OA 2012 understands the sign to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its

intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions on the sign stated are no loitering and no dogs, OA 2012 understands that its signs inform all users of its intertidal property of OA 2012 has given legal permission to the public to engage in these activities. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including the Masuccis and Mr. Connerney, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

20. None of the signs or physical markers inform the public that walking, navigation, fishing, or fowling is allowed on the intertidal land. (P. Masucci Dep. II 44:12-45:6, II 48:12-49:11, II 50:19-51:12, 1152:4-54:1, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:22-112:15, 114:17-115:7, 117:13-118:11, 118:19-119:17, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 110:3-111:6, 111:12-112:10, 113:33, Ex. Connerney-7, Ex. Connerney-8.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits the signs do not have words on them that state that "walking, navigation, fishing, or fowling is allowed on the intertidal land" but denies that the signs do not inform a reasonable reader that that walking, navigation, fishing, or fowling is allowed on the OA 2012's intertidal land. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs on its property inform the reader of what is not permitted, and in so doing the signs inform the reader what is permitted. OA 2012 understands "loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the sign only says no loitering, OA 2012 understands the sign to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions on the sign stated are no loitering and no dogs, OA 2012 understands that its signs inform all users of its intertidal property of OA 2012 has given legal permission to the public that it can engage in these activities. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including the Masuccis and Mr. Connerney have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on

the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

21. Each Defendant owns oceanfront property at Moody Beach near a Public Access Point. (P. Masucci Dep. 32:19-21, II 41:19-43:4, Ex. PM-5; K. Masucci Dep. 66:24-67:3, Ex. KM-5; Ocean 503 Dep. 14:21-15:10, 16:20-21, 17:9-11; Ex. Ocean 503-2, Ex. Ocean 503-3; OA 2012 Dep. Ex. 0A2012-2, Ex. 0A2012-3; Judy's Moody Dep. Ex. Judy's-2, Ex. Judy's-4.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Admitted as to OA 2012. Qualified. OA 2012 incorporates by reference Ocean 503, LLC and Judy's Moody LLC's response to that portion of the statement directed to them.

22. Defendant Ocean 503, LLC (Ocean 503) owns oceanfront property at Moody Beach located at 503 Ocean Avenue in Wells, Maine (Ocean 503's Property). (Ocean 503 Dep. 12:7- 13, 13:13-14:3, 14:21-15:10, 16:15-17:14, 33:16-25, Ex. Ocean 503-2, Ex. Ocean 503-3.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim The State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

23. Ocean 503 claims ownership of the intertidal land on Moody Beach between Ocean 503's Property and the low water mark of the Atlantic Ocean (the Ocean 503 Intertidal Land). (Ocean 503 Dep. 17:9-14, 18:22-25, 21:18-22:6.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim The State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

24. Ocean 503's Property abuts ROW 3: When accessing Moody Beach from ROW 3 and heading south along the intertidal land, the first property crossed is Ocean 503's Property. (Ocean 503 Dep. 16:15-21, 34:11-14, 41:10-12, Ex. Ocean 503-2, Ex. Ocean 503-4; P. Masucci Dep. 15:15-19, 18:11-20, 19:15-20:3, Ex. PM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim The State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

25. The following sign is affixed to the seawall on Ocean 503's Property and faces ROW 3:



(Ocean 503 Dep. 35:1-5, 36:9, 40:4-18, 41:9-11, Ex. Ocean 504-4⁴, Ex. Ocean 503-5; P. Masucci Dep. 23:3-24:3, II 44:8-45:10, Ex. PM-6; K. Masucci Dep. 26:1-27:1, Ex. KM-2, Ex. KM-6; Connerney Dep. 111:12-25, Ex. Connerney-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong

⁴ The photo images that appear in the AG's statement of material facts ¶¶ 25-26 and ¶¶ 37-38 (and also in the AG's supporting memorandum of law) are deposition exhibits Ocean 503-4, Ocean 503-5, OA2012-5, and OA2012-6. When copying those deposition exhibits and pasting them into this document and the AG's memorandum of law, the deposition exhibit stickers did not transfer with the rest of the image.

Response: Denied. No record citations were provided for this statement of material fact footnote.

to OA 2012's and therefore is irrelevant and not admissible with respect to any claim The State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

25. The following "PRIVATE BEACH" sign is affixed to the seawall on Ocean 503's Property and faces the ocean:



(Ocean 503 Dep. 19:8-17, 34:1-3, 34:11-20, 35:1-4, 36:9, 36:21-37:4, Ex. Ocean 503-4; P. Masucci Dep. 23:3-25:9, II 46:22-47:8, Ex. PM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim The State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

27. Defendant Judy's Moody, LLC (Judy's Moody) owns oceanfront property at Moody Beach located at 407 Ocean Avenue in Wells, Maine (Judy's Moody's Property). (Judy's Moody (JM) Dep. 13:22-14:3, 16:21-17:18, 19:10-23:2, 45:1-10, Ex. Judy's-2, Ex. Judy's-3, Ex. Judy's-4, Ex. Judy's-6.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim The State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

28. Judy's Moody claims ownership of the intertidal land on Moody Beach between Judy's Moody's Property and the low water mark of the Atlantic Ocean (the Judy's Moody Intertidal Land). (JM Dep. 19:10-21:25, 22:4-23:2, 39:25-40:4, Ex. Judy's-2, Ex. Judy's-3.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim The State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

29. Judy's Moody's Property abuts ROW 2: When accessing Moody Beach from ROW 2 and heading south along the intertidal land, the first property crossed is Judy's Moody's Property. (JM Dep. 21:2-23:2, 45:1-13, Ex. Judy's-2, Ex. Judy's-6; P. Masucci Dep. 20:17-21:1, 110:25-111:4, 112:4-10, 137:7-9, Ex. PM-5; K. Masucci Dep. 66:24-67:3, 118:19-119:1, Ex. KM-5; Connerney Dep. 75:10-17.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

30. There have been signs affixed to the seawall on Judy's Moody's Property that read "PRIVATE BEACH" and "No Trespassing" or "Private Beach, No Trespassing." (JM Dep. 46:25- 49:21, 103:5-16, 117:18-24; P. Masucci Dep. 32:3-11; K. Masucci Dep. 78:16-79:21, 124:17- 23; Connerney Dep. 77:5-78:16.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

31. Judy's Moody removed the "No Trespassing" sign for safety reasons; not because it disagreed with the content of the sign. (JM Dep. 48:12-49:5, 50:5-7, 103:6-16.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

32. Judy' Moody's "PRIVATE BEACH" sign was likely removed by the ocean. (JM Dep. 46:16-18, 47:17-48:6.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

33. Judy's Moody occasionally uses large pieces of wood that wash ashore, cones, or seaweed raked in a line to demarcate the side property boundary line shared by Judy's Moody Property and ROW 2. (JM Dep. 92:17-93:12, 93:21-94:10; P. Masucci Dep. II 52:4-25, II 53:16-54:1; K. Masucci Dep. 80:4-82:11, 118:19-119:12; Connerney Dep. 71:13-16, 75:10- 76:12, 119:6-120:7.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to the statement.

34. Defendant OA 2012 Trust (OA 2012) owns oceanfront property at Moody Beach located at 3 Ocean Ave, Wells, Maine (OA 2012's Property). (OA 2012 Dep. 20:17-21:6, 24:22-25:2, Ex. 0A2012-2, Ex. 0A2012-4.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The citation to OA 2012 Dep. 20:17-21:6 does not support the statement. OA 2012 admits it owns the property at 3 Ocean Avenue. (OA 2012 Dep. 21:11-14); *see also* Plaintiffs' Complaint ¶ 20; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs' Complaint (Aug. 11, 2022) ("OA 2012 Answer"), ¶ 20.

35. OA 2012 claims ownership of the intertidal land on Moody Beach between OA 2012's Property and the low water mark of the Atlantic Ocean (the OA 2012 Intertidal Land). (OA 2012 Dep. 25:3-26:6.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. OA 2012 owns the property at 3 Ocean Avenue to the Atlantic Ocean. (OA 2012 Dep. 21:11-14, 22:20-23); *see also* Plaintiffs' Complaint ¶ 20; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs'

Complaint (Aug. 11, 2022) (“OA 2012 Answer”), ¶ 20. There is a final judgment in *Bell II* of record that states the property now owned by OA 2012 includes the intertidal land to the low water mark of the Atlantic Ocean. See Additional Statement of Facts ¶ 19.

36. OA 2012's Property is near the Ogunquit Parking Lot: When accessing Moody Beach from the Ogunquit Parking Lot and walking north, the first property crossed is OA 2012's Property. (OA 2012 Dep. 38:20-39:16, 55:20-56:2, 60:9-10, Ex. 0A2012-4; P. Masucci Dep. 48:13-25, Ex. PM-5; K. Masucci Dep. 98:6-9, 114:15-20, Ex. KM-5; Connerney Dep. 89:10-91:23.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted. The citation OA 2012 Dep. 38:20-39:6, 55:20-56:2, 60:9-10 or P. Masucci Dep. 48:13-25 do not support the statement. The citation K. Masucci Dep. 98:6-9 is Mrs. Masucci understanding that the OA 2012 trust property is at the very end of the south end of the beach.

37. The following sign is affixed to the seawall on OA 2012's Property and faces the Ogunquit Parking Lot:



(OA 2012 Dep. 37:16-39:9, 46:22-25, Ex. 0A2012-5; P. Masucci Dep. II 48:12-49:5, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Howe Dep. 37:10-21 (identifying seawall at OA 2012 property and identifying sign depicted in Howe Dep. Ex. 5); 39:7-9 (sign is next to a public right-of-way).

38. The following sign is affixed to the seawall on OA 2012's Property and faces the ocean:



(OA 2012 Dep. 47:3-48:3, Ex. OA2012-6.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

39. The Masuccis live near ROW 3. (P. Masucci Dep. 13:9-21, Ex. PM-5; K. Masucci Dep. 13:12-14:1, Ex. KM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

40. If the Masuccis want to walk Moody Beach at low tide or mid tide, they typically walk down ROW 3, turn south, and then cross the Ocean 503 Intertidal Land. (P. Masucci 13:9-21, 18:11-20, 19:3-8, 19:15-20:10, 21:2-22, 117:8-16; Ex. PM-5; K. Masucci Dep. 21:10-21, 67:12-16, Ex. KM-5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's responses to this statement.

41. At or near high tide, there is more dry sand at the southern end of Moody Beach than at the northern end of Moody Beach. (P. Masucci Dep. 20:22-25, II 12:20-13:3; Connerney Dep. 91:24-92:14.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Admitted.

42. If the Masuccis want to walk Moody Beach at or near high tide, they typically walk down ROW 2, turn south, and then cross the Judy's Moody Intertidal Land. (P. Masucci 20:18- 21:4; 106:3-107:14, 117:8-16; K. Masucci Dep. 21:10-21.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. Mr. Masucci testified when he uses Right-of-Way No. 2, he turns "left, and you can get on the beach there." (P. Masucci Dep. 106:17-18.)

43. In the winter, the Masuccis typically walk the entire length of Moody Beach down to Ogunquit Beach and cross the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land. (P. Masucci Dep. 13:1-14:17; 18:11-20, 19:15-21:16, 116:23-117:16, II 10:9-15, II 15:23-16:7, II 33:6-8, II 43:22-44:5; K. Masucci Dep. 16:3-17:6, 35:21-36:5, 58:22-25, 68:21-69:1, 70:1-3, 97:11-98:9)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. Mr. Masucci testified they "would often walk the entire length of the beach down to Ogunquit Beach." (P. Masucci Dep. 14:5-7; II 43:22-25; K. Masucci 35:25-36:2, 97:15-21.) During the summer, he walked the full length of the beach. (P. Masucci Dep. II 10:9-15.) And because he walks up and down the beach he must necessarily cross on to and go over the defendants' intertidal property. (P. Masucci Dep. II 16:2-7; II 44:3-5.) "[T]he only time we [the Masuccis] have been at OA 2012 is while walking." (P. Masucci Dep. II 33:7-8.)

44. Mr. Connerney's property is located near ROW 2. (Connerney Dep. 11:11-14, 107:23- 108:5, Ex. Connerney-6.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

45. Mr. Connerney typically accesses Moody Beach using ROW 2. (Connerney Dep. 14:9- 10, 76:25-77:4, 107:23-108:1.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Admitted.

46. When Mr. Connerney accesses Moody Beach from ROW 2 and walks south he crosses the Judy's Moody Intertidal Land and the OA 2012 Intertidal Land. (Connerney Dep. 13:6-8, 13:20-25, 75:10-77:4, 90:15-91:23, 92:17-93:18.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Mr. Connerney testified he "walk[s] the beach down to Ogunquit Beach." (Connerney Dep. 13:6-8.) "I then walk to Ogunquit Beach." (Connerney Dep. 90:22-24.) Mr. Connerney understands the OA Trust property is the last structure. (Connerney Dep. 90:25-91:3, 19-23.) Mr. Connerney doesn't "walk the beach [at high tide] because you're walking sideways." (Connerney Dep. 93:5-7.) and OA 2012 incorporate herein by reference and Judy's Moody LLC's responses to the statement as directed to it.

47. When Mr. Connerney walks north along Moody Beach, Mr. Connerney crosses the Ocean 503 Intertidal Land. (Connerney Dep. 17:13-18:1, 19:17-24, 20:2-8, 32:24-33:17.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

48. Peter Masucci is conscious of the signs and other physical markers on Ocean 503's Property, on Judy's Moody's Property, and on OA 2012's Property. (P. Masucci Dep. 23:7-24:3, 27:8-24, 32:3-11, 33:15-17, 47:12-13, II 52:22-54:1, Ex. PM-6, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Admitted as to OA 2012. OA 2012 incorporates by reference Ocean 503, LLC's and Judy's Moody LLC's responses to the statement as directed to them.

49. The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over each of the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. The record citation P. Masucci 23:3-17 relates only to Ocean 503 LLC. No record citations were provided in support of statement of material fact as to OA 2012 nor Judy's Moody's signage. OA 2012 admits Peter Masucci stated that he reads the signage at Ocean 503, LLC's property to say that if crosses over intertidal land at Moody Beach, he believes he would be trespassing but denies that the signs and physical markers can reasonably be viewed as indicating to anyone that if they crossed OA 2012's intertidal land that they would be trespassing. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). Relative to OA 2012, OA 2012 understands the signs on its property and similar signs elsewhere to mean that other uses, other than loitering, are permitted on and over OA 2012 and others' intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its beach intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that OA 2012 has given legal permission to the

public to engage in these activities. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signs. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

50. Because of the signs on Defendants' properties, such as those on Ocean 503's Property, Peter Masucci does not stop on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Intertidal Land. (P. Masucci Dep. 57:15-22, II 49:22-50:9.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore as to that property is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference P. Masucci Dep. 57:15-22 does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.

Response: Denied. The record citation P. Masucci Dep. 57:15-22 relates to Ocean 503's property. When asked if Mr. Masucci was "ever concerned that OA 2012 Trust may ask you to leave the intertidal zone in front of that property," Mr. Masucci testified "at this far end of the beach we're usually just walking to and from our end. So I wouldn't expect that to be the case because we wouldn't stop there." (P. Masucci Dep. II 50:2-9.). Relative to the signs on OA 2012's upland property, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the signs on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that OA 2012 has given legal permission to the public that it can engage in these activities. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13)..

51. The sign on Ocean 503's seawall that faces ROW 3 stands out to Peter Masucci because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore as to that property is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified: OA 2012 incorporates by reference defendant Ocean 503, LLC's response to this statement..

52. The sign on Ocean 503's seawall that faces ROW 3 makes Peter Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-147, Ex. PM-6.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore as to that property is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified: OA 2012 incorporates by reference defendant Ocean 503, LLC's response to this statement.

53. Peter Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore as to that property is irrelevant and not admissible with respect to any claim the State may have against OA 2012. OA 2012 further objects on the basis that the "anecdotal stories" Mr. Masucci heard are hearsay.

Response: Qualified: OA 2012 incorporates by reference defendant Ocean 503, LLC's response to this statement.

54. Peter Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore as to that property is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified: OA 2012 incorporates by reference defendant Ocean 503, LLC's response to this statement.

55. That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Peter Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects

to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore as to that property is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified: OA 2012 incorporates by reference defendant Ocean 503, LLC's response to this statement.

56. Ocean 503 has never told Peter Masucci that he has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:9-12; P. Masucci Dep. II 45:15-18.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified: OA 2012 incorporates by reference defendant Ocean 503, LLC's response to this statement.

57. Ocean 503 has never told Peter Masucci that he has Ocean 503's permission to walk on Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:13-15; P. Masucci Dep. 16:12-17:21, 1145:19-22.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified: OA 2012 incorporates by reference defendant Ocean 503, LLC's response to this statement.

58. Peter Masucci feels unwelcome on Judy's Moody's Property when he sees the boundary demarcations—wood, orange cones, raked seaweed—on Judy's Moody's Property. (P. Masucci Dep. II 54:10-13.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: OA 2012 incorporates by reference defendant Judy's Moody LLC's response to this statement.

59. Peter Masucci is concerned that Judy's Moody will ask Peter to leave the Judy's Moody Intertidal Land. (P. Masucci Dep. II 54:14-17.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong

to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: OA 2012 incorporates by reference defendant Judy's Moody LLC's response to this statement.

60. That concern—Judy's Moody asking Peter Masucci to leave the Judy's Moody Intertidal Land—negatively effects Peter Masucci's beach experience. (P. Masucci Dep. II 54:18-20.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: OA 2012 incorporates by reference defendant Judy's Moody LLC's response to this statement.

61. Judy's Moody has never told Peter Masucci that he has the legal right to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:2-8; P. Masucci Dep. II 54:2-5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified: OA 2012 incorporates by reference defendant Judy's Moody LLC's response to this statement.

62. Judy's Moody has never told Peter Masucci that he has Judy's Moody permission to walk on the Judy's Moody Intertidal Land. (P. Masucci Dep. II 54:6-9.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified: OA 2012 incorporates by reference defendant Judy's Moody LLC's response to this statement.

63. Peter Masucci has seen the signs on OA 2012's Seawall. (Peter Masucci Dep. 26:17- 27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

64. When Peter Masucci sees the sign on OA 2012's Property that faces the Ogunquit Parking Lot he feels discouraged and angry. (P. Masucci Dep. II 49:21-24, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: When asked if Mr. Masucci was “ever concerned that OA2012 Trust may ask you to leave the intertidal zone in front of that property,” Mr. Masucci testified “at this far end of the beach we’re usually just walking to and from our end. So I wouldn’t expect that to be the case because we wouldn’t stop there.” (P. Masucci Dep. II 50:2-9.). OA 2012 denies its signs can reasonably be read to cause anger or discouragement. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). Relative to the sign facing the path that runs from the Town of Ogunquit parking lot to the Ogunquit Town Beach, OA 2012 understands the sign that says “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the sign says only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

65. OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11, II 50:6-12, Ex. PM-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Denied. When asked if Mr. Masucci was “ever concerned that OA2012 Trust may ask you to leave the intertidal zone in front of that property,” Mr. Masucci testified “at this far end of the beach we’re usually just walking to and from our end. So I wouldn’t expect that to be the case because we wouldn’t stop there.” (P. Masucci Dep. II 50:2-9.) OA 2012 denies that its signage can reasonably be read in a way that negatively detracts from the beach experience of walking over OA 2012’s intertidal land. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). Relative to the sign facing the path that runs from the Town of Ogunquit parking lot to the Ogunquit Town Beach, OA 2012 understands “loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). OA 2012 understands the sign that says “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the sign says only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

66. OA 2012 has not told Peter Masucci that he has the legal right to walk on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:12-15.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Peter Masucci that he has the legal right to walk on OA 2012’s intertidal land. But OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping

and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking, and based on that permission they have a right to be on the intertidal land. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

67. OA 2012 has not told Peter Masucci that he has OA 2012's permission to walk on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:16-20; OA 2012 Dep. 72:16-19.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Peter Masucci that he has permission right to walk on OA 2012’s intertidal land. But OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Peter Masucci, have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on

the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

68. Peter Masucci has personally seen police on Moody Beach. (P. Masucci Dep. 113:11-19, II 55:19-23.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property if any that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Admitted.

69. Peter Masucci feels discouraged, angry, and uncomfortable when he sees the police on Moody Beach. (P. Masucci Dep. II 55:24-56:1.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Admitted.

70. Peter Masucci is concerned that if he stops along the intertidal land of Moody Beach—for example, to make a phone call—he might be confronted by the police. (P. Masucci Dep. II 56:2-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 admits that Peter Masucci is concerned that if he stops along the intertidal land of Moody Beach—for example, to make a phone call—he might be confronted by the police but denies that it is a reasonable concern. OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby

unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

71. The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on Defendants' properties. (K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: OA 2012 admits that that signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on OA 2012's intertidal land but denies that the signs and other physical markers on OA 2102's property suggest to any reasonable person that they mean they should not be on OA 2102's intertidal property. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal

property for any reason, including based on the sign. See Additional Statement of Facts ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

72. The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: OA 2012 admits that that Kathy Masucci feels intimidated by signs and other physical markers on Defendants' properties but denies that the signs and other physical markings are intimidating. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

73. To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified: OA 2012 admits that that Kathy Masucci reads the signs to say that she is trespassing and is at risk of the landowner telling her to move but denies is what the

signs say. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

74. For Kathy Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The record citation states Mrs. Masucci testified “it’s not a good feeling.” (K. Masucci Dep. 126:6-7.). OA 2012 admits that for Kathy Masucci seeing the signs generates for her a negative feeling but denies that the signs can reasonable be read to generate a negative feeling. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land

grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

75. The sign on Ocean 503's Property that faces ROW 3 makes Kathy Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

76. Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

77. When Kathy Masucci sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 Intertidal Lane. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. OA 2012 further objects on the basis that the “anecdotal stories” Mr. Masucci heard are hearsay. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me.

1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC’s response to this statement.

78. Although she only walks across the Ocean 503 Intertidal Land, Kathy Masucci is concerned that Ocean 503 may ask her to leave the Ocean 503 Intertidal Land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012’s and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC’s response to this statement.

79. Kathy Masucci has heard stories of Ocean 503 approaching members of the public about using the Ocean 503 Intertidal Land. (K. Masucci Dep. 28:5-9, 29:7-10.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012’s and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. OA 2012 further objects to the statement that she “heard stories” on the basis of hearsay.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC’s response to this statement.

80. The stories Kathy Masucci has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to the statement that the “stories” Mrs. Masucci heard are hearsay.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC’s response to this statement.

81. Ocean 503 has never told Kathy Masucci that she has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:13-16; K. Masucci Dep. 113:6-9.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012’s and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

82. Ocean 503 has never told Kathy Masucci that Kathy Masucci has Ocean 503's permission to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:16-18; K. Masucci Dep. 113:10-13.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

83. Kathy Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. OA 2012 further objects to the statement on the basis of hearsay.

Response: Admitted.

84. Kathy Masucci has seen pictures of people being asked to leave Judy's Moody's Property. (K. Masucci Dep. 77:1-3.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment."). The statement is hearsay as well and not admissible.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

85. Kathy Masucci has heard stories of being people to asked to leave Judy's Moody's Property. (K. Masucci Dep. 28:5-9, 84:21-87:16, 91:11-92:4.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against

OA 2012. OA 2012 further objects to the statement on the basis of hearsay. (Mrs. Masucci never personally witnessed any of the events. (K. Masucci Dep. 85:5-6).

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

86. Kathy Masucci has seen the signs on the seawall at Judy's Moody's Property. (K. Masucci Dep. 78:16-79:19, 124:17-24.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement..

87. Kathy Masucci is aware that Judy's Moody has demarcated Judy's Moody's Property using logs, cones, and raked seaweed. (K. Masucci Dep. 81:9-24, 82:9-11.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment."). Statement is also hearsay. (Mrs. Masucci did not personally observe them putting cones and markers. (K. Masucci Dep. 81:12-19).)

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement..

88. The raked seaweed, log, and orange cones on Judy's Moody's Property, convey to Kathy Masucci "Keep out. No trespassing." (K. Masucci Dep. 119:19-17.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

89. Kathy Masucci is concerned that Judy's Moody may ask her to leave the Judy's Moody Intertidal Land. (K. Masucci Dep. 120:2-5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong

to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement..

90. That concern—being asked to leave Judy's Moody Intertidal Land—negatively affects Kathy Masucci's experience of walking Moody Beach. (K. Masucci Dep. 103:1-7, 120:6-10.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement..

91. Judy's Moody has never told Kathy Masucci that she has the legal right to walk on the Judy's Moody Intertidal Land. (K. Masucci Dep. 119:18-21.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement..

92. Judy's Moody has never told Kathy Masucci that she has Judy's Moody's permission to walk on the Judy's Moody Intertidal Land. JM Dep. 119:17-120:10; Kathy Masucci Dep. 119:22-120:1.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC's response to this statement..

93. Kathy Masucci has seen the sign on the OA 2012's Seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

94. The sign on the seawall at OA 2012's Property that faces the Ogunquit Parking Lot makes Kathy Masucci feel uncomfortable, sad, angry, and frustrated, and generates concern that the police may be called on her. (K. Masucci Dep. 103:1-7, 114:21-115:16, KM-7.)

Objection: OA 2012 incorporates by reference the general objections stated above. . *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 admits that for Kathy Masucci seeing the signs makes her uncomfortable, sad, angry, and frustrated, and generates concern that the police may but denies that the signs can reasonable be read to cause any reasonable person to feel uncomfortable, sad, angry, and frustrated. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

95. Kathy Masucci's concern that OA 2012 may ask her to leave the OA 2012 Intertidal Land negatively impacts her experience of walking Moody Beach. (K. Masucci Dep. 115:25- 116:9.)

Objection: OA 2012 incorporates by reference the general objections stated above. .
Town of Orient v. Dwyer, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 admits Kathy Masucci is concerned that OA 2012 may ask her to leave OA 2012’s intertidal land that her concern negatively impacts her experience of walking Moody Beach but denies OA 2012’s signs can reasonable be read to cause any reasonable person to believe that OA 2012 may ask her to leave OA 2012’s intertidal land and would in any negatively impact a reasonable person’s experience of walking over OA 2012’s intertidal land. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

96. OA 2012 has not told Kathy Masucci that she has the right to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:7-9; K. Masucci Dep. 115:17-20.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Kathy Masucci that she has the right to walk on OA 2012’s intertidal land. But OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building

sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given the public the right to use its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

97. OA 2012 has not told Kathy Masucci that she has OA 2012’s permission to walk on the OA 2012 Intertidal Land. (K. Masucci Dep. 115:21-24.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Kathy Masucci that she has permission right to walk on OA 2012’s intertidal land. But OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

98. Bill Connerney has seen the signs on Ocean 503's Seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Admitted.

99. Bill Connerney understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's Property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified .OA 2012 incorporates herein Ocean 503, LLC's response to this statement.

100. Bill Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that the Ocean 503 Intertidal Land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified .OA 2012 incorporates herein Ocean 503, LLC's response to this statement.

101. Because of Bill Connerney's understanding that Ocean 503 does not want people on its property, Bill Connerney now limits his use of the Ocean 503 Intertidal Land to when Ocean 503 is not around or otherwise tries to avoid the Ocean 503 Intertidal Land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses on OA 2012's property and therefore is not relevant and admissible relative to uses

on OA 2012's intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 incorporates herein Ocean 503, LLC's response\to this statement.

102. Bill Connerney is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. The citation Connerney Dep. 25:20-26:4 does not support the statement (testified as to "other properties"). OA 2012 incorporates herein Ocean 503, LLC's response\to this statement.

103. Bill Connerney's concern that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land negatively effects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. The citation Connerney Dep. 25:20-26:4 does not support the statement (testified as to "other properties"). OA 2012 incorporates herein Ocean 503, LLC's response\to this statement.

104. Ocean 503 has never told Bill Connerney that he has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:17-21.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates herein Ocean 503, LLC's response\to this statement.

105. Ocean 503 has never told Bill Connerney that he has Ocean 503's permission to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:19-21; Connerney Dep. 119:2-5.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates herein Ocean 503, LLC's response to this statement.

106. Bill Connerney has seen the police on the Judy's Moody Intertidal Land. (Connerney Dep. 27:24-28:14, 79:5-24, 82:24-83:4.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

107. Bill Connerney has seen the police on Moody Beach at areas other than the Defendants' properties. (Connerney Dep. 83:5-9.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

108. Bill Connerney has heard anecdotal accounts of Judy's Moody telling people to leave Judy's Moody Intertidal Land. (Connerney Dep. 29:6-20.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. OA 2012 further objects on the basis of hearsay.

Response: Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

109. Bill Connerney has seen the orange cones, wood, and raked seaweed demarcating the boundary of Judy's Moody's Property and ROW 2. (Connerney Dep. 71:13-15.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

110. Bill Connerney has seen the signs that used to be on the seawall at Judy's Moody's Property. (Connerney Dep. 76:24-77:18.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

111. Bill Connerney was aware of those signs on Judy's Moody's Property as soon as he enters the beach. (Connerney Dep. 78:17-23.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

112. The signs that were on Judy's Moody's Property have negatively impacted Bill Connerney's experience of walking the intertidal land at Moody Beach. (Connerney Dep. 13:6-8, 13:20-25, 78:17-79:4; 82:14-18.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

113. Bill Connerney feels unwelcome on Judy's Moody's Property when he sees those boundary demarcations—wood, cones, raked seaweed—on Judy's Moody's Property. (Connerney Dep 25:20-26:4, 119:10-17.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. The citation Connerney Dep. 25:20-26:4 does not support the statement (testified as to “other properties”). Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

114. Judy's Moody has never told Bill Connerney that he has the legal right to walk on the Judy's Moody Intertidal Land. (JM Dep. 119:13-16.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

115. Judy's Moody has never told Bill Connerney that he has Judy's Moody's permission to walk on the Judy's Moody Intertidal Land. (Connerney Dep. 118:23-119:1.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012.

Response: Qualified. OA 2012 incorporates herein Judy's Moody LLC's response to this statement.

116. Bill Connerney has seen the signs on the seawall at OA 2012's Property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

117. OA 2012 has not told Bill Connerney that he has the right to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:12-15.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Bill Connerney that he has the right to walk on OA 2012's intertidal land. But OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given the public the right to use its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Bill Connerney, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

118. OA 2012 has not told Bill Connerney that he has OA 2012's permission to walk on the OA 2012 Intertidal Land. (OA 2012 Dep. 72:24-73:3; Connerney Dep. 118:19-22.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified: OA 2012 admits it has not in spoken words told Bill Connerney that he has permission to walk on OA 2012's intertidal land. But OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach

related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given the public the right to use its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Bill Connerney, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

119. Bill Connerney would feel better about walking on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land if their signage specified that walking is allowed. (Connerney Dep. 115:5-10.)

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. OA 2012 admits that Bill Connerney stated he would feel better if the signage specified that walking is allowed but denies that the signage can reasonable be read to say that walking is not allowed. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Bill Connerney, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

For that portion of the statement directed to Ocean 503, LLC and Judy's Moody LLC, OA 2012 incorporates by refence their respective response to the statement.

120. Bill Connerney understands that Ocean 503, Judy's Moody, and OA 2012 could choose at any moment to ask someone who is walking across, respectively, the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Trust Intertidal Land to leave or move along. (Connerney Dep. 116:24-117:14.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: As to OA 2012, admitted. As to that portion of the statement directed to Ocean 503, LLC and Judy’s Moody LLC, OA 2012 incorporates by refence their respective response to the statement.

121. Bill Connerney thinks about the possibility of a confrontation with Ocean 503, Judy's Moody, and OA 2012 when he is on, respectively, the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land. (Connerney Dep. 25:20-26:4, 117:15-24).

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The citation Connerney Dep. 25:20-26:4 does not support the statement (testified as to “other properties”). Further OA 2012 denies that its signage can cause any reasonable person to think about the possibility of a confrontation with OA 2012 with respect to walking across OA 2012’s intertidal property. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). OA 2012 has had same signage for some time, signage that from OA 2012’s perspective gives legal permission for Mr. Connerney to walk across OA 2012’s property and eliminates any possibility of confrontation. Affidavit of James Howe, dated June 2, 2013 at ¶ 13. OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal

property every year, no one, including Mr. Connerney have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13). For that portion of the statement directed to Ocean 503, LLC and Judy's Moody LLC, OA 2012 incorporates by reference their respective response to the statement.

122. The possibility of a confrontation with Ocean 503, Judy's Moody, and OA 2012 detracts from what would otherwise be a relaxing walk on the beach for Bill Connerney. (Connerney Dep. 117:15-118:3.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 admits for Mr. Connerney he thinks that his risk of confrontation with OA 2012 detracts from what would otherwise be a relaxing walk on the beach for him but denies that any reasonable person who is walking across OA 2012's intertidal distracted from a relaxing walk over OA2012's intertidal property. OA 2012 has had same signage for some time, signage that from OA 2012's perspective gives permission for Mr. Connerney to walk across OA 2012's property and eliminates any possibility of confrontation. OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Mr. Connerney have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13). For that portion of the statement directed to Ocean 503, LLC and Judy's Moody LLC, OA 2012 incorporates by reference their respective response to the statement.

123. Kathy Masucci thinks that walking and running and moving could be considered navigation. (K. Masucci Dep. 76:4-8.)

Objection: OA 2012 incorporates by reference the general objections stated above. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Denied. See *Bell v. Town of Wells, supra*.

124. Bill Connerney thinks that walking could be considered navigation. (Connerney Dep. 65:16-66:20, 114:11-25, 115:13-116:6.)

Objection: OA 2012 incorporates by reference the general objections stated above. The cited reference does not in any way indicate the location of the stated uses at Moody Beach and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Denied. See *Bell v. Town of Wells, supra*.

125. Ocean 503 understands "fowling" to include bird watching. (Ocean 503 Dep. 38:17- 18, 39:25-40:3.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment."). The statement is not relevant to whether walking is a permitted use under the Colonial Ordinance.

Response: OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

126. Ocean 503 understands "navigation" to mean traversing the beach, which means walking back and forth on the beach. (Ocean 503 Dep. 38:18-39:2, 39:22-24.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified: OA 2012 incorporates by reference Ocean 503, LLC's response to this statement.

127. When people are engaging in activities other than fishing, fowling, and navigating on the Judy's Moody Intertidal Land, Judy's Moody understands that it has the right to ask people to leave. (JM Dep. 122:2-11.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified: OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

128. Judy's Moody thinks that there are times when navigation includes walking. (JM Dep. 123:8-11.)

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim the State may have against OA 2012. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified: OA 2012 incorporates by reference Judy's Moody LLC's response to this statement.

129. OA 2012 understands that it has the right to ask someone to leave the OA 2012 Intertidal Land but not if the person is just walking. (OA 2012 Dep. 70:22-71:4, 71:20-23.)

Objection: OA 2012 incorporates by reference the general objections stated above. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Admitted.

ADDITIONAL FACTS

Pursuant to Rule 56(h)(2) of the Maine Rules of Civil Procedure, Defendant OA 2012 submits this Opposing Statement of Material Facts to Plaintiffs' Statement of Material Facts, without waiving OA 2012's Objection of Plaintiffs' Statement of Material Facts.

1. OA 2012 is a Maine Trust and owns ocean front property at Moody Beach in Wells, Maine as described in a deed from Kevin J. Howe, Trustee of the Kevin J. Howe 1988 Trust, to John B. Howe, Trustee of the OA 2012 Trust dated December 10, 2012, and recorded December 18, 2012, in the York County Registry of Deeds at Book 16487, Page 844. *See*

Affidavit of Rebecca Kinney (“Kinney Aff.”) ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer (Aug. 11, 2022) (“OA 2012 Answer”) ¶ 20; Affidavit of Julie Washburn (“Washburn Aff.”), Exhibit A (Howe Depo. at 25-26, 71).

2. OA 2012’s property immediately abuts the Ogunquit Beach. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20.; Washburn Aff., Exhibit B (K. Masucci Depo. at 98).

3. OA 2012’s property is about 50 feet wide. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20; Washburn Aff., Exhibit A (Howe Depo. at 24) & Exhibit D (Peter I Depo. at 95).

4. The distance from the seawall at OA 2012’s property to the mean low water varies but in places is 500 to 600 feet. Washburn Aff., Exhibit A (Howe Depo. at 22, 24-25); Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20.

5. From the seawall toward the ocean for a distance of about 30 feet is a dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 121-122). No Plaintiff is making any claim of use to the dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 95, 101), Exhibit D (Peter I Depo. at 15, 18), Exhibit E (Peter II Depo. at 13-15).

6. The portions of the Ogunquit Beach that abuts the upland portion of OA 2012’s property to the south is a public way that provides access for a Town of Ogunquit parking lot to the Ogunquit Beach. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20; Washburn Aff., Exhibit A (Howe Depo. at 55-56, 60) & Exhibit E (Peter II Depo. at 40, 42).

7. There is a sign that has been in place for some time attached to the seawall facing the right of way that states: “Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you.” Washburn Aff., Exhibit A (Howe Depo. at 39 & Exhibit 5) & Exhibit D (Peter I Depo. at 27-28).

8. OA 2012 has posted on its seawall that faces the ocean a sign that states: “Moody Beach, Private, No Loitering.” Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40; Washburn Aff., Exhibit A (Howe Depo. at 47-49 & Exhibit 6) & Exhibit D (Peter I Depo. at 27-28).

9. During the summer season, OA 2012 places temporary signage at or near the high water mark on its property indicating the location of various beaches including arrows pointing to Moody Beach, a private beach, and the Ogunquit Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-48, 51-52 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

10. The purpose of the signage is to identify for those using the beach the demarcation between the Ogunquit Town beach and OA 2012’s property in Wells at Moody

Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-49, 51-52, 55-56, 60 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

11. Beach goers including those few Plaintiffs who have actually been on or over OA 2012's intertidal property do not read the sign as restricting or limiting in any way any movement-based activity, whether recreational, navigation or ocean based related. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103).

12. As was the case when *Bell* was decided, hundreds of people every summer day engage in movement-based activity on or over OA 2012's intertidal property without restriction or interruption. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64); Kinney Aff. ¶¶ 3, 4 and Exhibit B-6.

13. OA 2012's predecessor in title Kevin Howe was a plaintiff in the *Bell v. Town of Wells*, Maine Superior Court (York) CV-84-125, and Law Court Docket YOR-87-430, reported at *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) (collectively both the Superior Court action on and Law Court decision in *Bell* are referred to herein as the "*Bell Action*") and obtained a judgment that is of record through that quiet title action that he owned the fee to the intertidal portion of his property (e.g., that it is private property) subject only to the public's rights to use his intertidal property for fishing, fowling and navigation, and that those rights did not include any recreational rights. Kinney Aff. ¶¶ 3, 4 and Exhibits A, B-1 (at 332), B-2, B-6, B-7 & B-8; Washburn Aff., Exhibit A (Howe Depo. at 26-27).

14. The State was an actual party in the *Bell Action* and represented the public interest. Kinney Aff. ¶ 4 & Exhibits B-1, B-3 B-7 & B-8; see also *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

15. Plaintiff Orlando Delogu was among the amici in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

16. In the *Bell Action*, at the request of the State, guardian ad litem was appointed pursuant to 14 M.R.S. § 6656 "to represent the private rights of all unnamed and unknown defendant who have not actually been served with process and who had not appeared in this action." Kinney Aff. ¶ 4 & Exhibit B-5.

17. The testimony at trial in the *Bell Action* included references to signs posted on the seawall on the Howe property and on other seawalls that said Moody Peach was a private beach and stated, "No Loitering" and/or "No Trespassing." Kinney Aff. ¶ 4 & Exhibit B-6.

18. OA 2012 is successor in title and in privity with Kevin Howe. Kinney Aff. ¶¶ 3, 4 & Exhibits A, B-1 & B-8.

19. None of the Plaintiffs have had their access to OA 2012's intertidal land limited or restricted in any way for any movement-based activity, whether navigation related, recreational related and/or ocean base, let alone significantly restricted. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38 & 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

20. There are no facts suggesting that the "intertidal jurisdiction" has "restricted" any of the Plaintiffs from engaging in any movement-based activity on or over OA 2012's intertidal property. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38, 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

21. In the *Bell Action*, there was testimony that many of the ocean-front property owners placed signs either in the sand, or on their seawall steps; the signs carried messages such as "No Trespassing", "Private Beach to Low Water Mark, No Loitering Please" [App. at 1397], or simply "Private Property." At the southern end, near Ogunquit Beach, William Case and plaintiffs Leo Shannon and John Howe erected a sign in 1975 at Howe's property (on the Ogunquit Beach line) which said, "Private Beach." Kinney Aff. ¶ 4 and Exhibit B-6.

22. OA 2012 has never objected to any movement-based activity over its intertidal property, however characterized as ocean based, navigation or recreation. Washburn Aff., Exhibit A (Howe Depo. at 39, 45, 71).

23. With respect to OA 2012's intertidal zone Plaintiffs Robert Morse, George Seaver, John W. Grotton, Hale Miller, LeRoy Gilbert, Jake Wilson, Dan Harrington, Susan Domizi, Greg Tobey, Amanda Moeser, Chad Coffin, Lori Howell, Tom Howell and Brian Beal have not been to Moody Beach where OA 2012's intertidal property is located and have never been on OA 2012's property, and have not to identified any instance in which OA 2012 prevented or restricted them (or anyone else for that matter) from engaging in any movement-based activity on or over OA 2012 property. Washburn Aff., Exhibit J (Plaintiff Robert Morse's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff George Seaver's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff John W. Grotton's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 31, 2022); Plaintiff Hale Miller's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff LeRoy Gilbert's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 30, 2022); Plaintiff Jake Wilson's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Dan Harrington's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 19, 2022); Plaintiff Susan Domizi's Answers to Defendants OA 2012 Trust and Judy's

Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Jan. 4, 2023); Plaintiff Greg Tobey's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Amanda Moeser's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 26, 2022); Plaintiff Chad Coffin's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Lori Howell's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 12, 2022); Plaintiff Tom Howell's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 12, 2022); Plaintiff Brian Beal's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories No. 2 (signed & dated Dec. 28, 2022)).

24. Plaintiffs Judith Delogu and Sheila Jones have never been to Moody Beach, and have never been or attempted to engage any movement-based activity on OA 2012 intertidal land. Washburn Aff., Exhibit G (J. Delogu Depo. 13, 18, 21, 30) & Exhibit I (Jones Depo. at 32, 43).

25. Plaintiff William Griffiths has been to Moody Beach twice, and has never been or attempted to engage any movement-based activity on OA 2012 intertidal land. Washburn Aff., Exhibit F (Griffith's Depo. 10, 59, 66-67) & Exhibit K (Plaintiff William Griffiths' Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories No. 2 (signed & dated Dec. 21, 2022)).

26. Plaintiff Orlando Delogu has been to Moody Beach, but is not aware of the location of OA 2012's Property, and in any event has never been prevented from engaging in any movement-based activity over the entire beach, which necessarily involves the OA 2012 Property. Washburn Aff., Exhibit H (O. Delogu Depo. at 140-142, 148).

27. Plaintiffs Peter and Kathy Masucci are back lot owners and access the beach at the opposite end of Moody Beach from where OA 2012's property is located. Washburn Aff., Exhibit B (K. Masucci Depo. at 97-101) & Exhibit E (Peter II Depo. at 16-18). While they believe they have walked over OA 2012's property, they have never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's Property. *Id.*

28. Back lot owner Plaintiff William Connerney believes he has walked across the OA 2012's property, but he has never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's property. Washburn Aff., Exhibit C (Connerney Depo. at 69, 72-73, 97-98, 103).

29. Plaintiffs Griffiths and Jones do not know whether any of their customers had ever been on OA 2012's property or seen any signs located thereon, and could not identify an occasion when any of their customers advised them they would not return to their hotel due to

any signs on OA 2012's property. Washburn Aff., Exhibit F (Griffiths Depo. at 25, 29-30, 35-36) & Exhibit I (Jones Depo. at 22-23, 38).

30. In the *Bell Action* an Order for Alternative Service was published in the local York County newspaper that said in part "...it is hereby Ordered that any defendant or his attorney who wishes to oppose this lawsuit must prepare and file a written answer to the complaint on or by May 7, 1984.". Kinney Aff. ¶ 4 and Exhibit B-4 (at entries numbered 4, 6 19).

31. As of 1984, Plaintiffs Peter and Kathy Masucci and William Connerney were of legal age and spent time at Moody Beach. Washburn Aff., Exhibit B (K. Masucci Depo. at 65), Exhibit C (Connerney Depo. at 53) & Exhibit D (Peter I Depo. at 12, 18-19).

32. A final judgment was issued in the *Bell Action*. Kinney Aff. ¶ 4 and Exhibits B-7 and B-8 (docket entries at 9/15/87 Brodrick, J. decision/judgment, 09/30/87 Brodrick, J. amendment of findings of fact, & 10/01/87 declaration of "judgment be entered for the plaintiff, Kevin J. Howe", Apx. at pp. 29-30, 32) *infra*; *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

33. Plaintiffs have not joined in this action all of the prevailing plaintiffs in *Bell Action* or their successors in interests. Kinney Aff. ¶ 4 and Exhibit B-1 (at docket entries 265 through 293, Apx. at pp. 30-34) *infra*.

34. The Appendix filed by the parties in the Law Court in the *Bell Action*, Law Court Docket No. YOR-87-430 contained over 1600 pages, including, as follows:

- a. Exhibit B-1: Superior Court Docket Entries (Sheets 1 through 18), Appendix ("Apx.") at pp. 01-36;
- b. Exhibit B-2: Pleadings: Complaint and its Exhibit A (Mar. 7, 1984) and First Amendment to Complaint (Aug. 9, 1985); Apx. at pp. 37-58 & 78-85;
- c. Exhibit B-3: Defendant State of Maine Bureau of Lands' Answer (Apr. 11, 1984), State Defendants' Answer to Amendments to Plaintiffs' Complaint (July 1, 1986), Apx. At pp. 59-67 & 86-88;
- d. Exhibit B-4: Superior Court Docket Entries evidencing filing and entry of Plaintiffs' Motion for Alternative Service and Order, Apx. at 01-02;
- e. Exhibit B-5: Superior Court Docket Entries reflecting filing and entry of State's Motion for Appointment of Guardian Ad Litem (Nov. 2, 1984) and Order (Mar. 1, 1985), Apx. 04 & 06;
- f. Exhibit B-6: Excerpts of trial transcript regarding signage of Moody Beach (Edward Haseltine, Richard Kenary, Betty Stirling, & William Case);
- g. Exhibit B-7: Superior Court decision (Sept. 14, 1987)(Brodrick, J.) and Amendment of Findings of Fact (Sept. 30, 1987)(Brodrick, J.); and
- h. Exhibit B-8: Superior Court Docket Entries evidencing entry of Final Judgment (Sept. 14, 1987)(Brodrick, J.) and (29) Finding Judgments and Declaration of Title (Oct. 1, 1987).

True copies of the above-identified excerpts of the Appendix are attached to the Affidavit of Rebecca Kinney. *See* Kinney Aff. ¶ 4 and Exhibits B-1, B-2, B-3, B-4, B-5, B-6, B-7 & B-8, respectively.

35. The signs posted to the seawall on the upland portion of OA 2012 Trust's property (signs say "MOODY BEACH IS A PRIVATE BEACH, NO LOITERING") have been in place since 1978. J. Howe Depo. (Feb. 8, 2023) 69: 21-25; 70 1-59. (See Ex. 1 attached hereto); Affidavit of James Howe, dated June 2, 2023, ¶ 7. (See Ex. 2 attached hereto).

36. OA 2012 understands the word "loitering" in the signs on its property that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4. (See Ex. 1 attached hereto).

37. Since the signs on its property only say no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38).

38. OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Affidavit of James Howe, dated June 2, 2023, ¶ 13. (See Ex. 2 attached hereto).

39. Thousands of individuals each summer walk by the signs at OA 2012's property that says Moody Beach is a private beach no loitering and no one has ever expressed to OA 2012 any such indication that the signs in any cause fear or confusion as to whether they restrict or preclude in any way anyone from engaging in any movement-based activity over OA 2012's intertidal property. Affidavit of James Howe, dated June 2, 2023, ¶ 12. (See Ex. 2 attached hereto);

40. OA 2012 has never approached any member of the public to ask them not to be on the intertidal portion of OA 2012's property. J. Howe Depo (Feb, 8, 2023) 45: 19-24. (See Ex. 1 attached hereto);

41. Signs at Moody Beach have never prevented Kathy Masucci from walking across OA 2012's intertidal property. K. Masucci's Depo. (Jan. 13, 2023), 76, 78, 102. (See Ex. 3 attached hereto);

42. Signs at Moody Beach have never prevented Peter Masucci from engaging in any movement-based activity at Moody Beach, including on or over OA 2012's intertidal property. P. Masucci Depo. (Jan. 11, 2023) 57-58. (See Ex. 4 attached hereto);

43. No one has ever stopped Bill Connerney from engaging in any activity he would like to do in the intertidal area of Moody Beach, inclusive of OA 2012's intertidal property. W. Connerney Depo (Jan. 11, 2023) 97:17-25. (See Ex. 5 attached hereto).

44. No customer at the Crow's Nest Resort has ever informed the resort that they would not be returning to the resort because of signs at Moody Beach and Crow's Nest Resort does not have any data or information showing that the signs at Moody Beach in any way affected its business. W. Griffiths Depo. (Jan. 13, 2023) 36:7-23. (See Ex. 6 attached hereto).

Dated: June 2, 2023



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Attorneys for the Defendant OA 2012 Trust

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-35

| | |
|--|---|
| PETER and KATHY MASUCCI, <i>et al.</i> , |) |
| |) |
| Plaintiffs, |) |
| v. |) |
| |) |
| JUDY'S MOODY, LLC, <i>et al.</i> , |) |
| |) |
| Defendants, |) |
| and |) |
| |) |
| AARON M. FREY, in his capacity as the |) |
| ATTORNEY GENERAL OF THE STATE OF |) |
| MAINE, |) |
| |) |
| Party-in-Interest |) |

**ATTORNEY GENERAL'S
 RULE 56(h)(3) and (i)(2) REPLY
 STATEMENT OF MATERIAL FACTS
 TO OA 2012 TRUST'S
 RULE 56(h)(2) OPPOSING
 STATEMENT OF MATERIAL FACTS**

(Title to Real Estate Involved)

Pursuant to M.R. Civ. P. 56(h)(3) and (i)(2), the Attorney General (AG) replies to Defendant OA 2012 Trust's additional facts, objects to OA 2012 Trust's qualifications and denials of the AG's statements of material fact, and responds to OA 2012 Trust's objections to the AG's statements of material fact as follows.

THE AG'S REPLY TO OA 2012 TRUST'S ADDITIONAL STATEMENTS OF FACT

1. OA 2012 is a Maine Trust and owns ocean front property at Moody Beach in Wells, Maine as described in a deed from Kevin J. Howe, Trustee of the Kevin J. Howe 1988 Trust, to John B. Howe, Trustee of the OA 2012 Trust dated December 10, 2012, and recorded December 18, 2012, in the York County Registry of Deeds at Book 16487, Page 844. See Affidavit of Rebecca Kinney ("Kinney Aff.") ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer (Aug. 11, 2022) ("OA 2012 Answer") . ¶ 20; Affidavit of Julie Washburn ("Washburn Aff."), Exhibit A (Howe Depo. At 25-26, 71).

Admitted.

2. OA 2012's property immediately abuts the Ogunquit Beach. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20; Washburn Aff., Exhibit B (K. Masucci Depo. At 98).

Admitted.

3. OA 2012's property is about 50 feet wide. Kinney Aff ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20; Washburn Aff., Exhibit A (Howe Depo. At 24) & Exhibit D (Peter I Depo. At 95).

Admitted.

4. The distance from the seawall at OA 2012's property to the mean low water varies but in places is 500 to 600 feet. Washburn Aff., Exhibit A (Howe Depo. At 22, 24-25); Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20.

Admitted.

5. From the seawall toward the ocean for a distance of about 30 feet is a dry sand area. Washburn Aff., Exhibit C (Connerney Depo. At 112-122). No Plaintiff is making any claim of use to the dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 95, 101), Exhibit D (Peter I Depo. at 15, 18), Exhibit E (Peter II Depo. at 13-15).

Admitted.

6. The portions of the Ogunquit Beach that abuts the upland portion of OA 2012's property to the south is a public way that provides access for a Town of Ogunquit parking lot to the Ogunquit Beach. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20; Washburn Aff., Exhibit A (Howe Depo. at 55-56, 60) & Exhibit E (Peter II Depo. at 40, 42).

Admitted.

7. There is a sign that has been in place for some time attached to the seawall facing the right of way that states: "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." Washburn Aff., Exhibit A (Howe Depo. at 39 & Exhibit 5) & Exhibit D (Peter I Depo. at 27-28).

Admitted.

8. OA 2012 has posted on its seawall that faces the ocean a sign that states: "Moody Beach, Private, No Loitering." Compl. ¶¶20, 40; OA 2012 Answer ¶¶20, 40; Washburn Aff., Exhibit A (Howe Depo. at 47-49 & Exhibit 6) & Exhibit D (Peter I Depo. at 27-28).

Admitted.

9. During the summer season, OA 2012 places temporary signage at or near the high water mark on its property indicating the location of various beaches including arrows pointing to Moody Beach, a private beach, and the Ogunquit Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-48, 51-51 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

Admitted.

10. The purpose of the signage is to identify for those using the beach the demarcation between the Ogunquit Town beach and OA 2012's property in Wells at Moody Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-49, 51-52, 55-56, 60 & Exhibits 5, 6, 7 & 8); Compl. ¶¶20, 40; OA 2012 Answer ¶¶20, 40.

Objection. As to the Masuccis, Connerney, and other members of the public, this fact is unsupported by the record citations. Subject to this objection:

Qualified. The AG admits OA 2012's purpose of posting the sign, but denies that the Masuccis and Connerney have the same understanding of the sign as OA 2012:

To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, KM-7.) The signs and physical markers on Defendants' properties indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

11. Beach goers including those few Plaintiffs who have actually been on or over OA 2012's intertidal property do not read the sign as restricting or limiting in any way any movement-based activity, whether recreational, navigation or ocean based related. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103).

Objection. As to the Masuccis and other beach goers, this fact is unsupported by the record citations. Subject to this objection:

Qualified. The AG admits that it is OA 2012's perception that beach goers do not regard the OA 2012 signs as restricting them from using the OA 2012 Intertidal Land for movement-based activity. As to the Masuccis and Connerney, however, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 Intertidal Land:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Ms. Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-

27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Mr. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Mr. Masucci does not stop on the OA 2012 OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

12. As was the case when *Bell* was decided, hundreds of people every summer day engage in movement-based activity on or over OA 2012's intertidal property without restriction or interruption. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64); Kinney Aff. ¶¶ 3, 4 and Exhibit B-6.

Objection: This fact is unsupported by the record citations. Subject to this objection:

Qualified. The AG admits that people engage in movement-based activity in the summer on or over OA 2012's intertidal property without physical interruption or physical restriction. But, as to the Masuccis and Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Ms. Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (Peter Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Mr. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

13. OA 2012's predecessor in title Kevin Howe was a plaintiff in the *Bell v. Town of Wells*,

Maine Superior Court (York) CV-84-125, and Law Court Docket YOR-87-430, reported at *Bell v. Town of Wells*, 447 A.2d 168 (Me. 1989) (collectively both the Superior Court action on and Law Court decision in Bell are referred to herein as the “*Bell Action*”) and obtained a judgment that is of record through that quiet title action that he owned the fee to the intertidal portion of his property (e.g., that it is private property) subject only to the public’s rights to use his intertidal property for fishing, fowling, and navigation, and that those rights did not include any recreational rights. Kinney Aff. ¶¶3, 4 and Exhibits A, B-1 (at 332), B-2, B-6, B-7 & B-8; Washburn Aff., Exhibit A (Howe Depo. at 26-27).

Objection: The characterization of the judgment in YOR-CV-84-125 is unsupported by the citation. That judgment speaks for itself, and OA 2012’s intertidal property remains subject to Maine’s common law public trust doctrine. Subject to this objection:

Qualified. The AG admits that OA 2012’s predecessor, Kevin J. Howe, obtained a judgment in 1987 in YOR-CV-84-125 stating that title was “subject only to” the public trust doctrine, which judgment the Law Court affirmed. Kinney Aff. Exhibit B (Final Judgment and Declaration of Title dated Sep. 30, 1987, at 1); *see also id.* (docket entry for Oct. 1, 1987 (identified in handwriting as “274”)(same)). The AG admits that OA 2012’s property remains subject to Maine’s common law public trust doctrine.

14. The State was an actual party in the *Bell Action* and represented the public interest. Kinney Aff. ¶4 & Exhibits B-1, B-3, B-7 & B-8; *see also Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

Admitted.

15. Plaintiff Orlando Delogu was among the amici in the *Bell Action*. *See Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

Admitted.

16. In the *Bell Action*, at the request of the State, guardian ad litem was appointed pursuant to 14 M.R.S. §6656 “to represent the private rights of all unnamed and unknown defendant who have not actually been served with process and who had not appeared in this action.” Kinney Aff. ¶4 & Exhibit B-5.

Admitted.

17. The testimony at trial in the *Bell Action* included references to signs posted on the seawall on the Howe property an on other seawalls that said Moody Beach was a private beach and stated, “No Loitering” and/or “No Trespassing.” Kinney Aff. ¶4 & Exhibit B-6.

Admitted.

18. OA 2012 is successor in title and in privity with Kevin Howe. Kinney Aff. ¶¶3, 4 & Exhibits A, B-1 & B-8.

Admitted.

19. None of the Plaintiffs have had their access to OA 2012's intertidal land limited or restricted in any way for any movement-based activity, whether navigation related, recreational related and/or ocean base, let alone significantly restricted. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38 & 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18 & Exhibit H (O. Delogu Depo. at 141-142).

Objection: This fact is unsupported as to Bill Connerney. This fact is also unsupported as to Kathy Masucci's and Peter Masucci's respective understandings of the term navigation, which they understand to include walking. (Connerney Dep. 65:16-66:3, 66:13-20, 114:13-16, 115:13; K. Masucci Dep. 76:4-8, P. Masucci Dep. 128:22-129:5). Subject to this objection:

Qualified. The AG admits that OA 2012 has not physically restricted Plaintiffs from accessing or engaging in movement-based activity on OA 2012's intertidal land. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.) For Ms. Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.) The sign on the seawall at OA 2012's property that faces the Ogunquit Parking Lot makes Ms. Masucci feel uncomfortable, sad, angry, and frustrated, and generates concern that the police may be called on her. (K. Masucci Dep. 103:1-7, 114:21-115:16, KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Mr. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Mr. Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.) When Mr. Masucci sees the sign on OA 2012's property that faces the Ogunquit Parking Lot he feels discouraged and angry. (P. Masucci Dep. II 49:21-24, Ex. PM-8.) OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11, II 50:6-12, Ex. PM-8.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) OA 2012 has not told him that he has the right or permission to walk on OA 2012's intertidal land. (OA 2012 Dep. 72:12-15, 72:24-73:3; Connerney Dep. 118:19-22.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

Bill Connerney, Kathy Masucci, and Peter Masucci each understand the term navigation, with respect to intertidal usage, to include walking. (Connerney Dep. 65:16-66:3, 66:13-20, 114:13-16, 115:13; K. Masucci Dep. 76:4-8; P. Masucci Dep. 128:22-129:5).

20. There are no facts suggesting that the "intertidal jurisdiction" has "restricted" any of the Plaintiffs from engaging in any movement-based activity on or over OA 2012's intertidal property. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38, 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogy Depo. at 141-142).

Qualified. The AG admits that OA 2012 has not physically restricted Plaintiffs from engaging in movement-based activity on OA 2012's intertidal property. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Ms. Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Mr. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Mr. Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

21. In the *Bell Action*, there was testimony that many of the ocean-front property owners placed signs either in the sand, or on their seawall steps; the signs carried messages such as “No Trespassing” , “Private Beach to Low Water Mark, No Loitering Please” [App. At 1397], or simply “Private Property.” At the southern end, near Ogunquit Beach, William Case and plaintiffs Leo Shannon and John Howe erected a sign in 1975 at Howe’s property (on the Ogunquit Beach line) which said, “Private Beach.” Kinney Aff. ¶ 4 and Exhibit B-6.

Admitted.

22. OA 2012 has never objected to any movement-based activity over its intertidal property, however characterized as ocean based, navigation or recreation. Washburn Aff., Exhibit A (Howe Depo. at 39, 45, 71).

Qualified. The AG admits that no individual on behalf of OA 2012 has verbally objected to any movement-based activity over OA 2012’s intertidal property. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012’s signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012’s seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants’ properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants’ properties intimidate Ms. Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012’s property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012’s seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant’s property indicate to Mr. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012’s property, Mr. Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012’s property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

23. With respect to OA 2012’s intertidal zone Plaintiffs Robert Morse, George Seaver, John W. Grotton, Hale Miller, LeRoy Gilbert, Jake Wilson, Dan Harrington, Susan Domizi, Greg Tobey, Amnda Moeser, Chad Coffin, Lori Howell, Tom Howell and Brian Beal have not been to Moody Beach where OA 2012’s intertidal property is located and have never been

on OA 2012's property, and have not to identified any instance in which OA 2012 prevented or restricted them (or anyone else for that matter) from engaging in any movement-based activity on or over OA 2012 property. Washburn Aff., Exhibit J (Plaintiff Rober Morse's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022)); Plaintiff George Seaver's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff John W. Grotton's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 31, 2022); Plaintiff Hale Miller's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff LeRoy Gilber's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 30, 2022); Plaintiff Jake Wilson's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Dan Harrington's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 19, 2022); Plaintiff Susan Domizi's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Jan. 4, 2023); Plaintiff Greg Tobey's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Amanda Moeser's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 26, 2022); Plaintiff Chad Coffin's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Lori Howell's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 12, 2022); Plaintiff Tom Howell's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 12, 2022); Plaintiff Brian Beal's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories No. 2 (signed & dated Dec. 28, 2022)).

Admitted.

24. Plaintiffs Judith Delogu and Sheila Jones have never been to Moody Beach, and have never been or attempted to engage in any movement-based activity on OA 2012 intertidal land. Washburn Aff., Exhibit G (J. Delogu Depo. 13, 18, 21, 30) & Exhibit 1 (Jones Depo. at 32, 43).

Admitted.

25. Plaintiff William Griffiths has been to Moody Beach twice, and has never been or attempted to engage any movement-based activity on OA 2012 intertidal land. Washburn Aff., Exhibit F (Griffith's Depo. 10, 59, 66-67) & Exhibit K (Plaintiff William Griffiths' Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories No. 2 (signed & dated Dec. 21, 2022)).

Admitted.

26. Plaintiff Orlando Delogu has been to Moody Beach, but is not aware of the location of OA

2012's Property, and in any event has never been prevented from engaging in any movement-based activity over the entire beach, which necessarily involves the OA 2012 Property. Washburn Aff., Exhibit H (O. Delogu Depo. at 140-142, 148).

Admitted.

27. Plaintiffs Peter and Kathy Masucci are back lot owners and access the beach at the opposite end of Moody Beach from where OA 2012's property is located. Washburn Aff., Exhibit B (K. Masucci Depo. at 97-101) & Exhibit E (Peter II Depo. at 16-18). While they believe they have walked over OA 2012's property, they have never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's Property. *Id.*

Qualified. The AG admits that the Masuccis have walked over OA 2012's property. The AG admits that OA 2012 has not physically restricted the Masuccis from engaging in movement-based activity on OA 2012's intertidal property. But, to Peter Masucci and Kathy Masucci, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Ms. Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Mr. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Mr. Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

28. Back lot owner Plaintiff William Connerney believes he has walked across the OA 2012's property, but he has never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's property. Washburn Aff., Exhibit C (Connerney Depo. at 69, 72-73, 97-98, 103).

Qualified. The AG admits that Mr. Connerney has walked over OA 2012's property. The AG admits that OA 2012 has not physically restricted Mr. Connerney from engaging in movement-based activity on OA 2012's intertidal property. But, to Bill Connerney, OA 2012's signs convey restrictions or limitations on his use of the OA 2012 intertidal property. In particular:

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) OA 2012 has not told him that he has the right or permission to walk on OA 2012's intertidal land. (OA 2012 Dep. 72:12-15, 72:24-73:3; Connerney Dep. 118:19-22.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

29. Plaintiffs Griffiths and Jones do not know whether any of their customers had ever been on OA 2012's property or seen any signs located thereon, and could not identify an occasion when any of their customers advised them they would not return to their hotel due to any signs on OA 2012's property. Washburn Aff., Exhibit F (Griffiths Depo. at 25, 29-30, 35- 36) & Exhibit I (Jones Depo. at 22-23, 38).

Admitted.

30. In the *Bell Action* an Order for Alternative Service was published in the local York County newspaper that said in part "...it is hereby Ordered that any defendant or his attorney who wishes to oppose this lawsuit must prepare and file a written answer to the complaint on or by May 7, 1984.". Kinney Aff. ¶ 4 and Exhibit B-4 (at entries numbered 4, 6 19).

Admitted.

31. As of 1984, Plaintiffs Peter and Kathy Masucci and William Connerney were of legal age and spent time at Moody Beach. Washburn Aff., Exhibit B (K. Masucci Depo. at 65), Exhibit C (Connerney Depo. at 53) & Exhibit D (Peter I Depo. at 12, 18-19).

Admitted.

32. A final judgment was issued in the *Bell Action*. Kinney Aff. ¶ 4 and Exhibits B-7 and B-8 (docket entries at 9/15/87 Brodrick, J. decision/judgment, 09/30/87 Brodrick, J. amendment of findings of fact, & 10/01/87 declaration of "judgment be entered for the plaintiff, Kevin J. Howe", Apx. at pp. 29-30, 32) *infra*; *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

Qualified. Several judgments were issued in YOR-CV-84-125 involving different individuals. The AG admits that OA 2012's predecessor, Kevin J. Howe, obtained a judgment in 1987 in YOR-CV-84-125, which judgment the Law Court affirmed, stating that title was "subject only to" the public trust doctrine. Kinney Aff. Exhibit B (Final Judgment and Declaration of Title dated Sep. 30, 1987, at 1); *see also id.* (docket entry for Oct. 1, 1987 (identified in handwriting as "274")(same)). The AG admits that OA 2012's property remains subject to Maine's common law public trust doctrine.

33. Plaintiffs have not joined in this action all of the prevailing plaintiffs in *Bell Action* or their successors in interests. Kinney Aff. ¶ 4 and Exhibit B-1 (at docket entries 265 through 293, Apx. at pp. 30-34) *infra*.

Admitted.

34. The Appendix filed by the parties in the Law Court in the *Bell Action*, Law Court Docket No. YOR-87-430 contained over 1600 pages, including, as follows:

- a. Exhibit B-1: Superior Court Docket Entries (Sheets 1 through 18), Appendix (“Apx.”) at pp. 01-36;
- b. Exhibit B-2: Pleadings: Complaint and its Exhibit A (Mar. 7, 1984) and First Amendment to Complaint (Aug. 9, 1985); Apx. at pp. 37-58 & 78-85;
- c. Exhibit B-3: Defendant State of Maine Bureau of Lands’ Answer (Apr. 11, 1984), State Defendants’ Answer to Amendments to Plaintiffs’ Complaint (July 1, 1986), Apx. At pp. 59-67 & 86-88;
- d. Exhibit B-4: Superior Court Docket Entries evidencing filing and entry of Plaintiffs’ Motion for Alternative Service and Order, Apx. at 01-02;
- e. Exhibit B-5: Superior Court Docket Entries reflecting filing and entry of State’s Motion for Appointment of Guardian Ad Litem (Nov. 2, 1984) and Order (Mar. 1, 1985), Apx. 04 & 06;
- f. Exhibit B-6: Excerpts of trial transcript regarding signage of Moody Beach (Edward Haseltine, Richard Kenary, Betty Stirling, & William Case);
- g. Exhibit B-7: Superior Court decision (Sept. 14, 1987)(Brodrick, J.) and Amendment of Findings of Fact (Sept. 30, 1987)(Brodrick, J.); and
- h. Exhibit B-8: Superior Court Docket Entries evidencing entry of Final Judgment (Sept. 14, 1987)(Brodrick, J.) and (29) Finding Judgments and Declaration of Title (Oct. 1, 1987).

True copies of the above-identified excerpts of the Appendix are attached to the Affidavit of Rebecca Kinney. See Kinney Aff. ¶ 4 and Exhibits B-1, B-2, B-3, B-4, B-5, B-6, B-7 & B-8, respectively.

Admitted.

35. The signs posted to the seawall on the upland portion of OA 2012 Trust’s property (signs say “MOODY BEACH IS A PRIVATE BEACH, NO LOITERING”) have been in place since 1978. J. Howe Depo. (Feb. 8, 2023) 69:21-25; 70:1-5 (See Ex. 1 attached hereto); Affidavit of James Howe, dated June 2, 2023, ¶ 7. (See Ex. 2 attached hereto).

Admitted.

36. OA 2012 understands the word “loitering” in the signs on its property that say “no loitering” to mean “me stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4. (See Ex. 1 attached hereto).

Admitted.

37. Since the signs on its property only say no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* At 42:20-22, 42:23-25, 43:1-3, 43:6-13, 43:14-15, 43:16-25, 44:1-4, 44:4-11, 44:23-25, 45:1-3, 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶ 30, 31, 32, 33, 35, 37, 38).

Admitted.

38. OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Affidavit of James Howe, dated June 2, 2023, ¶ 13. (See Ex. 2 attached hereto).

Objection. First, as to everyone’s understanding of the presumption of permission, the fact is unsupported by the record citation as to everyone other than OA 2012. Second, even as to OA 2012, the fact is unsupported because it states a legal conclusion—whether a presumption of permission applies to the public trust doctrine—and is supported by an affidavit. *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 8 n.6, 770 A.2d 653 (“Conclusions of fact and law do not belong in an affidavit filed in support of a motion for summary judgment.”) (quotation marks omitted). Third, OA 2012’s legal conclusion is incorrect: “[T]he presumption of permission . . . does not apply to or trump the separate analysis of the extent of the public’s rights in the intertidal zone pursuant to the public trust doctrine.” *Almeder v. Town of Kennebunkport*, 106 A.3d 1115, 1119 n.2 (Me. 2014) (Law Court order on motions for reconsideration). Subject to this objection:

Qualified. Admitted as to OA 2012’s understanding. No presumption of permission applies to the public trust doctrine, *Almeder*, 106 A.3d at 1119 n.2, however, and OA 2012 has never in spoken words told the Masuccis or Connerney that they have permission to cross the OA 2012 Intertidal Land. (Connerney Dep. 118:19-22, OA 2012 Dep. 72:16-19, 72:24-73:3; K. Masucci Dep. 115:21-24; P. Masucci Dep. II 49:16-20.)

39. Thousands of individuals each summer walk by the signs at OA 2012’s property that says

Moody Beach is a private beach no loitering and no one has ever expressed to OA 2012 such indication that the signs in any cause fear or confusion as to whether they restrict or preclude in any way anyone from engaging in any movement-based activity over OA 2012's intertidal property. Affidavit of James Howe, dated June 2, 2023 ¶ 12. (See Ex. 2 attached hereto);

Admitted.

40. OA 2012 has never approached any member of the public to ask them not to be on the intertidal portion of OA 2012's property. J. Howe Depo (Feb., 8, 2023) 45:19-24. (See Ex. 1 attached hereto);

Admitted.

41. Signs at Moody Beach have never prevented Kathy Masucci from walking across OA 2012's intertidal property. K. Masucci's Depo. (Jan. 13, 2023), 76, 78, 102. (See Ex. 3 attached hereto);

Qualified. The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.) For Ms. Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.) Ms. Masucci's concern that OA 2012 may ask her to leave the OA 2012 Intertidal Land negatively impacts her experience of walking Moody Beach. (K. Masucci Dep. 115:25-116:9.)

42. Signs at Moody Beach have never prevented Peter Masucci from engaging in any movement-based activity at Moody Beach, including on or over OA 2012's intertidal property. P. Masucci Depo. (Jan. 11, 2023) 57-58. (See Ex. 4 attached hereto);

Qualified. The AG admits that while walking, Peter Masucci is less concerned with being asked to leave the OA 2012 intertidal zone. (P. Masucci Dep. II 50:2-9.) However, Mr. Masucci stated that OA 2012's sign negatively detracts from his beach experience. (P. Masucci Dep. II 50:10-12.) Mr. Masucci confirmed that he has only been on the OA 2012 property "while walking." (P. Masucci Dep. II 33:6-11.)

43. No one has ever stopped Bill Connerney from engaging in any activity he would like to do in the intertidal area of Moody Beach, inclusive of OA 2012's intertidal property. W. Connerney Depo (Jan. 11, 2023) 97:17-25. (See Ex. 5 attached hereto).

Qualified. The AG admits that no one has ever physically stopped Bill Connerney from engaging in an activity in the intertidal area of Moody Beach. However, the possibility of confrontation with landowners such as OA 2012 detracts from what would otherwise be a relaxing walk on the beach for Mr. Connerney. (Connerney Dep. 117:15-118:6.) While Mr. Connerney may "choose not to pay attention" to the signs, he testified his "whole attitude

regarding the beach has changed because of the signs. I'm aware then as soon as I enter the beach that I'm restricted... the fact that I have to even think about it is unsettling." (Conerney Dep. 78:20-79:1.)

44. No customer at the Crow's Nest Resort has ever informed the resort that they would not be returning to the resort because of signs at Moody Beach and Crow's Nest Resort does not have any data or information showing that the signs at Moody Beach in any way affected its business. W. Griffiths Depo. (Jan. 13, 2023) 36:7-23. (See Ex. 6 attached hereto).

Admitted.

THE AG'S OBJECTIONS TO OA 2012 TRUST'S QUALIFICATIONS AND DENIALS OF THE AG'S STATEMENTS OF MATERIAL FACT

OA 2012 Trust (OA 2012) qualifies most of the AG's statements of material fact. Because many of OA 2012's qualifications are repeated throughout its opposing statement of material facts, the AG categorically addresses OA 2012's qualifications. The AG then individually objects to OA 2012's denials.

THE AG'S OBJECTIONS TO OA 2012'S QUALIFICATIONS

A. OA 2012's qualifications through incorporation of other Defendants' responses: AG S.M.F ¶¶ 21-37, 40, 47, 48, 51-62, 75-82, 84-92, 99-115, 120.

Objection: OA 2012 supports its qualifications of these AG statements of material fact through incorporation by reference to other Defendants' responses, and not by a specific citation to the record. Because OA 2012's qualifications therefore do not comply with M.R. Civ. P. 56(h)(2) and (4), OA 2012 has not properly controverted these statements of fact. M.R. Civ. P. 56(h)(2), (4).

B. OA 2012's qualification of facts related to the impact Defendants' signs and other physical barriers have on the Masuccis and Connerney: AG S.M.F ¶¶ 49, 64, 70-72, 74, 94-95, 119, 121-22.

Objection: OA 2012 qualifies these AG statements of material fact by admitting the Masuccis' and Connerney's perceptions, reactions, concerns, and feelings and by denying the reasonableness of same (reasonableness denials). Because OA 2012's reasonableness denials are not supported by its record citations, OA 2012 has not properly controverted these statements of fact. M.R. Civ. P. 56(h)(2), (4).

C. OA 2012's qualification of facts based on a presumption of permission: AG S.M.F. ¶¶ 19, 20, 49, 64-67, 70-74, 94-97, 117-19, 121-22.

Objection: OA 2012 qualifies these AG statements of material fact in large part based on its (incorrect) understanding that a presumption of permission applies to the public's use of the OA 2012 Intertidal Land (presumption of permission qualifications). OA 2012 improperly supports its presumption of permission qualifications by citation to an affidavit. *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 8 n.6, 770 A.2d 653 ("Conclusions of fact and law do not belong in an affidavit filed in support of a motion for summary judgment.") (quotation marks omitted). Moreover, "the presumption of permission . . . does not apply to or trump the separate analysis of the extent of the public's rights in the intertidal zone pursuant to the public trust doctrine." *Almeder v. Town of Kennebunkport*, 106 A.3d 1115, 1119 n.2 (Me. 2014) (Law Court order on motions for reconsideration).

THE AG'S OBJECTIONS TO OA 2012'S DENIALS

17. There are four locations on land from which the public may access on foot the intertidal land at Moody Beach (the Public Access Points). (P. Masucci Dep. 13:9-19, 20:18-22, 27:11-22, 109:4-10, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:18, Ex. KM-5.)

OA 2012's response: Denied. There are three public access ways and the "southern one is an access point to get to Ogunguit Beach." (K. Masucci Dep. 120:21-121:18; P. Masucci Dep. 27:14-18, II 39:24-40:5.)

AG's Objection: OA 2012's denial does not properly controvert the AG's S.M.F ¶ 17. M.R. Civ. P. 56(h)(2), (4). The portion of the record to which OA 2012 cites for its denial does not establish that the public cannot access Moody Beach from the southern access point.

50. Because of the signs on Defendants' properties, such as those on Ocean 503's Property, Peter Masucci does not stop on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Intertidal Land. (P. Masucci Dep. 57:15-22, II 49:22-50:9.)

OA 2012's response: Denied. The record citation P. Masucci Dep. 57:15-22 relates to Ocean 503's property. When asked if Mr. Masucci was "ever concerned that OA 2012 Trust may ask you to leave the intertidal zone in front of that property," Mr. Masucci testified "at this far end of the beach we're usually just walking to and from our end. So I wouldn't expect that to be the case because we wouldn't stop there." (P. Masucci Dep. II 50:2-9.) Relative to the signs on OA 2012's upland property, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the signs on and over OA 2012's intertidal property including "walking and running," "stopping and stretching," "walking slowly, just sort of meandering," "surfing," "fishing," "building sandcastles," and "playing frisbee." *Id.* At 42:20-22, 42:23-25, 43:1-3, 43:6-13, 43:14-15, 43:16-25, 44:1-4, 44:4-11, 44:23-25, 45:1-3, 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of

permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions stated are no loitering and dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that OA 2012 has given legal permission to the public that it can engage in these activities. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023 ¶¶s 12, 13)..

AG's Objection: OA 2012's denial does not properly controvert the AG's S.M.F. ¶ 50. M.R. Civ. P. 56(h)(2), (4). OA 2012's denial mischaracterizes Peter Masucci's testimony and is unsupported by its record citation. The AG's S.M.F. ¶ 50 pertains to Mr. Masucci's understanding of Defendants' signs, not to OA 2012's understanding of its own signs. OA 2012's denial also improperly cites to an affidavit for the proposition that a presumption of permission applies to the public trust doctrine. *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 8 n.6, 770 A.2d 653 ("Conclusions of fact and law do not belong in an affidavit filed in support of a motion for summary judgment."). Moreover, "the presumption of permission . . . does not apply to or trump the separate analysis of the extent of the public's rights in the intertidal zone pursuant to the public trust doctrine." *Almeder v. Town of Kennebunkport*, 106 A.3d 1115, 1119 n.2 (Me. 2014) (Law Court order on motions for reconsideration).

65. OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11, II 50:6-12, Ex. PM-8.)

OA 2012's response: Denied. When asked if Mr. Masucci was "ever concerned that OA 2012 Trust may ask you to leave the intertidal zone in front of that property," Mr. Masucci testified "at this far end of the beach we're usually just walking to and from our end. So I wouldn't expect that to be the case because we wouldn't stop there." (P. Masucci Dep. II 50:2-9.) OA 2012 denies that its signage can reasonably be read in a way that negatively detracts from the beach experience of walking over OA 2012's intertidal land. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). Relative to the sign facing the path that runs from the Town of Ogunquit parking lot to the Ogunquit Town Beach, OA 2012 understands "loitering" to mean to be "stationary for more than 30 minutes," "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiff's Statement of Material Fact ¶¶ 29, 34). Since the sign says only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running," "stopping and stretching," "walking slowly, just sort of meandering," "surfing," "fishing," "building sandcastles," and "playing frisbee." *Id.* At 42:20-22, 42:23-25, 43:1-3, 43:6-13, 43:14-15, 43:16-25, 44:1-4, 44:4-11, 44:23-25, 45:1-3, 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone

crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions stated are no loitering and dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023 ¶¶s 12, 13).

AG's Objection: OA 2012's denial does not properly controvert the AG's S.M.F. ¶ 65. M.R. Civ. P. 56(2), (4). The AG's S.M.F. ¶ 65 pertains to Mr. Masucci's understanding of OA 2012's sign, not to OA 2012's understanding of its own sign. OA 2012's denial mischaracterizes Mr. Masucci's testimony and is unsupported by its record citation. At the portion of the record cited by both the AG and OA 2012, Mr. Masucci testified that, as to walking, he is less affected by OA 2012's signs than he is as to other non-walking uses of the OA 2012 Intertidal Land such as stopping. In addition, at the portion of the record cited by the AG, Mr. Masucci testified that the sign does negatively detract from his beach experience when he sees it. (P. Masucci Dep. II 50:10-12.) OA 2012 also bases its denial of the AG's S.M.F. ¶ 65 on its (incorrect) understanding that a presumption of permission applies to the public's use of the OA 2012 Intertidal Land. OA 2012 improperly supports its presumption of permission denial by citation to an affidavit. *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 8 n.6, 770 A.2d 653 ("Conclusions of fact and law do not belong in an affidavit filed in support of a motion for summary judgment.") (quotation marks omitted). Moreover, "the presumption of permission . . . does not apply to or trump the separate analysis of the extent of the public's rights in the intertidal zone pursuant to the public trust doctrine." *Almeder v. Town of Kennebunkport*, 106 A.3d 1115, 1119 n.2 (Me. 2014) (Law Court order on motions for reconsideration).

123. Kathy Masucci thinks that walking and running and moving could be considered navigation. (K. Masucci Dep. 76:4-8.)

OA 2012's response: Denied. See *Bell v. Town of Wells, supra*.

AG's Objection: OA 2012's denial does not properly controvert the AG's S.M.F. ¶ 123 because it is not supported by a specific citation to the record. M.R. Civ. P. 56(h)(2), (4).

124. Bill Connerney thinks that walking could be considered navigation. (Connerney Dep. 65:16-66:20, 114:11-25, 115:13-116:6.)

OA 2012's response: Denied. See *Bell v. Town of Wells, supra*.

AG's Objection: OA 2012's denial does not properly controvert the AG's S.M.F. ¶ 124

because it is not supported by a specific citation to the record. M.R. Civ. P. 56(h)(2), (4).

**THE AG'S RULE 56(i)(2) RESPONSE TO OA 2012'S OBJECTIONS TO
THE AG'S STATEMENTS OF MATERIAL FACT**

OA 2012 generally objects to the AG's statements of material fact. (OA 2012 Opp. S.M.F. 1-2.) Such general objections are inconsistent with M.R. Civ. P. 56(i)(1) because they are not tailored to specific factual assertions. As such, this Court should disregard OA 2012's general objections.

Otherwise, OA 2012's objections fall into one of four categories, which the AG addresses accordingly:

A. OA 2012's M.R. Evid. 401 relevance objections to facts about the Masuccis' and Connerney's use of and access to Moody Beach: AG S.M.F. ¶¶ 8-18, 39-40, 42-45, 47, 49-50, 107, 123-124.

AG's response: OA 2012's relevancy objections are unpreserved because they "belong in the party's memorandum of law, not its statement of material facts." *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15 n.5, 951 A.2d 821. Further, these AG statements of fact are relevant to OA 2012 because the facts address Moody Beach in its entirety—including the Masuccis' and Connerney's use of and access to Moody Beach—and the OA 2012 Intertidal Land is part of Moody Beach.

B. OA 2012's M.R. Evid. 401 relevance objections to facts that are not specific to OA 2012: AG S.M.F. ¶¶ 22-33, 39-45, 47, 49-62, 68, 70, 75-76, 78-79, 81-92, 98-115, 125-128.

AG's response: OA 2012's relevancy objections are unpreserved because they "belong in the party's memorandum of law, not its statement of material facts." *Dyer*, 2008 ME 106, ¶ 15 n.5, 951 A.2d 821. Further, these AG statements of fact are relevant to OA 2012: Although Moody Beach consists of many parcels of land, including the OA 2012 Intertidal Land, the Masuccis and Connerney experience Moody Beach as a whole. (AG S.M.F. ¶¶ 8-16, 39-47.) In addition to the impact that each defendant's signs or other physical barriers have on the Masuccis and Connerney, those signs and other physical barriers—especially because they are located at Public Access Points—also have a cumulative effect. (*E.g.*, AG S.M.F. ¶¶ 48-50, 71-74, 119-122.)

C. OA 2012's M.R. Evid. 801 and 802 objections to alleged hearsay statements: AG S.M.F. ¶¶ 53, 77, 79-80, 83-85, 87, 108.

AG response: OA 2012 objects to these AG statements of material fact because it assumes that the AG is offering these facts for the truth of the matter. To the contrary, the AG offers these facts to establish their effect on the hearer—the Masuccis and Connerney. See M.R. Evid. 801(c) (defining hearsay). What the Masuccis and Connerney see (photographs) and hear about defendants from neighbors impacts the Masuccis' and Connerney's impression of defendants and their calculus of the risks of walking across defendants' intertidal land (*e.g.*, will Ocean 503 verbally confront me or call the police on me?). (*E.g.*, AG S.M.F. ¶¶ 53-55, 79-80.) Further, these facts speak to Ocean 503's and Judy's Moody's reputation within the local community, and thus would be admissible even if offered for the truth of the matter. See M.R. Evid. 803(20), (21).

D. OA 2012's objections based on *Town of Orient v. Dwyer*: AG S.M.F. ¶¶ 8-9, 49-50, 52, 58-60, 64-65, 70-73, 76-78, 84, 87-88, 90, 94-95, 99-103, 106, 109, 111-113, 120, 122-129.

AG Response: *Town of Orient v. Dwyer*, 490 A.2d 660, 665 (Me. 1985) stands for the proposition that “[c]onclusions of fact and law do not properly belong in an affidavit.” Indeed, the AG did not rely on an affidavit to support any of the facts to which OA 2012 objected based on *Dwyer*. Instead, the AG supported these facts by citations to deposition testimony.

Dated: June 23, 2023

Respectfully submitted,

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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

| | | |
|---|---|----------------------------------|
| PETER MASUCCI, ET AL., |) | |
| |) | |
| PLAINTIFFS, |) | DEFENDANT OA 2012 TRUST'S RULE |
| |) | 56(i)(2) REPLY |
| v. |) | TO THE ATTORNEY GENERAL'S |
| |) | OPPOSING STATEMENT |
| JUDY'S MOODY LLC, ET AL., |) | TO OA 2012 TRUST'S RULE 56(h)(2) |
| |) | ADDITIONAL |
| DEFENDANTS, |) | STATEMENT OF MATERIAL FACTS |
| |) | |
| and |) | |
| |) | |
| AARON FREY, in his capacity as Attorney |) | (Title to Real Estate Involved) |
| General of the State of Maine, |) | |
| |) | |
| PARTY IN INTEREST |) | |

Defendant OA 2012 Trust ("OA 2012 ") respectfully submits this reply, pursuant to Rule 56(i)(2) of the Maine Rules of Civil Procedure, to the Attorney General's ("AG") Objections and Qualifications (June 23, 2023) to OA 2012's Rule 56(h)(2) Additional Statements of Material Facts (June 2, 2023). The following are intended solely for the purpose of opposing the Attorney General's summary judgment and for no other purpose and shall have no preclusive effect at trial or in any other proceeding.

ASMF 10: The purpose of the signage is to identify for those using the beach the demarcation between the Ogunquit Town beach and OA 2012's property in Wells at Moody Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-49, 51-52, 55-56, 60 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

AG'S RESPONSE TO ASMF 10:

Objection: As to the Masuccis, Connerney, and other members of the public, this fact is

unsupported by the record citations. Subject to this objection:

Qualified. The AG admits OA 2012's purpose of posting the sign, but denies that the Masuccis and Connerney have the same understanding of the sign as OA 2012:

To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21- 126:6, Ex. KM-6, KM-7.) The signs and physical markers on Defendants' properties indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012'S REPLY TO AG'S RESPONSE TO ASMF 10:

The AG's objection and qualification do not controvert ASMF 10. The statement is supported by the record citation. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-49, 51-52, 55-56, 60 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

The record citations as to Mrs. Masucci do not support the qualification. Mrs. Masucci testified "*It's not a prevention. It's a feeling ... and I know you don't like the word trespassing and **I know it's not on the sign** – but it is a feeling that you are trespassing every time you go onto that beach.*" (K. Masucci Dep. 37:22-38:4 (emphasis added).) OA 2012's signs do not state "trespassing." *Id.*; AG admission to OA 2012's ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012's ASMF 7, 8, 35 (June 23, 2023); (K. Masucci Dep. 125:21- 126:6 ("Right now what it means, private beach..."), Ex. KM-6, KM-7.) The only class of beings asked not to cross the property are dogs.

The record citations (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8) do not support the statement "[T]he signs and physical markers on Defendants' properties indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law." The record citation "P. Masucci Dep. 23:3-17" is Mr. Masucci's testimony as to the property of Ocean 503 LLC and not to OA 2012. Exhibit PM-6 depicts the property of Ocean 503 LLC and not OA 2012. *See* P. Masucci Vol. II, 44:8-45:22 (identifying Exhibit 6)¹. Mr. Masucci identified Exhibit PM-8 as a sign on the property OA 2012 and that he "feel[s] when he see[s] that sign? A. It's discouraging to me having been at the beach for over 50 years, discouraging but kind of makes me angry." *See* Addendum 1 (P. Masucci Dep. II, 48:6-49:24).

Bill Connerney testified that "What I know is the police don't prosecute if you walk through the Property." (Connerney Dep. 117:4-5.) As a member of the public, Mr. Connerney understands, referring to being asked to leave, "if you walk through the ... property

¹ True copies of excerpts of the deposition of Peter Masucci (Vol. II, Jan. 13, 2023) are attached hereto as Addendum 1.

...” the Defendants as “the owner, ... choose at any moment to enforce it” to ask someone who is walking across their intertidal land to leave or move along. (Connerney Dep. 116:24-117:14.) And “[i]f they’re not going to enforce it, it doesn’t bother me. If they’re going to enforce it, that would bother me.” (Connerney Dep. 117:10-13.)

ASMF 11: Beach goers including those few Plaintiffs who have actually been on or over OA 2012's intertidal property do not read the sign as restricting or limiting in any way any movement-based activity, whether recreational, navigation or ocean based related. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103).

AG’S RESPONSE TO ASMF 11:

Objection. As to the Masuccis and other beach goers, this fact is unsupported by the record citations. Subject to this objection:

Qualified. The AG admits that it is OA 2012's perception that beach goers do not regard the OA 2012 signs as restricting them from using the OA 2012 Intertidal Land for movement-based activity. As to the Masuccis and Connerney, however, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 Intertidal Land:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Ms. Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Ms. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Mr. Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with

Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012'S REPLY TO AG'S RESPONSE TO ASMF 11:

The AG's denial as to "other beach goers" has no basis as the statement is supported by the record. See Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64); Kinney Aff. ¶¶ 3, 4 and Exhibit B-6. The AG did not controvert as to Connerney.

The AG's qualification does not controvert ASMF 11.

OA 2012's reply to the AG's "[i]n particular:" The sign "on OA 2012's seawall that faces the Ogunquit Parking Lot" and that Ms. Masucci sees, has never not stopped her from walking up and down the beach. See AG's citation to K. Masucci Dep. 102 at lines 23-25 ("has that sign ever --- ever stopped you from walking up and down the beach? A. No."), 114:9-25, Ex. KM-7.

The AG responds that the signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. The AG's citations in support of this response to K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4; 44:15-17; 46:4-7; Ex. KM-6 are to Mrs. Masucci's testimony relating to the property of Ocean 503 LLC and not to the property of OA 2012. The AG's citation to Exhibit KM-7 is to a picture OA 2012's sign stating: "MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWS *Thank You*". See AG admission to OA 2012's ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

The AG responds that the signs on Defendants' properties intimidate Ms. Masucci and in support of its statement cites to K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7. Ms. Masucci still walks the entirety of Moody Beach. (K. Masucci Dep. 126:25-127:2.)

The AG responds that as to Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move and cites to K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7. Again, the AG's records citations in support of this response to K. Masucci Dep. 37:22-38:4; Ex. KM-6 are to Mrs. Masucci's testimony relating to the property of Ocean 503 LLC and not to the property of OA 2012. The AG's record citation to K. Masucci Dep. 125:21-125:6 is to Ms. Masucci's testimony to her feeling that she is "trespassing on their property." However, Ms. Masucci testified "*It's not a prevention. It's a feeling ... and I know you don't like the word trespassing and I know it's not on the sign* – but it is a feeling that you are trespassing every time you go onto that beach." (K. Masucci Dep. 37:22-38:4 (emphasis added).) OA 2012's signs do not state "trespassing." *Id.*; AG admission to OA 2012's ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012's ASMF 7, 8, 35 (June 23, 2023); (K. Masucci Dep. 125:21- 126:6 ("Right now what it means, private beach...."), Ex. KM-6, KM-7.) The only class of beings asked not to cross the property are dogs.

The AG responds that Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8- 24, 32:3-11, 33:15-17, Ex. PM-8.) The AG admits that Peter Masucci “has seen the signs on OA 2012's seawall.” (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.)

The AG responds that the “signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law.” (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) The AG’s record citations P. Masucci Dep. 23:3-17 and Ex. PM-6 do not support its qualification. The property is to that of Ocean 503 LLC and not to the property of OA 2012. Mr. Masucci testified that he didn’t “recall those words [trespassing, no trespassing] on a sign” at Moody Beach. *See* Addendum 1 (P. Masucci Dep. II, 29:13-17).

The AG responds that “because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)” The AG’s record citation does not support the statement. Mr. Masucci testified that he “wouldn’t expect that to be the case because we wouldn’t stop there” because “at this far end of the beach we’re usually just walking to and from our end.” *See* P. Masucci Dep. II 50:6-9. Mr. Masucci testified no one has ever asked him to not walk up and down the intertidal zone of the entire length of the beach, including OA 2012’s property. *See* Addendum 1 (P. Masucci Dep. II, 16:24-17:15).

The AG cites to Exhibit PM-8 in support of its qualification. Mr. Masucci identified Exhibit PM-8 as a sign on the property OA 2012 and that he “feel[s] when he see[s] that sign? A. It’s discouraging to me having been at the beach for over 50 years, discouraging but kind of makes me angry.” *See* Addendum 1 (P. Masucci Dep. II, 48:6-49:24).

The AG responded that Bill Connerney has seen the signs on the seawall at OA 2012's property and provided record citations to Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7; and that Bill Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24). Bill Connerney testified that “What I know is the police don’t prosecute if you walk through the Property.” (Connerney Dep. 117:4-5.) As a member of the public, Mr. Connerney understands, referring to being asked to leave, “if you walk through the ... property ...” the Defendants as “the owner, ... choose at any moment to enforce it” to ask someone who is walking across their intertidal land to leave or move along. (Connerney Dep. 116:24-117:14.) And “[i]f they’re not going to enforce it, it doesn’t bother me. If they’re going to enforce it, that would bother me.” (Connerney Dep. 117:10-13.) No one from OA 2012 has asked Mr. Connerney to leave the property of OA 2012. *See* Addendum 2 (Connerney Dep. 98:5-9.)

ASMF 12: As was the case when *Bell* was decided, hundreds of people every summer day engage in movement-based activity on or over OA 2012's intertidal property without restriction or interruption. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-

64); Kinney Aff. ¶¶ 3, 4 and Exhibit B-6.

AG’S RESPONSE TO ASMF 12:

Objection: This fact is unsupported by the citations. Subject to this objection:

Qualified. The AG admits that people engage in movement-based activity in the summer on or over OA 2012's intertidal property without physical interruption or physical restriction. But, to the Masuccis and Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property.

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Ms. Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (Peter Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Mr. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012’s REPLY TO AG’S RESPONSE TO ASMF 12:

The statement is supported by record citation. See Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64); Kinney Aff. ¶¶ 3, 4 and Exhibit B-6.

The AG’s qualification does not controvert ASMF 12. OA 2012 incorporates its reply to the AG’s Response to ASMF 11, above, in its entirety as if restated in full herein in reply to the AG’s Response to ASMF 12. The signs at OA Trust’s property do not say “No trespassing.” K. Masucci Dep. 37:22-38:4. AG admission to OA 2012’s ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012’s signs state: "Moody Beach, Private, No Loitering" and “Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012’s ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

ASMF 13: OA 2012's predecessor in title Kevin Howe was a plaintiff in the Bell v. Town of Wells, Maine Superior Court (York) CV-84-125, and Law Court Docket YOR-87-430, reported at Bell v. Town of Wells, 557 A.2d 168 (Me. 1989) (collectively both the Superior Court action on and Law Court decision in Bell are referred to herein as the "*Bell Action*") and obtained a judgment that is of record through that quiet title action that he owned the fee to the intertidal portion of his property (e.g., that it is private property) subject only to the public's rights to use his intertidal property for fishing, fowling and navigation, and that those rights did not include any recreational rights. Kinney Aff. ¶¶ 3, 4 and Exhibits A, B-1 (at 332), B-2, B-6, B-7 & B-8; Washburn Aff., Exhibit A (Howe Depo. at 26-27).

AG'S RESPONSE TO ASMF 13:

Objection: The characterization of the judgment in YOR-CV-84-125 is unsupported by the citation. That judgment speaks for itself, and OA 2012's intertidal property remains subject to Maine's common law public trust doctrine. Subject to this objection:

Qualified. The AG admits that OA 2012's predecessor, Kevin J. Howe, obtained a judgment in 1987 in YOR-CV-84-125 stating that title was "subject only to" the public trust doctrine, which judgment the Law Court affirmed. Kinney Aff. Exhibit B (Final Judgment and Declaration of Title dated Sep. 30, 1987, at 1); *see also id.* (docket entry for Oct. 1, 1987 (identified in handwriting as "274")(same)). The AG admits that OA 2012's property remains subject to Maine's common law public trust doctrine.

OA 2012'S REPLY TO AG'S RESPONSE TO ASMF 13:

The AG's does not controvert the statement.

ASMF 19: None of the Plaintiffs have had their access to OA 2012's intertidal land limited or restricted in any way for any movement-based activity, whether navigation related, recreational related and/or ocean base, let alone significantly restricted. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38 & 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18)

& Exhibit H (0. Delogu Depo. at 141-142).

AG'S RESPONSE TO ASMF 19:

Objection: This fact is unsupported as to Bill Connerney. This fact is also unsupported as to Kathy Masucci's and Peter Masucci's respective understandings of the term navigation, which they understand to include walking. (Connerney Dep. 65:16-66:3, 66:13-20, 114:13-16, 115:13; K. Masucci Dep. 76:4-8, P. Masucci Dep. 128:22-129:5). Subject to this objection:

Qualified. The AG admits that OA 2012 has not physically restricted Plaintiffs from accessing or engaging in movement-based activity on OA 2012's intertidal land. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Kathy Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.) For Ms. Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.) The sign on the seawall at OA 2012's property that faces the Ogunquit Parking Lot makes Ms. Masucci feel uncomfortable, sad, angry, and frustrated, and generates concern that the police may be called on her. (K. Masucci Dep. 103:1-7, 114:21-115:16, KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Mr. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Mr. Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.) When Mr. Masucci sees the sign on OA 2012's property that faces the Ogunquit Parking Lot he feels discouraged and angry. (P. Masucci Dep. II 49:21-24, Ex. PM-8.) OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11, 1150:6-12, Ex. PM-8.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) OA 2012 has not told him that he has the right or permission to walk on OA 2012's intertidal land. (OA 2012 Dep. 72:12- 15, 72:24-73:3; Connerney Dep. 118:19-22.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

Bill Connerney, Kathy Masucci, and Peter Masucci each understand the term navigation, with respect to intertidal usage, to include walking. (Connerney Dep. 65:16-66:3, 66:13- 20, 114:13-16, 115:13; K. Masucci Dep. 76:4-8; P. Masucci Dep. 128:22-129:5).

OA 2012'S REPLY TO AG'S RESPONSE TO ASMF 19:

The AG's qualification does not controvert ASMF 19. OA 2012 incorporates its reply to the AG's Response to ASMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to ASMF 19. The signs at OA Trust's property do not say "No trespassing." K. Masucci Dep. 37:22-38:4. AG admission to OA 2012's ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG admission to OA 2012's ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

ASMF 20: There are no facts suggesting that the "intertidal jurisdiction" has "restricted" any of the Plaintiffs from engaging in any movement-based activity on or over OA 2012's intertidal property. Washburn Aft, Exhibit B (K. Masucci Depo. at 37-38, 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

AG'S RESPONSE TO ASMF 20:

Qualified. The AG admits that OA 2012 has not physically restricted Plaintiffs from engaging in movement-based activity on OA 2012's intertidal property. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Ms. Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the

sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012'S REPLY TO AG'S RESPONSE TO ASMF 20:

The AG offered no facts that suggest "intertidal jurisprudence" has in any way prevented anyone, including Peter Masucci, Kathy Masucci, and Bill Connerney, from engaging in any movement-based activity on and over OA2012's intertidal land. The signs at OA Trust's property do not say "No trespassing." (K. Masucci Dep. 37:22-38:4.) See AG's admission to OA 2012 ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG's admission to OA 2012 ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

ASMF 22: OA 2012 has never objected to any movement-based activity over its intertidal property, however characterized as ocean based, navigation or recreation. Washburn Aff., Exhibit A (Howe Depo. at 39, 45, 71).

AG'S RESPONSE TO SMF 22:

Qualified. The AG admits that no individual on behalf of OA 2012 has verbally objected to any movement-based activity over OA 2012's intertidal property. But, to Peter Masucci, Kathy Masucci, and Bill Connerney, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Ms. Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each

Defendant's property indicate to Mr. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Peter Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012'S REPLY TO AG'S RESPONSE TO ASMF 22:

The AG's qualification does not controvert ASMF 22. OA 2012 incorporates its reply to the AG's Response to ASMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to ASMF 22. The signs at OA 2012's property do not say "No trespassing." K. Masucci Dep. 37:22-38:4. AG's admission to OA 2012's ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG's admission to OA 2012's ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

ASMF 27: Plaintiffs Peter and Kathy Masucci are back lot owners and access the beach at the opposite end of Moody Beach from where OA 2012's property is located. Washburn Aff., Exhibit B (K. Masucci Depo. at 97-101) & Exhibit E (Peter II Depo. at 16-18). While they believe they have walked over OA 2012's property, they have never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's Property. *Id.*

AG'S RESPONSE TO ASMF 27:

Qualified. The AG admits that the Masuccis have walked over OA 2012's property. The AG admits that OA 2012 has not physically restricted the Masuccis from engaging in movement-based activity on OA 2012's intertidal property. But, to Peter Masucci and Kathy Masucci, OA 2012's signs convey restrictions or limitations on their use of the OA 2012 intertidal property. In particular:

Kathy Masucci has seen the sign on OA 2012's seawall that faces the Ogunquit Parking Lot. (K. Masucci Dep. 102:1-22, 114:9-25, Ex. KM-7.) The signs and other physical markers on Defendants' properties suggest to Ms. Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) The signs on Defendants' properties intimidate Ms. Masucci. (K. Masucci Dep. 127:3-7, Ex. KM-6,

Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)

Peter Masucci is conscious of the signs on OA 2012's property. (P. Masucci Dep. 27:8-24, 32:3-11, 33:15-17, Ex. PM-8.) He has seen the signs on OA 2012's seawall. (P. Masucci Dep. 26:17-27:24, II 27:17-28:4, 48:13-49:5, Ex. PM-8.) The signs and physical markers on each Defendant's property indicate to Mr. Masucci that passage over their intertidal land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.) Because of the sign on OA 2012's property, Mr. Masucci does not stop on the OA 2012 Intertidal Land. (P. Masucci Dep. II 49:21-50:9.)

OA 2012'S REPLY TO AG'S RESPONSE TO ASMF 27:

The AG's qualification does not controvert ASMF 27. The AG's qualification is non-responsive to and does not properly controvert the statement. The statement does not concern signs or markers. OA 2012 incorporates its reply to the AG's Response to ASMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to ASMF 27. The signs at OA 2012's property do not say "No trespassing." K. Masucci Dep. 37:22-38:4. AG's admission to OA 2012's ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG's admission to OA 2012's ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

ASMF 28: Back lot owner Plaintiff William Connerney believes he has walked across the OA 2012's property, but he has never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's property. Washburn Aff., Exhibit C (Connerney Depo. at 69, 72-73, 97-98, 103).

AG'S RESPONSE TO ASMF 28:

Qualified. The AG admits that Mr. Connerney has walked over OA 2012's property. The AG admits that OA 2012 has not physically restricted Mr. Connerney from engaging in movement-based activity on OA 2012's intertidal property. But, to Bill Connerney, OA 2012's signs convey restrictions or limitations on his use of the OA 2012 intertidal property. In particular:

Bill Connerney has seen the signs on the seawall at OA 2012's property. (Connerney Dep. 100:11-101:3, 109:14-110:5, Ex. Connerney-7.) OA 2012 has not told him that he has the right or permission to walk on OA 2012's intertidal land. (OA 2012 Dep. 72:12-15, 72:24-73:3; Connerney Dep. 118:19-22.) Mr. Connerney understands that Defendants could choose at any moment to ask someone who is walking across their intertidal land to leave or move along, and he thinks about the possibility of a confrontation with Defendants when he is on

their intertidal land. (Connerney Dep. 116:24-117:14, 25:20-26:4, 117:15-24).

OA 2012’S REPLY TO AG’S RESPONSE TO ASMF 28:

The AG’s qualification does not controvert ASMF 28. The AG’s qualification is non-responsive to and does not properly controvert the statement. The statement does not concern signs or markers. OA 2012 incorporates its reply to the AG’s Response to ASMF 11, above, in its entirety as if restated in full herein in reply to the AG’s Response to ASMF 28. The signs at OA 2012’s property do not say “No trespassing.” K. Masucci Dep. 37:22-38:4. AG’s admission to OA 2012’s ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012’s signs state: "Moody Beach, Private, No Loitering" and “Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG’s admission to OA 2012’s ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

ASMF 32: A final judgment was issued in the Bell Action. Kinney Aff. ¶ 4 and Exhibits B-7 and B-8 (docket entries at 9/15/87 Brodrick, J. decision/judgment, 09/30/87 Brodrick, J. amendment of findings of fact, & 10/01/87 declaration of "judgment be entered for the plaintiff, Kevin J. Howe", Apx. at pp. 29-30, 32) *infra*; *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

AG’S RESPONSE TO ASMF 32:

Qualified. Several judgments were issued in YOR-CV-84-125 involving different individuals. The AG admits that OA 2012’s predecessor, Kevin J. Howe, obtained a judgment in 1987 in YOR-CV-84-125, which judgment the Law Court affirmed, stating that title was "subject only to" the public trust doctrine. Kinney Aff. Exhibit B (Final Judgment and Declaration of Title dated Sep. 30, 1987, at 1); *see also id.* (docket entry for Oct. 1, 1987 (identified in handwriting as "274")(same)). The AG admits that OA 2012’s property remains subject to Maine’s common law public trust doctrine.

OA 2012’S REPLY TO AG’S RESPONSE TO ASMF 32:

The AG’s qualification is non-responsive. The AG does not controvert that there was a final judgment entered in favor of Kevin J. Howe.

ASF 38: OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA

2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Affidavit of James Howe, dated June 2, 2023, ¶ 13. (See Ex. 2 attached hereto).

AG’S RESPONSE TO ASMF 38:

Objection. First, as to everyone's understanding of the presumption of permission, the fact is unsupported by the record citation as to everyone other than OA 2012. Second, even as to OA 2012, the fact is unsupported because it states a legal conclusion-whether a presumption of permission applies to the public trust doctrine-and is supported by an affidavit. *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 8 n.6, 770 A.2d 653 ("Conclusions of fact and law do not belong in an affidavit filed in support of a motion for summary judgment.") (quotation marks omitted). Third, OA 2012's legal conclusion is incorrect: "[T]he presumption of permission ... does not apply to or trump the separate analysis of the extent of the public's rights in the intertidal zone pursuant to the public trust doctrine." *Almeder v. Town of Kennebunkport*, 106 A.3d 1115, 1119 n.2 (Me. 2014) (Law Court order on motions for reconsideration). Subject to this objection:

Qualified. Admitted as to OA 2012's understanding. No presumption of permission applies to the public trust doctrine, *Almeder*, 106 A.3d at 1119 n.2, however, and OA 2012 has never in spoken words told the Masuccis or Connerney that they have permission to cross the OA 2012 Intertidal Land. (Connerney Dep. 118:19-22, OA 2012 Dep. 72:16-19, 72:24-73:3; K. Masucci Dep. 115:21-24; P. Masucci Dep. II 49:16-20.)

OA 2012’S REPLY TO AG’S RESPONSE TO ASMF 38:

The AG’s qualification does not controvert ASMF 38. Peter Masucci, Kathy Masucci, and Bill Connerney are members of the public whose interest the State represented in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989); AG’s admission to OA 2012’s ASMF 14, 16 (June 23, 2023). OA 2012 incorporates its reply to the AG’s Response to ASMF 11, above, it its entirety as if restated in full herein in reply to the AG’s Response to ASMF 38.

OA 2012 incorporates by this reference its General Objections to the State’s Statement of 129 Material Facts (June 23, 2023) as if set forth in full herein. Without waiving its General Objections, OA 2012 states as follows:

The signs at OA 2012’s property do not say “No trespassing.” (K. Masucci Dep. 37:22-38:4.) See AG’s admission to OA 2012 ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012’s signs state: "Moody Beach, Private, No Loitering" and “Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG’s admission to OA 2012 ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

OA 2012 understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions stated are no loitering and dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. *See* Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023 ¶¶ 12, 13),

The AG does not want to acknowledge that public recreational activities over OA 2012's intertidal land are not within the scope of activities permitted under the public easement, *see Bell II*, and that the Law Court has held that such recreational activities on open intertidal land are presumed to be occur with the permission of the upland owner. *See Almeder v. Town of Kennebunkport*, 2014 ME 139, 106 A.3d 1099. *See also Norton v. Town of Long Island*, 2005 ME 109, ¶ 33 n.6, 883 A.2d 889, noting that in *Bell II*, the court "clarified the limited nature of that public trust easement" and "reject[ed] a general recreational easement for the public."

Moreover for the reasons stated above, the AG misreads *Bell II* and *Almeder*. *See also Norton v. Town of Long Island*, 2005 ME 109, ¶ 33 n.6, 883 A.2d 889, noting that in *Bell II*, the court "clarified the limited nature of that public trust easement" and "reject[ed] a general recreational easement for the public."

ASMF 41: Signs at Moody Beach have never prevented Kathy Masucci from walking across OA 2012's intertidal property. K. Masucci's Depo. (Jan. 13, 2023), 76, 78, 102. (See Ex. 3 attached hereto).

AG'S RESPONSE TO ASMF 41:

Qualified. The signs and other physical markers on Defendants' properties suggest to Kathy Masucci that she should not be on their properties. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4,44:15-17; 46:4-7, Ex. KM-6, Ex. KM-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.) For Ms. Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.) Ms. Masucci's concern that OA 2012 may ask her to leave the OA 2012 Intertidal Land negatively impacts her experience of walking Moody Beach. (K. Masucci Dep. 115:25-116:9.)

OA 2012'S REPLY TO AG'S RESPONSE TO ASMF 41:

The AG's qualification does not controvert ASMF 41. Peter Masucci, Kathy Masucci,

and Bill Connerney are members of the public whose interest the State represented in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989); AG's admission to OA 2012's ASMF 14, 16 (June 23, 2023). OA 2012 incorporates its reply to the AG's Response to ASMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to ASMF 41.

OA 2012 incorporates by this reference its General Objections to the State's Statement of 129 Material Facts (June 23, 2023) as if set forth in full herein.

Without waiving its General Objections, OA 2012 states that the signs at OA Trust's property do not say "No trespassing." (K. Masucci Dep. 37:22-38:4.) See AG's admission to OA 2012 ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG's admission to OA 2012 ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

ASMF 42: Signs at Moody Beach have never prevented Peter Masucci from engaging in any movement-based activity at Moody Beach, including on or over OA 2012's intertidal property. P. Masucci Depo. (Jan. 11, 2023) 57-58. (See Ex. 4 attached hereto);

AG'S RESPONSE TO ASMF 42:

Qualified. The AG admits that while walking, Peter Masucci is less concerned with being asked to leave the OA 2012 intertidal zone. (P. Masucci Dep. II 50:2-9.) However, Mr. Masucci stated that OA 2012's sign negatively detracts from his beach experience. (P. Masucci Dep. II 50:10-12.) Mr. Masucci confirmed that he has only been on the OA 2012 property "while walking." (P. Masucci Dep. II 33:6-11.)

OA 2012'S REPLY TO AG'S RESPONSE TO ASMF 42:

The AG's qualification does not controvert ASMF 42. OA 2012 incorporates its reply to the AG's Response to ASMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to ASMF 42.

OA 2012 states that the signs at OA 2012's property do not say "No trespassing." (K. Masucci Dep. 37:22-38:4.) See AG's admission to OA 2012 ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG's admission to OA 2012 ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

ASMF 43: No one has ever stopped Bill Connerney from engaging in any activity he would like to do in the intertidal area of Moody Beach, inclusive of OA 2012's intertidal property. W. Connerney Depo (Jan. 11, 2023) 97:17-25. (See Ex. 5 attached hereto).

AG'S RESPONSE TO ASMF 43:

Qualified. The AG admits that no one has ever physically stopped Bill Connerney from engaging in an activity in the intertidal area of Moody Beach. However, the possibility of confrontation with landowners such as OA 2012 detracts from what would otherwise be a relaxing walk on the beach for Mr. Connerney. (Connerney Dep. 117:15-118:6.) While Mr. Connerney may "choose not to pay attention" to the signs, he testified his "whole attitude regarding the beach has changed because of the signs. I'm aware then as soon as I enter the beach that I'm restricted..., the fact that I have to even think about it is unsettling." (Conerney Dep. 78:20-79:1.)

OA 2012'S REPLY TO AG'S RESPONSE TO ASMF 43:

The AG's qualification does not controvert ASMF 43. OA 2012 incorporates its reply to the AG's Response to ASMF 11, above, in its entirety as if restated in full herein in reply to the AG's Response to ASMF 43.

Without waiving its General Objections, OA 2012 states: The signs at OA 2012's property do not say "No trespassing." (K. Masucci Dep. 37:22-38:4.) See AG's admission to OA 2012 ASMF 7, 8, 35, 36, 37 (June 23, 2023). OA 2012's signs state: "Moody Beach, Private, No Loitering" and "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." AG's admission to OA 2012 ASMF 7, 8, 35 (June 23, 2023). The only class of beings asked not to cross the property are dogs.

Dated: June 30, 2023

/s/ David P. Silk

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Attorney for the Defendant OA 2012 Trust

AG's Objection: OA 2012 supports its qualifications of these AG statements of material fact through incorporation by reference to other Defendants' responses, and not by a specific citation to the record. Because OA 2012's qualifications therefore do not comply with M.R. Civ. P. 56(h)(2) and (4), OA 2012 has not properly controverted these statements of fact. M.R. Civ. P. 56(h)(2), (4).

OA 2012's Response to AG's Objection:

The Attorney General submitted to this Court a Statement of Material Facts that is 129 separate facts long and runs 21 pages. AG's SMF (May 2, 2023). Instead of submitting a separate statement of material facts for each Defendant, the AG submitted one omnibus statement of material facts for all Defendants. Consequently, OA 2012 was forced to respond to the Attorney General's statements about *other* Defendants. Indeed, all of OA 2012's qualifications of the Attorney General's statements that the Attorney General has objected to² relate at least in part, if not wholly, to events on other Defendants' property. In fact, most of these facts relate *solely* to Defendants Judy's Moody, LLC and Ocean 503.³ In sum, these qualifications by incorporation include 62 separate statements that discuss Defendants Judy's Moody and Ocean 503, of which 49 discuss *only* Defendants Judy's Moody and Ocean 503 without reference to OA 2012. Thus, over a third of the AG's statement has nothing to do with OA 2102 and nearly half of this statement requires OA 2012 speculate as to the actions of Defendants Judy's Moody and Ocean 503.

The Attorney General's submission to OA 2012 of a statement of material facts that extraneously discusses other Defendants plainly violates Me. R. Civ. P. 56(h)'s requirement that a statement of material facts in support of a motion for summary judgment be "short" and "concise." An "unnecessarily long, repetitive, or otherwise convoluted," statement of material facts, "needlessly complicates the summary judgment process," *Stanley v. Hancock Cnty. Comm'rs*, 2004 ME 157, ¶¶ 28–29, 864 A.2d 169, and defeats the purpose of Rule 56(h), which is "designed to force litigants to narrowly frame their summary judgment contentions, enabling the court to decide a summary judgment motion without engaging in an exhaustive review of the record," *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 8, 742 A.2d 933.⁴ Where a party presents a statement of material facts that is excessively long and includes many irrelevant facts, a trial court may "disregard the statement and deny the motion for summary judgment solely on that basis." *Stanley*, 2004 ME 157, ¶ 29, 864 A.2d at 179; *see also First Tracks Investments, LLC v. Murray, Plumb & Murray*, 2015 ME 104, ¶ 2, 121 A.3d 1279.

It is unreasonable for the Attorney General to expect OA 2012 to reply to statements about *other* Defendants, that are not at all relevant to OA 2012, as it only needlessly serves to drive up costs. Like in *Stanley* and *First Tracks*, the Attorney General's lack of concision is grounds enough for this Court to grant OA 2012s' summary judgment, even if OA 2012 had

² OA 2012's qualifications of AG's SMF ¶¶ 19-33, 40, 46-62, 70-82, 84-92, 99-115, 119-122, 125-128. *See* OA 2012's Oppo. to AG's SMF ¶¶ 19-33, 40, 46-62, 70-82, 84-92, 99-115, 119-122, 125-128.

³ *See* AG's SMF ¶¶ 22-33, 42-43, 51-62, 75-82, 84-92, 98-106, 108-115, 125-129.

⁴ *Corey* here refers to Rule 7(d), which was the rule that originally stated the requirement for a statement of material facts. However, Rule 7(d) was renumbered in 1999 as Rule 56(h). *See* Me. R. Civ. P. 56, Advisory Committee's Notes (Jan. 1, 2001).

filed no opposition to the AG's SMF. Because these statements relate to *other* Defendants, they *cannot* be material to the Attorney General's and OA 2012's cross-motions for summary judgment. Moreover, even if these statements did relate to OA 2012, the Attorney General's claim is barred by res judicata and the statements are otherwise immaterial on their face, record citation or not; because the Attorney General seeks an expansion of the public trust easement to include recreational walking which *Bell v. Town of Wells*, 557 A.2d 168, 173-174 (Me. 1989) (*Bell II*), explicitly excludes. *See also Norton v. Town of Long Island*, 2005 ME 109, ¶ 33 n.6, 883 A.2d 889, noting that in *Bell II*, the court "clarified the limited nature of that public trust easement" and "reject[ed] a general recreational easement for the public." The Attorney General's statements are both legally and factually irrelevant.

B. OA 2012's qualification of facts related to the impact Defendants' signs and other physical barriers have on the Masuccis and Connerney: AG S.M.F. ¶¶ 49, 64, 70-72, 74, 94-95, 119, 121-22.

AG's Objection: OA 2012 qualifies these AG statements of material fact by admitting the Masuccis' and Connerney's perceptions, reactions, concerns, and feelings and by denying the reasonableness of same (reasonableness denials). Because OA 2012's reasonableness denials are not supported by its record citations, OA 2012 has not properly controverted these statements of fact. M.R. Civ. P. 56(h)(2), (4).

OA 2012's Response to AG's Objection:

The AG's statement never established in the first instance that Masuccis' and Connerney's perceptions, reactions, concerns, and feelings were anything more than subjective beliefs. As such the AG never laid a foundation for asserting that their views are reasonable. Moreover whether reasonable is a conclusion of law. *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 8 n.6, 770 A.2d 653 ("Conclusions of fact and law do not belong in an affidavit filed in support of a motion for summary judgment.") (quotation marks omitted). As the AG has admitted hundreds of individuals every summer day traverse the intertidal section of the beach without interruption. These actions show that the Masuccis' and Connerney's perceptions, reactions, concerns, and feelings are not reasonable and that the subjective beliefs are offered as a mere pretext.

C. OA 2012's qualification of facts based on a presumption of permission: AG S.M.F. ¶¶ 19, 20, 49, 64-67, 70-74, 94-97, 117-19, 121-22.

AG's Objection: OA 2012 qualifies these AG statements of material fact in large part based on its (incorrect) understanding that a presumption of permission applies to the public's use of the OA 2012 Intertidal Land (presumption of permission qualifications). OA 2012 improperly supports its presumption of permission qualifications by citation to an affidavit. *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, 118 n.6, 770 A.2d 653 ("Conclusions of fact and law do not belong in an affidavit filed in support of a motion for summary judgment.") (quotation marks omitted). Moreover, "the presumption of permission ... does not apply to or trump the separate analysis of the extent of the public's rights in the intertidal zone pursuant to the public trust doctrine." *Almeder v. Town of Kennebunkport*, 106 A.3d 1115, 1119 n.2 (Me. 2014) (Law Court order on motions for reconsideration).

OA 2012's Response to AG's Objection:

The AG does not want to acknowledge that public recreational activities over OA 2012's intertidal land are not within the scope of activities permitted under the public easement, *see Bell II*, and that the Law Court has held that such recreational activities on open intertidal land are presumed to be occur with the permission of the upland owner. *See Almeder v. Town of Kennebunkport*, 2014 ME 139, 106 A.3d 1099. *See also Norton v. Town of Long Island*, 2005 ME 109, ¶ 33 n.6, 883 A.2d 889, noting that in *Bell II*, the court "clarified the limited nature of that public trust easement" and "reject[ed] a general recreational easement for the public."

2. RESPONSE TO AG'S OBJECTIONS TO OA 2012 TRUST'S DENIALS

17. There are four locations on land from which the public may access on foot the intertidal land at Moody Beach (the Public Access Points). (P. Masucci Dep. 13:9-19, 20:18- 22, 27:11-22, 109:4-10, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:18, Ex. KM-S.)

OA 2012's response: Denied. There are three public access ways and the "southern one is an access point to get to Ogunguit Beach." (K. Masucci Dep. 120:21-121:18; P. Masucci Dep. 27:14-18,1139:24-40:5.)

AG's Objection: OA 2012's denial does not properly controvert the AG's S.M.F. ¶ 17. M.R.Civ. P. 56(h)(2), (4). The portion of the record to which OA 2012 cites for its denial does not establish that the public cannot access Moody Beach from the southern access point.

OA 2012's Response to AG's Objection:

The AG ignores what was stated in the transcript. K. Masucci Dep. 120:21-121:18; P. Masucci Dep. 27:14-18,1139:24-40:5.).

50. Because of the signs on Defendants' properties, such as those on Ocean 503's Property, Peter Masucci does not stop on the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Intertidal Land. (P. Masucci Dep. 57:15-22,1149:22-50:9.)

OA 2012's response: Denied. The record citation P. Masucci Dep. 57:15-22 relates to Ocean 503's property. When asked if Mr. Masucci was "ever concerned that OA 2012 Trust may ask you to leave the intertidal zone in front of that property," Mr. Masucci testified "at this far end of the beach we're usually just walking to and from our end. So I wouldn't expect that to be the case because we wouldn't stop there." (P. Masucci Dep. II 50:2-9.). Relative to the signs on OA 2012's upland property, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the signs on and over OA 2012's intertidal property including "walking and running," "stopping and stretching," "walking slowly, just sort of meandering," "surfing," "fishing," "building sandcastles," and "playing frisbee." *Id.* At 42:20-22, 42:23-25, 43:1-3, 43:6-13, 43:14-15, 43:16-25, 44:1-4, 44:4-11, 44:23-25, 45:1-3, 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption

of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions stated are no loitering and dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that OA 2012 has given legal permission to the public that it can engage in these activities. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023 ¶¶ 12, 13).

AG's Objection: OA 2012's denial does not properly controvert the AG's S.M.F. ¶ 50. M.R. Civ. P. 56(h)(2), (4). OA 2012's denial mischaracterizes Peter Masucci's testimony and is unsupported by its record citation. The AG's S.M.F. ¶ 50 pertains to Mr. Masucci's understanding of Defendants' signs, not to OA 2012's understanding of its own signs. OA 2012's denial also improperly cites to an affidavit for the proposition that a presumption of permission applies to the public trust doctrine. *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, y 8 n.6, 770 A.2d 653 ("Conclusions of fact and law do not belong in an affidavit filed in support of a motion for summary judgment."). Moreover, "the presumption of permission ... does not apply to or trump the separate analysis of the extent of the public's rights in the intertidal zone pursuant to the public trust doctrine." *Almeder v. Town of Kennebunkport*, 106 A.3d 1115, 1119 n.2 (Me. 2014) (Law Court order on motions for reconsideration).

OA 2012's Response to AG's Objection:

Relative to OA 2012's intertidal property, and his subjective fear that the signage puts him at risk of being asked to leave, so as to cause him not to "stop", he stated he would not stop on OA 2012's property in any event because for him, it was at the far end of the beach. (P. Masucci Dep. II 50:2-9.). The denial was supported by citation. Moreover for the reasons stated above, the AG misreads *Bell II* and *Almeder*. See also *Norton v. Town of Long Island*, 2005 ME 109, ¶ 33 n.6, 883 A.2d 889, noting that in *Bell II*, the court "clarified the limited nature of that public trust easement" and "reject[ed] a general recreational easement for the public."

65. OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11, II 50:6-12, Ex. PM-8.)

OA 2012's response: Denied. When asked if Mr. Masucci was "ever concerned that OA 2012 Trust may ask you to leave the intertidal zone in front of that property," Mr. Masucci testified "at this far end of the beach we're usually just walking to and from our end. So I wouldn't expect that to be the case because we wouldn't stop there." (P. Masucci Dep. II 50:2-9.) OA 2012 denies that its signage can reasonably be read in a way that negatively detracts from the beach experience of walking over OA 2012's intertidal land. Washburn Aft, Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103). Relative to the sign facing the path that runs from the Town of Ogunquit parking lot to the Ogunquit Town Beach, OA 2012 understands "loitering" to mean to be "stationary for more than 30 minutes," "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25,

44:1-4 (All attached to Plaintiff's Statement of Material Fact ¶¶ 29, 34). Since the sign says only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running," "stopping and stretching," "walking slowly, just sort of meandering," "surfing," "fishing," "building sandcastles," and "playing frisbee." Id. At 42:20-22, 42:23-25, 43:1-3, 43:6-13, 43:14-15, 43:16-25, 44:1-4, 44:4-11, 44:23-25, 45:1-3, 45:4-7 (All attached to Plaintiffs' Statement of Material Fact 11130, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities. Based on this law, given the only restrictions stated are no loitering and dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Peter Masucci have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ly 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023 fls 12, 13),

AG's Objection: OA 2012's denial does not properly controvert the AG's S.M.F. 7 65. M.R. Civ, P. 56(2), (4). The AG's S.M.F. ¶ 65 pertains to Mr. Masucci's understanding of OA 2012's sign, not to OA 2012's understanding of its own sign. OA 2012's denial mischaracterizes Mr. Masucci's testimony and is unsupported by its record citation. At the portion of the record cited by both the AG and OA 2012, Mr. Masucci testified that, as to walking, he is less affected by OA 2012's signs than he is as to other non-walking uses of the OA 2012 Intertidal Land such as stopping. In addition, at the portion of the record cited by the AG, Mr. Masucci testified that the sign does negatively detract from his beach experience when he sees it. (P. Masucci Dep. II 50:10-12.) OA 2012 also bases its denial of the AG's S.M.F. If 65 on its (incorrect) understanding that a presumption of permission applies to the public's use of the OA 2012 Intertidal Land. OA 2012 improperly supports its presumption of permission denial by citation to an affidavit. *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, Ir 8 n.6, 770 A.2d 653 ("Conclusions of fact and law do not belong in an affidavit filed in support of a motion for summary judgment.") (quotation marks omitted). Moreover, "the presumption of permission ... does not apply to or trump the separate analysis of the extent of the public's rights in the intertidal zone pursuant to the public trust doctrine." *Almeder v. Town of Kennebunkport*, 106 A.3d 1115, 1119 n.2 (Me. 2014) (Law Court order on motions for reconsideration).

OA 2012's Response to AG's Objection:

Relative to OA 2012's intertidal property, and his subjective fear that the signage put him at risk of being asked to leave, so as to distract him from his beach experience, P. Masucci stated that at OA 2012's property, located at the far end of the beach from his home, he would not otherwise do anything at the location other than walk. (P. Masucci Dep. II 50:2-9.). The denial was supported by citation. Moreover for the reasons stated above, the AG misreads *Bell II* and *Almeder*. See also *Norton v. Town of Long Island*, 2005 ME 109, ¶ 33 n.6, 883 A.2d 889, noting that in *Bell II*, the court "clarified the limited nature of that public trust easement" and "reject[

ed] a general recreational easement for the public." Moreover, the AG has admitted that at no time has Peter Masucci ever been prevented from engaging in any movement-based activity across OA 2012's intertidal land.

123. Kathy Masucci thinks that walking and running and moving could be considered navigation. (K. Masucci Dep. 76:4-8.)

OA 2012's response: Denied. See *Bell v. Town of Wells*, supra.

AG's Objection: OA 2012's denial does not properly controvert the AG's S.M.F. I 123 because it is not supported by a specific citation to the record. M.R. Civ. P. 56(h)(2), (4).

OA 2012's Response to AG's Objection:

Regardless of what Kathy Masucci thinks, *Bell II* held that walking and running and moving over the beach are not navigation. See also *Norton v. Town of Long Island*, 2005 ME 109, ¶ 33 n.6, 883 A.2d 889, noting that in *Bell II*, the court "clarified the limited nature of that public trust easement" and "reject[ed] a general recreational easement for the public."

124. Bill Connerney thinks that walking could be considered navigation. (Connerney Dep. 65:16-66:20, 114:11-25, 115:13-116:6.)

OA 2012's response: Denied. See *Bell v. Town of Wells*, supra.

AG's Objection: OA 2012's denial does not properly controvert the AG's S.M.F. ¶ 24 because it is not supported by a specific citation to the record. M.R. Civ. P. 56(h)(2), (4).

OA 2012's Response to AG's Objection:

Regardless of what Bill Connerney, *Bell II* held that walking and running and moving over the beach are not navigation. See also *Norton v. Town of Long Island*, 2005 ME 109, ¶ 33 n.6, 883 A.2d 889, noting that in *Bell II*, the court "clarified the limited nature of that public trust easement" and "reject[ed] a general recreational easement for the public."

II. RESPONSE TO THE AG'S RULE 56(i)(2) RESPONSE TO OA 2012'S OBJECTIONS TO THE AG'S STATEMENTS OF MATERIAL FACT

The AG objects to OA 2012's general objections to the AG's 129 statements of material fact (OA 2012 Opp. S.M.F. (June 2, 2023) 1-2) and argues "such general objections are inconsistent with M.R. Civ. P. 56(i)(1) because they are not tailored to specific factual assertions." OA 212 responds to the AG's objections as each as follows:

A. OA 2012's M.R. Evid. 401 relevance objections to facts about the Masuccis' and Connerney's use of and access to Moody Beach: AG S.M.F. ¶¶ 8-18, 39-40, 42-45, 47,49-50, 107, 123-124.

AG's response: OA 2012's relevancy objections are unpreserved because they "belong in the party's memorandum of law, not its statement of material facts." *Dyer v. Dept of Transp.*, 2008 ME 106, ¶ 15 n.5, 951 A.2d 821. Further, these AG statements of fact are relevant to OA 2012 because the facts address Moody Beach in its entirety—including the Masuccis' and Connerney's use of and access to Moody Beach—and the OA 2012 Intertidal Land is part of Moody Beach.

OA 2012's Response to AG's Objection, Paragraph A:

Rule 56(i)(1) is clear that any objections are to be stated "in either [a party's] opposing statement or in its reply statement and shall include a brief statement of the reason(s) for the objection and any supporting authority or record citations. Moreover, the advisory committee notes referenced in *Dyer* stated: "In short, the statements of fact should be precisely what the rule requires: "short and concise." Rule 56(h)(1)." The AG Statement is neither short nor concise, so the AG has no basis to assert that the rule has not been followed. OA 2012 has also briefed extensively that the AG has not basis to file a summary judgment as it has not asserted in any pleading a claim for relief, and even if it had such a claim is barred by *res judicata*. These circumstances relative to OA 2012 mean all of the AG's assertions are not relevant. None of the statements identify uses at OA 2012's property, and what may have occurred at other property is not relevant to OA 2012. The AG makes no attempt to explain otherwise.

B. OA 2012's M.R. Evid. 401 relevance objections to facts that are not specific to OA 2012: AG S.M.F ¶¶ 22-33, 39-45, 47, 49-62, 68, 70, 75-76, 78-79, 81-92, 98-115, 125-128.

AG's response: OA 2012's relevancy objections are unpreserved because they "belong in the party's memorandum of law, not its statement of material facts." *Dyer*, 2008 ME 106, I 15 n.5, 951 A.2d 821. Further, these AG statements of fact are relevant to OA 2012: Although Moody Beach consists of many parcels of land, including the OA 2012 Intertidal Land, the Masuccis and Connerney experience Moody Beach as a whole. (AG S.M.F. 111 8-16, 39-47.) In addition to the impact that each defendant's signs or other physical barriers have on the Masuccis and Connerney, those signs and other physical barriers—especially because they are located at Public Access Points—also have a cumulative effect. (E.g., AG S.M.F. 11148- 50, 71-74, 119-122.)

OA 2012's Response to AG's Objection, Paragraph B:

Rule 56(i)(1) is clear that any objections are to be stated "in either [a party's] opposing statement or in its reply statement and shall include a brief statement of the reason(s) for the objection and any supporting authority or record citations. Moreover, the advisory committee notes referenced in *Dyer* stated: "In short, the statements of fact should be precisely what the rule requires: "short and concise." Rule 56(h)(1)." The AG Statement is neither short nor concise, so the AG has no basis to assert that the rule has not been followed. OA 2012 has also briefed extensively that the AG has not basis to file a summary judgment as it has not asserted in any pleading a claim for relief, and even if it had such a claim is barred by *res judicata*. These circumstances relative to OA 2012 mean all of the AG's assertions are not relevant. Many of the

statements relate to signage not just at OA 2012's property but otherwise. To the extent the AG wants to assert a cumulative impact, it should have included all of the properties that have signs the AG is conceding they are indispensable parties.

C. OA 2012's M.R. Evid. 801 and 802 objections to alleged hearsay statements: AG S.M.F. ¶¶ 53, 77, 79-80, 83-85, 87, 108.

AG response: OA 2012 objects to these AG statements of material fact because it assumes that the AG is offering these facts for the truth of the matter. To the contrary, the AG offers these facts to establish their effect on the hearer—the Masuccis and Connerney. See M.R. Evid. 801(c) (defining hearsay). What the Masuccis and Connerney see (photographs) and hear about defendants from neighbors impacts the Masuccis' and Connerney's impression of defendants and their calculus of the risks of walking across defendants' intertidal land (e.g., will Ocean 503 verbally confront me or call the police on me?). (E.g., AG S.M.F. TIT 53-55, 79-80.) Further, these facts speak to Ocean 503's and Judy's Moody's reputation within the local community, and thus would be admissible even if offered for the truth of the matter. See M.R. Evid. 803(20), (21).

OA 2012's Response to AG's Objection, Paragraph D:

The statements are clearly hearsay. Moreover, the AG does not identify any instances of the hearsay statements as pertaining OA 2012 or its property. Moreover, the Masuccis' and Mr. Connerney's fear that they will be asked to leave or be confronted by other defendants is based entirely on hearsay. The AG cannot introduce out-of-court stories of people being asked to leave for the truth of the matter asserted. M.R. Evid. 801, 802. Nor can the AG introduce these stories for their effect on the Masuccis and Mr. Connerney because these stories are not relevant. The Masuccis' and Mr. Connerney's concerns are not credible because as the AG has admitted neither party has ever been asked to leave, interrupted nor stopped by OA 2012, and as admitted both parties have continued to walk across OA 2012's intertidal land. Finally, the AG's qualifications are inadmissible about Mr. Connerney's opinion on what landowners with signs can or cannot do and Mr. Masucci's opinion on what he should be allowed to on Judy's Moody's intertidal property. Lay witnesses cannot offer opinion evidence (M.R. Evid. 701), yet these qualifications attempt to offer Mr. Connerney's and Mr. Masucci's opinions as to the scope of the public easement on the intertidal zone in Maine, and in any event since they are members of the public, have already been adjudicated with respect to OA 2012 in the *Bell II*.

D. OA 2012's objections based on *Town of Orient v. Dwyer*: AG S.M.F. ¶¶ 8-9, 49-50, 52, 58-60, 64-65, 70-73, 76-78, 84, 87-88, 90, 94-95, 99-103, 106, 109, 111-113, 120, 122-129.

AG Response: *Town of Orient v. Dwyer*, 490 A.2d 660, 665 (Me. 1985) stands for the proposition that "[c]onclusions of fact and law do not properly belong in an affidavit." Indeed, the AG did not rely on an affidavit to support any of the facts to which OA 2012 objected based on *Dwyer*. Instead, the AG supported these facts by citations to deposition testimony.

OA 2012's Response to AG's Objection, Paragraph D:

The AG misreads *Dwyer*. In this case whether someone has a reasonable belief, or has a view of what constitutes navigation, are conclusions of fact or law that do not belong in a Statement. By ignoring this basic rule, the AG has converted what is supposed to be short and concise Statement of Facts into a convoluted, lengthy and completely unnecessary process that is totally contrary to Rule 1. A rule that says in part that the rules “shall be construed to secure the just, speedy and inexpensive determination of every action.” The AG’s entire approach here is all but intended to securing a just, speedy and inexpensive determination of this action.

In sum, to be clear, OA 2012 requests that the court deny the AG’s motion. The AG has never asserted a claim in this case, so it has no basis to file a motion, and its motion is not supported by a Statement of Material Fact that is short and concise. It is clearly barred by res judicata.

Dated: June 30, 2023

/s/ David P. Silk

David P. Silk, Bar No. 3136
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STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

PETER and KATHY MASUCCI, et al.,)
)
Plaintiffs,)
)
v.)
)
JUDY’S MOODY LLC, et al.,)
)
Defendants,)
)
and)
)
AARON FREY, in his capacity as Attorney)
General for the State of Maine,)
)
Party-in-Interest.)

**DEFENDANT OCEAN 503, LLC’S
OPPOSITION TO ATTORNEY
GENERAL’S STATEMENT OF
MATERIAL FACTS AND DEFENDANT
OCEAN 503, LLC’S ADDITIONAL
STATEMENT OF MATERIAL FACTS**

Title to Real Estate is Involved

Pursuant to M.R. Civ. P. 56, Defendant Ocean 503, LLC (“Ocean 503”) hereby submits its Opposing Statement of Material Facts in response to the motion for summary judgment filed on May 2, 2023 by Party-in-Interest, Aaron Frey, in his capacity as Attorney General for the State of Maine.

1. **Admitted.**
2. **Admitted.**
3. **Admitted.**
4. **Admitted.**
5. **Admitted.**
6. **Admitted.**
7. **Admitted.**
8. **Admitted.**

9. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it asserts facts related to Plaintiffs' activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

10. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it asserts facts related to Plaintiffs' activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

11. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Peter Masucci's activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

12. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Peter Masucci's activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

13. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Kathy Masucci's activities on Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

14. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Kathy Masucci's activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

15. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to

Kathy Masucci’s activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

16. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to William Connerney’s activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

17. **Admitted.**

18. **Admitted.**

19. **Qualified.** To the extent that this fact pertains to the signage posted on the Ocean 503 property, such signage is not “forbidding.” (*See* Ocean 503 Dep. Ex. Ocean 503-4 and Ocean 503-5.) The signs read “Moody Beach is a private beach to the low water mark. No loitering” and “Private beach.”

20. **Admitted.**

21. **Admitted.**

22. **Admitted.**

23. **Admitted.**

24. **Admitted.**

25. **Admitted.**

26. **Admitted.**

27. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

28. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

29. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

30. **Qualified.** Dennis testified that these signs are no longer posted. (Judy's Moody Dep. 48:23-25; 49:3-5, 14.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

31. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

32. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

33. **Qualified.** Dennis testified that Judy's Moody has "occasionally" put markers down to demarcate the Judy's Moody property from the abutting public way. He further testified that they have occasionally put out cones and "might" put a "big piece of wood" if it comes up onto the property. (Judy's Moody Dep. 93:8-12, 21-23.) Dennis did not testify to raking seaweed and Kathy Masucci stated in her testimony that she did not know who rakes seaweed or uses cones and markers on the Judy's Moody property and has never personally observed anyone doing so. (K. Masucci Dep. 81:9-19.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

34. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

35. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

36. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

37. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

38. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

39. **Admitted.**

40. **Admitted.**

41. **Admitted.**

42. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

43. **Admitted.**

44. **Admitted.**

45. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

46. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

47. **Admitted.**

48. **Admitted.**

49. **Denied.** Peter Masucci testified that the signs state that it is private property. (P. Masucci Dep. 23:9-14, 17.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because Plaintiffs have failed to support this Statement of Material Fact. The cited record does not support the fact asserted. Peter Masucci did not testify here with respect to physical markers and did not testify that the signs indicated that passage “would be trespassing and against the law.” As such, this fact should not be considered. Moreover, to the extent that this Statement asserts facts related to claims against other Defendants

and unrelated to the claims asserted against Ocean 503, such facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

50. **Qualified.** Peter Masucci testified that the signs posted on Ocean 503's property have not impacted or deterred him from playing bocce ball or other beach games on Ocean 503's Intertidal Zone. (P. Masucci Dep. 57:15-21.) He further testified that "[t]he only thing they caused us not to do is to sit and stop." (P. Masucci Dep. 57:21-22.) He continues to engage in movement-based activity within Ocean 503's Intertidal Zone. (P. Masucci Dep. 57:23-25; 58:1-2.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 to the extent that it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. Such facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401. Moreover, to the extent that the Court in its Order on the Motions to Dismiss, dated April 15, 2022, intended to limit Count IV of the Complaint to movement-based activity, to the extent that the Statement asserts facts related to non-movement-based activity, the Statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401. (See Order dated April 15, 2022, at 25.)

51. **Admitted.**

52. **Admitted.**

53. **Denied.** During his deposition, Peter Masucci testified that he never personally observed someone associated with Ocean 503 confronting members of the public and could not "say definitively that [he] know[s] of that happening." (P. Masucci Dep. 42:12-17; 43:12-15.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence

excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered out-of-court statements by unknown persons to Plaintiff Peter Masucci to prove the truth of the matters asserted therein. Additionally, the Court should not consider this fact to the extent that it asserts facts that are not based in Peter Masucci's personal knowledge pursuant to Rule 602. Because these statements are inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1).

54. **Admitted.**

55. **Denied.** Peter Masucci testified that the signs do not impact his walking experience “because we walk 50 feet and we’re on - - across the property[.]” (P. Masucci Dep. II 46:2-6.) A true and accurate copy of the Deposition of Peter Masucci, dated January 13, 2023, with is attached hereto as **Exhibit A**.

56. **Admitted.**

57. **Admitted.**

58. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

59. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

60. **Qualified.** Peter Masucci *testified* that his concern negatively impacts his experience but did not provide any further details to substantiate that statement. (P. Masucci Dep. II 54:18-20.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

61. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

62. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

63. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

64. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

65. **Denied.** Peter Masucci testified that the signs do not impact his walking experience. (P. Masucci Dep. II 50:5-9.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

66. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean

503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

67. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

68. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it asserts facts related to Peter Masucci's observation of police being present on Moody Beach in its entirety. To the extent that police were not present on Ocean 503's property, the Court should not consider this Statement of Material Fact because it is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

69. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it asserts facts related to Peter Masucci's observation of police being present on Moody Beach in its entirety. To the extent that police were not present on Ocean 503's property, the Court should not consider this Statement of Material Fact because it is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

70. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it asserts facts related to Peter Masucci's observation of police being present on Moody Beach in its entirety. To the extent that police were not present on Ocean 503's property, the Court should not consider this Statement of Material Fact because it is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

71. **Admitted.**

72. **Admitted.**

73. **Admitted.**

74. **Admitted.**

75. **Admitted.**

76. **Qualified.** Kathy Masucci *testified* that the sign on Ocean 503's property negatively affects her experience of being on Moody Beach but did not provide any further details to substantiate that statement. (K. Masucci Dep. 112:21-25; 113:1-5.)

77. **Admitted.**

78. **Admitted.**

79. **Denied.** Kathy Masucci testified that she has not had conversations with anybody in which they specifically told her that Ocean 503 has confronted any members of the public on the intertidal zone. When further questioned, Kathy testified that she has not had any conversations with anybody that has specifically said that Ocean 503 has asked them to leave the intertidal zone in front of their property, nor does she have firsthand knowledge of any incidents involving Ocean 503 confronting members of the public on the beach. (K. Masucci Dep. 45:1-25.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered an out-of-court statement by unknown parties to Kathy to prove the truth of the matters asserted therein. Because this statement is inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1).

80. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered an out-of-court statement by unknown parties to Kathy to prove the truth of the matters asserted therein. Because this statement is inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1).

81. **Admitted.**

82. **Admitted.**

83. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered an out-of-court statement by unknown parties to Kathy to prove

the truth of the matters asserted therein. Because this statement is inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1). Furthermore, to the extent that this Statement asserts facts that are not related to the Ocean 503 property specifically, this Court should not consider such facts with respect to Ocean 503 because they are irrelevant to the claims asserted against Ocean 503.

84. **Qualified.** Kathy Masucci testified that she does not know where or when she saw the pictures. She further testified that she saw the pictures in an e-mail, but does not know which individuals were included on the e-mail, nor when she received the e-mail. (K. Masucci Dep. 77:13-78:15.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

85. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered an out-of-court statement by third-parties to Kathy to prove the truth of the matters asserted therein. Because this statement is inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1). Furthermore, this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted

against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

86. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

87. **Qualified.** Kathy Masucci testified that she does not know who put the cones or markers to demarcate Judy's Moody's Property. Kathy further testified that she did not personally observe Judy's Moody putting the cones or markers on Judy's Moody's Property. (K. Masucci Dep. 81:12-19.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

88. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

89. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

90. **Qualified.** Kathy Masucci *testified* that her concern negatively affects her experience on Moody Beach but did not provide details to substantiate that statement. (K. Masucci Dep. 120:2-10.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

91. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

92. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

93. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

94. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

95. **Qualified.** Kathy Masucci *testified* that her concern negatively affects her experience on Moody Beach but did not provide details to substantiate that statement. (K. Masucci Dep. 116:4-9.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

96. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

97. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

98. **Admitted.**

99. **Qualified.** This statement reflects William Connerney's belief as to the meaning of the signs on Ocean 503's seawall. His recollection was that Ocean 503's sign says "no trespassing, private land," which is not an accurate representation of the sign on the Ocean 503 property. (Connerney Dep. 18:18-19); (*see also* Ocean 503 Dep. Ex. Ocean 503-4 and Ocean 503-5).

100. **Admitted.**

101. **Qualified.** William Connerney testified that he "tr[ies] vaguely not to stay on his property" but he also testified that he walked on the intertidal zone of the Ocean 503 property most recently in October 2022, well after the signs were posted on the property. (Connerney Dep. 26:20-25; 27: 1-8; 32:24-25; 33:1-7.)

102. **Admitted.**

103. **Qualified.** William Connerney's testimony is not clear regarding any negative impact of the Ocean 503 signs specifically. He continues to walk on the Ocean 503 property but the signs make him "aware." (Connerney Dep. 26:10-25.)

104. **Admitted.**

105. **Admitted.**

106. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

107. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

108. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered an out-of-court statement by third-parties to William Connerney to prove the truth of the matters asserted therein. Because this statement is inadmissible, Plaintiffs

have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56. Moreover, this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

109. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

110. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

111. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

112. **Qualified.** William Connerney testified that the signs on Judy's Moody's property have made him "aware" that he is "restricted," but he "can choose not to pay attention to it." (Connerney Dep. 78:21-24.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

113. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

114. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

115. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

116. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

117. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

118. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

119. **Admitted.**

120. **Admitted.**

121. **Admitted.**

122. **Qualified.** William Connerney testified that his fear of confrontations arises from “hearing those stories” about beachfront owners confronting members of the public. However, with respect to Ocean 503, specifically, William Connerney testified that he does not have any firsthand knowledge of Ocean 503 confronting any members of the public. (Connerney Dep. 31:5-10, 16-20; 117:15-22.)

123. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

124. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

125. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

126. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

127. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

128. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

129. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

Additional Statement of Material Facts

Pursuant to Maine Rule of Civil Procedure 56(h)(2) and in support of its Opposition to Attorney General's Motion for Summary Judgment and Memorandum of Law, Ocean 503 sets forth the following additional statements of material facts as to which there is no genuine dispute, supported by the accompanying record citations.

1. Ocean 503 and its invitees have never confronted any member of the public regarding his or her use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.)

2. Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.)

3. Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. *See* (Ocean 503 Dep. 49, Ex. 6). A true and accurate copy of Exhibit 6 to the Deposition of Ocean 503, LLC is attached hereto as **Exhibit B**.

4. None of the Plaintiffs have provided any specific information regarding a single instance of Ocean 503 or anyone associated with Ocean 503 confronting any members of the public regarding use of the intertidal zone. *See, e.g.*, (O. Delogu Dep. 41:7-11); (Griffiths Dep. 38:5-15); (P. Masucci Dep. 42:12-44:10); (Connerney Dep. 31:5-20); (K. Masucci Dep. 44:19-45:25). True and accurate copies of excerpts from the Deposition of Orlando Delogu, with pertinent passages highlighted, are attached hereto collectively as **Exhibit C**. True and accurate copies of excerpts from the Deposition of William Griffiths with pertinent passages highlighted, are attached hereto collectively as **Exhibit D**.

5. William Connerney testified that he walked across the Ocean 503 intertidal zone a couple of times last August. (Connerney Dep. 19:21-24.)

6. Peter Masucci testified that he had walked across the Ocean 503 intertidal zone as recently as January 2023. (P. Masucci Dep. 19:15-17.)

7. Kathy Masucci testified that she had walked on the intertidal zone of the Ocean 503 Property as recently as December 2022. (K. Masucci Dep. 49:19-24.)

8. Mark Montesi, on behalf of Ocean 503, testified that it is his understanding that “people have the right to traverse the beach. They can walk back and forth all they want on the beach.” (Ocean 503 Dep. 38:19-21; 39:22-24.)

9. Peter Masucci testified that the Signs do not impact his walking experience “because we walk 50 feet and we’re on - - across the property[.]” (P. Masucci Dep. II 46:2-6.)

Dated at Portland, Maine this 2nd day of June, 2023.



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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-35

PETER and KATHY MASUCCI, *et al.*,)
)
Plaintiffs,)
v.)
)
JUDY’S MOODY, LLC, *et al.*,)
)
Defendants,)
and)
)
AARON M. FREY, in his capacity as the)
ATTORNEY GENERAL OF THE STATE OF)
MAINE,)
)
Party-in-Interest)

**ATTORNEY GENERAL’S
RULE 56(h)(3) and (i)(2) REPLY
STATEMENT OF MATERIAL FACTS
TO OCEAN 503 LLC’S
RULE 56(h)(2) OPPOSING
STATEMENT OF MATERIAL FACTS**

(Title to Real Estate Involved)

Pursuant to M.R. Civ. P. 56(h)(3) and (i)(2), the Attorney General (AG) replies to Defendant Ocean 503 LLC’s additional facts, objects to Ocean 503’s qualifications and denials of the AG’s statements of material fact, and responds to Ocean 503 LLC’s objections to the AG’s statements of material fact as follows.

THE AG’S REPLY TO OCEAN 503 LLC’S ADDITIONAL STATEMENTS OF FACT

1. Ocean 503 and its invitees have never confronted any member of the public regarding his or her use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.)

Qualified. The AG admits that individuals acting on behalf of Ocean 503 have never personally confronted members of the public about their usage of the intertidal zone at Ocean 503’s property. But Ocean 503’s signs confront members of the public, including Peter Masucci, Kathy Masucci, and Bill Connerney, regarding the use of the intertidal zone and this negatively affects their respective beach experiences. In particular:

Mr. Masucci has seen and is conscious of the signs on Ocean 503’s property. (P. Masucci Dep. 23:3-24:3, 32:3-11, 33:15-17, 47:12-13.) The sign on Ocean 503’s seawall that faces ROW 3 makes Mr. Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-14, Ex. PM-6.)

Because of such signs, Mr. Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22.) Mr. Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.) Mr. Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) The sign on Ocean 503's seawall that faces ROW 3 stands out to him because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.) Mr. Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.) That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Mr. Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

The signs on Ocean 503's property suggest to Ms. Masucci that she should not be on Ocean 503's property. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7.) The signs on Ocean 503's property intimidate her. (K. Masucci Dep. 46:4-7, 127:3-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) The sign on Ocean 503's property that faces ROW 3 makes Ms. Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.) Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.) When she sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 intertidal land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.) Although she only walks across the Ocean 503 intertidal land, Ms. Masucci is concerned that Ocean 503 may ask her to leave Ocean 503's intertidal land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.) Ms. Masucci has heard stories of Ocean 503 approaching members of the public about using Ocean 503's intertidal land. (K. Masucci Dep. 28:5-9, 29:7-10.) Ms. Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) The stories she has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Mr. Connerney has seen the signs on Ocean 503's seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.) He understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.) Mr. Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that its intertidal land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.) Because of his understanding that Ocean 503 does not want people on its property, Mr. Connerney now limits his use of Ocean 503's intertidal land to when Ocean 503 is not around or otherwise tries to avoid Ocean 503's intertidal land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.) Mr. Connerney is concerned that Ocean 503 may ask him to leave its intertidal land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.) His concern that Ocean 503 may ask him to leave Ocean 503's intertidal land negatively affects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

2. Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503

Property. (Ocean 503 Dep. 43:9-11.)

Qualified. The AG admits that individuals acting on behalf of Ocean 503 have never personally asked anyone to leave the intertidal zone at Ocean 503's property. But Ocean 503's signs suggest to Peter Masucci, Kathy Masucci, and Bill Connerney that they should not be on the Ocean 503 Intertidal Land and this negatively affects their respective beach experiences. In particular:

Mr. Masucci has seen and is conscious of the signs on Ocean 503's property. (P. Masucci Dep. 23:3-24:3, 32:3-11, 33:15-17, 47:12-13.) The sign on Ocean 503's seawall that faces ROW 3 makes Mr. Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-14, Ex. PM-6.) Because of such signs, Mr. Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22.) Mr. Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.) Mr. Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) The sign on Ocean 503's seawall that faces ROW 3 stands out to him because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.) Mr. Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.) That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Mr. Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

The signs on Ocean 503's property suggest to Ms. Masucci that she should not be on Ocean 503's property. (K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4, 44:15-17; 46:4-7.) The signs on Ocean 503's property intimidate her. (K. Masucci Dep. 46:4-7, 127:3-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) The sign on Ocean 503's property that faces ROW 3 makes Ms. Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.) Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.) When she sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 intertidal land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.) Although she only walks across the Ocean 503 intertidal land, Ms. Masucci is concerned that Ocean 503 may ask her to leave Ocean 503's intertidal land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.) Ms. Masucci has heard stories of Ocean 503 approaching members of the public about using Ocean 503's intertidal land. (K. Masucci Dep. 28:5-9, 29:7-10.) Ms. Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) The stories she has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Mr. Connerney has seen the signs on Ocean 503's seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.) He understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.) Mr. Connerney understands from the signs on

Ocean 503's seawall that Ocean 503 asserts that its intertidal land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.) Because of his understanding that Ocean 503 does not want people on its property, Mr. Connerney now limits his use of Ocean 503's intertidal land to when Ocean 503 is not around or otherwise tries to avoid Ocean 503's intertidal land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.) Mr. Connerney is concerned that Ocean 503 may ask him to leave its intertidal land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.) His concern that Ocean 503 may ask him to leave Ocean 503's intertidal land negatively affects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

3. Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. *See* (Ocean 503 Dep. 49, Ex. 6).

A true and accurate copy of Exhibit 6 to the Deposition of Ocean 503, LLC is attached hereto as **Exhibit B**.

Admitted.

4. None of the Plaintiffs have provided any specific information regarding a single instance of Ocean 503 or anyone associated with Ocean 503 confronting any members of the public regarding use of the intertidal zone. *See, e.g.*, (O. Delogu Dep. 41:7-11); (Griffiths Dep. 38:5-15); (P. Masucci Dep. 42:12-44:10); (Connerney Dep. 31:5-20); (K. Masucci Dep. 44:19-45:25). True and accurate copies of excerpts from the Deposition of Orlando Delogu, with pertinent passages highlighted, are attached hereto collectively as **Exhibit C**. True and accurate copies of excerpts from the Deposition of William Griffiths with pertinent passages highlighted, are attached hereto collectively as **Exhibit D**.

Qualified. The AG admits that Plaintiffs have not identified specific instances where individuals acting on behalf of Ocean 503 having personally confronted members of the public about their use of the intertidal zone at Ocean 503's property. But Ocean 503's signs confront members of the public, including Peter Masucci, Kathy Masucci, and Bill Connerney, regarding the use of the intertidal zone and this negatively affects their respective beach experiences. In particular:

Mr. Masucci has seen and is conscious of the signs on Ocean 503's property. (P. Masucci Dep. 23:3-24:3, 32:3-11, 33:15-17, 47:12-13.) The sign on Ocean 503's seawall that faces ROW 3 makes Mr. Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-14, Ex. PM-6.)

Because of such signs, Mr. Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22.) Mr. Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.) Mr. Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) The sign on Ocean 503's seawall that faces ROW 3 stands out to him because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.) Mr. Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.) That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Mr. Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

The signs on Ocean 503's property suggest to Ms. Masucci that she should not be on Ocean 503's property. (K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4, 44:15-17; 46:4-7.) The signs on Ocean 503's property intimidate her. (K. Masucci Dep. 46:4-7, 127:3-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) The sign on Ocean 503's property that faces ROW 3 makes Ms. Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.) Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.) When she sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 intertidal land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.) Although she only walks across the Ocean 503 intertidal land, Ms. Masucci is concerned that Ocean 503 may ask her to leave Ocean 503's intertidal land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.) Ms. Masucci has heard stories of Ocean 503 approaching members of the public about using Ocean 503's intertidal land. (K. Masucci Dep. 28:5-9, 29:7-10.) Ms. Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) The stories she has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Mr. Connerney has seen the signs on Ocean 503's seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.) He understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.) Mr. Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that its intertidal land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.) Because of his understanding that Ocean 503 does not want people on its property, Mr. Connerney now limits his use of Ocean 503's intertidal land to when Ocean 503 is not around or otherwise tries to avoid Ocean 503's intertidal land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.) Mr. Connerney is concerned that Ocean 503 may ask him to leave its intertidal land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.) His concern that Ocean 503 may ask him to leave Ocean 503's intertidal land negatively affects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

5. William Connerney testified that he walked across the Ocean 503 intertidal zone a couple of times last August. (Connerney Dep. 19:21-24.)

Admitted.

6. Peter Masucci testified that he had walked across the Ocean 503 intertidal zone as recently as January 2023. (P. Masucci Dep. 19:15-17.)

Admitted.

7. Kathy Masucci testified that she had walked on the intertidal zone of the Ocean 503 Property as recently as December 2022. (K. Masucci Dep. 49:19-24.)

Admitted.

8. Mark Montesi, on behalf of Ocean 503, testified that it is his understanding that “people have the right to traverse the beach. They can walk back and forth all they want on the beach.” (Ocean 503 Dep. 38:19-21; 39:22-24.)

Qualified. Mark Montesi testified that he understands “navigation” to mean traversing the beach, which means walking back and forth on the beach. (Ocean 503 Dep. 38:18-39:3, 39:22-24.)

9. Peter Masucci testified that the Signs do not impact his walking experience “because we walk 50 feet and we’re on - - across the property[.]” (P. Masucci Dep. II 46:2-6.)

Objection. This fact is unsupported by the record citation. Subject to this objection:

Qualified. The cited-to portion of the record supports the proposition that Ocean 503’s signs impact Peter Masucci while he is walking but that the impact is less for walking than it is for other activities because, when walking, Peter has to walk only fifty feet to be across the Ocean 503 Intertidal Land.

**THE AG’S OBJECTIONS TO OCEAN 503 LLC’S QUALIFICATIONS AND DENIALS
OF THE AG’S STATEMENTS OF MATERIAL FACT**

19. There is forbidding signage or other physical markers at each Public Access Point. (P. Masucci Dep. 23:9-14, 23:22-24:3, 26:17-32:11, II 48:19-49:5, II 50:16-51:12, II 54:21-55:3, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:24-112:9, 112:16-17, 113:14-17, 114:12-25, 115:8-10, 117:13-118:4, 118:21-119:17, 121:20-

122:1, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 18:18-19:5, 21:20-22:4, 23:14-21, 25:10-16, 30:14, 43:6, 75:10-76:19, 109:17-110:2.)

Ocean 503's Response: Qualified. To the extent that this fact pertains to the signage posted on the Ocean 503 property, such signage is not "forbidding." (See Ocean 503 Dep. Ex. Ocean 503-4 and Ocean 503-5.) The signs read "Moody Beach is a private beach to the low water mark. No loitering" and "Private beach."

AG's Objection: Ocean 503's qualification does not properly controvert AG's S.M.F. ¶ 19. The portion of the record cited by the AG in support of AG S.M.F. ¶ 19 substantiates that the signs at Moody Beach, including on Ocean 503's property, are forbidding to Kathy Masucci and William Connerney:

The signs on Ocean 503's property suggest to Ms. Masucci that she should not be on Ocean 503's property. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7.) Such signs intimidate her. (K. Masucci Dep. 46:4-7, 127:3-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) The sign on Ocean 503's property that faces ROW 3 makes Ms. Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.) Seeing that sign negatively affects Ms. Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.) When she sees Ocean 503's no loitering sign she does not feel welcome on the intertidal land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.)

Mr. Connerney understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on its property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.) He also understands from the signs that Ocean 503 asserts that its intertidal land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.) Because of his understanding, Mr. Connerney now limits his use of Ocean 503's intertidal land to when Ocean 503 is not around or otherwise tries to avoid that intertidal land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.) Mr. Connerney is concerned that Ocean 503 may ask him to leave its intertidal land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.) His concern that Ocean 503 may ask him to leave Ocean 503's intertidal land negatively effects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

49. The signs and physical markers on each Defendant's property indicate to Peter Masucci that passage over each of the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-8.)

Ocean 503's Response: Denied. Peter Masucci testified that the signs state that it is private property. (P. Masucci Dep. 23:9-14, 17).

AG's Objection: Ocean 503's denial does not properly controvert AG's S.M.F. ¶ 49. Peter Masucci testified regarding his discussion of signs on Ocean 503's property in his interrogatory answers. Specifically, he confirmed his interrogatory answer stating, "Ocean 503 LLC has posted signage indicating passing over the intertidal land adjacent its property would be trespassing and against the law." (Peter Masucci's Answers to Ocean 503's Interrogatories are attached to this document as **Exhibit A**.) Peter Masucci confirmed this statement referred to the "signs that they put on the seawall adjacent to the right-of-way." (P. Masucci Dep. 23:3-12.) Peter Masucci then testified that the signs state that it is private property. (P. Masucci Dep. 23:12-15, 17.)

55. That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Peter Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

Ocean 503 Response: Denied. Peter Masucci testified that the signs do not impact his walking experience "because we walk 50 feet and we're on - - across the property[.]" (P. Masucci Dep. II 46:2-6.)

AG's Objection: Ocean 503's denial does not properly controvert AG's S.M.F. ¶ 55. Ocean's 503's denial mischaracterizes Peter Masucci's testimony and is unsupported by its record citation. At the portion of the record cited by both the AG and Ocean 503, Peter Masucci testified that, as to walking, he is affected less by Ocean's 503's signs than he is as to other non-walking uses of the Ocean 503 Intertidal Land.

65. OA 2012's sign negatively detracts from Peter Masucci's beach experience of walking on the intertidal land at Moody Beach. (P. Masucci Dep. II 33:6-11, II 50:6-12, Ex. PM-8.)

Ocean 503's Response: Denied. Peter Masucci testified that the signs do not impact his walking experience. (P. Masucci Dep. II 50:5-9.)

AG's Objection: Ocean 503's denial does not properly controvert AG's S.M.F. ¶ 65. Ocean's 503's denial mischaracterizes Peter Masucci's testimony and is unsupported by its record citation.

**THE AG'S RULE 56(i)(2) RESPONSE TO OCEAN 503'S OBJECTIONS TO
THE AG'S STATEMENTS OF MATERIAL FACT**

Ocean 503's objections fall into one of four categories, which the AG addresses accordingly:

A. Ocean 503's M.R. Evid. 401 relevance objections to facts about Moody Beach in its entirety: AG S.M.F. ¶¶ 9-16, 68-70.

AG Response: Ocean 503's relevancy objections are unpreserved because they "belong in the party's memorandum of law, not its statement of material facts." *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15 n.5, 951 A.2d 821. Further, these statements of fact are relevant to Ocean 503 because they address Moody Beach in its entirety—including the Masuccis' and Connerney's use of and access to Moody Beach—and the Ocean 503 Intertidal Land is part of Moody Beach. (AG S.M.F. ¶ 22-23.)

B. Ocean 503's M.R. Evid. 401 relevance objections to facts about other Defendants: AG S.M.F. ¶¶ 27-38, 42, 45-46, 49-50, 58-67, 84, 86-97, 106-107, 109-118, 127, 129.

AG response: Ocean 503's relevancy objections are unpreserved because they "belong in the party's memorandum of law, not its statement of material facts." *Dyer*, 2008 ME 106, ¶ 15 n.5, 951 A.2d 821. Further, these statements of fact are relevant to Ocean 503: Although Moody Beach consists of many parcels of land, including the Ocean 503 Intertidal Land, the Masuccis and Connerney experience Moody Beach as a whole. (AG S.M.F. ¶¶ 8-16, 39-47.) In addition to the impact that each defendant's signs or other physical barriers have on the Masuccis and Connerney, those signs and other physical barriers—especially because they are located at Public Access Points—also have a cumulative effect. (*E.g.*, AG S.M.F. ¶¶ 48-50, 71-74, 119-122.)

C. Ocean 503's M.R. Evid. 801 and 802 objections to alleged hearsay statements: AG S.M.F. ¶¶ 53, 79-80, 83, 85, 108.

AG response: Ocean 503 objects to these statements of material fact because it incorrectly assumes that the AG offers them for the truth of the matter. To the contrary, the AG offers these facts to establish their effect on the hearer—the Masuccis and Connerney. *See* M.R. Evid. 801(c) (defining hearsay). What the Masuccis and Connerney see (photographs) and hear from their neighbors about defendants impacts the Masuccis' and Connerney's impression of defendants and their calculus of the risks of walking across defendants' intertidal land (*e.g.*, will Ocean 503 verbally confront me or call the police on me?). (*E.g.*, AG S.M.F. ¶¶ 53-55, 79-80.) Further, these facts speak to Ocean 503's reputation within the local community, and thus would be admissible even if offered for the truth of the matter. *See* M.R. Evid. 803(20), (21).

**D. Ocean 503's M.R. Evid. 701 objections to alleged legal opinions:
AG S.M.F. ¶¶ 123-126, 128.**

AG Response: Ocean 503 objects to these statements of material fact because the deponents—who are either parties or M.R. Civ. P. 30(b)(6) designees—testified as to whether they considered certain activities (e.g., walking) to be navigation or otherwise encompassed by the public trust doctrine. The AG offered these facts—which are rationally based on each speaker's perception and are helpful to clearly understand their testimony—to inform this Court's "consideration of 'contemporary notions of usage and public acceptance.'" *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶¶ 28-30, 206 A.3d 283 (identifying "'contemporary notions of usage and public acceptance'" as a criterion of the reasonable balance approach). The AG is not offering these facts as a substitute for this Court's legal analysis and conclusions of law.

Dated: June 23, 2023

Respectfully submitted,

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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

| | | |
|---|---|---|
| PETER and Kathy MASUCCI, et al., |) | |
| |) | |
| Plaintiffs, |) | DEFENDANT OCEAN 503, LLC’S |
| |) | RULE 56 (i)(2) REPLY AS OPPOSING |
| v. |) | PARTY TO (I) ATTORNEY |
| |) | GENERAL’S REPLY TO OCEAN |
| JUDY’S MOODY LLC, ET AL., |) | 503’S ADDITIONAL STATEMENTS |
| |) | OF FACT; AND (II) ATTORNEY |
| Defendants, |) | GENERAL’S OBJECTIONS TO |
| |) | OCEAN 503, LLC’S |
| and |) | QUALIFICATIONS AND DENIALS |
| |) | |
| AARON FREY, in his capacity as Attorney |) | |
| General of the State of Maine, |) | (Title to Real Estate Involved) |
| |) | |
| Party-in-Interest. |) | |

Pursuant to Rule 56(i)(2), Ocean 503, LLC (“Ocean 503”) replies to the Attorney General’s Rule 56(h)(3) and (i)(2) Reply Statement of Material Facts to Ocean 503 LLC’s Rule 56(h)(2) Opposing Statement of Material Facts, dated June 23, 2023, as follows:

I. RESPONSE TO AG’S REPLY TO OCEAN 503’S ADDITIONAL STATEMENTS OF FACT

1. **Ocean 503’s Response to AG’s Qualification of Ocean 503’s Additional Statement of Fact 1:** Regarding the asserted “fact” that Mr. Masucci does not stop on intertidal land due to the signs, Mr. Masucci testified that he still stops and plays bocce ball and other similar beach games on the Ocean 503 Property. (P. Masucci Dep. 57:15-22.) As such, this qualification is inaccurate. True and accurate copies of excerpts from the Deposition of Peter Masucci, with pertinent passages highlighted, are attached hereto collectively as **Exhibit A**.

As to the “fact” that Mr. Masucci feels intimidated by the “stories of people being asked to leave”, this qualification/statement should be disregarded. Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., “anecdotal” stories from unidentified third-parties) (P. Masucci Dep. 42:22-23) to prove the truth of the matters asserted therein.

As to Mr. Masucci's "concern" that Ocean 503 will ask him to leave the Ocean 503 Property, those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its "Private beach" and "no loitering" signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.) True and accurate copies of excerpts from the Deposition of Ocean 503, LLC, with pertinent passages highlighted, are attached hereto collectively as **Exhibit B**. A true and accurate copy of Affidavit of Mark Montesi in Support of Defendant Ocean 503, LLC's Motion for Summary Judgment is attached hereto as **Exhibit C**.

As to Ms. Masucci's understanding that "the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move," the statement is a legal conclusion and should not be considered for the purposes of summary judgment. Furthermore, to the extent that this statement is unrelated to any signs on the Ocean 503 Property, it is also irrelevant under Rules 401 and 402 of the Maine Rules of Evidence and should be disregarded.

As to the AG's assertions of "fact" that Ocean 503 has approached members of the public about using Ocean 503 Property, or that the "police have been called to Moody Beach", these qualifications/statements are predicated on stories from unidentified third-parties. As such, pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., stories from unidentified third-parties) to prove the truth of the matters asserted therein. Ms. Masucci is not personally aware of any confrontations involving Ocean 503 (K. Masucci Dep. 34:25-35:5.) True and accurate copies of excerpts from the Deposition of Kathy Masucci, with pertinent passages highlighted, are attached hereto collectively as **Exhibit D**. In addition, to the extent these "stories" from unidentified third-parties do not involve Ocean 503, the qualification/statement is not relevant under Rules 401 and 402 of the Maine Rules of Evidence, and therefore, should be disregarded.

As to Mr. Connerney's statement that he now avoids the Ocean 503 intertidal zone, Mr. Connerney testified that he still walks over, and stands upon, the intertidal zone on the Ocean 503 Property (Connerney Dep. 26:9-23) (stating that he still stands on, and walks upon the Ocean 503 Property). True and accurate copies of excerpts from the Deposition of William Connerney, with pertinent passages highlighted, are attached hereto collectively as **Exhibit E**.

As to Mr. Connerney's concern that "Ocean 503 may ask him to leave its intertidal land," those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted

its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

2. **Ocean 503’s Response to AG’s Qualification of Ocean 503’s Additional Statement of Fact 2:** Regarding the asserted “fact” that Mr. Masucci does not stop on intertidal land due to the signs, Mr. Masucci testified that he still stops and plays bocce ball and other similar beach games on the Ocean 503 Property. (P. Masucci Dep. 57:15-22.) As such, this qualification is inaccurate.

As to the “fact” that Mr. Masucci feels intimidated by the “stories of people being asked to leave”, this qualification/statement should be disregarded. Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., “anecdotal” stories from unidentified third-parties) (P. Masucci Dep. 42:22-23) to prove the truth of the matters asserted therein.

As to Mr. Masucci’s “concern” that Ocean 503 will ask him to leave the Ocean 503 Property, those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

As to Ms. Masucci’s understanding that “the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move,” the statement is a legal conclusion and should not be considered for the purposes of summary judgment. Furthermore, to the extent that this statement is unrelated to any signs on the Ocean 503 Property, it is also irrelevant under Rules 401 and 402 of the Maine Rules of Evidence and should be disregarded.

As to the AG’s assertions of “fact” that Ocean 503 has approached members of the public about using Ocean 503 Property, or that the “police have been called to Moody Beach”, these qualifications/statements are predicated on stories from unidentified third-parties. As such, pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., stories from unidentified third-parties) to prove the truth of the matters asserted therein. Ms. Masucci is not personally aware of any confrontations involving Ocean 503 (K. Masucci Dep. 34:25-35:5.) In addition, to the extent these “stories” from unidentified third-parties do not involve Ocean 503, the qualification/statement is not relevant under Rules 401 and 402 of the Maine Rules of Evidence, and therefore, should be disregarded.

As to Mr. Connerney’s statement that he now avoids the Ocean 503 intertidal zone, Mr. Connerney testified that he still walks over, and stands upon, the intertidal zone on the Ocean 503

Property (Connerney Dep. 26:9-23) (stating that he still stands on, and walks upon the Ocean 503 Property).

As to Mr. Connerney's concern that "Ocean 503 may ask him to leave its intertidal land," those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its "Private beach" and "no loitering" signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

3. Ocean 503's Response to AG's Qualification of Ocean 503's Additional Statement of Fact 4: Regarding the asserted "fact" that Mr. Masucci does not stop on intertidal land due to the signs, Mr. Masucci testified that he still stops and plays bocce ball and other similar beach games on the Ocean 503 Property. (P. Masucci Dep. 57:15-22.) As such, this qualification is inaccurate.

As to the "fact" that Mr. Masucci feels intimidated by the "stories of people being asked to leave", this qualification/statement should be disregarded. Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., "anecdotal" stories from unidentified third-parties) (P. Masucci Dep. 42:22-23) to prove the truth of the matters asserted therein.

As to Mr. Masucci's "concern" that Ocean 503 will ask him to leave the Ocean 503 Property, those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its "Private beach" and "no loitering" signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

As to Ms. Masucci's understanding that "the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move," the statement is a legal conclusion and should not be considered for the purposes of summary judgment. Furthermore, to the extent that this statement is unrelated to any signs on the Ocean 503 Property, it is also irrelevant under Rules 401 and 402 of the Maine Rules of Evidence and should be disregarded.

As to the AG's assertions of "fact" that Ocean 503 has approached members of the public about using Ocean 503 Property, or that the "police have been called to Moody Beach", these qualifications/statements are predicated on stories from unidentified third-parties. As such, pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under

Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., stories from unidentified third-parties) to prove the truth of the matters asserted therein. Ms. Masucci is not personally aware of any confrontations involving Ocean 503 (K. Masucci Dep. 34:25-35:5.) In addition, to the extent these “stories” from unidentified third-parties do not involve Ocean 503, the qualification/statement is not relevant under Rules 401 and 402 of the Maine Rules of Evidence, and therefore, should be disregarded.

As to Mr. Connerney’s statement that he now avoids the Ocean 503 intertidal zone, Mr. Connerney testified that he still walks over, and stands upon, the intertidal zone on the Ocean 503 Property (Connerney Dep. 26:9-23) (stating that he still stands on, and walks upon the Ocean 503 Property).

As to Mr. Connerney’s concern that “Ocean 503 may ask him to leave its intertidal land,” those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

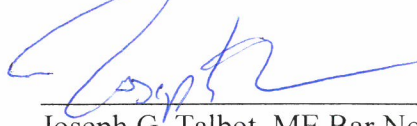
II. RESPONSE TO AG’S REPLY TO OCEAN 503’S ADDITIONAL STATEMENTS OF FACT

1. **Ocean 503’s Response to AG’s Objection to Ocean 503’s Qualification of AG’s Statement of Material Fact 19:** As to Ms. Masucci’s understanding that “the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move,” the statement is a legal conclusion and should not be considered for the purposes of summary judgment. Furthermore, to the extent that this statement is unrelated to any signs on the Ocean 503 Property, it is also irrelevant under Rules 401 and 402 of the Maine Rules of Evidence and should be disregarded.

As to Mr. Connerney’s statement that he now avoids the Ocean 503 intertidal zone, Mr. Connerney testified that he still walks over, and stands upon, the intertidal zone on the Ocean 503 Property (Connerney Dep. 26:9-23) (stating that he still stands on, and walks upon the Ocean 503 Property).

As to Mr. Connerney’s concern that “Ocean 503 may ask him to leave its intertidal land,” those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

Dated at Portland, Maine this 30th day of June, 2023.



Joseph G. Talbot, ME Bar No. 4868
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PETER AND KATHY MASUCCI, et al.,)
)
 Plaintiffs)
)
 v.)
)
 JUDY'S MOODY LLC, et al.,)
)
 Defendants)
 and)
)
 AARON FREY,)
 Attorney General for the State of Maine)
)
 Party in Interest)

**DEFENDANTS JEFFERY E. PARENT AND
MARGARET G. PARENT'S STATEMENT
OF MATERIAL FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Pursuant to M.R. Civ. P. 56(h), Defendants Jeffery E. Parent and Margaret G. Parent (collectively the "Parents") submit this Statement of Materials Facts in Support of their Motion for Summary Judgment filed herewith.

1. The Parents own waterfront property in Waldoboro, Maine ("Parent Property"). (Affidavit of Jeffery and Margaret Parent (hereinafter "Parent Aff.") ¶ 3, attached as Ex. 1.)
2. The Parents own the Parent Property through their deed recorded at Book 4578, Page 263 at the Lincoln County Registry of Deeds ("Parent Deed"). (Parent Aff. Attachment.)
3. [Intentionally blank.]
4. The Parent Deed describes the Parent Property boundary as running "to the waters of Back River Cove." (Parent Aff. Attachment.)
5. The intertidal area of the Parent Property has multiple areas covered by a type of seaweed commonly called rockweed. (Parent Aff. ¶ 6).

6. On October 30, 2019, a rockweed harvester cut and removed living, attached rockweed from the intertidal portion of the Parent Property. (Parent Aff. ¶ 8.)

7. Other than the rockweed harvesting incident on October 30, 2019, the Parents have not interacted with any person or entity present on or using the intertidal portion of the Parent Property. (Parent Aff. ¶ 9.)

8. Other than the rockweed harvesting incident on October 30, 2019, the Parents are not aware of any other person or entity being present on or using the intertidal portion of the Parent Property for any purpose. (Parent Aff. ¶ 10.)

9. At no time have the Parents prevented any person or entity from being present on or using the intertidal portion of the Parent Property. (Parent Aff. ¶ 11.)

10. Other than rockweed harvesting, the Parents have taken no public position on the public's rights to be present on or use the intertidal portion of the Parent Property. (Parent Aff. ¶ 12.)

Dated at Portland, Maine this 2nd day of May, 2023.



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9. Denied. On October 20, 2019, the Parents' stated to rockweed harvesters present on the intertidal land adjacent their property "that he needed permission to cut and remove the attached rockweed." Defendants Jeffery E. Parent and Margaret G. Parent's Motion for Summary Judgment with Incorporated Memorandum of Law dated May 2, 2023, page 3 ("Def.'s Mot. SMJ"); *See* Stip. Facts ¶¶ 11-12.

10. Admitted.

Dated: June 2, 2023

Respectfully submitted,



For Plaintiffs,
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STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

PETER and KATHY MASUCCI, et al.,)
)
Plaintiffs,)
)
v.)
)
JUDY’S MOODY LLC, et al.,)
)
Defendants,)
)
and)
)
AARON FREY, in his capacity as Attorney)
General for the State of Maine,)
)
Party-in-Interest.)

**STATEMENT OF MATERIAL FACTS
IN SUPPORT OF DEFENDANT
OCEAN 503, LLC’S MOTION FOR
SUMMARY JUDGMENT WITH
INCORPORATED MEMORANDUM
OF LAW**

Title to Real Estate is Involved

Pursuant to M.R. Civ. P. 56 (h), Defendant Ocean 503, LLC (“Ocean 503”) hereby submits its Statement of Material Facts in Support of Defendant’s Motion for Summary Judgment:

1. Ocean 503, LLC is a Maine limited liability company that owns certain real property located at 503 Ocean Avenue, Wells, Maine (the “Ocean 503 Property”). A true and accurate copy of Affidavit of Mark Montesi in Support of Defendant Ocean 503, LLC’s Motion for Summary Judgment is attached hereto as **Exhibit A**. (Affidavit of Mark Montesi in Support of Defendant Ocean 503, LLC’s Motion for Summary Judgment at ¶ 1) (hereinafter “Montesi Aff. ¶ ___”).

2. Mark Montesi and Corliss Montesi (the “Montesis”) are the only members of Ocean 503. True and accurate copies of excerpts from the Deposition of Ocean 503, LLC, with pertinent passages highlighted, are attached hereto collectively as **Exhibit B**. (Ocean 503 Dep. 11:5-19.)

3. Ocean 503 holds title to the Ocean 503 Property, which is located on the beachfront of Moody Beach. (Montesi Aff. ¶ 2.)

4. The Montesis initially purchased the Ocean 503 Property in 2018 in their capacity as trustees of the Mark J. Montesi Living Trust dated May 3, 2015, and the Corliss J. Montesi Living Trust dated May 3, 2015 (together, the “Trusts”). (Ocean 503 Dep. 13:16-14:9); (Montesi Aff. ¶ 3).

5. In May 2019, the Montesis transferred title of the Ocean 503 Property from the Trusts to Ocean 503. (Montesi Aff. ¶ 4.)

6. The Montesis spend about twenty percent of the year at the Ocean 503 Property. (Ocean 503 Dep. 15:15-18.)

7. The Montesis do not rent out the Ocean 503 Property to third parties. (Ocean 503 Dep. 48:10-13.)

8. Many beachfront properties on Moody Beach have signs indicating that Moody Beach is a private beach. (Montesi Aff. ¶ 6.)

9. On the seawall surrounding a portion of the Ocean 503 Property, there are two signs, one of which reads “Private beach” and another which reads “Moody Beach is a private beach to the low water mark – no loitering” (the “Signs”). (Montesi Aff. ¶ 5.)

10. One of the Signs faces a public way abutting the Ocean 503 Property which leads from Ocean Avenue to Moody Beach. (Ocean 503 Dep. 41:9-12).

11. The Signs were posted due, in part, to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16).

12. Mr. Montesi defines “loitering” as “coming together for no purpose at all” and does not consider sitting on the beach “loitering.” (Ocean 503 Dep. 41:17-21; 42:12-16.)

13. Mr. Montesi, on behalf of Ocean 503, testified that he does not have an issue with the members of the public recreating or sitting within the intertidal zone of the Ocean 503 Property for the purpose of enjoying the beach, provided that no one is breaking any laws. (Ocean 503 Dep. 45:3-12.)

14. Plaintiffs named Ocean 503 as a defendant due to: (1) its close proximity to one of the public rights-of-way that provides access to Moody Beach; (2) the presence of the Signs; and (3) the fact that “[t]he house was larger” which “gives some indication of their inclination to be there and to utilize the beach . . . and to assert their claimed rights to exclude members of the public from use of the beach. . . . They’re not there on a shoestring. They’re not there with an intention of . . . coming and going.” True and accurate copies of excerpts from the Deposition of Orlando Delogu, with pertinent passages highlighted, are attached hereto collectively as **Exhibit C**. (O. Delogu Dep. 42:15-19, 43:2-24.)

15. Ocean 503 was also named as a defendant on the basis of Plaintiffs’ belief that “they had been active, in the minds of some, at least, in asserting their claimed property right . . .”. (O. Delogu Dep. 42:14-16.)

16. However, Ocean 503 and its invitees have never confronted any member of the public regarding his or her use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.)

17. Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.)

18. Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6).

19. Mr. Montesi testified that, as a former public-school teacher with years of experience, he would never ask a child not to build a sandcastle on the Ocean 503 Property. (Ocean 503 Dep. 43:11-14.)

20. None of the Plaintiffs have provided any specific information regarding a single instance of Ocean 503 or anyone associated with Ocean 503 confronting any members of the public regarding use of the intertidal zone. *See, e.g.*, (O. Delogu Dep. 41:7-11); (Griffiths Dep. 38:5-15); (P. Masucci Dep. 42:12-44:10); (Connerney Dep. 31:5-20); (K. Masucci Dep. 44:19-45:25). True and accurate copies of excerpts from the Deposition of William M. Griffiths, with pertinent passages highlighted, are attached hereto collectively as **Exhibit D.** True and accurate copies of excerpts from the Deposition of Peter Masucci, with pertinent passages highlighted, are attached hereto collectively as **Exhibit E.** True and accurate copies of excerpts from the Deposition of William Connerney, with pertinent passages highlighted, are attached hereto collectively as **Exhibit F.** True and accurate copies of excerpts from the Deposition of Kathy Masucci, with pertinent passages highlighted, are attached hereto collectively as **Exhibit G.**

21. Of the twenty Plaintiffs, only three testified that they are certain they have been physically present within the intertidal zone of the Ocean 503 Property. (Connerney Dep. 19:17-20:8); (P. Masucci Dep. 18:11-20); (K. Masucci Dep. 49:19-24).

22. More specifically, Plaintiff William Connerney (“Mr. Connerney”) testified that he walked across the Ocean 503 intertidal zone last August. (Connerney Dep. 19:21-24.)

23. Plaintiff Peter Masucci (“Mr. Masucci”) testified that he had walked across the Ocean 503 intertidal zone as recently as January 2023. (P. Masucci Dep. 19:15-17.)

24. Plaintiff Kathy Masucci (“Ms. Masucci”) testified that she had walked on the intertidal zone of the Ocean 503 Property as recently as December 2022. (K. Masucci Dep. 49:19-24.)

25. Additionally, Plaintiff Orlando Delogu (“Mr. Delogu”) testified that he did not have a specific recollection of being on the Ocean 503 Property but assumed that he had by virtue of the fact that he had walked the entire length of Moody Beach. (O. Delogu Dep. 21:6-22:9.)

26. The remaining sixteen Plaintiffs have not been on the Ocean 503 Property. (Pls.’ Interrogs.); (J. Delogu Dep. 13:17-21). True and accurate copies of Plaintiffs’ Answers to Defendant Ocean 503, LLC’s First Set of Interrogatories are attached hereto collectively as **Exhibit H**. True and accurate copies of excerpts from the Deposition of Judith Delogu, with pertinent passages highlighted, are attached hereto collectively as **Exhibit I**.

27. Of the three Plaintiffs who specifically recall having engaged in some activity within the intertidal zone of the Ocean 503 Property, none are familiar with the Montesis. (Connerney Dep. 16:5-17); (P. Masucci Dep. 16:12-17:8); (K. Masucci Dep. 14:16-15:13).

28. Of the three Plaintiffs who specifically recall having engaged in some activity within the intertidal zone of the Ocean 503 Property, none had ever been confronted about their usage or asked to leave. (Connerney Dep. 30:2-18); (P. Masucci Dep. 43:16-44:10); (K. Masucci Dep. 28:10-29:2).

29. Mr. Connerney, Mr. Masucci, Ms. Masucci, and Mr. Delogu do not have any personal knowledge of any instances in which Ocean 503 has confronted members of the public with respect to their usage of the intertidal zone. (Connerney Dep. 31:5-20); (P. Masucci Dep. 42:12-44:10); (K. Masucci Dep. 34:25-35:5, 45:1-25); (O. Delogu Dep. 41:7-11).

30. The Signs have not deterred any of the Plaintiffs who have been on the Ocean 503 Property from continuing to engage in activity in the intertidal zone of the Ocean 503 Property. (Connerney Dep. 18:8-9, 26:10-27:8); (P. Masucci Dep. 53:11-55:5, 57:15-58:2); (K. Masucci Dep. 38:21-39:8).

31. More specifically, Mr. Connerney further testified that the Signs have not prevented him from entering the intertidal zone of the Ocean 503 Property but the Signs have made him aware that he might be on Ocean 503's Property and he "tr[ies] vaguely not to stay on his property." (Connerney Dep. 18:8-11, 26:10-27:8.)

32. Mr. Masucci testified that the Signs have not stopped him from engaging in movement-based activity within the intertidal zone of the Ocean 503 Property. (P. Masucci Dep. 57:15-58:2.)

33. Despite having seen the Signs, Mr. Masucci played bocce ball four or five times during the summer of 2022 on the intertidal zone of the Ocean 503 Property. (P. Masucci Dep. 53:19-22, 54:24-55:5.)

34. Ms. Masucci testified that the Signs had not prevented her from walking across the intertidal zone of that property. (K. Masucci Dep. 38:21-39:8.)

35. Ms. Delogu testified that she has not personally seen the Signs on the Ocean 503 Property. (J. Delogu Dep. 20:13-21.)

36. Mr. Delogu testified that he did not know for certain that there was a sign on the Ocean 503 Property but that signs "do not, in and of themselves, . . . prevent" the public from engaging in activity in the intertidal zone; rather, it is "the possible following through by the upland owner of calling the police, ousting me, threatening me with - - intimidating my . . . children or grandchildren who may be accompanying me . . .". (O. Delogu Dep. 37:2-7, 38:13-15, 127:1-5.)

37. Ocean 503 has never approached or confronted Mr. Delogu or called law enforcement regarding Mr. Delogu's use of the intertidal zone. (O. Delogu Dep. 46:14-23); (O. Delogu Ans. Ints. No. 8). A true and accurate copy of Plaintiff Orlando Delogu's Answers to Defendant Ocean 503, LLC's First Set of Interrogatories is attached hereto as **Exhibit J**.

38. Although Plaintiffs William Griffiths and Sheila Jones have never been on the Ocean 503 Property, they alleged that the Signs threatened their business, a resort located within a few minutes' walk to Old Orchard Beach and over twenty miles from the Ocean 503 Property, due to the disappointment their customers feel at finding "invisible lines in the sand and hostile signs telling them and their children to 'keep out.'" (Griffiths Dep. 18, 21:14-22:6, 22:25-23:5, 23:24-25:2); (Jones Dep. 15:9-12); (Compl. ¶ 14). True and accurate copies of excerpts from the Deposition of Sheila Jones, with pertinent passages highlighted, are attached hereto collectively as **Exhibit K**. A true and accurate copy of Plaintiffs' Complaint is attached hereto as **Exhibit L**.

39. Mr. Griffiths testified that he could not identify the Ocean 503 Property, did not know whether the property has signs, and could not say with certainty that his customers had seen any signs on the Ocean 503 Property. (Griffiths Dep. 32:14-18, 66:3-23.)

40. Mr. Griffiths also testified that he did not know if any of his customers had ever been on the Ocean 503 Property. (Griffiths Dep. 26:1-10.)

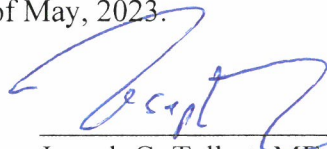
41. Ms. Jones testified that she had no recollection of any customers telling her that they had walked the entire length of Moody Beach and she had no reason to believe that her customers had seen Ocean 503's signs. (Jones Dep. 20:5-10, 21:19-22.)

42. Mr. Griffiths and Ms. Jones were not aware of any instances in which their customers were ever confronted, asked to leave, or had law enforcement called on them on Moody Beach. (Griffiths Dep. 35:1-15); (Jones Dep. 22:3-10).

43. Mr. Griffiths and Ms. Jones have not had a customer inform them that the customer will not be returning on account of the signs on Moody Beach and Mr. Griffiths does not have any data or information to support his position that the Signs are hurting his business. (Griffiths Dep. 36:7-23); (Jones Dep. 23:3-6).

44. Ms. Jones could not identify any way in which her business had been impacted by the signs on Moody Beach. (Jones Dep. 23:7-11.)

Dated at Portland, Maine this 1st day of May, 2023.



Joseph G. Talbot, ME Bar No. 4868
Emily A. Arvizu, ME Bar No. 6585
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11. Denied. The signage speaks for itself. Ocean 503, LLC posted signage facing the ocean stating "PRIVATE BEACH" on its seawall stating "MOODY BEACH IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING. Deposition of Mark Montesi dated March 2, 2023, exhibit 4 & 5 (attached hereto as "Exhibit A") ("Montesi Dep.").

12. Admitted.

13. Admitted.

14. Qualified. Orlando Delogu represents himself *pro se* in this litigation and therefore his deposition testimony is only applicable to his thought process when selecting Ocean 503 as a defendant.

15. Qualified. Orlando Delogu represents himself *pro se* in this litigation and therefore his deposition testimony is only applicable to his thought process when selecting Ocean 503 as a defendant.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Qualified. William Griffiths has been to Moody Beach twice and is unsure whether he has been on the Ocean 503, LLC Property. Deposition of William Griffiths dated January 12, 2023, page 21:14-18, 27:1-6, 59:7-12 (attached hereto as “Exhibit B”) (“Griffiths Dep.”).

27. Admitted.

28. Admitted.

29. Admitted.

30. Denied. Kathy Masucci has not “set up camp or sat down all of her things ... on the intertidal zone of [the] Ocean 503 Property” and “consciously sit[s] in the confines of the public way” since the Private Property signage has been posted. *See* Deposition of Kathy Masucci dated January 13, 2023, pages 18:22-25, 55:12-15, 105:16-17 (attached hereto as “Exhibit C”) (“K. Masucci Dep.”). Peter Masucci no longer puts chairs down or digs for seaworms with his family since the Private Property signage has been posted. *See* Plaintiff Peter Masucci’s Response to Ocean 503’s First Set of Interrogatories dated December 19, 2023, response, ¶ 11 (attached hereto as “Exhibit D”).

31. Admitted.

32. Admitted.

33. Admitted.

34. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

38. Admitted.

39. Admitted.

- 40. Admitted.
- 41. Admitted.
- 42. Admitted.
- 43. Admitted.
- 44. Admitted.

Dated: June 2, 2023

Respectfully submitted,



For Plaintiffs,
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STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

PETER and KATHY MASUCCI, et al.,)
)
Plaintiffs,)
)
v.)
)
JUDY’S MOODY LLC, et al.,)
)
Defendants,)
)
and)
)
AARON FREY, in his capacity as Attorney)
General for the State of Maine,)
)
Party-in-Interest.)

**DEFENDANT OCEAN 503, LLC’S
REPLY STATEMENT OF MATERIAL
FACTS (AS TO PLAINTIFFS’
OPPOSING STATEMENT OF
MATERIAL FACTS)**

Title to Real Estate is Involved

Defendant Ocean 503, LLC (“Ocean 503”), respectfully submits this Reply Statement of Material Facts pursuant to Maine Rule of Civil Procedure 56(h)(3). The following admissions and responses are intended solely for purposes of Ocean 503’s Motion for Summary Judgment and for no other purpose, and shall have no preclusive effect at trial or in any other proceeding.

Responses to Qualifications and Denials

26. **SMF:** The remaining sixteen Plaintiffs have not been on the Ocean 503 Property.

Plaintiffs’ Qualification: William Griffiths has been to Moody Beach twice and is unsure whether he has been on the Ocean 503, LLC Property.

Ocean 503’s Response: William Griffiths has been to Moody Beach twice; once 50 years ago playing football and a second time more recently for a press release related to the instant case. (Griffiths Dep. 15:16-23; 21:7-13.) Griffiths stated clearly that he did not believe he had ever been

on Ocean 503's intertidal property during either of his two visits to Moody Beach. (Griffiths Dep. 21:14-18.) True and accurate copies of excerpts from the Deposition of William M. Griffiths, with pertinent passages highlighted, are attached hereto collectively as **Exhibit A.**

30. **SMF:** The Signs have not deterred any of the Plaintiffs who have been on the Ocean 503 Property from continuing to engage in activity in the intertidal zone of the Ocean 503 Property.

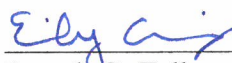
Plaintiffs' Denial: Kathy Masucci has not "set up camp or sat down all of her things . . . on the intertidal zone of [the] Ocean 503 Property" and "consciously sit[s] in the confines of the public way" since the Private Property signage has been posted. Peter Masucci no longer puts chairs down or digs for seaworms with his family since the Private Property signage has been posted.

Ocean 503's Response: Kathy Masucci was not able to state with any kind of specificity when she had sat down on the intertidal zone of the Ocean 503 Property. (K. Masucci Dep. 17:25-18:5.) When asked if she had ever sat on the intertidal zone of the Ocean 503 Property, Kathy Masucci testified "Yeah, I guess so. I mean, I'm sure I did." (K. Masucci Dep. 17:25-18:5.) As to when she last sat down in the Property, she could only say it was prior to the signs being put up, though she was unsure when that was. (K. Masucci Dep. 18:20-25; 51:6-12; 54:11-56:12.) True and accurate copies of excerpts from the Deposition of Kathy Masucci, with pertinent passages highlighted, are attached hereto collectively as **Exhibit B.**

It is unclear if Peter Masucci ever dug for seaworms on Ocean 503 Property. (P. Masucci Dep. 46:24-47:1.) Further, there is no testimony that prior to the posting of the signs Peter Masucci

specifically stopped on Ocean 503 Property. (P. Masucci Dep. 121:1-13; 122:4-6 (discussing stopping and sitting generally on intertidal land on Moody Beach.) True and accurate copies of excerpts from the Deposition of Peter Masucci, with pertinent passages highlighted, are attached hereto collectively as **Exhibit C**.

Dated at Portland, Maine this 20th of June, 2023.



Joseph G. Talbot, ME Bar No. 4868
Emily A. Arvizu, ME Bar No. 6585
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Ocean 503, LLC

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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-35

PETER MASUCCI, *et al.*,)
)
 Plaintiffs,)
 v.)
)
 JUDY'S MOODY LLC, *et al.*,)
)
 Defendants,)
 and)
)
 AARON FREY, in his capacity as the)
 ATTORNEY GENERAL OF THE STATE OF)
 MAINE,)
)
 Party-in-Interest)

**ATTORNEY GENERAL'S OPPOSING
AND ADDITIONAL STATEMENT OF
MATERIAL FACTS (RESPONSIVE TO
OCEAN 503, LLC'S STATEMENT OF
MATERIAL FACTS)**

(Title to Real Estate Involved)

Pursuant to M.R. Civ. P. 56(h)(2) and 56(i), Party-in-Interest the Attorney General (AG) opposes and objects to the material facts submitted by Defendant Ocean 503, LLC as follows and, in a separately titled section, sets forth additional facts.

ATTORNEY GENERAL'S OPPOSING STATEMENT OF MATERIAL FACTS

1. Ocean 503, LLC is a Maine limited liability company that owns certain real property located at 503 Ocean Avenue, Wells, Maine (the "Ocean 503 Property"). A true and accurate copy of Affidavit of Mark Montesi in Support of Defendant Ocean 503, LLC's Motion for Summary Judgment is attached hereto as **Exhibit A**, (Affidavit of Mark Montesi in Support of Defendant Ocean 503, LLC's Motion for Summary Judgment at ¶ 1) (hereinafter "Montesi Aff. ¶__").

RESPONSE: Admitted.

2. Mark Montesi and Corliss Montesi (the "Montesis") are the only members of

Ocean 503. True and accurate copies of excerpts from the Deposition of Ocean 503, LLC, with pertinent passages highlighted, are attached hereto collectively as **Exhibit B**. (Ocean 503 Dep. 11:5-19.)

RESPONSE: Admitted.

3. Ocean 503 holds title to the Ocean 503 Property, which is located on the beachfront of Moody Beach. (Montesi Aff. ¶ 2.)

RESPONSE: Admitted.

4. The Montesis initially purchased the Ocean 503 Property in 2018 in their capacity as trustees of the Mark J. Montesi Living Trust dated May 3, 2015, and the Corliss J. Montesi Living Trust dated May 3, 2015 (together, the "Trusts"). (Ocean 503 Dep. 13:16-14:9); (Montesi Aff. ¶3).

RESPONSE: Admitted.

5. In May 2019, the Montesis transferred title of the Ocean 503 Property from the Trusts to Ocean 503. (Montesi Aff. ¶4.)

RESPONSE: Admitted.

6. The Montesis spend about twenty percent of the year at the Ocean 503 Property. (Ocean 503 Dep. 15:15-18.)

RESPONSE: Admitted.

7. The Montesis do not rent out the Ocean 503 Property to third parties. (Ocean 503 Dep. 48:10-13.)

RESPONSE: Admitted.

8. Many beachfront properties on Moody Beach have signs indicating that Moody Beach is a private beach. (Montesi Aff. ¶6.)

RESPONSE: Qualified.

Less than half of the beachfront properties on Moody Beach have signs indicating that Moody Beach is a private beach or saying no loitering. (Connerney Dep. 25:20-26:8; P. Masucci Dep. 29:8-22, II¹ 28:19-29:12; K. Masucci Dep. 110:14-111:7). Otherwise admitted.

9. On the seawall surrounding a portion of the Ocean 503 Property, there are two signs, one of which reads "Private beach" and another which reads "Moody Beach is a private beach to the low water mark - no loitering" (the "Signs"). (Montesi Aff. ¶5)

RESPONSE: Admitted.

10. One of the Signs faces a public way abutting the Ocean 503 Property which leads from Ocean Avenue to Moody Beach. (Ocean 503 Dep. 41:9-12).

RESPONSE: Admitted.

11. The Signs were posted due, in part, to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16).

RESPONSE: Admitted.

12. Mr. Montesi defines "loitering" as "coming together for no purpose at all" and does not consider sitting on the beach "loitering." (Ocean 503 Dep. 41:17-21; 42:12-16.)

RESPONSE: Admitted.

13. Mr. Montesi, on behalf of Ocean 503, testified that he does not have an issue with the members of the public recreating or sitting within the intertidal zone of the Ocean 503 Property for the purpose of enjoying the beach, provided that no one is breaking

¹ Peter Masucci's deposition was split between two days: January 11, 2023, and January 13, 2023. "P. Masucci Dep. II" or "II" refers to his deposition transcript from January 13, 2023.

any laws. (Ocean 503 Dep. 45:3-12.)

RESPONSE: Admitted.

14. Plaintiffs named Ocean 503 as a defendant due to: (1) its close proximity to one of the public rights-of-way that provides access to Moody Beach; (2) the presence of the Signs; and (3) the fact that "[t]he house was larger" which "gives some indication of their inclination to be there and to utilize the beach ... and to assert their claimed rights to exclude members of the public from use of the beach.... They're not there on a shoestring. They're not there with an intention of ...coming and going." True and accurate copies of excerpts from the Deposition of Orlando Delogu, with pertinent passages highlighted, are attached hereto collectively as **Exhibit C**. (O. Delogu Dep. 42:15-19, 43:2-24.)

RESPONSE: Objection.

Objection: This fact is unsupported as to Peter Masucci, Kathy Masucci, and William (Bill) Connerney. Subject to this objection:

Admitted as to Plaintiff Orlando Delogu only.

15. Ocean 503 was also named as a defendant on the basis of Plaintiffs' belief that "they had been active, in the minds of some, at least, in asserting their claimed property right ... ". (O. Delogu Dep. 42:14-16.)

RESPONSE: Objection.

Objection: This fact is unsupported as to Peter Masucci, Kathy Masucci, and Bill Connerney. Subject to this objection:

Admitted as to Plaintiff Orlando Delogu only.

16. However, Ocean 503 and its invitees have never confronted any member of the public regarding his or her use of the intertidal zone of the Ocean 503 Property. (Ocean

503 Dep. 38:5-6, 43:9-14, 44:21-22.)

RESPONSE: Qualified.

The AG admits that individuals acting on behalf of Ocean 503 have never personally confronted members of the public about their usage of the intertidal zone at Ocean 503's property. But Ocean 503's signs confront members of the public, including Peter Masucci, Kathy Masucci, and Bill Connerney, regarding the use of the intertidal zone and this negatively affects their respective beach experiences. In particular:

Mr. Masucci has seen and is conscious of the signs on Ocean 503's property. (P. Masucci Dep. 23:3-24:3, 32:3-11, 33:15-17, 47:12-13.) The sign on Ocean 503's seawall that faces ROW 3 makes Mr. Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-14, Ex. PM-6.) Because of such signs, Mr. Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22.) Mr. Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.) Mr. Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) The sign on Ocean 503's seawall that faces ROW 3 stands out to him because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.) Mr. Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.) That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Mr. Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

The signs on Ocean 503's property suggest to Ms. Masucci that she should not be on Ocean 503's property. (K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4, 44:15-17; 46:4-7.) The signs on Ocean 503's property intimidate her. (K. Masucci Dep. 46:4-7, 127:3-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) The sign on Ocean 503's property that faces ROW 3 makes Ms. Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.) Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.) When she sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 intertidal land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.) Although she only walks across the Ocean 503 intertidal land, Ms. Masucci is concerned that Ocean 503 may ask her to leave Ocean 503's intertidal land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.) Ms. Masucci has heard stories of Ocean 503 approaching members of the public about using Ocean 503's intertidal land. (K. Masucci Dep. 28:5-9, 29:7-10.) Ms. Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) The stories she has heard make her feel

sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Mr. Connerney has seen the signs on Ocean 503's seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.) He understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.) Mr. Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that its intertidal land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.) Because of his understanding that Ocean 503 does not want people on its property, Mr. Connerney now limits his use of Ocean 503's intertidal land to when Ocean 503 is not around or otherwise tries to avoid Ocean 503's intertidal land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.) Mr. Connerney is concerned that Ocean 503 may ask him to leave its intertidal land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.) His concern that Ocean 503 may ask him to leave Ocean 503's intertidal land negatively affects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

17. Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.)

RESPONSE: Qualified.

The AG admits that individuals acting on behalf of Ocean 503 have never personally asked anyone to leave the intertidal zone at Ocean 503's property. But the signs on Ocean 503's property confront members of the public, including Mr. Masucci, Ms. Masucci, and Mr. Connerney, regarding their use of the intertidal zone at the property and this negatively affects their respective beach experiences. In particular:

Mr. Masucci has seen and is conscious of the signs on Ocean 503's property. (P. Masucci Dep. 23:3-24:3, 32:3-11, 33:15-17, 47:12-13.) The sign on Ocean 503's seawall that faces ROW 3 makes Mr. Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-14, Ex. PM-6.) Because of such signs, Mr. Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22.) Mr. Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.) Mr. Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) The sign on Ocean 503's seawall that faces ROW 3 stands out to him because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.) Mr. Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.) That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Mr. Masucci's experience at Moody Beach. (P. Masucci Dep. II

46:2-10.)

The signs on Ocean 503's property suggest to Ms. Masucci that she should not be on Ocean 503's property. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7.) The signs on Ocean 503's property intimidates her. (K. Masucci Dep. 46:4-7, 127:3-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) The sign on Ocean 503's property that faces ROW 3 makes Ms. Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.) Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.) When she sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 intertidal land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.) Although she only walks across the Ocean 503 intertidal land, Ms. Masucci is concerned that Ocean 503 may ask her to leave Ocean 503's intertidal land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.) Ms. Masucci has heard stories of Ocean 503 approaching members of the public about using Ocean 503's intertidal land. (K. Masucci Dep. 28:5-9, 29:7-10.) Ms. Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) The stories she has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Mr. Connerney has seen the signs on Ocean 503's seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.) He understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.) Mr. Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that its intertidal land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.) Because of his understanding that Ocean 503 does not want people on its property, Mr. Connerney now limits his use of Ocean 503's intertidal land to when Ocean 503 is not around or otherwise tries to avoid Ocean 503's intertidal land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.) Mr. Connerney is concerned that Ocean 503 may ask him to leave its intertidal land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.) His concern that Ocean 503 may ask him to leave Ocean 503's intertidal land negatively effects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

18. Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6).

RESPONSE: Admitted.

19. Mr. Montesi testified that, as a former public-school teacher with years of experience, he would never ask a child not to build a sandcastle on the Ocean 503 Property. (Ocean 503 Dep. 43:11-14.)

RESPONSE: Admitted.

20. None of the Plaintiffs have provided any specific information regarding a single instance of Ocean 503 or anyone associated with Ocean 503 confronting any members of the public regarding use of the intertidal zone. *See, e.g.*, (O. Delogu Dep. 41:7-11); (Griffiths Dep. 38:5-15); (P. Masucci Dep. 42:12-44:10); (Connerney Dep. 31:5-20); (K. Masucci Dep. 44:19-45:25). True and accurate copies of excerpts from the Deposition of William M. Griffiths, with pertinent passages highlighted, are attached hereto collectively as **Exhibit D**. True and accurate copies of excerpts from the Deposition of Peter Masucci, with pertinent passages highlighted, are attached hereto collectively as **Exhibit E**. True and accurate copies of excerpts from the Deposition of William Connerney, with pertinent passages highlighted, are attached hereto collectively as **Exhibit F**. True and accurate copies of excerpts from the Deposition of Kathy Masucci, with pertinent passages highlighted, are attached hereto collectively as **Exhibit G**.

RESPONSE: Qualified.

The AG admits that Plaintiffs have not identified specific instances where individuals acting on behalf of Ocean 503 having personally confronted members of the public about their use of the intertidal zone at Ocean 503's property. But the signs on Ocean 503's property confront members of the public, including Mr. Masucci, Ms. Masucci, and Mr. Connerney, regarding their use of the intertidal zone and this has had negative effects on their respective beach experiences. In particular:

Mr. Masucci has seen and is conscious of the signs on Ocean 503's property. (P. Masucci Dep. 23:3-24:3, 32:3-11, 33:15-17, 47:12-13.) The sign on Ocean 503's seawall that faces ROW 3 makes Mr. Masucci feel uncomfortable and angry. (P.

Masucci Dep. II 45:11-14, Ex. PM-6.) Because of such signs, Mr. Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22.) Mr. Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.) Mr. Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) The sign on Ocean 503's seawall that faces ROW 3 stands out to him because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.) Mr. Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.) That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Mr. Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

The signs on Ocean 503's property suggest to Ms. Masucci that she should not be on Ocean 503's property. (K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4, 44:15-17; 46:4-7.) The signs on Ocean 503's property intimidates her. (K. Masucci Dep. 46:4-7, 127:3-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) The sign on Ocean 503's property that faces ROW 3 makes Ms. Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.) Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.) When she sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 intertidal land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.) Although she only walks across the Ocean 503 intertidal land, Ms. Masucci is concerned that Ocean 503 may ask her to leave Ocean 503's intertidal land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.) Ms. Masucci has heard stories of Ocean 503 approaching members of the public about using Ocean 503's intertidal land. (K. Masucci Dep. 28:5-9, 29:7-10.) Ms. Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) The stories she has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Mr. Connerney has seen the signs on Ocean 503's seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.) He understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.) Mr. Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that its intertidal land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.) Because of his understanding that Ocean 503 does not want people on its property, Mr. Connerney now limits his use of Ocean 503's intertidal land to when Ocean 503 is not around or otherwise tries to avoid Ocean 503's intertidal land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.) Mr. Connerney is concerned that Ocean 503 may ask him to leave its intertidal land. (Connerney

Dep. 18:6-13, 25:20-26:4, 26:24-27:2.) His concern that Ocean 503 may ask him to leave Ocean 503's intertidal land negatively affects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

21. Of the twenty Plaintiffs, only three testified that they are certain they have been physically present within the intertidal zone of the Ocean 503 Property. (Connerney Dep. 19:17- 20:8); (P. Masucci Dep. 18:11-20); (K. Masucci Dep. 49:19-24).

RESPONSE: Admitted.

22. More specifically, Plaintiff William Connerney ("Mr. Connerney") testified that he walked across the Ocean 503 intertidal zone last August. (Connerney Dep. 19:21-24.)

RESPONSE: Admitted.

23. Plaintiff Peter Masucci ("Mr. Masucci") testified that he had walked across the Ocean 503 intertidal zone as recently as January 2023. (P. Masucci Dep. 19:15-17.)

RESPONSE: Admitted.

24. Plaintiff Kathy Masucci ("Ms. Masucci") testified that she had walked on the intertidal zone of the Ocean 503 Property as recently as December 2022. (K. Masucci Dep. 49:19- 24.)

RESPONSE: Admitted.

25. Additionally, Plaintiff Orlando Delogu ("Mr. Delogu") testified that he did not have a specific recollection of being on the Ocean 503 Property but assumed that he had by virtue of the fact that he had walked the entire length of Moody Beach. (O. Delogu Dep. 21:6 -22:9.)

RESPONSE: Admitted.

26. The remaining sixteen Plaintiffs have not been on the Ocean 503 Property. (Pls.' Interrogatories.); (J. Delogu Dep. 13:17-21). True and accurate copies of Plaintiffs' Answers

to Defendant Ocean 503, LLC's First Set of Interrogatories are attached hereto collectively as **Exhibit H**. True and accurate copies of excerpts from the Deposition of Judith Delogu, with pertinent passages highlighted, are attached hereto collectively as **Exhibit I**.

RESPONSE: Admitted.

27. Of the three Plaintiffs who specifically recall having engaged in some activity within the intertidal zone of the Ocean 503 Property, none are familiar with the Montesis. (Connerney Dep. 16:5-17); (P. Masucci Dep. 16:12-17:8); (K. Masucci Dep. 14:16-15:13).

RESPONSE: Admitted.

28. Of the three Plaintiffs who specifically recall having engaged in some activity within the intertidal zone of the Ocean 503 Property, none had ever been confronted about their usage or asked to leave. (Connerney Dep. 30:2-18); (P. Masucci Dep. 43:16-44:10); (K. Masucci Dep. 28:10-29:2).

RESPONSE: Qualified.

The AG admits that Mr. Masucci, Ms. Masucci, and Mr. Connerney have never been personally confronted by individuals about their respective usage of the intertidal zone at Ocean 503's property or verbally asked to leave. But Mr. Masucci, Ms. Masucci, and Mr. Connerney have seen and been confronted by the signs on Ocean 503's property and this has had similar and negative effects on their respective beach experiences. In particular:

Mr. Masucci has seen and is conscious of the signs on Ocean 503's property. (P. Masucci Dep. 23:3-24:3, 32:3-11, 33:15-17, 47:12-13.) The sign on Ocean 503's seawall that faces ROW 3 makes Mr. Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-14, Ex. PM-6.) Because of such signs, Mr. Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22.) Mr. Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.) Mr. Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) The sign on Ocean 503's seawall that faces ROW 3 stands out to him because

it says “private beach to the low water mark” instead of just “private beach.” (P. Masucci Dep. 35:5-13, Ex. PM-6.) Mr. Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.) That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Mr. Masucci’s experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

The signs on Ocean 503’s property suggest to Ms. Masucci that she should not be on Ocean 503’s property. (K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4, 44:15-17; 46:4-7.) The signs on Ocean 503’s property intimidates her. (K. Masucci Dep. 46:4-7, 127:3-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) The sign on Ocean 503’s property that faces ROW 3 makes Ms. Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.) Seeing the sign on Ocean 503’s Property that faces ROW 3 negatively affects Kathy Masucci’s experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.) When she sees Ocean 503’s no loitering sign she does not feel welcome on the Ocean 503 intertidal land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.) Although she only walks across the Ocean 503 intertidal land, Ms. Masucci is concerned that Ocean 503 may ask her to leave Ocean 503’s intertidal land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.) Ms. Masucci has heard stories of Ocean 503 approaching members of the public about using Ocean 503’s intertidal land. (K. Masucci Dep. 28:5-9, 29:7-10.) Ms. Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) The stories she has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Mr. Connerney has seen the signs on Ocean 503’s seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.) He understands from the signs on Ocean 503’s seawall that Ocean 503 does not want people on Ocean 503’s property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.) Mr. Connerney understands from the signs on Ocean 503’s seawall that Ocean 503 asserts that its intertidal land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.) Because of his understanding that Ocean 503 does not want people on its property, Mr. Connerney now limits his use of Ocean 503’s intertidal land to when Ocean 503 is not around or otherwise tries to avoid Ocean 503’s intertidal land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.) Mr. Connerney is concerned that Ocean 503 may ask him to leave its intertidal land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.) His concern that Ocean 503 may ask him to leave Ocean 503’s intertidal land negatively effects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

29. Mr. Connerney, Mr. Masucci, Ms. Masucci, and Mr. Delogu do not have any personal knowledge of any instances in which Ocean 503 has confronted members of the public

with respect to their usage of the intertidal zone. (Connerney Dep. 31:5-20); (P. Masucci Dep. 42:12-44:10); (K. Masucci Dep. 34:25-35:5, 45:1-25); (O. Delogu Dep. 41:7-11).

RESPONSE: Qualified.

The AG admits that Mr. Masucci, Ms. Masucci, Mr. Connerney, and Mr. Delogu do not have personal knowledge of instances where individuals on behalf of Ocean 503 have personally confronted members of the public about their usage of the intertidal zone at Ocean 503's property. But Mr. Masucci, Ms. Masucci, and Mr. Connerney have seen and been confronted by the signs on Ocean 503's property and this has had similar and negative effects on their respective beach experiences. In particular:

Mr. Masucci has seen and is conscious of the signs on Ocean 503's property. (P. Masucci Dep. 23:3-24:3, 32:3-11, 33:15-17, 47:12-13.) The sign on Ocean 503's seawall that faces ROW 3 makes Mr. Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-14, Ex. PM-6.) Because of such signs, Mr. Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22.) Mr. Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.) Mr. Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-6.) The sign on Ocean 503's seawall that faces ROW 3 stands out to him because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.) Mr. Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.) That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Mr. Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

The signs on Ocean 503's property suggest to Ms. Masucci that she should not be on Ocean 503's property. (K. Masucci Dep. 20:11-22; 24:11-25:8; 37:22-38:4, 44:15-17; 46:4-7.) The signs on Ocean 503's property intimidates her. (K. Masucci Dep. 46:4-7, 127:3-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) The sign on Ocean 503's property that faces ROW 3 makes Ms. Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.) Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.) When she sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 intertidal land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.) Although she only walks across the Ocean 503 intertidal land, Ms. Masucci is concerned that Ocean 503 may ask her to leave Ocean 503's intertidal land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.) Ms. Masucci has heard stories of Ocean

503 approaching members of the public about using Ocean 503's intertidal land. (K. Masucci Dep. 28:5-9, 29:7-10.) Ms. Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) The stories she has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Mr. Connerney has seen the signs on Ocean 503's seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.) He understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.) Mr. Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that its intertidal land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.) Because of his understanding that Ocean 503 does not want people on its property, Mr. Connerney now limits his use of Ocean 503's intertidal land to when Ocean 503 is not around or otherwise tries to avoid Ocean 503's intertidal land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.) Mr. Connerney is concerned that Ocean 503 may ask him to leave its intertidal land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.) His concern that Ocean 503 may ask him to leave Ocean 503's intertidal land negatively effects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

30. The Signs have not deterred any of the Plaintiffs who have been on the Ocean 503 Property from continuing to engage in activity in the intertidal zone of the Ocean 503 Property. (Connerney Dep. 18:8-9, 26:10-27:8); (P. Masucci Dep. 53:11-55:5, 57:15-58:2); (K. Masucci Dep. 38:21-39:8).

RESPONSE: Qualified.

The AG admits that Plaintiffs have not been physically prevented by Ocean 503's signs from engaging in activity in the intertidal zone of Ocean 503's property. But Mr. Masucci, Ms. Masucci, and Mr. Connerney have seen and been confronted by the signs on Ocean 503's property and this has had similar and negative effects on their respective beach experiences. In particular:

Mr. Masucci has seen and is conscious of the signs on Ocean 503's property. (P. Masucci Dep. 23:3-24:3, 32:3-11, 33:15-17, 47:12-13.) The sign on Ocean 503's seawall that faces ROW 3 makes Mr. Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-14, Ex. PM-6.) Because of such signs, Mr. Masucci does not stop on intertidal land. (P. Masucci Dep. 57:15-22.) Mr. Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.) Mr. Masucci feels he is not really able to use the intertidal zone in the way he should be, and he feels intimidated by all the signs and the stories of people being asked to leave. (P. Masucci Dep. 151:1-

6.) The sign on Ocean 503's seawall that faces ROW 3 stands out to him because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.) Mr. Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.) That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Mr. Masucci's experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)

The signs on Ocean 503's property suggest to Ms. Masucci that she should not be on Ocean 503's property. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7.) The signs on Ocean 503's property intimidates her. (K. Masucci Dep. 46:4-7, 127:3-7.) To Ms. Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6.) The sign on Ocean 503's property that faces ROW 3 makes Ms. Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.) Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.) When she sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 intertidal land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.) Although she only walks across the Ocean 503 intertidal land, Ms. Masucci is concerned that Ocean 503 may ask her to leave Ocean 503's intertidal land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.) Ms. Masucci has heard stories of Ocean 503 approaching members of the public about using Ocean 503's intertidal land. (K. Masucci Dep. 28:5-9, 29:7-10.) Ms. Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.) The stories she has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)

Mr. Connerney has seen the signs on Ocean 503's seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.) He understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.) Mr. Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that its intertidal land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.) Because of his understanding that Ocean 503 does not want people on its property, Mr. Connerney now limits his use of Ocean 503's intertidal land to when Ocean 503 is not around or otherwise tries to avoid Ocean 503's intertidal land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.) Mr. Connerney is concerned that Ocean 503 may ask him to leave its intertidal land. (Connerney Dep. 18:6-13, 25:20-26:4, 26:24-27:2.) His concern that Ocean 503 may ask him to leave Ocean 503's intertidal land negatively effects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)

31. More specifically, Mr. Connerney further testified that the Signs have not prevented

him from entering the intertidal zone of the Ocean 503 Property but the Signs have made him aware that he might be on Ocean 503's Property and he "tr[ies] vaguely not to stay on his property." (Connerney Dep. 18:8-11, 26:10-27:8.)

RESPONSE: Admitted.

32. Mr. Masucci testified that the Signs have not stopped him from engaging in movement-based activity within the intertidal zone of the Ocean 503 Property. (P. Masucci Dep. 57:15-58:2.)

RESPONSE: Admitted.

33. Despite having seen the Signs, Mr. Masucci played bocce ball four or five times during the summer of 2022 on the intertidal zone of the Ocean 503 Property. (P. Masucci Dep. 53:19-22, 54:24-55:5.)

RESPONSE: Admitted.

34. Ms. Masucci testified that the Signs had not prevented her from walking across the intertidal zone of that property. (K. Masucci Dep. 38:21-39:8.)

RESPONSE: Admitted.

35. Ms. Delogu testified that she has not personally seen the Signs on the Ocean 503 Property. (J. Delogu Dep. 20:13-21.)

RESPONSE: Admitted.

36. Mr. Delogu testified that he did not know for certain that there was a sign on the Ocean 503 Property but that signs "do not, in and of themselves, ... prevent" the public from engaging in activity in the intertidal zone; rather, it is "the possible following through by the upland owner of calling the police, ousting me, threatening me with - - intimidating my ... children or grandchildren who may be accompanying me ... ". (O. Delogu Dep.

37:2-7, 38:13-15, 127:1-5.)

RESPONSE: Admitted.

37. Ocean 503 has never approached or confronted Mr. Delogu or called law enforcement regarding Mr. Delogu's use of the intertidal zone. (O. Delogu Dep. 46:14-23); (O. Delogu Ans. Ints. No. 8). A true and accurate copy of Plaintiff Orlando Delogu's Answers to Defendant Ocean 503, LLC's First Set of Interrogatories is attached hereto as **Exhibit J**.

RESPONSE: Admitted.

38. Although Plaintiffs William Griffiths and Sheila Jones have never been on the Ocean 503 Property, they alleged that the Signs threatened their business, a resort located within a few minutes' walk to Old Orchard Beach and over twenty miles from the Ocean 503 Property, due to the disappointment their customers feel at finding "invisible lines in the sand and hostile signs telling them and their children to 'keep out.'" (Griffiths Dep. 18, 21 :14-22:6, 22:25-23:5, 23:24-25:2); (Jones Dep. 15:9-12); (Compl. ¶ 14). True and accurate copies of excerpts from the Deposition of Sheila Jones, with pertinent passages highlighted, are attached hereto collectively as **Exhibit K**. A true and accurate copy of Plaintiffs' Complaint is attached hereto as **Exhibit L**.

RESPONSE: Admitted.

39. Mr. Griffiths testified that he could not identify the Ocean 503 Property, did not know whether the property has signs, and could not say with certainty that his customers had seen any signs on the Ocean 503 Property. (Griffiths Dep. 32:14-18, 66:3-23.

RESPONSE: Admitted.

40. Mr. Griffiths also testified that he did not know if any of his customers had ever

been on the Ocean 503 Property. (Griffiths Dep. 26:1-10.):

RESPONSE: Admitted.

41. Ms. Jones testified that she had no recollection of any customers telling her that they had walked the entire length of Moody Beach and she had no reason to believe that her customers had seen Ocean 503's signs. (Jones Dep. 20:5-10, 21:19-22.)

RESPONSE: Admitted.

42. Mr. Griffiths and Ms. Jones were not aware of any instances in which their customers were ever confronted, asked to leave, or had law enforcement called on them on Moody Beach. (Griffiths Dep. 35:1-15); (Jones Dep. 22:3-10).

RESPONSE: Admitted.

43. Mr. Griffiths and Ms. Jones have not had a customer inform them that the customer will not be returning on account of the signs on Moody Beach and Mr. Griffiths does not have any data or information to support his position that the Signs are hurting his business. (Griffiths Dep. 36:7-23); (Jones Dep. 23:3-6).

RESPONSE: Admitted.

44. Ms. Jones could not identify any way in which her business had been impacted by the signs on Moody Beach. (Jones Dep. 23:7-11.)

RESPONSE: Admitted.

ATTORNEY GENERAL'S ADDITIONAL STATEMENT OF MATERIAL FACTS²

1. Moody Beach is a mostly sandy beach located in Wells, Maine. (P. Masucci Dep. 95:3-12, 96:24-97:15, II 38:17-39:5.)
2. Moody Beach is approximately 1.5 miles long and is generally oriented north (Wells)-south (Ogonquit). (P. Masucci Dep. 94:23-95:4, II 10:16-23.)
3. Plaintiffs Peter Masucci and Kathy Masucci (collectively, the Masuccis) are married. (P. Masucci Dep. 73:20; K. Masucci Dep. 12:2-6, 93:24-94:2.)
4. The Masuccis own and reside at the property located at 484 Ocean Avenue in Wells, Maine (the Masuccis' Property). (P. Masucci Dep. 11:1-5, Ex. PM-5; K. Masucci Dep. 12:8-10, 12:23-13:1, 13:10-11, 65:12-15, Ex. KM-5.)
5. The Masuccis' Property is across the street from the Moody Beach; it is not oceanfront property. (P. Masucci Dep. 11:6-11, Ex. PM-5; K. Masucci Dep. 66:16-23, Ex. KM-5.)
6. Plaintiff William (Bill) Connerney owns the property at 130 South Tibbetts in Wells, Maine (the Connerney Property) and lives there from the last weekend in May through November 1. (Connerney Dep. 10:21-11:2, 11:21-12:3.)
7. The Connerney Property is across the street from Moody Beach; it is not oceanfront property. (Connerney Dep. 11:3-10; 105:23, 107:7-22, Ex. Connerney-6.)
8. Peter Masucci, Kathy Masucci, and Bill Connerney each generally understand "intertidal land" to mean the land between the mean low-water mark and the mean high-

² The AG provided full copies of the relevant deposition transcripts in support of the AG's Motion for Summary Judgment on Count IV. The AG is not providing duplicate copies of the same deposition transcripts in support of its separate statement of additional material facts, and refers the Court to the deposition transcripts already provided.

water mark. (P. Masucci Dep. 101:6-103:16, II 13:5-13; K. Masucci Dep. 68:3-20; Connerney Dep. 57:12-22.)

9. Peter Masucci, Kathy Masucci, and Bill Connerney each regularly walk the length of Moody Beach on the intertidal land at Moody Beach. (P. Masucci Dep. 13:1-8, 13:22-14:7, 14:16-17, 19:15-21:16, 60:1-4, 116:23-117:1, II 43:22-44:5; K. Masucci Dep. 16:20-17:6, 28:21-23, 35:21-36:5, 68:21-69:1, 97:11-25, 108:1-4, 126:25-127:2; Connerney Dep. 13:6-8, 13:20-25, 17:13-18:5, 19:17-24, 25:20-21, 32:22-33:17, 90:15-93:18, 96:9-11.)

10. Peter Masucci and Kathy Masucci sometimes bring their grandson along when they walk the intertidal land at Moody Beach. (P. Masucci Dep. 19:15-20:3, 117:6-16; K. Masucci Dep. 50:9-16.)

11. Peter Masucci walks the intertidal land at Moody Beach for enjoyment, relaxation, and stress relief. (P. Masucci Dep. II 37:4-12.)

12. When Peter Masucci walks the intertidal land at Moody Beach he sometimes stops to gaze at the water or look for birds. (P. Masucci Dep. 121:1-10, II 46:11-14.)

13. Kathy Masucci likes going to the beach because it is beautiful, peaceful, and fun and because the beach is a wonderful place to think, observe, and be grateful. (K. Masucci Dep. 107:12-15.)

14. Kathy Masucci walks the intertidal land at Moody Beach for enjoyment, physical health benefits, and mental health benefits like stress relief and relaxation. (K. Masucci Dep. 107:16-25.)

15. When Kathy Masucci walks the intertidal land at Moody Beach, she sometimes stops to look at the water. (K. Masucci Dep. 108:1-4.)

16. Bill Connerney walks the intertidal land at Moody Beach for relaxation and physical health. (Connerney Dep. 118:4-9.)
17. There are four locations on land from which the public may access on foot the intertidal land at Moody Beach (the Public Access Points).³ (P. Masucci Dep. 13:9-19, 20:18-22, 27:11-22, 109:4-10, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:18, Ex. KM-5.)
18. Listed north to south, the Public Access Points are right of way 3 (ROW 3), right of way 2 (ROW 2), right of way 1 (ROW 1), and the parking lot in Ogunquit near the southern end of Moody Beach (Ogunquit Parking Lot). (P. Masucci Dep. 27:11-22, II 39:18-40:8, Ex. PM-5; K. Masucci Dep. 120:21-121:16, Ex. KM-5.)
19. There is forbidding signage or other physical markers at each Public Access Point. (P. Masucci Dep. 23:9-14, 23:22-24:3, 26:17-32:11, II 48:19-49:5, II 50:16-51:12, II 54:21-55:3, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:24-112:9, 112:16-17, 113:14-17, 114:12-25, 115:8-10, 117:13-118:4, 118:21-119:17, 121:20-122:1, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 18:18-19:5, 21:20-22:4, 23:14-21, 25:10-16, 30:14, 43:6, 75:10-76:19, 109:17-110:2.)
20. None of the signs or physical markers inform the public that walking, navigation, fishing, or fowling is allowed on the intertidal land. (P. Masucci Dep. II 44:12-45:6, II 48:12-49:11, II 50:19-51:12, II 52:4-54:1, Ex. PM-6, Ex. PM-8, Ex. PM-9, Ex. PM-10; K. Masucci Dep. 111:22-112:15, 114:17-115:7, 117:13-118:11, 118:19-119:17, Ex. KM-6, Ex. KM-7, Ex. KM-8, Ex. KM-9; Connerney Dep. 110:3-111:6, 111:12-112:10, 113:33, Ex. Connerney-7, Ex. Connerney-8.)

³ The public may also access the intertidal land at Moody Beach from the water.

21. Ocean 503 claims ownership of the intertidal land on Moody Beach between Ocean 503's Property and the low water mark of the Atlantic Ocean (the Ocean 503 Intertidal Land).

(Ocean 503 Dep. 17:9-14, 18:22-25, 21:18-22:6.)

22. The following sign is affixed to the seawall on Ocean 503's Property and faces ROW

3:





(Ocean 503 Dep. 35:1-5, 36:9, 40:4-18, 41:9-11, Ex. Ocean 504-4⁴, Ex. Ocean 503-5; P. Masucci Dep. 23:3-24:3, II 44:8-45:10, Ex. PM-6; K. Masucci Dep. 26:1-27:1, Ex. KM-2, Ex. KM-6; Connerney Dep. 111:12-25, Ex. Connerney-8.)

23. If the Masuccis want to walk Moody Beach at low tide or mid tide, they typically walk down ROW 3, turn south, and then cross the Ocean 503 Intertidal Land. (P. Masucci 13:9-21, 18:11-20, 19:2-8, 19:15-20:10, 21:2-22, 117:8-16; Ex. PM-5; K. Masucci Dep. 21:10-21, 67:12-16, Ex. KM-5.)

24. In the winter, the Masuccis typically walk the entire length of Moody Beach down to Ogunquit Beach, crossing Ocean 503 Intertidal Land in the process. (P. Masucci Dep. 13:1-

⁴ The photo images that appear in the AG's statement of material facts ¶¶ 25-26 and ¶¶ 37-38 (and also in the AG's supporting memorandum of law) are deposition exhibits Ocean 503-4, Ocean 503-5, OA2012-5, and OA-2012-6. When copying those deposition exhibits and pasting them into this document and the AG's memorandum of law, the deposition exhibit stickers did not transfer with the rest of the image.

14:17; 18:11-20, 19:15-21:16, 116:23-117:16, II 10:9-15, II 15:23-16:7, II 43:22-44:5; K. Masucci Dep. 16:3-17:6, 35:21-36:5, 58:22-25, 68:21-69:1, 70:1-3, 97:11-98:5).

25. Mr. Connerney's property is located near ROW 2. (Connerney Dep. 11:11-14, 107:23-108:5, Ex. Connerney-6.)

26. Mr. Connerney typically accesses Moody Beach using ROW 2. (Connerney Dep. 14:9-10, 76:25-77:4, 107:23-108:1.)

27. When Bill Connerney walks north along Moody Beach, Mr. Connerney crosses the Ocean 503 Intertidal Land. (Connerney Dep. 17:13-18:1, 19:17-24, 20:2-8, 32:24-33:17.)

28. Peter Masucci is conscious of the signs on Ocean 503's Property. (P. Masucci Dep. 23:7-24:3, 33:15-17, 47:12-13, Ex. PM-6.)

29. The signs on Ocean 503's Property indicate to Peter Masucci that passage over the Ocean 503 Intertidal Land would be trespassing and against the law. (P. Masucci Dep. 23:3-17, Ex. PM-6, Ex. PM-7.)

30. Because of the signs on Ocean 503's seawall, Peter Masucci does not stop on the Ocean 503 Intertidal Land. (P. Masucci Dep. 57:15-22, II 49:22-50:9.)

31. The sign on Ocean 503's seawall that faces ROW 3 stands out to Peter Masucci because it says "private beach to the low water mark" instead of just "private beach." (P. Masucci Dep. 35:5-13, Ex. PM-6.)

32. The sign on Ocean 503's seawall that faces ROW 3 makes Peter Masucci feel uncomfortable and angry. (P. Masucci Dep. II 45:11-14, Ex. PM-6.)

33. Peter Masucci has heard anecdotal stories about people being asked to move from the Ocean 503 Intertidal Land. (P. Masucci Dep. 42:18-43:2, 58:24-59:13.)

34. Peter Masucci is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (P. Masucci Dep. II 45:23-46:1.)
35. That concern—Ocean 503 asking him to leave the Ocean 503 Intertidal Land—negatively affects Peter Masucci’s experience at Moody Beach. (P. Masucci Dep. II 46:2-10.)
36. Ocean 503 has never told Peter Masucci that he has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:9-12; P. Masucci Dep. II 45:15-18.)
37. Ocean 503 has never told Peter Masucci that he has Ocean 503’s permission to walk on Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:13-15; P. Masucci Dep. 16:12-17:21, II 45:19-22.)
38. Peter Masucci has personally seen police on Moody Beach. (P. Masucci Dep. 113:11-19, II 55:19-23.)
39. Peter Masucci feels discouraged, angry, and uncomfortable when he sees the police on Moody Beach. (P. Masucci Dep. II 55:24-56:1.)
40. Peter Masucci is concerned that if he stops along the intertidal land of Moody Beach—for example, to make a phone call—he might be confronted by the police. (P. Masucci Dep. II 56:2-8.)
41. The signs on Ocean 503’s Property suggests to Kathy Masucci that she should not be on the Ocean 503 Intertidal Land. (K. Masucci Dep. 20:11-22; 24:11-25:8.; 37:22-38:4, 44:15-17; 46:4-7, Ex. KM-6.)
42. The signs on Defendants’ properties intimidate Kathy Masucci. (K. Masucci Dep. 46:4-7, 127:3-7, Ex. KM-6, Ex. KM-7.)

43. To Kathy Masucci, the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move. (K. Masucci Dep. 37:22-38:4, 125:21-126:6, Ex. KM-6, Ex. KM-7.)
44. For Kathy Masucci, seeing the signs generates negative feelings. (K. Masucci Dep. 126:6-7, Ex. KM-6, Ex. KM-7.)
45. The sign on Ocean 503's Property that faces ROW 3 makes Kathy Masucci feel sad, angry, frustrated, and discouraged. (K. Masucci Dep. 112:1-20, Ex. KM-6.)
46. Seeing the sign on Ocean 503's Property that faces ROW 3 negatively affects Kathy Masucci's experience of being on Moody Beach. (K. Masucci Dep. 58:21-25, 112:21-113:5, Ex. KM-6.)
47. When Kathy Masucci sees Ocean 503's no loitering sign she does not feel welcome on the Ocean 503 Intertidal Land. (K. Masucci Dep. 46:4-7, 113:14-17, Ex. KM-6.)
48. Although she only walks across the Ocean 503 Intertidal Land, Kathy Masucci is concerned that Ocean 503 may ask her to leave the Ocean 503 Intertidal Land. (K. Masucci Dep. 17:3-9, 46:4-7, 113:18-23.)
49. Kathy Masucci has heard stories of Ocean 503 approaching members of the public about using the Ocean 503 Intertidal Land. (K. Masucci Dep. 28:5-9, 29:7-10.)
50. The stories Kathy Masucci has heard make her feel sad, angry, discouraged, frustrated, and unhappy. (K. Masucci Dep. 122:18-123:10.)
51. Ocean 503 has never told Kathy Masucci that she has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:13-16; K. Masucci Dep. 113:6-9.)
52. Ocean 503 has never told Kathy Masucci that she has Ocean 503's permission to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:16-18; K. Masucci Dep. 113:10-13.)

53. Kathy Masucci heard from a neighbor that the police have been called to Moody Beach. (K. Masucci Dep. 29:15-30:25.)
54. Bill Connerney has seen the signs on Ocean 503's Seawall. (Connerney Dep. 24:2-6, 111:12-22, Ex. Connerney-8.)
55. Bill Connerney understands from the signs on Ocean 503's seawall that Ocean 503 does not want people on Ocean 503's Property. (Connerney Dep. 18:6-19, 25:20-26:4, 30:10-14, Ex. Connerney-8.)
56. Bill Connerney understands from the signs on Ocean 503's seawall that Ocean 503 asserts that the Ocean 503 Intertidal Land is private. (Connerney Dep. 21:18-22:4, Ex. Connerney-8.)
57. Because of Bill Connerney's understanding that Ocean 503 does not want people on its property, Mr. Connerney now limits his use of the Ocean 503 Intertidal Land to when Ocean 503 is not around or otherwise tries to avoid the Ocean 503 Intertidal Land. (Connerney Dep. 18:6-13, 26:10-27:8, 30:10-14.)
58. Bill Connerney is concerned that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land. (Connerney Dep. 18:6-13, 26:24-27:2.)
59. Bill Connerney's concern that Ocean 503 may ask him to leave the Ocean 503 Intertidal Land negatively effects his experience of walking on Moody Beach. (Connerney Dep. 18:6-13, 25:20-26:4.)
60. Ocean 503 has never told Bill Connerney that he has the legal right to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 53:17-21.)
61. Ocean 503 has never told Bill Connerney that he has Ocean 503's permission to walk on the Ocean 503 Intertidal Land. (Ocean 503 Dep. 54:19-21; Connerney Dep. 119:2-5.)

62. Bill Connerney has seen the police on Moody Beach at areas other than the Defendants' properties. (Connerney Dep. 83:5-9.)

63. Bill Connerney would feel better about walking the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, and the OA 2012 Intertidal Land if their signage specified that walking is allowed. (Connerney Dep. 115:5-10.)

64. Bill Connerney understands that Ocean 503, Judy's Moody, and OA 2012 could choose at any moment to ask someone who is walking across, respectively, the Ocean 503 Intertidal Land, the Judy's Moody Intertidal Land, or the OA 2012 Trust Intertidal Land to leave or move along. (Connerney Dep. 116:24-117:14.)

65. Bill Connerney thinks about the possibility of a confrontation with landowners when he is on the Ocean 503 Intertidal Land. (Connerney Dep. 25:20-26:4, 117:15-24).

66. The possibility of a confrontation with landowners, such as Ocean 503, detracts from what would otherwise be a relaxing walk on the beach for Mr. Connerney. (Connerney Dep. 117:15-118:3.)

67. Kathy Masucci thinks that walking and running and moving could be considered navigation. (K. Masucci Dep. 76:4-8.)

68. Bill Connerney thinks that walking could be considered navigation. (Connerney Dep. 65:16-66:20, 114:11-25, 115:13-116:6.)

69. Ocean 503 understands "navigation" to mean traversing the beach, which means walking back and forth on the beach. (Ocean 503 Dep. 38:18-39:2, 39:22-24.)

Dated: June 1, 2023

Respectfully submitted,

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STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

PETER and KATHY MASUCCI, et al.,)
)
Plaintiffs,)
)
v.)
)
JUDY’S MOODY LLC, et al.,)
)
Defendants,)
)
and)
)
AARON FREY, in his capacity as Attorney)
General for the State of Maine,)
)
Party-in-Interest.)

**DEFENDANT OCEAN 503, LLC’S
REPLY STATEMENT OF MATERIAL
FACTS (AS TO PARTY-IN-
INTEREST’S OPPOSING
STATEMENT OF MATERIAL FACTS)**

Title to Real Estate is Involved

Defendant Ocean 503, LLC (“Ocean 503”) respectfully submits this Reply Statement of Material Facts pursuant to Maine Rule of Civil Procedure 56(h)(3). The following admissions and responses are intended solely for purposes of Ocean 503’s Motion for Summary Judgment and for no other purpose, and shall have no preclusive effect at trial or in any other proceeding.

**RESPONSE TO OPPOSING STATEMENT OF MATERIAL FACTS
OF PARTY-IN-INTEREST ATTORNEY GENERAL**

8. In response to the qualification of Party-in-Interest Aaron Frey (the “State”), Ocean 503 states that there are between twenty and fifty properties along Moody Beach with signs indicating that Moody Beach is a private beach or prohibiting loitering. (K. Masucci Dep. 110:14-19); (Connerney Dep. 25:20-26:8.) True and accurate copies of excerpts from the Deposition of Kathy Masucci, with pertinent passages highlighted, are attached hereto collectively as **Exhibit A.** True and accurate copies of excerpts from the Deposition of William Connerney, with pertinent passages highlighted, are attached hereto collectively as **Exhibit B.**

16. In response to the State's qualification, Ocean 503 states as follows: Regarding the asserted fact that Mr. Masucci does not stop on intertidal land due to the signs, Mr. Masucci testified that he still stops and plays bocce ball and other similar beach games on the Ocean 503 Property. (P. Masucci Dep. 57:15-22.) As such, this qualification is inaccurate. True and accurate copies of excerpts from the Deposition of Peter Masucci, with pertinent passages highlighted, are attached hereto collectively as **Exhibit C**.

As to the "fact" that Mr. Masucci feels intimidated by the "stories of people being asked to leave", this qualification/statement should be disregarded. Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., "anecdotal" stories from unidentified third-parties) (P. Masucci Dep. 42:22-23) to prove the truth of the matters asserted therein.

As to Mr. Masucci's "concern" that Ocean 503 will ask him to leave the Ocean 503 Property, those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its "Private beach" and "no loitering" signs in part due to a concern that children

would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.) True and accurate copies of excerpts from the Deposition of Ocean 503, LLC, with pertinent passages highlighted, are attached hereto collectively as **Exhibit D.** A true and accurate copy of Affidavit of Mark Montesis in Support of Defendant Ocean 503, LLC's Motion for Summary Judgment is attached hereto as **Exhibit E.**

As to Ms. Masucci's understanding that "the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move," the statement is a legal conclusion and should not be considered for the purposes of summary judgment. Furthermore, to the extent that this statement is unrelated to any signs on the Ocean 503 Property, it is also irrelevant under Rules 401 and 402 of the Maine Rules of Evidence and should be disregarded.

As to the State's assertions of "fact" that Ocean 503 has approached members of the public about using Ocean 503 Property, or that the "police have been called to Moody Beach", these qualifications/statements are predicated on stories from unidentified third-parties. As such, pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., stories from unidentified third-parties) to prove the truth of the matters asserted therein. Ms. Masucci is not personally aware of any confrontations involving Ocean 503 (K. Masucci Dep. 34:25-35:5.) In addition, to the extent these "stories" from unidentified third-parties do not involve Ocean 503, the qualification/statement is not relevant under Rules 401 and 402 of the Maine Rules of Evidence, and therefore, should be disregarded.

As to Mr. Connerney's statement that he now avoids the Ocean 503 intertidal zone, Mr. Connerney testified that he still walks over, and stands upon, the intertidal zone on the Ocean 503 Property (Connerney Dep. 26:9-23) (stating that he still stands on, and walks upon the Ocean 503 Property).

As to Mr. Connerney's concern that "Ocean 503 may ask him to leave Ocean 503's intertidal land," those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its "Private beach" and "no loitering" signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

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As to the "fact" that Mr. Masucci feels intimidated by the "stories of people being asked to leave", this qualification/statement should be disregarded. Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court

statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., “anecdotal” stories from unidentified third-parties) (P. Masucci Dep. 42:22-23) to prove the truth of the matters asserted therein.

As to Mr. Masucci’s “concern” that Ocean 503 will ask him to leave the Ocean 503 Property, those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

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public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

28. In response to the State’s qualification, Ocean 503 states as follows: Regarding the asserted fact that Mr. Masucci does not stop on intertidal land due to the signs, Mr. Masucci testified that he still stops and plays bocce ball and other similar beach games on the Ocean 503 Property. (P. Masucci Dep. 57:15-22.) As such, this qualification is inaccurate.

As to the “fact” that Mr. Masucci feels intimidated by the “stories of people being asked to leave”, this qualification/statement should be disregarded. Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., “anecdotal” stories from unidentified third-parties) (P. Masucci Dep. 42:22-23) to prove the truth of the matters asserted therein.

As to Mr. Masucci’s “concern” that Ocean 503 will ask him to leave the Ocean 503 Property, those concerns are unfounded. Ocean 503 has never confronted a member of the public

about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

As to Ms. Masucci’s understanding that “the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move,” the statement is a legal conclusion and should not be considered for the purposes of summary judgment. Furthermore, to the extent that this statement is unrelated to any signs on the Ocean 503 Property, it is also irrelevant under Rules 401 and 402 of the Maine Rules of Evidence and should be disregarded.

As to the State’s assertions of “fact” that Ocean 503 has approached members of the public about using Ocean 503 Property, or that the “police have been called to Moody Beach”, these qualifications/statements are predicated on stories from unidentified third-parties. As such, pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., stories from unidentified third-parties) to prove the truth of the matters asserted therein. Ms. Masucci is not personally aware of any confrontations involving Ocean 503 (K. Masucci Dep. 34:25-35:5.) In addition, to the extent these “stories” from unidentified third-

parties do not involve Ocean 503, the qualification/statement is not relevant under Rules 401 and 402 of the Maine Rules of Evidence, and therefore, should be disregarded

As to Mr. Connerney's statement that he now avoids the Ocean 503 intertidal zone, Mr. Connerney testified that he still walks over, and stands upon, the intertidal zone on the Ocean 503 Property (Connerney Dep. 26:9-23) (stating that he still stands on, and walks upon the Ocean 503 Property).

As to Mr. Connerney's concern that "Ocean 503 may ask him to leave Ocean 503's intertidal land," those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its "Private beach" and "no loitering" signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

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As to the "fact" that Mr. Masucci feels intimidated by the "stories of people being asked to leave", this qualification/statement should be disregarded. Pursuant to M.R. Civ. P. 56(i)(1), this

Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., “anecdotal” stories from unidentified third-parties) (P. Masucci Dep. 42:22-23) to prove the truth of the matters asserted therein.

As to Mr. Masucci’s “concern” that Ocean 503 will ask him to leave the Ocean 503 Property, those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

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As to the State’s assertions of “fact” that Ocean 503 has approached members of the public about using Ocean 503 Property, or that the “police have been called to Moody Beach”, these

qualifications/statements are predicated on stories from unidentified third-parties. As such, pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., stories from unidentified third-parties) to prove the truth of the matters asserted therein. Ms. Masucci is not personally aware of any confrontations involving Ocean 503 (K. Masucci Dep. 34:25-35:5.) In addition, to the extent these “stories” from unidentified third-parties do not involve Ocean 503, the qualification/statement is not relevant under Rules 401 and 402 of the Maine Rules of Evidence, and therefore, should be disregarded

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As to Mr. Connerney’s concern that “Ocean 503 may ask him to leave Ocean 503’s intertidal land,” those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.)

Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

30. In response to the State’s qualification, Ocean 503 states as follows: Regarding the asserted fact that Mr. Masucci does not stop on intertidal land due to the signs, Mr. Masucci testified that he still stops and plays bocce ball and other similar beach games on the Ocean 503 Property. (P. Masucci Dep. 57:15-22.) As such, this qualification is inaccurate.

As to the “fact” that Mr. Masucci feels intimidated by the “stories of people being asked to leave”, this qualification/statement should be disregarded. Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., “anecdotal” stories from unidentified third-parties) (P. Masucci Dep. 42:22-23) to prove the truth of the matters asserted therein.

As to Mr. Masucci’s “concern” that Ocean 503 will ask him to leave the Ocean 503 Property, those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.)

Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

As to Ms. Masucci’s understanding that “the private beach signs on Moody Beach mean that she is trespassing and is at risk of the landowner telling her to move,” the statement is a legal conclusion and should not be considered for the purposes of summary judgment. Furthermore, to the extent that this statement is unrelated to any signs on the Ocean 503 Property, it is also irrelevant under Rules 401 and 402 of the Maine Rules of Evidence and should be disregarded.

As to the State’s assertions of “fact” that Ocean 503 has approached members of the public about using Ocean 503 Property, or that the “police have been called to Moody Beach”, these qualifications/statements are predicated on stories from unidentified third-parties. As such, pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this qualification/statement because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiff has impermissibly offered out-of-court statements (i.e., stories from unidentified third-parties) to prove the truth of the matters asserted therein. Ms. Masucci is not personally aware of any confrontations involving Ocean 503 (K. Masucci Dep. 34:25-35:5.) In addition, to the extent these “stories” from unidentified third-parties do not involve Ocean 503, the qualification/statement is not relevant under Rules 401 and 402 of the Maine Rules of Evidence, and therefore, should be disregarded

As to Mr. Connerney’s statement that he now avoids the Ocean 503 intertidal zone, Mr. Connerney testified that he still walks over, and stands upon, the intertidal zone on the Ocean 503 Property (Connerney Dep. 26:9-23) (stating that he still stands on, and walks upon the Ocean 503 Property).

As to Mr. Connerney's concern that "Ocean 503 may ask him to leave Ocean 503's intertidal land," those concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its "Private beach" and "no loitering" signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

**RESPONSES TO ADDITIONAL STATEMENT OF MATERIAL FACTS
OF PARTY-IN-INTEREST ATTORNEY GENERAL**

1. **Admitted.**
2. **Admitted.**
3. **Admitted.**
4. **Admitted.**
5. **Admitted.**
6. **Admitted.**
7. **Admitted.**
8. **Admitted.**
9. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it asserts facts related to Plaintiffs'

activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

10. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it asserts facts related to Plaintiffs' activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

11. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Peter Masucci's activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

12. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Peter

Masucci's activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

13. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Kathy Masucci's activities on Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

14. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Kathy Masucci's activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

15. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Kathy Masucci's activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence

because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

16. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to William Connerney’s activities on the intertidal areas of Moody Beach in its entirety. To the extent that the activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

17. **Admitted.**

18. **Admitted.**

19. **Denied.** To the extent that this fact pertains to the signage posted on the Ocean 503 property, such signage is not “forbidding.” (*See* Ocean 503 Dep. Ex. Ocean 503-4 and Ocean 503-5.) The signs read “Moody Beach is a private beach to the low water mark. No loitering” and “Private beach.”

20. **Admitted.**

21. **Admitted.**

22. **Admitted.**

23. **Admitted.**

24. **Admitted.**

25. **Admitted.**

26. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

27. **Admitted.**

28. **Admitted.**

29. **Qualified.** Peter Masucci testified that the signs simply *state* “private property.” (P. Masucci Dep. 23:9-14, 17.)

30. **Qualified.** Peter Masucci testified that the signs posted on Ocean 503’s property have not impacted or deterred him from playing bocce ball or other beach games on Ocean 503’s Intertidal Zone. (P. Masucci Dep. 57:15-21.) He further testified that “[t]he only thing they caused us not to do is to sit and stop.” (P. Masucci Dep. 57:21-22.) He continues to engage in movement-based activity within Ocean 503’s Intertidal Zone. (P. Masucci Dep. 57:23-58:2.)

Objection: To the extent that the Court in its Order on the Motions to Dismiss, dated April 15, 2022, intended to limit Count IV of the Complaint to movement-based activity, and to the extent that the Statement asserts facts related to non-movement-based activity, the Statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401. (See Order dated April 15, 2022, at 25.)

31. **Admitted.**

32. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence

excluded under the Maine Rules of Evidence. Mr. Masucci's feelings are not relevant to the claims asserted in this action as required under Rule 401 of the Maine Rules of Evidence.

33. **Denied.** During his deposition, Peter Masucci testified that he never personally observed someone associated with Ocean 503 confronting members of the public and could not "say definitively that [he] know[s] of that happening." (P. Masucci Dep. 42:12-17; 43:12-15.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered out-of-court statements by unknown persons to Plaintiff Peter Masucci to prove the truth of the matters asserted therein. Additionally, the Court should not consider this fact to the extent that it asserts facts that are not based in Peter Masucci's personal knowledge pursuant to Rule 602. Because these statements are inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1).

34. **Qualified.** Peter Masucci's concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its "Private beach" and "no loitering" signs in part

due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

35. **Denied.** Peter Masucci testified that the signs do not impact his walking experience “because we walk 50 feet and we’re on - - across the property[.]” (P. Masucci Dep. II 46:2-6.)

36. **Admitted.**

37. **Admitted.**

38. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it asserts facts related to Peter Masucci’s observation of police being present on Moody Beach in its entirety. To the extent that police were not present on Ocean 503’s property, the Court should not consider this Statement of Material Fact because it is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

39. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it asserts facts related to Peter Masucci’s observation of police being present on Moody Beach in its entirety. To the extent that police were not present on Ocean 503’s property, the Court should not consider this Statement of Material Fact because it is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

40. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

41. **Denied.** This is a subjective interpretation of the signs and does not reflect the intent of Ocean 503 when posting the signs. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

42. **Qualified.** Kathy Masucci’s concerns are unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

43. **Denied.** This is a subjective interpretation of the signs and does not reflect the intent of Ocean 503 when posting the signs. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. The Statement is not specific to the Ocean 503 Property. As such, these facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

44. **Admitted**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Kathy Masucci’s feelings. Ms. Masucci’s feelings are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503. Furthermore, to the extent the Statement refers to signs outside of the Ocean 503 Property, it is also not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

45. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Kathy Masucci's feelings. Ms. Masucci's feelings are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

46. **Qualified.** Kathy Masucci *testified* that the sign on Ocean 503's property negatively affects her experience of being on Moody Beach but did not provide any further details to substantiate that statement. (K. Masucci Dep. 112:21-113:5.)

47. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Kathy Masucci's feelings. Ms. Masucci's feelings are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

48. **Qualified.** This statement is unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its "Private beach" and "no loitering" signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

49. **Denied.** Kathy Masucci testified that she has not had conversations with anybody in which they specifically told her that Ocean 503 has confronted any members of the public on the intertidal zone. When further questioned, Kathy testified that she has not had any conversations with anybody that has specifically said that Ocean 503 has asked them to leave the intertidal zone in front of their property, nor does she have firsthand knowledge of any incidents involving Ocean 503 confronting members of the public on the beach. (K. Masucci Dep. 45:1-25.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered an out-of-court statement by unknown parties to Kathy to prove the truth of the matters asserted therein. Because this statement is inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1).

50. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered an out-of-court statement by unknown parties to Kathy to prove the truth of the matters asserted therein. Because this statement is inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1). Furthermore, to the extent the Statement refers to stories that do not involve Ocean 503, it is also not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503

51. **Admitted.**

52. **Admitted.**

53. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered an out-of-court statement by unknown parties to Kathy to prove the truth of the matters asserted therein. Because this statement is inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1). Furthermore, to the extent that this Statement asserts facts that are not related to the Ocean 503 property specifically, this Court should not consider such facts with respect to Ocean 503 because they are irrelevant to the claims asserted against Ocean 503.

54. **Admitted.**

55. **Qualified.** This statement reflects William Connerney's belief as to the meaning of the signs on Ocean 503's seawall. His recollection was that Ocean 503's sign says "no trespassing, private land," which is not an accurate representation of the sign on the Ocean 503 property. (Connerney Dep. 18:18-19); (*see also* Ocean 503 Dep. Ex. Ocean 503-4 and Ocean 503-5). Further, Ocean 503 does not have an issue with the public making use of the intertidal zone for recreational purposes and has never asked anyone to leave or stop an activity within the zone. (Ocean 503 Dep. 45:3-12, 38:5-6, 43:9-14, 44:21-22.)

56. **Qualified.** This statement reflects William Connerney's belief as to the meaning of the signs on Ocean 503's seawall. His recollection was that Ocean 503's sign says "no trespassing,

private land,” which is not an accurate representation of the sign on the Ocean 503 property. (Connerney Dep. 18:18-19); (*see also* Ocean 503 Dep. Ex. Ocean 503-4 and Ocean 503-5). Further, Ocean 503 does not have an issue with the public making use of the intertidal zone for recreational purposes and has never asked anyone to leave or stop an activity within the zone. (Ocean 503 Dep. 45:3-12, 38:5-6, 43:9-14, 44:21-22.)

57. **Qualified.** William Connerney testified that he “tr[ies] vaguely not to stay on his property” but he also testified that he walked on the intertidal zone of the Ocean 503 property most recently in October 2022, well after the signs were posted on the property. (Connerney Dep. 26:20-27:8; 32:24-33:7.)

58. **Qualified.** This concern is unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

59. **Qualified.** This is an unfounded concern. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property.

(Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

60. **Admitted.**

61. **Admitted.**

62. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

63. **Admitted.**

64. **Qualified.** Mr. Connerney testified, “[w]hat I know is the police don’t prosecute if you walk through the . . . property. They haven’t yet. . . . If they’re not going to enforce it, it doesn’t bother me. If they’re going to enforce it, that would bother me. And it depends on the owner, and they choose at any moment to enforce it.” (Connerney Dep. 117:4-14.) Mr. Connerney was speaking about owners generally, not Ocean 503 specifically. Moreover, his testimony here largely concerned police enforcement, rather than owner enforcement.

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Moody Beach in its entirety. Such facts are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

65. **Qualified.** This concern is unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Moody Beach in its entirety or landowners other than Ocean 503. Such facts are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

66. **Qualified.** This concern is unfounded. Ocean 503 has never confronted a member of the public about their use of the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 38:5-6, 43:9-14, 44:21-22.) Ocean 503 has never asked anyone to leave the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-11.) Ocean 503 has never called law enforcement with respect to anyone engaged in any activity in the intertidal zone of the Ocean 503 Property. (Montesi Aff. ¶¶ 7-8); *see also* (Ocean 503 Dep. 49, Ex. 6.) Ocean 503 allows members of the public to sit and recreate on the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 43:9-14, 44:7-12.) Ocean 503 posted its “Private beach” and “no loitering” signs in part due to a concern that children would climb the seawall and injure themselves. (Ocean 503 Dep. 41:13-16.)

67. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

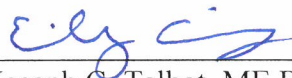
68. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

69. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

Dated at Portland, Maine this 20th day of June, 2023.



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State of Maine
Cumberland, ss

Superior Court
Civil Action
Docket No. RE-2021-35

Peter and Kathy Masucci, et al.,)
)
Plaintiffs)
)
v.)
)
Judy’s Moody LLC, et al.,)
)
Defendants)
)
and)
)
Aaron Frey in his capacity as the Attorney General)
for the State of Maine)
)
Party in interest)

PLAINTIFFS’ STATEMENT OF MATERIAL FACTS

1. Mark Montesi and Corliss Montesi are the sole representatives of Ocean 503, LLC. Deposition of Mark Montesi dated March 2, 2023, page 11:7-19. (attached hereto as “Exhibit A”)(“Montesi Dep.”)

2. Ocean 503, LLC gained ownership of 503 Ocean Avenue in Wells, Maine (“Ocean 503 Property”) in 2019. Montesi Dep. Ex. 3.

3. Mark and Corliss Montesi are Florida residents. Montesi Dep. 15:14.

4. Mark and Corliss Montesi spend only “about 20 percent of the year” at the Ocean 503 Property. Montesi Dep. 15:18.

5. Mark Montesi understands the Ocean 503 Property’s northerly and southerly side property lines extend “from the front of the lot to the mean low water mark ... 140 feet.” Montesi Dep. 18:23-25.

6. From 2013 to 2018, Mark Montesi owned real estate located at 66 Cranberry Street, Wells, Maine. Montesi Dep. 25:22-25, 26:1-8.
7. 66 Cranberry Street is not waterfront real estate, located approximately .25 miles from Moody Beach. Montesi Dep. 26:1-8.
8. From 2013 to 2018, Mark Montesi and his family utilized “North Beach in Ogunquit” for beach activities. Montesi Dep. 26:13-20.
9. From 2013 to 2018, Mark Montesi utilized the beach north of the Ogunquit and Wells Town division line to walk the beach more than 50, but less than 100 times. Montesi Dep. 28:2-10.
10. Currently, Mark Montesi uses Moody Beach to sit, paddleboard, surf, and swim. Montesi Dep. 37:9-11, 37:20-22.
11. Mark Montesi “hired someone to ... affix [signs] to the [sea]wall” on the Ocean 503 Property facing the ocean that state “PRIVATE BEACH”. Montesi Dep. 34:15-25, 35:1-5; *See* Montesi Dep. Ex. 4.
12. Mark Montesi had a sign installed on Ocean 503 Property seawall that states “MOODY BEACH IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING.” Montesi Dep. 40:9-17; *See* Montesi Dep. Ex. 4 & 5.
13. Mark Montesi understands “because it’s a private beach, it’s in [his] discretion, if [he] wanted” to tell people to get off the beach area seaward the Ocean 503 Property. Montesi Dep. 38:1-8.
14. Mark Montesi has never asked the public to move or relocate off the private area of Ocean 503 Property. Montesi Dep. 38:2-6, 43:9-11, 44:21-23, 45:22-24.

15. Despite his sign, Mark Montesi does not consider swimming, surfing, sitting, building sandcastles, or “recreating” on the beach “loitering.” Montesi Dep. 42:12-16, 42:22-25, 43:1-4, 44:7-10.

16. Despite the existence of the sign, Mark Montesi recognizes the public “has every right to fish” on the Ocean 503 Property. Montesi Dep. 39:20.

17. Despite the existence of the sign, Mark Montesi recognizes the public has “every right” to walk across the intertidal portion of the Ocean 503 Property. Montesi Dep. 39:22-24.

18. Despite the existence of the sign, Mark Montesi recognizes the public has the right to “bird watch” on the Ocean 503 Property. Montesi Dep. 39:25, 40:1-3.

19. James Howe is the sole beneficiary of OA 2012 Trust. Deposition of James Howe dated February 8, 2023, page 17:10-14 (attached hereto as “Exhibit B”)(“Howe Dep.”).

20. James Howe’s father, Kevin J. Howe, and Kevin McCue, purchased the property at 3 Ocean Avenue in Wells (“OA 2012 Property”) in 1978. Howe Dep. 16:5-7; *See* 17:20-25, 18:1.

21. The OA 2012 Property is James Howe’s permanent residence. Howe Dep. 29:19-21.

22. James Howe believes the OA 2012 property deed states the northerly and southerly side property lines extend to the Atlantic Ocean. Howe Dep. 22:20-23.

23. OA 2012 claims “ownership over the intertidal land that’s seaward of [the OA 2012 Property].” Howe Dep. 25:20-23.

24. The OA 2012 Property displays private beach signage stating “MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING

NO DOGS ALLOWED” attached to a seawall. Howe Dep. Ex. 5; *See* Howe Dep. 37:16-17, 39:2-3, 39:18, 39:25, 40:20-23.

25. The OA 2012 Property contains private beach signage stating “MOODY BEACH PRIVATE NO LOITERING” attached to a seawall, Howe Dep. Ex. 6; *See* Howe Dep. 37:16-17, 39:2-3, 39:18, 39:25, 40:20-23.

26. James Howe does not know by who or when the the “private beach” signage was installed on the OA 2012 Property. Howe Dep. 38:1, 38:17-19; *See* Howe Dep. 47:14-23.

27. James Howe never attempted to remove the signage from the seawall and consents to its message. Howe Dep. 38:7-9, 47:24-25, 48:1-3.

28. OA 2012 “restrict[s] dogs from being on the beach” on the OA 2012 Property. Howe Dep. 40:20-25; *See* Howe Dep. Ex. 6.

29. OA 2012 signage restricts loitering, meaning “[the public is] not allowed to sit [or] hang out on the beach.” Howe Dep. 42:15-16.

30. OA 2012 does not consider “walking or running” to be loitering. Howe Dep. 42:20-22.

31. OA 2012 does not consider “stopping and stretching” in place to be loitering, even if sitting down while doing so. Howe Dep. 42:23-25, 43:1-3.

32. OA 2012 does not consider “walking slowly; just sort of meandering ... walking around on [OA 2012 Property]” to be loitering. 43:6-13.

33. OA 2012 does not consider “surfing” to be loitering. Howe Dep. 43:14-15.

34. OA 2012 considers “sitting in the sand” loitering if you are “physically present” for more than 30 minutes in one spot. Howe Dep. 43:16-25, 44:1-4.

35. OA 2012 does not consider “sitting with a fishing pole” to be loitering, “as long as you’re fishing.” Howe Dep. 44:4-11.

36. OA 2012 states a fishing line “should be” for fishing not to be loitering. Howe Dep. 44:13-14.

37. OA 2012 does not consider “building a sandcastle” to be loitering, stating “somebody can be there as long as they want as long as they’re building a sandcastle.” Howe Dep. 44:23-25, 45:1-3.

38. OA 2012 does not consider “playing frisbee ... on the intertidal land” to be loitering. Howe Dep. 45:4-7.

39. OA 2012 has never “approached any members of the public to ask them to not be on ... the intertidal portion of [the OA 2012 Property].” Howe Dep. 45:20-24.

40. OA 2012 and its invitees go running and walking along the intertidal land. Howe Dep. 65:23-24, 66:1-2.

41. OA 2012 and its invitees play bocce “up and down the beach” on the intertidal land. Howe Dep. 66:3-18.

42. OA 2012 and its invitees “surf or boogie board” on the intertidal land. Howe Dep. 66:18-20.

43. OA 2012 and its invitees ride waves “in front of other houses” on the intertidal land of Moody Beach. Howe Dep. 66:24-25, 67:1-2.

44. OA 2012 understands “because it’s a private beach to the low tide mark, yes, we have the right to” “ask someone to leave the intertidal land.” Howe Dep. 70:22-25, 71:1-4.

45. Keith Dennis is the sole member of Judy’s Moody, LLC. Deposition of Keith Dennis dated February 10, 2023, page 13:15-17 (attached hereto as “Exhibit C”)(“Dennis Dep.”).

46. Keith Dennis purchased a portion of the property at 407 Ocean Avenue in Wells, Maine (“Judy’s Moody Property”) in 1991. Dennis Dep. Ex. 3.
47. Keith Dennis purchased a portion of the Judy’s Moody Property in 2016. Dennis Dep. Ex. 3.
48. Keith Dennis transferred the Judy’s Moody Property to Judy’s Moody, LLC on July 28, 2016. Dennis Dep. Ex. 3.
49. Keith Dennis’ primary residence is in Virginia. Dennis Dep. 26:19-21.
50. The Judy’s Moody Property northerly and southerly side property boundaries extend “to the Atlantic Ocean.” Dennis Dep. Ex. 3; *See* Dennis Dep. 19:22, 20:4-6.
51. The Judy’s Moody Property contains private beach signage stating “PRIVATE BEACH” attached to a seawall, Dennis Dep. Ex. 7 (“Ex. ___”); *See* Dennis Dep. 47:6-7.
52. Judy’s Moody has placed additional private beach signage stating “Private Property, No Trespassing,” and signage referencing “low tide.” Dennis Dep. 49:18-20.
53. Wells Police Department has told Judy’s Moody that they will respond to calls regarding trespass on the Judy’s Moody Property “private beach.” Dennis Dep. 55:14-20.
54. Judy’s Moody has provided members of the public written permission to use the Judy’s Moody Property for discrete periods of time. Dennis Dep. 57:12-13.
55. From 2016-2018, Judy’s Moody “had allowed, basically, any[.]” use of the Judy’s Moody Property. Dennis Dep. 58:4-5.
56. Judy’s Moody has allowed “strangers ..., or members of the public, ...” to use Judy’s Moody Property for “the vast majority of activities.” Dennis Dep. 57:23-25, 58:2-3
57. Judy’s Moody, has given permission to “strangers ..., or members of the public, ... to set up tables on [its] sand.” Dennis Dep. 57:23-25, 58:7-9.

58. Judy's Moody has physically removed a back lot owner's personal property on the Judy's Moody Property. Dennis Dep. 79:21-22.

59. Moody Beach Association has organized numerous charity events that take place, at least partially, on the Judy's Moody Property. Dennis Dep. 84:4-10.

60. Moody Beach Association organizes "an event ... called 'Moody Beach Days'" annually held on the Fourth of July. Dennis Dep. 85:5-8.

61. Judy's Moody understands Moody Beach Association has held the annual "Moody Beach Days" event for the past "30 or 40 years." Dennis Dep. 85:13-14.

62. Each year since 1956 on the fourth of July, Moody Beach Association runs the beach games where "four to five-hundred people there for several hours ... watch[] kids races and sack races all those kinds of things." P. Masucci Dep. Vol I 123:10-13.

63. During "Moody Beach Days," members of the public and organizers access the Judy's Moody Property, including but not limited to the intertidal, the dry sand area, the stairs, seawall, and developed portion of Judy's Moody Property. Dennis Dep. 85:25, 86:1-4.

64. At the Moody Beach Games, "families might just sit there, and the kids might dig in the sand, build a sandcastle or drip castle." P. Masucci Dep. Vol I 123:13-16.

65. From 2018 and 2021, Judy's Moody "gave the Moody Beach Association written permission to have their Fourth of July parade – the Fourth of July event and sandcastle contest on [the Judy's Moody Property] – ... above the high tide to low tide." Dennis Dep. 121:9-24.

66. Judy's Moody has used numerous objects to mark the northerly boundary line separating the Judy's Moody Property from the abutting public way, including but not limited to "a big piece of wood," "cones," "raked seaweed," and other "control type things." Dennis Dep.

93:4-11, 94:9-10; *See* Deposition of Kathy Masucci dated January 13, 2023, page 81:9-11 (attached hereto as “Exhibit D”)(“K. Masucci Dep.”).

67. Judy’s Moody, or its representatives and invitees, have contacted the Wells Police Department on numerous occasions for assistance removing members of the public from the intertidal land on Judy’s Moody Property. Dennis Dep. Ex. 9.

68. Judy’s Moody subjectively chooses when to enforce its right to exclude the public from its intertidal land. Dennis Dep. 111:10-18.

69. Judy’s Moody recognizes “thousands of people visit the beach” each year and use the intertidal land in ways “they probably aren’t allowed to do.” Dennis Dep. 111:1-3.

70. Judy’s Moody “generally give[s] people permission or implied permission to do a lot of stuff that are well beyond [navigation], including things that are potentially not.” Dennis Dep. 122:12-21.

71. Members of the public bring “bring coolers full of beer and sit in the low tide and smoke” without obtaining permission of Judy’s Moody. Dennis Dep. 111:4-5.

72. Kathy Masucci’s grandfather purchased the original property located at 484 Ocean Avenue (the “Masucci Property”). K. Masucci Dep. 12:12-13.

73. Kathy and Peter Masucci are co-trustees of the Peter F. and Kathy E. Masucci Trust which currently owns the Masucci Property. Plaintiff Peter Masucci’s Response to Ocean 503’s First Set of Interrogatories dated December 19, 2023, response 3 (attached hereto as “Exhibit E”)(“P. Masucci Resp. Ocean 503 Int.”).

74. Kathy and Peter Masucci began living at the Masucci Property as their year-round residence in 2002. K. Masucci Dep. 13:9; *See* P. Masucci Resp. Ocean 503 Int., ¶ 3.

75. Kathy Masucci has been on the intertidal zone of the Ocean 503 “hundreds to thousands” of times, visiting Moody Beach “since [she] was born” and consistently for the past “73 years.” K. Masucci Dep. 16:3-16.

76. Kathy Masucci’s activity on the intertidal areas of Moody beach has included:

- a. “walk[ing] over” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:6, 74:1-2.
- b. running on the intertidal area of the Judy’s Moody Property. K. Masucci Dep. 74:3-5.
- c. stopping and resting on the intertidal area of the Judy’s Moody Property. K. Masucci Dep. 74:7-9.
- d. stopping to look at the water when walking. K. Masucci Dep. 108:1-4.
- e. “sitting on the beach” on the Ocean 503 Property. K. Masucci Dep. 17:21.
- f. “digging holes” in the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:21.
- g. “playing bocci” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:21-22.
- h. playing “kickball” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:23.
- i. sitting and “reading” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:23, 18:5.
- j. “play[ing] baseball” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 57:7, 57:14.

- k. sitting to observe wildlife on the intertidal area of the Judy's Moody Property. K. Masucci Dep. 74:10-12.
 - l. building sandcastles on the intertidal area of the Judy's Moody Property. K. Masucci Dep. 74:13-15.
 - m. "boogie boarding" in the water adjacent to Judy's Moody Property. K. Masucci Dep. 75:5-7.
77. Kathy Masucci first noticed the signage on the Ocean 503 Property "within the past ten years." K. Masucci Dep. 19:16.
78. The Ocean 503 Property signage caused Kathy Masucci to "feel that you are ... trespassing every time you go onto [the] beach" on the Ocean 503 Property. K. Masucci Dep. 37:25, 38:1-4.
79. The Ocean 503 Property signage caused Kathy Masucci to "specifically avoid the intertidal land [on the] Ocean 503 Property," including but not limited to "sit[t]ing or build[ing] sand – to do sedentary activit[ies], games, digging." K. Masucci Dep. 39:4-7.
80. Kathy Masucci is "sad, angry, frustrated, discouraged" when seeing the private property signs on Moody Beach. K. Masucci Dep. 112:17; *See* K. Masucci Dep. 115:9-16
81. Kathy Masucci's experience is "negatively affected" by the private property signage at Moody Beach. K. Masucci Dep. 113:3-5.
82. Kathy Masucci has not "set up camp or sat down all of her things ... on the intertidal zone of [the] Ocean 503 Property" since "prior to the signs." K. Masucci Dep. 18:22-25.
83. Kathy Masucci "consciously sit[s] in the confines of the public way" since the Private Property signage went up. K. Masucci Dep. 105:16-17.

84. Kathy Masucci reasons “I would not have sat there” after the signs were posted, adding “that is when I stopped sitting there.” K. Masucci Dep. 55:12-15.

85. Peter Masucci visits Moody Beach “in the wintertime, probably once or twice a week ... in the summertime, it’d probably be three or four times a week. Deposition of Peter Masucci dated January 11, 2023, Volume I, page 13:5-8. (attached hereto as “Exhibit F”)(“P. Masucci Dep. V. I”).

86. In the wintertime, “[Peter and Kathy Masucci] go on the beach and walk,” “often walk[ing] the entire length of the beach down to Ogunquit Beach.” P. Masucci Dep. Vol. I 14:2-7.

87. In the summertime, Peter and Kathy Masucci “walk often, but ... would often take our beach chairs and sit on the beach.” P. Masucci Dep. Vol. I 14:17-18.

88. In the summertime, Peter and Kathy Masucci sit on the beach and “read a book” in the intertidal area. P. Masucci Dep. Vol. I 14:19, 15:8.

89. Peter Masucci and his family would regularly use the entire intertidal portion of Moody Beach prior to upland owners’ installation of private property signage and confrontations with members of the public. P. Masucci Resp. Ocean 503 Int., ¶ 4.

90. Peter Masucci’s activity on the intertidal areas of Moody beach has included:

- a. “play[ing] in the water ... bodysurfing or just splashing around” with his grandchildren. P. Masucci Dep. Vol. I 14:19-22; *See* P. Masucci Dep. Vol. I 37:14-18.
- b. “buil[ing] sandcastles and sand forts” which his children “would play in the little sand forts until the tide came in and washed it away.” P. Masucci Dep. Vol. I 14:22-25, 15:1; *See* P. Masucci Dep. Vol. I 37:14-18.

- c. walking from his house south to the Ogunquit / Wells Town Line. Deposition of Peter Masucci dated January 13, 2023, Volume II, page 11:12-16. (attached hereto as “Exhibit G”)(“P. Masucci Dep. V. II”).
- d. jogging the length of Moody Beach in his “20s and 30s.” P. Masucci Dep. Vol I 120:17-25.
- e. occasionally “stop[ing] to observe nature, watch the birds ... watch people fishing ... we would stop to enjoy the view or watch” while running in the intertidal zone of Moody Beach. P. Masucci Dep. Vol. I 121:1-24.
- f. sitting down on the sand and in beach chairs watching the beach activity. Beach. P. Masucci Dep. Vol I 122:4-12.
- g. observing “kids down there picking up rocks, looking under the rocks trying to find crabs, looking for periwinkles, looking for starfish.” P. Masucci Dep. V. II. 23:2-8.
- h. “boogieboarding and bodysurfing” with his family on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 48:19-21.
- i. “skimboard” with his family on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 49:20-24.
- j. along with dozens of other families, playing “Bocci” ball on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 53:16; *See* P. Masucci Dep. Vol. I 119:9-10.
- k. playing many games, including but not limited to “tag football, paddleball, wiffle ball, baseball, play catch with [his] kids, throwing a baseball.” P. Masucci Dep. Vol I 143:18-20.

91. Peter Masucci's children took advantage of the low tides to play in tide pools formed in the intertidal areas of Moody Beach. P. Masucci Dep. V. II. 22:4-5.

92. Peter Masucci will "will no longer put [his] chairs down in front of [the Ocean 503 Property]" since the signs first appeared on the Ocean 503 Property. P. Masucci Dep. Vol. I 37:1-8; *See* P. Masucci Resp. Ocean 503 Int., ¶ 11.

93. Peter Masucci and his family "no longer dig for seaworms on portions of the intertidal land" since the private property signage has been posted. P. Masucci Dep. Vol. I 46:20-23; *See* P. Masucci Resp. Ocean 503 Int., ¶ 11.

94. Peter Masucci has witnessed Keith Dennis of Judy's Moody "come down the steps onto the sand and gone to talk to people ... they're lifting up their chairs and moving it over into the narrow public way" in the intertidal zone. P. Masucci Dep. Vol. I 114:2-8.

95. Peter Masucci "could probably name hundreds of people who have either been told or expressed to me their concern and fear, if you will, that if they were to stop, a fear of intimidation, if you will, that they're going to be asked to move or, worse, that the police are going to be called on them." P. Masucci Dep. Vol. I 130:18-25.

96. William Connerney is a trustee of the Connerney Nominee Trust which owns property at 130 South Tibbetts Road in Wells, Maine. Deposition of William Connerney dated January 11, 2023, page 11:2 (attached hereto as "Exhibit H")("Connerney Dep."); *See* Plaintiff William Connerney's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 3 (attached hereto as "Exhibit I") ("Connerney Resp. Ocean 503 Int.").

97. William Connerney's activity on the intertidal areas of Moody Beach has included:

- a. “constantly walking the beach down to Ogunquit Beach. It makes an interesting walk, a lot of sightseeing.” Connerney Dep. 13:6-9; *See* Plaintiff William Connerney’s Answers to Defendants OA Trust’s and Judy’s Moody LLC’s First Set of Interrogatories dated January 5, 2023, response 3 (attached hereto as “Exhibit J”)(“Connerney Resp. Judy’s Moody Int.”).
- b. playing “all kinds of games through the years.” Connerney Dep. 13:10-12; *See* Connerney Resp. Ocean 503 Int., ¶ 11.
- c. “body surf[ing] in the water.” Connerney Dep. 13:12-13.
- d. “play[ing] in the sand ... with the kids.” Connerney Dep. 13:13-14; *See* Connerney Resp. Ocean 503 Int., ¶ 11.
- e. playing “hand tennis, where you make yourself a little court.” Connerney Dep. 13:16-17; *See* 35:7-14; *See also* Connerney Resp. Ocean 503 Int., ¶ 11.
- f. flying a kite. Connerney Dep. 13:17.
- g. “looking for sea crabs and seashells.” Connerney Dep. 13:18-19; *See* Connerney Resp. Judy’s Moody Int., ¶ 3.
- h. walking and jogging. Connerney Dep. 13:21; *See* Connerney Resp. Ocean 503 Int., ¶ 11.
- i. “ha[ving] lunch on the beach, and it could have well been on some of the prohibited land.” Connerney Dep. 63:23-25.
- j. “walk[ing] [his dog] regularly on a leash through the [prohibited] property” when he had a dog. Connerney Dep. 64:18-20.

98. William Connerney's daughter, Jeannie Connerney, is an avid runner and runs on the intertidal portion of Moody Beach almost daily in the summer and fall. Connerney Resp. Ocean 503 Int., ¶ 11.

99. Jeannie Connerney stretches before, during and after her run on the intertidal area. Connerney Resp. Ocean 503 Int., ¶ 11.

100. Jeannie Connerney stands on the intertidal area of Moody Beach for approximately 5 to 15 minutes after her run. Connerney Resp. Ocean 503 Int., ¶ 11.

101. Jeannie Connerney takes off her shoes and wades in the water to cool down after her run. Connerney Resp. Ocean 503 Int., ¶ 11.

102. In 1989, after the affirmation of beach front owner rights, William Connerney continued "to use [the intertidal] the way [he] wanted to use it" because "no one ever stopped [him]." Connerney Dep. 69:1-5.

103. William Connerney "felt hindered in what [he] would do" "later when stories started to arise" approximately 10 to 15 years ago. Connerney Dep. 69:6-9.

104. William Connerney is affected by the approximately 30 private property signs because "you know that they don't want you there, so you really walk with anticipation of what might happen." Connerney Dep. 26:1-4; *See* Connerney Dep. 25:23, Connerney Resp. Ocean 503 Int., ¶ 6.

105. William Connerney is "very cautious" when traversing the Ocean 503 Property recognizing "that [Ocean 503] could come down someday and kick me off." Connerney Dep. 18:8-10.

106. Confrontations with private property owners and private property signage has "cause [William Connerney] and [his family] to become concerned that if [they] should occupy

any portion of the intertidal land seaward of any of the Defendant's property, then [they] would be approached and told to leave." Connerney Resp. Ocean 503 Int., ¶ 11; *See* Connerney Resp. Judy's Moody Int., ¶ 3.

107. William Connerney's "whole attitude regarding the beach has changed because of the signs. [He] is aware then as soon as [he] enter[s] the beach that [he is] restricted." Connerney Dep. 78:20-23.

108. William Connerney plays hand tennis less due to the "prohibition of – that it might get challenged ... [because] It's hard to identify who would ask us to leave." Connerney Dep. 36:5-12.

109. William Connerney considers "fowling" to include "taking a picture of geese ... it has a modern meaning ... that shooting a picture, walking to ... access where you want to take the picture." Connerney Dep. 63:6-15.

110. William Connerney considers "navigation" to mean "navigating your way" to a specific place, "not limited to finding your way to the water." Connerney Dep. 66:9-22

111. William Connerney understands the modern interpretation of fishing, fowling and navigation to include commercial and recreational uses of intertidal land as permitted by the state legislature. Connerney Resp. Ocean 503 Int., ¶ 9.

112. William Griffith and Sheila Jones own the Crows' Nest Resort in Old Orchard Beach, Maine. Deposition of William Griffiths dated January 12, 2023, page 13:14-16. (attached hereto as "Exhibit K")("Griffiths Dep."); *See* Plaintiff William Griffiths' Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 21, 2022, response 1 (attached hereto as "Exhibit L")("Griffiths Resp. Judy's Moody Int.").

113. The Crows' Nest Resort is dependent on free use of Maine's beaches. Griffiths Resp. Judy's Moody Int., ¶ 3.

114. The Crows' Nest Resort is affected by claims that the intertidal is private by making it less likely "customers will return for fear that they will be approached by upland owners or the police acting on their behalf." Griffiths Resp. Judy's Moody Int., ¶ 3.

115. Approximately a half dozen Crows' Nest guests have been to Moody Beach since William Griffiths and Sheila Jones have owned the hotel. Griffiths Dep. 53:7-11.

116. The Crows' Nest guests have commented "that the signs [at Moody Beach] were – were troublesome to them." Griffiths Dep. 53:14-15; *See* Plaintiff William Griffiths' Response to Ocean 503's First Set of Interrogatories dated December 21, 2023, response 6 (attached hereto as "Exhibit M")("Griffiths Resp. Ocean 503 Int.").

117. The Crows' Nest guests "couldn't understand why they would shut a beach down" to the public. Griffiths Dep. 53:16-17.

118. Approximately 50 years ago, William Griffiths visited Moody Beach to play football with friends. Griffiths Dep. 59:7-12.

119. Judith and Orlando Delogu have lived in Maine since the 1960's. Plaintiff Judith Delogu's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 2 (attached hereto as "Exhibit N")("J. Delogu Resp. Judy's Moody Int.").

120. Orlando Delogu has walked the length of Moody Beach on multiple occasions. Plaintiff Orlando Delogu's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 2 (attached hereto as "Exhibit O")("O. Delogu Resp. Judy's Moody Int.").

121. Orlando Delogu has “walked the beach” within the intertidal area on Moody Beach. Deposition of Orlando Delogu dated January 12, 2023, page 132:8 (attached hereto as “Exhibit P”)(“O. Delogu Dep.”); *See also* O. Delogu Resp. Judy’s Moody Int, ¶ 2.

122. Orlando Delogu’s activity on Moody Beach was “simply to get an.... understanding of the shape and character and frequency, and the degree to which they ... are to be found, of signage that is designed to intimidate recreational users of the beach from engaging in [recreational] activities.” O. Delogu Dep. 121:1-8.

123. Orlando Delogu recognizes the purpose of private property signage at Moody Beach as “a warning and a deterrent that the upland owner makes a claim of ... ownership and presumably then could exercise his asserted right to have me removed from the property by calling the police ... or by coming down, themselves, and either asking me to leave ... or physically escorting me off the property.” O. Delogu Dep. 38:14-23.

124. Orlando Delogu understands the intent of private property owners when posting private property signage is to “cause[] an infringement on the rights of the public to make use of the intertidal zone.” O. Delogu Dep. 145:9-13.

125. Judith and Orlando Delogu’s activity on and across the intertidal land seaward of upland property on Maine’s coastline has included:

- a. walking stretches of beach. J. Delogu Resp. Judy’s Moody Int., ¶ 3; *See* O. Delogu Resp. Judy’s Moody Int, ¶ 3.
- b. sitting in the sand to watch birds and other wildlife. J. Delogu Resp. Judy’s Moody Int., ¶ 3; *See* O. Delogu Resp. Judy’s Moody Int, ¶ 3.
- c. wading in the water and sometimes swimming along the beach. J. Delogu Resp. Judy’s Moody Int., ¶ 3; *See* O. Delogu Resp. Judy’s Moody Int, ¶ 3.

126. treading water in place as the waves crash while swimming in the ocean. J. Delogu Resp. Judy's Moody Int, ¶ 3; See O. Delogu Resp. Judy's Moody Int, ¶ 3.

127. Judith Delogu, due to her advanced age, needs to stop and rest while walking along the intertidal area. J. Delogu Resp. Judy's Moody Int., ¶ 3; See O. Delogu Resp. Judy's Moody Int, ¶ 3.

128. "Jeffery E. Parent and Margaret G. Parent (collectively the "Parents") own waterfront property in Waldoboro, Maine." Stipulations Between Plaintiffs and Defendants Jeffery Parent and Margaret Parent dated April 12, 2023, ¶ 1 (attached hereto as "Exhibit Q")("Parent Stip. F.").

129. "The Parents claim to own the seaweed affixed to the rocks in the intertidal land seaward of their upland property." Parent Stip. F., ¶ 4.

130. "None of the Plaintiffs have directly harvested seaweed from the intertidal zone seaward of the Parents' upland property." Parent Stip. F., ¶ 7.

131. "None of the Plaintiffs have been present on or conducted any activity on or over the intertidal portion of the Parents' property." Parent Stip. F., ¶ 8.

132. "The Parents stated to [seaweed] harvester[s] that he needed permission to cut and remove the attached rockweed." Parent Stip. F., ¶ 13.

133. "In 2016, the harvester with whom the Parents interacted harvested attached rockweed from Maine Department of Marine Resources Sector 5-13, which includes the intertidal portion of the Parents' property." Parent Stip. F., ¶ 19.

134. "In 2016, the harvester with whom the Parents interacted sold seaweed to a company that is owned by Plaintiff Robert Morse and that employs Plaintiff John Grotton." Parent Stip. F., ¶ 22.

135. Brian Beal is a professor of Marine Ecology at the University of Maine at Machias residing at 37 Clarks Point Road in Machiasport, Maine. Plaintiff Brian Beal's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 28, 2023, response 1 (attached hereto as "Exhibit R")("Beal Resp. Judy's Moody Int.").

136. Brian Beal's "activities in the intertidal portion of the Maine coast ... include performing research on commercially important shellfish, marine worms, rockweed, and other intertidal organisms." Beal Resp. Judy's Moody Int., ¶ 3.

137. Brian Beal has "clammed in and around the town of Jonesport." Beal Resp. Judy's Moody Int., ¶ 3.

138. Brian Beal has "spent recreational time on Maine beaches." Beal Resp. Judy's Moody Int., ¶ 3.

139. Brian Beal's work is affected by claims that the intertidal is private "making it more difficult to obtain and maintain permission to perform research on intertidal land." Beal Resp. Judy's Moody Int., ¶ 4.

140. Susan Domizi runs a "business that relies on a consistent supply of seaweed that is harvested on intertidal land." Plaintiff Susan Domizi's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 4, 2023, response 3 (attached hereto as "Exhibit S")("Domizi Resp. Judy's Moody Int.").

141. Susan Domizi has "spent recreational time on Maine beaches." Domizi Resp. Judy's Moody Int., ¶ 3.

142. Susan Domizi's work is affected by claims that the intertidal is private "making it more difficult to run [her] business because [her] harvesters are being harassed by upland owners." Domizi Resp. Judy's Moody Int., ¶ 4.

143. Amanda Moeser resides at 21 Larrabees Grove Road in West Bath, Maine. Plaintiff Amanda Moeser's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as "Exhibit T") ("Moeser Resp. Judy's Moody Int.").

144. Amanda Moeser uses the intertidal for oyster farming and clamming. Moeser Resp. Judy's Moody Int., ¶ 3.

145. Amanda Moeser has "spent recreational time on Maine beaches." Moeser Resp. Judy's Moody Int., ¶ 3.

146. Amanda Moeser's work is affected by claims that the intertidal is private "making it more difficult to obtain and maintain aquaculture licenses in the intertidal." Moeser Resp. Judy's Moody Int., ¶ 4.

147. Greg Tobey resides at 207 Meadow Road in Woolwich, Maine. Plaintiff Greg Tobey's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 4, 2023, response 1 (attached hereto as "Exhibit U") ("Tobey Resp. Judy's Moody Int.").

148. Greg Tobey's "activities in the intertidal portion of the Maine coast ... include harvesting seaweed, collecting data, and clamming." Tobey Resp. Judy's Moody Int., ¶ 3

149. Greg Tobey has "spent recreational time on Maine beaches." Tobey Resp. Judy's Moody Int., ¶ 3.

150. Greg Tobey's work is affected by claims that the intertidal is private "making it impossible to harvest seaweed" in the privately held intertidal. Tobey Resp. Judy's Moody Int., ¶ 4.

151. Chad Coffin resides at 26 Litchfield Road in Freeport, Maine. Plaintiff Chad Coffin's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as "Exhibit V")("Coffin Resp. Judy's Moody Int.").

152. Chad Coffin uses the intertidal for clamming. Coffin Resp. Judy's Moody Int., ¶ 3.

153. Chad Coffin has "spent recreational time on Maine beaches." Coffin Resp. Judy's Moody Int., ¶ 3.

154. Chad Coffin's work is affected by claims that the intertidal is private "making it more difficult to harvest clams in the intertidal because upland owners harass me while I am doing my work." Tobey Resp. Judy's Moody Int., ¶ 4.

155. Leroy Gilbert resides at 601 Puddle Road in Waldoboro, Maine. Plaintiff Chad Coffin's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 30, 2022, response 1 (attached hereto as "Exhibit W")("Gilbert Resp. Judy's Moody Int.").

156. Leroy Gilbert uses the intertidal for seaweed harvesting. Gilbert Resp. Judy's Moody Int., ¶ 3.

157. Leroy Gilbert has "spent recreational time on Maine beaches." Gilbert Resp. Judy's Moody Int., ¶ 3.

158. Leroy Gilbert's work is affected by claims that the intertidal is private "making it more difficult to harvest seaweed in the intertidal along the Maine coast." Gilbert Resp. Judy's Moody Int., ¶ 4.

159. John Grotton resides at 2 Victoire Lane in Augusta, Maine. Plaintiff John Grotton's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 31, 2022, response 1 (attached hereto as "Exhibit X")("Grotton Resp. Judy's Moody Int.").

160. John Grotton's runs a "business that depends on a consistent supply of seaweed that grows in the intertidal." Grotton Resp. Judy's Moody Int., ¶ 3

161. John Grotton has "spent recreational time on Maine beaches." Grotton Resp. Judy's Moody Int., ¶ 3.

162. John Grotton's work is affected by claims that the intertidal is private "making it more difficult to harvest seaweed in the intertidal." Grotton Resp. Judy's Moody Int., ¶ 4.

163. Dan Harrington resides at 274 Dana Mills Road in Woolwich, Maine. Plaintiff Dan Harrington's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as "Exhibit Y") ("Harrington Resp. Judy's Moody Int.").

164. Dan Harrington uses the intertidal for seaweed harvesting. Harrington Resp. Judy's Moody Int., ¶ 3.

165. Dan Harrington has "spent recreational time on Maine beaches." Harrington Resp. Judy's Moody Int., ¶ 3.

166. Dan Harrington's work is affected by claims that the intertidal is private "making it more difficult to harvest seaweed in the intertidal because upland owners harass me." Harrington Resp. Judy's Moody Int., ¶ 4.

167. Jake Wilson resides at 79 Woody Lane in Cushing, Maine. Plaintiff Jake Wilson's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated

December 19, 2022, response 1 (attached hereto as “Exhibit Z”)(“Wilson Resp. Judy’s Moody Int.”).

168. Jake Wilson uses the intertidal for seaweed harvesting. Wilson Resp. Judy’s Moody Int., ¶ 3.

169. Jake Wilson has “spent recreational time on Maine beaches.” Wilson Resp. Judy’s Moody Int., ¶ 3.

170. Jake Wilson’s work is affected by claims that the intertidal is private “making it more difficult to harvest seaweed in the intertidal.” Wilson Resp. Judy’s Moody Int., ¶ 4.

171. George Seaver has “been in the seaweed and fertilizer business for forty-four (44) years.” Affidavit of George Seaver dated April 28, 2023, paragraph 9 (attached hereto as “Exhibit AA”)(“Seaver Aff.”).

172. George Seaver’s company, Ocean Organics, “utilizes seaweed resources to produce fertilizer for application in the agriculture and turf industries.” Seaver Aff., ¶¶ 3-4.

173. Ocean Organics “process[es] live rockweed harvested from the intertidal zone, primarily in the mid-coast region of Maine, ... to produce a liquid extract, which is in turn processed into our proprietary liquid supplements, and sold to customers for use in conjunction with fertilizers to increase their efficacy.” Seaver Aff., ¶¶ 5-6.

174. Approximately 60% of Ocean Organics product sales are to agricultural customers, with the remaining 40% to horticultural customers. Seaver Aff., ¶ 7.

175. George Seaver’s business and livelihood “depend upon reasonable access to and sustainable use of the intertidal zone.” Seaver Aff., ¶ 8.

176. Ocean Organics has “developed and improved [its] fertilizer products and their use instructions through intensive research and development over the years.” Seaver Aff., ¶ 10.

177. “Ocean Organics products use seaweed extracts as plant bio-stimulants, which increase the stress tolerance, efficiency, and ultimately yield of the plant or crop to which the product is applied.” Seaver Aff., ¶ 11.

178. “Increased stress tolerance thereby improves the resilience of plants in bad or unfavorable weather conditions, including drought, flood, and extreme heat.” Seaver Aff., ¶ 12.

179. “Seaweed extracts are the fastest-growing category of bio-stimulants currently being deployed in commercial agriculture.” Seaver Aff., ¶ 13.

180. “Seaweed extracts are favored for their efficiency and cost-effectiveness, requiring a small amount of product per acre.” Seaver Aff., ¶ 14.

181. “Research studies have shown that the use of seaweed extract results in a 5-15% increase in yield in the face of drought, flood, and heat conditions.” Seaver Aff., ¶ 15.

182. Ocean Organics “products ... play a role in confronting the world’s food crisis in the midst of a changing climate, environment, and weather conditions.” Seaver Aff., ¶ 16.

183. “Ocean Organics distributes product within the United States and abroad; a relatively small percentage of product is distributed within Maine and New England, while the bulk of domestic sales are to larger states with larger agriculture and turf economies such as the Midwest, Florida and California.” Seaver Aff., ¶ 17.

184. “The seaweed industry has grown substantially since the turn of the 21st century and is positioned [to] play a key role in the future of Maine’s ocean-resource-based economy.” Seaver Aff., ¶ 18.

185. Ocean Organics “business has grown steadily over time, gaining international recognition and entering new markets abroad, including in Europe and Asia. The combining of seaweed extract with fertilizer is a multi-billion-dollar industry worldwide.” Seaver Aff., ¶ 19;

See Affidavit of Robert Morse dated May 1, 2023, paragraphs 9 (attached hereto as “Exhibit BB”)(“Morse Aff.”).

186. “Rockweed grows only in the North Atlantic Ocean. Although China produces other seaweed products, those products are considered less reliable than products derived from rockweed harvested in North America.” Seaver Aff., ¶ 20.

187. “Ocean Organics currently purchases seaweed harvested from the intertidal zone within approximately twenty (20) miles of Waldoboro, Maine.” Seaver Aff., ¶ 21.

188. “Rockweed attaches to hard surfaces through an appendage called a ‘holdfast.’” Seaver Aff., ¶ 22.

189. Ocean Organics’ “harvesters cut rockweed by hand, accessing the resource using flat-bottom Carolina skiffs and using a sharp-edged tool to selectively cut the rockweed.” Seaver Aff., ¶ 23.

190. “Harvesters practice sustainable methods; for example, they primarily cut new growth rockweed and where other harvesters have not been to recently.” Seaver Aff., ¶ 24.

191. “Maine state regulations limit the length of the cut and the percentage of biomass that can be harvested from a single area. This often requires harvesters to travel along the coast harvesting the rockweed from different areas of the intertidal zone.” Seaver Aff., ¶ 25.

192. “Although [Ocean Organics’] harvesters do not use machines to harvest, neither method of harvesting rockweed—by machine or by hand—presents a danger to the sustainability of the resource—a conclusion supported by research and conclusions of the Maine Department of Marine Resources.” Seaver Aff., ¶ 26.

193. “It is a common misconception that seaweed is a plant.” Seaver Aff., ¶ 27.

194. “Rockweed is classified as “alga” and it grows only in the intertidal zones of the ocean. It has no roots, but rather gets all its nutrients from the water.” Seaver Aff., ¶ 28.

195. “Rockweed organisms have a sex—either male or female—and they release sperm or eggs into the sea.” Seaver Aff., ¶ 29.

196. “Once fertilized, the new organism is carried by the currents until large enough to attach to a rocky surface in the intertidal zone.” Seaver Aff., ¶ 30.

197. “Rockweed secures itself by a holdfast much in the same way as an oyster or barnacle.” Seaver Aff., ¶ 31.

198. “Holdfasts are not like roots; the rockweed does not pull nutrients through its holdfast, but instead takes nutrients from the ocean water when underwater at high tide.” Seaver Aff., ¶ 32.

199. George Seaver “believe[s] that the Maine Supreme Court’s decision in *Ross v. Acadian Seaplants Ltd.*, 206 A.3d 283 (Me. 2019) was not only wrong, but inconsistent with Maine’s law according to the Maine Legislature, longstanding public trust rights, and the scientific classification of rockweed not as a plant, but a marine organism.” Seaver Aff., ¶ 33; *See also* Morse Aff., ¶ 20.

200. “It is [George Seaver’s] understanding that *Ross* held that seaweed harvesting is taking plants, not fishing, and therefore that harvesting rockweed growing on privately owned intertidal land cannot be done without the owner’s permission, while taking other marine organisms like clams, mussels, or sea worms remain permissible public trust uses with or without the owner’s permission.” Seaver Aff., ¶ 34; *See also* Morse Aff., ¶ 21.

201. “Public trust rights include fishing, fowling, and navigating.” Seaver Aff., ¶ 35; *See* Morse Aff., ¶ 22.

202. “The Maine legislature has long defined “fishing” to including taking “any marine organism by any method or means” 12 M.R.S. § 6001(17), and to define “marine organism” as “any animal, plant or other life that inhabits waters below head of tide,” Id. § 6001(23), which would include rockweed.” *Seaver Aff.*, ¶ 36; *See Morse Aff.*, ¶ 23.

203. “Even after *Ross*, the question of ownership of rockweed, practically speaking, is not settled. Many shore property deeds seem to include the adjacent intertidal zone, but more often than not, historical deed searches suggest land owners have simply added it to their deeds, and have no historical basis for the claimed ownership. In addition, even if the deed history supports the ownership claim, no one has proposed a practical way to identify the boundaries when the tide comes in, and seaweed harvesting would commence.” *Seaver Aff.*, ¶ 37; *See Morse Aff.*, ¶ 24.

204. George Seaver is “deeply concerned about the future of the access to the resource.” *Seaver Aff.*, ¶ 38.

205. Ocean Organics “is unable to grow on the same footing as other resource-based industries because of the cloud hanging over the question of access to intertidal land and the seaweed resources that grow there.” *Seaver Aff.*, ¶ 39.

206. “Investors and businesspeople are very concerned about risk and factor risk and uncertainty in valuing a business and making an investment decision.” *Seaver Aff.*, ¶ 40; *See Morse Aff.*, ¶ 15.

207. “The legal uncertainty around Maine’s intertidal zone and the seaweed resource presents a risk that affects the value of [the seaweed harvesting] business and the desirability of investment in [the seaweed harvesting] business and other seaweed-related industries.” *Seaver Aff.*, ¶ 41; *See Morse Aff.*, ¶ 16.

208. George Seaver has “experienced this second hand—[he] know[s] of a midcoast seaweed business that was in negotiations with a potential buyer that fell through before closing because of concern about the uncertain legal status of harvesting seaweed in Maine’s intertidal zone.” Seaver Aff., ¶ 42.

209. Robert Morse is the co-owner of North American Kelp, a business based in Waldoboro, Maine with approximately thirty-five employees, which produces seaweed products, primarily from rockweed. Morse Aff., ¶¶ 3-5.

210. North American Kelp “harvest[s] a large volume of seaweed that is processed into various applications.” Morse Aff., ¶ 6.

211. North American Kelp “products include food ingredients, animal supplements, lawn conditioners, and seaweed extracts for use in a variety of areas, including home gardening and landscaping.” Morse Aff., ¶ 7.

212. “North American Kelp does business across the United States and in twenty-four (24) countries abroad. Through intermediaries, our products reach approximately seventy (70) foreign markets.” Morse Aff., ¶ 8.

213. “Based on our volume and very strong domestic demand, most of [North American Kelp’s] product is sold in the United States.” Morse Aff., ¶ 10.

214. “North American Kelp acquires rockweed from harvesters that harvest by a machine.” Morse Aff., ¶ 11.

215. Robert Morse “helped design and build a rockweed harvest machine that went into operation in 1995 and is still running.” Morse Aff., ¶ 12.

216. “Seaweed harvesting machines are designed to stay within state regulations (cutting no more than 16” of growth). The machines selectively and sustainably cut growth from

rockweed beds in a manner that will allow regeneration from tips of the harvested growth.”

Morse Aff., ¶ 13.

217. North American Kelp’s “business of harvesting by machine and processing large volume is very capital-intensive.” Morse Aff., ¶ 14.

218. North American Kelp “is in need of a larger processing plant building, but it is challenging to raise the capital given the uncertainty that hangs over the industry.” Morse Aff., ¶ 17.

219. “Without the cloud hanging over the question of title to intertidal land and the seaweed resources that grow there, [Robert Morse] would be able to expand and attract more investment in our business.” Morse Aff., ¶ 18.

220. North American Kelp’s “seaweed is sourced from the intertidal zone of Maine’s coast from Casco Bay, all the way up to Cobscook Bay in Washington County.” Morse Aff., ¶ 19.

Dated: May 2, 2023 at Portland, ME



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**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Docket No. Cum-24-82

Peter Masucci et al.
Plaintiffs/Appellants/Cross-Appellees

v.

Judy's Moody, LLC et al.
Defendants/Appellants/Cross-Appellees

On appeal from the Cumberland County Superior Court

Appendix

Volume IV of VI

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Dated: June 28, 2024

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

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| PETER MASUCCI, ET AL., |) | |
| |) | |
| PLAINTIFFS, |) | DEFENDANT JUDY’S MOODY LLC’S |
| |) | OPPOSING STATEMENT TO |
| v. |) | PLAINTIFFS’ 220 STATEMENT OF |
| |) | MATERIAL FACTS AND STATEMENT |
| JUDY’S MOODY LLC, ET AL., |) | OF ADDITIONAL FACT |
| |) | |
| DEFENDANTS, |) | |
| |) | |
| and |) | |
| |) | (Title to Real Estate Involved) |
| AARON FREY, in his capacity as Attorney |) | |
| General of the State of Maine, |) | |
| |) | |
| PARTY IN INTEREST |) | |

Pursuant to Rule 56(h)(2) of the Maine Rules of Civil Procedure, Defendant Judy’s Moody LLC (“Judy’s Moody”) submits its opposing statement to the Plaintiffs’ Statement of 220 Material Facts, and objects and admits, denies, or qualifies as follows: Judy’s Moody also submits additional facts following the opposing statement.

OPPOSING STATEMENT

General Objection to Plaintiffs’ 220 Statement of Material Facts

While motions to strike are not permitted, the Court should disregard Plaintiffs’ motion given that they have presented 220 purported statements of material facts. Maine Rules of Civil Procedure 56(h) requires that a motion for summary judgment be supported by “a separate, *short*, and concise statement of material facts.” (emphasis added). Each fact must be supported by a record cite showing it would be admissible in evidence. Me. R. Civ. P. 56(e). Plaintiffs have ignored these rules. A statement with 220 facts is not a “short” statement. Given the Court’s Orders issued to date, many of them simply are no longer relevant, and thus would not be admissible at trial.

Where a party submits an “unnecessarily long, repetitive, or otherwise convoluted statement of material facts,” the court may “disregard the statement and deny the motion for summary judgment solely on that basis.” *Stanley v. Hancock Cnty. Comm’rs*, 2004 ME 157, ¶ 29,

864 A.2d 169, 179 (holding 191 statements of material facts as not meeting the brevity requirement). A burdensome and rambling statement of facts “needlessly complicates the summary judgment process,” *id.* ¶ 28, 864 A.2d at 179, and defeats the purpose of Rule 56(h). That rule is “designed to force litigants to narrowly frame their summary judgment contentions, enabling the court to decide a summary judgment motion without engaging in an exhaustive review of the record.” *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 8, 742 A.2d 933, 938. *See also First Tracks Investments, LLC v. Murray, Plumb & Murray*, 2015 ME 104, ¶ 2, 121 A.3d 1279, 1280–82 (affirming trial court’s denial of a summary judgment motion where the plaintiff submitted 257 individual facts).

Given the Court in its April 15, 2022, Order (“Order”) at 25 limited Count IV to whether “any movement or research related activity” is permissible on or over Judy’s Moody’s intertidal property, statements of material facts with respect to non-movement-based activities are irrelevant.

The Court in its Order at 25 n.11 also stated that “[t]hose who seek declaratory judgments regarding their right to use the intertidal zone for the commercial purpose of harvesting marine plants have little chance of success as to Count IV. The Law Court was clear in *Ross* that even under the flexible balancing approach the Court employs, removing marine plants from private intertidal land is not a permissible activity. *Ross*, 2019 ME 45, ¶¶ 31–32, 206 A.3d 283.” Therefore, any facts offered relative to accessing Judy’s Moody’s intertidal property to harvest rockweed are irrelevant.

Given the Law Court in *Bell v. Town of Wells*, 557 A.2d 168, 173 (Me. 1989), held that general recreational activities such as “bathing, sunbathing,” and “recreational walking” on “privately owned intertidal land” at Moody Beach, including the intertidal land now owned by Judy’s Moody, are not public rights included within the public rights of fishing, fowling, and navigation in the Colonial Ordinance, any facts offered regarding the use of Judy’s Moody’s intertidal property for movement based recreational activities, including bathing, sunbathing, and recreational walking, are not relevant. Decisions of the Law Court are binding on the Superior Court. *Myrick v. James*, 444 A.2d 987, 997–98 (Me. 1982) (quoting *State v. Mellenberger*, 95 P.2d 709, 719–20 (Or. 1939)); *see also Shaw v. Jendzejec*, 1998 ME 208, ¶ 8, 717 A.2d 367, 370 (quoting *Myrick*).

RESPONSES

1. Mark Montesi and Corliss Montesi are the sole representatives of Ocean 503, LLC. Deposition of Mark Montesi dated March 2, 2023, page 11:7-19. (attached hereto as “Exhibit A”) (“Montesi Dep.”)

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

2. Ocean 503, LLC gained ownership of 503 Ocean Avenue in Wells, Maine ("Ocean 503 Property") in 2019. Montesi Dep. Ex. 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

3. Mark and Corliss Montesi are Florida residents. Montesi Dep. 15:14.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

4. Mark and Corliss Montesi spend only "about 20 percent of the year" at the Ocean 503 Property. Montesi Dep. 15:18.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

5. Mark Montesi understands the Ocean 503 Property's northerly and southerly side property lines extend "from the front of the lot to the mean low water mark ... 140 feet." Montesi Dep. 18:23-25.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does

not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

6. From 2013 to 2018, Mark Montesi owned real estate located at 66 Cranberry Street, Wells, Maine. Montesi Dep. 25:22-25, 26:1-8.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

7. 66 Cranberry Street is not waterfront real estate, located approximately .25 miles from Moody Beach. Montesi Dep. 26:1-8.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

8. From 2013 to 2018, Mark Montesi and his family utilized "North Beach in Ogunquit" for beach activities. Montesi Dep. 26:13-20.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

9. From 2013 to 2018, Mark Montesi utilized the beach north of the Ogunquit and Wells Town division line to walk the beach more than 50, but less than 100 times. Montesi Dep. 28:2-10.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

10. Currently, Mark Montesi uses Moody Beach to sit, paddleboard, surf, and swim. Montesi Dep. 37:9-11, 37:20-22.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice). The cited reference does not in any way indicate the location of the stated uses and therefore is not relevant and admissible relative to uses on Judy's Moody's intertidal property. MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

11. Mark Montesi "hired someone to ... affix (signs) to the (sea) wall" on the Ocean 503 Property facing the ocean that state 'PRIVATE BEACH'. Montesi Dep. 34:15-25, 35:1-5; *See* Montesi Dep. Ex. 4.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

12. Mark Montesi had a sign installed on Ocean 503 Property seawall that states ‘MOODY BEACH IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING.’ Montesi Dep. 40:9-17; *see* Montesi Dep. Ex. 4 & 5.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy’s Moody incorporates the response of Defendant Ocean 503, LLC.

13. Mark Montesi understanding “because it’s a private beach, it’s in [his] discretion, if [he] wanted” to tell people to get off the beach area seaward of the Ocean 503 Property. Montesi Dep. 38:1-8.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy’s Moody incorporates the response of Defendant Ocean 503, LLC.

14. Mark Montesi has never asked the public to move or relocate off the private area of Ocean 503 Property. Montesi Dep. 38:2-6, 43:9-11, 44:21-23, 45:22-24.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy’s Moody incorporates the response of Defendant Ocean 503, LLC.

15. Despite his sign, Mark Montesi does not consider swimming, surfing, sitting, building sandcastles, or “recreating” on the beach “loitering.” Montesi Dep. 42:12-16, 42:22-25, 43:1-4, 44:7-10.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

16. Despite the existence of the sign, Mark Montesi recognizes the public "has every right to fish" on the Ocean 503 Property. Montesi Dep. 39:20.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

17. Despite the existence of the sign, Mark Montesi recognizes the public has "every right" to walk across the intertidal portion of the Ocean 503 Property. Montesi Dep. 39:22-24.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

18. Despite the existence of the sign, Mark Montesi recognizes the public has the right to "bird watch" on the Ocean 503 Property. Montesi Dep. 39:25, 40:1-3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by

prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

19. James Howe is the sole beneficiary of OA 2012 Trust. Deposition of James Howe dated February 8, 2023, page 17:10-14 (attached hereto as "Exhibit B")("Howe Dep.").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

20. James Howe's father, Kevin J. Howe, and Kevin McCue, purchased the property at 3 Ocean Avenue in Wells ("OA 2012 Property") in 1978. Howe Dep. 16:5-7; See 17:20-25, 18:1.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

21. The OA 2012 Property is James Howe's permanent residence. Howe Dep. 29:19-21.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

22. James Howe believes the OA 2012 property deed states the northerly and southerly side property lines extend to the Atlantic Ocean. Howe Dep. 22:20-23.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

23. OA 2012 claims "ownership over the intertidal land that's seaward of [the OA 2012 Property]." Howe Dep. 25:20-23.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

24. The OA 2012 Property displays private beach signage stating "MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED" attached to a seawall. Howe Dep. Ex. 5; See Howe Dep. 37:16-17, 39:2-3, 39:18, 39:25, 40:20-23.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

25. The OA 2012 Property contains private beach signage stating "MOODY BEACH PRIVATE NO LOITERING" attached to a seawall, Howe Dep. Ex. 6; See Howe Dep. 37:16-17, 39:2-3, 39:18, 39:25, 40:20-23.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

26. James Howe does not know by who or when the "private beach" signage was installed on the OA 2012 Property. Howe Dep. 38:1, 38:17-19; See Howe Dep. 47:14-23.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

27. James Howe never attempted to remove the signage from the seawall and consents to its message. Howe Dep. 38:7-9, 47:24-25, 48:1-3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

28. OA 2012 "restrict[s] dogs from being on the beach" on the OA 2012 Property. Howe Dep. 40:20-25; See Howe Dep. Ex, 6.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

29. OA 2012 signage restricts loitering, meaning "[the public is] not allowed to sit [or] hang out on the beach." Howe Dep. 42:15-16.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

30. OA 2012 does not consider "walking or running" to be loitering. Howe Dep. 42:20-22.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

31. OA 2012 does not consider "stopping and stretching" in place to be loitering, even if sitting down while doing so. Howe Dep. 42:23-25, 43:1-3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

32. OA 2012 does not consider "walking slowly; just sort of meandering ... walking around on [OA 2012 Property]" to be loitering. 43:6-13.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

33. OA 2012 does not consider "surfing" to be loitering. Howe Dep. 43:14-15.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

34. OA 2012 considers "sitting in the sand" loitering if you are "physically present" for more than 30 minutes in one spot." Howe Dep. 43:16-25, 44:1-4.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

35. OA 2012 does not consider "sitting with a fishing pole" to be loitering, "as long as you're fishing." Howe Dep. 44:4-11.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

36. OA 2012 states a fishing line "should be" for fishing not to be loitering. Howe Dep. 44:13-14.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

37. OA 2012 does not consider "building a sandcastle" to be loitering, stating "somebody can be there as long as they want as long as they're building a sandcastle." Howe Dep. 44:23-25, 45:1-3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

38. OA 2012 does not consider "playing frisbee ... on the intertidal land" to be loitering. Howe Dep. 45:4-7.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

39. OA 2012 has never "approached any members of the public to ask them to not be on ... the intertidal portion of [the OA 2012 Property]." Howe Dep. 45:20-24.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

40. OA 2012 and its invitees go running and walking along the intertidal land. Howe Dep. 65:23-24, 66:1-2.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

41. OA 2012 and its invitees play bocce "up and down the beach" on the intertidal land. Howe Dep. 66:3-18.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

42. OA 2012 and its invitees "surf or boogie board" on the intertidal land. Howe Dep. 66:18-20.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

43. OA 2012 and its invitees ride waves "in front of other houses" on the intertidal land of Moody Beach. Howe Dep. 66:24-25, 67:1-2.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

44. OA 2012 understands "because it's a private beach to the low tide mark, yes, we have the right to" "ask someone to leave the intertidal land." Howe Dep. 70:22-25, 71:1-4.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Judy's Moody incorporates the response of Defendant OA 2012 Trust.

45. Keith Dennis is the sole member of Judy's Moody, LLC. Deposition of Keith Dennis dated February 10, 2023, page 13:15-17 (attached hereto as "Exhibit C") ("Dennis Dep.")

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Admitted.

46. Keith Dennis purchased a portion of the property at 407 Ocean Avenue in Wells, Maine ("Judy's Moody Property") in 1991. Dennis Dep. Ex. 3.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above. Judy's Moody further objects to Plaintiffs' characterization that Keith Dennis purchased a "portion" of the property at 407 Ocean Avenue in Wells, Maine. This Court already dismissed Plaintiffs' challenges to Judy's Moody's title in its Order dated April 15, 2022, at 26.

Response: Qualified. Keith Dennis purchased all the property at 407 Avenue Wells, Maine in June of 2016. Dennis Dep. 15:19-24; Dennis Dep. Ex. 3.

47. Keith Dennis purchased a portion of the Judy's Moody Property in 2016. Dennis Dep. Ex. 3.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above. Judy's Moody further objects to Plaintiffs' characterization that Keith Dennis purchased a "portion" of the property at 407 Ocean Avenue in Wells, Maine. This Court already dismissed Plaintiffs' challenges to Judy's Moody's title in its Order dated April 15, 2022, at 26.

Response: Qualified. Keith Dennis purchased all the property at 407 Avenue Wells, Maine in June of 2016. Dennis Dep. 15:19-24; Dennis Dep. Ex. 3.

48. Keith Dennis transferred the Judy's Moody Property to Judy's Moody, LLC on July 28, 2016. Dennis Dep. Ex. 3.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Admitted.

49. Keith Dennis' primary residence is in Virginia. Dennis Dep. 26:19-21.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Qualified. Keith Dennis is a resident of Virginia. Dennis Dep. 26:21.

50. The Judy's Moody Property northerly and southerly side property boundaries extend "to the Atlantic Ocean." Dennis Dep. Ex. 3; See Dennis Dep. 19:22, 20:4-6.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above. Judy's Moody also objects to the extent Paragraph 50 purports to characterize the property description in the deed, which speaks for itself; MRE 1002 (requirement of the original writing).

Response: Qualified. *See* Dennis Dep. Ex. 3.

51. The Judy's Moody Property contains private beach signage stating "PRIVATE BEACH" attached to a seawall, Dennis Dep. Ex. 7 ("Ex. s"); See Dennis Dep. 47:6-7.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above; MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody's property has in the past contained signs that read "Private Beach." Some of those signs were either taken down by Judy's Moody or were ripped

down by a member of the public. *See* Dennis Dep. 46:16-18; 48:23-25. No signs are currently on the property. *See* Exhibit 1 to Judy's Moody's Additional Statement of Material Facts, Dennis Dep. 46:10-50:2.

52. Judy's Moody has placed additional private beach signage stating "Private Property, No Trespassing," and signage referencing "low tide." Dennis Dep. 49:18-20.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above; MRE 403 (probative value outweighed by prejudice)..

Response: Qualified. From time to time in the past, Judy's Moody has placed signs that state "Private Property, No Trespassing," and signage referencing the low tide. These signs were not permanent. Dennis Dep. 46:16-18, 47:4-7, 47:21-25, 48:11-15, 49:18-20.

53. Wells Police Department has told Judy's Moody that they will respond to calls regarding trespass on the Judy's Moody Property "private beach." Dennis Dep. 55:14-20.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Admitted.

54. Judy's Moody has provided members of the public written permission to use the Judy's Moody Property for discrete periods of time. Dennis Dep. 57:12-13.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above; MRE 403 (probative value outweighed by prejudice)..

Response: Qualified. Judy's Moody has provided members of the public written permission to use the Judy's Moody intertidal zone property for discrete periods of time. Dennis Dep. 56:22-25; 57:1-13.

55. From 2016-2018, Judy's Moody "had allowed, basically, any[...]" use of the Judy's Moody Property. Dennis Dep. 58:4-5.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above; MRE 403 (probative value outweighed by prejudice)..

Response: Qualified. From 2016-2018, Judy's Moody "allowed the vast majority of activities to occur. And we had allowed, basically anything for two years; from 2016 to 2018" on Judy's Moody intertidal zone property. Dennis Dep. 58:1-5.

56. Judy's Moody has allowed "strangers ..., or members of the public, ..." to use Judy's Moody Property for "the vast majority of activities." Dennis Dep. 57:23-25, 58:2-3.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above; MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody has allowed "strangers ..., or members of the public, ..." to "set up tables on your sand" and have allowed "the vast majority of activities to occur" on its intertidal zone property. Dennis Dep. 57:23-25, 58:2-3.

57. Judy's Moody, has given permission to "strangers ..., or members of the public, ... to set up tables on [its] sand." Dennis Dep. 57:23-25, 58:7-9.

Objection: Judy's Moody incorporates by reference the general objections stated above; MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody has allowed "strangers ..., or members of the public, ..." to "set up tables on your sand" and have allowed "the vast majority of activities to occur" on its intertidal zone property. Dennis Dep. 57:23-25, 58:2-3.

58. Judy's Moody has physically removed a back lot owner's personal property on the Judy's Moody Property. Dennis Dep. 79:21-22.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above. Judy's Moody further objects on the basis that the above did not involve any of the named Plaintiffs in this case and is therefore irrelevant and inadmissible with respect to any claim Plaintiffs may have against Judy's Moody; ; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Mr. Dennis testified that he "moved his chair over to the side of the property." Dennis Dep. 79:21-22.

59. Moody Beach Association has organized numerous charity events that take place, at least partially, on the Judy's Moody Property. Dennis Dep. 84:4-10.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. The Moody Beach Association has organized at least one charity event that took place, at least partially, on the Judy's Moody Property. Dennis Dep. 84:4-10.

60. Moody Beach Association organizes "an event ... called "Moody Beach Days" annually held on the Fourth of July. Dennis Dep. 85:5-8.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Admitted.

61. Judy's Moody understands Moody Beach Association has held the annual "Moody Beach Days" event for the past "30 or 40 years." Dennis Dep. 85:13-14.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Admitted.

62. Each year since 1956 on the fourth of July, Moody Beach Association runs the beach games where "four to five-hundred people there for several hours ... watch[] kids races and sack races all those kinds of things." P. Masucci Dep. Vol 1 123:10-13.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above. Judy's Moody further objects on the ground that this paragraph contains inadmissible hearsay; MRE 802 (hearsay).

Response: Admitted.

63. During "Moody Beach Days," members of the public and organizers access the Judy's Moody Property, including but not limited to the intertidal, the dry sand area, the stairs, seawall, and developed portion of Judy's Moody Property. Dennis Dep. 85:25, 86:1-4.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody has given the organizers of this event permission to use its property. *See* Dennis Dep. 85:22-23.

64. At the Moody Beach Games, "families might just sit there, and the kids might dig in the sand, build a sandcastle or drip castle." P. Masucci Dep. Vol I 123:13-16.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Admitted.

65. From 2018 and 2021, Judy's Moody "gave the Moody Beach Association written permission to have their Fourth of July parade the Fourth of July event and sandcastle contest on [the Judy's Moody Property] - ... above the high tide to low tide." Dennis Dep. 121:9-24.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Qualified. Judy's Moody gave permission to hold these events even on the dry sand every summer that Mr. Dennis could remember to do it, and at least the years 2018-2021. Dennis Dep. 121:9-122:1.

66. Judy's Moody has used numerous objects to mark the northerly boundary line separating the Judy's Moody Property from the abutting public way, including but not limited to "a big piece of wood," "cones," "raked seaweed," and other "control type things." Dennis Dep. 93:4-11; 94:9-10; See Deposition of Kathy Masucci dated January 13, 2023, page 81:9-11 (attached hereto as "Exhibit D") ("K. Masucci Dep.").

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Qualified. These physical markers are there only occasionally and are often not placed by Judy's Moody. Dennis Dep. 92:17-93:12, 93:21-23.

67. Judy's Moody, or its representatives and invitees, have contacted the Wells Police Department on numerous occasions for assistance removing members of the public from the intertidal land on Judy's Moody Property. Dennis Dep. Ex. 9.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Admitted.

68. Judy's Moody subjectively chooses when to enforce its right to exclude the public from its intertidal land. Dennis Dep. 111:10-18.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Qualified. Mr. Dennis testified that "thousands of people visit the beach" and it would not be "worth it" to ask everyone technically trespassing to move. *See* Dennis Dep. 111:1-18.

69. Judy's Moody recognizes "thousands of people visit the beach" each year and use the intertidal land in ways "they probably aren't allowed to do." Dennis Dep. 111:1-3.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Qualified. Mr. Dennis testified that it would not be "worth it" to ask everyone technically trespassing to move, because "what are they going to do, move 40 feet over? You just ruined your own day and ruined their day." *See* Dennis Dep. 111:14-18.

70. Judy's Moody "generally give[s] people permission or implied permission to do a lot of stuff that are well beyond [navigation], including things that are potentially not." Dennis Dep. 122:12-21.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above. Judy's Moody also objects on the ground that Mr. Dennis is not competent to testify as to the limits of the term "navigation" as defined by Maine law. *See Bell v. Town of Wells*, 557 A.2d 168, 173 (Me. 1989) (*Bell II*) (collecting cases describing the meaning of "navigation"); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

71. Members of the public bring "bring coolers full of beer and sit in the low tide and smoke" without obtaining permission of Judy's Moody. Dennis Dep. 111:4-5.

Objection: Judy's Moody LLC incorporates by reference the general objections stated above.

Response: Qualified. Mr. Dennis testified that "thousands of people visit the beach" and it would not be "worth it" to ask everyone technically trespassing to move. *See* Dennis Dep. 111:1-18.

72. Kathy Masucci's grandfather purchased the original property located at 484 Ocean Avenue (the "Masucci Property"). K. Masucci Dep. 12:12-13.

Objection: Judy's Moody incorporates by reference the general objections stated above; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

73. Kathy and Peter Masucci are co-trustees of the Peter F. and Kathy E. Masucci Trust which currently owns the Masucci Property. Plaintiff Peter Masucci's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 3 (attached hereto as "Exhibit E")("P. Masucci Resp. Ocean 503 Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

74. Kathy and Peter Masucci began living at the Masucci Property as their year-round residence in 2002. K. Masucci Dep. 13:9; See P. Masucci Resp. Ocean 503 Int. ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

75. Kathy Masucci has been on the intertidal zone of the Ocean 503 “hundreds to thousands” of times, visiting Moody Beach “since [she] was born” and consistently for the past “73 years.” K. Masucci Dep. 16:3-16.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy’s Moody incorporates the response of Defendant Ocean 503 LLC.

76. Kathy Masucci’s activity on the intertidal areas of Moody beach has included:

- a. “walk[ing] over” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:6,74:1-2.
- b. running on the intertidal area of the Judy’s Moody Property. K. Masucci Dep. 74:3-5.
- c. stopping and resting on the intertidal area of the Judy’s Moody Property. K. Masucci Dep. 74:7-9.
- d. stopping to look at the water when walking. K. Masucci Dep. 108:1-4.
- e. “sitting on the beach” on the Ocean 503 Property. K. Masucci Dep. 17:21.
- f. “digging holes” in the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:21.
- g. “playing bocci” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:21-22.
- h. playing “kickball” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:23.
- i. sitting and “reading” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:23, 18:5.
- j. “play[ing] baseball” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 57:7, 57:14.
- k. sitting to observe wildlife on the intertidal area of the Judy’s Moody Property. K. Masucci Dep. 74:10-12.
- l. building sandcastles on the intertidal area of the Judy’s Moody Property. K. Masucci Dep. 74:13-15.
- m. “boogie boarding” in the water adjacent to Judy’s Moody Property. K. Masucci Dep. 75:5-7.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that portions pertain to property that does not belong to Judy’s Moody and are therefore irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody; MRE 105 (evidence admissible only

against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: As to Judy's Moody: Qualified. Kathy Masucci testified that over five years ago she had probably ran on the intertidal, stopped and rested on the intertidal, observed wildlife, built sandcastles, and boogie boarded in the water adjacent to Judy's Moody's intertidal. *See* Exhibit 22 to Judy's Moody's Statement of Additional Material Facts , K. Masucci Dep. 68:21-24, 74:3-5, 74:7-9, 74:10-12, 74:13-15, 75:5-7. With respect to Ocean 503: Qualified. Judy's Moody incorporates by reference the response of Ocean 503.

77. Kathy Masucci first noticed the signage on the Ocean 503 Property "within the past ten years." K. Masucci Dep. 19:16.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503 LLC.

78. The Ocean 503 Property signage caused Kathy Masucci to "feel that you are ... trespassing every time you go onto [the] beach" on the Ocean 503 Property. K. Masucci Dep. 37:25, 38:1-4.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503 LLC.

79. The Ocean 503 Property signage caused Kathy Masucci to "specifically avoid the intertidal land [on the] Ocean 503 Property," including but not limited to "sit[t]ing or build[ing] sand — to do sedentary activit[ies], games, digging." K. Masucci Dep. 39:4-7.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one

party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503 LLC.

80. Kathy Masucci is "sad, angry, frustrated, discouraged" when seeing the private property signs on Moody Beach. K. Masucci Dep. 112:17; *see* K. Masucci Dep. 115:9-16.

Objection: Judy's Moody incorporates by reference the general objections stated above; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. To the extent this statement applies to Judy's Moody, there is no signage currently on the property. *See* Dennis Dep. 46:10-49:24-25. Otherwise, Judy's Moody incorporates the response of the other Moody Beach Defendants.

81. Kathy Masucci's experience is "negatively affected" by the private property signage at Moody Beach. K. Masucci Dep. 113:3-5.

Objection: Judy's Moody incorporates by reference the general objections stated above; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. To the extent this statement applies to Judy's Moody, there is no signage currently on the property. *See* Dennis Dep. 46:10-49:24-25. Otherwise, Judy's Moody incorporates the response of the other Moody Beach Defendants.

82. Kathy Masucci has not "set up camp or sat down all of her things ... on the intertidal zone of [the] Ocean 503 Property" since "prior to the signs." K. Masucci Dep. 18:22- 25.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503 LLC.

83. Kathy Masucci "consciously sit[s] in the confines of the public way" since the Private Property signage went up. K. Masucci Dep. 105:16-17.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does

not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. The cited portion of the Kathy Masucci deposition does not indicate which property she is referring to. To the extent this statement applies to Judy's Moody, there is no signage currently on the property. *See* Dennis Dep. 46:10–49:24-25. Otherwise, Judy's Moody incorporates by reference the responses of the other Moody Beach Defendants.

84. Kathy Masucci reasons "I would not have sat there" after the signs were posted, adding "that is when I stopped sitting there." K. Masucci Dep. 55:12-15.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. The cited portion of the Kathy Masucci deposition indicates this applies only to Defendant Ocean 503 LLC. To the extent this statement applies to Judy's Moody, there is no signage currently on the property. Dennis Dep. 46:10–49:24-25. Otherwise, Judy's Moody incorporates by reference the response of Defendant Ocean 503 LLC.

85. Peter Masucci visits Moody Beach "in the wintertime, probably once or twice a week ... in the summertime, it'd probably be three or four times a week. Deposition of Peter Masucci dated January 11, 2023, Volume I, page 13:5-8. (attached hereto as "Exhibit F")("P. Masucci Dep. V. I").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice),

Response: Admitted.

86. In the wintertime, "[Peter and Kathy Masucci] go on the beach and walk," "often walk[ing] the entire length of the beach down to Ogunquit Beach." P. Masucci Dep. Vol. I 14:2-7.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one

party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

87. In the summertime, Peter and Kathy Masucci “walk often, but ... would often take our beach chairs and sit on the beach.” P. Masucci Dep. Vol. I 14:17-18.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to Judy’s Moody’s intertidal property; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. The cited reference does not in any way indicate the location of the activity, so this may not have been on Judy’s Moody’s property.

88. In the summertime, Peter and Kathy Masucci sit on the beach and “read a book” in the intertidal area. P. Masucci Dep. Vol. I 14:19, 15:8.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. The cited reference does not in any way indicate the location of the activity, so this may not have been on Judy’s Moody’s property.

89. Peter Masucci and his family would regularly use the entire intertidal portion of Moody Beach prior to upland owners’ installation of private property signage and confrontations with members of the public. P. Masucci Resp. Ocean 503 Int., ¶ 4.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. The cited reference does not in any way indicate the location of the activity, so this may not have been on Judy’s Moody’s property. To the extent this statement applies to Judy’s Moody, there is no signage currently on the property. Dennis Dep. 46:10–49:24–

25. Otherwise, Judy's Moody incorporates by reference the responses of the other Moody Beach Defendants.

90. Peter Masucci's activity on the intertidal areas of Moody beach has included:

- a. "play[ing] in the water ... bodysurfing or just splashing around" with his grandchildren. P. Masucci Dep. Vol. I 14:19-22; See P. Masucci Dep. Vol. I 37:14-18.
- b. "buil[ing] sandcastles and sand forts" which his children "would play in the little sand forts until the tide came in and washed it away." P. Masucci Dep. Vol. I 14:22-25, 15:1; See P. Masucci Dep. Vol. I 37:14-18.
- c. walking from his house south to the Ogunquit / Wells Town Line. Deposition of Peter Masucci dated January 13, 2023, Volume II, page 11:12-16. (attached hereto as "Exhibit G")("P. Masucci Dep. V. II").
- d. jogging the length of Moody Beach in his "20s and 30s." P. Masucci Dep. Vol I 120:17-25.
- e. occasionally "stop[ing] to observe nature, watch the birds ... watch people fishing ... we would stop to enjoy the view or watch" while running in the intertidal zone of Moody Beach, P. Masucci Dep. Vol. I 121:1-24.
- f. sitting down on the sand and in beach chairs watching the beach activity. Beach. P. Masucci Dep. Vol I 122:4-12.
- g. observing "kids down there picking up rocks, looking under the rocks trying to find crabs, looking for periwinkles, looking for starfish." P. Masucci Dep. V. II. 23:2-8.
- h. "boogieboarding and bodysurfing" with his family on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 48:19-21.
- i. "skimboard" with his family on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 49:20-24.
- j. along with dozens of other families, playing "Bocci" ball on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 53:16; See P. Masucci Dep. Vol. I 119:9-10.
- k. playing many games, including but not limited to "tag football, paddleball, wiffle ball, baseball, play catch with [his] kids, throwing a baseball." P. Masucci Dep. Vol I 143:18-20.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Nothing in this paragraph references Judy's Moody's property. Judy's Moody otherwise incorporates the responses of the other Moody Beach Defendants.

91. Peter Masucci's children took advantage of the low tides to play in tide pools formed in the intertidal areas of Moody Beach. P. Masucci Dep. V. II. 22:4-5.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Nothing in this paragraph specifically references Judy's Moody's property. Judy's Moody otherwise incorporates the responses of the other Moody Beach Defendants.

92. Peter Masucci will "will no longer put [his] chairs down in front of [the Ocean 503 Property]" since the signs first appeared on the Ocean 503 Property. P. Masucci Dep. Vol. I 37:1-8; See P. Masucci Resp. Ocean 503 Int., ¶ 11.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503, LLC.

93. Peter Masucci and his family "no longer dig for seaworms on portions of the intertidal land" since the private property signage has been posted. P. Masucci Dep. Vol. I 46:20-23; See P. Masucci Resp. Ocean 503 Int., ¶ 11.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. To the extent this statement applies to Judy's Moody, there is no signage currently on the property. Dennis Dep. 46:10-49:24-25. Otherwise, Judy's Moody incorporates the response of Defendant Ocean 503 LLC.

94. Peter Masucci has witnessed Keith Dennis of Judy's Moody "come down the steps onto the sand and gone to talk to people ... they're lifting up their chairs and moving it over into the narrow public way" in the intertidal zone. P. Masucci Dep. Vol. I 114:2-8.

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice)

Response: Qualified. The cited portion makes clear that Peter Masucci was not sure that the person talking was Keith Dennis, as Mr. Masucci doesn't "know who he is" and only knows his name "anecdotally from neighbors," *see* Exhibit 2 to Judy's Moody Statement of Additional Material Facts, P. Masucci Dep. Vol. 1 113:24. *See also* P. Masucci Dep. Vol 1 114:2. It also makes clear that Peter Masucci has no personal knowledge of the conversations between the man he believed to be Keith Dennis and members of the public. P. Masucci Dep. Vol. 1 114:2-6.

95. Peter Masucci "could probably name hundreds of people who have either been told or expressed to me their concern and fear, if you will, that if they were to stop, a fear of intimidation, if you will, that they're going to be asked to move or, worse, that the police are going to be called on them." P. Masucci Dep. Vol. I 130:18-25.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects on the ground that this paragraph contains inadmissible hearsay if it is offered to prove that these hundreds of declarants were actually concerned or fearful; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE801, 802 (hearsay).

Response: Qualified. To the extent this statement applies to Judy's Moody, no representative of Judy's Moody has ever asked Peter Masucci to leave Judy's Moody's intertidal land. *See* Exhibit 2 to Judy's Moody Statement of Additional Material Facts, P. Masucci Dep. 112:20-23, 113:5-10, 130:2-7. Judy's Moody further incorporates the responses of the other Moody Beach Defendants.

96. William Connerney is a trustee of the Connerney Nominee Trust which owns property at 130 South Tibbetts Road in Wells, Maine. Deposition of William Connerney dated January 11, 2023, page 11:2 (attached hereto as "Exhibit H")("Connerney Dep."); *See* Plaintiff William Connerney's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 3 (attached hereto as "Exhibit I") ("Connerney Resp. Ocean 503 Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

97. William Connerney's activity on the intertidal areas of Moody Beach has included:

- a. “constantly walking the beach down to Ogunquit Beach. It makes an interesting walk, a lot of sightseeing.” Connerney Dep. 13:6-9; See Plaintiff William Connerney’s Answers to Defendants OA Trust’s and Judy’s Moody LLC’s First Set of Interrogatories dated January 5, 2023, response 3 (attached hereto as “Exhibit J”)(“Connerney Resp. Judy’s Moody Int.”).
- b. playing “all kinds of games through the years.” Connerney Dep. 13:10-12; See Connerney Resp. Ocean 503 Int., ¶ 11.
- c. “body surf[ing] in the water.” Connerney Dep. 13:12-13.
- d. “play[ing] in the sand ... with the kids.” Connerney Dep. 13:13-14; See Connerney Resp. Ocean 503 Int., ¶ 11.
- e. playing “hand tennis, where you make yourself a little court.” Connerney Dep. 13:16-17; See 35:7-14; See also Connerney Resp. Ocean 503 Int., ¶ 11.
- f. flying a kite. Connerney Dep. 13:17.
- g. “looking for sea crabs and seashells.” Connerney Dep. 13:18-19; See Connerney Resp. Judy’s Moody Int. ¶ 3.
- h. walking and jogging. Connerney Dep. 13:21; See Connerney Resp. Ocean 503 Intl 11.
- i. “ha[ving] lunch on the beach, and it could have well been on some of the prohibited land.” Connerney Dep. 63:23-25.
- j. “walk[ing] [his dog] regularly on a leash through the [prohibited] property” when he had a dog. Connerney Dep. 64:18-20.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. To the extent William Connerney’s activities occurred on Judy’s Moody’s property, admitted. Otherwise, Judy’s Moody incorporates the responses of the other Moody Beach Defendants.

98. William Connerney’s daughter, Jeannie Connerney, is an avid runner and runs on the intertidal portion of Moody Beach almost daily in the summer and fall. Connerney Resp. Ocean 503 Int., ¶ 11.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it is hearsay, not based on personal knowledge, not limited in time, and not admissible. Judy’s Moody also objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. This paragraph does not state the location of Jeannie Connerney's running, so it may not have occurred on Judy's Moody's property. Otherwise, Judy's Moody incorporates the responses of the other Moody Beach Defendants.

99. Jeannie Connerney stretches before, during and after her run on the intertidal area. Connerney Resp. Ocean 503 Int., ¶ 11.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it is hearsay, not based on personal knowledge, not limited in time, and not admissible. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to Judy's Moody's intertidal property; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. This paragraph does not state the location of Jeannie Connerney's stretching, so it may not have occurred on Judy's Moody's property. Otherwise, Judy's Moody incorporates the responses of the other Moody Beach Defendants.

100. Jeannie Connerney stands on the intertidal area of Moody Beach for approximately 5 to 15 minutes after her run. Connerney Resp. Ocean 503 Int., ¶ 11.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement as it is hearsay, not based on personal knowledge, not limited in time and not admissible. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to Judy's Moody's intertidal property; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. This paragraph does not state the location of Jeannie Connerney's standing, so it may not have occurred on Judy's Moody's property. Otherwise, Judy's Moody incorporates the responses of the other Moody Beach Defendants.

101. Jeannie Connerney takes off her shoes and wades in the water to cool down after her run. Connerney Resp. Ocean 503 Int., ¶ 11.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects as the statement is hearsay, not based on personal knowledge, not limited in time, and not admissible. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to Judy's Moody's intertidal property; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Qualified. This paragraph does not state the location of Jeannie Connerney's activity, so it may not have occurred on Judy's Moody's property. Otherwise, Judy's Moody incorporates the responses of the other Moody Beach Defendants.

102. In 1989, after the affirmation of beach front owner rights, William Connerney continued "to use [the intertidal] the way [he] wanted to use it" because "no one ever stopped [him]." Connerney Dep. 69:1-5.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it is irrelevant. The cited references do not in any way indicate the location of the activity and therefore is not relevant and admissible relative to Judy's Moody intertidal property; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

103. William Connerney "felt hindered in what [he] would do" "later when stories started to arise" approximately 10 to 15 years ago. Connerney Dep. 69:6-9.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. Judy's Moody further objects on the ground that these "stories" are inadmissible hearsay to the extent they are offered for their truth; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 802 (hearsay).

Response: Qualified. Mr. Connerney's feeling of "hindrance" was due to the affirmation of beachfront owners; rights in the intertidal zone in 1989. Connerney Dep. 68:25, 69:1-9.

104. William Connerney is affected by the approximately 30 private property signs because "you know that they don't want you there, so you really walk with anticipation of what might happen." Connerney Dep. 26:1-4; See Connerney Dep. 25:23, Connerney Resp. Ocean 503 Int., ¶ 6.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement as it does not state the location of the 30 signs and therefore is not relevant and admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mr. Connerney's feelings, Mr. Connerney has never been asked to leave Judy's Moody's intertidal land. See Exhibit 23 to Judy's Moody's Statement of Additional Material Facts, Connerney Dep. 72:9-12, 73:1-3. No

signs regarding the beach are currently up on Judy's Moody's property. Dennis Dep. 46:10–49:24-25. Judy's Moody otherwise incorporates the responses of the other Moody Beach Defendants.

105. William Connerney is “very cautious” when traversing the Ocean 503 Property recognizing “that [Ocean 503] could come down someday and kick me off.” Connerney Dep. 18:8-10.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody incorporates the response of Defendant Ocean 503 LLC.

106. Confrontations with private property owners and private property signage has “cause [William Connerney] and [his family] to become concerned that if [they] should occupy any portion of the intertidal land seaward of any of the Defendant's property, then [they] would be approached and told to leave.” Connerney Resp. Ocean 503 Int., ¶ 11; See Connerney Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that it is hearsay and not admissible, not limited in time and there is no basis to connect the statement to Judy's Moody or its property and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mr. Connerney's feelings, Mr. Connerney has never been asked to leave Judy's Moody's intertidal land. See Exhibit 23 to Judy's Moody's Statement of Additional Material Facts, Connerney Dep. 72:9-12, 73:1-3. Otherwise, Judy's Moody incorporates the responses of the other Moody Beach Defendants.

107. William Connerney's “whole attitude regarding the beach has changed because of the signs. [He] is aware then as soon as [he] enter[s] the beach that [he is] restricted.” Connerney Dep. 78:20-23.

Objection: Judy's Moody incorporates by reference the general objections stated above; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mr. Connerney's feelings, Mr. Connerney has never been asked to leave Judy's Moody's intertidal land. See Exhibit 23 to Judy's Moody's Statement of Additional Material Facts, Connerney Dep. 72:9-12, 73:1-3. No

signs regarding the beach are currently up on Judy's Moody's property. Dennis Dep. 46:10–49:24-25. Judy's Moody otherwise incorporates the responses of the other Moody Beach Defendants.

108. William Connerney plays hand tennis less due to the “prohibition of that it might get challenged ...[because] It's hard to identify who would ask us to leave.” Connerney Dep. 36:5-12.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it lacks any location and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. While Judy's Moody cannot dispute Mr. Connerney's feelings, Mr. Connerney has never been asked to leave Judy's Moody's intertidal land. *See* Exhibit 23 to Judy's Moody's Statement of Additional Material Facts, Connerney Dep. 72:9-12, 73:1-3.

109. William Connerney considers “fowling” to include “taking a picture of geese ... it has a modem meaning ... that shooting a picture, walking to ... access where you want to take the picture.” Connerney Dep. 63:6-15.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement because William Connerney is not competent to testify as to the meaning of “fowling,” which is a question of law. *See Bell II*, 557 A.2d at 173; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

110. William Connerney considers “navigation” to mean “navigating your way” to a specific place, “not limited to finding your way to the water.” Connerney Dep. 66:9-22.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement because William Connerney is not competent to testify as to the meaning of “navigation,” which is a question of law. *See Bell II*, 557 A.2d at 173; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

111. William Connerney understands the modem interpretation of fishing, fowling and navigation to include commercial and recreational uses of intertidal land as permitted by the state legislature. Connerney Resp. Ocean 503 Int., ¶ 9.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement because William Connerney is not competent to testify as to the permitted uses of private intertidal land in Maine, which is a question of law. His "understanding" has thus far been rejected by the Law Court. *See Bell II*, 557 A.2d at 175-76; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

112. William Griffith and Sheila Jones own the Crows' Nest Resort in Old Orchard Beach, Maine. Deposition of William Griffiths dated January 12, 2023, page 13:14-16. (attached hereto as "Exhibit K")("Griffiths Dep."); See Plaintiff William Griffiths' Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 21, 2022, response 1 (attached hereto as "Exhibit L")("Griffiths Resp. Judy's Moody Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above.

Response: Admitted.

113. The Crows' Nest Resort is dependent on free use of Maine's beaches. Griffiths Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; RE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

114. The Crows' Nest Resort is affected by claims that the intertidal is private by making it less likely "customers will return for fear that they will be approached by upland owners or the police acting on their behalf." Griffiths Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects on the grounds that this paragraph misstates the law. Judy's Moody does not merely have a "claim" to the intertidal land, but it owns that land subject to the limited public easement. *See Bell II*, 557 A.2d at 173; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. No patron of the Crow's Nest Resort has ever told Mr. Griffiths that they were asked to leave Moody Beach. *See* Exhibit 19 to Judy's Moody's Statement of Additional Material Facts, Griffith's Dep. 55:3-7.

115. Approximately a half dozen Crows' Nest guests have been to Moody Beach since William Griffiths and Sheila Jones have owned the hotel. Griffiths Dep. 53:7-11.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement as it is hearsay, not based on personal knowledge, not limited in time, and not admissible. The cited reference does not in any way indicate the location of the guests' alleged activity and therefore is not relevant and admissible relative to Judy's Moody's intertidal property. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 802 (hearsay).

Response: Admitted.

116. The Crows' Nest guests have commented "that the signs [at Moody Beach] were - were troublesome to them." Griffiths Dep. 53:14-15; *See* Plaintiff William Griffiths' Response to Ocean 503's First Set of Interrogatories dated December 21, 2023, response 6 (attached hereto as "Exhibit M")("Griffiths Resp. Ocean 503 Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement as it is hearsay if offered to prove that the truth of what these guests allegedly said. MRE 801(c), 802 (hearsay). Judy's Moody further objects that this paragraph is not based on personal knowledge and not limited in time. The cited reference does not in any way indicate the location of the guests' alleged activity and therefore is not relevant and admissible relative Judy's Moody's intertidal property. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge).

Response: Qualified. While Judy's Moody cannot confirm the guests' feelings, no patron of the Crow's Nest Resort has ever told Mr. Griffiths that they were asked to leave Moody Beach. *See* Exhibit 19 to Judy's Moody's Statement of Additional Material Facts, Griffith's Dep. 55:3-7.

117. The Crows' Nest guests "couldn't understand why they would shut a beach down" to the public. Griffiths Dep. 53:16-17.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement as it is hearsay, *see* MRE 801(c), 802 (hearsay), not based on personal knowledge, not limited in time, and not admissible. Judy's Moody further objects on the ground that the statement includes an inaccurate legal conclusion, as the intertidal land has always been private subject to a limited public easement. *See Bell II*, 557 A.2d at 173; MRE 105 (evidence admissible only against one party but not another); MRE 401

(relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. While Judy's Moody cannot confirm the guests' feelings, no patron of the Crow's Nest Resort has ever told Mr. Griffiths that they were asked to leave Moody Beach. See Exhibit 19 to Judy's Moody's Statement of Additional Material Facts, Griffith's Dep. 55:3-7.

118. Approximately 50 years ago, William Griffiths visited Moody Beach to play football with friends. Griffiths Dep. 59:7-12.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it does not indicate where on Moody Beach he played football, whether on the dry sand or intertidal area, and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

119. Judith and Orlando Delogu have lived in Maine since the 1960's. Plaintiff Judith Delogu's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 2 (attached hereto as "Exhibit N")("J. Delogu Resp. Judy's Moody Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody.

Response: Admitted.

120. Orlando Delogu has walked the length of Moody Beach on multiple occasions. Plaintiff Orlando Delogu's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 2 (attached hereto as "Exhibit O")("O. Delogu Resp. Judy's Moody Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

121. Orlando Delogu has "walked the beach" within the intertidal area on Moody Beach. Deposition of Orlando Delogu dated January 12, 2023, page 132:8 (attached hereto as "Exhibit P")("O. Delogu Dep."); See also O. Delogu Resp. Judy's Moody Int., ¶ 2.

Objection: Judy's Moody incorporates by reference the general objections stated above. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice)

Response: Admitted.

122. Orlando Delogu's activity on Moody Beach was "simply to get an.... understanding of the shape and character and frequency, and the degree to which they ... are to be found, of signage that is designed to intimidate recreational users of the beach from engaging in [recreational] activities." O. Delogu Dep. 121:1-8.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that the cite does not support the statement. Judy's Moody further objects to this statement because it assumes an inaccurate legal conclusion. The public does not have the right to engage in general recreational activities on privately-owned intertidal land. *Bell II*, 557 A.2d at 175-76; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

123. Orlando Delogu recognizes the purpose of private property signage at Moody Beach as "a warning and a deterrent that the upland owner makes a claim of ... ownership and presumably then could exercise his asserted right to have me removed from the property by calling the police ... or by coming down, themselves, and either asking me to leave ... or physically escorting me off the property." O. Delogu Dep. 38:14-23.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it is not admissible opinion testimony, based on speculation, and impermissibly seeks to characterize signage that speaks for itself, and that without identifying signage at Judy's Moody's property, the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. Judy's Moody further objects that this paragraph inaccurately describes Judy's Moody's ownership of the intertidal land as a mere "claim." This is incorrect as a matter of law. *Bell II*, 557 A.2d at 173. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Mr. Delogu has never been asked to stop walking or to leave Moody Beach. *See* Exhibit 21 to Judy's Moody's Statement of Additional Material Facts, O. Delogu Dep. 134:1-12.

124. Orlando Delogu understands the intent of private property owners when posting private property signage is to "cause[] an infringement on the rights of the public to make use of the intertidal zone." O. Delogu Dep. 145:9-13.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it is based on speculation as he has no basis to testify as to intent of others, and he seeks to impermissibly characterize signage that speaks for itself, and that without identifying signage at Judy's Moody's property, the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. Judy's Moody further objects on the ground that Mr. Delogu is not competent to testify as to the scope of public rights to use the intertidal zone, which is a question of law. *Bell II*, 557 A.2d at 173. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Mr. Delogu has never been asked to stop walking or to leave Moody Beach. *See* Exhibit 21 to Judy's Moody's Statement of Additional Material Facts, O. Delogu Dep. 134:1-12.

125. Judith and Orlando Delogu's activity on and across the intertidal land seaward of upland property on Maine's coastline has included:

- a. walking stretches of beach. J. Delogu Resp. Judy's Moody Int., ¶ 3; *See* O. Delogu Resp. Judy's Moody Int., ¶ 3.
- b. sitting in the sand to watch birds and other wildlife. J. Delogu Resp. Judy's Moody Int., ¶ 3; *See* O. Delogu Resp. Judy's Moody Int., ¶ 3.
- c. wading in the water and sometimes swimming along the beach. J. Delogu Resp. Judy's Moody Int., ¶ 3; *See* O. Delogu Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it does not pertain to Moody Beach in general, but pertains to other beaches and to property that does not belong to Judy's Moody and, therefore, is wholly irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: As to Judith Delogu, denied. Ms. Delogu testified that she has never been to Moody Beach. *See* Exhibit 18 to Judy's Moody's Statement of Additional Material Facts, J. Delogu Dep. 23:15-16, 25:18-20. As to Orlando Delogu: Qualified. Mr. Delogu has walked on Moody Beach. *See* Exhibit 21 to Judy's Moody's Statement of Additional Material Facts, O. Delogu Dep. at 27:17-25, 31:10.

126. treading water in place as the waves crash while swimming in the ocean. J. Delogu Resp. Judy's Moody Int, ¶ 3; See O. Delogu Resp. Judy's Moody Int, ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it does not pertain to Moody Beach in general, but pertains to other beaches and to property that does not belong to Judy's Moody and, therefore, is wholly irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: As to Judith Delogu: Denied. Ms. Delogu testified that she has never been to Moody Beach. See Exhibit 18 to Judy's Moody's Statement of Additional Material Facts, J. Delogu Dep. 23:15-16, 25:18-20. As to Orlando Delogu: Qualified. Mr. Delogu has walked on Moody Beach. See Exhibit 21 to Judy's Moody's Statement of Additional Material Facts, O. Delogu Dep. at 27:17-25, 31:10.

127. Judith Delogu, due to her advanced age, needs to stop and rest while walking along the intertidal area. J. Delogu Resp. Judy's Moody Int., ¶ 3; See O. Delogu Resp. Judy's Moody Int, ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it does not pertain to Moody Beach in general, but pertains to other beaches and to property that does not belong to Judy's Moody and, therefore, is wholly irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody; MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judith Delogu testified that she has never been to Moody Beach. See Exhibit 18 to Judy's Moody's Statement of Additional Material Facts, J. Delogu Dep. 23:15-16, 25:18-20.

128. "Jeffery E. Parent and Margaret G. Parent (collectively the "Parents") own waterfront property in Waldoboro, Maine." Stipulations Between Plaintiffs and Defendants Jeffery Parent and Margaret Parent dated April 12, 2023, ¶ 1 (attached hereto as "Exhibit Q")("Parent Stip. F").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to claims that have been dismissed, to property that does not belong to Judy's Moody, and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. Judy's Moody is not a party to any stipulation and as such the statement is not based on personal knowledge under oath is not admissible and is hearsay. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 802 (hearsay).

Response: Admitted.

129. “The Parents claim to own the seaweed affixed to the rocks in the intertidal land seaward of their upland property.” Parent Stip. F., ¶ 4.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to claims that have been dismissed, to property that does not belong to Judy’s Moody, and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. Judy’s Moody is not a party to any stipulation and as such the statement is not based on personal knowledge under oath is not admissible and is hearsay. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 802 (hearsay).

Response: Admitted.

130. “None of the Plaintiffs have directly harvested seaweed from the intertidal zone seaward of the Parents’ upland property.” Parent Stip. F., ¶ 7.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. Judy’s Moody is not a party to any stipulation and as such the statement not based on personal knowledge under oath is not admissible and is hearsay. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 802 (hearsay).

Response: Admitted.

131. “None of the Plaintiffs have been present on or conducted any activity on or over the intertidal portion of the Parents’ property.” Parent Stip. F., ¶ 8.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. Judy’s Moody is not a party to any stipulation and as such the statement not based on personal knowledge under oath is not admissible and is hearsay. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 802 (hearsay).

Response: Admitted.

132. “The Parents stated to [seaweed] harvester[s] that he needed permission to cut and remove the attached rockweed.” Parent Stip. F., ¶ 13.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does

not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. Judy's Moody is not a party to any stipulation and as such the statement not based on personal knowledge under oath is not admissible and is hearsay. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 802 (hearsay).

Response: Admitted.

133. "In 2016, the harvester with whom the Parents interacted harvested attached rockweed from Maine Department of Marine Resources Sector 5-13, which includes the intertidal portion of the Parents' property." Parent Stip. F., ¶ 19.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. Judy's Moody is not a party to any stipulation and as such the statement not based on personal knowledge under oath is not admissible and is hearsay. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 802 (hearsay).

Response: Admitted.

134. "In 2016, the harvester with whom the Parents interacted sold seaweed to a company that is owned by Plaintiff Robert Morse and that employs Plaintiff John Grotton." Parent Stip. F., ¶ 22.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. Judy's Moody is not a party to any stipulation and as such the statement not based on personal knowledge under oath is not admissible and is hearsay. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 802 (hearsay).

Response: Admitted.

135. Brian Beal is a professor of Marine Ecology at the University of Maine at Machias residing at 37 Clarks Point Road in Machiasport, Maine. Plaintiff Brian Beal's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 28, 2023, response I (attached hereto as "Exhibit R")("Beal Resp. Judy's Moody Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one

party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

136. Brian Beal’s “activities in the intertidal portion of the Maine coast ... include performing research on commercially important shellfish, marine worms, rockweed, and other intertidal organisms.” Beal Resp. Judy’s Moody Int., ¶ 3.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that there is no showing that his activities have ever occurred at Moody Beach, and more specifically on or over Judy’s Moody intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Brian Beal has never been on Judy’s Moody’s intertidal property. Beal Resp. Judy’s Moody Int., ¶ 2.

137. Brian Beal has “clammed in and around the town of Jonesport.” Beal Resp. Judy’s Moody Int., ¶ 3.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

138. Brian Beal has “spent recreational time on Maine beaches.” Beal Resp. Judy’s Moody Int., ¶ 3.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over Judy’s Moody’s intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Brian Beal has never been on Judy’s Moody’s intertidal property. Beal Resp. to Judy’s Moody Int., ¶ 2.

139. Brian Beal’s work is affected by claims that the intertidal is private “making it more difficult to obtain and maintain permission to perform research on intertidal land.” Beal Resp. to Judy’s Moody Int., ¶ 4.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that it contains an inaccurate legal conclusion – Judy’s Moody owns its intertidal land, it does not merely claim it. *Bell II*, 557 A.2d at 173. Brian Beal is not competent to testify as to this question of law. Judy’s Moody further objects because the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to Judy’s Moody and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Brian Beal has never been on Judy’s Moody’s intertidal property. Beal Resp. to Judy’s Moody Int., ¶ 2.

140. Susan Domizi runs a “business that relies on a consistent supply of seaweed that is harvested on intertidal land.” Plaintiff Susan Domizi’s Answers to Defendants OA Trust’s and Judy’s Moody LLC’s First Set of Interrogatories dated January 4, 2023, response 3 (attached hereto as “Exhibit S”)(“Domizi Resp. Judy’s Moody Int.”).

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Susan Domizi has never been on Judy’s Moody’s intertidal property. Susan Domizi Resp. to Judy’s Moody’s Int., ¶ 2.

141. Susan Domizi has “spent recreational time on Maine beaches.” Domizi Resp. Judy’s Moody Int., ¶ 3.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Susan Domizi has never been on Judy’s Moody’s intertidal property. Susan Domizi Resp. to Judy’s Moody’s Int., ¶ 2.

142. Susan Domizi's work is affected by claims that the intertidal is private "making it more difficult to run [her] business because [her] harvesters are being harassed by upland owners." Domizi Resp. Judy's Moody Int., ¶ 4.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that it contains an inaccurate legal conclusion – Judy's Moody owns its intertidal land, it does not merely claim it. *Bell II*, 557 A.2d at 173. Susan Domizi is not competent to testify as to this question of law. Judy's Moody further objects because the absence of any connection of her general statement regarding her work and alleged difficulties to Moody Beach and more specifically to Judy's Moody and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Susan Domizi has never been on Judy's Moody's intertidal property. Susan Domizi Resp. to Judy's Moody's Int., ¶ 2.

143. Amanda Moeser resides at 21 Larrabees Grove Road in West Bath, Maine. Plaintiff Amanda Moeser's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as "Exhibit T") ("Moeser Resp. Judy's Moody Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

144. Amanda Moeser uses the intertidal for oyster farming and clamming. Moeser Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Amanda Moeser has never been on Judy's Moody's intertidal property. Amanda Moeser Resp. to Judy's Moody's Int., ¶ 2.

145. Amanda Moeser has “spent recreational time on Maine beaches.” Moeser Resp. Judy’s Moody Int., ¶ 3.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over Judy’s Moody intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Amanda Moeser has never been on Judy’s Moody’s intertidal property. Amanda Moeser Resp. to Judy’s Moody’s Int., ¶ 2.

146. Amanda Moeser’s work is affected by claims that the intertidal is private “making it more difficult to obtain and maintain aquaculture licenses in the intertidal.” Moeser Resp. Judy’s Moody Int., ¶ 4.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that it contains an inaccurate legal conclusion – Judy’s Moody owns its intertidal land, it does not merely claim it. *Bell II*, 557 A.2d at 173. Amanda Moeser is not competent to testify as to this question of law. Judy’s Moody further objects because the absence of any connection of her general statement regarding her work and alleged difficulties to Moody Beach and more specifically to Judy’s Moody and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Amanda Moeser has never been on Judy’s Moody’s intertidal property. Amanda Moeser Resp. to Judy’s Moody’s Int., ¶ 2.

147. Greg Tobey resides at 207 Meadow Road in Woolwich, Maine. Plaintiff Greg Tobey’s Answers to Defendants OA Trust’s and Judy’s Moody LLC’s First Set of Interrogatories dated January 4, 2023, response 1 (attached hereto as “Exhibit U”)(“Tobey Resp. Judy’s Moody Int.”).

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody.

Response: Admitted.

148. Greg Tobey’s “activities in the intertidal portion of the Maine coast ... include harvesting seaweed, collecting data, and clamming.” Tobey Resp. Judy’s Moody Int., ¶ 3

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Greg Tobey has never been on Judy's Moody's intertidal property. Greg Tobey Resp. to Judy's Moody Int., ¶ 2.

149. Greg Tobey has "spent recreational time on Maine beaches." Tobey Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over Judy's Moody's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Greg Tobey has never been on Judy's Moody's intertidal property. Greg Tobey Resp. to Judy's Moody Int., ¶ 2.

150. Greg Tobey's work is affected by claims that the intertidal is private "making it impossible to harvest seaweed" in the privately held intertidal. Tobey Resp. Judy's Moody Int., 11 4.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that it contains an inaccurate legal conclusion – Judy's Moody owns its intertidal land, it does not merely claim it. *Bell II*, 557 A.2d at 173. Greg Tobey is not competent to testify as to this question of law. Judy's Moody further objects because the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to Judy's Moody and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Greg Tobey has never been on Judy's Moody's intertidal property. Greg Tobey Resp. to Judy's Moody Int., ¶ 2.

151. Chad Coffin resides at 26 Litchfield Road in Freeport, Maine. Plaintiff Chad Coffin's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories

dated December 19, 2022, response 1 (attached hereto as “Exhibit V”)(“Coffin Resp. Judy’s Moody Int.”).

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

152. Chad Coffin uses the intertidal for clamming. Coffin Resp. Judy’s Moody Int., ¶ 3.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Chad Coffin has never been on Judy’s Moody’s intertidal property. Coffin Resp. to Judy’s Moody Int., ¶ 2.

153. Chad Coffin has “spent recreational time on Maine beaches.” Coffin Resp. Judy’s Moody Int., ¶ 3.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over Judy’s Moody’s intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Chad Coffin has never been on Judy’s Moody’s intertidal property. Coffin Resp. to Judy’s Moody Int., ¶ 2.

154. Chad Coffin’s work is affected by claims that the intertidal is private “making it more difficult to harvest clams in the intertidal because upland owners harass me while I am doing my work.” Tobey Resp. Judy’s Moody Int., ¶ 4.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that it contains an inaccurate legal conclusion – Judy’s Moody owns its intertidal land, it does not merely claim it. *Bell II*, 557 A.2d at 173. Chad Coffin is not competent to testify as to this question of law. Judy’s Moody

further objects because the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to Judy's Moody and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Chad Coffin has never been on Judy's Moody's intertidal property. Coffin Resp. to Judy's Moody Int., ¶ 2.

155. Leroy Gilbert resides at 601 Puddle Road in Waldoboro, Maine. Plaintiff Chad Coffin's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 30, 2022, response 1 (attached hereto as "Exhibit W")("Gilbert Resp. Judy's Moody Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

156. Leroy Gilbert uses the intertidal for seaweed harvesting. Gilbert Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that there is no showing of any use of intertidal land at Moody Beach in general, including Judy's Moody's intertidal land, for harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Leroy Gilbert has never been on Judy's Moody's intertidal property. Gilbert Resp. Judy's Moody Int., ¶ 2.

157. Leroy Gilbert has “spent recreational time on Maine beaches.” Gilbert Resp. Judy’s Moody Int., ¶ 3.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over Judy’s Moody intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Leroy Gilbert has never been on Judy’s Moody’s intertidal property. Gilbert Resp. Judy’s Moody Int., ¶ 2.

158. Leroy Gilbert’s work is affected by claims that the intertidal is private “making it more difficult to harvest seaweed in the intertidal along the Maine coast.” Gilbert Resp. Judy’s Moody Int., ¶ 4.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that it contains an inaccurate legal conclusion – Judy’s Moody owns its intertidal land, it does not merely claim it. *Bell II*, 557 A.2d at 173. Leroy Gilbert is not competent to testify as to this question of law. Judy’s Moody further objects because the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to Judy’s Moody and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Leroy Gilbert has never been on Judy’s Moody’s intertidal property. Gilbert Resp. Judy’s Moody Int., ¶ 2.

159. John Grotton resides at 2 Victoire Lane in Augusta, Maine. Plaintiff John Grotton’s Answers to Defendants OA Trust’s and Judy’s Moody LLC’s First Set of Interrogatories dated December 31, 2022, response 1 (attached hereto as “Exhibit X”)(“Grotton Resp. Judy’s Moody Int.”).

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody.

Response: Admitted.

160. John Grotton’s runs a “business that depends on a consistent supply of seaweed that grows in the intertidal.” Grotton Resp. Judy’s Moody Int., ¶ 3

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified: John Grotton has never been on Judy's Moody's intertidal property. Grotton Resp. Judy's Moody Int., ¶ 2.

161. John Grotton has "spent recreational time on Maine beaches." Grotton Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over Judy's Moody's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified: John Grotton has never been on Judy's Moody's intertidal property. Grotton Resp. Judy's Moody Int., ¶ 2.

162. John Grotton's work is affected by claims that the intertidal is private "making it more difficult to harvest seaweed in the intertidal." Grotton Resp. Judy's Moody Int., ¶ 4.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that it contains an inaccurate legal conclusion – Judy's Moody owns its intertidal land, it does not merely claim it. *Bell II*, 557 A.2d at 173. John Grotton is not competent to testify as to this question of law. Judy's Moody further objects because the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to Judy's Moody and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified: John Grotton has never been on Judy's Moody's intertidal property. Grotton Resp. Judy's Moody Int., ¶ 2.

163. Dan Harrington resides at 274 Dana Mills Road in Woolwich, Maine. Plaintiff Dan Harrington's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as "Exhibit Y") ("Harrington Resp. Judy's Moody Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

164. Dan Harrington uses the intertidal for seaweed harvesting. Harrington Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that there is no showing that Mr. Harrington has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Dan Harrington has never been on Judy's Moody's intertidal property. Harrington Resp. Judy's Moody Int., ¶ 2.

165. Dan Harrington has "spent recreational time on Maine beaches." Harrington Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over Judy's Moody's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Dan Harrington has never been on Judy's Moody's intertidal property. Harrington Resp. Judy's Moody Int., ¶ 2.

166. Dan Harrington's work is affected by claims that the intertidal is private "making it more difficult to harvest seaweed in the intertidal because upland owners harass me." Harrington Resp. Judy's Moody Int., ¶ 4.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that it contains an inaccurate legal conclusion – Judy's Moody owns its intertidal land, it does not merely claim it. *Bell II*, 557 A.2d at 173. Dan Harrington is not competent to testify as to this question of law. Judy's Moody further objects because the absence of any connection of his general statement regarding his work

and alleged difficulties to Moody Beach and more specifically to Judy's Moody and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Dan Harrington has never been on Judy's Moody's intertidal property. Harrington Resp. Judy's Moody Int., ¶ 2.

167. Jake Wilson resides at 79 Woody Lane in Cushing, Maine. Plaintiff Jake Wilson's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as "Exhibit Z")("Wilson Resp. Judy's Moody Int.").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody.

Response: Admitted.

168. Jake Wilson uses the intertidal for seaweed harvesting. Wilson Resp. Judy's Moody Int., ¶ 3.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody.

Response: Qualified. Jake Wilson has never been on Judy's Moody's intertidal property. Wilson Resp. Judy's Moody Int., ¶ 2.

169. Jake Wilson has "spent recreational time on Maine beaches." Wilson Resp. Judy's Moody Int., ¶ 13.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over Judy's Moody's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Jake Wilson has never been on Judy's Moody's intertidal property. Wilson Resp. Judy's Moody Int., ¶ 2.

170. Jake Wilson’s work is affected by claims that the intertidal is private “making it more difficult to harvest seaweed in the intertidal.” Wilson Resp. Judy’s Moody Int., ¶ 4.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that it contains an inaccurate legal conclusion – Judy’s Moody owns its intertidal land, it does not merely claim it. *Bell II*, 557 A.2d at 173. Jake Wilson is not competent to testify as to this question of law. Judy’s Moody further objects because the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to Judy’s Moody and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. Jake Wilson has never been on Judy’s Moody’s intertidal property. Wilson Resp. Judy’s Moody Int., ¶ 2.

171. George Seaver has “been in the seaweed and fertilizer business for forty-four (44) years.” Affidavit of George Seaver dated April 28, 2023, paragraph 9 (attached hereto as “Exhibit AA”)(“Seaver Aff.”).

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis it pertains to property that does not belong to Judy’s Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

172. George Seaver’s company, Ocean Organics, “utilizes seaweed resources to produce fertilizer for application in the agriculture and turf industries.” Seaver Aff., ¶113-4.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

173. Ocean Organics “process[es] live rockweed harvested from the intertidal zone, primarily in the mid-coast region of Maine, ... to produce a liquid extract, which is in turn processed into our proprietary liquid supplements, and sold to customers for use in conjunction with fertilizers to increase their efficacy.” Seaver Aff., ¶¶ 5-6.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice). The Court can take judicial notice that Moody Beach is not in the mid-coast area of Maine.

Response: Qualified. George Seaver has never been on Judy's Moody's intertidal property. *See* Exhibit 6 to Judy's Moody's Statement of Additional Material Facts, George Seaver's Answers to Defs. OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories ¶ 2.

174. Approximately 60% of Ocean Organics product sales are to agricultural customers, with the remaining 40% to horticultural customers. Seaver Aff., ¶ 7.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

175. George Seaver's business and livelihood "depend upon reasonable access to and sustainable use of the intertidal zone." Seaver Aff., ¶ 8.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. George Seaver has never been on Judy's Moody's intertidal property. *See* Exhibit 6 to Judy's Moody's Statement of Additional Material Facts, George Seaver's Answers to Defs. OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories ¶ 2.

176. Ocean Organics has "developed and improved [its] fertilizer products and their use instructions through intensive research and development over the years." Seaver Aff., ¶ 10.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean

Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

177. "Ocean Organics products use seaweed extracts as plant bio-stimulants, which increase the stress tolerance, efficiency, and ultimately yield of the plant or crop to which the product is applied." Seaver Aff., ¶ 11.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

178. "Increased stress tolerance thereby improves the resilience of plants in bad or unfavorable weather conditions, including drought, flood, and extreme heat." Seaver Aff., ¶ 12.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

179. "Seaweed extracts are the fastest-growing category of bio-stimulants currently being deployed in commercial agriculture." Seaver Aff., ¶ 13.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

180. “Seaweed extracts are favored for their efficiency and cost-effectiveness, requiring a small amount of product per acre.” Seaver Aff., ¶ 14.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

181. “Research studies have shown that the use of seaweed extract results in a 5-15% increase in yield in the face of drought, flood, and heat conditions.” Seaver Aff., ¶ 15.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Admitted.

182. Ocean Organics “products ... play a role in confronting the world’s food crisis in the midst of a changing climate, environment, and weather conditions.” Seaver Aff., ¶ 16.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Admitted.

183. “Ocean Organics distributes product within the United States and abroad; a relatively small percentage of product is distributed within Maine and New England, while the bulk of domestic sales are to larger states with larger agriculture and turf economies such as the Midwest, Florida and California.” Seaver Aff., ¶ 17.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

184. "The seaweed industry has grown substantially since the turn of the 21st century and is positioned [to] play a key role in the future of Maine's ocean-resource-based economy." Seaver Aff., ¶ 18.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Admitted.

185. Ocean Organics "business has grown steadily over time, gaining international recognition and entering new markets abroad, including in Europe and Asia. The combining of seaweed extract with fertilizer is a multi-billion-dollar industry worldwide." Seaver Aff., ¶ 19. See Affidavit of Robert Morse dated May 1, 2023, paragraphs 9 (attached hereto as "Exhibit BB")("Morse Aff.").

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Admitted.

186. "Rockweed grows only in the North Atlantic Ocean. Although China produces other seaweed products, those products are considered less reliable than products derived from rockweed harvested in North America." Seaver Aff., ¶ 20.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis it pertains to property that does

not belong to Judy's Moody and therefore is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay)

Response: Admitted.

187. "Ocean Organics currently purchases seaweed harvested from the intertidal zone within approximately twenty (20) miles of Waldoboro, Maine." Seaver Aff., ¶ 21.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

188. "Rockweed attaches to hard surfaces through an appendage called a 'holdfast.'" Seaver Aff., ¶ 22.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

189. Ocean Organics' "harvesters cut rockweed by hand, accessing the resource using flat-bottom Carolina skiffs and using a sharp-edged tool to selectively cut the rockweed." Seaver Aff., ¶ 23.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

190. “Harvesters practice sustainable methods; for example, they primarily cut new growth rockweed and where other harvesters have not been to recently.” Seaver Aff., ¶ 24.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted

191. “Maine state regulations limit the length of the cut and the percentage of biomass that can be harvested from a single area. This often requires harvesters to travel along the coast harvesting the rockweed from different areas of the intertidal zone.” Seaver Aff., ¶ 25.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Admitted.

192. “Although [Ocean Organics] harvesters do not use machines to harvest, neither method of harvesting rockweed—by machine or by hand—presents a danger to the sustainability of the resource a conclusion supported by research and conclusions of the Maine Department of Marine Resources.” Seaver Aff., ¶ 26.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

193. “It is a common misconception that seaweed is a plant.” Seaver Aff., ¶ 27.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean

Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Admitted.

194. "Rockweed is classified as "alga" and it grows only in the intertidal zones of the ocean. It has no roots, but rather gets all its nutrients from the water." Seaver Aff., ¶ 28.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Admitted.

195. "Rockweed organisms have a sex—either male or female and they release sperm or eggs into the sea." Seaver Aff., ¶ 29.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

196. "Once fertilized, the new organism is carried by the currents until large enough to attach to a rocky surface in the intertidal zone." Seaver Aff., ¶ 30.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

197. “Rockweed secures itself by a holdfast much in the same way as an oyster or barnacle.” Seaver Aff., ¶ 31.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

198. “Holdfasts are not like roots; the rockweed does not pull nutrients through its holdfast, but instead takes nutrients from the ocean water when underwater at high tide.” Seaver Aff., ¶ 32.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Admitted.

199. George Seaver “believe[s] that the Maine Supreme Court’s decision in *Ross v. Acadian Seaplants Ltd.*, 206 A.3d 283 (Me. 2019) was not only wrong, but inconsistent with Maine’s law according to the Maine Legislature, longstanding public trust rights, and the scientific classification of rockweed not as a plant, but a marine organism.” Seaver Aff., ¶ 33; *See also* Morse Aff., ¶ 20.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. His belief that *Ross* was wrong is irrelevant and not admissible. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”). MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Admitted.

200. “It is [George Seaver’s] understanding that Ross held that seaweed harvesting is taking plants, not fishing, and therefore that harvesting rockweed growing on privately owned intertidal land cannot be done without the owner’s permission, while taking other marine organisms like clams, mussels, or sea worms remain permissible public trust uses with or without the owner’s permission.” Seaver Aff., ¶ 34; See also Morse Aff., ¶ 21.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. His understanding of *Ross* is irrelevant and not admissible. *Town of Orient*, 490 A.2d at 662 (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”). MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Admitted.

201. “Public trust rights include fishing, fowling, and navigating.” Seaver Aff., ¶ 35; See Morse Aff., ¶ 22.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement as it is a conclusion of law. *Town of Orient*, 490 A.2d at 662 (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”). MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

Response: Qualified. This is an incomplete statement of law. *Town of Orient*, 490 A.2d at 662 (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

202. The Maine legislature has long defined “fishing” to including taking “any marine organism by any method or means” 12 M.R.S. § 6001(17), and to define “marine organism” as “any animal, plant or other life that inhabits waters below head of tide,” *Id.* § 6001(23), which would include rockweed.” Seaver Aff., ¶ 36; See Morse Aff., ¶ 23.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis that this statement is not admissible under *Town of Orient*, 490 A.2d at 662 (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”). MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative

value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Qualified. Maine statutes speak for themselves. See 12 M.R.S. § 6001(17), § 6001(23).

203. “Even after Ross, the question of ownership of rockweed, practically speaking, is not settled. Many shore property deeds seem to include the adjacent intertidal zone, but more often than not, historical deed searches suggest landowners have simply added it to their deeds, and have no historical basis for the claimed ownership. In addition, even if the deed history supports the ownership claim, no one has proposed a practical way to identify the boundaries when the tide comes in, and seaweed harvesting would commence.” Seaver Aff., ¶ 37; See Morse Aff., ¶ 24.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody’s. Plaintiffs’ understanding of *Ross* is irrelevant and not admissible. *Town of Orient*, 490 A.2d at 662 (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”). Judy’s Moody further objects on the ground that there is no foundation for either Seaver’s or Morse’s personal knowledge regarding historical deed searches, and the content of those deeds not before the Court is inadmissible hearsay. MRE 801(c), 802. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay)

Response: Qualified. Judy’s Moody has no way to evaluate alleged historical deed searches if the deeds are not before the Court. The statement is otherwise a combination of inadmissible factual and legal conclusions. *Town of Orient*, 490 A.2d at 662 (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

204. George Seaver is “deeply concerned about the future of the access to the resource.” Seaver Aff., ¶ 38.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. His concerns are irrelevant and not admissible.

Response: Admitted.

205. Ocean Organics “is unable to grow on the same footing as other resource-based industries because of the cloud hanging over the question of access to intertidal land and the seaweed resources that grow there.” Seaver Aff., ¶ 39.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody cannot dispute that private ownership of the intertidal zone, combined with the lack of public rights to harvest seaweed there, might have some effects on the business. But no such uncertainty exists, as *Ross* conclusively rejected a claim of public right to harvest seaweed in the intertidal zone.

206. "Investors and businesspeople are very concerned about risk and factor risk and uncertainty in valuing a business and making an investment decision." *Seaver Aff.*, ¶ 40; *See Morse Aff.*, ¶ 15.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 802 (hearsay).

Response: Admitted.

207. "The legal uncertainty around Maine's intertidal zone and the seaweed resource presents a risk that affects the value of [the seaweed harvesting] business and the desirability of investment in [the seaweed harvesting] business and other seaweed-related industries." *Seaver Aff.*, ¶ 41; *See Morse Aff.*, ¶ 16.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing that Plaintiffs have ever used or sought to use Judy's Moody's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. Judy's Moody further objects to this statement under *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment."). MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Qualified. Judy's Moody cannot dispute that private ownership of the intertidal zone, combined with the lack of public rights to harvest seaweed there, might have some

effects on the business. But no such uncertainty exists, as *Ross* conclusively rejected a claim of public right to harvest seaweed in the intertidal zone.

208. George Seaver has “experienced this second hand—[he] know[s] of a midcoast seaweed business that was in negotiations with a potential buyer that fell through before closing because of concern about the uncertain legal status of harvesting seaweed in Maine’s intertidal zone.” *Seaver Aff.*, ¶ 42.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use Judy’s Moody’s intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. Judy’s Moody also objects to this statement as inadmissible hearsay. MRE 801(c), 802. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses); MRE 802 (hearsay).

Response: Qualified. Judy’s Moody cannot dispute that private ownership of the intertidal zone, combined with the lack of public rights to harvest seaweed there, might have some effects on the business. But no such uncertainty exists, as *Ross* conclusively rejected a claim of public right to harvest seaweed in the intertidal zone.

209. Robert Morse is the co-owner of North American Kelp, a business based in Waldoboro, Maine with approximately thirty-five employees, which produces seaweed products, primarily from rockweed. *Morse Aff.*, ¶¶ 3-5.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the on basis there is no showing connecting North American Kelp’s seaweed business to Judy’s Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

210. North American Kelp “harvest[s] a large volume of seaweed that is processed into various applications.” *Morse Aff.*, ¶ 6.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the on basis there is no showing connecting North American Kelp’s seaweed business to Judy’s Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

211. North American Kelp “products include food ingredients, animal supplements, lawn conditioners, and seaweed extracts for use in a variety of areas, including home gardening and landscaping.” Morse Aff., ¶ 7.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the on basis there is no showing connecting North American Kelp’s seaweed business to Judy’s Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

212. “North American Kelp does business across the United States and in twenty-four (24) countries abroad. Through intermediaries, our products reach approximately seventy (70) foreign markets.” Morse Aff., ¶ 8.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the basis there is no showing connecting North American Kelp’s seaweed business to Judy’s Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

213. “Based on our volume and very strong domestic demand, most of [North American Kelp’s] product is sold in the United States.” Morse Aff., ¶ 10.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the on basis there is no showing connecting North American Kelp’s seaweed business to Judy’s Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy’s Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

214. “North American Kelp acquires rockweed from harvesters that harvest by a machine.” Morse Aff., ¶ 11.

Objection: Judy’s Moody incorporates by reference the general objections stated above. Judy’s Moody further objects to this statement on the on basis there is no showing connecting North American Kelp’s seaweed business to Judy’s Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim

Plaintiffs may have against Judy's Moody.MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

215. Robert Morse "helped design and build a rockweed harvest machine that went into operation in 1995 and is still running." Morse Aff., ¶ 12.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the on basis there is no showing connecting North American Kelp's seaweed business to Judy's Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody.MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

216. "Seaweed harvesting machines are designed to stay within state regulations (cutting no more than 16" of growth). The machines selectively and sustainably cut growth from rockweed beds in a manner that will allow regeneration from tips of the harvested growth." Morse Aff., ¶ 13.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing connecting North American Kelp's seaweed business to Judy's Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

217. North American Kelp's "business of harvesting by machine and processing large volume is very capital-intensive." Morse Aff., ¶ 14.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing connecting North American Kelp's seaweed business to Judy's Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody.MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

218. North American Kelp "is in need of a larger processing plant building, but it is challenging to raise the capital given the uncertainty that hangs over the industry." Morse Aff., ¶ 17.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the on basis there is no showing connecting North American Kelp's seaweed business to Judy's Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Admitted.

219. "Without the cloud hanging over the question of title to intertidal land and the seaweed resources that grow there, [Robert Morse] would be able to expand and attract more investment in our business." Morse Aff., ¶ 18.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing connecting North American Kelp's business and Mr. Morse's machinery to Judy's Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice).

Response: Qualified. Judy's Moody cannot dispute that private ownership of the intertidal zone, combined with the lack of public rights to harvest seaweed there, limits Mr. Morse's business. But no such "cloud" exists, as *Ross* conclusively rejected a claim of public right to harvest seaweed in the intertidal zone. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice); MRE 602 (need for personal knowledge); MRE 701 (opinion evidence by lay witnesses).

220. North American Kelp's "seaweed is sourced from the intertidal zone of Maine's coast from Casco Bay, all the way up to Cobscook Bay in Washington County." Morse Aff., ¶ 19.

Objection: Judy's Moody incorporates by reference the general objections stated above. Judy's Moody further objects to this statement on the basis there is no showing connecting North American Kelp's business to Judy's Moody and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs may have against Judy's Moody. MRE 105 (evidence admissible only against one party but not another); MRE 401 (relevance); MRE 403 (probative value outweighed by prejudice). The Court can take judicial notice that Moody Beach in Wells, Maine, is not located in or between Casco Bay and Cobscook Bay. The statement is irrelevant and not admissible.

Response: Admitted.

STATEMENT OF ADDITIONAL MATERIAL FACTS

1. Judy's Moody owns beachfront property on Moody Beach at 407 Ocean Avenue, Wells, Maine. *See* Deposition of Judy's Moody, LLC 30(b)(6) via Keith Dennis (February 10, 2023) ("Dennis Dep.") 29:12-14, 45:1-10. A true copy of portions of the Dennis Dep. is attached hereto as Exhibit 1.

2. Judy's Moody LLC is a single member LLC owned by Keith Dennis. Exhibit 1, Dennis Dep. 13:16-17.

3. Judy's Moody's property directly abuts a public right of way that provides members of the public access to the ocean. Exhibit 1, Dennis Dep. 21:23-25, 22:1.

4. Mr. Dennis has posted signs that read "Private Beach" and "Notice: Private Beach to Lowest Tide" and "No Trespassing" on the portion of Judy's Moody's seawall that faces the ocean. Exhibit 1, Dennis Dep. 47:4-7, 47:21-25, 48:11-15, 49:18-20.

5. None of these signs were permanent and some of them were removed naturally by the force of the ocean hitting the seawall. Exhibit 1, Dennis Dep. 48:3-6.

6. The presence of signs was not unique to Judy's Moody, and other beachfront properties on Moody Beach have signs on their seawall conveying that the beach is private. *See* Deposition of Peter Masucci (January 11, 2023) ("P. Masucci Dep.") 146:1-5. A true copy of portions of the P. Masucci Dep. is attached hereto as Exhibit 2.

7. Plaintiffs are a group of individuals who contend that the "intertidal zone" is public property and that they are entitled to use the intertidal zone for any purpose allowed by the State. Pls.' Compl. ¶¶ 63-65, ¶¶ 105-106. A true copy of Plaintiffs' Complaint is attached for the Court's convenience as Exhibit 3.

8. Plaintiff Dr. Brian Beal is a marine biologist who alleged in Plaintiffs' Complaint that several beachfront owners denied him access to the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 15 and Pl. Brian Beal's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Brian Beal's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 4.

9. Plaintiff Robert Morse is the president of a seaweed harvesting company who alleged in Plaintiffs' Complaint that his business is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶2 and Pl. Robert Morse's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Robert Morse's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 5.

10. Plaintiff George Seaver is part owner of a company that processes seaweed who alleged in Plaintiffs' Complaint that his livelihood is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls' Compl. ¶3 and Pl. George Seaver's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff George Seaver's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 6.

11. Plaintiff Greg Tobey is the general manager of a company that utilizes Maine Seaweed who alleged in Plaintiffs' Complaint that his livelihood is threatened by Defendants' claim to own the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶12 and Plaintiff Greg Tobey's Answers to QA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Greg Tobey's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 7.

12. Plaintiff Hale W. Miller is a seaweed harvester who alleged in Plaintiffs' Complaint that he has been harassed by landowners who claim to own the intertidal zone. Hale Miller has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl., ¶ 5 and Plaintiff Hale Miller's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Hale Miller's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 8.

13. Plaintiff LeRoy Gilbert is a seaweed harvester who alleged in Plaintiffs' Complaint that he is aware of landowners claiming ownership of the seaweed in the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl., ¶ 6 and Plaintiff LeRoy Gilbert's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff LeRoy Gilbert's Answers to Defs.' OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 9.

14. Plaintiff John W. Grotton is a seaweed harvester who alleged in Plaintiffs' Complaint that he feels his job is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal zone, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl., ¶ 4 and Plaintiff John Grotton's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff John Grotton's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 10.

15. Plaintiff Jake Wilson is a seaweed and clam harvester who alleged in Plaintiffs' Complaint that his job is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal zone, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 7 and Plaintiff Jake Wilson's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Jake Wilson's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 11.

16. Plaintiff Dan Harrington is a worm and seaweed harvester who alleged in Plaintiffs' Complaint that his livelihood is threatened by landowners claiming ownership of the intertidal zone. He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal zone. Exhibit 3, Pls.' Compl. ¶ 8 and Plaintiff Dan Harrington's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Dan Harrington's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 12.

17. Plaintiff Susan Domizi is in the seaweed industry and alleged in Plaintiffs' Complaint that her livelihood is threatened by landowners claiming ownership of the intertidal zone. She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl. ¶ 11 and Plaintiff Susan Domizi's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Susan Domizi's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 13.

18. Plaintiff Amanda Moeser is an oyster farmer who alleged in Plaintiffs' Complaint that she is "worried about the expanding interpretations of ownership of intertidal lands" and "seeks clarity and predictability in the law." Exhibit 3, Pls.' Compl. ¶ 17. She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Plaintiff Amanda Moeser's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Amanda Moeser's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 14.

19. Plaintiff Lori Howell is an oyster farmer who alleged in Plaintiffs' Complaint that she has been "harassed by upland owners wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond." She has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Exhibit 3, Pls.' Compl., ¶ 19 and Plaintiff Lori Howell's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Lori Howell's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 15.

20. Plaintiff Tom Howell is an oyster farmer who alleged in Plaintiffs' Complaint that he has been "harassed by upland owners wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond." He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's property. Exhibit 3, Pls.' Compl., ¶ 19 and Plaintiff Tom Howell's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Tom Howell's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 16.

21. Plaintiff Chad Coffin is a clam harvester who alleged in Plaintiffs' Complaint that he is "regularly harassed by upland owners who claim he is trespassing." He has never been on Judy's Moody's intertidal property, personally observed signage on Judy's Moody's property, or been denied access to Judy's Moody's intertidal property. Exhibit 3, Pls.' Compl., ¶ 18 and Plaintiff Chad Coffin's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 2. A true copy of Plaintiff Chad Coffin's Answers to Defs.' OA2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 17.

22. Plaintiff Judith Delogu has never been on Moody Beach. *See* Deposition of Judith Delogu (January 12, 2023) ("J. Delogu Dep.") 23:15-16, 25:18-20. A true copy of portions of the J. Delogu Dep. is attached hereto as Exhibit 18.

23. When questioned why she decided to be a plaintiff in this lawsuit, Ms. Delogu stated: "I decided to be a plaintiff on this suit because I believe that Maine beaches are public property." Exhibit 18, J. Delogu Dep. 27:19-25, 28:1.

24. Plaintiff William Griffiths is the co-owner of the Crow's Nest Resort in Old Orchard Beach and alleged in Plaintiffs' Complaint that his "business and livelihood is

threatened by Defendants' unlawful claim of title over Maine's intertidal land." Exhibit 3, Pls.' Compl. ¶14.

25. In the approximately eight years that Mr. Griffiths has owned the Crow's Nest Resort, he estimates that roughly six patrons have told him that they were on Moody Beach and only two to three patrons asked him about the signage on Moody Beach. *See* Deposition of William Griffiths (January 12, 2023) ("Griffiths Dep.") 53:10-11, 53:22-25, 54:1. A true copy of portions of the Griffiths Dep. is attached hereto as Exhibit 19.

26. Mr. Griffiths did not verify whether these patrons were indeed on Moody Beach. Exhibit 19, Griffiths Dep. 58:22.

27. No patron of the Crow's Nest Resort has ever told Mr. Griffith's that they were asked to leave Moody Beach and no patron has ever informed Mr. Griffiths that they will no longer stay at the Crow's Nest Resort because of signage on Moody Beach. Exhibit 19, Griffiths Dep. 55:3-7, 57:18.

28. Mr. Griffiths has been on Moody Beach but is uncertain if he has ever been on Judy's Moody's property. Exhibit 19, Griffiths Dep. 59:7-12, 59:15.

29. While on Moody Beach, Mr. Griffiths was never approached by anyone instructing him to leave. Exhibit 19, Griffiths Dep. 60:11.

30. Plaintiff Sheila Jones is a co-owner of the Crow's Nest Resort in Old Orchard Beach and alleged in Plaintiffs' Complaint that her "business and livelihood is threatened by Defendants' unlawful claim of title over Maine's intertidal land." Exhibit 3, Pls.' Compl. ¶14.

31. Ms. Jones has never been on Moody Beach or Judy's Moody's property. *See* Deposition of Sheila Jones (January 12, 2023) ("Jones Dep.") 32:22-24, 32:25, 33:1-2. A true copy of portions of the Jones Dep. is attached hereto as Exhibit 20.

32. Of the thousands of guests who have visited the Crow's Nest Resort, no more than five have told Ms. Jones that they visited Moody Beach and she is uncertain whether those patrons were actually at Moody Beach. Exhibit 20, Jones Dep. 31:20-23, 33:23-24.

33. No patron of the Crow's Nest Resort has ever told Ms. Jones that they were asked to leave Moody Beach and no patron has ever informed Ms. Jones that they will no longer stay at the Crow's Nest Resort because of signage on Moody Beach. Exhibit 20, Jones Dep. 33:17-21, 33:23-24, 40:21-25.

34. Plaintiff Orlando Delogu believes that *Bell I* and *Bell II* were incorrectly decided and that Maine's beaches are public property. *See* Deposition of Orlando Delogu (January 12, 2023) ("O. Delogu Dep.") 98:18, 136:3-15. A true copy of portions of the O. Delogu Dep. is attached hereto as Exhibit 21.

35. Mr. Delogu has walked along Moody Beach to observe the signage on Moody Beach and to get a feel for the "character" of Moody Beach. Exhibit 21, O. Delogu Dep. 27:17- 25, 31:10.

36. While walking on Moody Beach, Mr. Delogu was never approached by anyone telling him to stop walking on Moody Beach, asking him to leave Moody Beach, or telling him that he does not belong on Moody Beach. Exhibit 21, O. Delogu Dep. 134:1-12

37. Plaintiff Peter Masucci is a backlot owner of property behind but not on Moody Beach. Exhibit 2, P. Masucci Dep. 11:4-5, 11:6-11.

38. Mr. Masucci testified at his deposition that he has engaged in the following activities on Judy's Moody's intertidal zone: walking along the intertidal, stopping in the intertidal to observe people and wildlife, sitting in the intertidal to read, drinking wine and beer in the intertidal, and playing various beach games in the intertidal like bocce ball, tag football, paddleball, wiffleball, and catch, and bodysurfing and boogieboarding along the water next to the intertidal. Exhibit 2, P. Masucci Dep. 116:17-25, 117:1, 117:23-25, 118:1-16, 118:23-25, 121:5-24, 122:1-12, 127:7-25, 128:1-3, 143:18-24.

39. Mr. Masucci has never been approached by anyone associated with Judy's Moody LLC and told to leave Judy's Moody's intertidal zone or told to stop using Judy's Moody's intertidal zone. Exhibit 2, P. Masucci Dep. 112:20-23, 113:5-10, 130:2-7.

40. Mr. Masucci testified at his deposition that "my argument is not with the named defendants here" and that he got involved in this lawsuit because he believes that the intertidal land belongs to everyone, stating, "the issue is why should anyone own the sand?" Exhibit 2, P. Masucci Dep. 151:10-20.

41. Plaintiff Kathy Masucci is a backlot owner of property behind but not on Moody Beach. *See* Deposition of Kathy Masucci (January 13, 2023) ("K. Masucci Dep.") 66:18-21, 66:23. A true copy of portions of the K. Masucci Dep. is attached hereto as Exhibit 22.

42. Ms. Masucci testified at her deposition that the only activity she currently does on Judy's Moody's intertidal is walk, but that over five years ago she had probably stopped and rested on the intertidal zone, sat in the sand to observe wildlife, ran and jogged on the intertidal zone, built sandcastles, sunbathed, and boogie boarded on the intertidal zone. Exhibit 22, K. Masucci Dep. 68:21-24, 74:3-55, 74:10-22, 74:13-22, 75:7.

43. Ms. Masucci has never been approached by anyone associated with Judy's Moody LLC and been told to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. Exhibit 22, K. Masucci Dep. 76:13-17.

44. Plaintiff William Connerney is a backlot owner of property behind but not on Moody Beach. *See* Deposition of William Connerney (January 11, 2023) ("Connerney Dep.") 10:22-24. A true copy of the cited portions of the Connerney Dep. is attached hereto as Exhibit 23.

45. Plaintiff William Connerney testified at his deposition that today he mainly uses Moody Beach to walk and jog, and that in the past he had sat in the intertidal zone to sunbathe, surf, boogie board, build sandcastles, play frisbee, paddleboard, fly kites, play beach tennis and look for shellfish and crabs. Exhibit 23, Connerney Dep. 13:2-25, 14:1 and Plaintiff William Connerney's Answers to OA 2012 Trust's and Judy's Moody LLC's First Set of Interrogatories No. 3. A true copy of Plaintiff William Connerney's Answers to Defs.' OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories is attached as Exhibit 24.

46. Mr. Connerney has never been approached by anyone associated with Judy's Moody LLC and been told to leave Judy's Moody's intertidal zone or been told to stop using Judy's Moody's intertidal zone. Exhibit 23, Connerney Dep. 72:9-12, 73:1-3.

47. Plaintiffs Orlando Delogu, Peter Masucci, Kathy Masucci, and William Connerney still walked along the intertidal zone on Moody Beach despite the presence of signs on seawalls along Moody Beach. Exhibit 21, 0. Delogu Dep. 27:17-25, 31:10;

Exhibit 2, P. Masucci Dep. 144:18-19, 145:4-22, 145:25; Exhibit 22, K. Masucci Dep. 70:1-3, 102:23-25; Exhibit 23, Connerney Dep. 76:23, 77:5-7, 77:22-25.

Dated: June 2, 2023.

Respectfully submitted,



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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

| | | |
|---|---|---------------------------------|
| PETER MASUCCI, ET AL., |) | |
| |) | |
| PLAINTIFFS, |) | DEFENDANT OA 2012 TRUST'S |
| |) | OPPOSING STATEMENT TO |
| v. |) | PLAINTIFFS' STATEMENT OF 220 |
| |) | MATERIAL FACTS AND STATEMENT |
| JUDY'S MOODY LLC, ET AL., |) | OF ADDITIONAL STATEMENT OF |
| |) | FACTS |
| DEFENDANTS, |) | |
| |) | |
| and |) | |
| |) | |
| AARON FREY, in his capacity as Attorney |) | (Title to Real Estate Involved) |
| General of the State of Maine, |) | |
| |) | |
| PARTY IN INTEREST |) | |

Pursuant to Rule 56(h)(2) of the Maine Rules of Civil Procedure, Defendant OA 2012 Trust ("OA 2012") submits its opposing statement to the Plaintiffs' Statement of 220 Material Facts, and objects and admits, denies and qualifies as follows and OA 2012 also submits additional statement of facts following the opposing statement.

RULE 56(h)(2) OPPOSING STATEMENT

General Objection to Plaintiffs' Statement of 220 Material Facts

While motions to strike are not permitted, the court should disregard Plaintiffs' motion given that they have presented a statement with 220 material facts. Maine Rules of Civil Procedure 56(h) requires that a motion for summary judgment be supported by "a separate, *short*, and concise statement of material facts." (emphasis added). Each fact must be supported by a record cite showing it would be admissible in evidence. Me. R. Civ. P. 56(e). Plaintiffs have ignored these rules. A statement with 220 facts is not a "short" statement. Given the court's Orders issued to date, many of the facts simply are no longer relevant, and thus would not be admissible at trial. Others are conclusions of fact or law, or disagreements with Law Court decisions, and not admissible at trial.

Where a party submits an "unnecessarily long, repetitive, or otherwise convoluted statement of material facts," the court may "disregard the statement and deny the motion for

summary judgment solely on that basis.” *Stanley v. Hancock Cnty. Comm’rs*, 2004 ME 157, ¶ 29, 864 A.2d 169, 179 (holding a statement with 191 material facts as not meeting the brevity requirement). A burdensome and rambling statement of facts “needlessly complicates the summary judgment process,” *id.*, ¶ 28, 864 A.2d at 179, and defeats the purpose of Rule 56(h). That rule is “designed to force litigants to narrowly frame their summary judgment contentions, enabling the court to decide a summary judgment motion without engaging in an exhaustive review of the record.” *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 8, 742 A.2d 933, 938. *See also First Tracks Investments, LLC v. Murray, Plumb & Murray*, 2015 ME 104, ¶ 2, 121 A.3d 1279, 1280–82 (affirming trial court’s denial of a summary judgment motion where the plaintiff submitted a statement with 257 material facts).

Given the court in its April 15, 2022 Order at 25 limited Count IV of Plaintiffs’ complaint to whether “any movement or research related activity” is permissible on or over OA 2012’s intertidal property, statement of material facts with respect non-movement based activities are irrelevant.

Given the court in its April 15, 2022 Order at 25, n. 11 stated that “[t]hose who seek declaratory judgments regarding their right to use the intertidal zone for the commercial purpose of harvesting marine plants — have little chance of success as to Count IV. The Law Court was clear in *Ross* that even under the flexible balancing approach the Court employs, removing marine plants from private intertidal land is not a permissible activity. *Ross*, 2019 ME 45, ¶¶ 31-32, 206 A.3d 283,” and any facts offered relative to crossing OA 2012’s intertidal property to harvest rockweed are irrelevant. *See also Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, 206 A.3d 283 (“harvesting living rockweed [a marine plant] secured to the intertidal bed cannot be seen as either ‘fishing’ or ‘navigation,’” and, thus, “the harvesting of seaweed attached to the intertidal land falls outside of the scope of activities that can be carried out as a matter of public right”).

Given the Law Court in *Bell v. Town of Wells*, 557 A.2d 168, 173 (Me. 1989) held that general recreational activities such as “bathing, sunbathing,” and “recreational walking” on “privately owned intertidal land” at Moody Beach, including the intertidal land now owned by OA 2012, are not public rights included within the public rights of fishing, fowling and navigation in the Colonial Ordinance, any facts offered regarding the use of OA 2012’s intertidal property for movement based recreational activities, including bathing, sunbathing and recreational walking, are not relevant. Decisions of the Law Court are binding on the Superior Court. *Myrick v. James*, 444 A.2d 987, 997–98 (Me. 1982) (quoting *State v. Mellenberger*, 95 P.2d 709, 719–20 (Or. 1939)); *see also Shaw v. Jendzejec*, 1998 ME 208, ¶ 8, 717 A.2d 367, 370 (quoting *Myrick*).

OA 2012 RESPONSES¹

¹ OA 2012 understands the Ocean 503, LLC has supplied to the court complete copies of all of the deposition transcripts so at this point the court has before it the information needed for any citations to the depositions. To avoid needless duplicity, OA 2012 is not doing the same as the court has the transcripts to use for the record citations set forth in this Response. The Affidavit of James Howe, dated June 2, 2023 referenced in the Response is attached hereto with the Additional Statement of Facts as Ex.2.

1. Mark Montesi and Corliss Montesi are the sole representatives of Ocean 503, LLC. Deposition of Mark Montesi dated March 2, 2023, page 11:7-19. (attached hereto as "Exhibit A")("Montesi Dep.")

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

2. Ocean 503, LLC gained ownership of 503 Ocean Avenue in Wells, Maine ("Ocean 503 Property") in 2019. Montesi Dep. Ex. 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

3. Mark and Corliss Montesi are Florida residents. Montesi Dep. 15:14.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

4. Mark and Corliss Montesi spend only "about 20 percent of the year" at the Ocean 503 Property. Montesi Dep. 15:18.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

5. Mark Montesi understands the Ocean 503 Property's northerly and southerly side property lines extend "from the front of the lot to the mean low water mark ... 140 feet." Montesi

Dep. 18:23-25.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

6. From 2013 to 2018, Mark Montesi owned real estate located at 66 Cranberry Street, Wells, Maine. Montesi Dep. 25:22-25, 26:1-8.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

7. 66 Cranberry Street is not waterfront real estate, located approximately .25 miles from Moody Beach. Montesi Dep. 26:1-8.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

8. From 2013 to 2018, Mark Montesi and his family utilized "North Beach in Ogunquit" for beach activities. Montesi Dep. 26:13-20.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

9. From 2013 to 2018, Mark Montesi utilized the beach north of the Ogunquit and Wells Town division line to walk the beach more than 50, but less than 100 times. Montesi Dep. 28:2-10.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

10. Currently, Mark Montesi uses Moody Beach to sit, paddleboard, surf, and swim. Montesi Dep. 37:9-11, 37:20-22.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

11. Mark Montesi "hired someone to ... affix (signs) to the (sea) wall" on the Ocean 503 Property facing the ocean that state 'PRIVATE BEACH'. Montesi Dep. 34:15-25, 35:1-5; *See* Montesi Dep. Ex. 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

12. Mark Montesi had a sign installed on Ocean 503 Property seawall that states 'MOODY BEACH IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING.'" Montesi Dep. 40:9-17; *see* Montesi Dep. Ex. 4 & 5.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

13. Mark Montesi understanding “because it’s a private beach, it’s in [his] discretion, if [he] wanted” to tell people to get off the beach area seaward of the Ocean 503 Property. Montesi Dep. 38:1-8.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012. Mr. Montesi’s understanding of which the law may or may not permit is irrelevant. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC’s responses to this statement.

14. Mark Montesi has never asked the public to move or relocate off the private area of Ocean 503 Property. Montesi Dep. 38:2-6, 43:9-11, 44:21-23, 45:22-24.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC’s responses to this statement.

15. Despite his sign, Mark Montesi does not consider swimming, surfing, sitting, building sandcastles, or "recreating" on the beach "loitering." Montesi Dep. 42:12-16, 42:22-25, 43:1-4, 44:7-10.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012. Whether certain activities are loitering is not relevant to any issue in this case and calls for a legal conclusion. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”).

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC’s responses to this statement.

16. Despite the existence of the sign, Mark Montesi recognizes the public "has every right to fish" on the Ocean 503 Property. Montesi Dep. 39:20.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong

to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. This statement is not admissible under *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

17. Despite the existence of the sign, Mark Montesi recognizes the public has "every right" to walk across the intertidal portion of the Ocean 503 Property. Montesi Dep. 39:22-24.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any to any claim Plaintiffs' may have against OA 2012. This statement is not admissible under *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

18. Despite the existence of the sign, Mark Montesi recognizes the public has the right to "bird watch" on the Ocean 503 Property. Montesi Dep. 39:25, 40:1-3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. This statement is not admissible under *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

19. James Howe is the sole beneficiary of OA 2012 Trust. Deposition of James Howe dated February 8, 2023, page 17:10-14 (attached hereto as "Exhibit B") ("Howe Dep.").

Objection: OA 2012 incorporates by reference the general objections stated above..

Response: Admitted.

20. James Howe's father, Kevin J. Howe, and Kevin McCue, purchased the property at 3 Ocean Avenue in Wells ("OA 2012 Property") in 1978. Howe Dep. 16:5-7; See 17:20-25, 18:1.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted. *See also* Plaintiffs' Complaint ¶ 20; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs' Complaint (Aug. 11, 2022)("OA 2012 Answer"), ¶ 20.

21. The OA 2012 Property is James Howe's permanent residence. Howe Dep. 29:19-21.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

22. James Howe believes the OA 2012 property deed states the northerly and southerly side property lines extend to the Atlantic Ocean. Howe Dep. 22:20-23.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. The OA 2012 property lines end in the Atlantic Ocean, from the pin on the road side. Howe Dep. 22:15-25; 23:1-9. *See also* Plaintiffs' Complaint ¶ 20; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs' Complaint (Aug. 11, 2022)("OA 2012 Answer"), ¶ 20. *See* Additional Statement of Material Facts ¶13. (OA 2012 is successor in interest to Kevin Howe, who obtained a quiet title judgement in *Bell II* that this property extends to the low water mark of the Atlantic Ocean.)

23. OA 2012 claims "ownership over the intertidal land that's seaward of [the OA 2012 Property]." Howe Dep. 25:20-23.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Plaintiffs' Complaint ¶ 20; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs' Complaint (Aug. 11, 2022)("OA 2012 Answer"), ¶ 20. *See* Additional Statement of Material Facts ¶ 13 (OA 2012 is successor in interest to Kevin Howe, who obtained a quiet title judgement in *Bell II* that the property now owned by OA 2012 extends to the low water mark of the Atlantic Ocean.)

24. The OA 2012 Property displays private beach signage stating "MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED" attached to a seawall. Howe Dep. Ex. 5; *See* Howe Dep. 37:16-17, 39:2-3, 39:18, 39:25, 40:20-23.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Howe Dep. 37:10-21 (identifying sign on the seawall at OA 2012 property and identifying sign depicted in Howe Dep. Ex. 5). *See also* Plaintiffs' Complaint ¶¶ 20, 40; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs' Complaint (Aug. 11, 2022)("OA 2012 Answer"), ¶¶ 20, 40.

25. The OA 2012 Property contains private beach signage stating "MOODY BEACH PRIVATE NO LOITERING" attached to a seawall, Howe Dep. Ex. 6; See Howe Dep. 37:16-17, 39:2-3, 39:18, 39:25, 40:20-23.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Howe Dep. 37:10-21 (identifying seawall at OA 2012 property and identifying sign depicted in Howe Dep. Ex. 5). *See also* Plaintiffs' Complaint ¶¶ 20, 40; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs' Complaint (Aug. 11, 2022)("OA 2012 Answer"), ¶¶ 20, 40.

26. James Howe does not know by who or when the "private beach" signage was installed on the OA 2012 Property. Howe Dep. 38:1, 38:17-19; See Howe Dep. 47:14-23.

Response: Qualified. The signage "Moody Beach Private No Loitering" is marked deposition exhibit 6. Howe Dep. 47:8-20; citations Howe Dep. 37:10-25; 38:1, 17-19 refer to Howe Dep. Ex. 5. *See also* Plaintiffs' Complaint ¶ 20; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs' Complaint (Aug. 11, 2022)("OA 2012 Answer"), ¶ 20. Mr. Howe testified that the signs have been in place "as long as he can remember" at least since when the *Bell* case commenced in 1985. *See* Additional Statement of Material Facts ¶35 (Affidavit of James Howe, dated June 2, 2023, at ¶ 7.

27. James Howe never attempted to remove the signage from the seawall and consents to its message. Howe Dep. 38:7-9, 47:24-25, 48:1-3.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. James Howe consents to the sign being on the seawall of the OA 2012 property and does not disagree with anything that the sign says. Howe Dep. 47:24-25; 48:1-3. *See also* Plaintiffs' Complaint ¶ 20; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs' Complaint (Aug. 11, 2022)("OA 2012 Answer"), ¶ 20.

28. OA 2012 "restrict[s] dogs from being on the beach" on the OA 2012 Property. Howe Dep. 40:20-25; See Howe Dep. Ex. 6.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Mr. Howe testified he considers the statement "No Dogs Allowed" to mean "a private beach, and no dogs are allowed on the beach." Howe Dep. 40:20-22 and Howe Dep. Ex. 5. He also testified in response to questioning that if the public is going to be on the beach by permission, because the beach is private, you can't have a dog. Howe Dep. 41:7-10. *See also* Plaintiffs' Complaint ¶¶ 20, 40; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs' Complaint (Aug. 11, 2022)("OA 2012 Answer"), ¶¶ 20, 40.

29. OA 2012 signage restricts loitering, meaning "[the public is] not allowed to sit [or] hang out on the beach." Howe Dep. 42:15-16.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted. *See also* Plaintiffs' Complaint ¶¶ 20, 40; Defendant John B. Howe, Trustee of the OA 2012 Trust's Answer And Affirmative Defenses to Plaintiffs' Complaint (Aug. 11, 2022)("OA 2012 Answer"), ¶¶ 20, 40.

30. OA 2012 does not consider "walking or running" to be loitering. Howe Dep. 42:20-22.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

31. OA 2012 does not consider "stopping and stretching" in place to be loitering, even if sitting down while doing so. Howe Dep. 42:23-25, 43:1-3.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

32. OA 2012 does not consider "walking slowly; just sort of meandering ... walking around on [OA 2012 Property]" to be loitering. 43:6-13.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

33. OA 2012 does not consider "surfing" to be loitering. Howe Dep. 43:14-15.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

34. OA 2012 considers "sitting in the sand" loitering if you are "physically present" for more than 30 minutes in one spot." Howe Dep. 43:16-25, 44:1-4.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Mr. Howe testified physically present for 30 minutes in a spot. Howe Dep. 43:16-25 – 44:1-4.

35. OA 2012 does not consider "sitting with a fishing pole" to be loitering, "as long as

you're fishing." Howe Dep. 44:4-11.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

36. OA 2012 states a fishing line "should be" for fishing not to be loitering. Howe Dep. 44:13-14.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. Mr. Howe testified that sitting with a fishing pole and as long as you're fishing, the line should be in the water. Howe Dep. 44:4-14. *See* General Response, *supra*. Plaintiffs' claims against OA 2012 are barred by *res judicata* given that the State representing the public at-large fully participated in *Bell v. Town of Wells*, 557 A.2d 176 (Me. 1989) (hereinafter "*Bell I*"), and OA 2012 is in privity with Kevin Howe who was a successful plaintiff in *Bell II*.

37. OA 2012 does not consider "building a sandcastle" to be loitering, stating "somebody can be there as long as they want as long as they're building a sandcastle." Howe Dep. 44:23-25, 45:1-3.

Objection: OA 2012 incorporates by reference the general objections stated above

Response: Admitted.

38. OA 2012 does not consider "playing frisbee ... on the intertidal land" to be loitering. Howe Dep. 45:4-7.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

39. OA 2012 has never "approached any members of the public to ask them to not be on ... the intertidal portion of [the OA 2012 Property]." Howe Dep. 45:20-24.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

40. OA 2012 and its invitees go running and walking along the intertidal land. Howe Dep. 65:23-24, 66:1-2.

Objection: OA 2012 incorporates by reference the general objections stated above..

Response: Qualified. OA 2012 and its invitees go running and walking on the beach.

Howe Dep. 65:23-24, 66:1-2.

41. OA 2012 and its invitees play bocce "up and down the beach" on the intertidal land. Howe Dep. 66:3-18.

Objection: OA 2012 incorporates by reference the general objections stated above.

Response: Admitted.

42. OA 2012 and its invitees "surf or boogie board" on the intertidal land. Howe Dep. 66:18-20.

Objection: OA 2012 incorporates by reference the general objections stated above..

Response: Admitted.

43. OA 2012 and its invitees ride waves "in front of other houses" on the intertidal land of Moody Beach. Howe Dep. 66:24-25, 67:1-2.

Objection: OA 2012 incorporates by reference the general objections stated above..

Response: Qualified. Mr. Howe testified they might "ride a waive, ... , in front of other houses." Howe Dep. 66:24-25 – 67:1-2.

44. OA 2012 understands "because it's a private beach to the low tide mark, yes, we have the right to" "ask someone to leave the intertidal land." Howe Dep. 70:22-25, 71:1-4.

Objection: OA 2012 incorporates by reference the general objections stated above. The record citation does not support the statement asserted.

Response: Admitted.

45. Keith Dennis is the sole member of Judy's Moody, LLC. Deposition of Keith Dennis dated February 10, 2023, page 13:15-17 (attached hereto as "Exhibit C")("Dennis Dep.")

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

46. Keith Dennis purchased a portion of the property at 407 Ocean Avenue in Wells, Maine ("Judy's Moody Property") in 1991. Dennis Dep. Ex. 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

47. Keith Dennis purchased a portion of the Judy's Moody Property in 2016. Dennis Dep. Ex. 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

48. Keith Dennis transferred the Judy's Moody Property to Judy's Moody, LLC on July 28, 2016. Dennis Dep. Ex. 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

49. Keith Dennis' primary residence is in Virginia. Dennis Dep. 26:19-21.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

50. The Judy's Moody Property northerly and southerly side property boundaries extend "to the Atlantic Ocean." Dennis Dep. Ex. 3; See Dennis Dep. 19:22, 20:4-6.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

51. The Judy's Moody Property contains private beach signage stating "PRIVATE BEACH" attached to a seawall, Dennis Dep. Ex. 7 ("Ex. s "); See Dennis Dep. 47:6-7.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

52. Judy's Moody has placed additional private beach signage stating "Private Property, No Trespassing," and signage referencing "low tide." Dennis Dep. 49:18-20.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

53. Wells Police Department has told Judy's Moody that they will respond to calls regarding trespass on the Judy's Moody Property "private beach." Dennis Dep. 55:14-20.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement is hearsay and on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

54. Judy's Moody has provided members of the public written permission to use the Judy's Moody Property for discrete periods of time. Dennis Dep. 57:12-13.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

55. From 2016-2018, Judy's Moody "had allowed, basically, any[]" use of the Judy's Moody Property. Dennis Dep. 58:4-5.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

56. Judy's Moody has allowed "strangers ..., or members of the public, ..." to use Judy's Moody Property for "the vast majority of activities." Dennis Dep. 57:23-25, 58:2-3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

57. Judy's Moody, has given permission to "strangers ..., or members of the public, ... to set up tables on [its] sand." Dennis Dep. 57:23-25, 58:7-9.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

58. Judy's Moody has physically removed a back lot owner's personal property on the Judy's Moody Property. Dennis Dep. 79:21-22.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

59. Moody Beach Association has organized numerous charity events that take place, at least partially, on the Judy's Moody Property. Dennis Dep. 84:4-10.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

60. Moody Beach Association organizes "an event ... called 'Moody Beach Days' annually held on the Fourth of July. Dennis Dep. 85:5-8.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis is hearsay and it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

61. Judy's Moody understands Moody Beach Association has held the annual "Moody Beach Days" event for the past "30 or 40 years." Dennis Dep. 85:13-14.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is hearsay and pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

62. Each year since 1956 on the fourth of July, Moody Beach Association runs the beach games where "four to five-hundred people there for several hours ... watch[] kids races and sack races all those kinds of things." P. Masucci Dep. Vol 1 123:10-13.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is hearsay, and pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody,

LLC's responses to this statement.

63. During "Moody Beach Days," members of the public and organizers access the Judy's Moody Property, including but not limited to the intertidal, the dry sand area, the stairs, seawall, and developed portion of Judy's Moody Property. Dennis Dep. 85:25, 86:1-4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

64. At the Moody Beach Games, "families might just sit there, and the kids might dig in the sand, build a sandcastle or drip castle." P. Masucci Dep. Vol I 123:13-16.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

65. From 2018 and 2021, Judy's Moody "gave the Moody Beach Association written permission to have their Fourth of July parade the Fourth of July event and sandcastle contest on [the Judy's Moody Property] - ... above the high tide to low tide." Dennis Dep. 121:9-24.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

66. Judy's Moody has used numerous objects to mark the northerly boundary line separating the Judy's Moody Property from the abutting public way, including but not limited to "a big piece of wood," "cones," "raked seaweed," and other "control type things." Dennis Dep. 93:4-11; 94:9-10; See Deposition of Kathy Masucci dated January 13, 2023, page 81:9-11 (attached hereto as "Exhibit D")("K. Masucci Dep.").

Objection: OA 2012 incorporates by reference the general objections stated above.

OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

67. Judy's Moody, or its representatives and invitees, have contacted the Wells Police Department on numerous occasions for assistance removing members of the public from the intertidal land on Judy's Moody Property. Dennis Dep. Ex. 9.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

68. Judy's Moody subjectively chooses when to enforce its right to exclude the public from its intertidal land. Dennis Dep. 111:10-18.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Denied. The record citation does not support the fact asserted. At the citation Mr. Dennis testified to under what circumstances he asked individuals who were sitting on his property to move. Dennis Dep. 111:10-18.

69. Judy's Moody recognizes "thousands of people visit the beach" each year and use the intertidal land in ways "they probably aren't allowed to do." Dennis Dep. 111:1-3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

70. Judy's Moody "generally give[s] people permission or implied permission to do a lot of stuff that are well beyond [navigation], including things that are potentially not." Dennis Dep. 122:12-21.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. What Mr. Dennis thinks navigation means as a matter of law is irrelevant and not admissible. Also the statement is not admissible under *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

71. Members of the public bring "bring coolers full of beer and sit in the low tide and smoke" without obtaining permission of Judy's Moody. Dennis Dep. 111:4-5.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates by reference defendant Judy's Moody, LLC's responses to this statement.

72. Kathy Masucci's grandfather purchased the original property located at 484 Ocean Avenue (the "Masucci Property"). K. Masucci Dep. 12:12-13.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

73. Kathy and Peter Masucci are co-trustees of the Peter F. and Kathy E. Masucci Trust which currently owns the Masucci Property. Plaintiff Peter Masucci's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 3 (attached hereto as "Exhibit E")("P. Masucci Resp. Ocean 503 Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

74. Kathy and Peter Masucci began living at the Masucci Property as their year-round residence in 2002. K. Masucci Dep. 13:9; See P. Masucci Resp. Ocean 503 Int. ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

75. Kathy Masucci has been on the intertidal zone of the Ocean 503 "hundreds to thousands" of times, visiting Moody Beach "since [she] was born" and consistently for the past "73 years." K. Masucci Dep. 16:3-16.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the stated uses and therefore is not relevant and admissible relative to uses on OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

76. Kathy Masucci's activity on the intertidal areas of Moody beach has included:

- a. "walk[ing] over" on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:6,74:1-2.
- b. running on the intertidal area of the Judy's Moody Property. K. Masucci Dep. 74:3-5.
- c. stopping and resting on the intertidal area of the Judy's Moody Property. K. Masucci Dep. 74:7-9.
- d. stopping to look at the water when walking. K. Masucci Dep. 108:1-4.
- e. "sitting on the beach" on the Ocean 503 Property. K. Masucci Dep. 17:21.
- f. "digging holes" in the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:21.
- g. "playing bocci" on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:21-22.
- h. playing "kickball" on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:23.
- i. sitting and "reading" on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:23, 18:5.
- j. "play[ing] baseball" on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 57:7, 57:14.
- k. sitting to observe wildlife on the intertidal area of the Judy's Moody Property.

K. Masucci Dep. 74:10-12.

- l. building sandcastles on the intertidal area of the Judy's Moody Property. K. Masucci Dep. 74:13-15.
- m. "boogie boarding" in the water adjacent to Judy's Moody Property. K. Masucci Dep. 75:5-7.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and/or have not in any way indicated the activity occurred on or over OA 2012's intertidal property, and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited references are not with respect to OA 2012's intertidal property.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC and Judy's Moody, LLC's responses to this statement. Ms. Masucci testified no one has ever prevented her from doing any of these activities on OA 2012 intertidal zone. (K. Masucci Depo. (Jan. 13, 2023) 97-101.) *See* Additional Statement of Material Facts ¶ 27.

77. Kathy Masucci first noticed the signage on the Ocean 503 Property "within the past ten years." K. Masucci Dep. 19:16.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

78. The Ocean 503 Property signage caused Kathy Masucci to "feel that you are ... trespassing every time you go onto [the] beach" on the Ocean 503 Property. K. Masucci Dep. 37:25, 38:1-4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement. Ms. Masucci testified that the signs have not prevented her from walking across the intertidal zone of the OA 2012's property, despite her Interrogatory response stating the opposite. *See* Additional Statement of Material Facts ¶ 41 (K. Masucci Depo. (Jan. 13, 2023) 76, 78 102).

79. The Ocean 503 Property signage caused Kathy Masucci to "specifically avoid the intertidal land [on the] Ocean 503 Property," including but not limited to "sit[t]ing or build[ing]"

sand — to do sedentary activit[ies], games, digging." K. Masucci Dep. 39:4-7.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

80. Kathy Masucci is "sad, angry, frustrated, discouraged" when seeing the private property signs on Moody Beach.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the stated signs on Moody Beach, whether on upland/dry sand area, and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Qualified. Ms. Masucci testified that the signs have not prevented her from walking across the intertidal zone of the Defendant OA 2012's property, despite her Interrogatory response stating the opposite. (K. Masucci Dep. 76, 78, 102.)

81. Kathy Masucci's experience is "negatively affected" by the private property signage at Moody Beach. K. Masucci Dep. 113:3-5.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the stated signs on Moody Beach, whether on upland/dry sand area, and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Qualified. Ms. Masucci testified that the signs have not prevented her from walking across the intertidal zone of the Defendant OA 2012 property, despite her Interrogatory response stating the opposite. K. Masucci Depo. at 102.

82. Kathy Masucci has not "set up camp or sat down all of her things ... on the intertidal zone of [the] Ocean 503 Property" since "prior to the signs." K. Masucci Dep. 18:22-25.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

83. Kathy Masucci "consciously sit[s] in the confines of the public way" since the Private Property signage went up. K. Masucci Dep. 105:16-17.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012 relative to movement-based activity.

Response: Admitted.

84. Kathy Masucci reasons "I would not have sat there" after the signs were posted, adding "that is when I stopped sitting there." K. Masucci Dep. 55:12-15.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012 relative to movement-based activity.

Response: Qualified. Ms. Masucci testified that the signs have not prevented her from walking across the intertidal zone of the Defendant OA 2012 property, despite her Interrogatory response stating the opposite. K. Masucci Depo. at 102.

85. Peter Masucci visits Moody Beach "in the wintertime, probably once or twice a week ... in the summertime, it'd probably be three or four times a week. Deposition of Peter Masucci dated January 11, 2023, Volume I, page 13:5-8. (attached hereto as "Exhibit F")(P. Masucci Dep. V. I").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

86. In the wintertime, "[Peter and Kathy Masucci go on the beach and walk," "often walk[ing] the entire length of the beach down to Ogunquit Beach." P. Masucci Dep. Vol. I 14:2-7.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

87. In the summertime, Peter and Kathy Masucci "walk often, but ... would often take our beach chairs and sit on the beach." P. Masucci Dep. Vol. I 14:17-18.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Admitted.

88. In the summertime, Peter and Kathy Masucci sit on the beach and "read a book" in the intertidal area. P. Masucci Dep. Vol. I 14:19, 15:8.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Admitted.

89. Peter Masucci and his family would regularly use the entire intertidal portion of Moody Beach prior to upland owners' installation of private property signage and confrontations with members of the public. P. Masucci Resp. Ocean 503 Int., ¶ 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate they ever used, regularly or not, any portion of OA 2012's intertidal property and therefore is not relevant and admissible on any claim against OA 2012. Whatever confrontation P. Masucci had with the public is irrelevant to any claim against OA 2012 with respect to what his family may have observed the statement is hearsay and not admissible.

Response: Qualified. Mr. Masucci testified that the signs posted at Moody Beach states the Moody Beach is private have only deterred him from sitting and stopping. They have not stopped him from engaging in any movement-based activity. P. Masucci Dep. Vol. I 29:8-22, 57:15-23:2; Vol. II 27:17-28:4, 28:25-29:3, 32:1-33:8.

90. Peter Masucci's activity on the intertidal areas of Moody beach has included:

a. "play[ing] in the water ... bodysurfing or just splashing around" with his

grandchildren. P. Masucci Dep. Vol. I 14:19-22; See P. Masucci Dep. Vol. I 37:14-18.

- b. "buil[ing] sandcastles and sand forts" which his children "would play in the little sand forts until the tide came in and washed it away." P. Masucci Dep. Vol. I 14:22-25, 15:1; See P. Masucci Dep. Vol. I 37:14-18.
- c. walking from his house south to the Ogunquit / Wells Town Line. Deposition of Peter Masucci dated January 13, 2023, Volume II, page 11:12-16. (attached hereto as "Exhibit G")("P. Masucci Dep. V. II").
- d. jogging the length of Moody Beach in his "20s and 30s." P. Masucci Dep. Vol I 120:17-25.
- e. occasionally "stop[ing] to observe nature, watch the birds ... watch people fishing ... we would stop to enjoy the view or watch" while running in the intertidal zone of Moody Beach, P. Masucci Dep. Vol. I 121:1-24.
- f. sitting down on the sand and in beach chairs watching the beach activity. Beach. P. Masucci Dep. Vol I 122:4-12.
- g. observing "kids down there picking up rocks, looking under the rocks trying to find crabs, looking for periwinkles, looking for starfish." P. Masucci Dep. V. H. 23:2-8.
- h. "boogieboarding and bodysurfing" with his family on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. 148:19-21.
- i. "skimboard" with his family on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 49:20-24.
- j. along with dozens of other families, playing "Bocci" ball on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 53:16; See P. Masucci Dep. Vol. 1119:9-10.
- k. playing many games, including but not limited to "tag football, paddleball, wiffle ball, baseball, play catch with [his] kids, throwing a baseball." P. Masucci Dep. Vol I 143:18-20.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Qualified. When asked if Mr. Masucci was "ever concerned that OA2012 Trust may ask you to leave the intertidal zone in front of that property," Mr. Masucci testified "at this far end of the beach we're usually just walking to and from our end. So I wouldn't expect that to be the case because we wouldn't stop there." (P. Masucci Dep. II 50:2-9.) OA 2012 incorporates by reference defendant Ocean 503, LLC and Judy's Moody, LLC's responses to the subparts of this statement that pertains to their respective properties.

91. Peter Masucci's children took advantage of the low tides to play in tide pools formed in the intertidal areas of Moody Beach. P. Masucci Dep. V. II. 22:4-5.

Objection: OA 2012 incorporates by reference the general objections stated above.

OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Admitted.

92. Peter Masucci will "will no longer put [his] chairs down in front of [the Ocean 503 Property]" since the signs first appeared on the Ocean 503 Property. P. Masucci Dep. Vol. 37:1-8; See P. Masucci Resp. Ocean 503 Int., ¶ 11.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendant Ocean 503, LLC's responses to this statement.

93. Peter Masucci and his family "no longer dig for seaworms on portions of the intertidal land" since the private property signage has been posted. P. Masucci Dep. Vol. 1 46:20- 23; See P. Masucci Resp. Ocean 503 Int.,1 11.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Qualified. Mr. Masucci testified that the signs posted stating that Moody Beach is a private beach have only deterred him from sitting and stopping; they have not stopped him from engaging in any movement-based activity. P. Masucci Depo. (Jan 11, 2023) 57-58. When asked if Mr. Masucci was "ever concerned that OA2012 Trust may ask you to leave the intertidal zone in front of that property," Mr. Masucci testified "at this far end of the beach we're usually just walking to and from our end. So I wouldn't expect that to be the case because we wouldn't stop there." (P. Masucci Dep. II 50:2-9.)

94. Peter Masucci has witnessed Keith Dennis of Judy's Moody "come down the steps onto the sand and gone to talk to people ... they're lifting up their chairs and moving it over into the narrow public way" in the intertidal zone. P. Masucci Dep. Vol. 1 114:2-8.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Judy's Moody LLC; s response to this statement.

95. Peter Masucci "could probably name hundreds of people who have either been told or expressed to me their concern and fear, if you will, that if they were to stop, a fear of intimidation, if you will, that they're going to be asked to move or, worse, that the police are going to be called on them." P. Masucci Dep. Vol. I 130:18-25.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The statement is clearly hearsay and not admissible for any purpose. And not relevant to any claim against OA 2012.

Response: Denied.

96. William Connerney is a trustee of the Connerney Nominee Trust which owns property at 130 South Tibbetts Road in Wells, Maine. Deposition of William Connerney dated January 11, 2023, page 11:2 (attached hereto as "Exhibit H")("Connerney Dep."); See Plaintiff William Connerney's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 3 (attached hereto as "Exhibit I") ("Connerney Resp. Ocean 503 Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 incorporates by reference defendant Judy Moody, LLC's responses to this statement. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

97. William Connerney's activity on the intertidal areas of Moody Beach has included:

- a. "constantly walking the beach down to Ogunquit Beach. It makes an interesting walk, a lot of sightseeing." Connerney Dep. 13:6-9; See Plaintiff William Connerney's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 3 (attached hereto as "Exhibit J")("Connerney Resp. Judy's Moody Int.").
- b. playing "all kinds of games through the years." Connerney Dep. 13:10-12; See Connerney Resp. Ocean 503 Int., ¶ 11.
- c. "body surfing] in the water." Connerney Dep. 13:12-13.
- d. "play[ing] in the sand ... with the kids." Connerney Dep. 13:13-14; See Connerney Resp. Ocean 503 Int., ¶ 11.
- e. playing "hand tennis, where you make yourself a little court." Connerney Dep. 13:16-17; See 35:7-14; See also Connerney Resp. Ocean 503 Int., ¶ 11.
- f. flying a kite. Connerney Dep. 13:17.
- g. "looking for sea crabs and seashells." Connerney Dep. 13:18-19; See

Connerney Resp. Judy's Moody Int. ¶ 3.

- h. walking and jogging. Connerney Dep. 13:21; See Connerney Resp. Ocean 503 Intl 11.
- i. "ha[ving] lunch on the beach, and it could have well been on some of the prohibited land." Connerney Dep. 63:23-25.
- j. "walk[ing] [his dog] regularly on a leash through the [prohibited] property" when he had a dog. Connerney Dep. 64:18-20.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that any of these actions have occurred on OA 2012's intertidal property and therefore the statements are irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The cited references do not in any way indicate the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Denied. Mr. Connerney testified that these activities occurred north of OA 2012's property. W. Connerney Depo. (Jan. 11, 2023) 96:18-25.

98. William Connerney's daughter, Jeannie Connerney, is an avid runner and runs on the intertidal portion of Moody Beach almost daily in the summer and fall. Connerney Resp. Ocean 503 Int., ¶ 11.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement as it is hearsay, not based on personal knowledge, not limited in time, and not admissible. The cited reference does not in any way indicates the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Admitted.

99. Jeannie Connerney stretches before, during and after her run on the intertidal area. Connerney Resp. Ocean 503 Int., ¶ 11.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is hearsay, not based on personal knowledge, not limited in time, and not admissible. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Admitted.

100. Jeannie Connerney stands on the intertidal area of Moody Beach for approximately 5 to 15 minutes after her run. Connerney Resp. Ocean 503 Int., ¶ 11.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement as it is hearsay, not based on personal knowledge, not

limited in time and not admissible. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Admitted.

101. Jeannie Connerney takes off her shoes and wades in the water to cool down after her run. Connerney Resp. Ocean 503 Int., ¶ 11.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects as the statement is hearsay, not based on personal knowledge, not limited in time, and not admissible. The cited reference does not in any way indicate the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Admitted.

102. In 1989, after the affirmation of beach front owner rights, William Connerney continued "to use [the intertidal] the way [he] wanted to use it" because "no one ever stopped [him]." Connerney Dep. 69:1-5.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is irrelevant. The cited references do not in any way indicate the location of the activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Admitted.

103. William Connerney "felt hindered in what [he] would do" "later when stories started to arise" approximately 10 to 15 years ago. Connerney Dep. 69:6-9.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The statement also is hearsay and not admissible.

Response: Qualified. Mr. Connerney testified that no one has ever stopped him from engaging in any activity in the intertidal area of Moody Beach; inclusive of OA 2012's intertidal property. W. Connerney Dep. 68:25-69:5, 69:21-22, 97:18-25.

104. William Connerney is affected by the approximately 30 private property signs because "you know that they don't want you there, so you really walk with anticipation of what might happen." Connerney Dep. 26:1-4; See Connerney Dep. 25:23, Connerney Resp. Ocean 503 Int., ¶ 6.

Objection: OA 2012 incorporates by reference the general objections stated above.

OA 2012 further objects to this statement as it does not state the location of the 30 signs, based on speculation, and therefore is not relevant and admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. Mr. Connerney testified that no one has ever stopped him from engaging in any activity in the intertidal area of Moody Beach; inclusive of OA 2012's intertidal property. W. Connerney Dep. 68:25-69:5, 69:21-22, 97:18-25

105. William Connerney is "very cautious" when traversing the Ocean 503 Property recognizing "that [Ocean 503] could come down someday and kick me off." Connerney Dep. 18:8-10.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012, based on hearsay and speculation, and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference Ocean 503, LLC;'s response to this statement.

106. Confrontations with private property owners and private property signage has "cause [William Connerney] and [his family] to become concerned that if [they] should occupy any portion of the intertidal land seaward of any of the Defendant's property, then [they] would be approached and told to leave." Connerney Resp. Ocean 503 Int., ¶ 1; See Connerney Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that it is hearsay and not admissible, not limited in time and there is no basis to connect the statement to OA 2012 or its property and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. Mr. Connerney testified that no one has ever stopped him from engaging in any activity in the intertidal area of Moody Beach; inclusive of OA 2012's intertidal property. W. Connerney Dep. 68:25-69:5, 69:21-22, 97:18-25

107. William Connerney's "whole attitude regarding the beach has changed because of the signs. [He] is aware then as soon as [he] enter[s] the beach that [he is] restricted." Connerney Dep. 78:20-23.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. Mr. Connerney testified that no one has ever stopped him from

engaging in any activity in the intertidal area of Moody Beach; inclusive of OA 2012's intertidal property. W. Connerney Dep. 68:25-69:5, 69:21-22, 97:18-25

108. William Connerney plays hand tennis less due to the "prohibition of that it might get challenged ...[because] It's hard to identify who would ask us to leave." Connerney Dep. 36:5-12.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it lacks any location, based on speculation, and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. Mr. Connerney testified that no one has ever stopped him from engaging in any activity in the intertidal area of Moody Beach; inclusive of OA 2012's intertidal property. W. Connerney Dep. 68:25-69:5, 69:21-22, 97:18-25

109. William Connerney considers "fowling" to include "taking a picture of geese ... it has a modern meaning ... that shooting a picture, walking to ... access where you want to take the picture." Connerney Dep. 63:6-15.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that it is a legal issue what is fowling as that term is used in the Colonial Ordinance. He is not an expert. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment."). The statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted/

110. William Connerney considers "navigation" to mean "navigating your way" to a specific place, "not limited to finding your way to the water." Connerney Dep. 66:9-22.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that it is a legal issue what is navigation as that term is used on the Colonial Ordinance. He is not an expert. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment."). The statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted..

111. William Connerney understands the modern interpretation of fishing, fowling and navigation to include commercial and recreational uses of intertidal land as permitted by the state legislature. Connerney Resp. Ocean 503 Int., ¶ 9.

Objection: OA 2012 incorporates by reference the general objections stated above.

OA 2012 further objects to this statement on his understanding is irrelevant, he is not an expert, and what uses are permitted under the Colonial Ordinance is a legal issue. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) (“Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.”). The statement is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012.

Response: Admitted.

112. William Griffith and Sheila Jones own the Crows' Nest Resort in Old Orchard Beach, Maine. Deposition of William Griffiths dated January 12, 2023, page 13:14-16. (attached hereto as "Exhibit K")("Griffiths Dep."); See Plaintiff William Griffiths' Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 21, 2022, response 1 (attached hereto as "Exhibit L")("Griffiths Resp. Judy's Moody Int.”).

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012.

Response: Admitted.

113. The Crows' Nest Resort is dependent on free use of Maine's beaches. Griffiths Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012.

Response: Admitted.

114. The Crows' Nest Resort is affected by claims that the intertidal is private by making it less likely "customers will return for fear that they will be approached by upland owners or the police acting on their behalf." Griffiths Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012. The statement is speculation and not admissible.

Response: Denied. The intertidal land and Moody Beach, and at OA 2012’s property, is private property, subject to the public’s right to fishing, fowling and navigation. See *Bell II*. No Crow’s Nest Resort customer has ever said to the resort owners that they would not return to the resort due to signs at Moody Beach. (W. Griffiths Depo. (Jan. 13, 2023) 36:7-23.)

115. Approximately a half dozen Crows' Nest guests have been to Moody Beach since William Griffiths and Sheila Jones have owned the hotel. Griffiths Dep. 53:7-11.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement as it is hearsay, not based on personal knowledge, not limited in time and not admissible. The cited reference does not in any way indicate the location of the guests alleged activity and therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Admitted.

116. The Crows' Nest guests have commented "that the signs [at Moody Beach] were — were troublesome to them." Griffiths Dep. 53:14-15; See Plaintiff William Griffiths' Response to Ocean 503's First Set of Interrogatories dated December 21, 2023, response 6 (attached hereto as "Exhibit M")("Griffiths Resp. Ocean 503 Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement as it is hearsay, not based on personal knowledge, not limited in time and not admissible. The cited reference does not in any way indicate the location of the signs, therefore is not relevant and admissible relative to OA 2012's intertidal property.

Response: Qualified. No Crow's Nest Resort customer has ever said to the resort owners that they would not return to the resort due to signs at Moody Beach. (W. Griffiths Depo. (Jan. 13, 2023) 36:7-23.)

117. The Crows' Nest guests "couldn't understand why they would shut a beach down" to the public. Griffiths Dep. 53:16-17.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement as it is hearsay, not based on personal knowledge, not limited in time, not connected in any way to OA 2012 or its property, and therefore irrelevant and not admissible.

Response: Qualified. No Crow's Nest customer has ever said to the resort owners that they would not return to the resort due to signs at Moody Beach. W. Griffiths Depo. (Jan. 13, 2023) 36:7-23.

118. Approximately 50 years ago, William Griffiths visited Moody Beach to play football with friends. Griffiths Dep. 59:7-12.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it does not indicate where on Moody Beach he played football, whether on the dry sand or intertidal area, and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

119. Judith and Orlando Delogu have lived in Maine since the 1960's. Plaintiff Judith Delogu's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories

dated January 5, 2023, response 2 (attached hereto as "Exhibit N")("J. Delogu Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

120. Orlando Delogu has walked the length of Moody Beach on multiple occasions. Plaintiff Orlando Delogu's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 2 (attached hereto as "Exhibit O")("O. Delogu Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012, and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

121. Orlando Delogu has "walked the beach" within the intertidal area on Moody Beach. Deposition of Orlando Delogu dated January 12, 2023, page 132:8 (attached hereto as "Exhibit P")("O. Delogu Dep."); See also O. Delogu Resp. Judy's Moody Int., ¶ 2.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012, therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

122. Orlando Delogu's activity on Moody Beach was "simply to get an... understanding of the shape and character and frequency, and the degree to which they ... are to be found, of signage that is designed to intimidate recreational users of the beach from engaging in [recreational] activities." O. Delogu Dep. 121:1-8.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is not admissible opinion testimony but speculation, and impermissibly seeks to characterize signage that speaks for itself, and that without identifying signage at OA 2012's property, the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. The signage at Moody Beach has been in place since the Bell case commenced in 1985. Affidavit of James Howe, dated June 2, 2023 at ¶ 7. The signage was an issue in the case, and Mr. Delogu intervened in that case. Kinney Aff. ¶ 4 and Exhibit B-6.

OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Mr. Delogu, has ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. *See* Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

123. Orlando Delogu recognizes the purpose of private property signage at Moody Beach as "a warning and a deterrent that the upland owner makes a claim of ... ownership and presumably then could exercise his asserted right to have me removed from the property by calling the police ... or by coming down, themselves, and either asking me to leave ... or physically escorting me off the property." O. Delogu Dep. 38:14-23.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is not admissible opinion testimony, based on speculation, and impermissibly seeks to characterize signage that speaks for itself, and that without identifying signage at OA 2012’s property, the statement is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012. The statement is not relevant to any issue in this case since in *Bell II* a judgment issued that the intertidal property at Moody Beach including the intertidal property held by OA 2012 is private property to the low water mark.

Response: Qualified and Denied. Qualified: Mr. Delogu has never been prevented from engaging in any movement-based activity at Moody Beach, including at OA 2012’s intertidal land. *See* Additional Statement of Material Fact ¶ 26. Denied: OA 2012 understands the signs that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-

25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Mr. Delogu, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. *See* Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

124. Orlando Delogu understands the intent of private property owners when posting private property signage is to "cause[] an infringement on the rights of the public to make use of the intertidal zone." O. Delogu Dep. 145:9-13.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it is not admissible opinion testimony, based on speculation as he has not basis to testify as to intent of others, and he seeks to impermissibly characterize signage that speaks for itself, and that without identifying signage at OA 2012's property, the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Denied. OA 2012 understands the signs that say "no loitering" to mean to be "stationary for more than 30 minutes", "sitting and hanging out on the beach." J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including Mr. Delogu, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the sign. *See* Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

125. Judith and Orlando Delogu's activity on and across the intertidal land seaward of upland property on Maine's coastline has included:

- a. walking stretches of beach. J. Delogu Resp. Judy's Moody Int., ¶ 3; See 0. Delogu Resp. Judy's Moody Int., ¶ 3.
- b. sitting in the sand to watch birds and other wildlife. J. Delogu Resp. Judy's Moody Int., ¶ 3; See 0. Delogu Resp. Judy's Moody Int., ¶ 3.
- c. wading in the water and sometimes swimming along the beach. J. Delogu Resp. Judy's Moody Int., ¶ 3; See 0. Delogu Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it does not pertain to Moody Beach in general, but pertains to other beaches, and to property that does not belong to OA 2012, and therefore is wholly irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Denied. As to Judith Delogu: ("I have never been to Moody Beach." (J. Delogu Dep. 13); (activities "pertain to other beaches")(J. Delogu Dep. 18.) As to Orlando Delogu: (I have never gone to Moody Beach for purposes of running ... I have not been on Moody Beach for the purposes of swimming or other activities")(O. Delogu Dep. 26-27.)

126. [sic}treading water in place as the waves crash while swimming in the ocean. J. Delogu Resp. Judy's Moody Int, ¶ 3; See 0. Delogu Resp. Judy's Moody Int, ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it does not pertain to Moody Beach in general, but pertains to other beaches, and to property that does not belong to OA 2012 and therefore is wholly irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Denied. As to Judith Delogu ("I have never been to Moody Beach." (J. Delogu Dep. 13); (activities "pertain to other beaches")(J. Delogu Dep. 18.) As to Orlando Delogu: ("I have never gone to Moody Beach for purposes of running ... I have not been on Moody Beach for the purposes of swimming or other activities")(O. Delogu Dep. 26-27.)

127. Judith Delogu, due to her advanced age, needs to stop and rest while walking along the intertidal area. J. Delogu Resp. Judy's Moody Int., ¶ 3; See 0. Delogu Resp. Judy's Moody Int, ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it does not pertain to Moody Beach in general, but pertains to other beaches, and to property that does not belong to OA 2012 and therefore is wholly irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Denied. As to Judith Delogu: (“I have never been to Moody Beach.” (J. Delogu Dep. 13); (activities “pertain to other beaches”)(J. Delogu Dep. 18.) As to Orlando Delogu: (I have never gone to Moody Beach for purposes of running ... I have not been on Moody Beach for the purposes of swimming or other activities”)(O. Delogu Dep. 26-27.)

128. "Jeffery E. Parent and Margaret G. Parent (collectively the "Parents") own waterfront property in Waldoboro, Maine." Stipulations Between Plaintiffs and Defendants Jeffery Parent and Margaret Parent dated April 12, 2023, ¶ 1 (attached hereto as "Exhibit Q")("Parent Stip. F.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to claims that have been dismissed, to property that does not belong to OA 2012, and therefore is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012. OA 2012 is not a party to any stipulation and as such the statement is not based on personal knowledge and under oath and is hearsay.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent’s responses to this statement.

129. "The Parents claim to own the seaweed affixed to the rocks in the intertidal land seaward of their upland property." Parent Stip. F., ¶ 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to claims that have been dismissed, property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012. OA 2012 is not a party to any stipulation and as such the statement not based on personal knowledge and under oath is not admissible and is hearsay.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent’s responses to this statement.

130. "None of the Plaintiffs have directly harvested seaweed from the intertidal zone seaward of the Parents' upland property." Parent Stip. F., ¶ 7.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012’s and therefore is irrelevant and not admissible with respect to any claim Plaintiffs’ may have against OA 2012. OA 2012 is not a party to any stipulation and as such the statement not based on personal knowledge and under oath is not admissible and is hearsay.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent’s responses to this statement.

131. "None of the Plaintiffs have been present on or conducted any activity on or over

the intertidal portion of the Parents' property." Parent Stip. F., ¶ 8.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. OA 2012 is not a party to any stipulation and as such the statement not based on personal knowledge and under oath is not admissible and is hearsay.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

132. "The Parents stated to [seaweed] harvester[s] that he needed permission to cut and remove the attached rockweed." Parent Stip. F., ¶ 13.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. OA 2012 is not a party to any stipulation and as such the statement not based on personal knowledge and under oath is not admissible and is hearsay.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

133. "In 2016, the harvester with whom the Parents interacted harvested attached rockweed from Maine Department of Marine Resources Sector 5-13, which includes the intertidal portion of the Parents' property." Parent Stip. F., ¶ 19.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. OA 2012 is not a party to any stipulation and as such the statement not based on personal knowledge and under oath is not admissible and is hearsay.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

134. "In 2016, the harvester with whom the Parents interacted sold seaweed to a company that is owned by Plaintiff Robert Morse and that employs Plaintiff John Grotton." Parent Stip. F., ¶ 22.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. OA 2012 is not a party to any stipulation and as such the statement not based on personal knowledge and under oath is not admissible and is hearsay.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

135. Brian Beal is a professor of Marine Ecology at the University of Maine at Machias residing at 37 Clarks Point Road in Machiasport, Maine. Plaintiff Brian Beal's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 28, 2023, response I (attached hereto as "Exhibit R")("Beal Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

136. Brian Beal's "activities in the intertidal portion of the Maine coast ... include performing research on commercially important shellfish, marine worms, rockweed, and other intertidal organisms." Beal Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that his activities have ever occurred at Moody Beach, and more specifically on or over OA 2012's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

137. Brian Beal has "clammed in and around the town of Jonesport." Beal Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012 and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

138. Brian Beal has "spent recreational time on Maine beaches." Beal Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over OA 2012's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

139. Brian Beal's work is affected by claims that the intertidal is private "making it more difficult to obtain and maintain permission to perform research on intertidal land." Beal Resp. Judy's Moody Int., ¶ 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that in *Bell II* the court held the intertidal land at Moody Beach, including what is now OA 2012's intertidal land, is as a matter of fact adjudicated in quiet title action, private property, so his statement is irrelevant and not admissible, and the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to OA 2012 and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

140. Susan Domizi runs a "business that relies on a consistent supply of seaweed that is harvested on intertidal land." Plaintiff Susan Domizi's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 4, 2023, response 3 (attached hereto as "Exhibit S")("Domizi Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

141. Susan Domizi has "spent recreational time on Maine beaches." Domizi Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that her recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over OA 2012's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

142. Susan Domizi's work is affected by claims that the intertidal is private "making it more difficult to run [her] business because [her] harvesters are being harassed by upland owners." Domizi Resp. Judy's Moody Int., ¶ 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that in *Bell II* the court held the intertidal land at Moody Beach, including what is now OA 2012's intertidal land, is as a matter of fact adjudicated in quiet title action, private property, so her statement is irrelevant and not admissible, and the absence of any connection of her general statement regarding her work and alleged difficulties to Moody Beach and more specifically to OA 2012 and its intertidal property make her statement irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

143. Amanda Moeser resides at 21 Larrabees Grove Road in West Bath, Maine. Plaintiff Amanda Moeser's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as "Exhibit T") ("Moeser Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

144. Amanda Moeser uses the intertidal for oyster farming and clamming. Moeser Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

145. Amanda Moeser has "spent recreational time on Maine beaches." Moeser Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over OA 2012's intertidal property, and therefore it is irrelevant and not admissible with

respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

146. Amanda Moeser's work is affected by claims that the intertidal is private "making it more difficult to obtain and maintain aquaculture licenses in the intertidal." Moeser Resp. Judy's Moody Int., ¶ 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that in *Bell II* the court held the intertidal land at Moody Beach, including what is now OA 2012's intertidal land, is as a matter of fact adjudicated in quiet title action, private property, so her statement is irrelevant and not admissible, and the absence of any connection of her general statement regarding her work and alleged difficulties to Moody Beach and more specifically to OA 2012 and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

147. Greg Tobey resides at 207 Meadow Road in Woolwich, Maine. Plaintiff Greg Tobey's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 4, 2023, response 1 (attached hereto as "Exhibit U")("Tobey Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

148. Greg Tobey's "activities in the intertidal portion of the Maine coast ... include harvesting seaweed, collecting data, and clamming." Tobey Resp. Judy's Moody Int., ¶ 3

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

149. Greg Tobey has "spent recreational time on Maine beaches." Tobey Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over OA 2012's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

150. Greg Tobey's work is affected by claims that the intertidal is private "making it impossible to harvest seaweed" in the privately held intertidal. Tobey Resp. Judy's Moody Int., 11 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that in *Bell II* the court held the intertidal land at Moody Beach, including what is now OA 2012's intertidal land, is as a matter of fact adjudicated in quiet title action, private property, so his statement is irrelevant and not admissible, and the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to OA 2012 and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

151. Chad Coffin resides at 26 Litchfield Road in Freeport, Maine. Plaintiff Chad Coffin's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as "Exhibit V")("Coffin Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

152. Chad Coffin uses the intertidal for clamming. Coffin Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement is no basis that his use of intertidal property has ever been at Moody Beach in general or on over OA 2012's intertidal property and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and

Margaret G. Parent's responses to this statement.

153. Chad Coffin has "spent recreational time on Maine beaches." Coffin Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over OA 2012's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

154. Chad Coffin's work is affected by claims that the intertidal is private "making it more difficult to harvest clams in the intertidal because upland owners harass me while I am doing my work." Tobey Resp. Judy's Moody Int., ¶ 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that in *Bell II* the court held the intertidal land at Moody Beach, including what is now OA 2012's intertidal land, is as a matter of fact adjudicated in quiet title action, private property, so his statement is irrelevant and not admissible, and the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to OA 2012 and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

155. Leroy Gilbert resides at 601 Puddle Road in Waldoboro, Maine. Plaintiff Chad Coffin's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 30, 2022, response 1 (attached hereto as "Exhibit W")("Gilbert Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

156. Leroy Gilbert uses the intertidal for seaweed harvesting. Gilbert Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above.

OA 2012 further objects to this statement on the basis that there is no showing of any use of intertidal land Moody Beach in general, and OA 2012's intertidal land, for harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

157. Leroy Gilbert has "spent recreational time on Maine beaches." Gilbert Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over OA 2012's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

158. Leroy Gilbert's work is affected by claims that the intertidal is private "making it more difficult to harvest seaweed in the intertidal along the Maine coast." Gilbert Resp. Judy's Moody Int., ¶ 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that in *Bell II* the court held the intertidal land at Moody Beach, including what is now OA 2012's intertidal land, is as a matter of fact adjudicated in quiet title action, private property, so his statement is irrelevant and not admissible, and the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to OA 2012 and its intertidal property make his statement irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

159. John Grotton resides at 2 Victoire Lane in Augusta, Maine. Plaintiff John Grotton's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 31, 2022, response 1 (attached hereto as "Exhibit X")("Grotton Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

160. John Grotton's runs a "business that depends on a consistent supply of seaweed that grows in the intertidal." Grotton Resp. Judy's Moody Int., ¶ 3

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement that there is no showing that any seaweed his business uses or seeks to use is at or on OA 2012's intertidal property and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

161. John Grotton has "spent recreational time on Maine beaches." Grotton Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over OA 2012's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

162. John Grotton's work is affected by claims that the intertidal is private "making it more difficult to harvest seaweed in the intertidal." Grotton Resp. Judy's Moody Int., ¶ 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that in *Bell II* the court held the intertidal land at Moody Beach, including what is now OA 2012's intertidal land is as a matter of fact adjudicated in quiet title action private, so his statement is irrelevant and not admissible, and the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to OA 2012 and its intertidal property and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

163. Dan Harrington resides at 274 Dana Mills Road in Woolwich, Maine. Plaintiff Dan Harrington's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as "Exhibit Y") ("Harrington Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above.

OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

164. Dan Harrington uses the intertidal for seaweed harvesting. Harrington Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that Mr. Harrington has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

165. Dan Harrington has "spent recreational time on Maine beaches." Harrington Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over OA 2012's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

166. Dan Harrington's work is affected by claims that the intertidal is private "making it more difficult to harvest seaweed in the intertidal because upland owners harass me." Harrington Resp. Judy's Moody Int., ¶ 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that in *Bell II* the court held the intertidal land at Moody Beach, including what is now OA 2012's intertidal land is as a matter of fact adjudicated in quiet title action private, so his statement is irrelevant and not admissible, and the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to OA 2012 and its intertidal property and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

167. Jake Wilson resides at 79 Woody Lane in Cushing, Maine. Plaintiff Jake Wilson's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as "Exhibit Z")("Wilson Resp. Judy's Moody Int.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

168. Jake Wilson uses the intertidal for seaweed harvesting. Wilson Resp. Judy's Moody Int., ¶ 3.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that Mr. Wilson has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

169. Jake Wilson has "spent recreational time on Maine beaches." Wilson Resp. Judy's Moody Int., ¶ 13.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that there is no showing that his recreational time on Maine beaches has ever occurred at Moody Beach, and more specifically on or over OA 2012's intertidal property, and therefore it is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

170. Jake Wilson's work is affected by claims that the intertidal is private "making it more difficult to harvest seaweed in the intertidal." Wilson Resp. Judy's Moody Int., ¶ 4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis that in *Bell II* the court held the intertidal land at Moody Beach, including what is now OA 2012's intertidal land is as a matter of fact adjudicated in quiet title action private, so his statement is irrelevant and not admissible, and the absence of any connection of his general statement regarding his work and alleged difficulties to Moody Beach and more specifically to OA 2012 and its intertidal property and therefore the

statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

171. George Seaver has "been in the seaweed and fertilizer business for forty-four (44) years." Affidavit of George Seaver dated April 28, 2023, paragraph 9 (attached hereto as "Exhibit AA")("Seaver Aff.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis it pertains to property that does not belong to OA 2012's and therefore is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

172. George Seaver's company, Ocean Organics, "utilizes seaweed resources to produce fertilizer for application in the agriculture and turf industries." Seaver Aff., ¶¶113-4.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

173. Ocean Organics "process[es] live rockweed harvested from the intertidal zone, primarily in the mid-coast region of Maine, ... to produce a liquid extract, which is in turn processed into our proprietary liquid supplements, and sold to customers for use in conjunction with fertilizers to increase their efficacy." Seaver Aff., ¶¶ 5-6.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The court can take judicial notice that Moody Beach is not in the mid-coast area of Maine.

Response: Admitted.

174. Approximately 60% of Ocean Organics product sales are to agricultural customers, with the remaining 40% to horticultural customers. Seaver Aff., ¶ 7.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics

has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

175. George Seaver's business and livelihood "depend upon reasonable access to and sustainable use of the intertidal zone." Seaver Aff., ¶ 8.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

176. Ocean Organics has "developed and improved [its] fertilizer products and their use instructions through intensive research and development over the years." Seaver Aff., ¶ 10.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

177. "Ocean Organics products use seaweed extracts as plant bio-stimulants, which increase the stress tolerance, efficiency, and ultimately yield of the plant or crop to which the product is applied." Seaver Aff., ¶ 11.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

178. "Increased stress tolerance thereby improves the resilience of plants in bad or unfavorable weather conditions, including drought, flood, and extreme heat." Seaver Aff., ¶ 12.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

179. "Seaweed extracts are the fastest-growing category of bio-stimulants currently being deployed in commercial agriculture." Seaver Aff., ¶ 13.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

180. "Seaweed extracts are favored for their efficiency and cost-effectiveness, requiring a small amount of product per acre." Seaver Aff., ¶ 14.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

181. "Research studies have shown that the use of seaweed extract results in a 5-15% increase in yield in the face of drought, flood, and heat conditions." Seaver Aff., ¶ 15.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

182. Ocean Organics "products ... play a role in confronting the world's food crisis in

the midst of a changing climate, environment, and weather conditions." Seaver Aff., ¶ 16.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

183. "Ocean Organics distributes product within the United States and abroad; a relatively small percentage of product is distributed within Maine and New England, while the bulk of domestic sales are to larger states with larger agriculture and turf economies such as the Midwest, Florida and California." Seaver Aff., ¶ 17.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

184. "The seaweed industry has grown substantially since the turn of the 21st century and is positioned [to] play a key role in the future of Maine's ocean-resource-based economy." Seaver Aff., ¶ 18.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

185. Ocean Organics "business has grown steadily over time, gaining international recognition and entering new markets abroad, including in Europe and Asia. The combining of seaweed extract with fertilizer is a multi-billion-dollar industry worldwide." Seaver Aff., ¶ 19. See Affidavit of Robert Morse dated May 1, 2023, paragraphs 9 (attached hereto as "Exhibit BB")("Morse Aff.").

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics

has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

186. "Rockweed grows only in the North Atlantic Ocean. Although China produces other seaweed products, those products are considered less reliable than products derived from rockweed harvested in North America." Seaver Aff., ¶ 20.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement..

187. "Ocean Organics currently purchases seaweed harvested from the intertidal zone within approximately twenty (20) miles of Waldoboro, Maine." Seaver Aff., ¶ 21.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

188. "Rockweed attaches to hard surfaces through an appendage called a `holdfast." Seaver Aff., ¶ 22.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

189. Ocean Organics' "harvesters cut rockweed by hand, accessing the resource using flat-bottom Carolina skiffs and using a sharp-edged tool to selectively cut the rockweed." Seaver

Aff., ¶ 23.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

190. "Harvesters practice sustainable methods; for example, they primarily cut new growth rockweed and where other harvesters have not been to recently." Seaver Aff., ¶ 24.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

191. "Maine state regulations limit the length of the cut and the percentage of biomass that can be harvested from a single area. This often requires harvesters to travel along the coast harvesting the rockweed from different areas of the intertidal zone." Seaver Aff., ¶ 25.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

192. "Although [Ocean Organics] harvesters do not use machines to harvest, neither method of harvesting rockweed—by machine or by hand—presents a danger to the sustainability of the resource a conclusion supported by research and conclusions of the Maine Department of Marine Resources." Seaver Aff., ¶ 26.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

193. "It is a common misconception that seaweed is a plant." Seaver Aff., ¶ 27.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

194. "Rockweed is classified as "alga" and it grows only in the intertidal zones of the ocean. It has no roots, but rather gets all its nutrients from the water." Seaver Aff., ¶ 28.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

195. "Rockweed organisms have a sex—either male or female and they release sperm or eggs into the sea." Seaver Aff., ¶ 29.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

196. "Once fertilized, the new organism is carried by the currents until large enough to attach to a rocky surface in the intertidal zone." Seaver Aff., ¶ 30.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against

OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

197. "Rockweed secures itself by a holdfast much in the same way as an oyster or barnacle." Seaver Aff., ¶ 31.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

198. "Holdfasts are not like roots; the rockweed does not pull nutrients through its holdfast, but instead takes nutrients from the ocean water when underwater at high tide." Seaver Aff., ¶ 32.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

199. George Seaver "believe[s] that the Maine Supreme Court's decision in *Ross v. Acadian Seaplants Ltd.*, 206 A.3d 283 (Me. 2019) was not only wrong, but inconsistent with Maine's law according to the Maine Legislature, longstanding public trust rights, and the scientific classification of rockweed not as a plant, but a marine organism." Seaver Aff., ¶ 33; See also Morse Aff., ¶ 20.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. His belief is irrelevant and not admissible. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.")

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

200. "It is [George Seaver's] understanding that Ross held that seaweed harvesting is taking plants, not fishing, and therefore that harvesting rockweed growing on privately owned intertidal land cannot be done without the owner's permission, while taking other marine organisms like clams, mussels, or sea worms remain permissible public trust uses with or without the owner's permission." Seaver Aff., ¶ 34; See also Morse Aff., ¶ 21.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. His understanding of *Ross* is irrelevant and not admissible. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(" Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.")

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

201. "Public trust rights include fishing, fowling, and navigating." Seaver Aff., § 35; See Morse Aff., ¶ 22.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. His understanding of *Ross* is irrelevant and not admissible. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(" Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.")

Response: Admitted.

202. The Maine legislature has long defined "fishing" to including taking "any marine organism by any method or means" 12 M.R.S. § 6001(17), and to define "marine organism" as "any animal, plant or other life that inhabits waters below head of tide," *Id.* § 6001(23), which would include rockweed." Seaver Aff., ¶ 36; See Morse Aff., ¶ 23.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The statement is not admissible under *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985)(" Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.")

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

203. "Even after Ross, the question of ownership of rockweed, practically speaking, is not settled. Many shore property deeds seem to include the adjacent intertidal zone, but more often than not, historical deed searches suggest landowners have simply added it to their deeds, and have no historical basis for the claimed ownership. In addition, even if the deed history supports the ownership claim, no one has proposed a practical way to identify the boundaries when the tide comes in, and seaweed harvesting would commence." Seaver Aff., ¶ 37; See Morse Aff., ¶ 24.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. His understanding of *Ross* is irrelevant and not admissible. *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment."). There is no basis for his opinion and it is based on hearsay.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

204. George Seaver is "deeply concerned about the future of the access to the resource." Seaver Aff., ¶ 38.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. His concerns are irrelevant and not admissible.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

205. Ocean Organics "is unable to grow on the same footing as other resource-based industries because of the cloud hanging over the question of access to intertidal land and the seaweed resources that grow there." Seaver Aff., ¶ 39.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

206. "Investors and businesspeople are very concerned about risk and factor risk and uncertainty in valuing a business and making an investment decision." Seaver Aff., ¶ 40; See Morse Aff., ¶ 15.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

207. "The legal uncertainty around Maine's intertidal zone and the seaweed resource presents a risk that affects the value of [the seaweed harvesting] business and the desirability of investment in [the seaweed harvesting] business and other seaweed-related industries." Seaver Aff., ¶ 41; See Morse Aff., ¶ 16.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. OA 2012 further objects to this statement under *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

208. George Seaver has "experienced this second hand—[he] know[s] of a midcoast seaweed business that was in negotiations with a potential buyer that fell through before closing because of concern about the uncertain legal status of harvesting seaweed in Maine's intertidal zone." Seaver Aff., ¶ 42.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing that Ocean Organics has ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. OA 2012 further objects to this statement under *Town of Orient v. Dwyer*, 490 A.2d 660, 662 (Me. 1985) ("Conclusions of fact and law do not properly belong in an affidavit filed in support of a motion for summary judgment.").

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

209. Robert Morse is the co-owner of North American Kelp, a business based in

Waldoboro, Maine with approximately thirty-five employees, which produces seaweed products, primarily from rockweed. Morse Aff., ¶¶ 3-5.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the on basis there is no showing connecting NA Kelp's seaweed business to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

210. North American Kelp "harvest[s] a large volume of seaweed that is processed into various applications." Morse Aff., ¶ 6.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the on basis there is no showing connecting NA Kelp's seaweed business to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

211. North American Kelp "products include food ingredients, animal supplements, lawn conditioners, and seaweed extracts for use in a variety of areas, including home gardening and landscaping." Morse Aff., ¶ 7.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the on basis there is no showing connecting NA Kelp's seaweed business to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

212. "North American Kelp does business across the United States and in twenty-four (24) countries abroad. Through intermediaries, our products reach approximately seventy (70) foreign markets." Morse Aff., ¶ 8.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing connecting NA Kelp's seaweed business to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

213. "Based on our volume and very strong domestic demand, most of [North American Kelp's] product is sold in the United States." Morse Aff., ¶ 10.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the on basis there is no showing connecting NA Kelp's seaweed business to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

214. "North American Kelp acquires rockweed from harvesters that harvest by a machine." Morse Aff., ¶ 11.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the on basis there is no showing connecting NA Kelp's seaweed business to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

215. Robert Morse "helped design and build a rockweed harvest machine that went into operation in 1995 and is still running." Morse Aff., ¶ 12.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the on basis there is no showing connecting Mr. Morse's machinery to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

216. "Seaweed harvesting machines are designed to stay within state regulations (cutting no more than 16" of growth). The machines selectively and sustainably cut growth from rockweed beds in a manner that will allow regeneration from tips of the harvested growth." Morse Aff., ¶ 13.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the on basis there is no showing connecting Mr.

Morse's machinery to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

217. North American Kelp's "business of harvesting by machine and processing large volume is very capital-intensive." Morse Aff, ¶ 14.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing connecting NA Kelp's business to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

218. North American Kelp "is in need of a larger processing plant building, but it is challenging to raise the capital given the uncertainty that hangs over the industry." Morse Aff., ¶ 17.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing connecting NA Kelp's business to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

219. "Without the cloud hanging over the question of title to intertidal land and the seaweed resources that grow there, [Robert Morse] would be able to expand and attract more investment in our business." Morse Aff., ¶ 18.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing connecting NA Kelp's business and Mr. Morse's machinery to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012

OA 2012 incorporates by reference the general objections stated above.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

220. North American Kelp's "seaweed is sourced from the intertidal zone of Maine's coast from Casco Bay, all the way up to Cobscook Bay in Washington County." Morse Aff., ¶ 19.

Objection: OA 2012 incorporates by reference the general objections stated above. OA 2012 further objects to this statement on the basis there is no showing connecting NA Kelp's business to OA 2012 and its intertidal land at Moody Beach and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. The court can take judicial notice that Moody Beach in Wells ME is not located in or between Casco Bay and Cobscook Bay. The statement is irrelevant and not admissible.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this statement.

ADDITIONAL STATEMENT OF FACTS

Pursuant to Rule 56(h)(2) of the Maine Rules of Civil Procedure, Defendant OA 2012 submits this Additional Statement of Material Facts to Plaintiffs' Statement of Material Facts, without waiving OA 2012's Objection of Plaintiffs' Statement of Material Facts.

1. OA 2012 is a Maine Trust and owns ocean front property at Moody Beach in Wells, Maine as described in a deed from Kevin J. Howe, Trustee of the Kevin J. Howe 1988 Trust, to John B. Howe, Trustee of the OA 2012 Trust dated December 10, 2012, and recorded December 18, 2012, in the York County Registry of Deeds at Book 16487, Page 844. *See* Affidavit of Rebecca Kinney ("Kinney Aff.") ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer (Aug. 11, 2022) ("OA 2012 Answer") ¶ 20; Affidavit of Julie Washburn ("Washburn Aff."), Exhibit A (Howe Depo. at 25-26, 71).

2. OA 2012's property immediately abuts the Ogunquit Beach. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20.; Washburn Aff., Exhibit B (K. Masucci Depo. at 98).

3. OA 2012's property is about 50 feet wide. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20; Washburn Aff., Exhibit A (Howe Depo. at 24) & Exhibit D (Peter I Depo. at 95).

4. The distance from the seawall at OA 2012's property to the mean low water varies but in places is 500 to 600 feet. Washburn Aff., Exhibit A (Howe Depo. at 22, 24-25); Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20.

5. From the seawall toward the ocean for a distance of about 30 feet is a dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 121-122). No Plaintiff is making any claim of use to the dry sand area. Washburn Aff., Exhibit C (Connerney Depo. at 95, 101), Exhibit D (Peter I Depo. at 15, 18), Exhibit E (Peter II Depo. at 13-15).

6. The portions of the Ogunquit Beach that abuts the upland portion of OA 2012's property to the south is a public way that provides access for a Town of Ogunquit parking lot to the Ogunquit Beach. Kinney Aff. ¶ 3 & Exhibit A; Compl. ¶ 20; OA 2012 Answer ¶ 20; Washburn Aff., Exhibit A (Howe Depo. at 55-56, 60) & Exhibit E (Peter II Depo. at 40, 42).

7. There is a sign that has been in place for some time attached to the seawall facing the right of way that states: "Moody Beach (to your left) is a private beach to the low water mark no loitering no dogs allowed thank you." Washburn Aff., Exhibit A (Howe Depo. at 39 & Exhibit 5) & Exhibit D (Peter I Depo. at 27-28).

8. OA 2012 has posted on its seawall that faces the ocean a sign that states: "Moody Beach, Private, No Loitering." Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40; Washburn Aff., Exhibit A (Howe Depo. at 47-49 & Exhibit 6) & Exhibit D (Peter I Depo. at 27-28).

9. During the summer season, OA 2012 places temporary signage at or near the high water mark on its property indicating the location of various beaches including arrows pointing to Moody Beach, a private beach, and the Ogunquit Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-48, 51-52 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

10. The purpose of the signage is to identify for those using the beach the demarcation between the Ogunquit Town beach and OA 2012's property in Wells at Moody Beach. Washburn Aff., Exhibit A (Howe Depo. at 39, 47-49, 51-52, 55-56, 60 & Exhibits 5, 6, 7 & 8); Compl. ¶¶ 20, 40; OA 2012 Answer ¶¶ 20, 40.

11. Beach goers including those few Plaintiffs who have actually been on or over OA 2012's intertidal property do not read the sign as restricting or limiting in any way any movement-based activity, whether recreational, navigation or ocean based related. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64) & Exhibit C (Connerney Depo. 97-98, 100-101, 103).

12. As was the case when Bell was decided, hundreds of people every summer day engage in movement-based activity on or over OA 2012's intertidal property without restriction or interruption. Washburn Aff., Exhibit A (Howe Depo. at 39, 40, 42, 43, 44, 45, 63-64); Kinney Aff. ¶¶ 3, 4 and Exhibit B-6.

13. OA 2012's predecessor in title Kevin Howe was a plaintiff in the *Bell v. Town of Wells*, Maine Superior Court (York) CV-84-125, and Law Court Docket YOR-87-430, reported at *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) (collectively both the Superior Court action on and Law Court decision in Bell are referred to herein as the "*Bell Action*") and obtained a judgment that is of record through that quiet title action that he owned the fee to the intertidal portion of his property (e.g., that it is private property) subject only to the public's rights to use his intertidal property for fishing, fowling and navigation, and that those rights did not include

any recreational rights. Kinney Aff. ¶¶ 3, 4 and Exhibits A, B-1 (at 332), B-2, B-6, B-7 & B-8; Washburn Aff., Exhibit A (Howe Depo. at 26-27).

14. The State was an actual party in the *Bell Action* and represented the public interest. Kinney Aff. ¶ 4 & Exhibits B-1, B-3 B-7 & B-8; see also *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

15. Plaintiff Orlando Delogu was among the amici in the *Bell Action*. See *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

16. In the *Bell Action*, at the request of the State, a guardian ad litem was appointed pursuant to 14 M.R.S. § 6656 “to represent the private rights of all unnamed and unknown defendant who have not actually been served with process and who had not appeared in this action.” Kinney Aff. ¶ 4 & Exhibit B-5.

17. The testimony at trial in the *Bell Action* included references to signs posted on the seawall on the Howe property and on other seawalls that said Moody Peach was a private beach and stated, “No Loitering” and/or “No Trespassing.” Kinney Aff. ¶ 4 & Exhibit B-6.

18. OA 2012 is successor in title and in privity with Kevin Howe. Kinney Aff. ¶¶ 3, 4 & Exhibits A, B-1 & B-8.

19. None of the Plaintiffs have had their access to OA 2012’s intertidal land limited or restricted in any way for any movement-based activity, whether navigation related, recreational related and/or ocean base, let alone significantly restricted. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38 & 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

20. There are no facts suggesting that the “intertidal jurisdiction” has “restricted” any of the Plaintiffs from engaging in any movement-based activity on or over OA 2012’s intertidal property. Washburn Aff., Exhibit B (K. Masucci Depo. at 37-38, 98-102), Exhibit D (Peter I Depo. at 16-18), Exhibit E (Peter II Depo. at 18), Exhibit F (Griffiths Depo. at 35, 60, 66, 68), Exhibit G (J. Delogu Depo. at 13, 18) & Exhibit H (O. Delogu Depo. at 141-142).

21. In the *Bell Action*, there was testimony that many of the ocean-front property owners placed signs either in the sand, or on their seawall steps; the signs carried messages such as “No Trespassing”, “Private Beach to Low Water Mark, No Loitering Please” [App. at 1397], or simply “Private Property.” At the southern end, near Ogunquit Beach, William Case and plaintiffs Leo Shannon and John Howe erected a sign in 1975 at Howe’s property (on the Ogunquit Beach line) which said, “Private Beach.” Kinney Aff. ¶ 4 and Exhibit B-6.

22. OA 2012 has never objected to any movement-based activity over its intertidal property, however characterized as ocean based, navigation or recreation. Washburn Aff., Exhibit A (Howe Depo. at 39, 45, 71).

23. With respect to OA 2012's intertidal zone Plaintiffs Robert Morse, George Seaver, John W. Grotton, Hale Miller, LeRoy Gilbert, Jake Wilson, Dan Harrington, Susan Domizi, Greg Tobey, Amanda Moeser, Chad Coffin, Lori Howell, Tom Howell and Brian Beal have not been to Moody Beach where OA 2012's intertidal property is located and have never been on OA 2012's property, and have not identified any instance in which OA 2012 prevented or restricted them (or anyone else for that matter) from engaging in any movement-based activity on or over OA 2012 property. Washburn Aff., Exhibit J (Plaintiff Robert Morse's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff George Seaver's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff John W. Grotton's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 31, 2022); Plaintiff Hale Miller's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 19, 2022); Plaintiff LeRoy Gilbert's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 30, 2022); Plaintiff Jake Wilson's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Dan Harrington's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 19, 2022); Plaintiff Susan Domizi's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Jan. 4, 2023); Plaintiff Greg Tobey's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Amanda Moeser's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & dated Dec. 26, 2022); Plaintiff Chad Coffin's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (signed & undated); Plaintiff Lori Howell's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 12, 2022); Plaintiff Tom Howell's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories Nos. 2, 3 (Dec. 12, 2022); Plaintiff Brian Beal's Answers to Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories No. 2 (signed & dated Dec. 28, 2022)).

24. Plaintiffs Judith Delogu and Sheila Jones have never been to Moody Beach, and have never been or attempted to engage any movement-based activity on OA 2012's intertidal land. Washburn Aff., Exhibit G (J. Delogu Depo. 13, 18, 21, 30) & Exhibit I (Jones Depo. at 32, 43).

25. Plaintiff William Griffiths has been to Moody Beach twice, and has never been or attempted to engage any movement-based activity on OA 2012's intertidal land. Washburn Aff., Exhibit F (Griffith's Depo. 10, 59, 66-67) & Exhibit K (Plaintiff William Griffiths' Answers to

Defendants OA 2012 Trust and Judy's Moody LLC's First Set of Interrogatories No. 2 (signed & dated Dec. 21, 2022)).

26. Plaintiff Orlando Delogu has been to Moody Beach, but is not aware of the location of OA 2012's Property, and in any event has never been prevented from engaging in any movement-based activity over the entire beach, which necessarily involves the OA 2012 Property. Washburn Aff., Exhibit H (O. Delogu Depo. at 140-142, 148).

27. Plaintiffs Peter and Kathy Masucci are back lot owners and access the beach at the opposite end of Moody Beach from where OA 2012's property is located. Washburn Aff., Exhibit B (K. Masucci Depo. at 97-101) & Exhibit E (Peter II Depo. at 16-18). While they believe they have walked over OA 2012's property, they have never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's Property. *Id.*

28. Back lot owner Plaintiff William Connerney believes he has walked across the OA 2012's property, but he has never been prevented or restricted from engaging in any movement-based activity on or over OA 2012's property. Washburn Aff., Exhibit C (Connerney Depo. at 69, 72-73, 97-98, 103).

29. Plaintiffs Griffiths and Jones do not know whether any of their customers had ever been on OA 2012's property or seen any signs located thereon, and could not identify an occasion when any of their customers advised them they would not return to their hotel due to any signs on OA 2012's property. Washburn Aff., Exhibit F (Griffiths Depo. at 25, 29-30, 35-36) & Exhibit I (Jones Depo. at 22-23, 38).

30. In the *Bell Action* an Order for Alternative Service was published in the local York County newspaper that said in part "...it is hereby Ordered that any defendant or his attorney who wishes to oppose this lawsuit must prepare and file a written answer to the complaint on or by May 7, 1984.". Kinney Aff. ¶ 4 and Exhibit B-4 (at entries numbered 4, 6 19).

31. As of 1984, Plaintiffs Peter and Kathy Masucci and William Connerney were of legal age and spent time at Moody Beach. Washburn Aff., Exhibit B (K. Masucci Depo. at 65), Exhibit C (Connerney Depo. at 53) & Exhibit D (Peter I Depo. at 12, 18-19).

32. A final judgment was issued in the *Bell Action*. Kinney Aff. ¶ 4 and Exhibits B-7 and B-8 (docket entries at 9/15/87 Brodrick, J. decision/judgment, 09/30/87 Brodrick, J. amendment of findings of fact, & 10/01/87 declaration of "judgment be entered for the plaintiff, Kevin J. Howe", Apx. at pp. 29-30, 32) *infra*; *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

33. Plaintiffs have not joined in this action all of the prevailing plaintiffs in *Bell Action* or their successors in interests. Kinney Aff. ¶ 4 and Exhibit B-1 (at docket entries 265 through 293, Apx. at pp. 30-34) *infra*.

34. The Appendix filed by the parties in the Law Court in the *Bell Action*, Law Court Docket No. YOR-87-430 contained over 1600 pages, including, as follows:

- a. Exhibit B-1: Superior Court Docket Entries (Sheets 1 through 18), Appendix (“Apx.”) at pp. 01-36;
- b. Exhibit B-2: Pleadings: Complaint and its Exhibit A (Mar. 7, 1984) and First Amendment to Complaint (Aug. 9, 1985); Apx. at pp. 37-58 & 78-85;
- c. Exhibit B-3: Defendant State of Maine Bureau of Lands’ Answer (Apr. 11, 1984), State Defendants’ Answer to Amendments to Plaintiffs’ Complaint (July 1, 1986), Apx. At pp. 59-67 & 86-88;
- d. Exhibit B-4: Superior Court Docket Entries evidencing filing and entry of Plaintiffs’ Motion for Alternative Service and Order, Apx. at 01-02;
- e. Exhibit B-5: Superior Court Docket Entries reflecting filing and entry of State’s Motion for Appointment of Guardian Ad Litem (Nov. 2, 1984) and Order (Mar. 1, 1985), Apx. 04 & 06;
- f. Exhibit B-6: Excerpts of trial transcript regarding signage of Moody Beach (Edward Haseltine, Richard Kenary, Betty Stirling, & William Case);
- g. Exhibit B-7: Superior Court decision (Sept. 14, 1987)(Brodrick, J.) and Amendment of Findings of Fact (Sept. 30, 1987)(Brodrick, J.); and
- h. Exhibit B-8: Superior Court Docket Entries evidencing entry of Final Judgment (Sept. 14, 1987)(Brodrick, J.) and (29) Finding Judgments and Declaration of Title (Oct. 1, 1987).

True copies of the above-identified excerpts of the Appendix are attached to the Affidavit of Rebecca Kinney. *See* Kinney Aff. ¶ 4 and Exhibits B-1, B-2, B-3, B-4, B-5, B-6, B-7 & B-8, respectively.

35. The signs posted to the seawall on the upland portion of OA 2012 Trust’s property (signs say “M MOODY BEACH IS A PRIVATE BEACH, NO LOITERING”) have been in place since 1978. Howe Depo. 69: 21-25; 70 1-5 (see Ex. 1 attached hereto); Affidavit of James Howe, dated June 2, 2023, ¶ 7 (see Ex. 2 attached hereto).

36. OA 2012 understands the word “loitering” in the signs on its property that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (see Ex. 1 attached hereto).

37. Since the signs on its property only say no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38).

38. OA 2012 also understands that everyone crossing its intertidal property is on

notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and are on notice that provided they are not loitering, OA 2012 has given legal permission to the public to use of its intertidal land for recreational purposes, including walking. Affidavit of James Howe, dated June 2, 2023, ¶ 13 (see Ex. 2 attached hereto).

39. Thousands of individuals each summer walk by the signs at OA 2012's property that says Moody Beach is a private beach no loitering and no one has ever expressed to OA 2012 any such indication that the signs in any cause fear or confusion as to whether they restrict or preclude in any way anyone from engaging in any movement-based activity over OA 2012's intertidal property. Affidavit of James Howe, dated June 2, 2023, ¶ 12 (see Ex. 2 attached hereto).

40. OA 2012 has never approached any member of the public to ask them not to be on the intertidal portion of OA 2012's property. Howe Depo (Feb, 8, 2023) 45: 19-24 (see Ex. 1 attached hereto).

41. Signs at Moody Beach have never prevented Kathy Masucci from walking across to OA 2012's intertidal property. K. Masucci's Depo. (Jan. 13, 2023), 76, 78, 102 (see Ex. 3 attached hereto).

42. Signs at Moody Beach have never prevented Peter Masucci from engaging in any movement-based activity at Moody Beach, including on or over OA 2012's intellectual property. P. Masucci Depo. (Jan. 11, 2023) 57-58 (see Ex. 4 attached hereto).

43. No one has ever stopped Bill Connerney from engaging in any activity he would like to do in the intertidal area of Moody Beach. W. Connerney Depo (Jan. 11, 2023) 97:17-25 (see Ex. 5 attached hereto).

44. No customer at the Crow's Nest Resort has ever informed the resort that they would not be returning to the resort because of signs at Moody Beach and Crow's Nest Resort does not have any data or information showing that the signs in any way affected its business. W. Griffiths Depo. (Jan. 13, 2023) 36:7-23 (see Ex. 6 attached hereto).

Dated: June 2, 2023



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Attorney for the Defendant OA 2012 Trust

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State of Maine
Cumberland, ss

Superior Court
Civil Action
Docket No. RE-2021-35

Peter and Kathy Masucci, et al.,)
)
Plaintiffs)
)
v.)
)
Judy’s Moody LLC, et al.,)
)
Defendants)
)
and)
)
Aaron Frey in his capacity as the Attorney General)
for the State of Maine)
)
Party in interest)

**PLAINTIFFS’ REPLY TO
DEFENDANT OA2012 TRUST’S
ADDITIONAL STATEMENT OF
MATERIAL FACTS**

Plaintiffs, by and through undersigned counsel, replies to Defendant OA2012 Trust’s Additional Statement of Material Facts (hereafter “OA Trust Add. S.M.F.”) as follows:

35. Admitted.

36. Denied. OA Trust understands the word “loitering” in the signs on it property that say “no loitering” to mean “physically present” on their property for “30 minutes” or more.

Deposition of James Howe dated February 8, 2023, pages 43:16-44:4 (See Pl.’s S.M.F., Ex. B).

37. Denied. There are multiple signs on the OA Trust Property which say more than only no loitering. The OA 2012 Property displays private beach signage stating “MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED” attached to a seawall. The OA 2012 Property contains private beach signage stating “MOODY BEACH PRIVATE NO LOITERING” attached to its seawall. Howe Dep. Ex. 5 & 6; See Howe Dep. 37:16-17, 39:2-3, 39:18, 39:25, 40:20-23 (See Pl.’s S.M.F., Ex. B).

38. Admitted.

39. Denied. Plaintiffs' in this litigation are actively expressing to OA Trust that the signs cause fear restricting and precluding them from engaging in movement-based activity over OA Trust's intertidal property. *See* Deposition of Kathy Masucci dated January 13, 2023, page 115:9-16 (*See* Pl.'s S.M.F., Ex. D) ("K. Masucci Dep."); *See* Deposition of Peter Masucci dated January 11, 2023, Volume I, page 130:18-25 (*See* Pl.'s S.M.F., Ex. F) ("P. Masucci Dep. V. I"); *See* Plaintiff William Connerney's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 3 (*See* Pl.'s S.M.F., Ex. I) ("Connerney Resp. Ocean 503 Int."); *See* Plaintiff William Connerney's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 3 (*See* Pl.'s S.M.F., Ex. J) ("Connerney Resp. Judy's Moody Int.").

40. Admitted.

41. Denied. Since Defendants posted their signs and began confronting members of the public, Kathy Masucci and her family no longer engage in activity as they had prior to those signs being posted and confrontations began. *See* Plaintiff Kathy Masucci's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 11 (attached hereto as "Exhibit FF") ("K. Masucci Resp. Ocean 503 Int.").

42. Denied. Since Defendants posted their signs and began confronting members of the public, Peter Masucci and his family no longer engage in activity as they had prior to those signs being posted and confrontations began. *See* Plaintiff Peter Masucci's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 11 (*See* Pl.'s S.M.F., Ex. E) ("P. Masucci Resp. Ocean 503 Int.").

43. Admitted.

44. Admitted.

Dated: June 23, 2023

Respectfully submitted,



For Plaintiffs,

Sandra Guay, Bar No. 9350

Benjamin E. Ford, Bar No. 4528

Keith P. Richard, Bar No. 5556

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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

PETER AND KATHY MASUCCI, ET AL.,)
)
PLAINTIFFS,)
)
v.)
)
JUDY’S MOODY LLC,)
OA 2012 TRUST, ET AL.,)
)
DEFENDANTS,)
)
and)
)
AARON FREY, in his capacity as Attorney)
General of the State of Maine,)
)
PARTY IN INTEREST)

**DEFENDANT OA 2012 TRUST’S
RULE 56(i)(2) REPLY AS OPPOSING
PARTY TO PLAINTIFFS’ DENIALS
TO OA 2012’S RULE 56(h)(2)
ADDITIONAL STATEMENT OF
MATERIAL FACTS**

(Title to Real Estate Involved)

Defendant OA 2012 Trust (“OA 2012”) respectfully submits this reply, pursuant to Rule 56(i)(2) of the Maines Rules of Civil Procedure, to Plaintiffs’ reply statement (June 23, 2023) to OA 2012’s Additional Statement of Material Facts (“ASMF”) (June 2, 2023). The following are intended solely for the purpose of opposing the Plaintiffs’ motion summary judgment (May 2, 2023) and for no other purpose and shall have no preclusive effect at trial or in any other proceeding.

**Response to Plaintiffs’ Denials To OA 2012’s Rule 56(h)(2)
Additional Statement of Material Facts (“ASMF”)**

OA 2012’S ASMF 36: OA 2012 understands the word “loitering” in the signs on its property that say “no loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (see Ex. 1 attached hereto).

PLAINTIFFS' RESPONSE TO ASMF 36: Denied. OA Trust understands the word "loitering" in the signs on its property that say "no loitering" to mean "physically present" on their property for "30 minutes" or more. Deposition of James Howe dated February 8, 2023, pages 43:16-44:4 (See Pl.'s S.M.F., Ex. B).

OA 2012'S REPLY TO PLAINTIFFS' DENIAL TO ASMF 36: Plaintiffs' response and record citation do not controvert ASMF 36. Plaintiffs' twist Mr. Howe's testimony in response to Plaintiffs' counsel's deposition examination and Mr. Howe's answer is taken out of context. Mr. Howe upon examination by Plaintiffs' counsel and after a series of questions as to what he would consider "loitering," to which he answered in the negative (e.g. "stretching", "surfing", "walking around, say on circles in the property without your property line," "sitting in the sand...without any beach towels or beach chairs"), was asked the question "how long would you have to *sit* there before it becomes loitering? A. Oh, I don't know. 30 minutes. 30 minutes could lead to 3 hours." (Howe Dep. 43:1-44:4.) The question posed by Plaintiffs' counsel during examination related directly to "sit." (Howe Dep. 43:16-24.) The term "No Loitering" to Mr. Howe means, "[t]hat you're not allowed to sit, hang out on the beach." (Howe Dep. 42:13-16.)

OA 2012'S ASMF 37: Since the signs on its property only say no loitering, OA 2012 understands the signs to mean that other uses, other than loitering, are permitted by the sign on and over OA 2012's intertidal property including "walking and running", "stopping and stretching", "walking slowly, just sort of meandering", "surfing", "fishing", "building sandcastles", and "playing frisbee." *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs' Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38).

PLAINTIFFS' RESPONSE TO ASMF 37: Denied. There are multiple signs on the OA Trust Property which say more than only no loitering. The OA 2012 Property displays private beach signage stating "MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED" attached to a seawall. The OA 2012 Property contains private beach signage stating "MOODY BEACH PRIVATE NO LOITERING" attached to its seawall. Howe Dep. Ex. 5 & 6; See Howe Dep. 37:16-17, 39:2-3, 39:18, 39:25, 40:20-23 (See Pl.'s S.M.F., Ex. B).

OA 2012'S REPLY TO PLAINTIFFS' DENIAL TO ASMF 37: Plaintiffs' response and record citation do not controvert ASMF 37. There are two signs on OA 2012's property and one temporary. *See* Pl. Admission (June 2, 2023) to OA 2012 SMF 7, 8, 9, 10, 17, 21, 22, 30, 32, 33, 34, One sign has been in place since 1978. *See* Pl. Admission (June 23, 2023) to OA ASMF 35. The term "No Loitering" to Mr. Howe means, "[t]hat you're not allowed to sit, hang out on the beach." (Howe Dep. 42:13-16.) *See also* June 23, 2023, OA 2012 Qualification of Pl.

SMF 24, 25 and Admission to Pl. SMF 29 (“[the public is] not allowed to site [or] hang out on the beach”), 30 (“walking or running”), 31 (stopping and stretching”), 32 (“walking slowly; just sort of meandering ... walking around on [OA Property]”), 33 (“surfing”), 35 (“sitting with a fishing pole” “as long as you’re fishing”), 37 (“building a sandcastle”), 38 (“frisbee”).

OA 2012’S ASMF 39: Thousands of individuals each summer walk by the signs at OA 2012’s property that says Moody Beach is a private beach no loitering and no one has ever expressed to OA 2012 any such indication that the signs in any cause fear or confusion as to whether they restrict or preclude in any way anyone from engaging in any movement-based activity over OA 2012’s intertidal property. Affidavit of James Howe, dated June 2, 2023, ¶ 12 (see Ex. 2 attached hereto).

PLAINTIFFS’ RESPONSE TO ASMF 39: Denied. Plaintiffs' in this litigation are actively expressing to OA Trust that the signs cause fear restricting and precluding them from engaging in movement-based activity over OA Trust's intertidal property. See Deposition of Kathy Masucci dated January 13, 2023, page 115:9-16 (See Pl.'s S.M.F., Ex. D) ("K. Masucci Dep."); See Deposition of Peter Masucci dated January 11, 2023, Volume I, page 130:18-25 (See Pl.'s S.M.F., Ex. F) ("P. Masucci Dep. V. I."); See Plaintiff William Connerney's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 3 (See Pl.'s S.M.F., Ex. I) ("Connerney Resp. Ocean 503 Int."); See Plaintiff William Connerney's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 3 (See Pl.'s S.M.F., Ex. J) ("Connerney Resp. Judy's Moody Int.").

OA 2012’S REPLY TO PLAINTIFFS’ DENIAL TO ASMF 39: Plaintiffs’ response and record citation do not controvert ASMF 39. There are two signs on OA 2012’s property and one temporary. See Pl. Admission (June 2, 2023) to OA 2012 SMF 7, 8, 9, 10, 17, 21, 22, 30, 32, 33, 34, One sign has been in place since 1978. See Pl. Admission (June 23, 2023) to OA ASMF 35. OA 2012 has never objected to any movement-based activity over its property. See Pl. Admission (June 2, 2023) to OA 2012 SMF 22. The term “No Loitering” to Mr. Howe means, “[t]hat you’re not allowed to sit, hang out on the beach.” (Howe Dep. 42:13-16.) See also June 23, 2023, OA 2012 Qualification of Pl. SMF 24, 25 and Admission to Pl. SMF 29 (“[the public is] not allowed to site [or] hang out on the beach”), 30 (“walking or running”), 31 (stopping and stretching”), 32 (“walking slowly; just sort of meandering ... walking around on [OA Property]”), 33 (“surfing”), 35 (“sitting with a fishing pole” “as long as you’re fishing”), 37 (“building a sandcastle”), 38 (“frisbee”). No one from OA 2012 ever asked Connerney to stop what he was doing on the intertidal area of its property. (Connerney Dep.¹ 17:16-18:6; 18:12-23; 27:6-16; 72:10-12; 73:1-3.)

OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is

¹ True and correct excerpts of the Deposition of William Connerney are attached hereto as Addendum 1.

presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given permission to the public to use of its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012's intertidal property every year, no one, including plaintiffs, have ever not engaged in any movement-based activity over OA 2012's intertidal property for any reason, including based on the signage. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶ 12, 13).

OA 2012'S ASMF 41: Signs at Moody Beach have never prevented Kathy Masucci from walking across to OA 2012's intertidal property. K. Masucci's Depo. (Jan. 13, 2023), 76, 78, 102 (see Ex. 3 attached hereto).

PLAINTIFFS' RESPONSE TO ASMF 41: Denied. Since Defendants posted their signs and began confronting members of the public, Kathy Masucci and her family no longer engage in activity as they had prior to those signs being posted and confrontations began. See Plaintiff Kathy Masucci's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 11 (attached hereto as "Exhibit FF") ("K. Masucci Resp. Ocean 503 Int."). 42. Denied. Since Defendants posted their signs and began confronting members of the public, Peter Masucci and his family no longer engage in activity as they had prior to those signs being posted and confrontations began. See Plaintiff Peter Masucci's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 11 (See Pl.'s S.M.F., Ex. E) ("P. Masucci Resp. Ocean 503 Int.").

OA 2012'S REPLY TO PLAINTIFFS' DENIAL TO ASMF 41: Plaintiffs' response and record citation do not controvert ASMF 41. There are no facts anywhere that suggest in any way that OA 2012 Trust has ever confronted anyone with respect to activities in the intertidal area. The statement should be stricken. There are two signs on OA 2012's property and one temporary. See Pl. Admission (June 2, 2023) to OA 2012 SMF 7, 8, 9, 10, 17, 21, 22, 30, 32, 33, 34, One sign has been in place since 1978. See Pl. Admission (June 23, 2023) to OA ASMF 35.

OA 2012 has never objected to any movement-based activity over its property. See Pl. Admission (June 2, 2023) to OA 2012 SMF 22. The term "No Loitering" to Mr. Howe means, "[t]hat you're not allowed to sit, hang out on the beach." (Howe Dep. 42:13-16.) See also June 23, 2023, OA 2012 Qualification of Pl. SMF 24, 25 and Admission to Pl. SMF 29 ("[the public is] not allowed to site [or] hang out on the beach"), 30 ("walking or running"), 31 (stopping and stretching"), 32 ("walking slowly; just sort of meandering ... walking around on [OA Property]"), 33 ("surfing"), 35 ("sitting with a fishing pole" "as long as you're fishing"), 37 ("building a sandcastle"), 38 ("frisbee").

OA 2012 admits it has not in spoken words told Kathy Masucci that she has permission right to walk on OA 2012's intertidal land. But OA 2012 understands the signs that say "no

loitering” to mean to be “stationary for more than 30 minutes”, “sitting and hanging out on the beach.” J. Howe Depo. (Feb. 8, 2023) 43:15-25, 44:1-4 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 29, 34). Since the signs say only no loitering, OA 2012 understands the signs tell reader of the sign that other uses, other than loitering, are permitted by the sign on and over OA 2012’s intertidal property including “walking and running”, “stopping and stretching”, “walking slowly, just sort of meandering”, “surfing”, “fishing”, “building sandcastles”, and “playing frisbee.” *Id.* at 42:20-22; 42:23-25, 43:1-3; 43:6-13; 43:14-15; 43:16-25; 44:1-4; 44:4-11; 44:23-25; 45:1-3; 45:4-7 (All attached to Plaintiffs’ Statement of Material Fact ¶¶ 30, 31, 32, 33, 35, 37, 38). OA 2012 also understands that everyone crossing its intertidal property is on notice that there is in Maine law a presumption of permission whereby unless otherwise stated, it is presumed that upland owners like OA 2012 who own intertidal land grant permission to the public to use the intertidal land for general beach related recreational activities, including walking. Based on this law, given the only restrictions stated are no loitering and no dogs, OA 2012 understands that all users of its intertidal property for recreational uses are aware and by the signage are being told that provided they are not loitering, OA 2012 has given legal permission to the public to use its intertidal land for recreational purposes, including walking. Thousands of individuals each summer move across OA 2012’s intertidal property every year, no one, including Kathy Masucci, have ever not engaged in any movement-based activity over OA 2012’s intertidal property for any reason, including based on the sign. See Additional Statement of Facts, ¶¶ 37, 38 and 39 (Affidavit of James Howe, dated June 2, 2023, ¶¶s 12, 13).

Dated: June 30, 2023

/s/David P. Silk

David P. Silk, Bar No. 3136

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Attorney for the Defendant OA 2012 Trust

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

PETER and KATHY MASUCCI, et al.,)
)
Plaintiffs,)
)
v.)
)
JUDY’S MOODY LLC, et al.,)
)
Defendants,)
)
and)
)
AARON FREY, in his capacity as Attorney)
General for the State of Maine,)
)
Party-in-Interest.)

**DEFENDANT OCEAN 503, LLC’S
OPPOSITION TO PLAINTIFFS’
STATEMENT OF MATERIAL FACTS
AND DEFENDANT OCEAN 503, LLC’S
ADDITIONAL STATEMENT OF
MATERIAL FACTS**

Title to Real Estate is Involved

Pursuant to M.R. Civ. P. 56, Defendant Ocean 503, LLC (“Ocean 503”) hereby submits its Opposing Statement of Material Facts in response to the motion for summary judgment filed on May 2, 2023 by Plaintiffs Peter and Kathy Masucci, Robert Morse, George Seaver, Greg Tobey, Hale W. Miller, John W. Grotton, LeRoy Gilbert, Jake Wilson, Dan Harrington, Orlando and Judith Delogu, William Connerney, William M. Griffiths and Sheila A. Jones, Susan Domizi, Dr. Brian Beal, Amanda Moeser, Chad Coffin, and Lori and Tom Howell (collectively, “Plaintiffs”). Any admission made herein is made for the purposes of summary judgment only. Ocean 503 does not concede that any of the facts admitted below are material to Plaintiffs’ Motion for Summary Judgment.

1. **Qualified.** Mark Montesi (“Mr. Montesi”) and Corliss Montesi (“Ms. Montesi” and together with Mark Montesi, the “Montesis”) are the sole members of Ocean 503, LLC. (Ocean

503 Dep. 11:7-19.) A true copy of the Ocean 503 deposition transcript is attached hereto as

Exhibit A.

2. **Admitted.**

3. **Admitted**

4. **Admitted.**

5. **Qualified.** Mr. Montesi testified that he deferred to his deed but, when pressed for an estimate, stated “I guess from the front of the lot to the mean low water mark would be 140 feet.” (Ocean 503 Dep. 18:22-25.)

6. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Mr. Montesi’s prior ownership of a property with no intertidal land is irrelevant to this matter. As such, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401.

7. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Mr. Montesi’s prior ownership of a property with no intertidal land is irrelevant to this matter. As such, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401.

8. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence

excluded under the Maine Rules of Evidence. Mr. Montesi's use of North Beach in Ogunquit is irrelevant to this matter. As such, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401.

9. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Mr. Montesi's use of North Beach in Ogunquit is irrelevant to this matter. As such, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401.

10. **Qualified.** Mr. Montesi was asked what types of activities he *can* do within the intertidal zone of the Ocean 503 Property and in response to that question stated that he "*could* sit and enjoy the beach . . . and swim . . .". (Ocean 503 Dep. 37:9-11) (emphasis added).

11. **Qualified.** Mr. Montesi hired someone to affix a single sign, which reads "Private Beach," on the front of the seawall facing the ocean and a second sign on the side of the seawall facing the public way. There is only one sign on the seawall facing the ocean. (Ocean 503 Dep. 34:15-20.)

12. **Admitted.**

13. **Qualified.** Mr. Montesi clarified that his discretion is subject to the public's rights of fishing, fowling, and navigation within the intertidal zone. (Ocean 503 Dep. 38:14-25; 39:1-5, 18-25; 40:1-3.)

14. **Admitted.**

15. **Qualified.** Mr. Montesi did not testify as to whether he believed swimming or recreating on the beach were "loitering." (Ocean 503 Dep. 42:12-16; 42:22-25; 43:1-4; 44:7-10.)

16. **Qualified.** Mr. Montesi was testifying with respect to the intertidal zone of the Ocean 503 Property, not the entirety of the Property. Mr. Montesi recognizes the public's right to fish within the intertidal zone of the Ocean 503 Property. (Ocean 503 Dep. 39:9-11.)

Objection: Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

17. **Admitted.**

Objection: Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

18. **Qualified.** Mr. Montesi recognizes the public has the right to "bird watch" within the intertidal portion of the Ocean 503 Property. (Ocean 503 Dep. 38:17-18; 39:25; 40:1-3.)

Objection: Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered

19. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

20. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

21. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

22. **Qualified.** James Howe (“Howe”) responded to a question of whether his deed stated that the sideline of the OA 2012 Trust’s Property “ends in the Atlantic Ocean or it goes to the Atlantic Ocean” and he answered, “[c]orrect.” It is unclear from his response whether he believes that the sidelines of the property extend *to* the Atlantic Ocean or beyond. (OA 2012 Trust Dep. 22:20-23.) A true copy of the OA 2012 Trust deposition transcript is attached hereto as **Exhibit B.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

23. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

24. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

25. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

26. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

27. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

28. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to other Defendants and unrelated to the claims asserted against Ocean 503. As such, these facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

29. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

30. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

31. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

32. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

33. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

34. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean

503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

35. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

36. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

37. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

38. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

39. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

40. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

41. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

42. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

43. **Qualified.** Howe testified that OA 2012 Trust’s invitees “might ride a wave . . . in front of other houses” on the intertidal land. (OA 2012 Trust Dep. 66:24-25; 67:1-2.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

44. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

45. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean

503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

46. **Denied.** The record citation provided by Plaintiffs does not support this Statement of Material Fact. (Judy's Moody Dep. Ex. 3.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401. Furthermore, Plaintiffs have failed to support the Statement of Material Fact. Therefore, the Court should disregard that portion of the Statement of Material Fact. *See* M.R. Civ. P. 56(h)(4).

47. **Qualified.** Based on the cited exhibit, it appears Keith Dennis ("Dennis") purchased the entirety of the Judy's Moody Property in 2016. (Judy's Moody Dep. Ex. 3.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

48. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean

503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

49. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

50. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

51. **Denied.** Dennis testified that he did not think there were any signs on the seawall presently. (Judy's Moody Dep. 46:16-18, 21-24.) A true copy of Judy's Moody's deposition transcript is attached hereto as **Exhibit C**.

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

52. **Qualified.** Dennis testified that these signs are no longer posted. (Judy's Moody Dep. 48:23-25; 49:3-5, 14.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

53. **Denied.** It is unclear from Dennis's testimony the context in which the Wells Police Department has told Judy's Moody that they will respond to calls regarding the "private beach." (Judy's Moody Dep. 55:14-20.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered an out-of-court statement by the Wells Police Department to Dennis to prove the truth of the matters asserted therein. Because this statement is inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1). Additionally, this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

54. **Qualified.** Dennis testified that Judy's Moody has given written permission to members of the public previously but did not provide testimony regarding the period of time applicable to that permission. (Judy's Moody Dep. 57:12-19.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

55. **Qualified.** Dennis testified that Judy's Moody "had allowed, basically, anything for two years" in response to a question regarding allowing the public to use the "sand." Dennis's testimony was not with respect to the entirety of the Judy's Moody property. (Judy's Moody Dep. 57:21-25; 58:1-5.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

56. **Qualified.** Dennis testified that Judy's Moody had allowed "the vast majority of activities" in response to a question regarding allowing the public to use the "sand." Dennis's testimony was not with respect to the entirety of the Judy's Moody property. (Judy's Moody Dep. 57:21-25; 58:1-5.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

57. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

58. **Qualified.** Dennis testified that he moved a beachgoer's chair to the edge of the Judy's Moody property. (Judy's Moody Dep. 79:21-22; 80:9-10.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. The fact that Dennis moved a beachgoer's chair to the edge of his property is irrelevant to this matter because the beachgoer was not one of the Plaintiffs. Further, this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

59. **Qualified.** Dennis testified that Moody Beach Associates had organized charity events on the Judy's Moody property but it is unclear from his testimony that there were "numerous" events. (Judy's Moody Dep. 84:4-10.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

60. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

61. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

62. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to other Defendants and unrelated to the claims asserted against Ocean 503. As such, these facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

63. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

64. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 to the extent that it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

65. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

66. **Qualified.** Dennis testified that Judy's Moody has "occasionally" put markers down to demarcate the Judy's Moody property from the abutting public way. He further testified that they have occasionally put out cones and "might" put a "big piece of wood" if it comes up onto the property. (Judy's Moody Dep. 93:8-12, 21-23.) Dennis did not testify to raking seaweed and Kathy Masucci stated in her testimony that she did not know who rakes seaweed or uses cones and markers on the Judy's Moody property and has never personally observed anyone doing so.

(K. Masucci Dep. 81:9-19.) A true copy of Kathy Masucci's deposition transcript is attached hereto as **Exhibit D**.

Objection: Pursuant to M.R. Civ. P. 56(h), "[a]n assertion of fact set forth in a statement of material facts shall be followed by a citation to the specific page or paragraph of identified record material supporting the assertion." Plaintiffs have failed to support the assertion that Judy's Moody has raked seaweed to demarcate its property. Therefore, the Court should disregard that portion of the Statement of Material Fact. *See* M.R. Civ. P. 56(h)(4). Moreover, this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

67. **Qualified.** It is unclear from the police records whether the members of the public were in the intertidal zone of the Judy's Moody property or elsewhere on the property, such as within the dry sand. In at least one report, the caller stated that members of the public were right in front of the seawall. (Judy's Moody Dep. Ex. 9.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered an out-of-court report by the Wells Police Department to prove the truth of the matters asserted therein. Because this report is inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(h)(4). Therefore, the Court should disregard the Statement of Material Fact. *See* M.R. Civ. P. 56(i)(1). Moreover, this

Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

68. **Qualified.** Dennis's cited testimony was in response to a question regarding whether the decision to call the police was impacted by the member of the public's sitting "on the high tide line or above the high tide line or below the high tide line." Dennis's response was that their location "plays a factor" into the decision. (Judy's Moody Dep. 110:13-18; 111:1-19.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

69. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

70. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean

503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

71. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. To the extent that the public's activity described here takes place outside of the intertidal zone, it is irrelevant to this matter. Moreover, the Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. As such, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401.

72. **Admitted.**

73. **Admitted.**

74. **Admitted.**

75. **Qualified.** Kathy Masucci testified that she had been on the intertidal zone of the Ocean 503 property “[h]undreds to thousands” of times over the past seventy-three years, but testified that her uses were inconsistent as “some years when [she wasn’t] living there it would have been less than when [she was] there year round.” (K. Masucci Dep. 16:9-17.)

76. Please see specific responses below.

- a. **Qualified.** Kathy Masucci’s testimony on page 74:1-2 of her deposition was with respect to the Judy’s Moody property, not the Ocean 503 property. (K. Masucci Dep. 74:1-2.)

b. **Denied.** Kathy Masucci testified that she “probably” had run on the intertidal area of the Judy’s Moody property. (K. Masucci Dep. 74:3-5.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

c. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

d. **Admitted.**

Objection: It is unclear from Kathy Masucci’s testimony whether she stopped to look at the water on the Ocean 503 Property. To the extent that this did not take place on the Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

- e. **Denied.** When pressed for details regarding sitting on the intertidal zone of the Ocean 503 Property, Kathy Masucci testified that she was “sure [she] did” sit on the intertidal zone of the Ocean 503 Property and that she walked down the abutting right-of-way and would move to either “the left or the right.” She could not provide any further details and did not provide any definitive testimony regarding activity on the Ocean 503 Property specifically. (K. Masucci Dep. 17:25; 18:1-15; 51:1-25; 52:1-5.)
- f. **Denied.** Kathy Masucci later testified that she “really didn’t pay that much attention back then to what house [she] was directly in front of” and so she “probably didn’t know” whether she was on the Ocean 503 Property because “[i]t was a large area that [she] played on and recreated on without regard to property lines.” (K. Masucci Dep. 57:23-25; 58:4-8.)

Objection: It is unclear from Kathy Masucci’s testimony whether she dug holes in the intertidal area of the Ocean 503 Property. To the extent that this did not take place on the Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

- g. **Admitted.**
- h. **Denied.** Kathy Masucci later testified that she “really didn’t pay that much attention back then to what house [she] was directly in front of” and so she “probably didn’t know” whether she was on the Ocean 503 Property

because “[i]t was a large area that [she] played on and recreated on without regard to property lines.” (K. Masucci Dep. 57:23-25; 58:4-8.)

Objection: It is unclear from Kathy Masucci’s testimony whether she played kickball on the Ocean 503 Property. To the extent that this did not take place on the Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

i. **Denied.** When pressed for details regarding sitting on the intertidal zone of the Ocean 503 Property, Kathy Masucci testified that she was “sure [she] did” sit on the intertidal zone of the Ocean 503 Property and that she walked down the abutting right-of-way and would move to either “the left or the right.” She could not provide any further details and did not provide any definitive testimony regarding activity on the Ocean 503 Property specifically. (K. Masucci Dep. 17:25; 18:1-15; 51:1-25; 52:1-5.)

j. **Denied.** Kathy Masucci later testified that she “really didn’t pay that much attention back then to what house [she] was directly in front of” and so she “probably didn’t know” whether she was on the Ocean 503 Property because “[i]t was a large area that [she] played on and recreated on without regard to property lines.” (K. Masucci Dep. 57:23-25; 58:4-8.)

Objection: It is unclear from Kathy Masucci’s testimony whether she played baseball on the Ocean 503 property. To the extent that this did not

take place on the Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

k. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

l. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

m. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants

and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

77. **Denied.** Kathy Masucci testified that the signs appeared “[w]ithin the past ten years, I think. I don’t know. I don’t know.” (K. Masucci Dep. 19:16-17.)

78. **Admitted.**

79. **Qualified.** Kathy Masucci testified that she does not specifically avoid the intertidal land of the Ocean 503 Property for the purposes of “walk[ing] over it.” (K. Masucci Dep. 38:21-24; 39:4-8.)

80. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. The fact that Ms. Masucci feels “sad, angry, frustrated, discouraged” regarding the private property signs on Moody Beach is irrelevant to this matter because her feelings have no bearing on the determination of rights requested under Count IV of the Complaint. As such, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401.

81. **Qualified.** In response to a question of whether it is “fair to say [the signs] negatively affect[] [her] experience,” Kathy Masucci responded “yes.” (K. Masucci Dep. 113:2-5.) Kathy Masucci provided testimony claiming a negative experience but provided no further details.

82. **Qualified.** As previously stated, it is unclear that Kathy Masucci ever actually set all her things down and sat on the Ocean 503 intertidal zone. (K. Masucci Dep. 17:25; 18:1-15; 51:1-25; 52:1-5.)

83. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. To the extent that the Court in its Order on the Motions to Dismiss, dated April 15, 2022, intended to limit Count IV of the Complaint to movement-based activity, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401. (*See* Order dated April 15, 2022, at 25.)

84. **Qualified.** As previously stated, it is unclear that Kathy Masucci ever actually set all her things down and sat on the Ocean 503 intertidal zone. (K. Masucci Dep. 17:25; 18:1-15; 51:1-25; 52:1-5.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. To the extent that the Court in its Order on the Motions to Dismiss, dated April 15, 2022, intended to limit Count IV of the Complaint to movement-based activity, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401. (*See* Order dated April 15, 2022, at 25.)

85. **Admitted.**

86. **Admitted.**

87. **Admitted.**

Objection: It is unclear from Mr. Masucci's testimony whether they "would often take our beach chairs and sit on the beach" on the Ocean 503 property. To the extent that this did not take place on the Ocean 503 property, the statement is not relevant as defined under M.R. Evid. 401 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Furthermore, to the extent that the Court in its Order on the Motions to Dismiss, dated April 15, 2022, intended to limit Count IV of the Complaint to movement-based activity, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401. (*See* Order dated April 15, 2022, at 25.)

88. **Admitted.**

Objection: It is unclear from Mr. Masucci's testimony whether they sit on the beach and read on the Ocean 503 property. To the extent that this did not take place on the Ocean 503 property, the statement is not relevant as defined under M.R. Evid. 401 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Furthermore, to the extent that the Court in its Order on the Motions to Dismiss, dated April 15, 2022, intended to limit Count IV of the Complaint to movement-based activity, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401. (*See* Order dated April 15, 2022, at 25.)

89. **Denied.** Peter Masucci's response to Ocean 503's Interrogatory No. 4 stated that he had "regularly used the entire intertidal portion of Moody Beach, including the portions adjacent to 503 Ocean Avenue" "prior to the upland owner confrontations with members of the public." (P. Masucci. Ans. Int. No. 4.) During his deposition, Peter Masucci testified that he never personally observed someone associated with Ocean 503 confronting members of the public and could not "say definitively that [he] know[s] of that happening." (P. Masucci Dep. 42:12-17; 43:12-15.) A

true copy of Peter Masucci's deposition transcript is attached hereto as **Exhibit E**. To the extent that this Statement of Material Fact implies that Ocean 503 confronted members of the public, the Statement of Material Fact is denied.

Objection: To the extent that the "upland owners' . . . confrontations with members of the public" did not involve Ocean 503, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

90. Please see specific responses below.

Objection: This Statement of Material Fact asserts facts related to Peter Masucci's activities on the intertidal areas of Moody Beach in its entirety. To the extent that the listed activities did not take place on the Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

- a. **Admitted**, subject to the above objection.
- b. **Admitted**, subject to the above objection.
- c. **Denied**. The cited portion of the deposition transcript does not support this Statement of Material Fact. (See P. Masucci Dep. II 11:12-16.)
- d. **Denied**. Peter Masucci testified that he "may have jogged." (P. Masucci Dep. 120:24-25.)
- e. **Admitted**, subject to the above objection.
- f. **Admitted**, subject to the above objection.

- g. **Denied.** Peter Masucci testified that he had never taken kids down to look for wildlife on the Ocean 503 Property. (P. Masucci Dep. 52:7-25; 56:2-6.)
- h. **Admitted.**
- i. **Denied.** Peter Masucci testified that he engaged in bodysurfing and boogie boarding but did not mention skim boarding. (P. Masucci Dep. 49:23-25; 50:1.)
- j. **Qualified.** Peter Masucci testified that he has played bocce ball on the intertidal land of the Ocean 503 Property and that he “probably could name a dozen families that play that game on Moody Beach,” but he did not testify that those families play on the Ocean 503 Property. (P. Masucci Dep. 53:19-22; 119:9-10.)
- k. **Admitted,** subject to the above objection.

91. **Denied.** Peter Masucci testified that at low tide “the ocean takes the form of little tidal pools that the kids play in.” It appears he was talking about children in general, not his children specifically. (P. Masucci Dep. 21:18-22; 22:4-5.)

Objection: This Statement of Material Fact asserts facts related to activities on the intertidal areas of Moody Beach in its entirety. To the extent that this did not take place on the Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

92. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine

Rules of Evidence. This Statement of Material Fact asserts facts related to activities that are not movement-based. To the extent that the Court in its Order on the Motions to Dismiss, dated April 15, 2022, intended to limit Count IV of the Complaint to movement-based activity, the statement is not admissible as evidence because it is not relevant as defined under M.R. Evid. 401. (*See* Order dated April 15, 2022, at 25.)

93. **Denied.** Peter Masucci testified that he “couldn’t tell . . . for sure” whether he had ever dug for seaworms on the intertidal zone of the Ocean 503 Property. (P. Masucci Dep. 46:24-25; 47:1.)

94. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

95. **Qualified.** Peter Masucci *testified* that he “could probably name hundreds of people . . .”. (P. Masucci Dep. 114:2-8.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered out-of-court statements by unknown persons to Plaintiff Peter Masucci to prove the truth of the matters asserted therein. Because these statements are

inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1).

Additionally, to the extent that these out-of-court statements refer to incidents that occurred with beachfront property owners other than Ocean 503, the statements are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

96. **Admitted.**

97. Please see specific responses below.

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to William Connerney's activities on the intertidal areas of Moody Beach in its entirety. To the extent that any of the activities listed did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

- a. **Admitted**, subject to the above objection.
- b. **Admitted**, subject to the above objection.
- c. **Qualified.** William Connerney did not provide definitive testimony of specific use of the Ocean 503 property for this purpose. (*See* Connerney Dep. 13:2-5, 12-13.) A true copy of William Connerney's deposition transcript is attached hereto as **Exhibit F**.

- d. **Qualified.** William Connerney did not provide definitive testimony of specific use of the Ocean 503 property for this purpose. (*See* Connerney Dep. 13:2-5, 13-14.)
- e. **Admitted,** subject to the above objection.
- f. **Qualified.** William Connerney did not provide definitive testimony of specific use of the Ocean 503 property for this purpose. (*See* Connerney Dep. 13:2-5, 17.)
- g. **Admitted,** subject to the above objection.
- h. **Admitted,** subject to the above objection.
- i. **Qualified.** William Connerney did not provide definitive testimony of specific use of the Ocean 503 property for this purpose. (*See* Connerney Dep. 63:23-25.)
- j. **Qualified.** William Connerney did not provide definitive testimony of specific use of the Ocean 503 property for this purpose. (*See* Connerney Dep. 64:18-20.)

98. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Jeannie Connerney's activities on the intertidal areas of Moody Beach in its entirety. Jeannie Connerney is not a party to this matter and it is unclear whether her activities took place on the Ocean 503 property. As such, the facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

99. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Jeannie Connerney's activities on the intertidal areas of Moody Beach in its entirety. Jeannie Connerney is not a party to this matter and it is unclear whether her activities took place on the Ocean 503 property. As such, the facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

100. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Jeannie Connerney's activities on the intertidal areas of Moody Beach in its entirety. Jeannie Connerney is not a party to this matter and it is unclear whether her activities took place on the Ocean 503 property. As such, the facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

101. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Jeannie Connerney's activities on the intertidal areas of Moody Beach in its entirety. Jeannie Connerney is not a party to this matter and it is unclear whether her activities took place on the Ocean 503 property. As such, the facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

102. **Admitted.**

Objection: This Statement of Material Fact asserts facts related to activities on the intertidal areas of Moody Beach in its entirety. To the extent that this did not take place on the

Ocean 503 property, the statement is not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503 and the Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence.

103. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it is vague. Furthermore, to the extent that it asserts facts related to confrontations not involving Ocean 503, those facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

104. **Qualified.** William Connerney *testified* that he is affected by the private property signs. (Connerney Dep. 26:1-4.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to private property signs posted on properties not belonging to Ocean 503. Those facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

105. **Admitted.**

106. **Qualified.** William Connerney clarified in his deposition that he had never been confronted or asked to leave the Ocean 503 Property nor had he ever witnessed anyone else be confronted or asked to leave the Ocean 503 Property. (Connerney Dep. 29:23-25; 30:2-15; 31:5-17.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to

private property signs posted on properties not belonging to Ocean 503 or related to confrontations not involving Ocean 503. Such facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

Additionally, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Connerney's personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence.

107. **Qualified.** William Connerney's quoted testimony in this Statement of Material Fact was with respect to the signs on the Judy's Moody property. (Connerney Dep. 78:20-23.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts related to claims against other Defendants and unrelated to the claims asserted against Ocean 503. These facts are not admissible with respect to Ocean 503 because they are not relevant as defined under M.R. Evid. 401.

108. **Qualified.** William Connerney testified that he did not specifically recall playing beach tennis on the Ocean 503 Property and also testified that he "quit when [his] son started beating [him] regularly." (Connerney Dep. 35:12-13, 22-24.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to private property signs posted on properties not belonging to Ocean 503 or related to confrontations not involving Ocean 503. Such facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

109. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

110. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

111. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

112. **Admitted.**

113. **Qualified.** William Griffiths *stated* that the Crows' Nest Resort is dependent on free use of Maine's beaches. (Griffiths Resp. Judy's Moody Int. ¶ 3.)

114. **Denied.** William Griffiths testified that he does not have any data or information to support his position that the Crows' Nest Resort is impacted by the signs on Moody Beach. He further testified that he is not aware of any of his customers ever having been confronted, told to move or to leave, or had the police called on them. None of his customers have specifically told him that an experience at Moody Beach made them feel unwelcome. None of his customers have ever told him that they will not be returning because they felt unwelcome at Moody Beach.

(Griffiths Dep. 34:21-25; 35:5-15, 25; 36:1-3, 20-23.) A true copy of William Griffiths' deposition transcript is attached hereto as **Exhibit G**.

115. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that the Court should not consider this fact to the extent that it asserts facts that are not based in Plaintiffs' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence.

116. **Denied.** When asked further questions regarding conversations about the signs with customers, William Griffiths testified that the two or three customers who mentioned the signs "just asked me what was the issue there. What was the story with those signs." (Griffiths Dep. 54:3-4, 22-25.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered out-of-court statements by unknown persons to Plaintiff William Griffiths to prove the truth of the matters asserted therein. Moreover, such facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401. The impact of the signs on persons not parties to this Action is irrelevant. Because these statements are inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1).

117. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact because it requires the admission of evidence

excluded under the Maine Rules of Evidence. Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have offered out-of-court statements by unknown persons to Plaintiff William Griffiths to prove the truth of the matters asserted therein. Moreover, such facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401. The impact of the signs on persons not parties to this Action is irrelevant. Because these statements are inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1).

118. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to William Griffiths's activities on the intertidal areas of Moody Beach in its entirety. To the extent that his activities did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

119. **Admitted.**

120. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Orlando Delogu's activities on the intertidal areas of Moody Beach in its entirety. To the extent that his activities did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

121. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Orlando Delogu's activities on the intertidal areas of Moody Beach in its entirety. To the extent that his activities did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

122. **Qualified.** The quotation is found in another portion of the deposition transcript. (O. Delogu Dep. 131:1-8.) A true copy of Orlando Delogu's deposition transcript is attached hereto as **Exhibit H**.

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Orlando Delogu's activities on the intertidal areas of Moody Beach in its entirety. To the extent that his activities did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

123. **Qualified.** The quotation reflects Orlando Delogu's belief regarding the purpose of private property signage at Moody Beach. (O. Delogu Dep. 13-25; 39:1-6.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that the Court should not consider this fact to the extent that it asserts facts that are not based in Plaintiffs' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence.

124. **Qualified.** The quotation reflects Orlando Delogu's belief regarding the intent of private property owners when posting private property signage. (O. Delogu Dep. 145:9-13.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that the Court should not consider this fact to the extent that it asserts facts that are not based in Plaintiffs' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence.

125. Please see specific responses below.

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Judith and Orlando Delogu's activities on Maine's coastline generally. To the extent that any of the activities listed did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503. With respect to Judith Delogu, none of the facts are relevant because Ms. Delogu testified that she has never been to Moody Beach or any of the Defendants' properties. *See* (J. Delogu 13:16.) Ocean 503, therefore, denies the facts asserted with respect to Judith Delogu. A true copy of Judith Delogu's deposition transcript is attached hereto as **Exhibit I**.

- a. **Denied.** The cited interrogatory response of Judith Delogu states, in part, "[w]hile at the beach, I along with my family, walk and run on and across the intertidal land seaward of [OA 2012 Trust and Judy's Moody's] property." (J. Delogu Ans. OA 2012 Trust and Judy's Moody Ints. No. 3.) During her deposition, Judith Delogu testified that she "ha[s] never been to Moody Beach." (J. Delogu 13:16.)
- b. **Denied.** The cited interrogatory response of Judith Delogu was provided in response to an interrogatory asking Ms. Delogu to "[i]dentify every

movement related activity that you have undertaken on [OA 2012 Trust and Judy's Moody's] property.” Ms. Delogu's response to that interrogatory stated that she had “s[a]t in the sand to watch birds and other wildlife.” (J. Delogu Ans. OA 2012 Trust and Judy's Moody Ints. No. 3.) During her deposition, Judith Delogu testified that she “ha[s] never been to Moody Beach” and has never sat in the sand and observed wildlife on Defendants' properties. (J. Delogu 13:16; 18:20-23; 25:24-25; 26:1.)

- c. **Denied.** The cited interrogatory response of Judith Delogu was provided in response to an interrogatory asking Ms. Delogu to “[i]dentify every movement related activity that you have undertaken on [OA 2012 Trust and Judy's Moody's] property.” Ms. Delogu's response to that interrogatory stated that she “wade[s] in the water and sometimes swim[s] along the beach.” (J. Delogu Ans. OA 2012 Trust and Judy's Moody Ints. No. 3.) During her deposition, Judith Delogu testified that she “ha[s] never been to Moody Beach” and has never waded in the water or swam along the intertidal land of the Defendants' properties. (J. Delogu 13:16; 18:20-23; 26:2-7.)

126. **Denied.** The cited interrogatory response of Judith Delogu was provided in response to an interrogatory asking Ms. Delogu to “[i]dentify every movement related activity that you have undertaken on [OA 2012 Trust and Judy's Moody's] property.” Ms. Delogu's response to that interrogatory stated that she “tread[s] water in place as the waves crash over us.” (J. Delogu Ans. OA 2012 Trust and Judy's Moody Ints. No. 3.) During her deposition, Judith Delogu testified

that she “ha[s] never been to Moody Beach” and has never tread water in place on the Defendants’ properties. (J. Delogu 13:16; 18:20-23; 26:8-10.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent that it asserts facts related to Judith and Orlando Delogu’s activities on Maine’s coastline generally. To the extent that this activity did not take place on the Ocean 503 property, the facts are not admissible as evidence because they are not relevant, as defined under M.R. Evid. 401, to the claims asserted against Ocean 503.

127. **Denied.** The cited interrogatory response of Judith Delogu was provided in response to an interrogatory asking Ms. Delogu to “[i]dentify every movement related activity that you have undertaken on [OA 2012 Trust and Judy’s Moody’s] property.” Ms. Delogu’s response to that interrogatory stated that she “tread[s] water in place as the waves crash over us.” (J. Delogu Ans. OA 2012 Trust and Judy’s Moody Ints. No. 3.) During her deposition, Judith Delogu testified that she “ha[s] never been to Moody Beach” and has never tread water in place on the Defendants’ properties. (J. Delogu 13:16; 18:20-23; 26:8-10.)

128. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Such facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

129. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts unrelated to the claims asserted against Ocean 503. Such facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

130. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Such facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

131. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Such facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

132. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Such facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

133. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Such facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

134. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Such facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

135. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Brian Beal has never been to the Ocean 503 Property. (*See* Beal Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

136. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Brian Beal has never been to the Ocean 503 Property. (*See* Beal Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

137. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Brian Beal has never been to the Ocean 503 Property. (*See* Beal Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

138. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Brian Beal has never been to the Ocean 503 Property. (*See* Beal Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

139. **Qualified.** Brian Beal *stated* that his work is affected by claims that the intertidal land is private.

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Brian Beal has never been to the Ocean 503 Property. (*See* Beal Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

140. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Susan Domizi has never been to the Ocean 503 Property. (*See* Domizi Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

141. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Susan Domizi has never been to the Ocean

503 Property. (*See* Domizi Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

142. **Qualified.** Susan Domizi *stated* that her work is affected by claims that the intertidal land is private. (Domizi Resp. Judy's Moody Int. ¶ 4.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Susan Domizi has never been to the Ocean 503 Property. (*See* Domizi Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

143. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Amanda Moeser has never been to the Ocean 503 Property. (*See* Moeser Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

144. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Amanda Moeser has never been to the Ocean 503 Property. (*See* Moeser Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

145. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Amanda Moeser has never been to the Ocean 503 Property. (*See* Moeser Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

146. **Qualified.** Amanda Moeser *stated* that her work is affected by claims that the intertidal land is private. (Moeser Resp. Judy's Moody Int. ¶ 4.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Amanda Moeser has never been to the Ocean 503 Property. (*See* Moeser Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

147. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Greg Tobey has never been to the Ocean 503 Property. (*See* Tobey Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

148. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Greg Tobey has never been to the Ocean

503 Property. (*See* Tobey Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

149. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Greg Tobey has never been to the Ocean 503 Property. (*See* Tobey Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

150. **Qualified.** Greg Tobey *stated* that his work is affected by claims that the intertidal land is private. (Tobey Resp. Judy's Moody Int. ¶ 4.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Greg Tobey has never been to the Ocean 503 Property. (*See* Tobey Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

151. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Chad Coffin has never been to the Ocean 503 Property. (*See* Coffin Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

152. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Chad Coffin has never been to the Ocean 503 Property. (*See* Coffin Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

153. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Chad Coffin has never been to the Ocean 503 Property. (*See* Coffin Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

154. **Qualified.** Chad Coffin *stated* that his work is affected by claims that the intertidal land is private. (Coffin Resp. Judy's Moody Int. ¶ 4.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Chad Coffin has never been to the Ocean 503 Property. (*See* Coffin Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

155. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Leroy Gilbert has never been to the Ocean

503 Property. (*See* Gilbert Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

156. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Leroy Gilbert has never been to the Ocean 503 Property. (*See* Gilbert Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

157. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Leroy Gilbert has never been to the Ocean 503 Property. (*See* Gilbert Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

158. **Qualified.** Leroy Gilbert *stated* that his work is affected by claims that the intertidal land is private. (Gilbert Resp. Judy's Moody Int. ¶ 4.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Leroy Gilbert has never been to the Ocean 503 Property. (*See* Gilbert Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

159. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. John Grotton has never been to the Ocean 503 Property. (*See* Grotton Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

160. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. John Grotton has never been to the Ocean 503 Property. (*See* Grotton Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

161. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. John Grotton has never been to the Ocean 503 Property. (*See* Grotton Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

162. **Qualified.** John Grotton *stated* that his work is affected by claims that the intertidal land is private. (Grotton Resp. Judy's Moody Int. ¶ 4.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. John Grotton has never been to the Ocean

503 Property. (*See* Grotton Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

163. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Dan Harrington has never been to the Ocean 503 Property. (*See* Harrington Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

164. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Dan Harrington has never been to the Ocean 503 Property. (*See* Harrington Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

165. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Dan Harrington has never been to the Ocean 503 Property. (*See* Harrington Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

166. **Qualified.** Dan Harrington *stated* that his work is affected by claims that the intertidal land is private. (Harrington Resp. Judy's Moody Int. ¶ 4.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Dan Harrington has never been to the Ocean 503 Property. (*See* Harrington Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

167. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Jake Wilson has never been to the Ocean 503 Property. (*See* Wilson Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

168. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Jake Wilson has never been to the Ocean 503 Property. (*See* Wilson Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

169. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Jake Wilson has never been to the Ocean 503 Property. (*See* Wilson Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

170. **Qualified.** Jake Wilson *stated* that his work is affected by claims that the intertidal land is private. (Wilson Resp. Judy's Moody Int. ¶ 4.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Jake Wilson has never been to the Ocean 503 Property. (*See* Wilson Ans. to Ocean 503 Interrogs. No. 4.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

171. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

172. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

173. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

174. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

175. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such,

these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

176. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

177. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

178. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been

no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

179. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

180. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

181. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the

Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Lastly, Under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs rely upon out-of-court statements – i.e., “research studies” to prove the truth of the matters asserted therein. Because the statements are inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1).

182. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

183. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such,

these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

184. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Lastly, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e).

185. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

186. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Lastly, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e).

187. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

188. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

189. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

190. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Lastly, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e).

191. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Lastly, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e).

192. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been

no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Furthermore, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e).

Moreover, Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent it states an expert opinion and falls outside the scope of Rule 701

Lastly, under Rules 801 and 802, an out-of-court statement offered to prove the truth of the matter stated therein is not admissible as evidence. M.R. Evid. 801, 802. Plaintiffs have relied upon an out-of-court statement (i.e., a report) by the Maine Department of Marine Resources to prove the truth of the matters asserted therein. Because this statement is inadmissible, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56(i)(1).

193. **Qualified.** The quoted statement represents a belief held by George Seaver. (Seaver Aff. ¶ 27.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such,

these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Furthermore, Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent it states an expert opinion and falls outside the scope of Rule 701. Lastly, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e).

194. **Qualified.** This statement represents a belief held by George Seaver. (Seaver Aff. ¶ 28.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Furthermore, Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent it states an expert opinion and falls outside the scope of Rule 701.

Lastly, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal

knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e)

195. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Furthermore, Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent it states an expert opinion and falls outside the scope of Rule 701.

Lastly, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e)

196. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such,

these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Furthermore, Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent it states an expert opinion and falls outside the scope of Rule 701.

Lastly, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e).

197. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Furthermore, Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent it states an expert opinion and falls outside the scope of Rule 701.

Lastly, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal

knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e).

198. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Furthermore, Ocean 503 contends that this Court should not consider this Statement of Material Fact to the extent it states an expert opinion and falls outside the scope of Rule 701.

Lastly, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. Mr. Seavers' affidavit does not demonstrate that he has personal knowledge of the facts asserted, or that he is competent to testify as to those facts, as required under M.R. Civ. P. 56(e)

199. **Qualified.** The quoted statement represents a belief held by George Seaver. (Seaver Aff. ¶ 33.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been

no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) Moreover, this Statement of Material Fact states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

200. **Qualified.** The quoted statement represents a belief held by George Seaver. (Seaver Aff. ¶ 34.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) Moreover, this Statement of Material Fact states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

201. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) Moreover, this Statement of Material Fact states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered. Moreover, this Statement of Material Fact states a legal opinion and falls outside the scope of Rule

701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

Lastly, conclusory legal statements included within a Statement of Material Fact are not properly considered in deciding a motion for summary judgment; as such, this Statement of Material Fact should not be considered by the Court. *Barron v Shapiro & Morley, LLC*, 2017 ME 51 ¶ 11 n.4, 157 A.3d 769 (“To the extent that either party’s statement of material facts . . . sets forth statements that are irrelevant, immaterial, do not have adequate records support and/or are conclusory legal statements as opposed to statement of fact, the court does not rely on them for purposes of this motion.”) (emphasis added.)

202. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (See Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (See generally Compl.) Moreover, this Statement of Material Fact states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

Lastly, conclusory legal statements included within a Statement of Material Fact are not properly considered in deciding a motion for summary judgment; as such, this Statement of Material Fact should not be considered by the Court. *Barron v Shapiro & Morley, LLC*, 2017 ME 51 ¶ 11 n.4, 157 A.3d 769 (“To the extent that either party’s statement of material facts . . . sets forth statements that are irrelevant, immaterial, do not have adequate records support and/or

are conclusory legal statements as opposed to statement of fact, the court does not rely on them for purposes of this motion.”) (emphasis added.)

203. **Qualified.** The quoted statement represents a belief held by George Seaver. (Seaver Aff. ¶ 37.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) Moreover, this Statement of Material Fact states a legal opinion and falls outside the scope of Rule 701. As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

204. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, this Statement of Material Fact is not admissible as evidence and should not be considered.

205. **Qualified.** The quoted statement represents a belief held by George Seaver. (Seaver Aff. ¶ 39.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

206. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver and Robert Morse have never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401. Further, Plaintiffs have failed to support this Statement of Material Fact as required under M.R. Civ. P. 56.

Furthermore, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' or Mr. Morses' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. The affidavits do not demonstrate that either has personal knowledge of the facts asserted, or that they are competent to testify as to those facts, as required under M.R. Civ. P. 56(e).

207. **Qualified.** The quoted statement is a belief asserted by George Seaver. (Seaver Aff. ¶ 41.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Furthermore, the Court should not consider this fact to the extent that it asserts facts that are not based in Mr. Seavers' or Mr. Morses' personal knowledge pursuant to Rule 602. Such facts are not admissible as evidence. The affidavits do not demonstrate that either has personal knowledge of the facts asserted, or that they are competent to testify as to those facts, as required under M.R. Civ. P. 56(e).

208. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401. Further, the Court should not consider this fact to the extent that it asserts facts that are not based in George Seaver's personal knowledge pursuant to Rule 602.

209. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. Robert Morse has never been to the Ocean

503 Property. (*See* Morse Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

210. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

211. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See* Seaver Ans. to Ocean 503 Interrogs. No. 4.) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

212. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4* Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

213. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

214. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

215. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4* Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

216. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

217. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally* Compl.) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

218. **Qualified.** The quoted statement is a belief asserted by Robert Morse. (Morse Aff. ¶ 17.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

219. **Qualified.** The quoted statement is a belief asserted by Robert Morse. (Morse Aff. ¶ 18.)

Objection: Pursuant to M.R. Civ. P. 56(i)(1), this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401. Moreover, to the extent that this Statement asserts that there is a “question of title to intertidal land,” the Statement must not be considered. This Court dismissed Counts II, III, and V pertaining to fee ownership of intertidal land. (*See Order dated April 15, 2022, at 26.*)

220. **Admitted.**

Objection: Pursuant to M.R. Civ. P. 56(i)(1), Ocean 503 contends that this Court should not consider this Statement of Material Fact with respect to Ocean 503 because it asserts

facts unrelated to the claims asserted against Ocean 503. George Seaver has never been to the Ocean 503 Property. (*See Seaver Ans. to Ocean 503 Interrogs. No. 4.*) Additionally, there has been no assertion of rockweed harvesting on the Ocean 503 Property. (*See generally Compl.*) As such, these facts are not admissible as evidence because they are not relevant as defined under M.R. Evid. 401.

Additional Statement of Material Facts

Pursuant to Maine Rule of Civil Procedure 56(h)(2) and in support of its Opposition to Plaintiffs' Motion for Summary Judgment and Incorporated Memorandum of Law, Ocean 503 sets forth the following additional statements of material facts as to which there is no genuine dispute, supported by the accompanying record citations.

1. Peter Masucci testified that the Signs have not stopped him from engaging in movement-based activity within the intertidal zone of the Ocean 503 Property. (P. Masucci Dep. 57:15-58:2.)

2. Peter Masucci testified that “[t]he only thing [the Signs] caused us not to do is to sit and stop.” (P. Masucci Dep. 57:21-22.)

3. Peter Masucci played bocce ball four or five times during the summer of 2022 on the intertidal zone of the Ocean 503 Property. (P. Masucci Dep. 53:19-22, 54:24-55:5.)

4. Kathy Masucci testified that the Signs had not prevented her from walking across the intertidal zone of that property. (K. Masucci Dep. 38:21-39:8.)

5. William Connerney testified that the Signs have not prevented him from entering the intertidal zone of the Ocean 503 Property but the Signs have made him aware that he might be

on Ocean 503's Property and he "tr[ies] vaguely not to stay on his property." (Connerney Dep. 18:8-11, 26:10-27:8.)

6. William Connerney testified that he walked across the Ocean 503 intertidal zone a couple of times last August. (Connerney Dep. 19:21-24.)

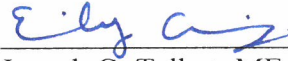
7. Peter Masucci testified that he had walked across the Ocean 503 intertidal zone as recently as January 2023. (P. Masucci Dep. 19:15-17.)

8. Kathy Masucci testified that she had walked on the intertidal zone of the Ocean 503 Property as recently as December 2022. (K. Masucci Dep. 49:19-24.)

9. Orlando Delogu testified that he did not have a specific recollection of being on the Ocean 503 Property but assumed that he had by virtue of the fact that he had walked the entire length of Moody Beach. (O. Delogu Dep. 21:6-22:9.)

10. The following Plaintiffs have never been on the Ocean 503 Property: Robert Morse (Morse Resp. Ocean 503 Int. No. 4); Greg Tobey (Tobey Resp. Ocean 503 Int. No. 4); George Seaver (Seaver Resp. Ocean 503 Int. No. 4); Hale Miller (Miller Resp. Ocean 503 Int. No. 4); Leroy Gilbert (Gilbert Resp. Ocean 503 Int. No. 4); John Grotton (Grotton Resp. Ocean 503 Int. No. 4); Jake Wilson (Wilson Resp. Ocean 503 Int. No. 4); Dan Harrington (Harrington Resp. Ocean 503 Int. No. 4); William Griffiths (Griffiths Resp. Ocean 503 Int. No. 4); Susan Domizi (Domizi Resp. Ocean 503 Int. No. 4); Brian Beal (Beal Resp. Ocean 503 Int. No. 4); Amanda Moeser (Moeser Resp. Ocean 503 Int. No. 4); Lori Howell (L. Howell Resp. Ocean 503 Int. No. 4); Tom Howell (T. Howell Resp. Ocean 503 Int. No. 4); Chad Coffin (Coffin Resp. Ocean 503 Int. No. 4); Judith Delogu (J. Delogu Resp. Ocean 503 Int. No. 4); and Sheila Jones (Jones Resp. Ocean 503 Int. No. 4). True copies of Plaintiffs' interrogatory answers are attached hereto as one collective **Exhibit J**.

Dated at Portland, Maine this 2nd day of June, 2023.

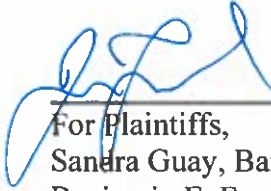


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Counsel for Defendant,
Ocean 503, LLC

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Dated: June 23, 2023

Respectfully submitted,



For Plaintiffs,
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Benjamin E. Ford, Bar No. 4528
Keith P. Richard, Bar No. 5556
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krichard@archipelagona.com

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Docket No. Cum-24-82

Peter Masucci et al.
Plaintiffs/Appellants/Cross-Appellees

v.

Judy's Moody, LLC et al.
Defendants/Appellants/Cross-Appellees

On appeal from the Cumberland County Superior Court

Appendix

Volume V of VI

Keith P. Richard (Bar No. 5556)

Benjamin Ford (Bar No. 4528)

Sandra Guay (Bar No. 9350)

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Attorneys for Appellants

Dated: June 28, 2024

State of Maine
Cumberland, ss.

Superior Court
Civil Action
Docket No. RE-2021-35

Peter and Kathy Masucci, et al.,)
)
Plaintiffs)
)
v.)
)
Judy’s Moody LLC, et al.,)
)
Defendants)
)
and)
)
Aaron Frey in his capacity as the Attorney General)
 for the State of Maine)
)
Party in interest)

DEFENDANTS JEFFERY E.
PARENT AND MARGARET G.
PARENTS’ OPPOSING
STATEMENT OF MATERIAL
FACTS

Pursuant to Rule 56 (h)(2) of the Maine Rules of Civil Procedure, Defendants Jeffery E. Parent and Margaret G. Parent (the “Parents”) submit this opposing statement to Plaintiffs’ Statement of Material Facts.

1. Mark Montesi and Corliss Montesi are the sole representatives of Ocean 503, LLC. Deposition of Mark Montesi dated March 2, 2023, page 11:7-19. (attached hereto as “Exhibit A”)(“Montesi Dep.”)

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this

statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

2. Ocean 503, LLC gained ownership of 503 Ocean Avenue in Wells, Maine ("Ocean 503 Property") in 2019. Montesi Dep. Ex. 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

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3. Mark and Corliss Montesi are Florida residents. Montesi Dep. 15:14.

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Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

4. Mark and Corliss Montesi spend only “about 20 percent of the year” at the Ocean 503 Property. Montesi Dep. 15:18.

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5. Mark Montesi understands the Ocean 503 Property's northerly and southerly side property lines extend “from the front of the lot to the mean low water mark ... 140 feet.” Montesi Dep. 18:23-25.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

6. From 2013 to 2018, Mark Montesi owned real estate located at 66 Cranberry Street, Wells, Maine. Montesi Dep. 25:22-25, 26:1-8.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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7. 66 Cranberry Street is not waterfront real estate, located approximately .25 miles from Moody Beach. Montesi Dep. 26:1-8.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

8. From 2013 to 2018, Mark Montesi and his family utilized “North Beach in Ogunquit” for beach activities. Montesi Dep. 26:13-20.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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9. From 2013 to 2018, Mark Montesi utilized the beach north of the Ogunquit and Wells Town division line to walk the beach more than 50, but less than 100 times. Montesi Dep. 28:2-10.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

10. Currently, Mark Montesi uses Moody Beach to sit, paddleboard, surf, and swim. Montesi Dep. 37:9-11, 37:20-22.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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11. Mark Montesi “hired someone to ... affix [signs] to the [sea]wall” on the Ocean 503 Property facing the ocean that state “PRIVATE BEACH”. Montesi Dep. 34:15-25, 35:1-5; *See* Montesi Dep. Ex. 4.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

12. Mark Montesi had a sign installed on Ocean 503 Property seawall that states “MOODY BEACH IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING.” Montesi Dep. 40:9-17; *See* Montesi Dep. Ex. 4 & 5.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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13. Mark Montesi understands “because it’s a private beach, it’s in [his] discretion, if [he] wanted” to tell people to get off the beach area seaward the Ocean 503 Property. Montesi Dep. 38:1-8.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement

have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

14. Mark Montesi has never asked the public to move or relocate off the private area of Ocean 503 Property. Montesi Dep. 38:2-6, 43:9-11, 44:21-23, 45:22-24.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

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15. Despite his sign, Mark Montesi does not consider swimming, surfing, sitting, building sandcastles, or "recreating" on the beach "loitering." Montesi Dep. 42:12-16, 42:22-25, 43:1-4, 44:7-10.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

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have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

16. Despite the existence of the sign, Mark Montesi recognizes the public "has every right to fish" on the Ocean 503 Property. Montesi Dep. 39:20.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

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17. Despite the existence of the sign, Mark Montesi recognizes the public has "every right" to walk across the intertidal portion of the Ocean 503 Property. Montesi Dep. 39:22-24.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

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Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

18. Despite the existence of the sign, Mark Montesi recognizes the public has the right to “bird watch” on the Ocean 503 Property. Montesi Dep. 39:25, 40:1-3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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19. James Howe is the sole beneficiary of OA 2012 Trust. Deposition of James Howe dated February 8, 2023, page 17:10-14 (attached hereto as “Exhibit B”)(“Howe Dep.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

20. James Howe's father, Kevin J. Howe, and Kevin McCue, purchased the property at 3 Ocean Avenue in Wells (“OA 2012 Property”) in 1978. Howe Dep. 16:5-7; *See* 17:20-25, 18:1.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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21. The OA 2012 Property is James Howe's permanent residence. Howe Dep. 29:19-21.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

22. James Howe believes the OA 2012 property deed states the northerly and southerly side property lines extend to the Atlantic Ocean. Howe Dep. 22:20-23.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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23. OA 2012 claims “ownership over the intertidal land that's seaward of [the OA 2012 Property].” Howe Dep. 25:20-23.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

24. The OA 2012 Property displays private beach signage stating “MOODY BEACH (TO YOUR LEFT) IS A PRIVATE BEACH TO THE LOW WATER MARK NO LOITERING NO DOGS ALLOWED” attached to a seawall. Howe Dep. Ex. 5; *See* Howe Dep. 37:16-17, 39:2-3, 39:18, 39:25, 40:20-23.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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25. The OA 2012 Property contains private beach signage stating “MOODY BEACH PRIVATE NO LOITERING” attached to a seawall, Howe Dep. Ex. 6; *See* Howe Dep. 37:16-17, 39:2-3, 39:18, 39:25, 40:20-23.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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26. James Howe does not know by who or when the the “private beach” signage was installed on the OA 2012 Property. Howe Dep. 38:1, 38:17-19; *See* Howe Dep. 47:14-23.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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27. James Howe never attempted to remove the signage from the seawall and consents to its message. Howe Dep. 38:7-9, 47:24-25, 48:1-3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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28. OA 2012 "restrict[s] dogs from being on the beach" on the OA 2012 Property. Howe Dep. 40:20-25; See Howe Dep. Ex. 6.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

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29. OA 2012 signage restricts loitering, meaning "[the public is] not allowed to sit [or] hang out on the beach." Howe Dep. 42:15-16.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

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Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

30. OA 2012 does not consider “walking or running” to be loitering. Howe Dep. 42:20-22.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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31. OA 2012 does not consider “stopping and stretching” in place to be loitering, even if sitting down while doing so. Howe Dep. 42:23-25, 43:1-3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

32. OA 2012 does not consider “walking slowly; just sort of meandering ... walking around on [OA 2012 Property]” to be loitering. 43:6-13.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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33. OA 2012 does not consider “surfing” to be loitering. Howe Dep. 43:14-15.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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34. OA 2012 considers “sitting in the sand” loitering if you are “physically present” for more than 30 minutes in one spot. Howe Dep. 43:16-25, 44:1-4.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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35. OA 2012 does not consider “sitting with a fishing pole” to be loitering, “as long as you're fishing.” Howe Dep. 44:4-11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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36. OA 2012 states a fishing line “should be” for fishing not to be loitering. Howe Dep. 44:13-14.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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37. OA 2012 does not consider “building a sandcastle” to be loitering, stating “somebody can be there as long as they want as long as they’re building a sandcastle.” Howe Dep. 44:23-25, 45:1-3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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38. OA 2012 does not consider “playing frisbee ... on the intertidal land” to be loitering. Howe Dep. 45:4-7.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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39. OA 2012 has never “approached any members of the public to ask them to not be on ... the intertidal portion of [the OA 2012 Property].” Howe Dep. 45:20-24.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

40. OA 2012 and its invitees go running and walking along the intertidal land. Howe Dep. 65:23-24, 66:1-2.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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41. OA 2012 and its invitees play bocce “up and down the beach” on the intertidal land. Howe Dep. 66:3-18.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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42. OA 2012 and its invitees “surf or boogie board” on the intertidal land. Howe Dep. 66:18-20.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

43. OA 2012 and its invitees ride waves “in front of other houses” on the intertidal land of Moody Beach. Howe Dep. 66:24-25, 67:1-2.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

44. OA 2012 understands “because it's a private beach to the low tide mark, yes, we have the right to” “ask someone to leave the intertidal land.” Howe Dep. 70:22-25, 71:1-4.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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45. Keith Dennis is the sole member of Judy's Moody, LLC. Deposition of Keith Dennis dated February 10, 2023, page 13:15-17 (attached hereto as “Exhibit C”)(“Dennis Dep.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

46. Keith Dennis purchased a portion of the property at 407 Ocean Avenue in Wells, Maine (“Judy's Moody Property”) in 1991. Dennis Dep. Ex. 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

47. Keith Dennis purchased a portion of the Judy's Moody Property in 2016. Dennis Dep. Ex. 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

48. Keith Dennis transferred the Judy's Moody Property to Judy's Moody, LLC on July 28, 2016. Dennis Dep. Ex. 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

49. Keith Dennis' primary residence is in Virginia. Dennis Dep. 26:19-21.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

50. The Judy's Moody Property northerly and southerly side property boundaries extend “to the Atlantic Ocean.” Dennis Dep. Ex. 3; *See* Dennis Dep. 19:22, 20:4-6.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

51. The Judy's Moody Property contains private beach signage stating “PRIVATE BEACH” attached to a seawall, Dennis Dep. Ex. 7 (“Ex. _ “); *See* Dennis Dep. 47:6-7.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

52. Judy's Moody has placed additional private beach signage stating “Private Property, No Trespassing,” and signage referencing “low tide.” Dennis Dep. 49:18-20.

OBJECTION: This statement is neither relevant nor material to Plaintiffs'

claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

53. Wells Police Department has told Judy's Moody that they will respond to calls regarding trespass on the Judy's Moody Property “private beach.” Dennis Dep. 55:14-20.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

54. Judy's Moody has provided members of the public written permission to use the Judy's Moody Property for discrete periods of time. Dennis Dep. 57:12-13.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union*

v. Roberge, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

55. From 2016-2018, Judy's Moody “had allowed, basically, any[]” use of the Judy's Moody Property. Dennis Dep. 58:4-5.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

56. Judy's Moody has allowed “strangers ..., or members of the public, ...” to use Judy's Moody Property for “the vast majority of activities.” Dennis Dep. 57:23-25, 58:2-3

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material

facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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57. Judy's Moody, has given permission to “strangers ..., or members of the public, ... to set up tables on [its] sand.” Dennis Dep. 57:23-25, 58:7-9.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

58. Judy's Moody has physically removed a back lot owner's personal property on the Judy's Moody Property. Dennis Dep. 79:21-22.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be

admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

59. Moody Beach Association has organized numerous charity events that take place at least partially, on the Judy's Moody Property. Dennis Dep. 84:4-10.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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60. Moody Beach Association organizes “an event ... called ‘Moody Beach Days’ annually held on the Fourth of July. Dennis Dep. 85:5-8.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

61. Judy's Moody understands Moody Beach Association has held the annual “Moody Beach Days” event for the past “30 or 40 years.” Dennis Dep. 85:13-14.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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62. Each year since 1956 on the fourth of July, Moody Beach Association runs the beach games where “four to five-hundred people there for several hours ... watch[] kids races and sack races all those kinds of things.” P. Masucci Dep. Vol I 123:10-13.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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63. During “Moody Beach Days,” members of the public and organizers access the Judy's Moody Property, including but not limited to the intertidal, the dry sand area, the stairs, seawall, and developed portion of Judy's Moody Property. Dennis Dep. 85:25, 86:1-4.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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64. At the Moody Beach Games, “families might just sit there, and the kids might dig in the sand, build a sandcastle or drip castle.” P. Masucci Dep. Vol I 123:13-16.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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65. From 2018 and 2021, Judy's Moody “gave the Moody Beach Association written permission to have their Fourth of July parade the Fourth of July event and sandcastle contest on [the Judy's Moody Property] ... above the high tide to low tide.” Dennis Dep. 121:9-24.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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66. Judy's Moody has used numerous objects to mark the northerly boundary line separating the Judy's Moody Property from the abutting public way, including but not limited to “a big piece of wood,” “cones,” “raked seaweed,” and other “control type things.” Dennis Dep. 93:4-11, 94:9-10; *See* Deposition of Kathy Masucci dated January 13, 2023, page 81:9-11 (attached hereto as “Exhibit D”)(“K. Masucci Dep.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union*

v. Roberge, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

67. Judy's Moody, or its representatives and invitees, have contacted the Wells Police Department on numerous occasions for assistance removing members of the public from the intertidal land on Judy's Moody Property. Dennis Dep. Ex. 9.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

68. Judy's Moody subjectively chooses when to enforce its right to exclude the public from its intertidal land. Dennis Dep. 111:10-18.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union*

v. Roberge, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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69. Judy's Moody recognizes “thousands of people visit the beach” each year and use the intertidal land in ways “they probably aren't allowed to do.” Dennis Dep. 111:1-3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

70. Judy's Moody “generally give[s] people permission or implied permission to do a lot of stuff that are well beyond [navigation], including things that are potentially not.” Dennis Dep. 122:12-21.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*,

2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

71. Members of the public bring “bring coolers full of beer and sit in the low tide and smoke” without obtaining permission of Judy's Moody. Dennis Dep. 111:4-5.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

72. Kathy Masucci's grandfather purchased the original property located at 484 Ocean Avenue (the “Masucci Property”). K. Masucci Dep. 12:12-13.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material

facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

73. Kathy and Peter Masucci are co-trustees of the Peter F. and Kathy E. Masucci Trust which currently owns the Masucci Property. Plaintiff Peter Masucci's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 3 (attached hereto as “Exhibit E”)(“P. Masucci Resp. Ocean 503 Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

74. Kathy and Peter Masucci began living at the Masucci Property as their year-round residence in 2002. K. Masucci Dep. 13:9; *See* P. Masucci Resp. Ocean 503 Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’

claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

75. Kathy Masucci has been on the intertidal zone of the Ocean 503 “hundreds to thousands” of times, visiting Moody Beach “since [she] was born” and consistently for the past “73 years.” K. Masucci Dep. 16:3-16.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

76. Kathy Masucci's activity on the intertidal areas of Moody beach has included:
a. “walk[ing] over” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:6, 74:1-2.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

- b. running on the intertidal area of the Judy's Moody Property. K. Masucci Dep. 74:3-5.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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- c. stopping and resting on the intertidal area of the Judy's Moody Property. K. Masucci Dep. 74:7-9.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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d. stopping to look at the water when walking. K. Masucci Dep. 108:1-4.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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e. “sitting on the beach” on the Ocean 503 Property. K. Masucci Dep. 17:21.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union*

v. Roberge, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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f. “digging holes” in the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:21.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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g. “playing bocci” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:21-22.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material

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- h. playing “kickball” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:23.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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- i. sitting and “reading” on the intertidal area of the Ocean 503 Property. K. Masucci Dep. 17:23, 18:5.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be

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j. “play[ing] baseball” on the intertidal area of the Ocean 503 Property. K. Masucci
Dep. 57:7, 57:14

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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k. sitting to observe wildlife on the intertidal area of the Judy's Moody Property.
K. Masucci Dep. 74:10-12.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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1. building sandcastles on the intertidal area of the Judy's Moody Property. K. Masucci Dep. 74:13-15.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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- m. “boogie boarding” in the water adjacent to Judy's Moody Property. K. Masucci Dep. 75:5-7.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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77. Kathy Masucci first noticed the signage on the Ocean 503 Property “within the past ten years.” K. Masucci Dep. 19:16.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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78. The Ocean 503 Property signage caused Kathy Masucci to “feel that you are .. trespassing every time you go onto [the] beach” on the Ocean 503 Property. K. Masucci Dep. 37:25, 38:1-4.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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79. The Ocean 503 Property signage caused Kathy Masucci to “specifically avoid the intertidal land [on the] Ocean 503 Property,” including but not limited to “sit[t]ing or build[ing] sand - to do sedentary activit[ies], games, digging.” K. Masucci Dep. 39:4-7.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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80. Kathy Masucci is “sad, angry, frustrated, discouraged” when seeing the private property signs on Moody Beach. K. Masucci Dep. 112:17; *See* K. Masucci Dep. 115:9-16

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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81. Kathy Masucci’s experience is “negatively affected” by the private property signage at Moody Beach. K. Masucci Dep. 113:3-5.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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82. Kathy Masucci has not “set up camp or sat down all of her things ... on the intertidal zone of [the] Ocean 503 Property” since “prior to the signs.” K. Masucci Dep. 18:22-25.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be

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83. Kathy Masucci “consciously sit[s] in the confines of the public way” since the Private Property signage went up. K. Masucci Dep. 105:16-17.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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84. Kathy Masucci reasons “I would not have sat there” after the signs were posted, adding “that is when I stopped sitting there.” K. Masucci Dep. 55:12-15.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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85. Peter Masucci visits Moody Beach “in the wintertime, probably once or twice a week ... in the summertime, it’d probably be three or four times a week. Deposition of Peter Masucci dated January 11, 2023, Volume I, page 13:5-8. (attached hereto as “Exhibit F”)(“P. Masucci Dep. V. I”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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86. In the wintertime, “[Peter and Kathy Masucci] go on the beach and walk,” “often walk[ing] the entire length of the beach down to Ogunquit Beach.” P. Masucci Dep. Vol. I 14:27.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material

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87. In the summertime, Peter and Kathy Masucci “walk often, but ... would often take our beach chairs and sit on the beach.” P. Masucci Dep. Vol. I 14:17-18.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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88. In the summertime, Peter and Kathy Masucci sit on the beach and “read a book” in the intertidal area. P. Masucci Dep. Vol. I 14:19, 15:8.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material

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89. Peter Masucci and his family would regularly use the entire intertidal portion of Moody Beach prior to upland owners' installation of private property signage and confrontations with members of the public. P. Masucci Resp. Ocean 503 Int., ¶ 4.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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90. Peter Masucci's activity on the intertidal areas of Moody beach has included:
a. “play[ing] in the water ... bodysurfing or just splashing around” with his grandchildren. P. Masucci Dep. Vol. I 14:19-22; *See* P. Masucci Dep. Vol. I 37:14-18.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’

claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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b. “buil[ing] sandcastles and sand forts” which his children “would play in the little sand forts until the tide came in and washed it away.” P. Masucci Dep. Vol. I 14:22-25, 15:1; *See* P. Masucci Dep. Vol. I 37:14-18.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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c. walking from his house south to the Ogunquit Wells Town Line. Deposition of Peter Masucci dated January 13, 2023, Volume II, page 11:12-16. (attached hereto as “Exhibit G”)(“P. Masucci Dep. V. II”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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d. jogging the length of Moody Beach in his “20s and 30s.” P. Masucci Dep. Vol I 120:17-25.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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e. occasionally “stop[ing] to observe nature, watch the birds ... watch people fishing we would stop to enjoy the view or watch” while running in the intertidal zone of Moody Beach. P. Masucci Dep. Vol. I 121:1-24.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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f. sitting down on the sand and in beach chairs watching the beach activity. Beach. P. Masucci Dep. Vol I 122:4-12.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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g. observing “kids down there picking up rocks, looking under the rocks trying to find crabs, looking for periwinkles, looking for starfish.” P. Masucci Dep. V. II. 23:2-8.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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h. “boogieboarding and bodysurfing” with his family on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 48:19-21.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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- i. “skimboard” with his family on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 49:20-24.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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- j. along with dozens of other families, playing “Bocci” ball on the intertidal land of the Ocean 503 Property. P. Masucci Dep. Vol. I 53:16; *See* P. Masucci Dep. Vol. I 119:9-10.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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- k. playing many games, including but not limited to “tag football, paddleball, wiffle ball, baseball, play catch with [his] kids, throwing a baseball.” P. Masucci Dep. Vol I 143:18-20.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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91. Peter Masucci's children took advantage of the low tides to play in tide pools formed in the intertidal areas of Moody Beach. P. Masucci Dep. V. II. 22:4-5.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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92. Peter Masucci will “will no longer put [his] chairs down in front of [the Ocean 503 Property]” since the signs first appeared on the Ocean 503 Property. P. Masucci Dep. Vol. I 37:1-8; *See* P. Masucci Resp. Ocean 503 Int., ¶ 11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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93. Peter Masucci and his family “no longer dig for seaworms on portions of the intertidal land” since the private property signage has been posted. P. Masucci Dep. Vol. 146:2023; *See* P. Masucci Resp. Ocean 503 Int., ¶ 11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8;

Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

94. Peter Masucci has witnessed Keith Dennis of Judy's Moody “come down the steps onto the sand and gone to talk to people ... they're lifting up their chairs and moving it over into the narrow public way” in the intertidal zone. P. Masucci Dep. Vol. I 114:2-8.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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95. Peter Masucci “could probably name hundreds of people who have either been told or expressed to me their concern and fear, if you will, that if they were to stop, a fear of intimidation, if you will, that they're going to be asked to move or, worse, that the police are going to be called on them.” P. Masucci Dep. Vol. I 130:18-25.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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96. William Connerney is a trustee of the Connerney Nominee Trust which owns property at 130 South Tibbetts Road in Wells, Maine. Deposition of William Connerney dated January 11, 2023, page 11:2 (attached hereto as “Exhibit H”) (“Connerney Dep.”); *See* Plaintiff William Connerney's Response to Ocean 503's First Set of Interrogatories dated December 19, 2023, response 3 (attached hereto as “Exhibit I”) (“Connerney Resp. Ocean 503 Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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97. William Connerney's activity on the intertidal areas of Moody Beach has included:

- a. “constantly walking the beach down to Ogunquit Beach. It makes an interesting walk, a lot of sightseeing.” Connerney Dep. 13:6-9; *See* Plaintiff William Connerney's Answers to Defendants OA Trust's and Judy's Moody LLC's First

Set of Interrogatories dated January 5, 2023, response 3 (attached hereto as “Exhibit J”)(“Connerney Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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b. playing “all kinds of games through the years.” Connerney Dep. 13:10-12; *See* Connerney Resp. Ocean 503 Int., ¶ 11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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c. “body surf[ing] in the water.” Connerney Dep. 13:12-13.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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d. “play[ing] in the sand ... with the kids.” Connerney Dep. 13:13-14; *See* Connerney Resp. Ocean 503 Int., ¶ 11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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e. playing “hand tennis, where you make yourself a little court,” Connerney Dep. 13:16-17; *See* 35:7-14; *See also* Connerney Resp. Ocean 503 Int., ¶ 11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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f. flying a kite. Connerney Dep. 13:17.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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g. “looking for sea crabs and seashells.” Connerney Dep. 13:18-19; *See* Connerney Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union*

v. Roberge, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

h. walking and jogging. Connerney Dep. 13:21; *See* Connerney Resp. Ocean 503 Int., ¶ 11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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i. “ha[ving] lunch on the beach, and it could have well been on some of the prohibited land.” Connerney Dep. 63:23-25.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material

facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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j. “walk[ing] [his dog] regularly on a leash through the [prohibited] property” when he had a dog. Connerney Dep. 64:18-20.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

98. William Connerney's daughter, Jeannie Connerney, is an avid runner and runs on the intertidal portion of Moody Beach almost daily in the summer and fall. Connerney Resp. Ocean 503 Int., ¶ 11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material

facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

99. Jeannie Connerney stretches before, during and after her run on the intertidal area. Connerney Resp. Ocean 503 Int., ¶ 11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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100. Jeannie Connerney stands on the intertidal area of Moody Beach for approximately 5 to 15 minutes after her run. Connerney Resp. Ocean 503 Int., ¶ 11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be

admissible at trial.”).

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101. Jeannie Connerney takes off her shoes and wades in the water to cool down after her run. Connerney Resp. Ocean 503 Int., ¶ 11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

102. In 1989, after the affirmation of beach front owner rights, William Connerney continued “to use [the intertidal] the way [he] wanted to use it” because “no one ever stopped [him].” Connerney Dep. 69:1-5.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material

facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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103. William Connerney “felt hindered in what [he] would do” “later when stories started to arise” approximately 10 to 15 years ago. Connerney Dep. 69:6-9.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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104. William Connerney is affected by the approximately 30 private property signs because “you know that they don’t want you there, so you really walk with anticipation of what might happen.” Connerney Dep. 26:1-4; *See* Connerney Dep. 25:23, Connerney Resp. Ocean 503 Int., ¶ 6.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’

claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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105. William Connerney is “very cautious” when traversing the Ocean 503 Property recognizing “that [Ocean 503] could come down someday and kick me off.” Connerney Dep. 18:8-10.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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106. Confrontations with private property owners and private property signage has “cause [William Connerney] and [his family] to become concerned that if [they] should occupy any portion of the intertidal land seaward of any of the Defendant's property, then [they] would

be approached and told to leave.” Connerney Resp. Ocean 503 Int., 11; *See* Connerney Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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107. William Connerney” whole attitude regarding the beach has changed because of the signs. [He] is aware then as soon as [he] enter[s] the beach that [he is] restricted.” Connerney Dep. 78:20-23.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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108. William Connerney plays hand tennis less due to the “prohibition of that it might get challenged ...[because] It's hard to identify who would ask us to leave.”

Connerney Dep. 36:5-12.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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109. William Connerney considers “fowling” to include “taking a picture of geese ... it has a modern meaning ... that shooting a picture, walking to ... access where you want to take the picture.” Connerney Dep. 63:6-15.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

110. William Connerney considers “navigation” to mean “navigating your way” to a specific place, “not limited to finding your way to the water.” Connerney Dep. 66:9-22

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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111. William Connerney understands the modern interpretation of fishing, fowling and navigation to include commercial and recreational uses of intertidal land as permitted by the state legislature. Connerney Resp. Ocean 503 Int., ¶ 9.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

112. William Griffith and Sheila Jones own the Crows' Nest Resort in Old Orchard Beach, Maine. Deposition of William Griffiths dated January 12, 2023, page 13:14-16. (attached hereto as “Exhibit K”)(“Griffiths Dep.”); *See* Plaintiff William Griffiths' Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 21, 2022, response 1 (attached hereto as “Exhibit L”)(“Griffiths Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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113. The Crows' Nest Resort is dependent on free use of Maine's beaches. Griffiths Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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114. The Crows' Nest Resort is affected by claims that the intertidal is private by making it less likely "customers will return for fear that they will be approached by upland owners or the police acting on their behalf." Griffiths Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

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115. Approximately a half dozen Crows' Nest guests have been to Moody Beach since William Griffiths and Sheila Jones have owned the hotel. Griffiths Dep. 53:7-11.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

116. The Crows' Nest guests have commented “that the signs [at Moody Beach] were — were troublesome to them.” Griffiths Dep. 53:14-15; *See* Plaintiff William Griffiths' Response to Ocean 503's First Set of Interrogatories dated December 21, 2023, response 6 (attached hereto as “Exhibit M”)(“Griffiths Resp. Ocean 503 Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

117. The Crows' Nest guests “couldn't understand why they would shut a beach down” to the public. Griffiths Dep. 53:16-17.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be

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118. Approximately 50 years ago, William Griffiths visited Moody Beach to play football with friends, Griffiths Dep. 59:7-12.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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119. Judith and Orlando Delogu have lived in Maine since the 1960's. Plaintiff Judith Delogu's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 2 (attached hereto as “Exhibit N”)(“J. Delogu Resp, Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material

facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

120. Orlando Delogu has walked the length of Moody Beach on multiple occasions. Plaintiff Orlando Delogu's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 5, 2023, response 2 (attached hereto as “Exhibit 0”)(“O. Delogu Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

121. Orlando Delogu has “walked the beach” within the intertidal area on Moody Beach. Deposition of Orlando Delogu dated January 12, 2023, page 132:8 (attached hereto as “Exhibit P”)(“O. Delogu Dep.”); *See also* O. Delogu Resp. Judy's Moody Int, ¶ 2.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’

claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

122. Orlando Delogu's activity on Moody Beach was “simply to get an... understanding of the shape and character and frequency, and the degree to which they ... are to be found, of signage that is designed to intimidate recreational users of the beach from engaging in [recreational] activities.” O. Delogu Dep. 121:1-8.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

123. Orlando Delogu recognizes the purpose of private property signage at Moody Beach as “a warning and a deterrent that the upland owner makes a claim of ... ownership and

presumably then could exercise his asserted right to have me removed from the property by calling the police ... or by coming down, themselves, and either asking me to leave ... or physically escorting me off the property.” O. Delogu Dep. 38:14-23.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

124. Orlando Delogu understands the intent of private property owners when posting private property signage is to “cause[] an infringement on the rights of the public to make use of the intertidal zone.” O. Delogu Dep. 145:9-13.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging

in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

125. Judith and Orlando Delogu's activity on and across the intertidal land seaward of upland property on Maine's coastline has included:

- a. walking stretches of beach. J. Delogu Resp. Judy's Moody Int., ¶ 3; *See O. Delogu Resp. Judy's Moody Int, ¶ 3.*

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

- b. sitting in the sand to watch birds and other wildlife. J. Delogu Resp. Judy's Moody Int., ¶ 3; *See O. Delogu Resp. Judy's Moody Int, ¶ 3.*

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8;

Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

- c. wading in the water and sometimes swimming along the beach. J. Delogu Resp. Judy's Moody Int., ¶ 3; *See* O. Delogu Resp. Judy's Moody Int, ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

- 126. treading water in place as the waves crash while swimming in the ocean. J. Delogu Resp. Judy's Moody Int, ¶ 3; *See* O. Delogu Resp, Judy's Moody Int, ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging

in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

127. Judith Delogu, due to her advanced age, needs to stop and rest while walking along the intertidal area. J. Delogu Resp. Judy's Moody Int.,113; *See* O. Delogu Resp. Judy's Moody Int, ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

128. “Jeffery E. Parent and Margaret G. Parent (collectively the “Parents”) own waterfront property in Waldoboro, Maine.” Stipulations Between Plaintiffs and Defendants Jeffery Parent and Margaret Parent dated April 12, 2023, 1 (attached hereto as “Exhibit Q”)(“Parent Stip. F.”).

ADMIT.

129, “The Parents claim to own the seaweed affixed to the rocks in the intertidal land seaward of their upland property.” Parent Stip. F., ¶ 4.

ADMIT.

130. “None of the Plaintiffs have directly harvested seaweed from the intertidal zone seaward of the Parents' upland property.” Parent Stip. F., ¶ 7.

ADMIT.

131. “None of the Plaintiffs have been present on or conducted any activity on or over the intertidal portion of the Parents' property.” Parent Stip. F., ¶ 8.

ADMIT.

132. “The Parents stated to [seaweed] harvester[s] that he needed permission to cut and remove the attached rockweed.” Parent Stip. F., ¶ 13.

ADMIT.

133. “In 2016, the harvester with whom the Parents interacted harvested attached rockweed from Maine Department of Marine Resources Sector 5-13, which includes the intertidal portion of the Parents' property.” Parent Stip. F., ¶ 19.

ADMIT

134. “In 2016, the harvester with whom the Parents interacted sold seaweed to a company that is owned by Plaintiff Robert Morse and that employs Plaintiff John Grotton.” Parent Stip. F., ¶ 22.

ADMIT.

135. Brian Beal is a professor of Marine Ecology at the University of Maine at Machias residing at 37 Clarks Point Road in Machiasport, Maine. Plaintiff Brian Beal's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 28, 2023, response I (attached hereto as “Exhibit R”)(“Beal Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material

facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

136. Brian Beal's “activities in the intertidal portion of the Maine coast ... include performing research on commercially important shellfish, marine worms, rockweed, and other intertidal organisms.” Beal Resp. Judy's Moody Int., ¶ 3.

OBJECTION: To the extent Mr. Beal’s research involves removing shellfish and marine worms, that activity is an acknowledged public right within the intertidal zone in Maine. *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 36 n.12, 206 A.3d 283, 294 (Saufley, J., concurring). To the extent Mr. Beal’s research involves removing attached, living rockweed, that activity is not within the public’s rights in the intertidal zone in Maine. *Id.* ¶¶ 33, 43. This statement lacks any factual foundation sufficient to determine the meaning of the activity of “research.” This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8;

Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

137. Brian Beal has “clammed in and around the town of Jonesport.” Beal Resp. Judy's Moody Int., ¶ 3.

OBJECTION: Clamming is an acknowledged public right within the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶ 36 n.12. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: The Parents’ property is in Waldoboro, not in Jonesboro. (Stip. Facts ¶ 1; Parent SMF ¶ 1.) Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

138. Brian Beal has “spent recreational time on Maine beaches.” Beal Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

139. Brian Beal's work is affected by claims that the intertidal is private “making it more difficult to obtain and maintain permission to perform research on intertidal land.”
Beal Resp. Judy's Moody Int., ¶ 4.

OBJECTION: Plaintiffs’ claims regarding fee ownership of intertidal land have been dismissed from this action. This statement lacks foundation. M.R. Evid. 602. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

140. Susan Domizi runs a “business that relies on a consistent supply of seaweed that is harvested on intertidal land.” Plaintiff Susan Domizi's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 4, 2023, response 3 (attached hereto as “Exhibit S”)(“Domizi Resp. Judy's Moody Int.”).

OBJECTION: Ms. Domizi’s business model is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed.*

Credit Union v. Roberge, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

141. Susan Domizi has “spent recreational time on Maine beaches.” Domizi Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

142. Susan Domizi's work is affected by claims that the intertidal is private “making it more difficult to run [her] business because [her] harvesters are being harassed by upland owners.” Domizi Resp. Judy's Moody Int., ¶ 4.

OBJECTION: Plaintiffs’ claims regarding fee ownership of intertidal land have been dismissed from this action. This statement lacks any factual foundation,

M.R. Evid. 602, and is otherwise inadmissible hearsay, M.R. Evid. 802. Ms. Domizi nor any other Plaintiff has identified any specific instance in which they or anyone else have been “harassed by upland owners.” M.R. Evid. 602. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

143. Amanda Moeser resides at 21 Larrabees Grove Road in West Bath, Maine. Plaintiff Amanda Moeser's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as “Exhibit T”) (“Moeser Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging

in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

144. Amanda Moeser uses the intertidal for oyster farming and clamming.
Moeser Resp. Judy's Moody Int., ¶ 3.

OBJECTION: Clamming and shellfishing are acknowledged public rights within the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶ 36 n.12. Oyster farming is a form of aquaculture that requires “written permission of every riparian owner whose land to the low water mark will be actually used.” 12 M.R.S. § 6072 (4)(f). This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

145. Amanda Moeser has “spent recreational time on Maine beaches.” Moeser Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement

have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

146. Amanda Moeser's work is affected by claims that the intertidal is private “making it more difficult to obtain and maintain aquaculture licenses in the intertidal.” Moeser Resp. Judy's Moody Int., ¶ 4.

OBJECTION: Plaintiffs’ claims regarding fee ownership of intertidal land have been dismissed from this action. This statement lacks any factual foundation. M.R. Evid. 602. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

147. Greg Tobey resides at 207 Meadow Road in Woolwich, Maine. Plaintiff Greg Tobey's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated January 4, 2023, response 1 (attached hereto as “Exhibit U”)(“Tobey Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union*

v. Roberge, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

148. Greg Tobey's “activities in the intertidal portion of the Maine coast ... include harvesting seaweed, collecting data, and clamming.” Tobey Resp. Judy's Moody Int., ¶ 3

OBJECTION: To the extent Mr. Tobey has engaged in clamming, that activity is an acknowledged public right within the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶ 36 n.12. To the extent Mr. Tobey has engaged in removing attached, living rockweed, that activity is not within the public’s rights in the intertidal zone in Maine. *Id.* ¶¶ 33, 43. The activity of “collecting data” lacks any factual foundation to understand its meaning or determine whether it is relevant. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

149. Greg Tobey has “spent recreational time on Maine beaches.” Tobey Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

150. Greg Tobey's work is affected by claims that the intertidal is private “making it impossible to harvest seaweed” in the privately held intertidal. Tobey Resp. Judy's Moody Int., r 4.

OBJECTION: Plaintiffs’ claims regarding fee ownership of intertidal land have been dismissed from this action. This statement lacks any factual foundation. M.R. Evid. 602. To the extent that Mr. Tobey asserts the right to harvest living, attached seaweed from private intertidal land without permission, that is not a cognizable legal claim. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

151. Chad Coffin resides at 26 Litchfield Road in Freeport, Maine. Plaintiff Chad Coffin's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as “Exhibit V”) (“Coffin Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

152. Chad Coffin uses the intertidal for clamming. Coffin Resp. Judy's Moody Int., ¶ 3.

OBJECTION: To the extent Mr. Coffin has engaged in clamming, that activity is an acknowledged public right within the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶ 36 n.12. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016

ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

153. Chad Coffin has “spent recreational time on Maine beaches.” Coffin Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

154. Chad Coffin's work is affected by claims that the intertidal is private “making it more difficult to harvest clams in the intertidal because upland owners harass me while I am doing my work.” Tobey Resp. Judy's Moody Int., ¶ 4.

OBJECTION: Plaintiffs’ claims regarding fee ownership of intertidal land have been dismissed from this action. Clamming is an acknowledged public right in the

intertidal zone. *Ross*, 2019 ME 45, ¶ 36 n.12. This statement lacks any factual foundation. M.R. Evid. 602. Neither Mr. Coffin nor any other Plaintiff has identified any specific instance in which they or anyone else have been “harassed by upland owners.” M.R. Evid. 602. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

155. Leroy Gilbert resides at 601 Puddle Road in Waldoboro, Maine. Plaintiff Chad Coffin's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 30, 2022, response 1 (attached hereto as “Exhibit W”)(“Gilbert Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8;

Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

156. Leroy Gilbert uses the intertidal for seaweed harvesting. Gilbert Resp. Judy's Moody Int., ¶ 3.

OBJECTION: To the extent Mr. Gilbert has harvested attached, living rockweed from private intertidal land without permission, that activity is not within the public's rights in the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

157. Leroy Gilbert has “spent recreational time on Maine beaches.” Gilbert Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

158. Leroy Gilbert's work is affected by claims that the intertidal is private “making it more difficult to harvest seaweed in the intertidal along the Maine coast.” Gilbert Resp. Judy's Moody Int., ¶ 4.

OBJECTION: Plaintiffs’ claims regarding fee ownership of intertidal land have been dismissed from this action. This statement lacks any factual foundation. M.R. Evid. 602. To the extent that Mr. Gilbert asserts the right to harvest living, attached seaweed from private intertidal land without permission, that is not a cognizable legal claim. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

159. John Grotton resides at 2 Victoire Lane in Augusta, Maine. Plaintiff John Grotton's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of

Interrogatories dated December 31, 2022, response 1 (attached hereto as “Exhibit X”)(“Grotton Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

160. John Grotton's runs a “business that depends on a consistent supply of seaweed that grows in the intertidal.” Grotton Resp. Judy's Moody Int., ¶ 3

OBJECTION: The business model of Mr. Grotton’s business is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

161. John Grotton has “spent recreational time on Maine beaches.” Grotton Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

162. John Grotton's work is affected by claims that the intertidal is private “making it more difficult to harvest seaweed in the intertidal.” Grotton Resp. Judy's Moody Int., ¶ 4.

OBJECTION: Plaintiffs’ claims regarding fee ownership of intertidal land have been dismissed from this action. This statement lacks any factual foundation. M.R. Evid. 602. To the extent that Mr. Grotton asserts the right to harvest living, attached seaweed from private intertidal land without permission, that is not a cognizable legal claim. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement

have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

163. Dan Harrington resides at 274 Dana Mills Road in Woolwich, Maine. Plaintiff Dan Harrington's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as “Exhibit Y”) (“Harrington Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

164. Dan Harrington uses the intertidal for seaweed harvesting. Harrington Resp. Judy's Moody Int., ¶ 3.

OBJECTION: To the extent Mr. Harrington has harvested attached, living rockweed from private intertidal land without permission, that activity is not within the public’s rights in the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7

(“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

165. Dan Harrington has “spent recreational time on Maine beaches.” Harrington Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

166. Dan Harrington's work is affected by claims that the intertidal is private “making it more difficult to harvest seaweed in the intertidal because upland owners harass me.” Harrington Resp. Judy's Moody Int., ¶ 4.

OBJECTION: Plaintiffs’ claims regarding fee ownership of intertidal land have been dismissed from this action. To the extent that Mr. Harrington asserts the right to harvest living, attached seaweed from private intertidal land without

permission, that is not a cognizable legal claim. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement lacks any factual foundation. M.R. Evid. 602. Neither Mr. Harrington nor any other Plaintiff has identified any specific instance in which they or anyone else have been “harassed by upland owners.” This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

167. Jake Wilson resides at 79 Woody Lane in Cushing, Maine. Plaintiff Jake Wilson's Answers to Defendants OA Trust's and Judy's Moody LLC's First Set of Interrogatories dated December 19, 2022, response 1 (attached hereto as “Exhibit Z”)(“Wilson Resp. Judy's Moody Int.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8;

Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

168. Jake Wilson uses the intertidal for seaweed harvesting. Wilson Resp. Judy's Moody Int., ¶ 3.

OBJECTION: To the extent Mr. Wilson has harvested attached, living rockweed from private intertidal land without permission, that activity is not within the public's rights in the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

169. Jake Wilson has “spent recreational time on Maine beaches.” Wilson Resp. Judy's Moody Int., ¶ 3.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement

have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

170. Jake Wilson's work is affected by claims that the intertidal is private “making it more difficult to harvest seaweed in the intertidal.” Wilson Resp. Judy's Moody Int., ¶ 4.

OBJECTION: Plaintiffs’ claims regarding fee ownership of intertidal land have been dismissed from this action. This statement lacks any factual foundation. M.R. Evid. 602. To the extent that Mr. Wilson asserts the right to harvest living, attached seaweed from private intertidal land without permission, that is not a cognizable legal claim. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

171. George Seaver has “been in the seaweed and fertilizer business for forty-four (44) years.” Affidavit of George Seaver dated April 28, 2023, paragraph 9 (attached hereto as “Exhibit AA”)(“Seaver Aff.”).

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union*

v. Roberge, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

172. George Seaver's company, Ocean Organics, “utilizes seaweed resources to produce fertilizer for application in the agriculture and turf industries.” Seaver Aff., ¶¶ 3-4.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

173. Ocean Organics “process[es] live rockweed harvested from the intertidal zone, primarily in the mid-coast region of Maine, ... to produce a liquid extract, which is in turn processed into our proprietary liquid supplements, and sold to customers for use in conjunction with fertilizers to increase their efficacy.” Seaver Aff., ¶¶ 5-6.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’

claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

174. Approximately 60% of Ocean Organics product sales are to agricultural customers, with the remaining 40% to horticultural customers. Seaver Aff., ¶ 7.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

175. George Seaver’s business and livelihood “depend upon reasonable access to and sustainable use of the intertidal zone.” Seaver Aff., ¶ 8.

OBJECTION: This statement lacks any factual foundation. M.R. Evid. 602. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents.

M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

176. Ocean Organics has “developed and improved [its] fertilizer products and their use instructions through intensive research and development over the years.” Seaver Aff., ¶ 10.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

177. “Ocean Organics products use seaweed extracts as plant bio-stimulants, which increase the stress tolerance, efficiency, and ultimately yield of the plant or crop to which the product is applied.” Seaver Aff., ¶ 11.

OBJECTION: This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13

(quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). No foundation has been established for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

178. “Increased stress tolerance thereby improves the resilience of plants in bad or unfavorable weather conditions, including drought, flood, and extreme heat.” Seaver Aff., ¶ 12.

OBJECTION: This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). No foundation has been established

for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

179. “Seaweed extracts are the fastest-growing category of bio-stimulants currently being deployed in commercial agriculture.” Seaver Aff., ¶ 13.

OBJECTION: This statement lacks any factual foundation. M.R. Evid. 602. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

180. “Seaweed extracts are favored for their efficiency and cost-effectiveness, requiring a small amount of product per acre.” Seaver Aff., ¶ 14.

OBJECTION: This statement lacks any factual foundation. M.R. Evid. 602. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

181. “Research studies have shown that the use of seaweed extract results in a 5-15% increase in yield in the face of drought, flood, and heat conditions.” Seaver Aff., ¶ 15.

OBJECTION: This statement is inadmissible hearsay, M.R. Evid. 802, and is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). The statement lacks foundation, M.R. Evid. 602, and no foundation has been established for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims

against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

182. Ocean Organics “products ... play a role in confronting the world's food crisis in the midst of a changing climate, environment, and weather conditions.” Seaver Aff., ¶ 16.

OBJECTION: This statement lacks any factual foundation. M.R. Evid. 602. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

183. “Ocean Organics distributes product within the United States and abroad; a relatively small percentage of product is distributed within Maine and New England, while the bulk of domestic sales are to larger states with larger agriculture and turf economies such as the Midwest, Florida and California.” Seaver Aff., ¶ 17.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

184. “The seaweed industry has grown substantially since the turn of the 21st century and is positioned [to] play a key role in the future of Maine's ocean-resource-based economy.” Seaver Aff., ¶ 18.

OBJECTION: This statement lacks any factual foundation, M.R. Evid. 602, and is otherwise inadmissible hearsay, M.R. Evid. 802. This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

185. Ocean Organics “business has grown steadily over time, gaining international recognition and entering new markets abroad, including in Europe and Asia. The combining of seaweed extract with fertilizer is a multi-billion-dollar industry worldwide.” Seaver Aff., ¶ 19; *See* Affidavit of Robert Morse dated May 1, 2023, paragraphs 9 (attached hereto as “Exhibit BB”)(“Morse Aff.”).

OBJECTION: This statement lacks any factual foundation. M.R. Evid. 602. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

186. “Rockweed grows only in the North Atlantic Ocean. Although China produces other seaweed products, those products are considered less reliable than products derived from rockweed harvested in North America.” Seaver Aff., ¶ 20.

OBJECTION: This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). The statement lacks foundation, M.R. Evid 602, and no foundation has been established for Mr. Seaver’s qualification

as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

187. “Ocean Organics currently purchases seaweed harvested from the intertidal zone within approximately twenty (20) miles of Waldoboro, Maine.” Seaver Aff., ¶ 21.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

188. “Rockweed attaches to hard surfaces through an appendage called a `holdfast.”
Seaver Aff., ¶ 22.

OBJECTION: This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). The statement lacks foundation, M.R. Evid 602, and no foundation has been established for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

189. Ocean Organics’ “harvesters cut rockweed by hand, accessing the resource using flat-bottom Carolina skiffs and using a sharp-edged tool to selectively cut the rockweed.” Seaver Aff., ¶ 23.

OBJECTION: To the extent Mr. Seaver’s company has harvesters who cut and

remove attached, living rockweed from private intertidal land without permission, that activity is not within the public's rights in the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

190. "Harvesters practice sustainable methods; for example, they primarily cut new growth rockweed and where other harvesters have not been to recently." Seaver Aff., ¶ 24.

OBJECTION: This statement lacks any factual foundation, M. R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 ("the record references in both the statements of material facts and the affidavits themselves "must refer to evidence of a quality that could be admissible at trial.").

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

191. “Maine state regulations limit the length of the cut and the percentage of biomass that can be harvested from a single area. This often requires harvesters to travel along the coast harvesting the rockweed from different areas of the intertidal zone.” Seaver Aff., ¶ 25.

OBJECTION: This statement lacks factual foundation, M. R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

192. “Although [Ocean Organics'] harvesters do not use machines to harvest, neither method of harvesting rockweed—by machine or by hand—presents a danger to the sustainability of the resource—a conclusion supported by research and conclusions of the Maine Department of Marine Resources.” Seaver Aff., ¶ 26.

OBJECTION: This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). The statement lacks foundation, M. R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. No foundation has

been established for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.)

193. “It is a common misconception that seaweed is a plant.” Seaver Aff., ¶ 27.

OBJECTION: This statement lacks any factual foundation. M. R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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194. “Rockweed is classified as “alga” and it grows only in the intertidal zones of the ocean. It has no roots, but rather gets all its nutrients from the water.” Seaver Aff., ¶ 28.

OBJECTION: This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). The statement lacks foundation, M.R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. No foundation has been established for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

195. “Rockweed organisms have a sex—either male or female and they release sperm or eggs into the sea.” Seaver Aff, ¶ 29.

OBJECTION: This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). The statement lacks foundation, M.R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. No foundation has been established for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

196. “Once fertilized, the new organism is carried by the currents until large enough to attach to a rocky surface in the intertidal zone.” Seaver Aff., ¶ 30.

OBJECTION: This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is

necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”). The statement lacks foundation, M.R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. No foundation has been established for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

197. “Rockweed secures itself by a holdfast much in the same way as an oyster or barnacle.” Seaver Aff., ¶ 31.

OBJECTION: This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”). The statement lacks foundation, M.R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. No foundation has

been established for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

198. “Holdfasts are not like roots; the rockweed does not pull nutrients through its holdfast, but instead takes nutrients from the ocean water when underwater at high tide.” Seaver Aff., ¶ 32.

OBJECTION: This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). The statement lacks foundation, M.R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. No foundation has been established for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the

deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

199. George Seaver “believe[s] that the Maine Supreme Court’s decision in *Ross v. Acadian Seaplants Ltd*, 206 A.3d 283 (Me. 2019) was not only wrong, but inconsistent with Maine’s law according to the Maine Legislature, longstanding public trust rights, and the scientific classification of rockweed not as a plant, but a marine organism.” Seaver Aff., ¶ 33; *See also* Morse Aff., ¶ 20.

OBJECTION: This states a legal opinion, not a factual statement. Mr. Seaver’s subjective opinion of *Ross v. Acadian Seaplants, Ltd.* is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”). To the extent the statement includes a scientific opinion about rockweed, it calls for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150

Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”). The statement lacks foundation, and no foundation has been established for Mr. Seaver’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022.

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

200. “It is [George Seaver's] understanding that *Ross* held that seaweed harvesting is taking plants, not fishing, and therefore that harvesting rockweed growing on privately owned intertidal land cannot be done without the owner's permission, while taking other marine organisms like clams, mussels, or sea worms remain permissible public trust uses with or without the owner's permission.” *Seaver Aff.*, 1134; *See also Morse Aff.*, ¶ 21.

OBJECTION: Mr. Seaver’s subjective understanding of *Ross v. Acadian Seaplants, Ltd.* is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

201. “Public trust rights include fishing, fowling, and navigating.” *Seaver Aff.*, ¶ 35; *See Morse Aff.*, ¶ 22.

ADMIT.

202. “The Maine legislature has long defined “fishing” to including taking “any marine organism by any method or means” 12 M.R.S. § 6001(17), and to define “marine organism” as “any animal, plant or other life that inhabits waters below head of tide,” *Id.* § 6001(23), which would include rockweed.” *Seaver Aff.*, ¶ 36; *See Morse Aff.*, ¶ 23.

OBJECTION: This is legal argument, not a factual statement. To the extent the statement purports to provide an expert legal opinion, it calls for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). No foundation has been established for Mr. Seaver’s qualification as an expert to testify to this legal opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶

7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

203. “Even after *Ross*, the question of ownership of rockweed, practically speaking, is not settled. Many shore property deeds seem to include the adjacent intertidal zone, but more often than not, historical deed searches suggest land owners have simply added it to their deeds, and have no historical basis for the claimed ownership. In addition, even if the deed history supports the ownership claim, no one has proposed a practical way to identify the boundaries when the tide comes in, and seaweed harvesting would commence.” *Seaver Aff.*, ¶ 37; *See Morse Aff.*, ¶ 24.

OBJECTION: This statement is speculative and lacks any factual foundation. M.R. Evid. 602. To the extent the statement purports to opine on deed interpretation or provide other legal opinion, it calls for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). No foundation has been established for Mr. Seaver’s qualification as an expert to testify to this legal opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant

nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶¶ 9, 14; Parent SMF ¶ 9.)

204. George Seaver is “deeply concerned about the future of the access to the resource.” Seaver Aff., ¶ 38.

OBJECTION: Mr. Seaver's state of mine is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

205. Ocean Organics “is unable to grow on the same footing as other resource-based industries because of the cloud hanging over the question of access to intertidal land and the seaweed resources that grow there.” Seaver Aff., ¶ 39.

OBJECTION: This statement lacks any factual foundation. M.R. Evid. 602. To

the extent Mr. Seaver states a subjective opinion that there is a “cloud hanging over the question” of the public’s right to harvest rockweed, that statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

206. “Investors and businesspeople are very concerned about risk and factor risk and uncertainty in valuing a business and making an investment decision.” Seaver Aff., ¶ 40; *See Morse Aff.*, ¶ 15.

OBJECTION: This statement lacks any factual foundation, M.R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

207. “The legal uncertainty around Maine's intertidal zone and the seaweed resource presents a risk that affects the value of [the seaweed harvesting] business and the desirability of investment in [the seaweed harvesting] business and other seaweed-related industries.” *Seaver Aff.*, ¶ 41; *See Morse Aff.*, ¶ 16.

OBJECTION: This statement is speculative and lacks any factual foundation, M.R. Evid. 602, or is otherwise inadmissible hearsay, M.R. Evid. 802. To the extent Mr. Seaver states a subjective opinion that there is a “legal uncertainty” regarding the public’s right to harvest rockweed, that statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”). To the extent the statement purports to provide a legal opinion, it calls for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150 Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”)). No foundation has been established for Mr. Seaver’s qualification as an expert to testify to this legal opinion. M.R. Evid. 702. To the extent Mr. Seaver states that there is a “legal uncertainty” regarding the public’s right to harvest rockweed, it is contrary to the explicit holding in *Ross v. Acadian Seaplants, Ltd.*, 209 ME 45, ¶¶ 33 (“Harvesting rockweed from the intertidal land is therefore not within the collection of rights held in trust by the State, and members of the public are not entitled to engage in that activity as a matter of right.”). Finally, this statement is

neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

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208. George Seaver has “experienced this second hand -[he] know[s] of a midcoast seaweed business that was in negotiations with a potential buyer that fell through before closing because of concern about the uncertain legal status of harvesting seaweed in Maine's intertidal zone.” Seaver Aff., ¶ 42.

OBJECTION: Hearsay. M.R. Evid. 802. Lacks foundation. M.R. Evid. 602. This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

209. Robert Morse is the co-owner of North American Kelp, a business based in Waldoboro, Maine with approximately thirty-five employees, which produces seaweed

products, primarily from rockweed. Morse Aff., ¶¶ 3-5.

OBJECTION: This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

210. North American Kelp “harvest[s] a large volume of seaweed that is processed into various applications.” Morse Aff., ¶ 6.

OBJECTION: To the extent Mr. Morse's company harvests attached, living rockweed from private intertidal land without permission, that activity is not within the public's rights in the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

211. North American Kelp “products include food ingredients, animal supplements, lawn conditioners, and seaweed extracts for use in a variety of areas, including home gardening and landscaping.” Morse Aff., ¶ 7.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

212. “North American Kelp does business across the United States and in twenty-four (24) countries abroad. Through intermediaries, our products reach approximately seventy (70) foreign markets.” Morse Aff., ¶ 8.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging

in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

213. “Based on our volume and very strong domestic demand, most of [North American Kelp's] product is sold in the United States.” Morse Aff., ¶ 10.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

214. “North American Kelp acquires rockweed from harvesters that harvest by a machine.” Morse Aff., ¶ 11.

OBJECTION: To the extent Mr. Morse’s company acquires rockweed from harvesters who cut and remove attached, living rockweed from private intertidal land without permission, the harvesters’ activity is not within the public’s rights in the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement

have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

215. Robert Morse “helped design and build a rockweed harvest machine that went into operation in 1995 and is still running.” Morse Aff., ¶ 12.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

216. “Seaweed harvesting machines are designed to stay within state regulations (cutting no more than 16” of growth). The machines selectively and sustainably cut growth from rockweed beds in a manner that will allow regeneration from tips of the harvested growth.” Morse Aff., ¶ 13.

OBJECTION: To the extent Mr. Morse’s company harvests attached, living rockweed from private intertidal land without permission, that activity is not within the public’s rights in the intertidal zone in Maine. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement includes scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709, 712–13 (quoting *Cyr v. Giesen*, 150

Me. 248, 252, 108 A.2d 316, 318 (1954) (Expert testimony is necessary “where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons].”). The statement lacks foundation, M. R. Evid. 602, and no foundation has been established for Mr. Morse’s qualification as an expert to testify to this scientific opinion. M.R. Evid. 702. Plaintiffs failed to designate any expert witness prior to the deadline of November 30, 2022, per the Court’s Amended Scheduling Order dated August 30, 2022. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

217. North American Kelp's “business of harvesting by machine and processing large volume is very capital-intensive.” Morse Aff., ¶ 14.

OBJECTION: This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement

have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

218. North American Kelp “is in need of a larger processing plant building, but it is challenging to raise the capital given the uncertainty that hangs over the industry.” Morse Aff., ¶ 17.

OBJECTION: Lacks factual foundation. M. R. Evid. 602. This statement is neither relevant nor material to Plaintiffs’ claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents’ intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

219. “Without the cloud hanging over the question of title to intertidal land and the seaweed resources that grow there, [Robert Morsel would be able to expand and attract more investment in our business.” Morse Aff., ¶ 18.

OBJECTION: Plaintiffs’ claims regarding fee ownership of intertidal land have been dismissed from this action. This statement is speculative and lacks factual foundation. M.R. Evid. 602. To the extent that Mr. Morse asserts the right to harvest living, attached seaweed from private intertidal land without permission, that is not a cognizable legal claim. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant

nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

220. North American Kelp's “seaweed is sourced from the intertidal zone of Maine's coast from Casco Bay, all the way up to Cobscook Bay in Washington County.” Morse Aff., ¶ 19.

OBJECTION: To the extent that Mr. Morse asserts the right to harvest living, attached seaweed from private intertidal land without permission, that is not a cognizable legal claim. *Ross*, 2019 ME 45, ¶¶ 33, 43. This statement is neither relevant nor material to Plaintiffs' claims against the Parents. M.R. Evid. 401, 402; *Ocean Communities Fed. Credit Union v. Roberge*, 2016 ME 118, ¶ 7 (“the record references in both the statements of material facts and the affidavits themselves “must refer to evidence of a quality that could be admissible at trial.”).

QUALIFIED: Individuals, entities, and/or activities referenced in this statement have never been on or taken place on the Parents' intertidal property. (Stip. Facts ¶ 8; Parent SMF ¶ 8.) The Parents have never prevented any person or entity from engaging

in any activity referenced in this statement. (Stip. Facts ¶ 9; Parent SMF ¶ 9.)

Dated: June 2, 2023 at Portland, ME



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State of Maine
Cumberland, ss

Superior Court
Civil Action
Docket No. RE-2021-35

Peter and Kathy Masucci, et al.,)
)
Plaintiffs)
)
v.)
)
Judy’s Moody LLC, et al.,)
)
Defendants)
)
and)
)
Aaron Frey in his capacity as the Attorney General)
 for the State of Maine)
)
Party in interest)

**PLAINTIFFS’ ADDITIONAL
STATEMENT OF MATERIAL
FACTS**

ADDITIONAL STATEMENT OF MATERIAL FACTS

221. “Rockweed ... is a type of large marine algae (seaweed or macroalgae) native to the North Atlantic Ocean and the Gulf of Maine.” Pete Thayler & Catherine Schmitt, *Rockweed: Ecology, Industry & Management* 1 (2013), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/brochure01-11-13.pdf> (attached hereto as “Exhibit CC”).

222. “Marine organism means any animal, plant or other life that inhabits waters below head of tide.” 12 M.R.S. § 6001(26) (internal quotations omitted).

223. “The verb fish means to take or attempt to take any marine organism by any method or means.” 12 M.R.S. § 6001(17) (internal quotations omitted).

224. “Emerging fishery” means the commercial fishing for any marine organism, except herring and groundfish species, that requires a commercial fishing license issued under section 6501.” 12 M.R.S. § 6171-B(1)(A).

225. Maine Department of Marine Resources regulates and issues commercial fishing licenses for rockweed harvesting. *See* 12 M.R.S. § 6807.

226. Maine Department of Marine Resources considers the commercial and recreational harvesting of rockweed a fishery, similarly, classified as marine organisms and regulated like finfish fisheries. Maine Dep’t of Marine Res., *Fishery Management Plan for Rockweed (Acophyllum nodosum)* 17-21 (2014), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/DMRRockweedFMPJan2014.pdf> (attached hereto as “Exhibit DD”); *see also* NOAA, *Fisheries of the Northeast* (2021), <https://media.fisheries.noaa.gov/2021-07/NE-Fisheries-flyer-508-nefsc.pdf?VersionId=null> (attached hereto as “Exhibit EE”).

227. “Rockweed attaches to the substratum by disc-like “holdfast”, and they regenerate fronds from remaining holdfasts after experimental or natural disturbance that removes upright fronts.” Maine Dep’t of Marine Res., *Fishery Management Plan for Rockweed (Acophyllum nodosum)* 4-5 (2014), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/DMRRockweedFMPJan2014.pdf>.

228. Rockweed “accumulate[es] nutrients and minerals from the surrounding seawater.” Pete Thayler & Catherine Schmitt, *Rockweed: Ecology, Industry & Management* 1 (2013), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/brochure01-11-13.pdf>.

229. Rockweed populations contain an even ratio of 1:1 male and female sexes. Male rockweed have receptacles holding sperm masses and female rockweed have receptacles holding

egg masses used for reproduction of the marine organism. Maine Dep't of Marine Res., *Fishery Management Plan for Rockweed (Acophyllum nodosum)* 5-6 (2014),

<https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/DMRRockweedFMPJan2014.pdf>.

230. “Rockweed is harvested for use in food, fertilizer, soil conductors, animal feed, and other products.” Pete Thayler & Catherine Schmitt, *Rockweed: Ecology, Industry & Management* 1 (2013), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/brochure01-11-13.pdf>.

Dated: June ~~22~~²³, 2023

Respectfully submitted,



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declaratory judgments regarding their right to use the intertidal zone for the commercial purpose of harvesting marine plants — have little chance of success as to Count IV. The Law Court was clear in *Ross* that even under the flexible balancing approach the Court employs, removing marine plants from private intertidal land is not a permissible activity. *Ross*, 2019 ME 45, ¶¶ 31-32, 206 A.3d 283. Any statements offered relative to crossing OA 2012’s intertidal property to harvest rockweed are irrelevant. *See also Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶¶ 20, 29, 206 A.3d 283 (“harvesting living rockweed [a marine plant] secured to the intertidal bed cannot be seen as either ‘fishing’ or ‘navigation,’” and, thus, “the harvesting of seaweed attached to the intertidal land falls outside of the scope of activities that can be carried out as a matter of public right”).

OA 2012 further objects on the basis that with 230 assertions, Plaintiffs have clearly exceeded any basis to claim they have complied with the summary judgment process. Plaintiffs motion clearly is not supported by a “short and concise” statement of material fact. Further, many of the assertions are not of fact, but relate to what a statute, regulation or book may say, and therefore should not be the subject of factual assertions in the summary judgment process. Plaintiffs’ summary judgment motion is replete with statements that are irrelevant to the issue the court stated is germane to Count IV, whether any movement-based activity over the defendants’ intertidal land can be considered navigation as that term is used in the Colonial Ordinance, construed with a “sympathetically generous interpretation.” Plaintiffs’ assertions unnecessarily increase what already are substantial costs and expense as OA 2012 is required by the rules to respond and is prohibited from filing a motion to strike. But the court can find that that the Plaintiffs’ Statement does not comply with the rule and refuse to entertain the motion.

**OA 2012'S REPLY TO PLAINTIFFS' ADDITIONAL
STATEMENT OF MATERIAL FACTS ("PL. ASMF")**

PL. ASMF 221: "Rockweed ... is a type of large marine alga (seaweed or macroalgae) native to the North Atlantic Ocean and the Gulf of Maine." Pete Thayler & Catherine Schmitt, *Rockweed: Ecology, Industry & Management* 1 (2013), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/brochure01-11-13.pdf> (attached hereto as "Exhibit CC").

Objection to PL. ASMF 221: OA 2012 incorporates its General Objections to Plaintiffs' Statement of 220 Material Facts (June 2, 2023), as if more fully set forth herein, specifically the general objection above. OA 2012 further objects to this statement on the basis there is no showing that Plaintiffs have ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. Moreover, the statement appears to be a backdoor way of offering expert opinion by quoting an excerpt from a publication, and as such is clearly hearsay and not admissible. Plaintiffs have not designated any experts in this case.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this additional statement.

PL. ASMF 222: "Marine organism means any animal, plant or other life that inhabits waters below head of tide." 12 M.R.S. § 6001(26) (internal quotations omitted).

Objection to PL. ASMF 222: OA 2012 incorporates its General Objections to Plaintiffs' Statement of 220 Material Facts (June 2, 2023), as if more fully set forth herein, specifically the general objection above. OA 2012 further objects to this statement on the basis there is no showing that Plaintiffs have ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. Moreover, the statement appears to be a backdoor way of offering expert opinion by quoting an excerpt from a publication, and as such is clearly hearsay and not admissible. Plaintiffs have not designated any experts in this case.

Response: Admitted that is what the statute says.

PL. ASMF 223: "The verb fish means to take or attempt to take any marine organism by any method or means." 12 M.R.S. § 6001(17) (internal quotations omitted).

Objection to PL. ASMF 223: OA 2012 incorporates its General Objections to Plaintiffs' Statement of 220 Material Facts (June 2, 2023), as if more fully set forth herein, specifically the general objection above. OA 2012 further objects to this statement on the basis there is no showing that Plaintiffs have ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. What a statute says is not a proper statement of fact. The statute speaks for itself.

Response: Admitted that is what the statute says.

PL. ASMF 224: "Emerging fishery" means the commercial fishing for any marine organism, except herring and groundfish species, that requires a commercial fishing license issued under section 6501." 12 M.R.S. § 6171-B(1)(A).

Objection to PL. ASMF 224: OA 2012 incorporates its General Objections to Plaintiffs' Statement of 220 Material Facts (June 2, 2023), as if more fully set forth herein, specifically the general objection above. OA 2012 further objects to this statement on the basis there is no showing that Plaintiffs have ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. What a statute says is not a proper statement of fact. The statute speaks for itself.

Response: Admitted that is what the statute says.

PL. ASMF 225: Maine Department of Marine Resources regulates and issues commercial fishing licenses for rockweed harvesting. See 12 M.R.S. § 6807.

Objection to PL. ASMF 225: OA 2012 incorporates its General Objections to Plaintiffs' Statement of 220 Material Facts (June 2, 2023), as if more fully set forth herein, specifically the general objection above. OA 2012 further objects to this statement on the basis there is no showing that Plaintiffs have ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012.

Response: Admitted.

PL. ASMF 226: Maine Department of Marine Resources considers the commercial and recreational harvesting of rockweed a fishery, similarly, classified as marine organisms and regulated like finfish fisheries. Maine Dep't of Marine Res., *Fishery Management Plan for Rocicweed (*Acophyllum nodosum*)* 17-21(2014), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/DMRRockweedFMPJan2014.pdf> (attached hereto as "Exhibit DD"); see also NOAA, *Fisheries of the Northeast* (2021), <https://media.fisheries.noaa.gov/2021-07/NE-Fisheries-flyer-508-nefsc.pdf?VersionId=null> (attached hereto as "Exhibit EE").

Objection to PL. ASMF 226: OA 2012 incorporates its General Objections to Plaintiffs' Statement of 220 Material Facts (June 2, 2023), as if more fully set forth herein, specifically the general objection above. OA 2012 further objects to this statement on the basis there is no showing that Plaintiffs have ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. Moreover, the statement appears to be a backdoor way of offering expert opinion by quoting an excerpt from a publication, and as such is clearly hearsay and not admissible. Plaintiffs have not designated any experts in this case.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this additional statement.

PL. ASMF 227: "Rockweed attaches to the substratum by disc-like "holdfast", and they regenerate fronds from remaining holdfasts after experimental or natural disturbance that removes upright fronts." Maine Dep't of Marine Res., *Fishery Management Plan for Rockweed (Acophyllum nodosum)* 4-5 (2014), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/DMRRockweedFMPJan2014.pdf>.

Objection to PL. ASMF 227: OA 2012 incorporates its General Objections to Plaintiffs' Statement of 220 Material Facts (June 2, 2023), as if more fully set forth herein, specifically the general objection above. OA 2012 further objects to this statement on the basis there is no showing that Plaintiffs have ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. Moreover, the statement appears to be a backdoor way of offering expert opinion by quoting an excerpt from a publication, and as such is clearly hearsay and not admissible. Plaintiffs have not designated any experts in this case.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this additional statement.

PL. ASMF 228: Rockweed "accumulate[es] nutrients and minerals from the surrounding seawater." Pete Thayer & Catherine Schmitt, *Rockweed: Ecology, Industry & Management* 1 (2013), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/brochure01-11-13.pdf>.

Objection to PL. ASMF 228: OA 2012 incorporates its General Objections to Plaintiffs' Statement of 220 Material Facts (June 2, 2023), as if more fully set forth herein, specifically the general objection above. OA 2012 further objects to this statement on the basis there is no showing that Plaintiffs have ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. Moreover, the statement appears to be a backdoor way of offering expert opinion by quoting an excerpt from a publication, and as such is clearly hearsay and not admissible. Plaintiffs have not designated any experts in this case.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this additional statement.

PL. ASMF 229: Rockweed populations contain an even ratio of 1:1 male and female sexes. Male rockweed have receptacles holding sperm masses and female rockweed have receptacles holding egg masses used for reproduction of the marine organism. Maine Dep't of Marine Res., *Fishery Management Plan for Rockweed (Acophyllum nodosum)* 5-6 (2014), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/DMRRockweedFMPJan2014.pdf>.

Objection to PL. ASMF 229: OA 2012 incorporates its General Objections to Plaintiffs' Statement of 220 Material Facts (June 2, 2023), as if more fully set forth herein, specifically the general objection above. OA 2012 further objects to this statement on the basis

there is no showing that Plaintiffs have ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. Moreover, the statement appears to be a backdoor way of offering expert opinion by quoting an excerpt from a publication, and as such is clearly hearsay and not admissible. Plaintiffs have not designated any experts in this case.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this additional statement.

PL. ASMF 230: "Rockweed is harvested for use in food, fertilizer, soil conductors, animal feed, and other products." Pete Thayler & Catherine Schmitt, *Rockweed: Ecology, Industry & Management 1* (2013), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/brochure01-11-13.pdf>.

Objection to PL. ASMF 230: OA 2012 incorporates its General Objections to Plaintiffs' Statement of 220 Material Facts (June 2, 2023), as if more fully set forth herein, specifically the general objection above. OA 2012 further objects to this statement on the basis there is no showing that Plaintiffs have ever used or sought to use OA 2012's intertidal land for seaweed harvesting and therefore the statement is irrelevant and not admissible with respect to any claim Plaintiffs' may have against OA 2012. Moreover, the statement appears to be a backdoor way of offering expert opinion by quoting an excerpt from a publication, and as such is clearly hearsay and not admissible. Plaintiffs have not designated any experts in this case.

Response: Qualified. OA 2012 incorporates by reference defendants Jeffrey E. and Margaret G. Parent's responses to this additional statement.

Dated: June 30, 2023

/s/David P. Silk

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Attorney for the Defendant OA 2012 Trust

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2021-0035

PETER and KATHY MASUCCI, et al.,)
)
Plaintiffs,)
)
v.)
)
JUDY’S MOODY LLC, et al.,)
)
Defendants,)
)
and)
)
AARON FREY, in his capacity as Attorney)
General for the State of Maine,)
)
Party-in-Interest.)

**DEFENDANT OCEAN 503, LLC’S
OPPOSITION TO PLAINTIFFS’
ADDITIONAL STATEMENT OF
MATERIAL FACTS**

Title to Real Estate is Involved

Defendant Ocean 503, LLC (“Ocean 503”) respectfully submits this Opposition to Plaintiffs’ Additional Statement of Material Facts. The following admissions and responses are intended solely for purposes of Plaintiffs’ Motion for Summary Judgment and for no other purpose, and shall have no preclusive effect at trial or in any other proceeding.

OBJECTIONS TO PLAINTIFFS’ ADDITIONAL STATEMENT OF MATERIAL FACTS

In an effort to spare the Court another lengthy filing in this matter, and for the purposes of efficiency, Ocean 503 joins in, adopts, and incorporates as its own, the legal objections to Plaintiffs’ Additional Statement of Material Facts as set forth in: (a) Defendant Judy’s Moody, LLC’s Rule 56(h)(3) Response to Plaintiffs’ Additional Statement of Material Facts; (b) Defendant OA 2012 Trust’s Rule 56(h)(3) Reply to Plaintiffs’ Additional Statement of Material Facts; (c) Defendants Jeffery E. Parent and Margaret G. Parent’s Opposition to Plaintiffs’ Additional Statement of Material Facts; and (d) Defendants Jeffrey E. Parent and Margaret G.

Parent's Response to Plaintiffs' Additional Statement of Material Facts. Additionally, Ocean 503 objects to ASMF ¶¶ 221-230 on the grounds that they are irrelevant as to the claims asserted against Ocean 503. Plaintiffs have not established (by citation to any record material) that they have sought to harvest rockweed *on the property of Ocean 503*.

RESPONSES TO PLAINTIFFS' ADDITIONAL STATEMENT OF MATERIAL FACTS

Without waiving the above objections, Ocean 503 submits the following responses to Plaintiffs' Additional Statement of Material Facts pursuant to M.R. Civ. P. 56(h)(2):

221. **Qualified.** The cited source refers to rockweed as a plant and an alga interchangeably. (Plfs.' Additional SMF Ex. CC.)

222. **Qualified.** Ocean 503 admits that Plaintiffs have accurately quoted the statutory language.

223. **Qualified.** Ocean 503 admits that Plaintiffs have accurately quoted the statutory language.

224. **Qualified.** Ocean 503 admits that Plaintiffs have accurately quoted the statutory language.

225. **Admitted.**

226. **Qualified.** The documents submitted as Exhibits DD and EE speak for themselves. Moreover, Exhibits DD and EE do not expressly support Plaintiffs' ASMF ¶ 226.

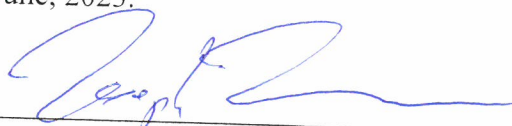
227. **Qualified.** Ocean 503 admits that Plaintiffs have accurately quoted a portion of Exhibit DD.

228. **Qualified.** Ocean 503 admits that Plaintiffs have accurately quoted language from Exhibit CC.

229. **Qualified.** Ocean 503 admits that Plaintiffs have accurately summarized language in Exhibit DD.

230. **Qualified.** Ocean 503 admits that Plaintiffs have accurately quoted language from Exhibit CC.

Dated at Portland, Maine this 30th day of June, 2023.



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Emily A. Arvizu, ME Bar No. 6585
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PETER AND KATHY MASUCCI, et al.,)
)
Plaintiffs)
)
v.)
)
JUDY’S MOODY LLC, et al.,)
)
Defendants)
and)
)
AARON FREY,)
Attorney General for the State of Maine)
)
Party in Interest)

**DEFENDANTS JEFFERY E. PARENT AND
MARGARET G. PARENT’S RESPONSE TO
PLAINTIFFS’ ADDITIONAL STATEMENT
OF MATERIAL FACTS**

Pursuant to M.R. Civ. P. 56, Defendants Jeffery E. Parent and Margaret G. Parent (the “Parents”) hereby respond to Plaintiffs’ Additional Statement of Material Facts (“Additional SMF”) filed with Plaintiffs’ Reply in Support of Plaintiffs’ Motion for Summary Judgment (“Plaintiffs’ Reply”).

ARGUMENT

The Parents are forced to submit this response because Plaintiffs have improperly attempted to introduce new statements of fact and exhibits with Plaintiffs’ Reply. Plaintiffs’ Additional Statement of Material Facts should be disregarded because: 1) it is not authorized by Rule 56; 2) the proposed facts are functionally identical to the stipulated record in *Ross v Acadian Seaplants, Ltd.*, thus they do not support Plaintiffs’ assertion that there was “an erroneous fact stipulation and concession by parties to the *Ross* litigation”; and 3) the proposed exhibits do not support Plaintiffs’ claim that rockweed is not a plant.

1. Plaintiffs' Additional SMF Violates Rule 56

Maine Rule of Civil Procedure 56 authorizes additional new facts to be submitted with an opposition, not with a reply. The statement of material facts permitted in a reply is “a separate, short, concise response limited to the additional facts submitted by the opposing party.” M.R. Civ. P. 56(h)(3). The Parents did not submit any additional facts in their Opposition. Thus, there is no basis for Plaintiffs to submit any additional facts, let alone new facts unrelated to any existing record material, with their Reply. Plaintiffs’ attempt to submit new facts with their Reply has the effect of restarting the summary judgment process of briefing and statements of material fact, thus requiring the Parents to file this response.¹

Had Plaintiffs thought their case required a record of rockweed biology and taxonomy, they could have designated an expert witness, which would have prompted the Parents to designate a responsive expert. Those experts could have been deposed and requested to produce files and answer interrogatories. In that way, both sides would have been able to develop a credible factual record subject to cross-examination. However, Plaintiffs did not designate any expert witness nor conduct any discovery at all regarding rockweed biology or taxonomy. Nor did Plaintiffs seek to arrive at any stipulated facts on these topics.

Thus, Plaintiffs failed to create the factual record that now appears to be central to their case. In lieu of such a record, Plaintiffs seek to introduce facts and excerpted exhibits absent any

¹ To the extent the Parents’ response is deemed a surreply, the Court has discretion to consider it and should do so because it is limited to addressing new material improperly presented in Plaintiffs’ Reply. *Smith v. Campbell*, No. Civ.A. CV-06-47, 2006 WL 1669664, at *1 (Me. Super. Ct. May 16, 2006) (considering defendant’s surreply over motion to strike); *Darling's v. Ford Motor Co.*, No. CV-01-14, 2004 WL 1435235, at *3 (Me. Super. Ct. Apr. 2, 2004) (Hjelm, J.) (considering defendant’s surreply argument on motion to amend); *Portland Surgery Ctr., LLC v. Comm'r, ME Dept. of Human Res.*, No. Civ.A. AP-03-74, 2003 WL 23146069, at *2 (Me. Super. Ct. Dec. 10, 2003) (considering surreply on motion to dismiss); *Melnick v. Microsoft Corp.*, No. CV-99-709, CV-99-752, 2001 WL 1012261, at *15 (Me. Super. Ct. Aug. 24, 2001) (considering surreply on motion for class certification).

affidavit for the first time with their Reply brief. For that reason alone, Plaintiffs' Additional SMF should be disregarded.

2. Plaintiffs' Proposed Additional Facts Are Indistinguishable from the Stipulated Record and the Court's Factual Findings in *Ross*

Plaintiffs' Additional SMF is not only procedurally inappropriate, but the proposed facts demonstrate that Plaintiffs' claim against the Parents in this action was fully heard and rejected in *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45. Because it has become clear through Plaintiffs' Reply that they seek only to reargue the same facts adjudicated in *Ross*, Plaintiffs have not stated a cognizable claim against the Parents.

Plaintiffs request that this Court “distinguish *Ross* on the factual distinction that there is no stipulation here that seaweed is a plant.” (Plfs.’ Reply at 2.) And Plaintiffs claim that “the foundation for the *Ross* decision is unsupportable if rockweed is an alga that attaches and grows on intertidal rocks, deriving nutrients from sea water just like mussels and oysters and thus easily falls under fishing.” *Id.* However, the facts of rockweed biology and taxonomy that Plaintiffs seek to introduce with their Reply do not distinguish the current action from *Ross*. On the contrary, they reinforce that there is no distinction because Plaintiffs’ proposed additional facts are functionally identical to the facts contained in the stipulated Joint Statement of Material Facts upon which *Ross* was decided (“*Ross* JSMF”).² Nowhere in the *Ross* JSMF is there an express stipulation that rockweed is a “plant.” Furthermore, Plaintiffs’ proposed additional facts are set forth in the opinions of both the Law Court and the Superior Court in the *Ross* litigation.

² The *Ross* JSMF is attached for the Court’s convenience. *Wells Fargo Bank, Nat’l Ass’n v. Bump*, 2021 ME 2, ¶ 21, 244 A.3d 232, 238 (“As we have stated in particular, ‘[c]ourts may take judicial notice of pleadings, dockets, and other court records where the existence or content of such records is germane to an issue in the same or separate proceedings.’”) (quoting *Cabral v. L’Heureux*, 2017 ME 50, ¶ 10, 157 A.3d 795). Note that the *Ross* JSMF is not submitted for the truth or substance of its contents, but for the fact that its contents were before the Court in the *Ross* litigation.

Plaintiffs state that “Rockweed ... is a type of large marine alga [sic] (seaweed or macroalgae) native to the North Atlantic Ocean and the Gulf of Maine.” (Plfs.’ Additional SMF ¶ 221.) The stipulated facts in *Ross* state that rockweed “is a brown macroalga, or seaweed, that is commonly found on the rocks and ledges of the Maine seacoast.” (*Ross* Joint SMF ¶ 11.)

Plaintiffs state that “Rockweed attaches to the substratum by disc-like ‘holdfast,’ and they regenerate fronds from remaining holdfasts after experimental or natural disturbance that removes upright fronts [sic].” (Plfs.’ Additional SMF ¶ 227.) The stipulated facts in *Ross* state that “Rockweed has a disc-like structure, called a holdfast, which attaches to the irregular surfaces of rocky substrate.” (*Ross* Joint SMF ¶ 14.) And that “A rockweed’s holdfast typically remains largely intact and attached for decades, allowing the plant to generate new growth” after natural disturbances. (*Ross* Joint SMF ¶ 23.)

Plaintiffs state that “Rockweed ‘accumulate[es] nutrients and minerals from the surrounding seawater.’” (Plfs.’ Additional SMF ¶ 228.) The stipulated facts in *Ross* state that “Rockweed receives nutrients from the sea when immersed during higher tides and also absorbs CO₂ from both the air and seawater.” (*Ross* Joint SMF ¶ 18.)

Plaintiffs state that “Rockweed populations contain an even ratio of 1:1 male and female sexes. Male rockweed have receptacles holding sperm masses and female rockweed have receptacles holding egg masses used for reproduction of the marine organism.” (Plfs.’ Additional SMF ¶ 229.) The stipulated facts in *Ross* state that “A given Rockweed plant is either male or female. During reproductive stages, male rockweed plants release free-floating sperm and female rockweed plants release eggs.” (*Ross* Joint SMF ¶ 20.)

Plaintiffs state that “Rockweed is harvested for use in food, fertilizer, soil conductors, animal feed, and other products.” (Plfs.’ Additional SMF ¶ 230.) The stipulated facts in *Ross*

state that Acadian Seaplants “harvest[s] rockweed from the intertidal area of the Maine seacoast, which Acadian Seaplants uses in various products, such as fertilizer and animal feed, that it sells commercially.” (*Ross* Joint SMF ¶ 5.)

These stipulated facts in *Ross* were considered and incorporated into the *Ross* holdings. The *Ross* Superior Court order found the following facts in determining that the public does not have the right to harvest attached, living intertidal rockweed:

Harvested rockweed is used in fertilizer and animal feed products

Rockweed is the common name for a species of brown intertidal seaweed, known as *Ascophyllum nodosum* and is found on the rocks and ledges of the coast. . . . The rockweed attaches to rocky substrates by a “holdfast” which penetrates the bedrock by up to four millimeters. . . .

The holdfast's sole purpose is to keep the rockweed in place and is not a means to extract nutrients from the ground. Instead, rockweed receives nutrients from the sea, and absorbs CO₂ from the air and seawater. . . .

. . . Each year, rockweed will release a portion of its biomass due to natural effects of the environment. But the holdfast, if not severely damaged, can remain intact and attached for decades, allowing the plant to generate new growth.

And rockweed plants reproduce. Male rockweed plants release free-floating sperm and female rockweed plants release eggs.

Ross v. Acadian Seaplants, Ltd, No. SC-CV-15-022, 2017 WL 1247566, at *1 (Me. Super. Ct. March 14, 2017).

And the Law Court decision in *Ross* found the following facts in affirming that the public does not have the right to harvest attached, living intertidal rockweed:

Rockweed is the common name for several species of brown seaweed, or macroalga. The most abundant of the species is known by the scientific name *Ascophyllum nodosum* and is often found on rocks and ledges in the intertidal portions of Maine's seacoast. Rockweed is a plant. It does not grow in intertidal sand but obtains its nutrients from the surrounding seawater and air. Rockweed attaches to hard, stable objects such as ledges and rocks using a disc-like structure called a holdfast. The sole function of the holdfast is to secure the rockweed in place by penetrating the surface of substrate by up to four millimeters. A

rockweed's holdfast typically remains intact and attached to a substrate for decades, allowing rockweed to generate new growth. If the rockweed becomes detached from a substrate, it cannot reattach its holdfast to a different substrate and will float freely in the water or be cast onto the land. Rockweed, which is typically two to four feet in length but can grow to be more than six feet, is important to Maine's coastline ecology because it moderates temperatures and provides a habitat for marine organisms.

Acadian is a commercial entity that operates in Maine and Nova Scotia and harvests rockweed from the Maine intertidal zone for use in various commercial products, such as fertilizer and animal feed.

Ross v. Acadian Seaplants, Ltd., 2019 ME 45, ¶¶ 4-5, 206 A.3d 283, 285–86.

Accordingly, every single fact that Plaintiffs seek to introduce with their Reply was part of the record in *Ross*, was considered by the Court in *Ross*, and formed the basis for the holdings in *Ross*. Plaintiffs' Additional SMF does not distinguish the current action from *Ross*. Rather, it demonstrates that Plaintiffs' case is identical to the claim that was conclusively heard and decided in *Ross*. That includes Plaintiffs' assertion that rockweed must be called an alga. *Id.* ¶ 4 (“Rockweed is the common name for several species of brown seaweed, or macroalga.”). Thus, Plaintiffs' SMF is further proof that Plaintiffs have failed to state a cognizable legal claim against the Parents.

3. Plaintiffs' Proposed Exhibits Undercut Plaintiffs' Argument

In apparent support of Plaintiffs' argument that rockweed must be called an “alga” rather than a “plant,” Plaintiffs attempt to introduce excerpted reports as exhibits to their Additional Statement of Material Facts. Yet these exhibits interchangeably refer to rockweed as both a plant and an alga.

Plaintiffs’ proposed Exhibit DD, an excerpt of the Maine Department of Marine Resources 2014 Fishery Management Plan for Rockweed (“DMR Management Plan”),³ refers to rockweed as a “plant” 10 separate times. (Plfs.’ Additional SMF Ex. DD at 4-6, 11, 18.) For example, the Plan states that rockweed “is dioecious (male and female reproductive receptacles on separate *plants*), and the ratio of male *plants* to female *plants* was reported as approximately 1:1 . . . *Plant* sex was determined by coloration of receptacles.” *Id.* at 5 (emphasis added).⁴

Plaintiffs’ proposed Exhibit CC, a 2013 rockweed factsheet created by Maine Sea Grant and Maine DMR (“Sea Grant Factsheet”), refers to rockweed as a “plant” five separate times. For example, the Sea Grant Factsheet states, “Broken or cut *plants* may grow back with a different shape or structure.” The Factsheet also states, “Air bladders along the branches help the top of the *plant* float at high tide” and “successful establishment of new *plants* (zygotes) is facilitated by dense canopy cover along the shore.” (Plfs.’ Additional SMF Ex. CC) (emphasis added.)

Accordingly, even if the Court were to allow Plaintiffs to introduce these exhibits through Plaintiffs’ Reply, the exhibits do not support Plaintiffs’ claim that there is no “scientific basis” to refer to rockweed as a plant or that *Ross* was decided based on “an erroneous fact.”

³ The group that prepared the DMR Management Plan included Plaintiffs Brian Beal, Susan Domizi and George Seaver, and a representative from North American Kelp, which is owned by Plaintiff Robert Morse and employs Plaintiff John Grotton. (Plfs.’ Additional SMF Ex. DD at ii.)

⁴ The entire, unexcerpted DMR Management Plan refers to rockweed as a “plant” 38 times. The Plan’s bibliography lists seven scholarly articles that refer to seaweed as a “plant” in their titles.

CONCLUSION

Plaintiffs' Additional Statement of Material Facts should be disregarded because it was submitted in violation of M.R. Civ. P. 56(b). Furthermore, Plaintiffs' Additional Statement of Material Facts demonstrates that Plaintiffs' case in this action is identical to the claim that was conclusively heard and decided in *Ross*. Thus, Plaintiffs' Additional SMF supports the Parents' motion for summary judgment because it is further evidence that Plaintiffs have not stated a cognizable claim against the Parents.

Dated at Portland, Maine this 29th day of June, 2023.



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STATE OF MAINE
WASHINGTON, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV 2015-00022

KENNETH W. ROSS, CARL E. ROSS,)
and ROQUE ISLAND GARDNER)
HOMESTEAD CORPORATION)

Plaintiffs,)

v.)

ACADIAN SEAPLANTS, LTD.)

Defendant.)

**JOINT STATEMENT
OF MATERIAL FACTS**

Pursuant to Maine Rule of Civil Procedure 56(h), Plaintiffs Roque Island Gardner Homestead Corporation (“RIGHC”), Kenneth W. Ross and Carl E. Ross (collectively “Plaintiffs”) and Defendant Acadian Seaplants, Ltd. (“Acadian Seaplants” or “Defendant”) hereby submit the following joint statement of stipulated material facts.

I. Parties

1. Plaintiff Kenneth W. Ross is an individual owning coastal property, including intertidal property, on Cobscook Bay between Red Cove and Rogers Point, off Garnet Head Road, Pembroke, Washington County, Maine. Kenneth Ross’s property is identified on Town of Pembroke Tax Map 003 as Lot 24-1.

2. Plaintiff Carl E. Ross is an individual owning coastal property, including intertidal property, on Cobscook Bay on Hersey Neck between Rogers Point and Garnet Point, off Garnet Head Road, Pembroke, Washington County, Maine. Carl Ross’s property is identified on Town of Pembroke Tax Map 003 as Lots 21, 24 and 28.

3. Plaintiff RIGHC is a Maine corporation with a principal place of business at 123 Free Street, Portland, ME 04103, and an owner of coastal property, including intertidal property, in Chandler Bay comprising Roque Island and several other islands in the Roque Island archipelago, located in Jonesport, Washington County, Maine. RIGHC's property is identified in relevant part on Town of Jonesport Tax Map 16, Book 011 as Lot 000.

4. Defendant Acadian Seaplants is a commercial entity with a business address of 9 Ferry Road, Orrington, Maine and a business address of 30 Brown Avenue, Dartmouth, Nova Scotia, Canada.

II. Harvest of Rockweed by Defendant on Plaintiffs' Intertidal Land

5. As part of its operations, Acadian Seaplants' contractors (hereinafter "Acadian Seaplants") harvest rockweed from the intertidal area of the Maine seacoast, which Acadian Seaplants uses in various products, such as fertilizer and animal feed, that it sells commercially.

6. Acadian Seaplants harvests rockweed using a three to four-ton capacity skiff and a specially-designed cutting rake. The harvest is carried out primarily during mid-tide while the seaweed is floating. Acadian Seaplants uses the rake's sharp blade to cut the upper portion of the plants, leaving enough branches for regeneration of the plant weight or biomass. The cut seaweed is accumulated inside the boat while harvesting. Once full, Acadian Seaplants transfers the harvested rockweed into specially-designed containers where the load of each harvester is monitored on a daily basis. Although rockweed in Cobscook Bay, where the Ross Plaintiffs' property is located, can grow from 29% to 71% of its weight in a year, Acadian Seaplants harvests an annual maximum of 17% of the biomass from a particular management district in Cobscook Bay, as required by statute.

7. Acadian Seaplants operates watercraft in waters floating above Plaintiffs' intertidal land while harvesting rockweed; it does not walk or travel on intertidal land owned by Plaintiffs while harvesting rockweed.

8. Rockweed growing in tidal waters and attached to intertidal property west of Rogers Point on Cobscook Bay owned by Plaintiff Carl Ross was harvested and carried off, without plaintiff's consent, by Defendant Acadian Seaplants within the past six years.

9. Rockweed growing in tidal waters and attached to intertidal property off Red Cove on Cobscook Bay owned by Plaintiff Kenneth Ross was harvested and carried off, without plaintiff's consent, by Defendant Acadian Seaplants within the past six years.

10. Rockweed growing in tidal waters and attached to intertidal property at the north end of Squire Point on Roque Island owned by Plaintiff RIGHC was harvested and carried off, without plaintiff's consent, by Defendant Acadian Seaplants within the past six years.

III. Facts about Rockweed and Other Marine Organisms

11. Rockweed is the common name for several species of brown intertidal seaweed, the most abundant of which is known by the scientific name *Ascophyllum nodosum*. It is a brown macroalga, or seaweed, that is commonly found on the rocks and ledges of the Maine seacoast.

12. Rockweed does not grow on intertidal sandy beach except on hard and attached objects such as a rock outcrop, sunken log, stone beaches, or other areas where the substrate is stable enough for the plant to attach.

13. Rockweed, under normal conditions, generally grows between two and four feet tall when standing up at high tide but can, in some places grow to be over six feet tall.

14. Rockweed has a disc-like structure, called a holdfast, which attaches to the irregular surfaces of rocky substrate. Holdfasts use the physical characteristics of the rock to penetrate the bedrock by up to four millimeters.

15. Rockweed plants, once attached, do not move and reattach using their holdfast in a new location. But if broken or detached due to natural or artificial causes, the detached portions either remain floating on the ocean or will be cast upon the shore, unless harvested.

16. Unlike the roots of trees and most other terrestrial plants, rockweed does not use its holdfast to extract nutrients from the soil. The holdfast functions solely to keep the rockweed in place. Rockweed receives its nutrients directly from the sea and the air.

17. Some terrestrial plants do not have roots that extract nutrients from the soil.

18. Rockweed receives nutrients from the sea when immersed during higher tides and also absorbs CO₂ from both the air and seawater. Rockweed's branching pattern results in most of the plant biomass residing in the upper part of the plant.

19. Rockweed beds are ecologically important because they, as with other habitat-forming seaweed species, provide cover and habitat to multiple kinds of organisms, including birds, fish, invertebrates and vertebrates.

20. A given Rockweed plant is either male or female. During reproductive stages, male rockweed plants release free-floating sperm and female rockweed plants release eggs. Once the eggs are fertilized, the embryo will try to attach to rocky substrate. Once it does so, the rockweed remains a stationary, perennial species for the remainder of its life. Rockweed can survive in undisturbed locations for decades.

21. When whole rockweed plants, including holdfasts, are removed, early successional species (e.g. green algae and other faster-growing seaweed species) typically take their place.

22. When a rockweed bed has been severely damaged, such as during ice scouring, when most of the biomass down to its holdfast is removed, it can take years to return to its original height, original density and biomass.

23. Each year due to the natural effects of storms, ice scouring, sedimentation, and quick currents, rockweed in Cobscook Bay releases approximately 60% of its biomass. A rockweed's holdfast typically remains largely intact and attached for decades, allowing the plant to generate new growth. The rockweed fronds carried off through these natural processes provide a source of nutrients to the marine ecosystem.

24. Rockweed beds moderate temperature. During summer low tides, rockweed plants shade organisms from the sun. During winter low tides, rockweed plants shield organisms from freezing air temperatures.

25. Some shellfish found in Maine's intertidal zone are motile species that can move around in the mud or sand via their foot. Snails, such as periwinkles, will move around in the intertidal zone. Extremely early in their lives when they are no larger than a quarter millimeter, soft-shell clams and razor clams will move around the water with the currents until growing large enough to burrow. By the time these clams grow to harvestable size, they have burrowed in the mud or sand using their foot. Once burrowed, these clams can use their foot to move up and down in the sand or mud but generally do not move laterally within the intertidal zone. Blue mussels and oysters typically attach to hard substrate where they will live the majority of their lives unless detached due to natural or artificial causes. If detached, it is possible for blue

mussels and oysters to move with the currents and then reattach themselves to rocky substrate in a new location.

IV. State Regulation of Rockweed Harvest

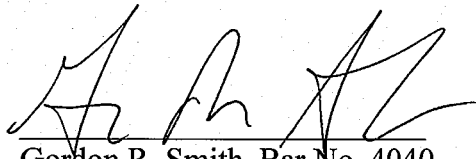
26. Current State regulations, 13 CMR ch.29, prohibit harvesters from cutting rockweed below 16 inches from the holdfast or from disturbing or cutting below the lowest lateral branches during harvest.

27. Title 12 Section 6803-C of the Maine Statutes sets forth a framework for rockweed harvest in Cobscook Bay. Section 6803-C directs the Department of Marine Resources to divide Cobscook Bay into sectors that may be allocated to specific harvesters. Section 6803-C(9) prohibits any harvester from annually harvesting more than 17% of harvestable rockweed biomass in a given sector. Outside of Cobscook Bay, i.e. on the remainder of the Maine coast, 12 M.R.S.A. Section 6803-C does not apply and no rockweed sectors or annual harvest limits are in place.

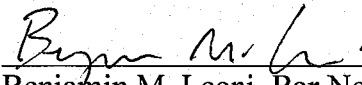
28. Pursuant to 12 M.R.S. Section 6803, entities that wish to commercially harvest rockweed anywhere in Maine must obtain a license from the Maine Department of Marine Resources.

29. Pursuant to 12 M.R.S.A. Section 6803-C(2), the Maine Department of Marine Resources has designated areas of Cobscook Bay as “no cut” zones in which rockweed harvest is prohibited.

Dated: November 14, 2016



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Acadian Seaplants Limited

PETER AND KATHY MASUCCI, et al.,)
)
 Plaintiffs)
)
 v.)
)
 JUDY’S MOODY LLC, et al.,)
)
 Defendants)
)
 and)
)
 AARON FREY,)
 Attorney General for the State of Maine)
)
 Party in Interest)

**DEFENDANTS JEFFERY E. PARENT AND
 MARGARET G. PARENT’S OPPOSITION
 TO PLAINTIFFS’ ADDITIONAL
 STATEMENT OF MATERIAL FACTS**

221. "Rockweed ... is a type of large marine alga (seaweed or macroalgae) native to the North Atlantic Ocean and the Gulf of Maine." Pete Thayler & Catherine Schmitt, *Rockweed: Ecology, Industry & Management* 1 (2013), <https://www.maine.gov/dmr/sites/maine.gov/dmr/files/docs/brochure01-11-13.pdf> (attached hereto as "Exhibit CC").

OBJECTION: This statement is submitted in violation of Maine Rule of Civil Procedure 56. This statement is a scientific opinion calling for expert testimony. *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11. Plaintiffs did not designate an expert witness prior to the deadline. The statement is not appropriate for admission under the judicial notice doctrine. M.R. Evid. 201. The statement is inadmissible hearsay. M.R. Evid. 802.

QUALIFIED: The cited source refers to rockweed as a plant and an alga interchangeably. (Plfs.’ Additional SMF Ex. CC.)

222. "Marine organism means any animal, plant or other life that inhabits waters below head of tide." 12 M.R.S. § 6001(26) (internal quotations omitted).

OBJECTION: This is legal argument, not a factual statement.

223. "The verb fish means to take or attempt to **take** any marine organism by any method or means." 12 M.R.S. § 6001(17) (internal quotations omitted).

OBJECTION: This is legal argument, not a factual statement.

224. "Emerging fishery" means the commercial fishing for any marine organism, except herring and groundfish species, that requires a commercial fishing license issued under section 6501." 12 M.R.S. § 6171-B(1)(A).

OBJECTION: This is legal argument, not a factual statement.

225. Maine Department of Marine Resources regulates and issues commercial fishing licenses for rockweed harvesting. *See* 12 M.R.S. § 6807.

OBJECTION: This is legal argument, not a factual statement.

226. Maine Department of Marine Resources considers the commercial and recreational harvesting of rockweed a fishery, similarly, classified as marine organisms and regulated like finfish fisheries. Maine Dep't of Marine Res., *Fishery Management Plan for Rockweed (Acophyllum nodosum)* 17-21 (2014),

<https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/DMRRockweedFMRJan2014.pdf>

(attached hereto as "Exhibit DD"); *see also* NOAA, *Fisheries of the Northeast* (2021),

<https://media.fisheries.noaa.gov/2021-07/NE-Fisheries-flyer-508-nefsc.pdf?VersionId=null>

(attached hereto as "Exhibit EE").

OBJECTION: This is legal argument, not a factual statement.

227. "Rockweed attaches to the substratum by disc-like "holdfast", and they regenerate fronds from remaining holdfasts after experimental or natural disturbance that removes upright fronts." Maine Dep't of Marine Res., *Fishery Management Plan for Rockweed (Acophyllum nodosum)* 4-5 (2014),

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228. Rockweed "accumulate[es] nutrients and minerals from the surrounding seawater." Pete Thayer & Catherine Schmitt, *Rockweed: Ecology, Industry & Management* 1 (2013), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/brochure01-11-13.pdf>.

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229. Rockweed populations contain an even ratio of 1:1 male and female sexes. Male rockweed have receptacles holding sperm masses and female rockweed have receptacles holding egg masses used for reproduction of the marine organism. Maine Dep't of Marine Res., *Fishery Management Plan for Rockweed (Acophyllum nodosum)* 5-6 (2014),

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230. "Rockweed is harvested for use in food, fertilizer, soil conductors, animal feed, and other products." Pete Thayler & Catherine Schmitt, *Rockweed: Ecology, Industry & Management* 1 (2013), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/brochure01-11-13.pdf>

OBJECTION: This statement is submitted in violation of Maine Rule of Civil Procedure 56.

Dated at Portland, Maine this 29th day of June, 2023.



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2pg → E Return to:
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Sheehan Phinney Bass + Green
P.O. Box 3701
Manchester, NH 03105-3701

WARRANTY DEED

Kevin J. Howe, Trustee of the Kevin J. Howe 1988 Trust, dated January 15, 1988, of 951 Straw Hill Road, Manchester, Hillsborough County, New Hampshire 03104, for consideration paid, grants to **John B. Howe, Trustee of the OA 2012 Trust**, dated December 10, 2012 (an irrevocable trust), of 951 Straw Hill Road, Manchester, Hillsborough County, New Hampshire 03104, with warranty covenants, the following property:

A certain lot or parcel of land, with the buildings thereon, situated in Wells, County of York, and State of Maine, at Ogunquit Beach, so-called, sometimes known as Moody Beach, and lying on the easterly side of the extension of Ocean Avenue, so-called, bounded and described as follows:

Beginning at an iron pipe set in the southeasterly sideline of Ocean Avenue, said point being also in the division line between Wells and Ogunquit; thence northeasterly, by said Ocean Avenue, 56.21 feet to an iron pipe; thence southeasterly, making an included angle of 94° 30', 106.15 feet to an iron pipe; thence continuing by the same course to the Atlantic Ocean; thence southwesterly, by said Ocean, to a point; thence northwesterly to an iron pipe; thence continuing by the same course 68.83 feet to the point of beginning, said last course making an included angle of 84° 06' with the first described course.

This conveyance is specifically made subject to any applicable provisions of the Wells Zoning Ordinance.

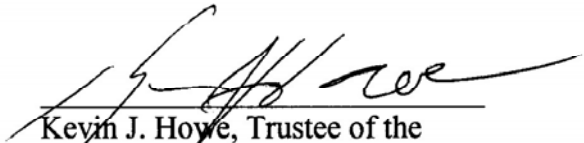
Meaning and intending to describe and to convey all and the same premises that were conveyed to Kevin J. Howe, Trustee of the Kevin J. Howe 1998 Trust, by deed of Kevin J. Howe dated June 17, 2002 and recorded in the York County Registry of Deeds at Book 11741, Page 052.

This conveyance is exempt from transfer tax pursuant to Maine Revised Statutes Title 36 Section 4641-C 15B.

This deed was prepared from information supplied by the Grantor herein, and no independent title examination has been conducted.

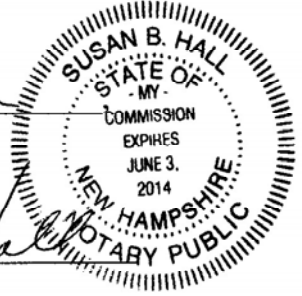
No R.E. Transfer Tax Paid

EXECUTED this 10th day of December, 2012.


Kevin J. Howe, Trustee of the
Kevin J. Howe 1988 Trust

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

This instrument was acknowledged before me this 10th day of December
2012, by Kevin J. Howe, Trustee of the Kevin J. Howe 1988 Trust.




Notary Public
My commission expires:

SEAL

End of Document

WARRANTY DEED

Kevin J. Howe, a single person, of 951 Straw Hill Road, Manchester, Hillsborough County, New Hampshire 03104, for consideration paid, grants to **Kevin J. Howe, Trustee of the Kevin J. Howe 1988 Trust**, dated January 15, 1988, of 951 Straw Hill Road, Manchester, Hillsborough County, New Hampshire 03104, with warranty covenants, the following property:

A certain lot or parcel of land, with the buildings thereon, situated in Wells, County of York, and State of Maine, at Ogunquit Beach, so-called, sometimes known as Moody Beach, and lying on the easterly side of the extension of Ocean Avenue, so-called, bounded and described as follows:

Beginning at an iron pipe set in the southeasterly sideline of Ocean Avenue, said point being also in the division line between Wells and Ogunquit; thence northeasterly, by said Ocean Avenue, 56.21 feet to an iron pipe; thence southeasterly, making an included angle of 94° 30', 106.15 feet to an iron pipe; thence continuing by the same course to the Atlantic Ocean; thence southwesterly, by said Ocean, to a point; thence northwesterly to an iron pipe; thence continuing by the same course 68.83 feet to the point of beginning, said last course making an included angle of 84° 06' with the first described course.

This conveyance is specifically made subject to any applicable provisions of the Wells Zoning Ordinance.

Meaning and intending to describe and to convey all and the same premises that were conveyed to Kevin J. Howe by deed of Marion E. Jellison, dated November 8, 1976, and recorded in the York County Registry of Deeds at Book 2162, Page 470. See also deed of Kevin J. Howe to Kevin T. McHugh, dated April 16, 1992 and recorded in said Registry at Book 6085, Page 89, and deed of Lea M. McHugh to Kevin J. Howe, dated June 21, 1993 and recorded in said Registry at Book 9650, Page 255.

This deed was prepared from information supplied by the Grantor herein, and no independent title examination has been conducted.

EXECUTED this 17th day of June, 2002.


Kevin J. Howe

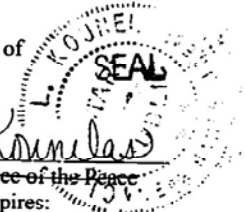
NO R.E. TRANSFER TAX PAID

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 17 day of June, 2002, by Kevin J. Howe.

Claire L. Kounelas

Notary Public/Justice of the Peace
My commission expires:



CLAIRE L. KOUNELAS, Notary Public
My Commission Expires January 5, 2005

g:\jcain\howe, kevin j (2888-1677)\deed to trust - maine property.doc

RECEIVED YORK S.S.
2002 JUN 26 PM 1:53

*Stephan Plummer
Sophia Annas
PO Box 3701
Manchester NH 03105*
JMS →

Know Everyone by these Presents, 045586

That I, Lea M. McHugh, unmarried, of 135 Shaw Street, Manchester [Grantor(s)]
of Hillsborough County, New Hampshire
for consideration paid, grant(s) to Kevin J. Howe of Manchester [Grantee(s)]
of Hillsborough County, New Hampshire
with warranty covenants,

An undivided one-half interest in certain real estate described as follows:

A certain lot or parcel of land with buildings thereon situated in Wells in the County of York, and State of Maine, at Ogunguit Beach, so-called, sometimes known as Moody Beach, and lying on the Easterly side of the extension of Ocean Avenue, so-called, bounded and described as follows: BEGINNING at an iron pipe set in the Southeasterly sideline of Ocean Avenue; said point being also in the division line between WELLS and Ogunguit; thence Northeasterly by said Ocean Avenue fifty-six and twenty-one hundredths (56.21) feet to an iron pipe; thence Southeasterly making an included angle of 94 degrees 30' one hundred six and fifteen hundredths (106.15) feet to an iron pipe; thence continuing by the same course to the Atlantic Ocean; thence Southwesterly by said Ocean to a point; thence Northwesterly to an iron pipe; thence continuing by the same course sixty-eight and eighty-three hundredths (68.83) feet to the point of beginning, said last course making an included angle of 84 degrees 06' with the first described course.

Being the same premises conveyed to Kevin T. McHugh by deed of Kevin J. Howe dated April 16, 1992 and recorded in the York County Registry of Deeds at Volume 6085, Page 089.

Lea M. McHugh derives her title as devisee under the will of Kevin T. McHugh.

MAINE R.E. TRANSFER TAX PAID

ATTEST: *Joan M. Moore*
REGISTER OF DEEDS

RECEIVED YORK S.S.
1999 AUG 25 A 10:24

K 0133 H 118 MANCHESTER ST 070 GASTOWN 179 7 KEVIN HOWE 660

wife husband of the Grantor(s), release to the Grantee(s) all rights of homestead and other interests therein.

Dated June 21, 1993 L.S. *Lea M. McHugh* L.S.
Lea M. McHugh

State of New Hampshire, County of Hillsborough ss: June 21 1993
Personally appeared Lea M. McHugh

known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

Before me, *Constance M. Lavoie*
Justice of the Peace, Notary Public, Public
CONSTANCE M. LAVOIE
My Commission Expires June 27, 1994
Constance M. Lavoie

KNOW ALL MEN BY THESE PRESENTS, That I, KEVIN J. HOWE, unmarried of Manchester, Hillsborough County, New Hampshire

for consideration paid, grant to KEVIN T. MCHUGH of 135 Shaw Street, Manchester, Hillsborough County, New Hampshire

with warranty covenants

An undivided one-half interest in certain real estate described as follows:

A certain lot or parcel of land with buildings thereon situated in Wells in the County of York, and State of Maine, at Ogunguit Beach, so-called, sometimes known as Moody Beach, and lying on the Easterly side of the extension of Ocean Avenue, so-called, bounded and described as follows: BEGINNING at an iron pipe set in the Southeasterly sideline of Ocean Avenue; said point being also in the division line between Wells and Ogunguit; thence Northeasterly by said Ocean Avenue fifty-six and twenty-one hundredths (56.21) feet to an iron pipe; thence Southeasterly making an included angle of 94 degrees 30' one hundred six and fifteen hundredths (106.15) feet to an iron pipe; thence continuing by the same course to the Atlantic Ocean; thence Southwesterly by said Ocean to a point; thence Northwesterly to an iron pipe; thence continuing by the same course sixty-eight and eighty-three hundredths (68.83) feet to the point of beginning, said last course making an included angle of 84 degrees 06' with the first described course.

Being the same premises conveyed to the grantor by deed of Marion E. Jellison in November, 1976, and recorded in the York County Registry of Deeds.

The consideration for this conveyance is less than \$100.

NO. R.E. TRANSFER TAX PAID

ALL STATE AND LOCAL TAXES PAID

RECEIVED YORK S.S. APR 13 AM 9:18

I, Kevin J. Howe being ~~husband~~ ^{husband} of said grantor, release to said grantee all rights of homestead and other interests therein.

Signed this 16th day of April, 19 92

[Signature of Kevin J. Howe] L.S.
Kevin J. Howe L.S.
L.S.

State of New Hampshire

HILLSBOROUGH ss.:

Personally appeared Kevin J. Howe known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

Before me, [Signature of Julia Damalas] Notary Public Julia Damalas

~~XXXX~~ MARION E. JELLISON,

of Wells, York County, State of Maine,

being ~~XX~~ married, for consideration paid, grant to KEVIN J. HOWE, of 707 Chestnut Street,

of Manchester, Hillsborough County, New Hampshire, ~~with warranty covenants~~

~~XXXX~~ his heirs and assigns,

the land in Wells, York County, Maine
as follows:

A certain lot or parcel of land with the buildings thereon situated in Wells, County of York and State of Maine, at Ogunquit Beach, so-called, sometimes known as Moody Beach, and lying on the Easterly side of the extension of Ocean Avenue, so-called, bounded and described as follows: BEGINNING at an iron pipe set in the Southeasterly sideline of Ocean Avenue; said point being also in the division line between Wells and Ogunquit; thence Northeasterly by said Ocean Avenue, 56.21 feet to an iron pipe; thence Southeasterly making an included angle of 94° 30', 106.15 feet to an iron pipe; thence continuing by the same course to the Atlantic Ocean; thence Southwesterly by said Ocean to a point; thence Northwesterly to an iron pipe; thence continuing by the same course 68.83 feet to the point of beginning, said last course making an included angle of 84° 06' with the first described course.

Being the same premises conveyed to Edward R. Jellison and Marion E. Jellison by deed of E. R. Jellison Realty, Inc., dated June 28, 1972 recorded in York County Registry of Deeds in Book 1953, Page 419.

Reference is also made to Quit Claim deed from Edward R. Jellison to Marion E. Jellison dated June 30, 1972, recorded in York County Registry of Deeds in Book 1953, Page 420.

This conveyance is specifically made subject to any applicable provisions of the Wells Zoning Ordinance.

Real estate taxes assessed as of April 1, 1976 are to be prorated as of the date of transfer.

Also hereby conveying all rights, easements, privileges, and appurtenances belonging to the premises hereinabove described.

William Jellison husband of said grantor,
~~XXXX~~

joins as grantor and releases all rights, by descent and all other rights therein.

Witness ~~XXX~~ hand(s) and seal(s) this 8th day of November 1976
William Jellison *Marion E. Jellison*

STATE OF MAINE
County of York ss. November 8, 1976

Then personally appeared the above named Marion E. Jellison
and acknowledged the foregoing instrument to be her free act and deed.

York, ss.
Received DEC 13 1976 at 2:55 PM
and recorded from this original



Before me, *Arthur D. [Signature]*
Notary Public - Justice of the Peace.

(K)

State of Maine
Cumberland, ss

Superior Court
Civil Action
Docket No. RE-2021-35

Peter and Kathy Masucci, et al.,)
)
Plaintiffs)
)
v.)
)
Judy’s Moody LLC, et al.,)
)
Defendants)
)
and)
)
Aaron Frey in his capacity as the Attorney General)
 for the State of Maine)
)
Party in interest)

**PLAINTIFFS’ OPPOSITION
TO DEFENDANTS’ SPECIAL
MOTION TO DISMISS**

Plaintiffs oppose the Special Motion to Dismiss filed by Defendants Edward and Christine Page, James Li and Kim Newby, and Robin Hadlock Seely. In support of this opposition, Plaintiffs state as follows:

INTRODUCTION

This Court will be the arbiter of who owns the public trust land adjacent to Defendants’ property: not Marine Patrol Officer Clint Thompson, not Marine Patrol Officer Jonathan Luellen, nor DMR Director Dierdre Gilbert. In this motion, Defendants make an extraordinary claim: blanket immunity simply by virtue of the fact that they called law enforcement and their erroneous claims were believed. According to Defendants’ theory, Officer Thompson’s statement as to the validity of Defendants’ deeds means that any challenge to that title must forever be extinguished as a SLAPP suit; thereby giving Officer Thompson and his colleagues the final say as to who owns

the intertidal land. Such a claim cannot be the intent behind Maine’s anti-SLAPP statute and can be easily dismissed by this Court following the Law Court’s two-step analysis.

Maine’s anti-SLAPP statute establishes a procedure for the dismissal of lawsuits that are brought “solely for the purposes of dissuading a defendant from exercising his First Amendment right to petition the government or punish him for doing so.” *Desjardins v. Reynolds*, 162 A.3d 228, 233 (Me. 2017). Maine courts have noted that a SLAPP plaintiff’s goal is not necessarily to win the litigation, but to punish or deter petitioning activity. *Id.* “To prevail on a special motion to dismiss, the defendant carries the initial burden to show that the suit was based on some activity that would qualify as an exercise of the defendant’s First Amendment right to petition the government.” *Schelling v. Lindell*, 942 A.2d 1226, 1229 (Me. 2008). “Once the Defendant demonstrates that this is the basis for the suit and therefore that the statute applies, the burden falls on the plaintiff to demonstrate that the defendant’s activity: (1) was without ‘reasonable factual support,’ (2) was without an ‘arguable basis in law,’ and (3) resulted in ‘actual injury’ to the plaintiff.” *Id.*

Not all advocacy can be considered petitioning activity protected by Maine’s anti-SLAPP statute. “The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives” *Gaudette v. Mainely Media, LLC.*, 160 A.3d 539, 543 (Me. 2007). To claim its protections, the defendant must be engaged in seeking redress from the government. *Id.* Arguments and advocacy directed at private individuals, with no call for changes in law or public policy, do not rise to the level of petitioning activity protected by Maine’s anti-SLAPP statute. See *Pollack v. Fournier*, 237 A.3d 149 (Me. 2020). In *Hearts with Haiti, Inc.*

v. Kendrick, the Court denied Defendant's anti-SLAPP motion noting that the activities he engaged in were not aimed at the government:

HWH's complaint alleges a string of conduct and statements by Kendrick that were specifically aimed at HWH's benefactors and various other third parties, not governmental entities. The statements generally urge benefactors not to donate to HWH and pressure third parties not to do business with HWH. Few of the statements include any call to action; rather, the statements include multiple threatening or derogatory messages. Such statements are fundamentally different from those that we have previously held to be protected by the anti-SLAPP statute.

202 A.3d 1189, 1194 (Me. 2019).

Defendants are not being sued because they are seeking redress from the government. They are being sued because they have made, and are continuing to make, legal claims with no basis in the law. These claims falsely deny Plaintiffs the right to harvest seaweed under license from the state of Maine. These claims also cause massive disruption to Plaintiffs' businesses and threaten their livelihoods.

I. DEFENDANTS CANNOT SHOW THAT THE SUIT WAS BASED ON ANY PROTECTED PETITIONING ACTIVITY.

Defendants' motion fails at the first stage of the inquiry. The Pages and the Li/Newbys are not being sued because they called the Marine Patrol. They are being sued because they are claiming dominion over public trust land that does not belong to them. Their calls to the Marine Patrol were simply how they exercised dominion over the intertidal land. Had these Defendants erected a fence or strung up ropes, they still would have been sued. Because the act of calling law enforcement was not this core of the suit, Defendants Page and Li/Newby's motion must fail at this initial stage.

Another indication that these Defendants are not being sued because of their advocacy is the existence of all the other Defendants and Plaintiffs in this case. If Plaintiffs were seeking to punish or intimidate the Pages, the Li/Newbys, or the Seeley's why would they go through the trouble and expense of naming all the other Defendants in this case? If Plaintiffs were seeking retribution, why bring in the Attorney General? Defendants' arguments ignore the large scope of this suit. This Court should not make the same mistake.

The Defendants' claim of total immunity for having called law enforcement would create a troubling precedent. Under their logic, any individual could claim immunity from civil suit simply by being the first person to call the police. A trespasser need only call the police to report a dispute over land and then claim any future civil suit was brought in retaliation for his report. A borrower could simply file a dispute over their student loans to the Department of Education and then claim any future collection action is a SLAPP brought in retaliation for the report. Immunity from all civil suit is surely not what the legislature intended when it sought to protect a citizen's right to petition the government.

As to Dr. Seeley, the Complaint alleges that she has taken steps to block the lawful harvesting of seaweed, not by petitioning the government to change policy, but instead by attempting to convince other upland owners to exercise rights they do not have. Dr. Seeley's actions are akin to those of the Defendant in *Pollack*, 237 A.3d at 155. In that case, the Defendant argued that her notice of claim, sent only to the Plaintiff, should be considered petitioning activity under the anti-SLAPP statute. The Court rejected the argument because the notice of claim did not "convey the special concerns of its author to the Government." *Id.*

The advocacy that is at the heart of the claims against Dr. Seeley contain no call to action for changes in the law or the policy. Even today, a website controlled by Dr. Seeley encourages upland owners to make claims based on a highly misleading and flatly incorrect reading of *Ross v. Acadian Seaplants*. Affidavit of John W. Grotton, dated July 19, 2021 (Grotton Aff.), Exhibit D. Dr. Seeley seeks the protection of the anti-SLAPP statute not to argue that the legislature should ban seaweed harvesting, or that *Ross* should be expanded, or that *Almeder* should be overturned. She seeks the protection so that she can continue to mislead shorefront property owners into believing the intertidal land next to their property, and the seaweed on it, automatically belongs to them. Dr. Seeley stands behind *Ross*, but as demonstrated below, that is not the holding of *Ross* and it certainly is not the state of the law after *Almeder*.

Cases cited by Defendants contain different claims and seek different relief compared to the present matter. *Desjardins* and *Schelling* both involved claims of defamation that stemmed from the defendant's report; to the Sherriff's department in the case of *Desjardins*, and a newspaper in the case of *Schelling*. This case could not be more different. The Plaintiffs are not claiming Defendants have besmirched their character. They are not even seeking monetary damages - even though Defendants' actions have hurt them financially by driving up the costs associated with running their businesses. Here, Plaintiffs are asking the court to clarify the law around issues that are as important to Plaintiffs as they are to Defendants. Plaintiffs do not challenge Defendants' First Amendment rights to petition the government for redress, they only ask that they have the same rights to seek the same redress from this Court. Me. Const. art. I, § 19 ("Every person, for an injury inflicted on the person or the person's reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay.")

II. DEFENDANTS' DEMAND THAT LAW ENFORCEMENT REMOVE HARVESTERS FROM PUBLIC TRUST LAND WAS WITHOUT REASONABLE FACTUAL SUPPORT AND AN ARGUABLE BASIS IN THE LAW

“A person can convey only what is conveyed into them.” *Eaton v. Town of Wells*, 760 A.2d 232, 241 (Me. 2000). As alleged in the Complaint, as argued in Plaintiffs’ Opposition to the Motions to Dismiss, and as demonstrated herein, Defendants do not own the intertidal land adjacent to their upland property because their predecessors in title did not own it and therefore could not convey it.¹

Defendants again place much reliance on *Ross v. Acadian Seaplants, Ltd.* but continue to ignore the limited nature of that decision:

The limited issue before us is whether living rockweed, growing on and attached to intertidal land, is—as Ross asserts—the private property of the adjoining upland landowner **who owns the intertidal zone in fee**, or—as Acadian counters—a public resource held in trust by the State.

206 A.3d 283, 287 (Me. 2019)(emphasis added). What was not before the court in any part of that case was whether or not the Plaintiffs owned the intertidal land adjacent to their property and therefore had the right to exclude seaweed harvesters in the first place. The *Ross* court acknowledged that intertidal land could be held by a party different than the upland owner. *Id.* at 288 (“The intertidal zone belongs to the owner of the adjacent upland property, **or some other person to whom that part of the land has been transferred by the upland owner**, subject to

¹ Plaintiffs make additional claims in this case including: that the remnants of the Colonial Ordinance were nullified upon statehood pursuant to the Equal Footing Doctrine (Count II); that the *Bell II* court violated principles of the separation of powers by abrogating the legislature’s attempt to regulate public-trust land (Count III); and, that the common law that grew out of the Colonial Ordinance should be treated as all other common law and be subject to modern uses and interpretations (Count IV). Those arguments are well stated in Plaintiff’s opposition to the various Rule 12(b)(6) motions and are incorporated by reference into this opposition. However, because Defendants have raised the issue of their title, Plaintiffs will take the opportunity to expand on their arguments under Count V—that Defendants cannot show that they hold title to the land they are claiming.

certain public rights.”)(emphasis added). The question not addressed in *Ross* is now squarely before this court: Do the Defendants own the intertidal land adjacent to their property?

The Law Court recently made clear that fee ownership of the intertidal is not automatic. Because intertidal land can be conveyed separately, the common law that has grown around the Colonial Ordinance holds the owner of adjacent upland property only **presumptively** owns the adjacent intertidal land. *Almeder v. Town of Kennebunkport*, 217 A.3d 1111, 1123 (Me. 2019)(emphasis added). The owner only benefits from this presumption where a grant of property specifically includes a call to the water. *Id.* (citing *Storer*, 6 Mass at 439).

The interpretation of the language in a deed is a question of law. *Hodgdon v. Campbell*, 411 A.2d 667, 672 (Me. 1980)(“What are the boundaries is a question of law, and where the boundaries are is a question of fact.”). When interpreting deeds, Maine courts are very careful to distinguish between uses of the word “shore.”

As a matter of law, a deed reference ‘by the shore’ calls for a measurement along the contour of the high-water mark. The ‘shore’ is the ground between the ordinary high and low water mark, the flats and is a well defined monument. As a monument, the shore limits the grant to the high-water mark. Monuments control inconsistent courses, distances and quantity. The ‘including-the-shore-adjoining-the-lot language operated to convey the flats excluded in the grant ‘by the shore.’”

Id. (internal citations omitted). Since 1810, Maine Courts have long recognized that borders that run “to the flats,” or “to the shore,” or “along the flats,” or “along the shore,” do not include the flats or the shore because the words “to” and “along” are exclusionary. See *Storer v. Freeman* 6 Mass. 435, 440 (1810). Accordingly, because the shore is considered the intertidal land, borders that only run to, by, or along the shore exclude that intertidal land.

Citing the long string of Maine cases that define terminology used in deeds, the *Almeder* court set forth a clear test for future courts to determine when the deeds included the adjacent intertidal land:

Terms such as “Atlantic Ocean,” “ocean,” “cove,” “sea,” or “river” are calls to the water that trigger the presumption[.] However, language limiting a grant “to” or “by” the shore, beach, bank, or sea shore may defeat the presumption.

Id. at 1124. The Court in that case held that the Plaintiffs did not “benefit from the Colonial Ordinance because their source deeds do not include a call to the water or even to the shore” *Id.*

Critical to the matter before this court, the *Almeder* court also held that the intertidal land must be in the source deed going all the way back in the chain of title to the original conveyance; a grantor cannot simply add a description of the adjacent intertidal and then convey it to a subsequent owner. *Id.* (“In most of the title chains, language referencing the water was added to later deeds; these late additions do not resurrect the presumption of ownership to the low water mark.”).

Hence, in order to demonstrate title to the adjacent intertidal land, the Defendants in this case must trace their ownership of that intertidal land back to the original grants. It is not enough that a description of the intertidal appear in the current deed. Because intertidal land can be conveyed separately (or not at all), in order for a claim to be valid, descriptions of the intertidal land must have been included in all prior conveyances. While this inquiry may prove burdensome for every lot along the Maine coast, the chains of title belonging to the three moving Defendants present little challenge. As demonstrated below, language describing the intertidal land adjacent to their property is not present in their historical chain of title, but was instead added in 2015, 1983, and 2019 respectively.

A. Edward and Christine Page’s Chain of Title Does Not Include the Adjacent Intertidal Land

The intertidal land that Edward and Christine Page now claim, was written into their deed in 2015. The warranty deed attached to Mr. Page’s affidavit contains the following:

Also conveying all the right, title and interest of the grantors in and to the flats and lands lying between the high and low water marks on Cundy’s Harbor and the New Meadows River abutting and adjacent to the above described premises.

Exhibit to Affidavit of Edward Page dated June 23, 2021. The 2015 Page Deed conveys all the same premises that was conveyed to his predecessors by a prior deed recorded at Book 25711, page 50 in the Cumberland County Registry of Deeds. Grotton Aff. ¶ 12, Ex. A-2. That December 19, 2007 deed specifically excludes the intertidal land by defining the boundaries as “above the high water mark.” *Id.* The only reference to the flats found in the 2007 deed pertains to a right-of-way in common with others, and even then, it is only the flats of an abutting property owner. *Id.* ¶ 13.

The 2015 Page Deed also contains a reference to another deed recorded at Book 6351, page 222 also in the Cumberland County Registry of Deeds. *Id.* ¶ 14. That December 15, 1983 deed also contains references only to the high water mark and does not contain any reference to any intertidal land. *Id.* Ex. A-3. Tracing the Page’s chain of title all the way back to 1953 reveals no call to the water. *Id.* ¶¶ 15-16.

We do not know who added the “flats” language to the Pages’ deed in 2015 or why it was added, but we do know it could not have been conveyed to the Pages by their immediate predecessors in title because that predecessor did not own it. Because their chain of title does not include any intertidal land, holdings from *Storer* in 1810 to *Almeder* in 2019 all dictate that the

Pages do not own the intertidal land adjacent to their property and therefore had no right to call law enforcement to have seaweed harvesters removed.

B. James Li and Kim Newby’s Chain of Title Does Not Contain the Adjacent Intertidal Land.

James Li and Kim Newby fair no better than the Pages. The adjacent intertidal land first appears in their chain of title in 1983. Grotton Aff. ¶ 31. Their modern deed does indeed purport to convey “any interest in the shore, rocks, and flats adjacent to the above-described premises.” *Id.* ¶ 21. Ex. B-1. That same language appears in a 1983 deed. *Id.* ¶ 26. Ex. B-5. But that language is not included on the 1946 deed. *Id.* The 1946 deed contains a reference to “tide waters” but that reference does not appear in any prior deeds. *Id.* ¶ 28. Ex. B-6. The Li/Newby chain of title runs back to include an 1839 deed. That 1839 deed described the Cranberry Island land as running “to the shore of the Island” and thence “by the shore,” language that the *Almeder* Court specifically held “defeats the presumption” of ownership of the adjacent intertidal land. The 1839 deed contains no reference to Atlantic Ocean, cove, sea, or river. *Id.* ¶ 29.

This was not an accident or an oversight. When the 1839 deed was written, it had been known for almost 40 years that these terms were interpreted by the courts as not to include the shore itself, or the intertidal. See *Storer*, 6 Mass. at 440. Even in 1839, it was well known that if a property owner wanted to convey intertidal property along with the upland, they needed to describe it in the deed.

Because Defendants Li and Newby’s predecessors in title never owned the intertidal land adjacent to their property, they could have never conveyed it to the subsequent owners. Because

James Li and Kim Newby do not own the intertidal land next to their property, they had no right to call law enforcement to have seaweed harvesters removed from it.

C. Dr. Seeley’s Chain of Title Does Not Include the Adjacent Intertidal Land.

Dr. Seeley’s deed contains no reference to any intertidal land at all. Grotton Aff. ¶ 33. In an attempt to claim ownership of intertidal land, Dr. Seeley’s sought a corrective deed from a prior owner named Sondra Castile. *Id.* ¶ 34, Ex. C-2. However, Ms. Castile had no intertidal land to convey. The 1987 deed from Miriam Myers to Sondra Castile grants to Sondra four separate parcels. *Id.* ¶ 36. Plaintiffs could find no connection between the first lot and any land owned by the Seeleys. *Id.* ¶ 39. The last parcels described in the 1987 Castile deed describes the boundaries as “[b]eginning at the shore of Pennamaquan Bay” and then “along said shore”. *Id.* Ex. C-4. Similarly, the other lots lack a description that would include any intertidal law. *Id.* ¶¶ 40-44. The Seeley’s obtained a corrective deed to claim intertidal property from a predecessor who never owned it in the first place.

In 2020 the Seeleys granted a conservation easement over a portion of their land. Seeley Aff. Ex 1. The grant purported to restrict the use of the property so that “no seaweed shall be harvested on the Protected property and the Protected Property shall not be used for the transportation of commercially harvested seaweed.” *Id.* (page 4 of the conservation easement). Because the Seeley’s did not own the intertidal land adjacent to their property before they granted the easement, they could not have imposed such a condition. One cannot grant an easement over land one does not own.

D. Law Enforcement’s Cursory Review of Only the Most Current Deeds, Does Not Make Defendants Immune from Suit.

Defendants argue that because Officers Thompson and Luellen of the Marine Patrol and Deirdre Gilbert of the Department of Marine Resources agree with their interpretation of *Ross*, then their calls to law enforcement must have been legitimate and therefore any suit brought against them to clarify the law must be a retaliatory SLAPP suit. Moreover, they provide these out-of-court statements as an authoritative declaration of law-that the seaweed next to Defendants' property automatically belongs to Defendants. With all respect to their very important work to protect Maine's resources and to ensure the safety of Maine people on the water, Officers Thompson and Luellen and Ms. Gilbert are simply wrong on the law, especially in light of the Law Court's holding in *Almeder*. More importantly, Defendants completely overstate the authority of the DMR and Marine Patrol where it comes to interpreting the law. It is this Court and not the DMR or Marine Patrol, that will decide who owns the intertidal adjacent to Defendants' land and therefore who may grant or deny permission for the harvest of seaweed thereon.

III. THE DAMAGES CAUSED BY DEFENDANT'S FALSE CLAIMS OF TITLE IS REAL AND THE THREAT TO THEIR LIVELIHOODS IS SIGNIFICANT

The Li/Newby affidavit describes a troubling encounter with Plaintiff Leroy Gilbert, a Maine citizen making a living from the bounty of his home state. Under a questionable claim of title, James Li and Kim Newby harassed a man who was just trying to make a living from the ocean and denied him his right to harvest seaweed under license from the State of Maine. Now, to add insult to injury, they claim that he has sustained no damages as a result.

By unlawfully excluding harvesters from collecting seaweed, Defendants have made it so that harvesters must travel farther, which costs them more fuel, or harvest less productive seaweed beds, which takes more time. This action alone drives up the cost of the raw materials which in turn makes the products produced by Plaintiffs less competitive in the marketplace. But

Defendants' false legal claims cut even deeper by raising doubt among potential investors about the stability of the supply chain of a critical raw material, thereby making it more difficult for companies to operate. Plaintiffs' actions devalue a critical renewable natural resource that belongs to everyone. If necessary, Plaintiffs intend to introduce business valuation and commodity pricing experts at trial, but for purposes of this motion, such evidence is premature. See *Camden Nat. Bank v. Weintraud*, 143 A.3d 788, 795 (Me. 2016)(holding that Plaintiff need not introduce expert testimony to defeat an anti-SLAPP motion.).

IV. DEFENDANT'S CLAIM FOR ATTORNEY'S FEE IS REPUGNANT TO ANY FORM OF JUSTICE.

"The typical mischief that the anti-SLAPP legislation is intended to remedy was lawsuits directed at individual citizens of modest means for speaking publicly against development projects." *Gaudette v. Mainely Media, LLC.*, 160 A.3d 539, 543 (Me. 2017). Defendants, apparently claiming to be "citizens of modest means," would have this Court punish Plaintiffs for seeking redress for a matter that is of grave concern to both parties. This should not be a case of rich versus poor. As much as Defendants' demand for attorney's fees on this motion would draw the comparison, Plaintiffs will not engage. The interests of justice are far better served by this Court and these parties focusing on the merits of the factual and legal issues before them.

CONCLUSION

The Defendants claim that Maine's anti-SLAPP statute confers absolute immunity from civil suit simply because they called the police or because they solicited others to make similar unlawful claims to land they do not own. Defendants attempt to buttress these claims by including out-of-court statements from law enforcement officers purporting to agree with Defendants' legal

theory. It is this Court that will be the arbiter of Defendants' claims, not the Maine Marine Patrol, nor the Maine Department of Marine Recourses. Maine's anti-SLAPP statute cannot be a means to deflect jurisdiction from this Court over an issue so critical to this state.

The Defendants' unlawful claims to intertidal land threatens the very livelihood of Plaintiffs. In holding that any legislative action to clarify the extent of common law would be considered a "taking," the Court in *Bell II* shut the door to any form of legislative or administrative redress, rendering the Courts as the sole authority to decide all issues regarding intertidal land. 557 A.2d 168, 179 (Me. 1989). *Almeder* raised serious questions about the ownership of intertidal land. 217 A.3d at 1124. Those questions were not resolved, or even contested in *Ross*. 206 A.3d at 287. Because of *Bell II*, the only forum available to resolve those questions is this Court. Through this motion, Defendants would bar the courthouse doors to Plaintiffs and charge them "attorneys fees" as punishment for having the nerve to seek redress from their own government. Such a motion is an affront to the fundamentals of fairness and justice and should be denied by this Court as such.

Dated at Portland, Maine this 20th day of July, 2021.


For Plaintiffs,
Benjamin E. Ford, Esq.
Sandra L. Guay, Esq.
John R. Coon, Esq.
Archipelago Law, LLP
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jrcoon@archipelagolaw.com

State of Maine
Cumberland, ss

Superior Court
Civil Action
Docket No. RE-2021-35

Peter and Kathy Masucci, et al.,)
)
 Plaintiffs)
)
 v.)
)
 Judy's Moody LLC, et al.,)
)
 Defendants)
)
 and)
)
 Aaron Frey in his capacity as the Attorney General)
 for the State of Maine)
)
 Party in interest)

AFFIDAVIT OF JOHN W. GROTTON

I, John W. Grotton, do hereby depose and swear the following:

1. I am an employee of North American Kelp.
2. Our company produces products derived from seaweed that is harvested from sites on the Maine Coast.
3. We purchase seaweed from licensed harvesters who gather seaweed from the area between the high tide line and the low tide line.
4. Since the Law Court's decision in *Ross v. Acadian Seaplants* in 2019, law enforcement officers have approached seaweed harvesters and have told them to leave areas they have previously been harvesting.
5. Defendants Page and Li/Newby have called law enforcement to remove harvesters from intertidal land they claim to own.

6. Defendant Seeley has engaged in a campaign to convince other shorefront owners to call law enforcement in order to deny access to seaweed harvesters.
7. I am not a professional title abstractor however starting in June 2019, I began to research the deeds of the various people that have attempted to deny harvesters access to intertidal land adjacent to their upland property.
8. As part of this process, I looked up the owner's property in the tax records for each town. Then I pulled each deed from the online database for each counties' registry of deeds. Once I had the current deeds, I followed the chain of title back to see if the prior grants contained the intertidal land. I did this both on-line and by going to the Registries of Deeds where sometimes the Clerk would assist in my search.
9. While the current deeds for the Pages, Li/Newbys and Seeleys contain references to intertidal land, I have found that for each of these Defendants, that language was added to their deeds in the recent past. In other words, for each of these Defendants, the language describing the intertidal land they are claiming was inserted into the deed by a predecessor in title who themselves were never granted that intertidal land by a prior owner.
10. A detailed analysis of each deed follows:

Edward and Christine Page

11. Defendants Edward and Christine Page were conveyed title to the property by Deed from the Steffian Family Maine Property Trust (the "Trust"), dated October 5, 2015, and recorded in the Cumberland County Registry of Deeds in Book 32649, Page 201. ("2015 Page Deed"; attached hereto as Exhibit A-1). The 2015 Page Deed includes the following language: "Also conveying all the right, title and interest of the grantors in and to the flats and land lying

between the high and low water marks on Cundys Harbor and the New Meadows River abutting and adjacent to the above described premises.” Exhibit A-1.

12. The 2015 Page Deed conveys “all the same premises” that was conveyed by Peter Steffian and Beth B. Steffian to the Trust, in a deed dated December 19, 2007, and recorded in said Registry of Deeds in Book 25711, Page 50. That 2007 deed specifically excludes any intertidal land in the conveyance by defining the boundaries as being “all of the island know[sic] as Shepherd’s Island, so-called, *above high water mark*.” See Exhibit A-2 attached hereto (emphasis added).
13. The only reference to the flats found in the 2007 deed pertains to a right-of way in common with others, and even then, is to only the flats of an abutting property owner “the said Sherman”. Exhibit A-2.
14. The 2015 Page Deed also references a deed dated December 15, 1983, and recorded in said Registry in Book 6351, Page 222, being the predecessor to the 2007 deed. That predecessor deed again specifically conveys only to the high water mark. Exhibit A-3 attached hereto. The 1983 deed gives a title reference to an October 28, 1972 deed recorded in said Registry on Book 4883, Page 52. The 1972 deed has the same language limiting the parcel to “above the high water mark” and “to high water mark.” Exhibit A-4; attached hereto.
15. The 1972 deed give a title reference to a deed dated August 23, 1966, recorded in said Registry in Book 2972, Page 347. That deed also describes the property as being “above the high water mark” and “to high water mark.” Exhibit A-5; attached hereto.
16. I also examined deeds prior to the 1972 conveyance going back in title to July 21, 1953 (Book 2140, Page 427) and found the same references to the high water mark and no

reference to a conveyance of the flats or any land between the high and low water marks other than the common right of way over an abutting property.

17. I concluded that the language purporting to convey right, title and interest “in and to the flats and land lying between the high and low water marks on Cundys Harbor and the New Meadows River abutting and adjacent to the above described premises” was added in 2015 to the 2015 Page Deed.

James Li and Kim Newby

18. James Li and Kim Newby own two lots with water frontage on Cranberry Island in the town of Friendship, Maine. Both lots appear on the Town of Friendship Tax Map 220 and are designated on that Map as Lot 1 and Lot 13.

19. James Li and Kim Newby were conveyed title to these two lots by Deed from James Li and Kim Newby as Trustees of the Spotted Duck Revocable Trust, dated October 27, 2013, recorded in the Knox County Registry of Deeds in Book 4626, Page 202. The two lots are identified on the deed as “Cranberry Island Parcel I” (Lot 1 on the Tax Map) and “Cranberry Island Parcel II” (Lot 13 on the Tax Map) in said deed. (“2013 Li/Newby Deed”; attached hereto as Exhibit B-1).

20. The 2013 Li/Newby Deed describes “Cranberry Island Parcel I” as running “to a point on the shore” of Muscongus Bay “from a rebar set in rock adjacent to said shoreline” and thence running “along the shore of Muscongus Bay and Joslin Cove”. Exhibit B-1.

21. The Deed description for “Cranberry Island Parcel I” in the 2013 Li/Newby Deed also purports to convey “any interest in the shore, rocks, and flats adjacent to the above-described premises.” Exhibit B-1.

22. The 2013 Li/Newby Deed describes the first part of the “Cranberry Island Parcel II” as “[b]eginning at the shore” and then running “easterly by the shore”; the second described part is only a building and 100-feet around the building. Exhibit B-1.
23. The land conveyed in the 2013 Li/Newby Deed was conveyed to Li/Newby as Trustees, by James Li and Kim Newby who received title to “Cranberry Island Parcel I” by Deed from Kenneth Sumner and Karen Z. Chance, dated October 4, 2002, and recorded in said Registry of Deeds in Book 2605, Page 017 (Exhibit B-2, attached hereto); and to Cranberry Island Parcel II” by Deed dated July 22, 2005 and recorded in said Registry of Deeds on Book 3463, Page 181.
24. The 2002 deed from Sumner/Chance to Li/Newby describes “Cranberry Island Parcel I” using the same language as in the 2013 Li/Newby Deed; “Cranberry Island Parcel I” being a portion of the land conveyed to Sumner/Chance in a Deed from David L. Adams and Pamela B. Adams, dated June 1, 2001, and recorded in said Registry of Deeds in Book 2605, Page 17. This 2001 deed also uses the language “[t]ogether with the flats and shore appurtenant to the premises conveyed.” Exhibit B-3; attached hereto.
25. The Adams were conveyed the land that includes “Cranberry Island Parcel I” by Deed from Nanette Mary Scott, dated June 10, 1983, recorded in said Registry in Book 919, Page 311; this 1983 deed also includes the language “[t]ogether with the flats and shore appurtenant to the premises conveyed.” Exhibit B-4; attached hereto.
26. The 1983 Nanette Mary Scott deed provides several title references wherein partial interests in the land were conveyed to Scott, including a deed from Grace E. Giles and Donald E. Giles, dated July 6, 1946 and recorded in said Registry in Book 291, Page 253. Exhibit B-5; attached hereto.

27. The 1946 Scott deed describes two Cranberry Island parcels and it is unclear which one (or both) describes the “Cranberry Island Parcel I”, in whole or in part. One of the described parcels describes the land as “running along the shore”; the second parcel is also described as running “to the shore”, then “by the shore”. This description in this second parcel also says “and on all other sides by tide waters.” Exhibit B-5.
28. The title reference to the first parcel in the 1946 Scott deed was to a deed from E.A. Giles and Donald E. Giles, dated January 3, 1928, recorded in Book 168, Page 242. The 1928 deed describes that land as running “to the shore” and then “by the shore”. There is no reference intertidal land or “tide waters” in this 1928 deed. Exhibit B-6; attached hereto.
29. Title reference in the 1928 deed was to a Deed from James Morton to David and Henry Simmons, recorded in the East Lincoln Record, Vol. 20, Page 26. (Exhibit B-7; attached hereto). This deed, dated August 17, 1839, described the Cranberry Island land as running “to the shore of the Island” and thence “by the shore.” Once again, there is no reference intertidal land or “tide waters” in this 1928 deed.
30. The title reference to the second parcel described in the 1946 Scott deed is to a deed from Ernest J. Burns, dated December 1927, and recorded in the Knox County Registry of Deeds in Book 215, Page 334. Exhibit 8; attached hereto). This deed describes the land as “starting at the cove” then “running along the shore.”
31. Based on the above, I concluded that for “Cranberry Island Parcel I”, the language about “flats and shore appurtenant to the premises conveyed” was added in 1983 and the language about “tide waters” was added in 1946; with respect to “Cranberry Island Parcel II” there has been no reference to intertidal land or tide waters in the deeds.

Thomas Seeley and Robin Hadlock Seeley

32. Thomas Seeley and Robin Hadlock Seeley own property in the town of Pembroke, Maine. Their deed for this property is recorded in Book 3663, Page 213 in the Washington County Registry of deeds. (“2010 Seeley Deed”; attached hereto as Exhibit C-1).
33. The 2010 Seeley Deed describes the land as running “to the highwater line” of Pennamaquan Bay and then “along the high water line”. (Exhibit C-1). The deed contains no reference to intertidal land.
34. The Grantor in the 2010 Seeley Deed was Robert T. Howard. (Exhibit C-1). On November 20, 2019, the Seeleys recorded a document titled “Corrective Release Deed” in which the prior owner to Howard in the chain of title, a Sondra Castile, purported to convey “the area between the high and low water” adjacent to the property owned by the Seeleys. Exhibit C-2; attached hereto.
35. The so-called Corrective Release Deed states that Sondra Castile owned the “area between the high and low water mark of Pennamquan Bay” adjacent to the Seeley’s property by virtue of a 1987 deed to her from Miriam Myers recorded in Book 1449, Page 194. Exhibit C-3; attached hereto.
36. The 1987 deed from Miriam Myers to Sondra Castile grants to Sondra four separate parcels. The last of these parcels is described in that deed as being bound by Pennamaquan Bay, and that description reads “[b]eginning at the shore of Pennamaquan Bay” and then “along said shore”. There is no mention in this deed of any land between the high and low water. Exhibit C-3.
37. The Pennamanquan Bay parcel was conveyed to Miriam Myers by Roger J. Wilson, administrator of the estate of Adelaide Smith, by deed dated April 18, 1960 and recorded in said Registry of Deeds in Book 518, Page 42. That deed also describes the property as

“[b]egin[...] at the shore of Pennamaquan Bay” and then “along said shore”. Again, there is no mention in this deed of any land between the high and low water. Exhibit C-4; attached hereto.

38. The April 18, 1960 deed gives a title reference to a deed from Esther A. Holland to Ephriam B. Smith, dated March 7, 1894 and recorded in said Registry in Book 208, Page 319. Exhibit C-5; attached hereto. This deed describes the Pennamaquan Bay land as “[b]eginning at the shore of Pennamaquan Bay” and then “running along said shore” with again no mention of land between the high and low water.
39. I also researched the deeds to the first parcel described in the 1987 Castile deed. I could find no connection between that parcel and land owned by the Seeleys.
40. The next parcel described in the 1987 deed makes no mention of Pennamaquan Bay or any body of water. It gives as title reference a deed from Albert A. Hersey to Marion B. Munson, dated October 27, 1942 and recorded in said Registry in Book 446, Page 15. This 1942 deed again makes no mention of any water body, but gives as title reference a deed from Hosea Smith to B.B.Murray, dated December 28, 1897 and recorded in said Registry in Book 148, Page 459 (this is an incorrect deed reference, the correct date is December 28, 1877 and it is recorded in said Registry in Book 146, Page 459). There are also title references in the 1942 deed to deeds from Catherine B. and Hosea Smith dated October 26, 1886, and recorded in Book 174, Page 166, being the same property conveyed to Dorcas E. Morrison by Charles C. Morang, by deed dated July 20, 1888 and recorded in Book 184, Page 119, also being the same property conveyed to Francis A. Morrison by Dorcas E. Morrison by deed dated April 28, 1921 and recoded in Book 353, Page 560, also being the same premises conveyed to Albert E. Hersey, by deed dated August 19, 1927, and recorded in Book 376, Page 547.

41. Going back to the earliest referenced deed to Hosea Smith, dated October 26, 1886, and recorded in Book 174, Page 166, the property is, in part, described as going from the “‘Head of the Tide’ so called to ‘Leighton Point’”. Exhibit C-8; attached hereto. There is no other reference to tide or water in this deed. I also researched the other deeds listed in the 1942 deed, which repeated the same language and again, other than the “Head of the Tide” mentioned no tide or water body.
42. The 1877 deed from Hosea Smith to B.B. Murray, recorded in said Registry in Book 146, Page 459, describes the parcel as “Beginning at a Stake in a Stone on the Shore of Pennamaquan Bay at high water and running thence North-westerly by said shore....” (Exhibit C-9; attached hereto).
43. The next parcel described in the 1987 deed makes no mention of Pennamaquan Bay or any body of water. It gives as title reference a deed from Loran E. Blackwood to Marion B. Munson, dated April 24, 1947 and recorded in said Registry of Deeds in Book 474, Page 587, which deed likewise makes no mention of any water body. The 1947 deed gives as title reference a deed from Earl P. Carter, dated May 15, 1942 and recorded in said Registry of Deeds in Book 446, Page 319, which deed again makes no reference to a water body but provides another title reference to a deed from the Town of Pembroke, dated May 9, 1940 (and recorded in May 16, 1942 in Book 443, Page 226). This deed references a series of Tax Lien records between the years 1934 and 1938. Each lien provides a brief description of the parcel being conveyed. The lien filed in said Registry in Book 411, Page 455 describes some of the property as running east by Pennamaquan Bay
44. Lastly, the 1987 gives two additional title references for these last two described parcels; a deed from James E. Munson, dated April 11, 1961 and recorded in said Registry of Deeds in

Book 574, Page 568, and a deed from Inez L. Marek, dated September 22, 1961 and recorded in said Registry in Book 580, Page 99. The April 11, 1961 deed has the term “Head of the Tide”. The September 22, 1961 deed does not use that term. Neither deed makes any other reference to tide or a body of water.

45. With respect to the Seeley property, I concluded as follows:

- (a) The land conveyed to Seeley in the 2010 deed, and to the Seeleys’ immediate predecessor in title, Robert T. Howard, is only a portion of the land that is described in the 1987 deed from Miriam B. Myers to Sondra M. Castile but because the description has been changed to a surveyed description, it is difficult to know which of the four parcels described in the 1987 was conveyed by Sondra Castile to Robert T. Howard.
- (b) Neither the 2010 Seeley Deed nor the 2004 deed from Sondra Castile to Robert T. Myers make mention of any tide or any waterbody.
- (c) The “Corrective Release Deed” given to the Seeley’s by Sondra Castile purporting to convey “the area between the high and low water” adjacent to the property owned by the Seeleys claims ownership of this intertidal land by way of the 1987 deed.
- (d) I could find no connection to the first lot described in the 1987 deed and the land currently owned by the Seeleys.
- (e) There is nothing in the chain of title to any of the remaining described parcels in the 1987 deed to mentioned tide water (other than the “Head of the Tide”) and no mention of Pennamaquan Bay land other than as “[b]eginning at the shore of Pennamaquan Bay” and then “running along said shore”.
- (f) As a result of the above, I concluded that the “the area between the high and low water” language in the “Corrective Release Deed” was added only to that “Corrective Release Deed” in 2019 and that there is no predecessor deed that mentioned anything about any land running seaward from “[b]eginning at the shore of Pennamaquan Bay” and then “running along said shore”.

46. I am familiar with the advocacy work of Robin Seeley.

47. Attached hereto as Exhibit D is a form that Dr. Seeley is currently posting online.

48. This form encourages upland property owners to include their property in a database of landowners that do not permit the harvest of seaweed on the intertidal land adjacent to their property.

Dated: July 19, 2021

John W. Grotton

STATE OF MAINE
CUMBERLAND, SS.

Personally appeared before me the 19th day of July, 2021, the above named John W. Grotton, and made oath as to the truth of the following foregoing statements by him to the best of his knowledge, information and belief and to the extent based upon his knowledge, information, and belief, he believes it to be true.

Benjamin E. Ford
Attorney, Bar No. 4528

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT WE, HANNA COVER STEFFIAN and BETH B. STEFFIAN, Trustees of the STEFFIAN FAMILY MAINE PROPERTY TRUST u/d/t December 19, 2007, with a mailing address of 37 Water Street, Brunswick, Maine 04011, by the powers conferred by law, and every other power, for consideration paid, GRANT to EDWARD GORDON PAGE and CHRISTINE E. PAGE, both with a mailing address of 313 W. Gundlach Street, Columbia, Illinois 62236, as joint tenants, and not as tenants in common, with WARRANTY COVENANTS, a certain lot or parcel of land and any buildings thereon located in Harpswell, Cumberland County and State of Maine, being more particularly described as follows:

A certain lot or parcel of land with the buildings thereon situated in the New Meadows River in that part of the Town of Harpswell known as Cundy's Harbor, so-called, in the County of Cumberland and State of Maine, and being all of the island know as Shepherd's Island, so-called, above high water mark; together with a right of way in common with others over land of Ernest E. Sherman, the same being a strip twenty (20) feet wide on the easterly side of said Sherman's land immediately adjoining the land of Margaret LeBourdais and leading from the "Field Road", so-called, to high water mark; and thence extending over the flats of the said Sherman following the same course and width to said conveyed island.

Also with the right to use the "Field Road", so-called, as now used, in common with others, leading from the Cundy's Harbor Road to the above mentioned right of way.

Excepting, however, from said above described premises, one lot sold to Thurl L. Wilson and Bertha Wilson, being one hundred (100) feet frontage on the shore and fifty (50) feet in depth on the northeasterly side and at the north end of the island, which deed has been duly recorded in the Cumberland County Registry of Deeds.

The above described premises are conveyed subject to easements of record.

Meaning and intending to convey and hereby conveying all the same premises conveyed to Peter Steffian and Beth B. Steffian as Trustees of the Steffian Family Maine Property Trust u/d/t dated December 19, 2007, which deed is dated December 19, 2007 and recorded at Book 25711, Page 50 in the Cumberland County Registry of Deeds.

Further reference is made to a deed from Maria L. Card a/k/a Marie L. Card, dated December 15, 1983, and recorded in the Cumberland County Registry of Deeds, in Book 6351, Page 222.

MAINE REAL ESTATE TAX PAID

Also conveying all the right, title and interest of the grantors in and to the flats and land lying between the high and low water marks on Cundys Harbor and the New Meadows River abutting and adjacent to the above described premises.

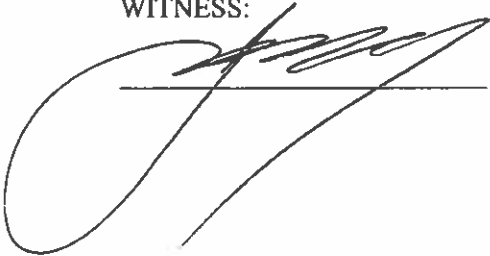
Certificate of Trust Pursuant to 18-B MRSA 1013


We, the undersigned trustees, by signing this deed, hereby certify that:


- (i) *We are the sole duly appointed and authorized trustees of the Steffian Family Maine Property Trust w/d/t December 19, 2007, as of the date of this deed (Hanna Cover Steffian having become a successor trustee upon the death of Peter Steffian on May 28, 2013);*
- (ii) *We have the power to sell real property held by the trust;*
- (iii) *We are authorized to convey the real property set forth in this deed, having been specifically directed to do so by the beneficiaries pursuant to Paragraph 3 of the Declaration of Trust; and*
- (iv) *The trust has not been revoked, modified, or amended in any manner that would cause the representations contained in this certification to be incorrect.*

IN WITNESS WHEREOF, HANNA COVER STEFFIAN and BETH B. STEFFIAN, Trustees of the STEFFIAN FAMILY MAINE PROPERTY TRUST have hereunto set their hand and seal this 5th day of October 2015.

WITNESS:



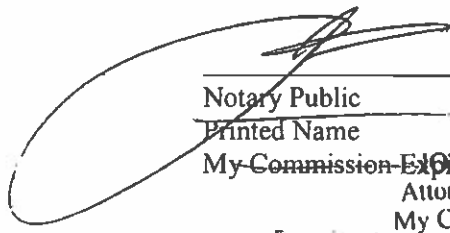

 HANNA COVER STEFFIAN, Trustee of the
 STEFFIAN FAMILY MAINE PROPERTY TRUST


 BETH B. STEFFIAN, Trustee of the
 STEFFIAN FAMILY MAINE PROPERTY TRUST

STATE OF MAINE
Cumberland, ss

October 5, 2015

Then personally appeared before me the above-named HANNA COVER STEFFIAN and BETH B. STEFFIAN, Trustees of the STEFFIAN FAMILY MAINE PROPERTY TRUST, and acknowledged the foregoing instrument to be their free act and deed in their said capacity and being duly sworn, attested to the truth of the statements contained herein, said statements being based upon their own personal knowledge.


 Notary Public
 Printed Name
 My Commission Expires: **EDMOND T. VOORHEES, JR.**
 Attorney-at-Law/Notary Public
 My Commission does not expire.

Received
 Recorded Register of Deeds
 Oct 07, 2015 11:38:17A
 Cumberland County
 Nancy A. Lane

QUITCLAIM DEED RELEASE

(Without Covenant)

KNOW ALL ME BY THESE PRESENTS, That we, Peter Steffian and Beth B. Steffian, both of Somerville, County of Middlesex, Commonwealth of Massachusetts, in consideration of One (\$1.00) Dollar paid by Peter Steffian and Beth B. Steffian, as Trustees of the Steffian Family Maine Property Trust, of Somerville, County of Middlesex, Commonwealth of Massachusetts, the receipt whereof we do hereby acknowledge, do hereby release unto the said Peter Steffian and Beth B. Steffian, Trustees of the Steffian Family Maine Property Trust, u/d/t dated December 19, 2007, and recorded herewith, all our right, title and interest in and to the following locus:

A certain lot or parcel of land with the buildings thereon situated in the New Meadows River in that part of the Town of Harpswell known as Cundy's Harbor, so-called, in the County of Cumberland and State of Maine, and being all of the island know as Shepherd's Island, so-called, above high water mark; together with a right of way in common with others over land of Ernest E. Sherman, the same being a strip twenty (20) feet wide on the easterly side of said Sherman's land immediately adjoining the land of Margaret LeBourdais and leading from the "Field Road", so-called, to high water mark; and thence extending over the flats of the said Sherman following the same course and width to said conveyed island.

Also with the right to use the "Field Road", so-called, as now used, in common with others, leading from the Cundy's Harbor Road to the above mentioned right of way.

Excepting, however, from said above described premises, one lot sold to Thurl L. Wilson and Bertha Wilson, being one hundred (100) feet frontage on the shore and fifty (50) feet in depth on the northeasterly side and at the north end of the island, which deed has been duly recorded in the Cumberland County Registry of Deeds.

For source of title, reference may be had to a certain instrument from Maria L Card, dated December 115, 1983, and recorded in the Cumberland County Registry of Deeds, in Book 6351, Page 222.

The above described premises are conveyed subject to easements of record.

To have and to hold the aforegranted Premises with all the privileges and appurtenances thereof to the said Peter Steffian and Beth B. Steffian, as Trustees as aforesaid, and their assigns, to them and their use and behoove forever.

IN WITNESS WHEREOF, we, Peter Steffian and Beth B. Steffian, both release all rights in the premises being conveyed, and have hereunto set our

hands and seals this 19TH day of December, in the year of our Lord two thousand and seven.

*Signed, Sealed and Delivered
in the presence of*

Andrew E. Bram

Peter Steffian
Peter Steffian

Beth B. Steffian
Beth B. Steffian

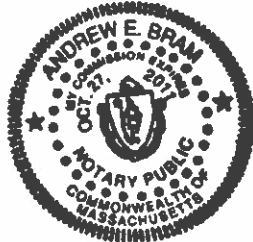
COMMONWEALTH OF MASSACHUSETTS

Middlesex,ss.

December 19, 2007

On This 19th day of December, 2007, before me, the undersigned notary public, personally appeared Peter Steffian, proved to me through satisfactory evidence of identification, to wit: Massachusetts drivers license as to both, to be the person whose names are signed on the within document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Andrew E. Bram
Notary Public: ANDREW E. BRAM
My Commission Expires: 10.27.2011



Received
Recorded Register of Deeds
Dec 27, 2007 12:59:07P
Cumberland County
Pamela E. Lovley

25711

Know All Men By These Presents.

That I, MARIA L. CARD, also known as MARIE L. CARD, of Harpswell, in the County of Cumberland and State of Maine,

in consideration of one dollar and other good and valuable considerations

paid by PETER STEFFIAN and BETH B. STEFFIAN, both of Cambridge, in the County of Middlesex and Commonwealth of Massachusetts,

the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said PETER STEFFIAN and BETH B. STEFFIAN, as joint tenants and not as tenants in common, and their heirs and assigns, and the survivor of them, and the heirs and assigns of the survivor of them, forever,

A certain lot or parcel of land with the buildings thereon situated in the New Meadows River in that part of the Town of Harpswell known as Cundy's Harbor, so-called, in the County of Cumberland and State of Maine, and being all of the island known as Shepherd's Island, so-called, above high water mark; together with a right of way in common with others over land of Ernest E. Sherman, the same being a strip twenty (20) feet wide on the easterly side of said Sherman's land immediately adjoining the land of Margaret LeBourdais and leading from the "Field Road", so-called, to high water mark; and thence extending over the flats of the said Sherman following the same course and width to said conveyed island.

Also with the right to use the "Field Road", so-called, as now used, in common with others, leading from the Cundy's Harbor Road to the above mentioned right of way.

Excepting, however, from said above described premises, one lot sold to Thurl L. Wilson and Bertha Wilson, being one hundred (100) feet frontage on the shore and fifty (50) feet in depth on the northeasterly side and at the north end of the island, which deed has been duly recorded in the Cumberland County Registry of Deeds.

For source of title, reference may be had to a certain instrument from Lester N. Card and Vida E. Card to Marie L. Card dated October 28, 1972 and recorded in the Cumberland County Registry of Deeds in Book 4883 at Page 52. Incorporated in the within conveyance by reference are those premises conveyed to the within grantor by deed of Lester N. Card and Vida E. Card dated October 28, 1972 and recorded in the Cumberland County Registry of Deeds in Book 4883 at Page 55.

The above described premises are conveyed subject to easements of record.

BOOK 6351 PAGE 222

52

30633

Know All Men by These Presents,

That We, LESTER N. CARD and VIDA E. CARD both of Star Route, in the City of Brunswick, County of Cumberland and State of Maine,

in consideration of one dollar and other valuable consideration, (total consideration being less than one hundred dollars)

paid by MARIE L. CARD of 317 Fowler Road, in the town of Cape Elizabeth, County of Cumberland and State of Maine,

the receipt whereof we do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said

MARIE L. CARD, her

heirs and assigns forever, a certain lot or parcel of land with the buildings thereon situated in the New Meadows River in that part of the Town of Harpswell known as Cundy's Harbor, so-called, in the County of Cumberland and State of Maine, and being all of the island known as Shepherd's Island, so-called, above high water mark; together with a right of way in common with others over land of Ernest E. Sherman, the same being a strip twenty (20) feet wide on the Easterly side of said Sherman's land immediately adjoining the land of Margaret LeBourdais and leading from the "Field Road", so-called, to high water mark; and thence extending over the flats of the said Sherman following the same course and width to said conveyed island.

Also with the right to use the "Field Road", so-called, as now used, in common with others, leading from the Cundy's Harbor Road to the above mentioned right of way.

Excepting, however, from said above described premises, one lot sold to Thurl L. Wilson and Bertha Wilson, being one hundred (100) feet frontage on the shore and fifty (50) feet in depth on the Northeasterly side and at the North end of the island, which deed has been duly recorded in the Cumberland County Registry of Deeds.

Also excepting and reserving, however, from the above described premises one certain lot or parcel of land situated on said Shepherd's Island, bounded and described as follows:

Beginning at a point on the Westerly edge of the roadway as now situated on said Shepherd's Island; said point being marked by a stake and being one hundred feet (100), more or less, Southerly from the Northerly end of said Island; thence by compass heading of two hundred ninety degrees (290°) magnetic seventy one feet (71), more or less, to the high water mark of Cundy's Harbor; thence by said high water mark, southerly, one hundred feet (100), measured in a straight line to a point; thence in an easterly direction, parallel with the first described seventy-one foot (71) line ninety five feet (95) more or less to the said westerly edge of said roadway; thence in a northerly direction by the said westerly edge of said roadway to the point of beginning.

Excepting also from the above described rights and real estate the right to use the right of way in common with others over land of said Sherman, the same being a strip twenty feet (20) wide on the easterly side of said Sherman land immediately adjoining the land of Margaret LeBourdais and leading from the "Field Road", so-called, to high water mark; and thence extending over the flats of the said Sherman, following the same course and width to the said Island.

Also reserving the right to use the "Field Road" as now used, in common with others leading from the Cundy's Harbor road to the above mentioned right of way.

Being the same premises conveyed to the Grantors herein by deed of Marie L. Card dated August 23, 1966, and recorded in the Cumberland County Registry of Deeds in Book 2972, Page 347.

And we do hereby grant unto the said Grantee, her heirs and assigns, the aforegranted and bargained premises with all the privileges and appurtenances thereof, to the said

MARIE L. CARD, her

heirs and assigns, to her and their use and behoof forever.

And we do warrant with the said Grantee, her heirs and assigns, that we are lawfully seized in fee of the premises, that they are free of all incumbrances;

1939
09317
Know All Men by These Presents.

That I, MARIA L. CARD, of Cape Elizabeth, in the County of Cumberland and State of Maine,

in consideration of One Dollar and other valuable consideration,

paid by LESTER N. CARD and VIDA E. CARD, both of Harpswell, in the County of Cumberland and State of Maine,

the receipt whereof I do hereby acknowledge, do hereby remise, release, bargain, sell and convey and forever quit-claim unto the said Lester N. Card and Vida E. Card, as joint tenants and not as tenants in common, their

heirs and assigns forever, a certain lot or parcel of land with the buildings thereon situated in the New Meadows River in that part of the Town of Harpswell known as Curdy's Harbor, so-called, in the County of Cumberland and State of Maine, and being all of the island known as Shepherd's Island, so-called, above high water mark; together with a right of way in common with others over land of Ernest E. Sherman, the same being a strip twenty (20) feet wide on the Easterly side of said Sherman's land immediately adjoining the land of Margaret LeBourdais and leading from the "Field Road", so-called, to high water mark; and thence extending over the flats of the said Sherman following the same course and width to said conveyed island.

Also with the right to use the "Field Road", so-called, as now used, in common with others, leading from the Cundy's Harbor Road to the above mentioned right of way.

Excepting, however, from said above described premises, one lot sold to Thurl L. Wilson and Bertha Wilson, being one hundred (100) feet frontage on the shore and fifty (50) feet in depth on the Northeasterly side and at the North end of the island, which deed has been duly recorded in the Cumberland County Registry of Deeds.

Also excepting and reserving, however, from the above described premises one certain lot or parcel of land situated on said Shepherd's Island, bounded and described as follows:-

Beginning at a point on the Westerly edge of the roadway as now situated on said Shepherd's Island; said point being marked by a stake and being one hundred feet (100'), more or less, Southerly from the Northerly end of said Island; thence by compass heading of Two Hundred Ninety Degrees (290°) magnetic Seventy-One Feet (71'), more or less, to the high water mark of Cundy's Harbor; thence by said high water mark, Southerly, One Hundred Feet (100'), measured in a straight line to a point; thence in an Easterly direction, parallel with the first described Seventy-One Foot (71') line

00348

Ninety-Five Feet (95') more or less to the said Westerly edge of said roadway; thence in a Northerly direction by the said Westerly edge of said roadway to the point of beginning.

Excepting also from the above described rights and real estate the right to use the right of way in common with others over land of said Sherman, the same being a strip Twenty Feet (20') wide on the Easterly side of said Sherman land immediately adjoining the land of Margaret LeBourdais and leading from the "Field Road", so-called, to high water mark; and thence extending over the flats of the said Sherman, following the same course and width to the said Island.

Also reserving the right to use the "Field Road" as now used, in common with others leading from the Cundy's Harbor road to the above mentioned right of way.

Being the same premises conveyed to the Grantor herein by deed of Lester S. Card, Jr. dated July 31, 1964 and recorded in Cumberland County Registry of Deeds in Book 2842, Page 27.

To have and to hold the same, together with all the privileges and appurtenances thereunto belonging, to the said Lester N. Card and Vida E. Card, as joint tenants and not as tenants in common, their heirs and assigns forever.

And I do covenant with the said Grantees, their heirs and assigns, that I will Warrant and Maintain the premises to them the said Grantees, their heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through or under me.

In Witness Whereof, I the said MARIA L. CARD and LESTER S. CARD, JR., husband of the said Maria L. Card

sssk


with

the said

joining in this deed as Grantors, and relinquishing and conveying my rights by descent and all other rights in the above described premises, have hereunto set our hands and seals this 23rd day of August, in the year of our Lord one thousand nine hundred and sixty-six.

Signed, Sealed and Delivered in presence of

Barbara Richards
Richard L. Adams

Maria L. Card
Lester S. Card, Jr. 

State of Maine. Cumberland, ss.

August 23, 1966.

00749

Personally appeared the above named

MARIA L. CARD

and acknowledged

the above instrument to be her free act and deed.

Before me,

Arta C. Hayward

Justice of the Peace
Notary Public

SEP 12 1966

My Commission expires Feb. 17, 1967

REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE

Received at 9 H - M. and recorded in

BOOK 2972 PAGE 347

Lowell R. H. Jones

Register

Know All Men by These Presents.

That We, Bartlett P. and Edith Seavey of Scarborough in the County of Cumberland and the State of Maine

Discharge
Book 2994
Page 569

in consideration of Eight Hundred Fifty Dollars (\$850.00)

paid by Auto Finance Co. a corporation organized under the laws of the State of Maine, and having a place of business in Portland in the County of Cumberland and the State of Maine

the receipt whereof we do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said Auto Finance Co., its successors

hereby and assigns forever,

the following described property:

A certain lot or parcel of land, with the buildings thereon, situated on Maple Avenue, in said Town of Scarborough, bounded and described as follows:

Beginning at the northeasterly corner of land of Peter Sorensen; thence easterly along the southerly side line of Hunnewell Road one hundred (100) feet; thence southerly on a line parallel with the easterly line of said Sorensen land one hundred fifty (150) feet; thence westerly along a line parallel with the southerly line of said Hunnewell Road one hundred (100) feet to the easterly side line of said Sorensen land; thence northerly one hundred fifty (150) feet along the easterly side of said Sorensen land to the point of beginning.

Being the same premises conveyed to the grantors by Warranty Deed of Everett T. Roberts, et al, dated November 12, 1954, and recorded in the Cumberland County Registry of Deeds in Book 2204, Page 222, and being subject to a mortgage to the Maine Savings Bank dated April 24, 1955, and recorded in Book 2227, Page 97, not to exceed Fifty-five Hundred Dollars (\$5500.00), and also a mortgage to the Maine Savings Bank dated November 19, 1964 and recorded in Book 2865, Page 127.

Doc# 1091
Bk = 4626 Ps = 202

WARRANTY DEED

Know All By These Presents

That we, **James Li and Kim Newby**, of Friendship, Knox County, Maine in consideration of one dollar and other valuable consideration, do hereby grant and convey unto **James Li and Kim Newby** as Trustees of the **Spotted Duck Revocable Living Trust** under a Declaration of Trust dated February 6, 2013, the following lots and parcels of land, with all buildings and improvements thereon, all being situated in the town of Friendship in Knox County, Maine, and bounded and described as follows:

1. Cranberry Island Parcel I

Beginning at a 5/8" iron rebar set on the easterly line of the land of the grantors, Newby and Li, which said rebar is located S 64 degrees 37 minutes 45 seconds W a distance of 40 feet from the center of a well located on the common line of the grantors, Newby and Li, and land now or formerly of one Thompson; thence running N 05 degrees 58 minutes 55 seconds W along land now or formerly of Kenneth Sumner and Karen Z. Chance a distance of 738.8 feet, more or less, to a point on the shore of Muscongus Bay (which said point is located S 05 degrees 58 minutes 55 seconds E a distance of 50 feet, more or less, from a rebar set in rock adjacent to said shoreline); thence running in a general easterly, southerly and southwesterly direction along the shore of Muscongus Bay and Joslin Cove, so-called, to the northeast corner of land now or formerly of said Thompson; thence running S 62 degrees 28 minutes 00 seconds W along said Thompson land a distance of 7.5 feet to a rebar; thence continuing on said bearing of S 62 degrees 28 minutes 00 seconds W along said Thompson land a distance of 22.0 feet to an iron rebar; thence continuing on said bearing of S 62 degrees 28 minutes 00 seconds W a distance of 146.6 feet to an iron rod; thence running S 62 degrees 35 minutes 20 seconds W along said Thompson land a distance of 226.2 feet to the center of the aforesaid well; thence running S 64 degrees 37 minutes 45 seconds W a distance of 40 feet along said Thompson land to the point of beginning, being 11.4 acres, more or less.

Also conveying any interest in the shore, rocks and flats adjacent to the above-described premises.

This Cranberry Island Parcel I is subject to the rights granted by Nanette Mary Scott to the Lincoln Audubon Society by instrument dated May 16, 1974, and recorded in the Knox County Registry of Deeds in Book 912, Page 320.

For source of title to the above-described Cranberry Island Parcel I reference may be had to a conveyance from Kenneth Sumner and Karen Z. Chance to Kim Newby and James Li dated October 4, 2002, and recorded in the Knox County Registry of Deeds in Book 2846 at Page 338.

2. Cranberry Island Parcel II

Beginning at the shore at the eastern corner of land of the late Joseph Simmons; thence easterly by the shore ninety-nine (99) feet to a stake and stones; thence southwesterly to line of land of Albert Crofoot; thence North 28 degrees 30 minutes West, two hundred eighty-six (286) feet and seven (7) inches to the middle of the well; thence North 65 degrees 30 minutes East three hundred ninety-five (395) feet and six (6) inches to the place of beginning.

And also conveying the land and building thereon, which building is the southern most one on the following described real estate: bounded on the north by land now or formerly of Mollie Smith and the sea; on the east by land now or formerly of Ora Simmons; on the south by land now or formerly of heirs of Joseph Thompson; on the west by Elbridge Giles estate, now or formerly; Willie E. Wotton conveyed the above named building and one hundred (100) feet around the same, only, and no other part of the above described premises.

For source of title to the above-described Cranberry Island Parcel II reference may be had to a conveyance from Roger L. Jones to Kim Newby and James Li dated July 22, 2005, and recorded in the Knox County Registry of Deeds in Book 3463 Page 181.

3. Friendship Village Parcel

A certain lot or parcel of land situated in said Friendship in said County of Knox and State of Maine on the eastern side of the road leading to Davis' Point, beginning at the South corner of land now or formerly of Mertland Simmons; thence running Southeast one hundred and fifty (150) feet to stake and stones; thence running Southwest one hundred (100) feet to stake and stones; thence running Northwest one hundred and fifty (150) feet to stake and stones; thence running Northeast one hundred (100) feet to land of said Mertland Simmons and the point of beginning. Title reference: Knox County Registry of Deeds Book 305 Page 232.

Together with the right to use the private way of about twenty (20) feet, along the southern side of the lot to the main town road.

Also another certain lot or parcel of land situated in said Friendship, County of Knox and State of Maine, bounded and described as follows:

Being Lot #8 on a "Plan of Cottage Lots on Main Street owned by Elijah Davis" drawn by Frank Bullfinch in 1909, said lot described as follows:

Commencing at the northwest corner of land now or formerly of Mertland Simmons; thence, southwesterly along the Harbor Road a distance of one hundred (100) feet, more

or less, to a right of way laid out on said plan; thence southeasterly along the northeast line of said right of way a distance of one hundred fifty (150) feet to land of John Neubig; thence, northeasterly a distance of one hundred (100) feet to land of Simmons; thence northwesterly along said Simmons land a distance of one hundred fifty (150) feet to the point of beginning. Title reference: Knox County Registry of Deeds Book 731 Page 140.

Also another certain lot or parcel of land with any improvements thereon situated in the Town of Friendship, County of Knox and State of Maine, bounded and described as follows:

Beginning at the easterly corner of Lot 17 and on the northwesterly side of a certain private way as shown on survey entitled "Plan of Cottage Lots on Main Street, Friendship Village, Maine owned by Elijah M. Davis of Friendship" as prepared by Frank Bullfinch in November 1909 and recorded in Knox County Registry of Deeds, Volume 8, Sheet 54; thence southwesterly along the southerly boundary of Lot 17 and the northwesterly boundary of said private way to the southerly corner of Lot 17, being one hundred (100) feet, more or less; thence northwesterly along the westerly boundary of Lots 17 and 8 and the northeasterly boundary of said private way three hundred (300) feet, more or less, to a bolt located at the westerly corner of Lot 8 and the southeasterly boundary of Main Street, so-called; thence southwesterly forty-three (43) feet, more or less, following the southeasterly boundary of Main Street and crossing said private way to a point located at the intersection of said private way and Main Street and being other land owned now or formerly of Newbig (aka Neubig); thence southeasterly along the southwesterly boundary of said private way and other land now or formerly of Newbig (aka Neubig) three hundred forty (340) feet, more or less, to a corner in said private way; thence northeasterly one hundred forty-two (142) feet, more or less, along the southeasterly boundary of said private way to a point being the location where the easterly boundary of Lot 17 if extended in a southeasterly direction across said private way would contact the southeasterly boundary of said private way, thence northwesterly forty-five (45) feet, more or less, to the easterly corner of Lot 17 and the southerly corner of Lot 18, being the point of beginning. Title reference: Knox County Registry of Deeds Book 936 Page 219.

Meaning and intending to convey a portion of a certain private way abutting the westerly side of Lot 8 and 17 and the easterly side of Lot 17 as set forth on survey entitled "Plan of Cottage Lots on Main Street, Friendship Village, Maine owned by Elijah M. Davis of Friendship" as prepared by Frank Bullfinch in November 1909 and recorded in Knox County Registry of Deeds, Volume 8, Sheet 54. For further reference, see said survey.

For source of title to the above-described Friendship Village Parcel reference may be had to a conveyance from John W. Neubig to James Li and Kim Newby dated October 7, 2002, and recorded in the Knox County Registry of Deeds in Book 2856 Page 218.

Signed, Sealed, and Delivered
in the presence of

Victoria Motyka
witness

[Signature]
James Li

Vanessa Motyka
witness

[Signature]
Kim Newby

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of Maine)
County of KNOX) ss.

On February 6th, 2013 before me, *Joel Fearn*, a notary public in and for said state, personally appeared James Li and Kim Newby, personally known to me (or proved on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entities upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Joel Fearn
Notary Public

My commission expires: Oct 27, 2013

SEAL

[NOTARIAL SEAL]

KNOX SS: RECEIVED
Feb 07, 2013
at 11:16A
ATTEST: LISA J SIMMONS
REGISTER OF DEEDS

A

BK 2846 PG 338

012801

MAINE SHORT FORM WARRANTY DEED

We, KENNETH SUMNER and KAREN Z. CHANCE, both of Brunswick, in the County of Cumberland and State of Maine, for consideration paid, grant to KIM NEWBY and JAMES LI, both of Boston, in the County of Suffolk and Commonwealth of Massachusetts, with WARRANTY COVENANTS, as joint tenants, the land and buildings situated in Friendship, Maine, and being bounded and described as follows:

Two certain lots or parcels of land with any and all improvements thereon situated in the Town of Friendship, County of Knox and State of Maine, bounded and described as follows:

PARCEL I (Village Lot):

Parcel located on the northerly side of the Town Road and being described as Lot # 16 on "Plan of Cottage Lots on Main Street, Friendship Village, Maine. Owned by Elija M. Davis of Friendship" as prepared in November, 1909, and recorded in the Knox County Registry of Deeds in Plan Book 8, Sheet 54; also being described as Lot # 72 on Town of Friendship Tax Map 14, said parcel measuring approximately 100 feet by 155 feet on the northwesterly boundary and 150 feet on the southwesterly boundary.

PARCEL II (Cranberry Island Lot):

Beginning at a 5/8" iron rebar set on the easterly line of land of the grantors, Sumner and Chance, which said rebar is located S 64° 37' 45" W a distance of 40 feet from the center of a well located on the common line of the grantors, Sumner and Chance, and land now or formerly of one Thompson; thence running N 05° 58' 55" W along land being retained by Sumner and Chance a distance of 738.8 feet, more or less, to a point on the shore of Muscongus Bay (which said point is located S 05° 58' 55" E a distance of 50 feet, more or less, from a rebar set in rock adjacent to said shoreline); thence running in a general easterly, southerly and southwesterly direction along the shore of Muscongus Bay and Joslin Cove, so-called, to the northeast corner of land now or formerly of said Thompson; thence running S 62° 28' 00" W along said Thompson land a distance of 7.5 feet to a rebar; thence continuing on said bearing of S 62° 28' 00" W along said Thompson land a distance of 22.0 feet to an iron rebar; thence continuing on said bearing of S 62° 28' 00" W a distance of 146.6 feet to an iron rod; thence running S 62° 35' 20" W along said Thompson land a distance of 226.2 feet to the center of the aforesaid well; thence running S 64° 37' 45" W a distance of 40 feet along said Thompson land to the point of beginning, being 11.4 acres, more or less.

Also conveying my interest in the shore, rocks and flats adjacent to the above-described premises.

MAINE REAL ESTATE TRANSFER
TAX PAID

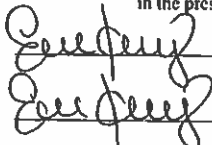
Parcel II is subject to the rights granted by Nanette Mary Scott to the Lincoln Audubon Society by instrument dated May 16, 1974, and recorded in the Knox County Registry of Deeds in Book 912, Page 320. Grantors reserve and retain for themselves and their heirs and assigns the development and improvement rights available under said Audubon Easement, or otherwise, for use with their remainder land, including the rights to establish within the development area another residential building, dock, other non-residential structures and appurtenances, wells, moorings, septic systems, etc. Grantees and their heirs and assigns may also exercise said development and improvement rights in connection with Parcel II, except they may not establish an additional residence nor additional new dock. Parcel II is also subject to a right-of-way from Joslin Cove to the land now or formerly of Friou as set forth in the deed from Nanette Mary Scott to George J. Friou, et al., dated July 1, 1958, and recorded in the Knox County Registry of Deeds in Book 368 at Page 35. Grantors and their heirs and assigns reserve the right to also use said right-of-way from and to their land until such time as a permanent residence and dock are established on their said remainder land.

For source of title to the above described Parcels I and II reference may be had to a conveyance from David L. Adams and Pamela B. Adams a/k/a Pamela B. Adams to Kenneth Sumner and Karen Z. Chance, dated June 1, 2001, and recorded in the Knox County Registry of Deeds in Book 2605 at Page 017. Parcel II conveyed herein is a portion of Parcel II conveyed in said deed of Adams recorded in Book 2605 at Page 017. The within conveyed premises are shown on the attached Exhibit A as well as on a Survey for Kenneth Sumner and Karen Z. Chance by Lincoln Surveying Company, dated August 30, 2002, and to be recorded in the Knox County Registry of Deeds.


IN WITNESS WHEREOF, we, the said **KENNETH SUMNER** and


KAREN Z. CHANCE, husband and wife, have hereunto set our hands and seals this 4th day of October, 2002.

SIGNED, SEALED AND DELIVERED
in the presence of



State of Maine,
Cumberland County



Kenneth Sumner


Karen Z. Chance

October 4, 2002

Personally appeared before me the above named **KENNETH SUMNER** and **KAREN Z. CHANCE** and acknowledged the foregoing instrument to be their free act and deed.

My commission expires:

 Nanette Sumner
Notary Public, Maine
My Commission Expires 9-23-08

Notary Public

SEAL

A

BK2605 PG017

005741

WARRANTY DEED

Know All By These Presents

That we, David L. Adams and Pamela B. Adams a/k/a Pamela B. Adams of 160 Spruce Point Road, Yarmouth, ME 04096

in consideration of one dollar and other valuable considerations, paid by Kenneth Sumner and Karen Z. Chance

whose mailing address is 41 Sandy Cove Road, Harpswell, ME 04079,

the receipt whereof we do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto the said Kenneth Sumner and Karen Z. Chance, as joint tenants, their heirs and assigns forever,

Two certain lots or parcels of land with any and all improvements thereon situated in the Town of Friendship, County of Knox and State of Maine, bounded and described as follows:

PARCEL I (Village Lot): Parcel located on the northerly side of the Town Road and being described as Lot #16 on "Plan of Cottage Lots on Main Street, Friendship Village, Maine, Owned by Elijah M. Davis of Friendship" as prepared in November, 1909, and recorded in the Knox County Registry of Deeds in Plan Book 8, Sheet 54; also being described as Lot #72 on Town of Friendship Tax Map 14; said parcel measuring approximately 100 feet by 155 feet on the northwesterly boundary and 150 feet on the southwesterly boundary.

FOR REFERENCE see warranty deed of William B. Jameson to David L. Adams and Pamela B. Adams dated April 10, 1987, and recorded in the Knox County Registry of Deeds, Book 1168, Page 321. See also deed from Jelzar Thomas to William Thomas dated May 20, 1846 and recorded in the East Lincoln Records at Book 27, Page 228, Knox County Registry of Deeds, deed of Melzar Thomas to Jesse Thomas dated March 2, 1945, and recorded in the East Lincoln Records at Book 27, page 229, and affidavit as to the heirs of Jesse Thomas recorded in the Knox County Registry of Deeds, Book 849, Page 87.

PARCEL II (Cranberry Island Lot): Beginning at a ring bolt in the ledge at the northwesterly corner of land now or formerly of Friou; thence South 31° 12' 45" East by said Friou's land seven hundred ninety-six and nine tenths (796.9) feet to an iron pipe;

MAINE REAL ESTATE TRANSFER TAX PAID

BK2605 PG018

thence North 64° 41' 30" East, still by said Friou's land, nine hundred sixteen and three tenths (916.3) feet to an iron pin at line of land now or formerly of Wotton; thence North 40° 26' 30" West by said Wotton's land three hundred thirty and seven tenths (330.7) feet to an iron rod; thence North 64° 41' 30" East, still by said Wotton's land, nine hundred seventy-three and three tenths (973.3) feet to the center of a well at line of land now or formerly of Thompson; thence North 62° 28' East by said Thompson's land two hundred twenty-eight and five tenths (228.5) feet to an iron rod; thence continuing the same course still by said Thompson's land one hundred forty-six and five tenths (146.5) feet to an iron rod; thence continuing the same course twenty-nine and forty-eight one hundredths (29.48) feet to a "x" cut at the shore of Joslin Cove; thence northerly, westerly and southwesterly by the shore five thousand (5,000) feet, more or less, to the place of beginning. Together with the flats and shore appurtenant to the premises conveyed.

Parcel II is subject to the rights granted by Nanette Mary Scott to the Lincoln Audubon Society by instrument dated May 16, 1974, and recorded in the Knox County Registry of Deeds in Book 912, Page 320. It is also subject to a right of way from Joslin Cove to the land now or formerly of Friou as set forth in the deed from Nanette Mary Scott to George J. Friou, et al., dated July 1, 1958, and recorded in the Knox County Registry of Deeds, Book 368, Page 35.

FOR REFERENCE see deed of David L. Adams to Pamela B. Adams dated March 1, 1990, and recorded in the Knox County Registry of Deeds, Book 1411, Page 188. See also deed of Nannette Mary Scott dated June 10, 1983, and recorded in the Knox County Registry of Deeds, Book 919, Page 311.

To Have and To Hold the aforegranted and bargained premises with all privileges and appurtenances thereof to the said Kenneth Sumner and Karen Z. Chance, as joint tenants, their heirs and assigns, for them and their use and behoof forever,

AND we, David L. Adams and Pamela B. Adams do *Covenant* with the said grantees, their heirs and assigns, that we are lawfully seized in fee of the premises, that they are free of all encumbrances; that we have good right to sell and convey the same to the said grantees to hold as aforesaid; and that we and our heirs shall and will *Warrant and Defend* the same to the said grantees, their heirs and assigns forever, against the lawful claims and demands of all persons.

BK2605 PG019

In Witness Whereof, we, the said David L. Adams and Pamela B. Adams

Have hereunto set our hands and seals this 1st day of the month of JUNE, 2001.

Signed, Sealed and Delivered
in presence of

John W. Cordees

David L. Adams
David L. Adams

To both

Pamela B. Adams
Pamela B. Adams

State of Maine
County of SARASOTA, FL

JUNE 1, 2001

Then personally appeared the above named David L. Adams and Pamela B. Adams and acknowledged the above instrument to be their free act and deed.

Before me,

John W. Cordees
Attorney at Law
Notary Public

SEAL

RNOX SS: RECEIVED

2001 JUN -5 PM 12:55

ATTEST:

Bruce L. Mason

REGISTER OF DEEDS

F:\USER\POBIM\DATA\ROBIN.NP\Adams\Deed to Sumner vpd

Know All Men By These Presents.

BCR 919 PAGE 311

That I, NANETTE MARY SCOTT, 34 Hawkins Road, Stoneybrook, NY 11790,
05630

in consideration of One dollar and other valuable considerations

paid by DAVID L. ADAMS and PAMELIA B. ADAMS, RRL, Box 234A, Yarmouth,
ME, 04096, husband and wife,

the receipt whereof I do hereby acknowledge, do hereby

give, grant, bargain, sell and convey unto the said DAVID L. ADAMS and PAMELIA B.
ADAMS, to hold as joint tenants according to the principles of joint
tenancy, and not as tenants in common, ^{theirs} ~~theirs~~ and assigns forever,

a certain lot or parcel of land with the buildings thereon, situate on Cran-
berry Island, FRIENDSHIP, Knox County, Maine, bounded and described
as follows, to wit:-

BEGINNING at a ring bolt in the ledge at the northwesterly corner
of land of Friou; thence South 31 deg. 32 min. 45 sec. East by said
Friou's land seven hundred ninety-six and nine tenths (796.9) feet to
an iron pipe; thence North 64 deg. 41 min. 30 sec. East, still by
said Friou's land, nine hundred sixteen and three tenths (916.3) feet
to an iron pin at line of land now or formerly of Wotton; thence
North 40 deg. 26 min. 30 sec. West by said Wotton's land three hundred
thirty and seven tenths (330.7) feet to an iron rod; thence North
64 deg. 41 min. 30 sec. East, still by said Wotton's land, nine hun-
dred seventy-three and three tenths (973.3) feet to the center of a
well at line of land now or formerly of Thompson; thence North 62 deg.
28 min. East by said Thompson's land two hundred twenty-eight and five
tenths (228.5) feet to an iron rod; thence continuing the same course,
still by said Thompson's land, one hundred forty-six and five tenths
(146.5) feet to an iron rod; thence continuing the same course twenty-
nine and forty eight one hundredths (29.48) feet to an "X" cut at the
shore of Joslin Cove; thence northerly, westerly, and southwesterly
by the shore five thousand (5,000) feet, more or less, to the place of
beginning, together with the flats and shore appurtenant to the premi-
ses conveyed.

The property is SUBJECT to the rights granted by Nanette Mary
Scott to the Lincoln Audubon Society by instrument dated 16 May 1974
and recorded in Knox County Registry of Deeds, Book 912, Page 320.
ALSO, SUBJECT to a right of way from Joslin Cove to the land of Friou,
as set forth in the deed from Nanette Mary Scott to George J. Friou,
et als., dated 1 July 1958 and recorded in the Knox County Registry of
Deeds, Book 368, Page 35.

Reference is made to deed of Grace E. & Donald E. Giles to Donald
Scott, Jr. & Nanette Mary Scott dated 20 June 1946, recorded Knox
Registry of Deeds, Book 291, Page 253; deed from Donald Scott, Jr. to
Nanette Mary Scott dated 25 May 1953, recorded Book 331, Page 317;
deed of Nanette Mary Scott to George J. & Carolyn B. Friou dated 1 July
1958, recorded Book 368, Page 35; deed from George J. & Carolyn B.
Friou to Nanette Mary Scott dated 1 July 1958, recorded Book 368,
Page 37; agreement between Nanette Mary Scott, Nathan W. & Maxine
Thompson dated 3 April 1975, recorded Book 600, Page 231, and agree-
ment between Nanette Mary Scott and Lincoln Audubon Society dated
16 May 1974 and recorded in said Registry, Book 912, Page 320.

Reference is made to the plan of land of Mrs. Carlisle Scott by
Lincoln Engineering Co., Inc. dated 20 August 1974, and recorded in
Knox County Registry of Deeds at Cabinet 1, Sheet 173.

To Have and to Hold the aforegranted and bargained premises with all the privileges and appurtenances thereof to the said DAVID L. ADAMS and PAMELIA B. ADAMS, to hold as joint tenants according to the principles of joint tenancy and not as tenants in common, their


heirs and assigns, to them and their use and behoof forever.

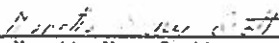
And I do COVENANT with the said Grantees, their heirs and assigns, that I am lawfully seized in fee of the premises that they are free of all encumbrances:

that I have good right to sell and convey the same to the said Grantees to hold as aforesaid; and that I and my heirs shall and will WARRANT and DEFEND the same to the said Grantees, their heirs and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, I, the said Nanette Mary Scott, single,

joining in this deed as Grantor and relinquishing and conveying xxxxxxxxxxxxxxxx rights they desire and all other rights in the above described premises have hereunto set my hand and seal this 10th day of June in the year of our Lord one thousand nine hundred and eighty-three.

Signed, Sealed and Delivered
to me in presence of

Witness


Nanette Mary Scott


State of Maine, }
County of Knox, }

10 June 19 83

Personally appeared the above named Nanette Mary Scott

instrument to be her free act and deed.

Knox ss: Received Before me,
August 10, 1983
at 9h 20m A.M.

and acknowledged

Justice of the Peace
Notary Public



Know all Men by these Presents,

Book (291)
Warranty
Giles et al
to
Scott et al
Friendship

That We, Grace E. Giles and Donald E. Giles, both of Boothbay Harbor, County of Lincoln, State of Maine in consideration of One Dollar and other valuable consideration paid by Donald Scott, Jr., and Nanette Mary Scott, both of Gladwyne, County of Montgomery, State of Pennsylvania the receipt whereof We do hereby acknowledge, do hereby GIVE, GRANT, BARGAIN, SELL AND CONVEY, unto the said Donald Scott, Jr., and Nanette Mary Scott, their heirs and assigns forever, a certain lot or parcel of land situated in Cranberry Island, in Friendship, in the County of Knox and State of Maine. and bounded and described as follows, viz:

Beginning at a spruce tree at the head of Joslin Cove and running South 60° West by land formerly of William Willey to Potato Point; thence Northwest to the shore of the Island; thence Northeast by the shore and as that runs to the Ministers Gut; thence Easterly and Southerly by said shore to the first mentioned bound, containing fifty acres more or less, being same premises conveyed to David and Henry Simmons by James Morton by deeds recorded in East Lincoln Record Vol. 20, Page 26, to which deed and the record thereof reference is hereby made for a more particular description of the property hereby conveyed. (Except lots conveyed to Elbridge Burns and E. A. Giles.)

Meaning and intending to convey and hereby conveying (but not limiting or restricting the bounds first herein described) all that part of said Cranberry Island described as follows, viz:

A certain lot or parcel of land situated on Cranberry Island in said Friendship, and bounded and described as follows, viz: On the southwest side by land of heirs of the late Joseph Thompson deceased and land formerly owned and occupied by the late Joshua Wotton, deceased, and on all other sides by tide waters, with the buildings thereon. Excepting from the above described lot the lot owned by Ernest Burns and the lot owned by heirs of the late Elbridge Burns, deceased.

Also another parcel of land situated in Cranberry Island in said Friendship and bounded and described as follows, viz: Beginning at the line of the late Joshua Wotton, deceased, at the head of the cove, and running Northwest along the shore forty feet to stake and stone; thence Southwesterly two hundred and eighty feet to stake and stone; said line passing the house at a distance of twenty five feet northwest from the house; thence Southeast thirty feet to land of the said Joshua Wotton, aforesaid; thence Northeast to the first mentioned bound, containing three fourths of an acre, more or less, with the buildings thereon, excepting the store at the shore.

It being the same conveyed to Elbridge Giles by Warranty Deed from Ernest J. Burns, dated December 21, 1927, and recorded in Knox Registry of Deeds Book 215, Page 334, and devised to the said Grace E. Giles under the Will of said Elbridge Giles.

The first described parcel is the same conveyed to E.A. Giles and Donald E. Giles by Genora E. Burns under license of the Probate Court by deed dated Jan. 3, 1928 and recorded in said Registry Book 168, Page 242. The undivided half conveyed to E.A. Giles was devised to Grace E. Giles as aforesaid.

To Have and to hold, the aforesaid and bargained premises with all the privileges and appurtenances thereof, to the said Donald Scott, Jr., and Nanette Mary Scott, their heirs and assigns, to them and their use and behoof forever.

And we do COVENANT with the said Grantees, their heirs and assigns, that we are lawfully seized in fee of the premises, that they are free of all incumbrances;

that, we have good right to sell and convey the same to the said Grantee, to hold as aforesaid; and that we and our heirs, shall and will WARRANT AND DEFEND the same to the said Grantees, their heirs and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, We, the said Grace E. Giles, widow, and Donald E. Giles and Carolyn E. Giles wife of the said Donald E. Giles

joining in this deed as Grantees and relinquishing and conveying all right by descent and all other rights in the above described premises, have hereunto set our hands and seals this twentieth day of June in the year of our Lord one thousand nine hundred and forty-six.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF

A. D. Tupper

Donald E Giles L.S.

Grace E Giles L.S.

Carolyn E. Giles L.S.

State of Maine, Lincoln ss. July 6, 1946. Personally appeared the above named Donald E. Giles free act and deed. and acknowledged the above instrument to be his Before me, A. D. Tupper Notary Public



Received

July 20, 1946. at 11:21 a.m. and recorded according to the original

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Vol. 108.

Know all Men by these Presents, That

I, Genora E. Burns of Friendship in the county of Knox and State of Maine.

having on the 20th day of Dec. A. D. 19 27 obtained License from the Honorable Edward K. Gould Judge of Probate, within and for the County of Knox and State of Maine, to sell and convey at private sale the Real Estate hereinafter described, of the said Norman K. Burns

for the sum of Twelve Hundred dollars, the same being an advantageous offer therefor, and having agreeably to the order and decrees of said Court, given due notice upon the petition for license to make such sale, and having given the bond and taken the oath required by law, by virtue of the power and authority with which I am as aforesaid vested, and in consideration of the aforesaid sum of Twelve Hundred dollars,

to County of Lincoln and State of Maine, do hereby acknowledge, have given, granted, and sold, and by these Presents do give, GRANT, SELL and CONVEY to the said E. A. Giles and Donald E. Giles, their Heirs and Assigns forever, the following described Real Estate, viz:

A certain lot or parcel of land with the buildings thereon, situate on Cranberry Island and bounded as follows to wit;

Beginning at a spruce tree at the head of Jeslin Cove and running South 60° West by land of William Willey to Potato Point; thence Northwest to the shore of the Island; thence Northeast by the shore and as that runs to the Ministers Gut; thence Easterly and Southerly by said shore to the first mentioned bound, containing fifty acres more or less, being same premises conveyed to David and Henry Simons by James Morton by deeds recorded in East Lincoln Record Vol. 20, Page 26, to which deed and record thereof reference is hereby made for a more particular description of the property hereby conveyed.

(Except lots conveyed to Elbridge Burns and E. A. Giles.)

To Have and to Hold the same, with all the privileges and appurtenances to the same belonging, in manner as aforesaid, to the said E. A. Giles, and Donald E. Giles their Heirs and Assigns forever.

And I the said Genora E. Burns in said capacity do COVENANT to and with the said E. A. Giles and Donald E. Giles, their Heirs and Assigns, that I have in all things observed the rules and directions of law relative to the selling of said Estate, and have good right and lawful authority to sell and convey the same in manner aforesaid.

In Witness Whereof I hereunto set my hand and seal in my said capacity, this 3rd day of January in the year of our Lord one thousand nine hundred twenty eight.

Signed, Sealed and Delivered in presence of

Ella O. Newman Genora E. Burns L. S.

State of Maine, Knox, ss. Rockland, Me. Jan 3, 19 28 Personally appeared the above named Genora E. Burns and acknowledged the above instrument to be her free act and deed in my said capacity. Before me, Ella O. Newman.

Justice of the Peace.

Received January 4, 19 28, at 10 o'clock 25 m. A. M. and recorded according to the original.

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Keep Island for further particulars of the premises reference is had to the award of Commissioners &c. Recorded at Thomaston Vol. 17. Page 269 meaning & intending by this instrument to convey all the Estate specified in said award with the exception of the George River farm. To have and to hold the aforementioned premises with all the privileges and appurtenances thereto belonging to them the said J. Dearborn & Co. their heirs and assigns forever & that neither the said Rebecca S. Hall nor my heirs, or any other person or persons claiming from or under one or them, or in the whole, right, or stead of one or them shall or will, by any way or means, have, claim or demand any right, or title to the aforesaid premises, or appurtenances, or to any part or parcel thereof forever. In witness whereof I the said Rebecca S. Hall have hereunto set my hand and seal this thirtieth day of November in the year of our Lord one thousand eight hundred and fifty two.

Signed sealed and delivered in presence of H. P. Coombs } Rebecca S. Hall

Lincoln 33. December 6th 1852. Then the above named Rebecca S. Hall acknowledged this instrument by her subscribed to be her free act and deed. Before me
C. Prince Justice of the Peace

Recd. Dec. 6. 12. M. 1852 Entered & examined by
H. P. Coombs Regr.

Know all men by these presents that I James Norton of Friendship in the County of Lincoln and State of Maine in consideration of Four Hundred Dollars paid by David Simmons & Henry Simmons of said Friendship State and County aforesaid the receipt whereof is hereby acknowledged do hereby give, grant, bargain, sell and convey unto the said David & Henry a certain tract or parcel of land situate on Babooy Island & bounded as follows. Viz. Beginning at a Spruce tree at the head of Boston Cove & running South sixty degrees West by land of William Willey to potatoe point, thence North West to the shore of the Island, thence North & West by the shore & as that runs to the Ministers quet, thence Eastward and Southward by said shore to the first mentioned bounds containing fifty acres more or less. To have and to hold the above granted premises with the privileges and appurtenances thereto belonging to the said David & Henry their heirs and assigns, to their use and behoof forever. And I the said James Norton for myself & my heirs, executors and administrators do covenant with the said David and Henry their heirs and assigns that I am lawfully seized in fee of the aforesaid premises. That I have good right to sell and convey the same to the said David & Henry as aforesaid. And that I will and my heirs, executors and administrators shall warrant and defend the same to the said David Simmons & Henry Simmons their heirs and assigns forever, against the lawful claims and demands of all persons. In witness whereof I the said James Norton with Hannah Norton my wife have

Know all Men by these Presents,

(Book 216)

That I, Ernest J. Burns of Friendship, County of Knox State of Maine

in consideration of one dollar and other valuable considerations paid by Elbridge Giles, of Boothbay Harbor, County of Lincoln, State of Maine;

the receipt whereof I do hereby acknowledge, do hereby GIVE, GRANT, BARGAIN, SELL AND CONVEY, unto the said Elbridge Giles, his heirs and assigns forever, a certain lot or parcel of land

situate on Cranberry Island in said Friendship, and bounded and described as follows, viz; Beginning at the line of the late Joshua Wotton, deceased, at the head of the cove, and running Northwest along the shore forty feet to stake and stone; thence Southwesterly two hundred and eighty feet to stake and stone; said line passing the house at a distance of twenty five feet northwest from the house; Thence Southeast thirty feet to land of the said Joshua Wotton, aforesaid; thence Northeast to the first mentioned bound, containing three fourths of an acre, more or less, with the buildings thereon, excepting the store at the shore.

It being the same conveyed to me by Warranty Deed from O. F. Johnson, dated Sept 3, 1926, and recorded in Knox, ss. Registry of Deeds, Book 211, Page 370.

To Have and to Hold, the aforesaid and bargained promises with all the privileges and appurtenances thereof to the said Elbridge Giles, his heirs and assigns, to his and their use and behoof forever.

And I do COVENANT with the said grantee, his heirs and assigns, that I am lawfully seized in fee of the premises, that they are free of all incumbrances;

that I have good right to sell and convey the same to the said Grantee to hold as aforesaid; and that I and my heirs, shall and will WARRANT AND DEFEND the same to the said Grantee, his heirs and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, the said Ernest J. Burns and Helen Burns wife of the said Ernest J. Burns

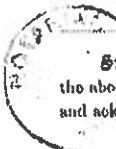
joining in this deed as Grantor, and relinquishing and conveying my right by descent and all other rights in the above described premises have hereunto set our hand and seal this 21 day of December in the year of our Lord one thousand nine hundred and twenty seven.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

R. L. Thompson

Ernest J. Burns L. S.

Helen E. Burns L. S.



State of Maine, County of Knox ss. December 21, 1927. Personally appeared the above named Ernest J. Burns and acknowledged the above instrument to be his free act and deed.

Before me, Robert L. Thompson Justice of the Peace Notary Public.

Received January 4,

19 25.10 h. 24m. A. M., and recorded according to the original.

WARRANTY DEED
(Joint Tenancy)

Robert T. Howard, whose mailing address is: PO Box 1259, Port Washington, NY 11050,
for consideration paid,

grants to Thomas D. Seeley and Robin H. Seeley, whose mailing address is: 332 Hurd Road,
Ithaca, NY 14850,

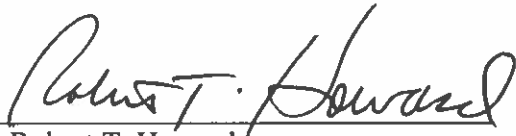
with warranty covenants, as joint tenants,

A certain lot or parcel of land situated in the Town of Pembroke, County of Washington, State of
Maine and bounded and described as follows, to wit:

See attached Exhibit A for description of property which is incorporated herein
by reference.

WITNESS my hand and seal this 26th day of August, 2010.

TRANSFER TAX PAID



Witness

Robert T. Howard

STATE OF NEW YORK
County of Nassau

Dated: 8/26/2010

Then personally appeared the above named Robert T. Howard and acknowledged the
foregoing instrument to be his free act and deed.

Before me,

GLENN CORBETT
No. 01CO4842848
Notary Public, State of New York
Qualified in Suffolk County
My Commission Expires Aug. 1, 2011



Typed or printed name of Notary Public

Notary Public

EXHIBIT A

A certain lot or parcel of land situated in the Town of Pembroke, County of Washington, State of Maine and bounded and described as follows, to wit:

Beginning at an iron pin set on the easterly sideline of the Leighton Point Road. Said pin being also the southwest corner of land now or formerly of Wayne G. and Jeanne M. Silva (Book 2846, Page 094).

Thence N 62°-45'-56" E but always following the southerly line of land of said Silva - 500.00' to an iron pin set approximately 60' westerly of the high water line of Pennamaquan Bay.

Thence N 62°-45'-56" E along land of Silva approximately 60' to the highwater line of said Pennamaquan Bay.

Thence generally southerly along the highwater line approximately 660' to a point which bears N 64°-05'-53" E and is approximately 50' from a pipe found set on the northerly line of land now or formerly of Diane Glidden Wichtermann (Book 2923, Page 328).

Thence S 64°-05'-53" W along the north line of said Wichtermann a distance of 50' to an iron pipe found set.

A tie line between pins near the shore is: S 14°-14'-32" E and 634.16'.

Thence S 64°-05'-53" W along the northerly line of Wichtermann 405.65' to a stone marked and painted on the easterly sideline of the aforesaid Leighton Road.

Thence N 32°-12'-54" W along the Easterly sideline of said road - 166.41' to a point.

Thence continuing along said highway N 27°-40'-55" W a distance of 207.90' to a point.

Thence continuing along said highway N 20°-54'-53" W a distance of 62.78' to a point.

Thence continuing along said highway N 13°-23'-32" W a distance of 63.43" to a point.

Thence continuing along said highway N06°-26'-01"W a distance of 118.55' to the point of beginning, containing 7.17 acres, more or less.

Meaning and hereby conveying a portion of the property described in a deed from Sondra M. Castille to Robert T. Howard, the Grantor herein, under the name of Robert Howard, dated December 28, 2004 and recorded in Book 2969, Page 276 of the Washington County Registry of Deeds.

Granting also to the Grantees herein, their heirs and assigns forever, all rights, privileges, appurtenances and easements belonging to the granted estate as intended by M.R.S.A., Title 33, Section 773.

Excepting and reserving, however, to the grantor herein, his heirs and assigns, and others with similar rights, as appurtenant to the real estate described in Book 2969, Page 276 of the Washington County Registry of Deeds, to be used in common with the Grantees herein, their heirs and assigns, a right of way described as follows:

A non-exclusive, permanent ten foot wide right of way over the existing grassy lane leading from the easterly side of Leighton Point Road to the waters of the Pennamaquan River which right of way is more fully described in the Exhibit A attached to the Affidavit of David Cook and as shown on the ROW Sketch by Cook Land Services attached as Exhibit B to said Affidavit recorded in Book 3658, Page 266, said Exhibit A being at Book 3658, Page 267, said Exhibit B being at Book 3658, Page 268 of the Washington County Registry of Deeds and which description is fully incorporated by reference herein.

Received
Recorded Register of Deeds
Aug 27, 2010 02:43:14P
Washington County
Sharon D. Strout

CORRECTIVE RELEASE DEED

SONDRA M. CASTILE, whose mailing address is 1755 York Avenue, Apt. 20, Edward, NY 10128,

for no monetary consideration, being a corrective and confirmatory deed,

grants unto THOMAS D. SEELEY and ROBIN H. SEELEY, whose mailing address is 332 Hurd Road, Ithaca, NY 14850, as joint tenants, with WARRANTY COVENANTS, all the right, title and interest of the Grantor in and to a certain lot or parcel of land situated in Pembroke, County of Washington, State of Maine, described as follows:

Being all of the area between high and low water mark of Pennamaquan Bay formed by a northeasterly extension of the northwesterly and southeasterly sidelines of that certain property described in a warranty deed from Robert Howard to Thomas D. Seeley and Robin H. Seeley, the Grantees herein, dated August 26, 2010 and recorded in Book 3663, Page 213 of the Washington County Registry of Deeds.

Grantor acquired her interest in said real estate by virtue of a warranty deed from Miriam Myers to Sondra M. Castile dated June 5, 1987 and recorded in Book 1449, Page 194 of the Washington County Registry of Deeds but said area between high and low water mark of Pennamaquan Bay was not included in the first parcel of the conveyance from Sondra M. Castile to Robert Howard dated December 28, 2004, recorded in Book 2969, Page 276 of said Registry of Deeds. The purpose of the within conveyance is to merge the title of the property within the intertidal zone in the Grantees as owners of the adjacent upland.

Subject to the rights of the public and the State of Maine in accordance with Maine law.

Also conveying all rights, easements, privileges and appurtenances now belonging to the granted estate as intended by Title 33 M.R.S. Section.773.

WITNESS my hand and seal this 20 day of December, 2019.

SIGNED, SEALED AND DELIVERED

In the presence of

Takemitsu Oka
Witness

Sondra M. Castile
SONDRA M. CASTILE

NO TRANSFER TAX PAID

STATE OF New York
County of New York

November 20th, 2019

Personally appeared the above named SONDRA M. CASTILE and acknowledged the foregoing instrument to be her free act and deed.

Before me,

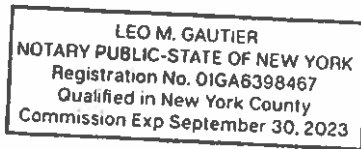
Leo Gantier

Notary Public

Leo Gantier

Type/print name of Notary Public

misc\secret\deed.doc



Received
Recorded Register of Deeds
Dec 02, 2019 02:18:24F
Washington County
Sharon D. Strout

VOL 1449 PAGE 194

WARRANTY DEED**04816**

I, MIRIAM B. MYERS, of Eastport, Maine (being unmarried),
for consideration paid, grant to SONDR A. M. CASTILE, of New York,
New York with Warranty Covenants, the land in Pembroke, Washington
County, State of Maine.

A certain lot or parcel of land, together with the buildings thereon, situated in Pembroke, Maine and bounded and described as follows, to wit: Bounded northerly by land formerly of Ephraim Smith, and later owned or occupied by his widow, Addie M. Smith, and by land formerly of E. Carter and later owned or occupied by Wallace Carter; easterly by Pennamaquan Bay; southerly by land formerly of Andrew Small, and later owned or occupied by Alfred R. Carter, land now or formerly of heirs of Ebed Wilder, and land now or formerly owned or occupied by James Munson; and westerly by land formerly of Charles Brown and land formerly of Clarence Carter, now or formerly owned or occupied by Wilber Carter and Wallace Carter; and being a part of the lot known as number thirteen according to the survey and plan of said Pembroke by Benjamin R. Jones, and containing sixty (60) acres, more or less, being formerly the homestead of the late Joseph Wilder, now deceased.

For grantor's title, see that deed to her and Franklin R. Myers as joint tenants, from Ruth E. Hersey dated September 6, 1958 and recorded in the Washington County Registry of Deeds at book 562, page 130. Franklin R. Myers is deceased and grantor is the surviving joint tenant.

ALSO two certain lots of land situated in that part of the said town of Pembroke, said lots being bounded and described as follows, to wit:

First Parcel: Being formerly the homestead of Hosea and Catherine B. Smith, and situated on the westerly side of the town road leading to Leighton's Point in said Pembroke, and near and adjoining the homestead farm formerly owned and occupied by Andrew Small, later by John A. Small, and now by A. Raymond Carter. Said premises are more particularly described in a deed from Hosea Smith to B.B. Murray dated December 28, 1897, and recorded in the Washington County Registry of Deeds, in Book 148, at Page 459, to which deed or the record thereof reference may be had for a more particular description of said premises. Said premises are the same (but now with no buildings thereon) which were conveyed to Marion B. Munson by Albert A. Hersey by his deed dated October 27, 1941 and recorded in said Registry of Deeds in Book 446, at Page 15, and reference is hereby made to said deed or the record thereof for further particulars and for title.

Second Parcel: The premises formerly of Harry Ashby, located on the westerly side of said town road leading to Leighton's Point, and bounded and described as follows, to wit: Bounded on the north by land formerly of Ruth Hersey, and now owned by the grantees named herein; easterly by said town road leading to Leighton's Point; southerly by the lot described above as "First Parcel"; and westerly by the lot described above as "First Parcel". This lot is the same which was conveyed to Marion B. Munson by Loran E. Blackwood by his deed dated April 24, 1947 and recorded in said Registry of Deeds in Book 474, at Page 587.

The premises above described and hereby conveyed are the same which were conveyed by James E. Munson by his Warranty Deed dated April 11, 1961 and recorded in said Registry of Deeds in Book 574, at Page 568.

For title to the two foregoing lots see that deed from Inez L. Marek to grantor and Franklin R. Myers, dated September 22, 1961

and recorded in said Registry at book 580, page 99.

Also, all the right, title and interest of the late ADELAIDE SMITH in and to the following described property; as recorded in Washington County Registry of Deeds in Book 405, Page 286, also Book 208, Page 319. A certain lot with buidlings thereon, in Pembroke, as follows: Beginning at the Shore of Pennamaquan Bay at the Northeast corner of the land formerly owned and occupied by Reuben P. Fisher; along said Shore Southeast twenty-one (21) rods by a direct line to a stake; Southwest two hundred eighty (280) rods to a marked tree; Northwest twenty-one (21) rods to a corner of the fence; Northeast two hundred eighty (280) rods to place of beginning. For reference see Washington County Registry of Deeds Book 208, Page 319; also Book 405, Page 286. For grantor's title, see that deed to her and Franklin R. Myers from Roger J. Wilson, administrator of the estate of Adelaide Smith, dated April 18, 1960 and recorded in said Registry at book 518, Page 42. EXCEPTING, HOWEVER, all that part of said real estate previously sold by grantor to Mary D.E. Rob by deed dated October 18, 1962 and recorded in said Registry at book 583, page 44.

WITNESS my hand and seal this 5th day of June, 1987.

Holley MacNichol

Miriam B. Myers
MIRIAM B. MYERS

STATE OF MAINE,
Washington, ss.

June 5, 1987

Then personally appeared the above named MIRIAM B. MYERS and acknowledged the foregoing instrument to be her free act and deed.

Before me, Holley MacNichol
Notary Public
HOLLY MacNichol

STATE OF MAINE
WASHINGTON CO.
REGISTRY OF DEEDS

Received JUN 9 1987
at 9 H 35 M AM recorded
in Book _____ Page _____
Attest:

Register

NO TRANSFER
TAX
NECESSARY



42

Book
518

VOL. 318
ADMINISTRATOR'S OR GUARDIAN'S DEED—PRIVATE SALE

Know all Men by these Presents,

That I, ROGER J. WILSON, Administrator of the estate of ADELAIDE SMITH,
Late of Pembroke, County of Washington, State of Maine, intestate,

having on the fourth day of August A. D. 1959, obtained License from the Honorable HAROLD F. BLACKWOOD, Judge of Probate, within and for the County of Washington and State of Maine, to sell and convey at private sale the Real Estate hereinafter described, of the said ADELAIDE SMITH, for the sum of THREE THOUSAND ONE HUNDRED DOLLARS (\$3,100.00) dollars, the same being an advantageous offer therefor, and having agreeably to the order and decree of said Court, and taken the oath given due notice upon the petition for license to make such sale, and having given the bond required by law by virtue of the power and authority with which I am as aforesaid vested, and in consideration of the aforesaid sum of THREE THOUSAND ONE HUNDRED DOLLARS/ (\$3,100.00) dollars to me paid by FRANKLIN R. MYERS and MIRIAM B. MYERS, husband and wife/ both of Twin Lakes, Far Hills, County of Somerset, State of New Jersey, the receipt whereof I do hereby acknowledge, have given, granted and sold, and by these Presents do give, grant, sell and convey to the said FRANKLIN R. MYERS and MIRIAM B. MYERS, as joint tenants and not as tenants in common, to them and their assigns, and the survivor of them and the heirs and assigns of the survivor of them forever, the following described real estate; all the right, title and interest of the late ADELAIDE SMITH in and to the following described property; as recorded in Washington County Registry of Deeds in Book 405, Page 286, also Book 208, Page 319. A certain lot with buildings thereon, in Pembroke, as follows: Begin at the Shore of Pennamaquan Bay at the Northeast corner of the land formerly owned and occupied by Reuben P Fisher; along said Shore Southeast twenty-one (21) rods by a direct line to a stake; Southwest two hundred eighty (280) rods to a marked tree; Northwest twenty-one (21) rods to a corner of the fence; Northeast two hundred eighty(280) rods to place of beginning. For reference see Washington County Registry of Deeds Book 208, Page 319; also Book 405, Page 286; (\$3.85)
Rev. Stamps
Cancelled

To Have and to Hold the same, with all the privileges and appurtenances to the same belonging in manner as aforesaid, to the said FRANKLIN R. MYERS and MIRIAM B. MYERS, as joint tenants and not as tenants in common, to them and their assigns, and the survivor of them and their assigns forever, the following described real estate; all the right, title and interest of the late ADELAIDE SMITH in and to the following described property; as recorded in Washington County Registry of Deeds in Book 405, Page 286, also Book 208, Page 319. A certain lot with buildings thereon, in Pembroke, as follows: Begin at the Shore of Pennamaquan Bay at the Northeast corner of the land formerly owned and occupied by Reuben P Fisher; along said Shore Southeast twenty-one (21) rods by a direct line to a stake; Southwest two hundred eighty (280) rods to a marked tree; Northwest twenty-one (21) rods to a corner of the fence; Northeast two hundred eighty(280) rods to place of beginning. For reference see Washington County Registry of Deeds Book 208, Page 319; also Book 405, Page 286; (\$3.85)
Rev. Stamps
Cancelled

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF
Bonita D. Wilson Roger J. Wilson (seal) (L.S.)
Roger J. Wilson, Administrator of
the Estate of Adelaide Smith

State of Maine.
Washington April 18, 1960 Personally appeared the above named
ROGER J. WILSON, as aforesaid, and in said capacity
-and-acknowledged the above instrument to be his free act and deed in said capacity.
BEFORE ME, Bonita D. Wilson
Justice of the Peace.
Received April 18, 1960 11 h 30 M AM.

Know all Men by these Presents, That

I *Ceather A. Holland of Pembroke in the County of Washington and State of Maine*

In consideration of *93* *Six Hundred and Fifty Dollars* paid by *Ephraim B. Smith of Pembroke aforesaid.*

Holland to Smith.

the receipt whereof *I* do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said *Ephraim B. Smith his*

heirs and assigns forever, a certain lot or parcel of land situated in *with the buildings thereon situated in said Pembroke and bounded as follows to wit: Beginning at the shore of Pennamagog Bay at the north west corner of land owned and occupied by Reuben P. Fisher and running along said shore south easterly twenty one rods by a direct line to a stake thence south westerly two hundred and eighty rods to a marked tree, this line strikes a fir tree in the fence on the westerly side of the road and the westerly corner of S. C. Blackwoods barn thence north westerly on the Charter line so called twenty one rods to the corner of the fence long said Blackwoods northern line thence north easterly on the line last mentioned two hundred and eighty rods to the place of beginning being the same premises conveyed to me by Sophronia A. Willburd by her deed dated March 25th A.D. 1882 and recorded in Washington County Registry of Deeds Book 176 Page 562.*

To have and to hold the aforesaid and bargained premises, with all the privileges and appurtenances thereof to the said *Ephraim B. Smith his* heirs and assigns, to their use and behoof forever. And *I* do covenant with the said *Grantee his* heirs and assigns, that *I am* lawfully seized in fee of the premises; that they are free of all incumbrances; *excepting a mortgage to the Eastport Savings Bank for one hundred and five dollars.* that *I* have good right to sell and convey the same to the said *Grantee* to hold as aforesaid; and that *I and my* heirs shall and will warrant and defend the same to the said *Grantee* heirs and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, *We* the said *Grantor and Charles P. Holland* husband of the said *Ceather A. Holland* in testimony of *his* relinquishment of *his* right of Dower in the above-described premises have hereunto set *our* hands and seal: this *seventh* day of *March* in the year of our Lord one thousand eight hundred and ninety *four.*

Signed, Sealed and Delivered in presence of *J. H. McFaul* *Ceather A. Holland* *S. D. Lovvitt.* *Charles P. Holland*

State of Maine, Washington, ss. *March 7* 1894. Personally appeared the above named *Ceather A. Holland.* and acknowledged the above instrument to be *her* free act and deed. Before me, *John H. McFaul* Justice of the Peace. Received *Sept 12 1894.* 7 h *-ma. M.* Entered and compared by *H. P. Taylor* Reg'r.

Know all Men by these Presents.

That I, Ruth E. Hersey, of Pembroke, in the County of Washington and State of Maine,

In consideration of one dollar and other valuable considerations, paid by Franklin R. Meyrs and Miriam B. Myers, both of Far Hills, in the County of Somerset and State of New Jersey,

the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said Franklin R. Myers and Miriam B. Myers as joint tenants in joint tenancy heirs and assigns forever, and not as tenants in common, the whole to the survivor, their heirs and assigns forever, a certain lot or parcel of land, together with the buildings thereon, situated in said Pembroke, and bounded and described as follows, to wit: Bounded northerly by land formerly of Ephraim Smith, and now owned or occupied by his widow, Addie M. Smith, and by land formerly of E. Carter, and now owned or occupied by Wallace Carter; easterly by Pennamaquan Bay; southerly by land formerly of Andrew Small, and now owned or occupied by Alfred R. Carter, land now or formerly of heirs of Ebed Wilder, and land now owned or occupied by James Munson; and westerly by land formerly of Charles Brown and land formerly of Clarence Carter, now owned or occupied by Wilber Carter and Wallace Carter; and being a part of the lot known as number thirteen, according to the survey and plan of said Pembroke by Benjamin R. Jones, and containing sixty (60) acres, more or less, being formerly the homestead of the late Joseph Wilder, now deceased.

My title was derived by deed from my late father, Jesse H. Blackwood, now deceased, said deed being dated May 12, A.D. 1924, and recorded in the Washington County Registry of Deeds, in Book 365, at Page 141; and by deed from my former stepmother, Hattie Howe, said deed being dated May 17, A.D. 1924, and recorded in said Registry of Deeds, in Book 358, at Page 143.

(\$8.80)
Rev. Stamps
Cancelled

TO HAVE AND TO HOLD the aforegranted and bargained premises with all the privileges and appurtenances thereof, to the said Franklin R. Myers and Miriam B. Myers and their assigns, and the survivor of either of them, and the heirs and assigns of such survivor, to them and their use and behoof forever.

To Have and to Hold - the aforegranted and bargained premises, with all the privileges and appurtenances thereof to the said - heirs and assigns, to - and behoof forever. - And I do covenant with the said Grantees, in joint tenancy as afore/ said, their heirs and assigns, that I am lawfully seized in fee of the premises, that they are free of all incumbrances;

that I have good right to sell and convey the same to the said Grantees to hold as aforesaid; and that I and my heirs shall and will warrant and defend the same to the said Grantees, in joint tenancy as aforesaid, their heirs and assigns forever, against the lawful claims and demands of all persons. In Witness Whereof I, the said Ruth E. Hersey, being now unmarried

and of the said - joining in this deed as grantor, and relinquishing and conveying -- right -- by deed and all other titles in the above described premises, have hereunto set my hand and seal this sixth day of September in the year of our Lord one thousand nine hundred and fifty-eight.

Signed, Sealed and Delivered in presence of
Harold F. Blackwood Ruth E. Hersey (seal)

State of Maine Washington ss.
September 6, A.D. 1958
above named Ruth E. Hersey Personally appeared the
and acknowledged the foregoing to be her free act and deed.
Before me, Harold F. Blackwood JUSTICE OF THE PEACE

Received Nov. 21, 1958 10 h-- m. A. M.

Know all Men by these Presents,

That I, Jesse H. Blackwood, of Pembroke, in the County of Washington and State of Maine,

in consideration of one dollar and other valuable consideration, paid by Ruth E. Hersey, of Pembroke, in the County of Washington and State of Maine,

the receipt whereof I do hereby acknowledge. do hereby give, grant, bargain, sell and convey unto the said Ruth E. Hersey, her heirs and assigns forever,

certain lot or parcel of land situated in said Pembroke and bounded and described as follows, to wit: Beginning at a stake and stones on the Western shore of Ponnamaquan Bay, northerly by land of Ephraim Smith and E. Carter, Southerly by the farm of the late Andrew Small; westerly by the late Charles Brown farm and land of Clarence Carter; Easterly by Ponnamaquan Bay. Being part of lot number thirteen (13) formerly the homestead of the late Joseph Wilder. Containing sixth acres, more or less, with the buildings thereon.

Being the same premises conveyed to me by Solomon C. Blackwood June 24, A. D. 1898, and recorded in Washington County Registry of Deeds in Book 236, Page 379.

(\$50)
Stamp
Cancelled.

To Have and to Hold the aforegranted and bargained premises, with all the privileges and appurtenances thereof to the said Ruth E. Hersey, her heirs and assigns, to her and their use and behoof forever. And I do covenant with the said Grantee, her heirs and assigns, that I am lawfully seized in fee of the premises; that they are free of all incumbrances;

that I have good right to sell and convey the same to the said Grantee to hold as aforesaid; and that I and my heirs shall and will warrant and defend the same to the said Grantee, her heirs and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, I the said Jesse H. Blackwood, being an unmarried man,

and of the said - ~~right - by descent and all other rights in the above described premises,~~ - joining in this deed as grantor, and relinquishing and conveying - have hereunto set my hand and seal this 12th. day of May in the year of our Lord one thousand nine hundred and twenty-four. (May 12, 1924).

Signed, Sealed and Delivered in presence of
Millard Reynolds

Jesse H. Blackwood (seal)

State of Maine,
Washington ss. May 12, 1924.

above named Jesse H. Blackwood, Personally appeared the
and acknowledged the above instrument to be his free act and deed.
N. F. (seal)
By impression.

Before me, Millard Reynolds,
Notary Public.

JUSTICE OF THE PEACE -

Received May 21, 1924, 9 h. - m. A. M.

Know all Men by these Presents, That
Leathman B. Smith of Pembroke Maine

Leathman B. Smith
to
Charles Manning

in consideration of Five hundred dollars to me,
Charles L. Manning, of Pembroke, Maine

the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the
said Charles L. Manning his
heirs and assigns forever, a certain parcel of land situated in together with the buildings

thereon situated in Pembroke, Washington County, Maine,
and described as follows, being the homestead of
Hosea & Leathman B. Smith, as occupied by them situated
on the road leading from the "Head of the Pond" so called
to "Light's Point" in said Pembroke, and near to
and adjoining the homestead farm of Benjamin
Small, of said Pembroke. The premises above more
particularly described in a deed of Hosea Smith to
B. B. Manning dated Oct 12 1877, and recorded
with Deeds of Deeds for Washington County in Book 128
Page 154; and reference may be had to said deed to
see a more particular description of the premises.
So far as the description therein contained now
applies to said homestead.

To Have and to Hold the aforegranted and bargained premises, with all the privileges and appurtenances thereof,
to the said Charles L. Manning his heirs and assigns, to their use and
behoof forever. And I do covenant with the said Charles L. Manning his heirs and assigns,
that I lawfully seized in fee of the premises; that they are free of all incumbrances;

that I have good right to sell and convey the same to the said Charles L. Manning to hold as aforesaid;
and that I and my heirs shall and will warrant and defend the same to the said Charles L. Manning &
his heirs and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, I the said Leathman B. Smith and Hosea Smith husband
of the said Catherine B. Smith in testimony of his relinquishment
of his right of Dower in the above described premises
have hereunto set our hand and seal this twenty sixth day of October
in the year of our Lord one thousand eight hundred and eighty five.

Signed, Sealed and Delivered in presence of
James G. Munger
Leathman B. Smith (Seal)
Hosea Smith (Seal)

Washington State of Maine
SS. Charles L. Manning 1885, Personally appeared the
above named Hosea Smith
and acknowledged the above instrument to be his free act and deed.
Before me, B. B. Manning JUSTICE OF THE PEACE.
Received August 28 1885, S. B. M. A. M. Entered and compared by J. A. Adams REG'R.

land situated in Paulsboro afforded and conveyed as follows, beginning at the County Road at the certain corner and occupied by David Laughlin and running thence southerly to the corner and thence along that parcel to the monument corner shown by said deed by David Willard and thence to said County road to the place of beginning containing Seventy Acres more or less, with buildings, to have and to hold the appurtenances and bargained, promised with all the privileges and advantages thereof to the said Edward H. Knauton his heirs and assigns and also to the said Edward H. Knauton his heirs and assigns that I said Knauton did give and give of the premises that they are free of all encumbrances, that I have good right to do and convey the same to the said Edward H. Knauton to hold as aforesaid and that I will defend my heirs heirs and assigns and defend the same to the said Edward H. Knauton his heirs and assigns forever against the lawful claims and demands of all persons, and testimony in the above recited premises shall be taken on some day and year this Seventh day of October in the year of our Lord one thousand eight hundred and seventy eight;

Witness my hand and seal this 7th day of January, 1878, at New Brunswick, New Jersey, in presence of the above named James L. Knauton and acknowledged the above to be his deed and deed of Benjamin, J. Knauton, Justice of the Peace, Read Nov 4, 1878, 4th Mo, Peter J. Adams, Register

I know certainly that Edward H. Richardson, of East Machics County of Newington State of Maine, in consideration of the money paid by Catherine Smith of said East Machics in the County of Newington State of Maine, the receipt whereof I do hereby acknowledge do hereby give, grant, bargain, sell and convey unto the said Catherine Smith her heirs and assigns forever, a certain lot or parcel of land situated in East Machics to-wit the north westerly half of the lot of land lying east of the County Road, bounded on the north easterly side by land owned by Thompson her heirs the same conveyed Benjamin B. Robinson to James Madigan by his deed dated Aug 13, 1853, and recorded in the Registry of Deeds of Newington County, Book 83, page 78 meaning to convey the aforesaid half lying east of the County Road and further description as follows: May be had to Edwin Graham's deed to me dated Dec 25, 1872 and recorded in Book 137 Page 85 and secus etiam, I do know and hold the appurtenances and bargained promises, with all the privileges and advantages thereof, to the said Catherine Smith her heirs and assigns, to have and to hold forever and also to the said Edward H. Knauton his heirs and assigns

Edward H. Richardson
to
Catherine Smith

Know all Men by these Presents,

That The Inhabitants of the Town of Pembroke a body corporate, located at Pembroke in the County of Washington and State of Maine,

in consideration of one dollar and other valuable considerations paid by
Earl F. Carter of said Pembroke, County and State

the receipt whereof it do hereby acknowledge, do hereby remise, release, bargain, sell and convey and forever Quit-Claim unto the said Earl F. Carter, his

heirs and assigns forever,

all its right, title and interest in and to the following described real estate situated at Pembroke in the County of Washington and State of Maine and more particularly described as premises formerly of Harry Ashby, located on the west side of the road leading from West Pembroke village to Leighton's Point, and bounded and described as follows: Bounded north by land of George Hersey; east by road leading from West Pembroke village to Leighton's Point; south by land occupied by Samuel Rice; west by land occupied by said Rice; at this time there are no buildings thereon on said land, although there formerly were. The premises herein conveyed are the same which were acquired by the grantor under certain tax lien now recorded in the Washington County Registry of Deeds, as follows: Tax Lien recorded March 17, 1934 in Book 399, at Page 595; Tax Lien recorded March 11, 1935 in Book 403, at Page 324; Tax Lien recorded March 13, 1936 in Book 411, at Page 455; Tax Lien recorded March 31, 1937 in Book 416, at Page 452; Tax Lien recorded March 7, 1938 in Book 422, at Page 215, and reference is hereby made to all the foregoing instruments or to the record thereof for further particulars.

The purpose of this deed is to convey any interest the grantor may have in the foregoing property by virtue of unpaid taxes for the tax year(s) 1933, 1934, 1935, 1936, and 1937.

To Have and to Hold the same, together with all the privileges and appurtenances thereunto belonging to him the said Earl F. Carter, his heirs and assigns forever.

And do covenant with the said -heirs and assigns, that-
~~will warrant and forever defend the premises to~~ the said
~~heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through or under~~

In Witness Whereof, the said Inhabitants of the Town of Pembroke has caused this instrument to be sealed with its seal and signed in its corporate name by Ernest M. Carter, Harry M. Little and Harland G. Cushing, its Selectmen and thereunto duly authorized,

of the said joining in this Deed as Grantor
and relinquishing and conveying right by descent and all other rights in the above-described premises, have hereunto set hand and seal this ninth day of

May A.D. 1940. in the year of our Lord one thousand nine hundred

Signed, Sealed and Delivered in presence of

Harold F. Blackwood
Harold F. Blackwood
Harold F. Blackwood

Inhabitants of the Town of Pembroke
By Ernest M. Carter (seal)
Harry M. Little
Harland G. Cushing

State of Maine
Washington ss. May 9, 1940 Then Personally appeared the above named Ernest M. Carter, Harry M. Little and Harland G. Cushing and acknowledged the above instrument to be their free act and deed. in their said capacity, and the free act and deed of said body corporate.

Before me, Harold F. Blackwood JUSTICE OF THE PEACE

Received May 18, 1942 9 h. - m. A.M.

ROCKWEED NO-CUT LANDOWNER REGISTRY

I/we own or am/are trustee for shorefront property(ies) in Washington County, Maine. Please add the lot below to the database of landowners who **do not permit** commercial rockweed harvesting on their lands. I/we also wish to have my/our position on this matter made a matter of public record.

Property Owner (entity or individual(s))

| | | | | |
|-------|-------|-------|--------------|---------------------------------------|
| _____ | _____ | _____ | _____ | _____ feet |
| Town | Map # | Lot # | Lot Location | Shore Frontage, if known (approx.) |

First Name

Last Name

Street

(Apt/Ste/FI)

City/Town

ST/Province

ZIP/Postcode

Country

(_____) _____
Phone (optional and will not be shared)

eMail (optional and will not be shared)

Signature (*one required*)

Date

Providing the information below is helpful but not required:

- I have attached a tax or sketch map or other information to help locate the property.
- My deed(s) is/are recorded at the Washington County Registry of Deeds as follows:

Book: _____ **Page:** _____

=====

Please mail this form to:
Downeast Coastal Conservancy | PO Box 760 | Machias, ME 04654
Hand delivery: DCC, 6 Colonial Way, Suite 3, Machias, ME
(207) 255-4500 | info@downeastcoastalconservancy.org

State of Maine
Cumberland, ss

Superior Court
Civil Action
Docket No. RE-2021-35

Peter and Kathy Masucci, et al.,)
)
 Plaintiffs)
)
 v.)
)
 Judy's Moody LLC, et al.,)
)
 Defendants)
)
 and)
)
 Aaron Frey in his capacity as the Attorney General)
 for the State of Maine)
)
 Party in interest)

AFFIDAVIT OF JOHN W. GROTTON

I, John W. Grotton, do hereby depose and swear the following:

1. I am an employee of North American Kelp.
2. Our company produces products derived from seaweed that is harvested from sites on the Maine Coast.
3. We purchase seaweed from licensed harvesters who gather seaweed from the area between the high tide line and the low tide line.
4. Since the Law Court's decision in *Ross v. Acadian Seaplants* in 2019, law enforcement officers have approached seaweed harvesters and have told them to leave areas they have previously been harvesting.
5. Defendants Page and Li/Newby have called law enforcement to remove harvesters from intertidal land they claim to own.

6. Defendant Seeley has engaged in a campaign to convince other shorefront owners to call law enforcement in order to deny access to seaweed harvesters.
7. I am not a professional title abstractor however starting in June 2019, I began to research the deeds of the various people that have attempted to deny harvesters access to intertidal land adjacent to their upland property.
8. As part of this process, I looked up the owner's property in the tax records for each town. Then I pulled each deed from the online database for each counties' registry of deeds. Once I had the current deeds, I followed the chain of title back to see if the prior grants contained the intertidal land. I did this both on-line and by going to the Registries of Deeds where sometimes the Clerk would assist in my search.
9. While the current deeds for the Pages, Li/Newbys and Seeleys contain references to intertidal land, I have found that for each of these Defendants, that language was added to their deeds in the recent past. In other words, for each of these Defendants, the language describing the intertidal land they are claiming was inserted into the deed by a predecessor in title who themselves were never granted that intertidal land by a prior owner.
10. A detailed analysis of each deed follows:

Edward and Christine Page

11. Defendants Edward and Christine Page were conveyed title to the property by Deed from the Steffian Family Maine Property Trust (the "Trust"), dated October 5, 2015, and recorded in the Cumberland County Registry of Deeds in Book 32649, Page 201. ("2015 Page Deed"; attached hereto as Exhibit A-1). The 2015 Page Deed includes the following language: "Also conveying all the right, title and interest of the grantors in and to the flats and land lying

between the high and low water marks on Cundys Harbor and the New Meadows River abutting and adjacent to the above described premises.” Exhibit A-1.

12. The 2015 Page Deed conveys “all the same premises” that was conveyed by Peter Steffian and Beth B. Steffian to the Trust, in a deed dated December 19, 2007, and recorded in said Registry of Deeds in Book 25711, Page 50. That 2007 deed specifically excludes any intertidal land in the conveyance by defining the boundaries as being “all of the island know[sic] as Shepherd’s Island, so-called, *above high water mark*.” See Exhibit A-2 attached hereto (emphasis added).
13. The only reference to the flats found in the 2007 deed pertains to a right-of-way in common with others, and even then, is to only the flats of an abutting property owner “the said Sherman”. Exhibit A-2.
14. The 2015 Page Deed also references a deed dated December 15, 1983, and recorded in said Registry in Book 6351, Page 222, being the predecessor to the 2007 deed. That predecessor deed again specifically conveys only to the high water mark. Exhibit A-3 attached hereto. The 1983 deed gives a title reference to an October 28, 1972 deed recorded in said Registry on Book 4883, Page 52. The 1972 deed has the same language limiting the parcel to “above the high water mark” and “to high water mark.” Exhibit A-4; attached hereto.
15. The 1972 deed give a title reference to a deed dated August 23, 1966, recorded in said Registry in Book 2972, Page 347. That deed also describes the property as being “above the high water mark” and “to high water mark.” Exhibit A-5; attached hereto.
16. I also examined deeds prior to the 1972 conveyance going back in title to July 21, 1953 (Book 2140, Page 427) and found the same references to the high water mark and no

reference to a conveyance of the flats or any land between the high and low water marks other than the common right of way over an abutting property.

17. I concluded that the language purporting to convey right, title and interest “in and to the flats and land lying between the high and low water marks on Cundys Harbor and the New Meadows River abutting and adjacent to the above described premises” was added in 2015 to the 2015 Page Deed.

James Li and Kim Newby

18. James Li and Kim Newby own two lots with water frontage on Cranberry Island in the town of Friendship, Maine. Both lots appear on the Town of Friendship Tax Map 220 and are designated on that Map as Lot 1 and Lot 13.
19. James Li and Kim Newby were conveyed title to these two lots by Deed from James Li and Kim Newby as Trustees of the Spotted Duck Revocable Trust, dated October 27, 2013, recorded in the Knox County Registry of Deeds in Book 4626, Page 202. The two lots are identified on the deed as “Cranberry Island Parcel I” (Lot 1 on the Tax Map) and “Cranberry Island Parcel II” (Lot 13 on the Tax Map) in said deed. (“2013 Li/Newby Deed”; attached hereto as Exhibit B-1).
20. The 2013 Li/Newby Deed describes “Cranberry Island Parcel I” as running “to a point on the shore” of Muscongus Bay “from a rebar set in rock adjacent to said shoreline” and thence running “along the shore of Muscongus Bay and Joslin Cove”. Exhibit B-1.
21. The Deed description for “Cranberry Island Parcel I” in the 2013 Li/Newby Deed also purports to convey “any interest in the shore, rocks, and flats adjacent to the above-described premises.” Exhibit B-1.

22. The 2013 Li/Newby Deed describes the first part of the “Cranberry Island Parcel II” as “[b]eginning at the shore” and then running “easterly by the shore”; the second described part is only a building and 100-feet around the building. Exhibit B-1.
23. The land conveyed in the 2013 Li/Newby Deed was conveyed to Li/Newby as Trustees, by James Li and Kim Newby who received title to “Cranberry Island Parcel I” by Deed from Kenneth Sumner and Karen Z. Chance, dated October 4, 2002, and recorded in said Registry of Deeds in Book 2605, Page 017 (Exhibit B-2, attached hereto); and to Cranberry Island Parcel II” by Deed dated July 22, 2005 and recorded in said Registry of Deeds on Book 3463, Page 181.
24. The 2002 deed from Sumner/Chance to Li/Newby describes “Cranberry Island Parcel I” using the same language as in the 2013 Li/Newby Deed; “Cranberry Island Parcel I” being a portion of the land conveyed to Sumner/Chance in a Deed from David L. Adams and Pamela B. Adams, dated June 1, 2001, and recorded in said Registry of Deeds in Book 2605, Page 17. This 2001 deed also uses the language “[t]ogether with the flats and shore appurtenant to the premises conveyed.” Exhibit B-3; attached hereto.
25. The Adams were conveyed the land that includes “Cranberry Island Parcel I” by Deed from Nanette Mary Scott, dated June 10, 1983, recorded in said Registry in Book 919, Page 311; this 1983 deed also includes the language “[t]ogether with the flats and shore appurtenant to the premises conveyed.” Exhibit B-4; attached hereto.
26. The 1983 Nanette Mary Scott deed provides several title references wherein partial interests in the land were conveyed to Scott, including a deed from Grace E. Giles and Donald E. Giles, dated July 6, 1946 and recorded in said Registry in Book 291, Page 253. Exhibit B-5; attached hereto.

27. The 1946 Scott deed describes two Cranberry Island parcels and it is unclear which one (or both) describes the "Cranberry Island Parcel I", in whole or in part. One of the described parcels describes the land as "running along the shore"; the second parcel is also described as running "to the shore", then "by the shore". This description in this second parcel also says "and on all other sides by tide waters." Exhibit B-5.
28. The title reference to the first parcel in the 1946 Scott deed was to a deed from E.A. Giles and Donald E. Giles, dated January 3, 1928, recorded in Book 168, Page 242. The 1928 deed describes that land as running "to the shore" and then "by the shore". There is no reference intertidal land or "tide waters" in this 1928 deed. Exhibit B-6; attached hereto.
29. Title reference in the 1928 deed was to a Deed from James Morton to David and Henry Simmons, recorded in the East Lincoln Record, Vol. 20, Page 26. (Exhibit B-7; attached hereto). This deed, dated August 17, 1839, described the Cranberry Island land as running "to the shore of the Island" and thence "by the shore." Once again, there is no reference intertidal land or "tide waters" in this 1928 deed.
30. The title reference to the second parcel described in the 1946 Scott deed is to a deed from Ernest J. Burns, dated December 1927, and recorded in the Knox County Registry of Deeds in Book 215, Page 334. Exhibit 8; attached hereto). This deed describes the land as "starting at the cove" then "running along the shore."
31. Based on the above, I concluded that for "Cranberry Island Parcel I", the language about "flats and shore appurtenant to the premises conveyed" was added in 1983 and the language about "tide waters" was added in 1946; with respect to "Cranberry Island Parcel II" there has been no reference to intertidal land or tide waters in the deeds.

Thomas Seeley and Robin Hadlock Seeley

32. Thomas Seeley and Robin Hadlock Seeley own property in the town of Pembroke, Maine. Their deed for this property is recorded in Book 3663, Page 213 in the Washington County Registry of deeds. ("2010 Seeley Deed"; attached hereto as Exhibit C-1).
33. The 2010 Seeley Deed describes the land as running "to the highwater line" of Pennamaquan Bay and then "along the high water line". (Exhibit C-1). The deed contains no reference to intertidal land.
34. The Grantor in the 2010 Seeley Deed was Robert T. Howard. (Exhibit C-1). On November 20, 2019, the Seeleys recorded a document titled "Corrective Release Deed" in which the prior owner to Howard in the chain of title, a Sondra Castile, purported to convey "the area between the high and low water" adjacent to the property owned by the Seeleys. Exhibit C-2; attached hereto.
35. The so-called Corrective Release Deed states that Sondra Castile owned the "area between the high and low water mark of Pennamaquan Bay" adjacent to the Seeley's property by virtue of a 1987 deed to her from Miriam Myers recorded in Book 1449, Page 194. Exhibit C-3; attached hereto.
36. The 1987 deed from Miriam Myers to Sondra Castile grants to Sondra four separate parcels. The last of these parcels is described in that deed as being bound by Pennamaquan Bay, and that description reads "[b]eginning at the shore of Pennamaquan Bay" and then "along said shore". There is no mention in this deed of any land between the high and low water. Exhibit C-3.
37. The Pennamaquan Bay parcel was conveyed to Miriam Myers by Roger J. Wilson, administrator of the estate of Adelaide Smith, by deed dated April 18, 1960 and recorded in said Registry of Deeds in Book 518, Page 42. That deed also describes the property as

“[b]egin[...] at the shore of Pennamaquan Bay” and then “along said shore”. Again, there is no mention in this deed of any land between the high and low water. Exhibit C-4; attached hereto.

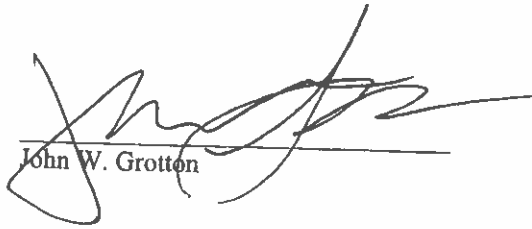
38. The April 18, 1960 deed gives a title reference to a deed from Esther A. Holland to Ephriam B. Smith, dated March 7, 1894 and recorded in said Registry in Book 208, Page 319. Exhibit C-5; attached hereto. This deed describes the Pennamaquan Bay land as “[b]eginning at the shore of Pennamaquan Bay” and then “running along said shore” with again no mention of land between the high and low water.
39. I also researched the deeds to the first parcel described in the 1987 Castile deed. I could find no connection between that parcel and land owned by the Seeleys.
40. The next parcel described in the 1987 deed makes no mention of Pennamaquan Bay or any body of water. It gives as title reference a deed from Albert A. Hersey to Marion B. Munson, dated October 27, 1942 and recorded in said Registry in Book 446, Page 15. This 1942 deed again makes no mention of any water body, but gives as title reference a deed from Hosea Smith to B.B.Murray, dated December 28, 1897 and recorded in said Registry in Book 148, Page 459 (this is an incorrect deed reference, the correct date is December 28, 1877 and it is recorded in said Registry in Book 146, Page 459). There are also title references in the 1942 deed to deeds from Catherine B. and Hosea Smith dated October 26, 1886, and recorded in Book 174, Page 166, being the same property conveyed to Dorcas E. Morrison by Charles C. Morang, by deed dated July 20, 1888 and recorded in Book 184, Page 119, also being the same property conveyed to Francis A. Morrison by Dorcas E. Morrison by deed dated April 28, 1921 and recoded in Book 353, Page 560, also being the same premises conveyed to Albert E. Hersey, by deed dated August 19, 1927, and recorded in Book 376, Page 547.

41. Going back to the earliest referenced deed to Hosea Smith, dated October 26, 1886, and recorded in Book 174, Page 166, the property is, in part, described as going from the “‘Head of the Tide’ so called to ‘Leighton Point’”. Exhibit C-8; attached hereto. There is no other reference to tide or water in this deed. I also researched the other deeds listed in the 1942 deed, which repeated the same language and again, other than the “Head of the Tide” mentioned no tide or water body.
42. The 1877 deed from Hosea Smith to B.B. Murray, recorded in said Registry in Book 146, Page 459, describes the parcel as “Beginning at a Stake in a Stone on the Shore of Pennamaquan Bay at high water and running thence North-westerly by said shore....” (Exhibit C-9; attached hereto).
43. The next parcel described in the 1987 deed makes no mention of Pennamaquan Bay or any body of water. It gives as title reference a deed from Loran E. Blackwood to Marion B. Munson, dated April 24, 1947 and recorded in said Registry of Deeds in Book 474, Page 587, which deed likewise makes no mention of any water body. The 1947 deed gives as title reference a deed from Earl P. Carter, dated May 15, 1942 and recorded in said Registry of Deeds in Book 446, Page 319, which deed again makes no reference to a water body but provides another title reference to a deed from the Town of Pembroke, dated May 9, 1940 (and recorded in May 16, 1942 in Book 443, Page 226). This deed references a series of Tax Lien records between the years 1934 and 1938. Each lien provides a brief description of the parcel being conveyed. The lien filed in said Registry in Book 411, Page 455 describes some of the property as running east by Pennamaquan Bay
44. Lastly, the 1987 gives two additional title references for these last two described parcels; a deed from James E. Munson, dated April 11, 1961 and recorded in said Registry of Deeds in

Book 574, Page 568, and a deed from Inez L. Marek, dated September 22, 1961 and recorded in said Registry in Book 580, Page 99. The April 11, 1961 deed has the term "Head of the Tide". The September 22, 1961 deed does not use that term. Neither deed makes any other reference to tide or a body of water.

45. With respect to the Seeley property, I concluded as follows:
- (a) The land conveyed to Seeley in the 2010 deed, and to the Seeleys' immediate predecessor in title, Robert T. Howard, is only a portion of the land that is described in the 1987 deed from Miriam B. Myers to Sondra M. Castile but because the description has been changed to a surveyed description, it is difficult to know which of the four parcels described in the 1987 was conveyed by Sondra Castile to Robert T. Howard.
 - (b) Neither the 2010 Seeley Deed nor the 2004 deed from Sondra Castile to Robert T. Myers make mention of any tide or any waterbody.
 - (c) The "Corrective Release Deed" given to the Seeley's by Sondra Castile purporting to convey "the area between the high and low water" adjacent to the property owned by the Seeleys claims ownership of this intertidal land by way of the 1987 deed.
 - (d) I could find no connection to the first lot described in the 1987 deed and the land currently owned by the Seeleys.
 - (e) There is nothing in the chain of title to any of the remaining described parcels in the 1987 deed to mentioned tide water (other than the "Head of the Tide") and no mention of Pennamaquan Bay land other than as "[b]eginning at the shore of Pennamaquan Bay" and then "running along said shore".
 - (f) As a result of the above, I concluded that the "the area between the high and low water" language in the "Corrective Release Deed" was added only to that "Corrective Release Deed" in 2019 and that there is no predecessor deed that mentioned anything about any land running seaward from "[b]eginning at the shore of Pennamaquan Bay" and then "running along said shore".
46. I am familiar with the advocacy work of Robin Seeley.
47. Attached hereto as Exhibit D is a form that Dr. Seeley is currently posting online.
48. This form encourages upland property owners to include their property in a database of landowners that do not permit the harvest of seaweed on the intertidal land adjacent to their property.

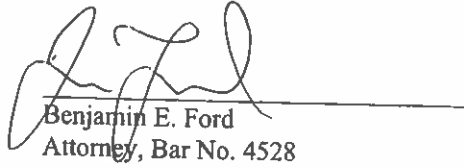
Dated: July 19, 2021



John W. Grotton

STATE OF MAINE
CUMBERLAND, SS.

Personally appeared before me the 19th day of July, 2021, the above named John W. Grotton, and made oath as to the truth of the following foregoing statements by him to the best of his knowledge, information and belief and to the extent based upon his knowledge, information, and belief, he believes it to be true.



Benjamin E. Ford
Attorney, Bar No. 4528

and over for hundreds of years. And the question of whether the public has the right to cut rockweed without the permission of the intertidal landowner was answered with a definitive no by *Ross v. Acadian Seaplants*, 2019 ME 45. Thus, with respect to Defendants, Plaintiffs' lawsuit is "meritless." *Schelling v. Lindell*, 2008 ME 59, ¶ 6 (Maine Anti-SLAPP statute "is designed to guard against meritless lawsuits brought with the intention of chilling or deterring the free exercise of the defendant's First Amendment right to petition the government by threatening would-be activists with litigation costs.").

Plaintiffs express lofty goals of rewriting Maine law. But the vehicle they have chosen is to sue individuals who have done nothing other than call Marine Patrol to help stop what is unequivocally illegal – the removal of rockweed without landowner permission. And Plaintiffs have sued an environmental activist who has done nothing other than advocate for the conservation of rockweed. Plaintiffs' suit against Defendants is analogous to a burglar suing a homeowner or a neighbor that called the police to report unlawful conduct. That the burglar wishes the law were different does not legitimize the lawsuit.

Plaintiffs claim that granting this Anti-SLAPP Motion would "open the door to repeated use of this tactic by future defendants in Declaratory Judgment proceedings involving competing claims of property ownership." Delogu Opp. 4. It would not. The facts of this Anti-SLAPP Motion are confined to plaintiffs who have no colorable claim to title, do not assert title in themselves, take property from other people's land without permission, and then sue only those property owners who speak up by calling the police.

Plaintiffs argue that the policy behind Maine's Anti-SLAPP statute does not apply here because SLAPP suits are typically brought by commercial interest groups "to deter individuals, neighborhood or environmental groups who are opposing a proposed project and/or urging more

stringent regulation of existing or proposed development from going too far.” Delogu Opp. 2. However, that is exactly the dynamic in this litigation. Plaintiff rockweed harvesters represent an extractive commercial enterprise that bills itself as a \$20 million annual industry in Maine. *See* Second Seeley Affidavit Ex. 1 (attached). Plaintiffs claim that “there is no development project” to implicate the policy behind the Anti-SLAPP statute. Delogu at 4. However, there is a commercial rockweed harvest that hauls some 22 million tons of rockweed out of the water every year. Second Seeley Aff. Ex. 1.

Conversely, the Defendants in this suit include environmental advocates and individual property owners who seek to conserve a natural resource. *Id.*; First Seely Aff. ¶¶ 5-8; Li/Newby Aff. ¶¶ 7-8; Page Aff ¶ 7. It is reasonable to expect that Plaintiffs’ suit has had or will have the effect of “chilling or deterring” other similarly situated landowners from contacting Marine Patrol to report unauthorized rockweed harvest. *See Schelling v. Lindell*, 2008 ME 59, ¶ 6.

Accordingly, this Anti-SLAPP Motion is brought because Defendants have been targeted for exercising their right to petition the government. Plaintiffs’ litigation against Defendants is meritless, and likely will have or has had the effect of deterring other would-be activists and property owners from the free exercise of their First Amendment right to petition.

II. The Conduct for Which Defendants Were Sued Is Petitioning Activity

Plaintiffs claim that “the Pages and the Li/Newby’s are not being sued because they called Marine Patrol. They are being sued because they are claiming dominion over public trust land that does not belong to them.” Pl. Opp. 3. However, of the thousands or tens of thousands of Maine landowners who claim title to intertidal property, Plaintiffs have chosen to sue the landowners who called Marine Patrol. Aff. of John W. Grotton ¶ 5 (“Defendants Page and

Li/Newby have called law enforcement to remove harvesters from intertidal land they claim to own.”).

Plaintiffs also state that “another indication that these Defendants are not being sued for their advocacy is the existence of all the other Defendants and Plaintiffs in the case.” Pl. Opp. 4. There are two groups of defendants in this case. One group consists of three beachfront landowners in Wells. Pl. Compl. ¶¶ 20-24. The other group are the owners of four coastal properties from Harpswell to Pembroke who have been sued because they sought to halt the commercial harvest of rockweed. Pl. Compl. ¶¶ 25-36. Of these “rockweed defendants,” every single one either called Marine Patrol to report the harvest of rockweed without permission or otherwise advocated for the conservation of rockweed. *Id.*

Most telling is that Plaintiffs have sued Defendant Robin Hadlock Seeley, not because she has taken any action to “claim dominion” over intertidal property (other than holding and recording a deed), but purely because she is an environmental advocate seeking to curtail the commercial harvest of rockweed. Pl. Compl. ¶¶ 31-36. Plaintiffs claim that Seeley “has taken steps to block the lawful harvesting of seaweed . . . by attempting to convince other upland owners to exercise rights they do not have.” And that, “Even today, a website controlled by Dr. Seeley encourages upland owners to make claims based on a highly misleading and flatly incorrect reading of *Ross v. Acadian Seaplants*.” Pl. Opp. 4-5. Plaintiffs state that “Defendant Seeley has engaged in a campaign to convince other shoreline owners to call law enforcement in order to deny access to seaweed harvesters.” Grotton Aff. ¶ 6.

In reality, Dr. Seeley has, among other conservation advocacy, simply quoted from and accurately summarized the holding of *Ross v. Acadian Seaplants*, namely that “the public may not harvest living rockweed growing in and attached to the privately-owned intertidal zone.”

2019 ME 45, ¶ 14. Dr. Seeley's advocacy is publicized primarily on the web site for the Maine Rockweed Coalition. *See* Second Affidavit of Robin Hadlock Seeley. This is representative text: "Landowners can protect and conserve their rockweed beds simply by saying "no thank you" when a harvester requests permission to cut. Why? Because private landowners, not the state, own the private intertidal area from high tide to low tide, and also own the seaweed attached to that intertidal area, by unanimous Maine Supreme Court decision of 2019." *Id.* at Ex. 2.

These statements by Dr. Seeley constitute petitioning activity under the Anti-SLAPP statute because they are "reasonably likely to enlist public participation" regarding "consideration or review of an issue by a legislative, executive or judicial body." 14 M.R.S. § 556. Specifically, Dr. Seeley's advocacy regarding the law under *Ross* was reasonably likely to encourage landowners to contact Marine Patrol if their rockweed was being harvested without permission. In Plaintiffs' version, she "engaged in a campaign to convince other shorefront owners to call law enforcement." Grotton Aff. ¶ 6.

Defendants Page and Li/Newby did in fact call law enforcement, resulting in them and Dr. Seeley being sued for "exercise of their right to petition." 14 M.R.S. § 556.

III. Plaintiffs Have Not Met Their Burden to Show that Defendants' Petitioning Activity Was Devoid of any Reasonable Factual Support or Arguable Basis in Law

Plaintiffs principally argue that Defendants' petitioning activity lacked factual support by claiming that Defendants do not hold title to intertidal land. Pl. Opp. 6-12. However, defendants' title is irrelevant to the factual and legal basis for their petitioning activity.

For Defendant Seeley, the petitioning activity for which she was sued, rockweed conservation advocacy, has nothing to do with her chain of title or her personal ownership of intertidal property. Plaintiffs do not allege that she has attempted to exclude rockweed harvesters or anyone else from her intertidal property. As noted above, she has been sued for making

statements regarding landowners' rights and other rockweed conservation issues. For example, "The 2019 Maine Supreme Court decision: 7-0 unanimous agreement that rockweed is privately owned by the owner of the intertidal zone, because cutting vegetation is not "fishing", and therefore not a public trust right." Second Seely Aff. Ex. 3. This is an entirely accurate restatement of the holding in *Ross v. Acadian Seaplants*. Plaintiffs do not and cannot identify any specific petitioning activity by Dr. Seeley that was devoid of any reasonable factual support or arguable basis in law.

For Defendants Page and Li/Newby, the petitioning activity for which they were sued, contacting Marine Patrol to report harvesters cutting rockweed without landowner permission, does not require intertidal land ownership to have factual and legal support. One need not be the owner of the property on which an apparent theft is occurring to have a reasonable basis to call the authorities. Whether the intertidal land on which the rockweed in question was growing belonged to Defendants or to someone else, the Pages and Li/Newby reasonably understood that the rockweed harvesters did not have landowner permission to harvest.

Plaintiffs do not provide any evidence or even assert that the harvest at issue took place with landowner permission. In fact, the rockweed harvesters in question acknowledged that they did not have landowner permission and apparently believed that no permission was needed. Page Aff. ¶¶ 11, 14; Li/Newby Aff. ¶¶ 18, 35. There is no dispute that the rockweed harvesters were taking rockweed from someone else's land without permission.

Furthermore, Plaintiffs acknowledge that Defendants all hold deeds with property descriptions that include the intertidal zone. Pl. Opp. 9-11. The fact that Plaintiffs named Defendants in this litigation as "geographically selected surrogates for a much larger class, i.e., upland owners claiming to own adjacent intertidal land," Delogu Opp. 4, indicates that Plaintiffs

themselves believe Defendants to be prima facie intertidal landowners.¹ Accordingly, Plaintiffs fail to meet their burden to show that Defendants' petitioning activity lacked "reasonable factual support."

Plaintiffs have similarly failed to meet their burden to show that Defendants' petitioning activity was "devoid" of any "arguable basis in law."² Given that Plaintiffs acknowledge that their suit is an attempt to reverse hundreds of years of Law Court precedent, including the 2019 decision in *Ross* that the public does not have the right to harvest rockweed without landowner

¹ For the reasons stated above it is unnecessary to adjudicate Defendants' title in the context of this Anti-SLAPP Motion. However, Plaintiffs' title analysis is inaccurate and omits the relevant calls to the water in Defendants' deed descriptions. For example, Plaintiffs chain the Li/Newby title back to an 1839 deed that Plaintiffs claim "contains no reference to Atlantic Ocean, cove, sea, or river." Pl. Opp. 10. However, that 1839 deed actually states that property is bounded "by the shore as that runs to the Ministers Gut." Grotton Aff. Ex. B-7. Ministers Gut is the name of the channel of water surrounding the Li/Newby property. The call to Ministers Gut is contained in every deed in the Li/Newby chain of title until the 1893 deed description conveying the "flats and shore appurtenant to the premises." Grotton Aff. Exs. B-4 through B-6. Plaintiffs similarly misunderstand the Seeley chain of title when they claim that the grantor of Dr. Seeley's flats "had no intertidal land to convey." Pl. Opp. 11. Seeley's Grantor, Sondra Castille, held title to the flats by virtue of a deed conveying to her land bounded "easterly by Pennamaquan Bay." Grotton Aff. Ex. C-3. These deed calls bounding property to or by the water convey with them the adjacent intertidal zone. *Almeder v. Town of Kennebunkport*, 2019 ME 151, ¶ 37.

² Furthermore, Plaintiffs continue to overstate or mischaracterize the significance of *Almeder*. Pl. Opp. 7-8, 14. The *Almeder* decision did not single out intertidal land as requiring a heightened demonstration of ownership as compared to upland, as suggested by Plaintiffs. Pl. Opp. 8. The land in dispute in *Almeder* was both intertidal and upland. 2019 ME 151, ¶ 8. *Almeder* simply rested on the background principle that "a grantor may not convey more than what he or she owns." *Id.* ¶ 28 (citing *Eaton v. Town of Wells*, 2000 ME 176). The presumption discussed in *Almeder*, that the owner of upland oceanfront property owns to the low water mark when a grant of the property includes a reference or call to the water, is not new. It dates back to the Colonial Ordinance. *Almeder*, 2019 ME 151, ¶ 28 (citing *Storer v. Freeman*, 6 Mass. 435, 438-39 (1810)). The "presumption" test is just another way of stating the long-recognized principle that intertidal land can be conveyed separately from the upland. *See, e.g., Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 12 ("The intertidal zone belongs to the owner of the adjacent upland property, or some other person to whom that part of the land has been transferred by the upland owner, subject to certain public rights."); *McGarvey v. Whittredge*, 2011 ME 97, ¶ 16 & n.8 ("In Maine, the upland owner also owns this land in fee. This is true unless the intertidal lands have been separated by deed from ownership of the adjacent upland."); *Proctor v. Maine Cent. R. Co.*, 52 A. 933, 935 (Me. 1902) ("While a grantor may separate the flats from the upland, and convey the one and retain the other, yet, unless flats are excluded by the terms of the grant properly construed, they pass by a grant of the upland.").

permission, Plaintiffs cannot seriously take the position that Defendants' petitioning activity was devoid of "any arguable basis in law." 14 M.R.S. § 556.

IV. Plaintiffs Have Not Met Their Burden to Demonstrate that Defendants' Petitioning Activity Caused Them Actual Injury

To avoid dismissal under the Anti-SLAPP statute, Plaintiffs must show that Defendants' petitioning activity caused Plaintiffs "actual injury," which requires a "reasonably certain monetary valuation of the injury suffered by the plaintiff." *Desjardins*, 2017 ME 99, ¶ 14. Under the "actual injury" requirement, Plaintiffs must "produce affirmative evidence of an injury" and "the record must contain evidence from which damage in a definite amount may be determined with reasonable certainty." *Maietta Const., Inc. v. Wainwright*, 2004 ME 53, ¶ 10. "Actual injury means that the facts in the record must allow the amount of damages to be determined with reasonable, as distinguished from mathematical certainty" and "the amount cannot be left to mere guess or conjecture." *Schelling v. Lindell*, 2008 ME 59, ¶ 17.

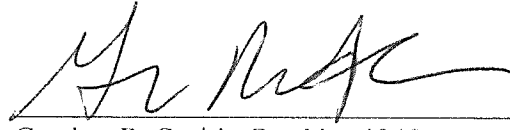
With respect to actual injury, Plaintiffs offer a handful of conclusory statements unsupported by any "facts in the record." Plaintiffs have not provided a single factual allegation of actual injury that is supported by affidavit. The injury stated in Plaintiffs' briefs is raw conjecture, such as "the total loss (in wages, corporate profits, and reduced value of capital investments) in the state as a whole exceeds tens of millions of dollars." Delogu Opp. 8. Or "Plaintiffs' [sic] actions devalue a critical renewable natural resource that belongs to everyone." Pl. Opp. 13.

Accordingly, Plaintiffs fail to meet their burden of showing that Defendants' petitioning conduct has caused Plaintiffs "actual injury." 14 M.R.S. § 556.

CONCLUSION

As discussed above, Plaintiffs' briefs in opposition to Defendants' Anti-SLAPP Special Motion to Dismiss do not meet their burden under 14 M.R.S. § 556. Accordingly, Defendants respectfully request that the Court dismiss all counts of Plaintiffs' Complaint against them with prejudice and award Defendants' reasonable attorneys' fees.

Dated at Portland, Maine this 3rd day of August, 2021.



Gordon R. Smith, Bar No. 4040
Attorney for Defendants Edward Page,
Christine Page, James Li, Kim Newby,
and Robin Hadlock Seeley

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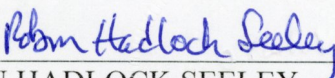
PETER AND KATHY MASUCCI, et al.,)
)
 Plaintiffs)
)
 v.)
)
 JUDY'S MOODY LLC, et al.,)
)
 Defendants)
 and)
)
 AARON FREY,)
 Attorney General for the State of Maine)
)
 Party in Interest)

SECOND AFFIDAVIT OF ROBIN HADLOCK SEELEY

My name is Robin Hadlock Seeley. I hereby state under oath as follows.

1. I am over 18 years of age and competent to provide this sworn statement.
2. As part of my rockweed conservation activities, I serve as editor of a website for the Maine Rockweed Coalition (501(c)(3) pending) with a URL address of www.mainerockweedcoalition.org.
3. The Maine Rockweed Coalition website is the principal location where I publicize information about rockweed conservation.
4. Attached to this affidavit are true and accurate copies of pages from the current version of the Maine Rockweed Coalition website that are relevant to this litigation.
5. Attached to this affidavit is a true and accurate copy of a Boston Globe newspaper article regarding the Maine rockweed industry's response to *Ross v. Acadian Seaplants*.

Dated: August 2, 2021



ROBIN HADLOCK SEELEY

STATE OF MAINE
Washington, ss.

Personally appeared before me this 2nd day of August 2021, the above named Robin Hadlock Seeley, and made oath as to the truth of the foregoing statements by her to the best of her knowledge, information and belief and to the extent based upon her knowledge, information and belief, she believes it to be true.

Roberta Seeley
Notary Public
Printed Name: Roberta Seeley
My commission expires: 6/16/2025

EXHIBIT 1

Clash along bucolic Maine coast erupts over rockweed

By **David Abel** Globe Staff, November 25, 2019, 7:33 p.m.



Jeffrey Parent said he was dumbfounded by the denuding of rockweed from the shoreline near his home in Waldoboro, Maine. JESSICA RINALDI/GLOBE STAFF/GLOBE STAFF

WALDOBORO, Maine — On a recent afternoon, a few feet from the small, coastal home where Jeffrey Parent lives with his wife and five children, a boat rumbled up to his rocky shore and deployed a vacuum-like tool that began sucking up large clumps of a knotty, olive-colored marine plant called rockweed.

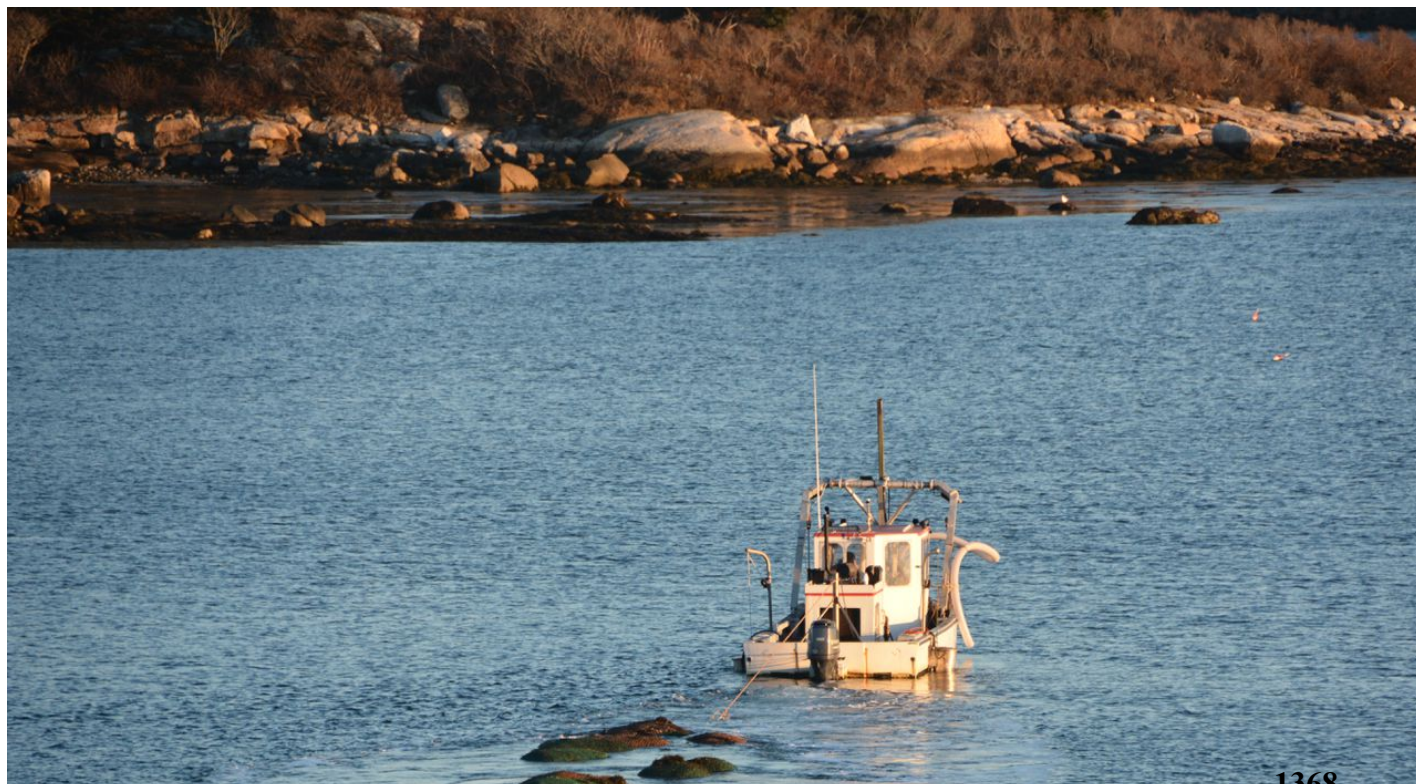
No one asked for his permission.

To Parent, it was as if someone had just parked in his yard and started snipping flowers from his garden. He couldn't believe what he was witnessing.

"We were so angry," said Parent, 65, showing the newly shorn granite boulders surrounding the modest home he has owned here since 2012, where the rambling rockweed had been clipped to a few inches. "It was so arrogant of them. They acted like they could do whatever they wanted, no matter the consequences."

The retired UPS driver and others along this state's 3,500 miles of coast have complained that many harvesters of rockweed — an increasingly valuable commodity used for fertilizers and food products — are ignoring last spring's controversial Supreme Judicial Court ruling that requires them to do something few had ever done: ask property owners for permission before removing the soggy weeds.

For generations, rockweed harvesters in Maine have operated like fishermen, free under state law to rake clams, collect worms, and navigate in the so-called intertidal zone — the area between high and low tides. As the industry has become more lucrative, the number of harvesters has increased, stirring tensions with coastal residents who prize their seaside tranquility.





A harvester used a machine to remove rockweed from the shoreline of Friendship, Maine. The weed (left) resembles eel grass, and some environmentalists say it protects young lobsters and other sea life. LYNN CASE

The court's ruling doesn't appear to have reduced the conflict, even though the justices sided with coastal property owners who objected to a Canadian company that had repeatedly taken rockweed from their shore. The plaintiffs complained that the large-scale removal of rockweed — which has grown to a \$20 million business in Maine — has damaged coastal ecosystems, reducing habitats for juvenile lobster, cod, and other species that rely on the weed for protection and food.

“We agree that rockweed in the intertidal zone belongs to the upland property owner and therefore is not public property, is not held in trust by the state for public use, and cannot be harvested by members of the public as a matter of right,” Justice Jeffrey Hjelm wrote in the majority opinion.

The decision wasn't well received by the owners of companies that rely on a steady supply of rockweed, some of whom worried that it would undermine an industry that has seen its harvest quadruple to more than 22 million pounds since 2001.

“The ruling created a huge mess,” said Dave Preston, president of the Maine Seaweed Council, which represents the companies.

He acknowledged that some of the state's 154 licensed harvesters — the number of which has increased by more than 40 percent over the past decade — may be ignoring the ruling as a matter of economic necessity.

“Many of them have a lot of money tied up with their equipment, and so they've had to make a decision about what to do,” said Preston, noting that many of the harvesters work as independent contractors. “Do you try to survive? Until this ruling, the public's right to the intertidal zone was unfringed.”

In flouting the court, others suggested, some harvesters hope to invite another lawsuit

in hearing the court, others suggested, some had fostered hope to invite another attempt that might persuade the court to reconsider or alter its ruling.



Rockweed along Jeffrey Parent's shoreline in Waldoboro, Maine. JESSICA RINALDI/GLOBE STAFF/GLOBE STAFF

George Seaver, co-owner of Ocean Organics, a Waldoboro processor of rockweed, said he thought there were gray areas in the ruling, such as whether coastal homeowners can prevent harvesting if they can't prove their deeds extend to the shoreline.

“What do you do when you look all day long and can't find the owner of the intertidal zone?” he said. “Does that mean we all have to stop being in business?”

The harvesters his company has been buying from have received permission to take rockweed, he said. But he acknowledged that some of his colleagues at other companies haven't done so, and that some harvesters have turned the tables on property owners who have complained, demanding that they prove their property extends to the waterline.

Seaver said he hopes such disputes get litigated.

“A bad presentation in court before is what snatched this away from us,” he said, referring to the case decided by Maine’s top court. “It would be great if this ends up back in court.”

Seaver and others, including state regulators, have dismissed the concerns about rockweed harvesting, even suggesting that it has benefits for the environment. The final product, for example, reduces the use of chemical fertilizers and the need for pesticides.

In a letter sent to Seaver last month, Patrick Keliher, commissioner of the state’s Department of Marine Resources, wrote: “The department is not aware of any scientific research that has documented a deleterious or irreversible impact on Maine’s marine ecosystem from rockweed harvesting.”

But some property owners and scientists insist there are harmful impacts, especially when the rockweed is removed by machine, rather than by hand.

Diane Cowan, executive director of The Lobster Conservancy, compared harvesting that occurred last spring on the island off Friendship, where she has lived and worked for years, to a “massacre.”

Rockweed has been harvested in the area for years, but it used to be mainly by hand, and there was little lasting damage, she said. Now, she sees several boats a day using mechanical harvesting equipment.

“It’s a gold rush mentality,” she said. “They harvest the same place over and over again. There’s nothing left to take. I search and fail to find any place that hasn’t been harvested in this bay.”

As someone who has spent her entire adult life wading through intertidal zones and studying what lives there, Cowan said, rockweed is especially vital to juvenile lobster, protecting them from the heat and the cold and providing cover from predators, such as

sea gulls and skunks.

Rockweed is similar to eelgrass, which also provides vital habitat to many organisms but is highly protected by the state, she said.

Like a few of her neighbors — some of whom said they worried about retaliation if they spoke publicly about their concerns — Cowan has tried to ward off the mechanical harvesters, which are often noisy and spew diesel fumes.

“Watching the seaweed massacre — seeing, hearing, and smelling those destructive, filthy machines chugging along, clear cutting the rocky intertidal forest from this bay, literally breaks my heart,” she said.

While some of her neighbors said they’ve filed complaints with the Maine Marine Patrol, which has few resources to enforce the ruling, little has been done to stop the harvesting, they said.

Lynn Case, who has owned a house across the bay in Friendship since the 1980s, became so perturbed by recent harvesting that she called the Marine Patrol to file a complaint. She had taken pictures of the boat sucking up the rockweed along her shore.

But the officer didn’t seem interested and said she had to prove she owned the land up to the shoreline, she said.

“It was like, ‘Lady, don’t bother me,’” Case said. “He clearly didn’t want anything to do with it.”

Officials at the Department of Marine Resources said they have investigated only eight complaints relating to rockweed harvesting since the court’s ruling. None has resulted in a summons, said Jeff Nichols, a spokesman for the department.

“If there is sufficient reason to believe a violation has occurred, patrol [officers] may write a summons for theft,” he said.

For Jeffrey Parent, who has also sought help from authorities, the damage is already done.

As he walked along his spear-shaped property that juts into the frigid waters of Back River Cove, he showed areas where rockweed used to rise some 4 feet off the rocks. Now, it was down to about 16 inches, the legal limit.

It would likely take more than a decade to grow back, and the lack of protection would contribute to erosion, especially as sea levels rise, he said.

“There was no consideration for those of us who live here,” he said, pointing to one rock that had been completely denuded of rockweed. “What am I left to do at this point?”



Jeffrey Parent handled rockweed that had been cut by a harvester. JESSICA RINALDI/GLOBE STAFF/GLOBE STAFF

David Abel can be reached at dabel@globe.com. Follow him on Twitter [@davabel](https://twitter.com/davabel).

EXHIBIT 2

MAINE ROCKWEED COALITION (/)

About rockweed



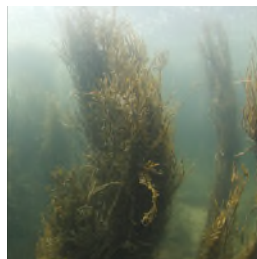
ROCKWEED FAQ

Looking for an introduction to the rockweed conservation issue?

Recent podcast: “Rockweed: underwater forest or industrial commodity?” (<https://podcasts.apple.com/ca/podcast/rockweed-underwater-forest-or-industrial-commodity/id1273561340?i=1000527358599>) Down to Earth: The Planet to Plate Podcast



What does rockweed do?



See our digital flyer (/landowner-flyer-2021)!

What are my rights as a landowner?




How is the rockweed cut? Who is cutting it? What are the rules?




the owner of the intertidal zone, because cutting vegetation is not “fishing”, and therefore not a public trust right.



Tern plunge diving in rockweed v2



Watch on  YouTube

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Docket No. Cum-24-82

Peter Masucci et al.
Plaintiffs/Appellants/Cross-Appellees

v.

Judy's Moody, LLC et al.
Defendants/Appellants/Cross-Appellees

On appeal from the Cumberland County Superior Court

Appendix

Volume VI of VI

Keith P. Richard (Bar No. 5556)

Benjamin Ford (Bar No. 4528)

Sandra Guay (Bar No. 9350)

Archipelago

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Portland, ME 04101

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sguay@archipelagona.com

(207) 558-0102

Attorneys for Appellants

Dated: June 28, 2024

49237

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-84-125

EDWARD B. BELL, et al.,)
Plaintiffs)
v)
INHABITANTS OF THE TOWN)
OF WELLS, et al.,)
Defendants)

FINAL JUDGMENT
AND DECLARATION
OF TITLE

These quiet title and declaratory judgment actions pursuant to 14 M.R.S.A. § 6651-6658 and 14 M.R.S.A. § 5951-5963 came for trial before the Court, Honorable William S. Brodrick presiding, and the Court on September 14, 1987, having ordered that judgment be entered for the plaintiff, Kevin J. Howe, on all pending counts of his complaint:

It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Kevin J. Howe, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 2162, Page 470, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

JUDGMENT on these actions having been so entered on the docket, a copy of this FINAL JUDGMENT and DECLARATION OF TITLE is

to be duly recorded in the York County Registry of Deeds pursuant to 14 M.R.S.A. § 6654.

Dated: 9/30/87

W. S. Brodrick
William S. Brodrick
Justice, Superior Court

BARBJ

A TRUE COPY ATTEST
Jackie M. Kimball
associate CLERK

RECEIVED YORK, SS

1987 OCT -6 PM 12:45

RECORDED REGISTRY OF DEEDS

ATTEST: Ann M. Ponzetti
REGISTER

Action

LAW DOCKET NO. YOR-85-373

Intervening Defendants

CLF-NRC

GUARDIAN AD LITEM APPOINTED
3/1/85 - Ralph Austin, Esq.

YOR-87-430

01

EDWARD B. BELL, et als

INH. OF & SELECTMEN TOWN OF WELLS &
vs. STATE OF MAINE-BUR. OF PUBLIC LANDS et

Plaintiff's Attorney

~~Kermit V. Lipez, Esq.~~ Sidney St. F. Thaxter
CURTIS THAXTER LIPEZ STEVENS BRODER & MICOLEAU
One Canal Plaza
Portland, Maine 04112

David Strater, Esq.

~~STRATER, HANCOCK & ERWIN~~

4A Woodbridge Road - Box 69

York, Maine 03909

For: Edward B. Bell

Defendant's Attorney

Michael T. Healy, Esq.

Verrill & Dana

2 Canal Plaza - Box 586

Portland, Maine 04112

For: Town of Wells

Paul Stern, Esq. - Philip Ahrens, Esq.

Assistant Attorney General

State House Station 6

Augusta, Maine 04333

For: State of Maine, B.P.L.

Date of
Entry

1984

- Mar. 7 ⁽¹⁾ Complaint filed.
- 13 ⁽²⁾ Summonses filed; Service made on/Selectmen H. Donald James, James Wiggin, Harry Margeson and Clarence Moulton on March 8, 1984. Service made on Defendant Selectmen Alberta Wentworth on March 10, 1984. Service made on Defendant Town of Wells by service on Marion Brown, Clerk on March 8, 1984. Service made on Defendant State of Maine, Bureau of Public Lands by certified mail to James Tierney, Attorney General on March 9, 1984.
- 21 ⁽³⁾ Motion for Alternative Service filed by Plaintiffs. Affidavit of Leo J. Shannon in Support of Motion for Alternative Service filed.
- 21 ⁽⁴⁾ Order for Alternative Service filed by the Court. "It is hereby Ordered that any defendant or his attorney who wishes to oppose this lawsuit, must prepare and file a written answer to the complaint on or before May 7, 1984. It is further Ordered that this Order be published in the York County Coast Star, published in Kennebunk, Maine, once a week for three (3) successive weeks, beginning on or about the 28th day of March, 1984." (Bradford, J.)
Copy of Order mailed to K. V. Lipez, Esq.
- 22 ⁽⁵⁾ Motion to Extend Time in which to Answer filed by Defendants, Town of Wells and Selectmen.
Order filed on Defendants' Motion to Extend Time to Answer. Ordered: "Motion granted." (Brodrick, J.)
Copy of Order mailed to K. V. Lipez, Esq., and to M. T. Healy, Esq.
- 22 ⁽⁶⁾ Amended Order for Alternative Service filed by the Court. "Answer to be filed on or before May 8, 1984. Order to be published in the York County Coast Star, published in Kennebunk, Maine, once a week for three successive weeks, beginning the 28th day of March, 1984." (Bradford, J.)
Copy of Order mailed to K. V. Lipez, Esq., and to M. T. Healy, Esq.
- Apr. 12 ⁽⁷⁾ Answer of Defendant State of Maine Bureau of Public Lands' filed.
⁽⁸⁾ Motion to Reconsider and Vacate or Modify the Amended Order for Alternative Service dated March 22, 1984, filed by Defendant State of Maine Bureau of

| 1984 | | 02 |
|------|----|--|
| Apr. | 12 | Public Lands. Memorandum of Law in support of Defendant State of Maine Bureau of Public Lands' Motion to Reconsider and Vacate or Modify Amended Order for Alternative Service filed. (Original motion forwarded to Justice Bradford in Cumberland County) |
| | 12 | (9) Answer of Inhabitants of the Town of Wells, H. Donald James, Harry Margeson, Clarence Moulton, Alberta Wentworth and James Wiggin filed April 11, 1984. (10) Interrogatories and First Request for Production of Documents to Plaintiffs filed by Defendant - Town of Wells. |
| May | 8 | (11) Answer filed by Unnamed Defendant Natural Resources Council of Maine. Copy of Petition to Intervene filed by Unnamed Defendant Natural Resources Council of Maine. |
| | 10 | (12) Original Petition to Intervene filed by Unnamed Defendant. |
| | 14 | (13) Objections to Interrogatories filed by Plaintiffs. (14) Motion for Extension of Time to Respond to Discovery filed by Plaintiffs. Memorandum of Law in Support of Motion for Extension of Time filed by Plaintiffs. |
| | 18 | (15) Motion to Withdraw Certain Plaintiffs filed by Plaintiffs. |
| | 22 | (16) Memorandum of Law in Opposition to Petition to Intervene filed by Plaintiffs. |
| | 23 | Order filed on Motion to Withdraw Certain Plaintiffs. Ordered: "Motion granted." (Brodrick, J.) Evan C. Luce, Franklin H. Perkins, Jr., and Katherine E. Perkins withdraw themselves without prejudice as party plaintiffs. |
| | 29 | (17) Second Amended Order for Alternative Service filed by the Court. (Bradford, J.) Exhibit B - Notice to All Users of Moody Beach filed by Court. (Bradford, J.) Copy of Order mailed to K. V. Lipez, Esq., M. T. Healy, Esq., and to P. Stern, Esq. |
| | 31 | (18) Special Assignment issued by the Court. "Ordered that Justice William S. Brodrick be and is hereby assigned to hear and dispose of all matters that may arise in connection with said case." (Clifford, C.J. Superior Court) Copy of Order mailed to K. V. Lipez, Esq., M. T. Healy, Esq., and to P. Stern, Esq. |
| June | 29 | (19) Motion to Join Party Defendant filed by Plaintiffs. Memorandum of Law in Support of Motion to Join Defendant filed by Plaintiffs. |
| July | 11 | (20) Answer of Defendant State of Maine filed. (Copy forwarded to Judge Brodrick, South Paris, Maine.) |
| Aug. | 17 | (21) Answers to Defendant Town of Wells' interrogatories and request for production filed by Plaintiffs Edward B. Bell, Norman E. Bissonette and Maureen S. Bissonette, Richard F. Cooper and Jane C. Fall, co-trustees of the Cooper Family Trust, Gordon M. Enfield and Lois E. Enfield, Spencer F. Furbush and Mary C. Furbush, Estelle A. Greenwood, Gunnar A. Hagstrom and Anna M. Hagstrom, Edward |

Action _____

Docket Sheet No. 2

03

EDWARD B. BELL, et als

vs. TNH. TOWN OF WELLS et al

Plaintiff's Attorney

George L. Haskins, Esq.
3400 Chestnut Street
Philadelphia, PA 19104

Defendant's Attorney

~~Everett B. Carson Esq.~~
Natural Resources Council of Maine
~~271 State Street~~
~~Augusta, Maine 04330~~

Michael T. Healy, Esq.
William C. Knowles, Esq.
VERRILL & DANA
Two Canal Plaza/P.O. Box 586
Portland, Maine 04112
For: Robert P. & Joan E. Slipp

Date of
Entry

1984

Aug. 17

Haseltine and Eleanor Haseltine, Jean M. Hedman, Robert G. Henderson and Pauline D. Henderson, Francis X. Hogan and Alice B. Hogan, John G. Howe, Warren H. Jones and Dorothy P. Jones, Richard N. Kenary and Bernice R. Kenary, Jean P. Kennan, Richard J. King, Robert D. Kirk and Janice K. Kirk, Marion Lord, Henry J. Nagne and Marie K. Magne, George R. Pope, Phillip M. Pope, and Richard M. Pope, Winslow E. Ryan and Eileen F. Ryan, George H. Schofield, Leo J. Shannon and Jane M. Shannon, John H. Shinner Vera Shinner, Robert V. Stirling and Bette J. Stirling, Shirley Symons, Susan C. Treiss and Chelsea Remington, Doris D. Vezeau, Richey E. Vezeau and Elizabeth S. Vezeau.

20⁵⁷ Interrogatories to Defendant Town of Wells filed by Plaintiffs.

21⁵² First Request for Production of Documents filed by Defendant State of Maine

27⁵³ First Request for Production of Documents to the Defendant Town of Wells filed by Plaintiffs.

30⁵⁴ Answers to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiff; Audrey Familgetti.

55 Answer to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiffs, James H. Hayes and Claire S. Hayes.

56 Answer to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiff, Kevin J. Howe.

57 Answer to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiffs, Gerard P. Lamoureux and Rachel Lamoureux.

58 Answers to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiffs, Robert J. Maloney, Jr. and Joan Maloney.

59 Answers to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiffs, Shelton B. Ray and Donna F. Ray.

60 Answers to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiffs, Joseph Sico and Elizabeth V. Sico.

61 Answers to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiffs, Eugene M. Van Loan, III and John E. Fribe

- 1984
- Aug. 30 (30) Answers to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiff, Edna R. Walker. 04
(31) Answers to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiff, Phyllis L. Wyne.
- Sept. 19 (39) Motion to Extend Time in which to Answer Interrogatories filed by Defendant Inh. - Town of Wells.
Order filed on Defendant Town of Wells Motion to Extend time. "Motion granted." (Goffin, J.)
Copy of Order mailed to K. V. Lipez, Esq., W. C. Knowles, Esq., and to P. Stern, Esq.
- 21 (45) Response to State's First Request for The Production of Documents filed by Plaintiffs.
- 24 (46) Motion to Extend Time to file Answer filed by Defendant Robert Slipp.
- 28 Everett B. Carson, Esq., enters his appearance for the Natural Resources Council of Maine.
- Oct. 5 (52) First Request for the Production of Documents of Defendants State of Maine Bureau of Public Lands and State of Maine filed by Plaintiffs on October 4, 1984.
(53) Interrogatories to Defendants filed by Plaintiffs on October 4, 1984.
(54) Answers to Interrogatories and First Request for Production of Documents filed by Plaintiffs' Barbara Stetson, Irving Marsden, Paul Marsden and Barbara Buddington.
- 25 (55) Supplemental Response to State's First Request for Production of Documents filed by Plaintiffs October 24, 1984.
- 25 (56) Answers to Interrogatories filed by Defendant Town of Wells October 24, 1984.
- 26 (57) Answer and Counterclaim filed by Defendants, Robert P. Slipp and Joan E. Slipp.
- Nov. 1 (63) Affidavit regarding Service by Publication filed by Deborah M. Mann, Esq. on October 31, 1984.
- 2 (64) Request for Extension of Time in Which to Answer Plaintiff's Interrogatories and Request for Production of Documents filed by Defendants State of Maine and Maine Bureau of Public Lands on Nov. 1, 1984.
- (65) Motion for Appointment of Guardian Ad Litem filed by Defendants State of Maine and Maine Bureau of Public Lands on Nov. 1, 1984.
Memorandum of Law in Support of Motion for Appointment of Guardian Ad Litem filed by Defendants State of Maine and Maine Bureau of Public Lands on Nov. 1, 1984.
- 2 Order filed by the Court on Defendants State of Maine and Maine Bureau of Public Lands Motion for Extension of Time in Which to Answer Plaintiff's Interrogatories and Request for Production of Documents.
"Motion Granted." (Brodrick, J.)
Copy of Order mailed to K.V.Lipez, Esq., W.C.Knowles, P.Stern, Esq. & E.V.Caron, Esq.
- 14 (76) Response to Plaintiffs' First Request for Production of Documents filed by State Defendants.

Action _____

Docket Sheet No. 3

05

EDWARD B. BELL et als

vs. INH. TOWN OF WELLS et als

Plaintiff's Attorney

Defendant's Attorney

~~Gordon H. S. Scott, Esq.~~~~LUND, WILK & SCOTT~~~~Two Central Plaza~~~~Augusta, Maine--04330~~

For: Natural Resources Council of Ma

Ralph Austin, Esq.

JENSEN, BAIRD, GARDNER & HENRY

RR #1, P.O. Box 96

Kennebunkport, Maine 04046

Guardian Ad Litem

Date of
Entry

1984

- Nov. 14 ¹⁷ Answers to Plaintiffs' Interrogatories filed by Defendants State of Maine and Maine Bureau of Public Lands.
- 15 ¹⁶ Memorandum of Law in Response to Motion for Appointment of Guardian Ad Litem filed by Plaintiffs.
- 19 ¹⁷ Answer to Counterclaim of Robert P. Slipp and Joan E. Slipp filed by Plaintiffs, Spencer S. Furbush and Mary C. Furbush, November 16, 1984.
- 19 Gordon H. Scott, Esq. enters his appearance as counsel for Natural Resources Council of Maine.
- 19 ¹⁸ Memorandum of Law in Support of Petition to Intervene of The Natural Resources Council of Maine filed.
- 19 Conference had in chambers. Order filed on Natural Resources Council of Maine's Petition to Intervene - "Petition Denied. The N.R.C.'s interest is identical to the Attorney General's interest in this particular case and that interest will be adequately represented by the Attorney General. (Brodrick, J.) Order filed on Plaintiffs' Motion to Join Party Defendant "Motion granted." (Brodrick, J.) Order to be submitted on Defendants' Motion for Appointment of Guardian Ad Litem. (Brodrick, J.) Copy of Orders mailed to K. Lipez, Esq., M. Healy, Esq., P. Ahrens, Esq., W. C. Knowles, Esq., E. B. Carson, Esq. and G. H. S. Scott, Esq.
- Dec. 19 ¹⁹ Supplemental Answers to Interrogatories filed by Defendant Town of Wells December 18, 1984.
- 20 ²⁰ Motion to Withdraw Certain Plaintiffs filed by Plaintiffs. Seen and Agreed to by Defendants. Ordered: "Motion Granted." (Brodrick, J.) Plaintiffs John B. and Vera Shinner, Donna F. and Shelton B. Ray, Marie A. Desmaris and Samuel A. Tamposi withdrawn as Party Plaintiffs. Copy of Motion and Order thereon mailed to K. V. Lipez, Esq., M. T. Healy, Esq. and P. Ahrens, Esq.

- 1984
Dec. 28 Affidavit of Deborah M. Mann Regarding Service by Publication filed December 21, 1984. 06
- 1985
Jan. 14 (84) Notice to take Deposition of Plaintiff Norman Bissonnette filed by Defendants State of Maine and Maine Bureau of Public Lands.
Notice to take Deposition of Plaintiff Maureen Bissonnette filed by Defendants State of Maine and Maine Bureau of Public Lands.
Notice to take Deposition of Plaintiffs Richard F. Cooper, Jane C. Fall, Alice Clare Elliott, Edward J. Haseltine, Gordon M. Enfield, Lois E. Enfield, Audrey Familgetti, Spencer Furbish, Mary Furbish, Estelle A. Greenwood, Gunnar A. Hagstrom, Anna M. Hagstrom, Claire S. Hayes, Jean M. Hedman, Robert G. Henderson, Pauline D. Henderson, Francis X. Hogan, Alice B. Hogan, John B. Howe, Kevin J. Howe, Warren H. Jones, Dorothy P. Jones, Richard N. Kenary, Bernice R. Kenary, Jean P. Kennan, Richard J. King, Robert D. Kirk, Janice K. Kirk, Gerard P. Lamoureux, Rachel Lamoureux, Henry J. Magne, Marie K. Magne, Robert J. Maloney, Joan C. Maloney, Phillip Pope, George R. Pope, Richard M. Pope, Winslow E. Ryan, Eileen F. Ryan, Marion E. Lord, George H. Schofield, Joseph Sico, Barbara M. Stetson, Barbara C. Buddington, Irving G. Marsden, Paul J. Marsden, Robert V. Stirling, Bette S. Stirling, Shirley L. Symons, Susan C. Treiss, Chesley C. Remington, Edna R. Walker, Eugene M. VanLoan III, John E. Friberg, Doris Vezeau, Richey Vezeau, Elizabeth S. Vezeau, Phyllis L. Wyne, Jane M. Shannon, Leo J. Shannon and Edward B. Bell filed by Defendants State of Maine and Maine Bureau of Public Lands.
- 22 (85) Objection to Notices of Deposition filed by Plaintiffs January 21, 1985.
- Feb. 11 (86) Motion to Strike and Memorandum of Law in Support Thereof filed by Plaintiffs on February 7, 1985.
- Mar. 1 (87) Conference had in Chambers. Oral motion for enlargement of time to file motion to strike presented by counsel for Plaintiffs - 'Granted. Plaintiff Granted until February 7, 1985.' (Brodrick, J.)
- Order Appointing Guardian Ad Litem filed by the Court. "It is Hereby Ordered, Adjudged and Decreed that: 1. Ralph Austin, Esq. shall be appointed as guardian ad litem pursuant to 14 M.R.S.A. Sec. 6656 to represent the private rights of all unnamed and unknown defendants who have not actually been served with process and who have not appeared in this action; and 2. The duties and obligations of said guardian ad litem shall be: (a) To file an acceptance of this appointment; (b) To file an answer to plaintiffs' complaint, denying all of the allegations of the complaint adverse to said defendants whom he represents; and (c) To appear and be heard at a hearing to consider the private rights of said defendants in the property of the plaintiffs as that property is defined in plaintiffs' complaint." (Brodrick, J.)
Attorney Austin given leave to remove from Court two volumes of individual form answers totalling approximately 934.
Copy of Order mailed to K. Lipez, Esq., M. T. Healy, Esq., P. Stern, Esq., and R. Austin, Esq.
- 11 ~~Acceptance of Appointment as Guardian Ad Litem filed by Ralph W. Austin, Esq. March 4, 1985.~~
Copy of Acceptance mailed to K. Lipez, Esq., M. T. Healy, Esq., P. Stern, Esq. and R. Austin, Esq.

Action _____

Docket Sheet No. 4

07

EDWARD B. BELL et als

vs. INH. TOWN OF WELLS et als

Plaintiff's Attorney

Defendant's Attorney

Harrison L. Richardson, Esq.
 RICHARDSON, TYLER & TROUBH
 465 Congress Street
 P.O. Box 15340
 Portland, Maine 04101
 For; Conservation Law Foundation

Date of
Entry

1985

- Mar. 11 (81) Motion to Compel filed by State Defendants.
 Memorandum in Support of Motion to Compel filed by State Defendants.
- 19 (79) Memorandum of Law in Opposition to Motion to Compel filed by Plaintiffs
 March 18, 1985.
- Letter joining in State's Motion to Compel and Memorandum in support thereof dated March 8, 1985 filed by Town of Wells March 14, 1985.
- 21 (91) Decision filed by the Court. "Having reviewed the memoranda on the issues raised by the state's March 8, 1985 motion to compel, I am satisfied that plaintiffs should answer the questions in dispute, if they can answer them, after registering their objections. This decision, of course, does not suggest that the answers are in any way relevant. The motion to compel is granted." (Brodrick, J.) Copy of Decision mailed to K. Lipez, Esq., M. T. Healy, Esq., P. Stern, Esq. and R. Austin, Esq.
- 26 (72) Notification of Discovery Service filed by Plaintiffs March 25, 1985. Plaintiff Edward Bell's Amended Answers to Defendants' Interrogatories served on Defendants March 21, 1985.
- Apr. 1 (83) Motion to Admit Visiting Attorneys filed by Harrison L. Richardson, Esq.
- (74) Motion of the Conservation Law Foundation of New England, Inc. to Intervene filed by Harrison L. Richardson, Esq., attorney for Applicant for Intervention.
 Memorandum of Law in support of Motion to Intervene as Defendants filed.
 Affidavit of Douglas I. Roy, J. D., Executive Director, Conservation Law Foundation of New England, Inc. filed.
- (85) Answer and Affirmative Defenses of Defendant-Intervenor Conservation Law Foundation of New England, Inc. filed.
- 16 (76) Memorandum of Law in Opposition to the Motion to Intervene of Conservation Law Foundation of New England, Inc. filed by Plaintiffs.

- 08**
- 1985
- Apr. 19 (100) Pretrial Memorandum filed by Plaintiffs.
- 22 (101) Motion to Enlarge Time to File Motion to Strike filed by Plaintiffs.
 (102) Motion to Strike filed by Plaintiffs.
 Memorandum of Law in Support of Motion to Strike filed by Plaintiffs.
- 22 (103) Notification of Discovery Service filed by Plaintiffs. Notices of Deposition of Fred Breslin, Casper Briders, Robert Littlefield and Marion Noble and Requests for Production of Documents served on Defendants April 19, 1985.
- 30 Hearing had April 26, 1985 on Conservation Law Foundation of New England's Motion to Intervene. Oral motion to admit Richard Emmet, Esq. and K. Hoffman, Esq. from Massachusetts for purposes of this hearing only - 'both counsel are admitted by the Court.' Motion taken under advisement. (Brodrick, J.)
- 30 Letter of No Objection to Conservation Law Foundation of New England's Motion to Intervene filed by Defendant Town of Wells.
- May 2 (104) Order on the Motion of Conservation Law Foundation of New England, Inc. to Intervene dated April 30, 1985 filed by the Court. "The CLF's motion to intervene is GRANTED on condition that they consult the NRC and jointly agree to a team of no more than three lawyers to represent their interests. The CLF-NRC team will be subject to the following conditions, which are designed to eliminate undue delay: 1. Counsel for CLF-NRC shall receive copies of all further filings with this court including, but not limited to, copies of pleadings, discovery requests and responses to discovery. 2. Counsel for CLF-NRC are entitled to notice of any further disposition activity in this case and may monitor subsequent deposition activity. 3. Counsel for CLF-NRC may not initiate discovery requests and will not be allowed to examine witnesses at deposition. 4. The CLF-NRC is bound by all proceedings taken to date." (Brodrick, J.)
 Copy of Order mailed to K. Lipez, Esq., M. T. Healy, Esq., P. Stern, Esq., R. W. Austin, Esq., H. L. Richardson, Esq. and G. H. Scott, Esq.
- 10 (105) Pretrial Memorandum filed by Defendants State of Maine and Town of Wells.
- 17 (106) Notification of Discovery Service filed by Defendant State of Maine. State Defendants Interrogatories and Second Request for Production of Documents to Plaintiffs served on Deborah Mann, Esq. on May 16, 1985.
- 23 (107) Notification of Discovery Service filed by Defendant State of Maine. State Defendants' Supplemental Response to Plaintiff's First Request for Production of Documents served on Sidney St.F.Thaxter, II, Esq on May 22, 1985.
- 28 (108) Answer of Defendant David A. Jones, Esq. to Plaintiffs' Motion to Strike filed.
- June 3 (109) Answer of Defendant David A. Jones, Esq., filed Sept. 24, 1984.
- 3 (110) ~~Notification of Discovery Service filed by Plaintiffs, Notice to take Deposition of Helen Colby, John Trafton, Alberta Wentworth and Jeff Beaulieu served on Defendants May 30, 1985.~~

Action _____

09

EDWARD B. BELL, et als vs. TOWN OF WELLS et al

Plaintiff's Attorney

Defendant's Attorney

Date of Entry

1985

- June 6 (108) Officer's return of service of witness subpoenas for deposition served on Alberta Wentworth and John Trafton May 31, 1985, and Jeffrey Beaulieu June 1, 1985, filed by Plaintiffs.
- 13 Officer's return of service of witness subpoena for Deposition filed on June 12, 1985. Service made on Helen Colby on June 5, 1985.
- 19 (109) Motion for Protective Order filed by Plaintiffs filed June 18, 1985. Memorandum in Support of Plaintiffs' Motion for Protective Order filed June 18, 1985.
- 20 (110) Motion to Dismiss filed by Defendants State of Maine, Maine Bureau of Public Lands and the Town of Wells and its Selectmen. Memorandum of Law in Support of Motion to Dismiss filed by Defendants. Deposition of Phillip M. Pope, Dr. Warren H. Jones, Bernice R. Kenary, Richard N. Kenary, Dorothy P. Jones, Norman E. Bissonnette, Jean M. Hedman and Estelle A. Greenwood and Maureen S. Bissonnette filed by Defendants. Deposition of John E. Friberg, Joan Maloney and Richard J. King filed by Defendants.
- 24 Hearing had June 21, 1985 on Plaintiffs' Motion to Strike. Oral presentations made by Edward Regal, summer resident. Plaintiffs move to have Mr. Regal's answer stricken. Presentations made by Mr. Sandler and Robert Tabor, Resident and William Penny: Taken under advisement. (Brodrick, J.) Penny Philbrick Court Reporter.
- 27 (111) Order filed by the Court. "Plaintiffs' motion to strike dated April 22, 1985 is granted as it applies to all persons who filed a personal statement regarding their concerns about the use of Moody Beach. These personal statements do not meet the requirements of M.R.Civ.P. 8(b). Insofar as the persons sending in the personal statements are concerned about the general public's interest in the use of Moody Beach, they will be represented by the Attorney General for the State of Maine. Professor David A. Jones' answer to plaintiffs' motion to strike dated May 28, 1985, does meet the requirements of M.R.Civ.P. 8(b). However, he has failed to allege any

1985

10

- June 27 particularized injury that would separate him from the general public. Thus he has no standing under Maine law. Ricci v. Bureau of Banking, 485 A.2d 645 (Me. 1984). He, too, will be represented by the Attorney General. Plaintiffs' motion to strike as it applies to Professor Jones is granted." (Brodrick, J.)
Copy of Order mailed to S. S. F. Thaxter, Esq., M. T. Healy, Esq., P. Ahrens, Esq., R. Austin, Esq., H. L. Richardson, Esq., and to D. Mann, Esq., and to Professor David A. Jones.
- July 1 State Defendants' Motion to Compel filed.
(112) Memorandum in support of Motion to Compel and in opposition to Plaintiffs' Motion for a Protective Order filed.
- July 11 Memorandum of Law in Opposition to Defendant's Motion to Dismiss filed by Plaintiffs.
(113) Affidavit of Richard J. King filed.
- 12 Plaintiffs' Motion to Compel and Memorandum of Law in Support of Motion to Compel filed.
(114)
- (115) Memorandum of Law in Opposition to Defendants' Motion to Compel and Affidavit in Support thereof filed by Plaintiffs.
- (116) Motion to Join Party Plaintiff filed by Plaintiffs. Affidavit filed.
- 15 Affidavit of Joan Maloney filed.
- 16 Reply Memorandum of the Town of Wells and its Selectmen and the State of Maine and the Maine Bureau of Public Lands with respect to the Motion to Dismiss filed.
(117)
- 18 Hearing had on Defendants State of Maine, Maine Bureau of Public Lands and the Town of Wells and its Selectmen's Motion to Dismiss - 'Taken under advisement.' (Brodrick, J.) Plaintiff, Edward J. Haseltine's Motion to Join Party Plaintiff Granted. (Brodrick, J.) Donald Mitchell, Court Reporter.
- 18 Order Granting Request for Enlargement of Time filed by the Court.
(118) "Defendants State of Maine and Maine Bureau of Public Lands have requested, pursuant to M.R.Civ.P. 6(b) that the period of time in which they are to respond to Plaintiffs' Motion to Compel dated July 11, 1985, be enlarged until such time as Plaintiffs' counsel indicate Plaintiffs intend to pursue that motion to compel, which has been continued by agreement of counsel. It is hereby ordered that such request is granted." (Brodrick, J.)
Copy of Order mailed to S. St. F. Thaxter, Esq., M. T. Healy, Esq., P. Stern, Esq., P. Ahrens, Esq., W. C. Knowles, Esq., R. ~~Austin~~, Esq., H. L. Richardson, Esq.
- 18 Depositions of Phillip M. Pope, Dr. Warren H. Jones, Bernice R. Kenary, Richard N. Kenary, Dorothy P. Jones, Norman E. Bissonnette, Jean M. Hedman, Estelle A. Greenwood, Maureen S. Bissonnette, John E. Friberg, Joan Maloney and Richard J. King given in hand to Paul Stern, Esq.
- Aug. 1 Decision filed by the Court July 31, 1985. (Brodrick, J.)
(119)
- 1 Counts I and II of Plaintiffs' Complaint dismissed. On Count III summary judgment granted to the Town of Wells.

Action

Docket Sheet No. 6

11

EDWARD B. BELL et als

vs. TOWN OF WELLS et al

Plaintiff's Attorney

Defendant's Attorney

Barri L. Bloom, Esq.
Richardson, Tyler & Troubh
465 Congress Street - Box 15340
Portland, Maine 04101
For: Moody Beach Tier II Group

Date of
Entry

1985

- Aug. 1 Copy of Decision mailed July 31, 1985 to M. Healy, Esq., P. Stern, Esq., R. Austin, Esq., H. Richardson, Esq. and S. Thaxter, Esq.
- 1
(120) Defendants, Moody Beach Tier II Group's Motion for Leave to file Late Answer filed. Memo filed. Answer filed.
- 8
(121) Response to Defendants Moody Beach Tier II Group Motion to File Late Answer filed by Plaintiffs.
- 22
(122) Motion to Alter and Amend Decision filed by Plaintiffs.
Memorandum of Law in Support of Motion to Alter or Amend Decision filed by Plaintiffs.
- 123
(123) Motion and Memorandum of Law in Support, To Amend Their Complaint, Pursuant to Rule 15(a) filed by Plaintiffs.
- 124
(124) First Amendment to Complaint filed by Plaintiffs.
- 125
(125) Motion for Entry of Final Judgment Pursuant to Rule 54(b) and Memorandum in Support Thereof filed by Plaintiffs.
- 13
(126) Motion to Enlarge Time to Respond to Motions filed by Defendant Town of Wells.
- 16
(127) Motion for Enlargement of Time pursuant to Rule 6B of the Maine Rules of Civil Procedure filed by Defendant, Moody Beach Tier II Group.
- 19
(128) Order filed by the Court on Defendant Town of Wells' Motion to Enlarge Time to Respond to Motions. Ordered: "Motion granted." (Brodrick, J.)
Order filed on Defendant Moody Beach Tier II Group's Motion for Enlargement of Time to Respond to Motions. Ordered: "Motion granted." (Brodrick, J.)
Copy of Order mailed to S. F. Thaxter, Esq., M. T. Healy, Esq. P. Stern, Esq., R. Austin, and to B. L. Bloom, Esq.
- 21
(129) Order filed on State's request for Enlargement of Time to Respond to Motions. "Request approved." (Brodrick, J.)
Copy of Order mailed to S. F. Thaxter, Esq., M. T. Healy, Esq., P. Stern, Esq., H. L. Richardson, Esq., B. L. Bloom, Esq., and to R. W. Austin, Esq.
- Sept. 3
(129) Memorandum of Law of State of Maine, Maine Bureau of Public Lands and the Town of Wells and its Selectmen in Opposition to Plaintiffs' Motion to Alter or Amend Decision filed.

| Date of Entry | Docket No. CV-84-125 |
|---------------|---|
| 1985 Sept. | <p>3 Memorandum of Law of State of Maine, Maine Bureau of Public Lands and the Town of Wells and its Selectmen in Response to Plaintiffs' Motion for Entry of Final Judgment Pursuant to M.R.Civ.P. 54(B) filed. 12</p> |
| 3 | <p>3 Memorandum of the Town of Wells in Opposition to Plaintiffs' Motion to Amend Their Complaint filed.</p> |
| 6 | <p>6 Memorandum of Law in Response to Defendants' Memorandum in Opposition of Plaintiffs' Motion to Alter or Amend filed by Plaintiffs.</p> |
| 9 | <p>9 Hearing had on Motions September 6, 1985. Plaintiffs' Motion to Alter and Amend Decision - 'taken under advisement'. (Brodrick, J.) Plaintiffs' Motion for Entry of Final Judgment - 'taken under advisement'. (Brodrick, J.) Kathy Casey, Court Reporter.</p> |
| 13 | <p>13 Decision filed by the Court. "1. Plaintiffs' motion to alter is denied. 2. Final judgment will be entered in favor of defendants and against plaintiffs on Counts I and II of plaintiffs' Complaint. 3. All further action in this case is ordered stayed pending review of my decision on Counts I and II of the Complaint in the Law Court." (Brodrick, J.)</p> |
| | <p>Copy of Decision mailed to S. F. Thaxter, Esq., M. T. Healy, Esq., P. Stern, Esq., B. L. Bloom, Esq., R. Austin, Esq., W. C. Knowles, Esq. and H. Richardson, Esq.</p> |
| 13 | <p>13 Final Judgment entered in favor of defendants and against plaintiffs on Counts I and II of plaintiffs' Complaint.</p> |
| 17 | <p>17 Deborah M. Mann, Esq., requests Court to withdraw her appearance as counsel for plaintiffs Edward B. Bell et al.</p> |
| Oct. | <p>1 Notice of Appeal to the Law Court under Rule 73(b) filed by Plaintiffs. Attested copy of Notice of Appeal mailed to S. S. F. Thaxter, Esq., M. T. Healy, Esq., P. Sterns, Esq., B. L. Bloom, Esq., R. W. Austin, Esq., W. C. Knowles, Esq., and to H. L. Richardson, Esq., and to Hon. W. S. Brodrick, Kathy Casey, Court Reporter, Donald Mitchell, Court Reporter and to the Hon. James C. Chute, Clerk of the Law Court. (Attested copy of docket entries mailed to Mr. Chute.)</p> |
| 1 | <p>1 Appeal Fee - \$100.00 - deposited.</p> |
| 35 | <p>35-3 Certificate of Service re Notice of Appeal filed by Plaintiff.</p> |
| 23 | <p>23 Original record forwarded to Law Court.</p> |
| 23 | <p>23 Receipt of Clerk's Record filed by Law Court.</p> |
| 1986 | |
| 06/05/86 | <p>06/05/86 Original record returned by Law Court.</p> |
| 06/09/86 | <p>06/09/86 Mandate issued by the Law Court. "Judgment vacated. Remanded for further proceedings consistent with the opinion herein."</p> |
| 06/09/86 | <p>06/09/86 Motion to Substitute a Plaintiff and Suggestion of Death upon the Record filed by Plaintiffs.</p> |
| | <p>Motion to Withdraw Certain Plaintiffs filed by Plaintiffs.</p> |
| | <p>Motion for Leave to Amend Complaint filed by Plaintiffs.</p> |
| | <p>Memorandum of Law in support of Plaintiffs' Motion to Amend Complaint filed.</p> |
| 06/09/86 | <p>06/09/86 Memorandum in opposition to Plaintiffs' Motion to Complaint, together with a letter to Justice Brodrick, filed by Defendant State of Maine.</p> |

| Date of Entry | EDWARD B. BELL et als VS. TOWN OF WELLS et al | Docket No. CV-84-125 |
|---------------|--|----------------------|
| 1986 | | 13 |
| 06/11/86 | (143) Memorandum in opposition to Plaintiffs' Motion to Withdraw Certain Plaintiffs filed by Defendant Town of Wells. | |
| 06/12/86 | (144) Response to Plaintiffs' Motion to Substitute, Motion to Withdraw and Motion for Leave to Amend filed by State Defendants. | |
| 06/13/86 | (145) Memorandum of Law in opposition to Defendants Moody Beach Tier II Group's Motion for Leave to file a Late Answer filed by Plaintiffs. | |
| | (146) Memorandum of Law in support of Plaintiffs' Motion to Withdraw Certain Plaintiffs filed by Plaintiffs. | |
| 06/16/86 | Hearing had in Cumberland County on Motions on 6/13/86. Plaintiffs moti Amend. Plaintiffs Motion to Substitute. Tier II's Motion to Join. Plaintiffs Motion to Amend to Include Trespass Action. States Motion to Compel. Plaintiffs Motion for Protective Order. States Motion to Compel dated 6/28/85. (Brodrick, J.) No. Court Reporter. | |
| | (147) Decision and Orders filed by the Court. ORDERED: "Although the Law Court ruled in <u>Bell v. The Town of Wells</u> , (Dec. No. 1430, May 23, 1986) that the State of Maine is not an indispensable party to this case, the Attorney General will, at my request, continue to represent the general public's interest in Moody Beach. The Town of Wells will continue to have its own counsel and the "E" Team will continue their role as parti defendant. By virtue of my granting Tier II Group's July 30, 1985 motion to file late answer, the Moody Beach Tier II property owners will join the lawsuit today as parties defendant with their own counsel to assert their independent, particularized rights to Moody Beach. Plaint June 6, 1986 motion to amend the complaint to seek a declaratory judgment on the effect and consitutionality of the recently enacted L.D. 2380 is granted. Plaintiffs' August 9, 1985 motion to amend the complaint is also granted but only to the extent that the motion seeks to clarify the fact that Plaintiffs are seeking a declaratory judgment concerning the various public and private rights asserted in Moody Beach. Plaintiffs ha chosen to withdraw those portions of their August 9, 1985 motion to amend that sought to add counts in trespass against the Town of Wells ar Tier II Group. As a result, there will be no jury trial in this case. Plaintiffs' June 6, 1986 motion to substitute a plaintiff because of the death of a previous plaintiff is granted. As for plaintiffs' June 5, 1986 motion to withdraw certain plaintiffs, plaintiffs' counsel is granted tv weeks to notify the court which plaintiffs specifically named in the body of this motion wish to continue as plaintiffs. All such plaintiffs who have not filed through counsel their desire to continue as plaintiff in this action by June 27, 1986, are to be dismissed as plaintiffs in th case with prejudice. The Attorney General's motion to compel discovery dated June 28, 1985, plaintiffs' motion for a protective order and plain tiffs' motion to compel discovery dated July 11, 1985 were for the most part resolved by agreement. The Attorney General will prepare a draft order detailing the nature of the agreement and the Attorney General and plaintiffs' counsel will meet shortly to discuss what few differences, i any, remain. Any unresolved discovery differences will be decided by me the hearing on plaintiffs' motion in limine concerning the proper interp tation of the Law Court's recent decision on this case. That hearing is tentatively scheduled to be held in Portland during the last week of Jul or the first week in August of 1986." (Brodrick, J.) Copy of Decision and Orders mailed to all counsel of record. | |

- 06/17/86 Copy of Order on Plaintiffs Motion for Leave to Amend Complaint; Plaintiff Richard Cooper's Motion to Substitute a Plaintiff and Suggestion of Death Upon the Record and Defendants Moody Beach Tier II Group's Motion for Leave to File Late Answer mailed to all counsel of record.
- 06/27/86 (148) Notification to the Court Pursuant to June 16, 1986 Court Order filed by Plaintiffs.
(149) Motion in Limine filed by Plaintiffs.
Memorandum of Law in Support of Plaintiffs' Motion in Limine filed by Plaintiffs.
- 07/03/86 (150) State Defendants' Answer to Amendments to Plaintiffs' Complaint filed.
- 07/03/86 (151) Answer of Inhabitants of the Town of Wells, H. Donald James, Harry Margeson, Clarence Moulton, and James Wiggin to Plaintiffs' Amended Complaint filed.
- 07/11/86 (152) Town and State Defendants' Memorandum in opposition to Plaintiffs' Motion in Limine filed.
- 07/14/86 (153) Order on Plaintiffs' Motion for a Protective Order, State Defendants' Motion to Compel, and Plaintiffs' Motion to Compel. "By agreement of the Plaintiffs and State Defendants, this Court hereby orders: Plaintiffs shall answer within 30 days from the date of this Order the State Defendants' Interrogatories 3(a), 4, 5, 6, 7, 8, 20-25 and 27. These interrogatories may be answered by means of a single filing and in such case the answers contained therein shall be binding on all Plaintiffs. Plaintiffs shall answer within 30 days from the date of this Order the State Defendants' Interrogatories 9(a)-(f), 10(a)-(f), 11(a)-(f), 12(a)-(f), 13, 14, 15, 16(a)-(f), 17, 18 and 19. To the extend possible, these interrogatories may be answered by means of a single filing, and the answers contained therein shall be binding on all Plaintiffs. Further, if a single filing is utilized, the filing shall designate to which Plaintiff said answer applies if it does not apply to all Plaintiffs (in particular, with respect to the witnesses and documents which may be used at trial.) Plaintiffs shall answer State Defendants' Interrogatories 3(b), 3(c), 9(1)-(7), 10(1)-(7), 11(1)-(9), 12(1)-(9) and 16(1)-(4) within 60 days of the date of this Order. Plaintiffs acknowledgements may be taken orally by telephone, in which case such Plaintiffs shall be bound as if they acknowledged in person. In answering all of the above interrogatories, Plaintiffs shall answer State Defendants' Interrogatories 1 and 2. Plaintiffs object to answering State Defendants' Interrogatory 26 to the extent such seeks attorney's work-product. State Defendants continue to seek the list of witnesses Plaintiffs have interviewed. This dispute shall be dealt with at the hearing on the motion ~~in limine~~.
By agreement of the Plaintiffs and State Defendants, this Court hereby orders: With regard to Plaintiffs' Request for Production No. 13, the State Defendants' understand the Courts' order to be that the motion is denied except that State Defendants' shall identify those documents relating to the Colony Ordinance which State Defendants will rely upon at trial. Plaintiffs take the position that they are entitled to any documents relating to the Colony Ordinance within State Defendants' possession whether or not State Defendants rely upon such at trial. ~~This dispute shall be dealt with at the hearing on the motion in limine.~~ With respect to those answers of State Defendants, where State Defendants incorporate the answers of Defendant Town of Wells, State Defendants are bound by the answers of the Town of Wells unless and until the State Defendants supplement their answers, in which case State Defendants will summarize the facts of any witnesses it

| Date of Entry | EDWARD B. BELL et als VS. TOWN OF WELLS et al |
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| 1986 07/14/86 | <p style="text-align: right;">15</p> <p>otherwise intends to call. <u>Discovery Requests Regarding the Colonial Ordinance</u> - Plaintiffs will file a motion in limine, regarding evidence on the Colonial Ordinance. Pending the Court's determination of this motion, the Plaintiffs and State Defendants need not respond to discovery regarding the Colonial Ordinance. Costs are awarded to neither party. To the extent not dealt with herein, Plaintiffs' motion for a protective order and to compel and State Defendants' motion to compel are otherwise denied." (Brodrick, J.) Copy of Order mailed to P. Stern, Esq., M. T. Healy, Esq., W. Knowles, Esq., H. L. Richardson, Esq., B. Bloom, Esq., R. Austin, Esq., and to S. St. F. Thaxter II, Esq.</p> |
| 08/06/86 (154) | <p>Reply to Defendants' Memorandum in Opposition to Plaintiffs' Motion in Limine filed by Plaintiffs. Copy mailed to Justice Brodrick in Cumberland County.</p> |
| 08/06/86 (155) | <p>David Strater, Esq., enters his appearance as counsel for Plaintiff Edward B. Bell.</p> |
| 08/12/86 (156) | <p>Decision dated August 8, 1986 filed by the Court. "Plaintiffs' motion in limine is DENIED." (Brodrick, J.) Copy of Decision mailed to S. St. F. Thaxter, Esq., D. Strater, Esq., M. T. Healy, Esq., Paul Stern, Esq., R. Austin, Esq., H. Richardson, Esq., B. L. Bloom, Esq.</p> |
| 08/12/86 (157) (158) | <p>Motion to Withdraw Certain Plaintiffs filed by Plaintiffs. Notification of Discovery Service filed by Plaintiffs. Answers to Interrogatories pursuant to Order dated July 11, 1986 served on P. Stern, Esq. 8/11/86.</p> |
| 08/15/86 (159) | <p>Order dated 08/14/86 filed on Plaintiffs' Motion to Withdraw Certain Plaintiffs. "Motion Granted." (Brodrick, J.) Copy of Motion and Order thereon mailed to S. St. F. Thaxter, Esq., M. T. Healy, Esq., D. Strater, Esq., P. Stern, Esq., R. W. Austin, Esq., H. L. Richardson, Esq. and B. L. Bloom, Esq.</p> |
| 08/26/86 (160) | <p>Memorandum of Law in Support of Plaintiffs' Objections to the Defendant State's Interrogatory Number 26 filed.</p> |
| 09/02/86 (161) | <p>Memorandum of Law of State Defendants in Support of Motion to Compel Plaintiffs to Answer State Defendants' Interrogatory #26 filed.</p> |
| 09/03/86 (162) | <p>Order filed by the Court. "The State's motion to compel plaintiffs' to answer state defendants' Interrogatory #26 is granted only to the extent that plaintiffs are ordered to provide the State with the names and addresses of persons having or purporting to have knowledge of 26(a) and 26(b). Plaintiffs do not have to produce the statements of those witnesses." (Brodrick, J.) Copy of Order mailed to S. St. F. Thaxter, Esq., M. T. Healy, Esq., D. Strater, Esq., P. Stern, Esq., R. W. Austin, Esq., H. L. Richardson, Esq. and B. L. Bloom, Esq.</p> |
| 09/26/86 (163) | <p>Notification of Discovery Service filed by Plaintiffs; Plaintiffs' Answers to Interrogatories served on P. Stern, Esq., 09/25/86.</p> |
| 09/30/86 (164) | <p>Notification of Discovery Service filed by Plaintiffs; Plaintiffs' Interrogatories to Defendants Moody Beach Tier II Group and Request for Production of Documents served on B. L. Bloom, Esq., 09/29/86.</p> |

- 12/09/86 (165) - Notification of Discovery Service filed by Plaintiffs 12/05/86. Notice of Deposition and Request for Production of Documents of Robert Linscott and Notice of Deposition and Request for Production of Documents of Alberta Wentworth served on P. Stern, Esq., M. T. Healy, Esq., H. Richardson, Esq. and B. L. Bloom, Esq. 12/01/86.
- 12/15/86 (166) - Witness Subpoenas for Deposition filed by Plaintiffs 12/12/86; Service made on Alberta Wentworth 12/6/86; Service made on Robert Linscott 12/08/86.
- (167) - Motion for Default or, in the Alternative, to Compel filed by Plaintiffs 12/12/86.
Memorandum of Law in Support of Motion for Default or to Compel filed by Plaintiffs 12/12/86.
- 12/15/86 (168) - Attachments to Plaintiffs' Motion for Default and Memorandum filed.
- 12/15/86 (169) - Motion for Enlargement of Time filed by Defendant Moody Beach Tier II Group.
Affidavit of Barri L. Bloom filed.
- 12/19/86 (170) - Request for Admissions filed by Plaintiffs.
- 12/22/86 (171) - Motion for Summary Judgment filed by Plaintiffs.
Memorandum of Law in support of Motion for Summary Judgment filed.
- 01/09/87 (172) - Notification of Discovery Service filed by Defendant State of Maine 12/31/86. Defendant State of Maine's Supplement to Answers to Interrogatories served on M. T. Healy, Esq., W. Knowles, Esq., S. Thaxter, Esq., R. Austin, Esq., E. Carson, Esq., H. Richardson, Esq., B. Bloom, Esq. 12/29/86.
- (173) - Supplement to Pretrial Memorandum filed by Defendant State of Maine 12/31/86.
- (174) - Supplement to Answers to Interrogatories filed by Defendant State of Maine 12/31/86.
- (175) - Notification of Discovery Service filed by Defendants 01/02/87. Defendants Moody Beach Tier II Group's Answers to Plaintiffs' Interrogatories and Request for Production of Documents served on S. St. F. Thaxter, II, Esq. 12/30/86.
- (176) - Notice of Voluntary Dismissal of Counts 4 and 5 filed by Plaintiffs 01/06/87, viz; "Plaintiffs hereby voluntarily dismiss Count 4 and Count 5 of the Complaint without prejudice, pursuant to M.R.Civ.P. 41(a)(1)(i)."
- 01/16/87 (177) - Motion for Extension of Time filed by Defendants 01/15/87.
- 01/21/87 (178) - Order dated 01/20/87 filed on Defendants' Motion for Extension of Time. "Motion Granted". (Brodrick, J.)
Copy of Motion and Order thereon mailed to S. St. F. Thaxter, Esq., D. Strater, Esq., M. T. Healy, Esq. P. Stern, Esq., W. C. Knowles, Esq., R. Austin, Esq., H. Richardson, Esq., B. Bloom, Esq.

Date of
Entry

Edward B. Bell et als
vs. Town of Wells, et al

Docket Sheet No. 9

Docket No. CV-84-125

- 17
- 1/28/87 (179) Notification of Discovery Service filed by Defendants 01/28/87; Defendants Moody Beach Tier II Group's Answers to Interrogatories and Request for Production of Documents served on S.F. St. Thaxter, esq. 01/27/87.
- 02/02/87 (180) Response to Plaintiffs' Request for Admissions filed by Defendants.
- 02/04/87 (181) Motion to Substitute Party Plaintiff filed by Plaintiffs 02/03/87.
- 02/04/87 (182) Cross-Motion for Summary Judgment filed by Defendants.
- (183) Joint Memorandum of Defendants' State of Maine and the Town of Wells and Its Selectmen in Opposition to Plaintiffs' Motion for Summary Judgment and In Support of Defendants' Cross-Motion for Summary Judgment filed.
- (184) Exhibits to Joint Memorandum of Defendants' State of Maine and the Town of Wells and Its Selectmen in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendants' Cross-Motion for Summary Judgment filed.
- 02/09/87 (185) Affidavit in Support of Motion to Substitute a Party Plaintiff filed 02/05/87.
- (186) Copy of deposition transcript of Alberta M. Wentworth filed in conjunction with the Joint Memorandum of Defendants' State of Maine and the Town of Wells and Its Selectmen in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendants' Cross-Motion for Summary Judgment filed 02/06/87.
- 02/17/87 (187) Response to Plaintiff's Request for Admissions filed by Defendants Moody Beach Tier II 02/11/87.
- (188) Notification of Discovery Service filed by Defendants Inh. Town of Wells 02/11/87. Defendants Moody Beach Tier II Group's Answers to Plaintiffs' Interrogatories and Request for Production of Documents served on S. St. F. Thaxter, Esq. 2/10/87.
- 03/12/87 (189) Notification of Discovery Service filed by State Defendants 03/09/87. State Defendants' Interrogatories and Request for Production of Documents to Plaintiffs with Respect to Claim 14 and Request for Admissions served on S. St.F. Thaxter, Esq. and Counsel of Record 03/06/87.
- 03/12/87 (190) Motion to Compel and for Sanctions Against Plaintiffs filed by State Defendants.
~~Memorandum~~ in Support of State Defendant's Motion to Compel and for Sanctions filed.
- 03/23/87 (191) Motion for Clarification of Discovery Deadline filed by Defendant, Moody Beach Tier II Group.
- 03/31/87 (192) Notification of Discovery Service filed by Defendant Moody Beach Tier II. Defendant Moody Beach Tier II Group's Answers to Interrogatories and Request for Production of Documents served on S. St. F. Thaxter, Esq. 01/27/87.
- 04/02/87 (193) ~~Response to Defendant State of Maine's Request for Admissions filed~~ by Plaintiffs.

- 04/02/87
(194) Motion for Protective Order and Objection to Defendant State of Maine's Second Set of Interrogatories filed by Plaintiffs.
(195) Memorandum of Law in Support of Plaintiffs' Motion for Protective Order filed.
(196) Reply Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to Defendants' Cross Motion for Summary Judgment filed.
(197) Plaintiffs' Memorandum of Law in Opposition to State Defendant's Motion to Compel and for Sanctions filed.
(198) Plaintiffs' Motion to Determine Sufficiency of Defendants' Answers to Plaintiffs' Request for Admissions filed.
(199) Plaintiffs' Memorandum of Law in Support of Motion to Determine Sufficiency of Defendants' Answers to Plaintiffs' Request for Admissions filed.
- 04/07/87
(200) State Defendants Motion for Service of Interrogatories and Request for Documents Relating to Plaintiffs' Claim 14 filed.
State Defendants Memorandum in Opposition to Plaintiffs' Motion for a Protective Order and Objections to State Defendants Interrogatories Regarding Claim 14 and in Support of State Defendants' Motion to Permit Service of Said Interrogatories filed.
- 04/10/87
Hearing had on Motions on April 9, 1987. Plaintiffs' Motion for Default or, in the Alternative, to Compel. "Motion Denied. Non answering Tier II have two weeks to answer or be dismissed with prejudice." (Brodrick, J.) Defendant Moody Beach Tier II Groups Motion for Enlargement of Time. "Motion Granted." (Brodrick, J.) Plaintiffs' Motion for Summary Judgment. "Motion Denied. See Record for Reasons." (Brodrick, J.) Plaintiffs Motion to Substitute Party Plaintiff. "Motion Granted." (Brodrick, J.) Defendant Moody Beach Tier II Groups Motion for Clarification of Discovery Deadline. "New Discovery Deadline agreed to." (Brodrick, J.) Plaintiffs' Motion for Protective Order and Objection to Defendant State of Maine's Second Interrogatories. "Motion Denied after State's interrogatories were ordered changed by court. See record for court ordered changes." (Brodrick, J.) Plaintiffs' Motion to Determine Sufficiency of Defendants' Answers to Plaintiffs' Request for Admissions. "Motion mooted by stipulation. See record for stipulation." (Brodrick, J.) State of Maine and Bureau of Public Lands Motion to Compel and for Sanctions against Plaintiffs. "Granted in part and denied in part. See record for details." (Brodrick, J.) Defendant State of Maine and Bureau of Public Lands Motion for Service of Interrogatories and Request for Documents Relating to Plaintiffs' Claim 14. "Motion granted after question were modified by court. See record for details." (Brodrick, J.) Defendants State of Maine and Town of Wells and its Selectmen's Cross-Motion for Summary Judgment. "Motion Denied." (Brodrick, J.) Cindy Packard, Court Reporter.
Copies of Motions and Orders thereon mailed to all counsel of record.
- 04/17/87
(201) Letter withdrawing Mr. and Mrs. Spencer Furbush as plaintiffs in this action filed.
(202) Answer to State Defendant's Interrogatory #26 filed by Plaintiffs.
(203) Supplemental Answers to State Defendant's Interrogatories filed by Plaintiffs.
- 04/23/87
(204) Scheduling Order filed by the Court. (Brodrick, J.)
Copy of Scheduling Order mailed to all counsel of record.

Date of
Entry

EDWARD B. BELL et als
Vs. TOWN OF WELLS et als

Docket No. CV-84-125
Docket Sheet No. 10

- 05/05/87 (205) Notification of Discovery Service filed by Plaintiffs 05/01/87. **19**
Plaintiffs' Answers to State Defendant's Supplemental Interrogatories and Request for Production of Documents to Plaintiffs with Respect to Claim 14 served on Paul Stern, Esq. 4/30/87.
- 05/15/87 (206) Notification of Discovery Service filed by Defendant State of Maine. State Defendants' Second and Third Supplements to Answer to Interrogatories and Addition to First Supplement served on M. T. Healy, Esq., W. Knowles, Esq., S. Thaxter, Esq., R. Austin, Esq., E. Carson, Esq., H. Richardson, Esq., B. Bloom, Esq. 05/13/87.
- 05/21/87 (207) Notification of Discovery Service filed by State Defendants 05/20/87. Request for Entry Upon Land for Inspection served on S. Thaxter, Esq., M. Healy, Esq., W. Knowles, Esq., B. Bloom, Esq., H. Richardson, Esq., E. Carson, Esq., and R. Austin, Esq. 05/19/87.
- 05/29/87 (208) Signature Page to Deposition of Robert Linscott filed on 05/26/87.
- 06/04/87 (209) Notification of Discovery Service filed by Plaintiffs 06/01/87. Responses to Request for Entry Upon Land for Inspection served on P. Stern, Esq. 05/28/87.
- 06/10/87 (210) Notification of Discovery Service filed by Plaintiffs 06/04/87. Supplemental Response to State's Interrogatories Re: Witness Loretta Weigal served on Paul Stern, Esq. (by hand) 06/02/87.
- (211) Notification of Discovery Service filed by Plaintiffs 06/04/87. Supplemental Response to State's Interrogatories Re: William Case served on Paul Stern, Esq. 06/03/87.
- (212) Notification of Discovery Service filed by Defendant Moody Beach Tier II Group 06/04/87. Defendants Moody Beach Tier II Group's Answers to Plaintiffs' Interrogatories and Request for Production of Documents (Harold Anderson, Raymond and Margaret Angelucci, George E. Bertini, Jr., Ernest Brousseau, Mr. & Mrs. Oscar Demuth, Elmer J. Flynn, James M. Fortunato, Mr. and Mrs. Raymond Morin, Robert and Maureen Roche, Robert and Marcia Post, John and Eleanor Sullivan, George Tabor, John and Marie Walsh, Stanley and Irene Jacobson, Mary and John Iritano) served on S. St. F. Thaxter, Esq. June 3, 1987.
- (213) Notification of Discovery Service filed by Plaintiffs 06/09/87. Notice of Deposition of Edwin A. Churchill served on Counsel of Record 06/08/87.
- (214) Notification of Discovery Service filed by Plaintiffs 06/09/87. Request for Admission served on P. Stern, Esq., M. Healy, Esq., H. Richardson, Esq. and B. Bloom, Esq. June 8, 1987.
- (215) Notification of Discovery Service filed by Defendant Town of Wells 06/09/87. Request for Admissions, June 8, 1987; Supplement to Pretrial Memorandum and Answers to Interrogatories, June 8, 1987; and Addition to Third Supplement to Answers to Interrogatories served on S. St. F. Thaxter, Esq., H. Richardson, Esq., B. Bloom, Esq. and R. Austin, Esq. June 8, 1987.
- (216) ~~List of Witnesses filed by Plaintiffs.~~
- (217) ~~List of Exhibits filed by Plaintiffs.~~

- 06/16/87 (218) Copy of Plaintiffs' list of taking experts, dated May 15, 1987; State Defendants' Request for Entry Upon Land for Inspection, dated May 19, 1987; Plaintiffs' Response to Request for Entry, dated May 28, 1987; and Plaintiffs' Supplemental Response to Interrogatories Regarding Takings Expert with letter, dated June 2, 1987 filed by Defendant State of Maine - B.P.L. 06/11/87 (Documents were subject of telephone conference held on June 4, 1987.)
- (219) Notification of Discovery Service filed by Plaintiffs 06/15/87. Second Supplemental Response to State's Interrogatories (re: Richard Dunn), Second Supplemental Response to State's Interrogatories (re: Loretta Weigel) and Second Supplemental Response to State's Interrogatories (re: William Case) served on all counsel 06/12/87.
- 06/23/87 (220) Transcript of Proceedings, Motions, before the Hon. William S. Brodrick on April 9, 1987 filed by Cindy Packard, Court Reporter, 06/17/87.
- (221) Transcript of Proceedings, Chambers Conference, before the Hon. William S. Brodrick on April 9, 1987 filed by Cindy Packard, Court Reporter, 06/17/87.
- 07/06/87 (222) Entry of Appearance for the Plaintiffs filed by George L. Haskins, Esq. 06/24/87.
- (223) Notification of Discovery Service filed by Defendant State of Maine 06/26/87. Notice of Deposition of Plaintiff Robert Kirk, Loretta Weigel and William Case served on S. St. F. Thaxter, Esq. 6/25/87.
- (224) Motion for Reconsideration filed by Plaintiffs. Memorandum of Law in Support of Motion for Reconsideration filed by Plaintiffs.
- (225) Order filed by the Court. "Plaintiffs are to pay Mr. Austin for his services to date. Mr. Austin will not be required to attend any further hearings in this matter." (Brodrick, J.) Copy of Order mailed to S. St. F. Thaxter, Esq., D. Strater, Esq., G. L. Haskins, Esq., M. T. Healy, Esq., P. Stern, Esq., W. C. Knowles, Esq., R. Austin, Esq., H. Richardson, Esq., B. Bloom, Esq.
- 07/13/87 (226) Notification of Discovery Service filed by State Defendants 06/29/87. Notices of Deposition for Plaintiffs R. Cooper, G. Pope, R. Pope, G. Schofield, I. Marsden, B. Statson, E. Walker, G. Telge, G. Lamoreaux, and R. Lamoreaux served on S. St. F. Thaxter, Esq. 06/26/87.
- 07/14/87 (227) Trial Memorandum filed by Plaintiff.
- (228) Response to Defendants' Request for Admissions Under Rule 36 filed by Plaintiff.
- (229) Trial Brief filed by Defendants State of Maine and Town of Wells.
- 07/15/87 (230) Trial Brief filed by Mood Beach Tier II.
- ~~07/20/87 (231) Notification of Discovery Service filed by Defendants 07/14/87. Response to the Request for Admission served on S. St. F. Thaxter, Esq. 07/13/87.~~

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EDWARD B. BELL et als
Vs. TOWN OF WELLS et als

Docket No. CV-84-125
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07/22/87

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Defendant, Tier II, adopts the Town of Wells and State's Response to Plaintiff's Request for Admissions 07/20/87.

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233

Defendant, Tier II List of Witnesses filed 07/20/87.

234

Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Reconsideration filed 07/21/87.

235

Plaintiffs' Supplemental List of Exhibits filed.

07/29/87

236

David Strater, Esq. withdraws his appearance as counsel for Plaintiff Edward B. Bell 07/24/87.

237

Notification of discovery service filed by Plaintiffs 07/24/87. Supplemental Responses to State Defendant's Interrogatories (Warren Jones and Robert Kirk) served on Paul Stern, Esq., Barri Bloom, Esq., William Knowles, Esq. and Michael Healy, Esq. 07/23/87.

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Stipulation filed by Counsel 07/28/87. (Re: Exhibits)

07/29/87

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Clerk's Certificate filed by Plaintiffs. Attested copy of Clerk's Certificate mailed to Lynne C. Watson, Legal Assistant.

07/29/87

Entire file transferred to Sagadahoc County Superior Court for trial. Case hand carried by Justice Roland A. Cole.

08/11/87

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Under date of 08/03/87:
At Lincoln County Superior Court, Wiscasset, Maine -
Defendant, Town of Wells' Motion to Reopen Discovery for the Limited purpose of deposing Paul Kimball and Memorandum in Support Thereof (no memo enclosed) filed.
Letter from P. Stern, Esq. regarding scheduling filed.

Jury waived trial began. Hon. William S. Brodrick, Justice Presiding. Attorneys for the Plaintiff - Sidney Thaxter, Esq., John Gleason, Esq., John Bernotavicz, Esq., Nancy Ziegler, Esq. and George L. Haskins, Esq. Univ. of Pennsylvania and Member of Maine Bar Association; Barri Bloom, Esq. for Defendant Tier Group II. Paul Stern, Esq. and Thomas Warren, Esq. for the State; Michael Healy, Esq. and William Knowles, Esq. for the Town of Wells. Cindy Packard, Court Reporter. Debra Nowak, Courtroom Clerk.

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Plaintiff's Memorandum of Law in Opposition to Defendants' Motion in Limine filed.
Recessed to 08/04/87 at 9:00 A.M.

Second day of Jury waived trial held before Hon. William S. Brodrick at Lincoln County Superior Court 08/04/87. Cindy Packard, Court Reporter; Debra Nowak, Courtroom Clerk.
Recessed to 08/05/87 at 9:00 A.M.

Third day of Jury waived trial held before Hon. William S. Brodrick at Lincoln County Superior Court 08/05/87. Cindy Packard, Court Reporter; Deborah Peabody, Courtroom Clerk.
Recessed to 08/06/87 at 9:00 A.M.

08/11/87

Fourth day of Jury waived trial held before Hon. William S. Brodrick at Lincoln County Superior Court 08/06/87. Cindy Packard, Court Reporter; Debra Nowak, Courtroom Clerk. Recessed to 08/11/87 at 9:00 A.M.

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08/27/87

Plaintiffs' Exhibits Nos. 1 through No. 229 marked prior to trial. Exhibits during trial in Lincoln County on 08/03/87 - Plaintiffs' Exhibits Nos. 1 (deed - McBride to Bells 04/19/62), No. 17 (deed - McKeon to Bissonettes 10/26/76), No. 22 (copy of deed Cooper et als to Trustees of the Cooper Family Trust 09/01/73), No. 25 (deed - Fall to Enfield 05/27/82), No. 26 (Deed - Plumer to Hagstrom 04/26/65), No. 27 (Deed - Mansfield to Haseltine 09/18/74), No. 28 (Deed - Smith to Haseltine 09/23/63), No. 29 (Deed - Guillemette to Hedman 02/21/64), No. 44 (Deed - Howard to Hendersons 09/12/61), No. 46 (Deed - Cram, Sr. to Hogans), No. 47 (Deed - Kolovson to Howe 08/24/79), No. 48 (Deed - Jellison to Howe 11/08/76), No. 50 (Deed - Perry to Jones 06/27/68), No. 98 (Deed - Eddy to Kenary), No. 106 (Deed - Penta to Kennan 02/26/82), No. 109 (Deed - Kings to Kings 08/31/81), No. 126 (Deed - Powers to Lamoureaux 05/19/76), No. 127 (Deed - Jenks to Lords 11/19/76), No. 132 (Deed - Pences to Magnes 02/01/79), No. 139 (Deed - Adams to Maloney 05/21/64), No. 137 (Deed - Clapp to Buddington 12/22/81), No. 138 (Deed - Whitehouse to Marsden 10/7/22), No. 139 (Town of Wells 1979 Tax Bill), No. 140 Deed - Marshall to Pope 01/23/81), No. 151 (Deed - Ryan to Ryan 12/23/77), No. 156 (Deed - Underwood to Schofield), No. 160 (Deed - Benoit to Shannon 08/27/69), No. 174 (Deed - Kellett to Stirling 07/16/76), No. 180 (Deed - Treiss & Remington to Connecticut Bank and Trust Co.), No. 181 (Deed - Ireland to Van Loan & Friberg 03/12/80), No. 186 (Deed - Brooks to Walker 08/01/63) and No. 189 (Deed - Lagrenade to Wyne 04/27/83) offered and admitted. Plaintiffs' Exhibits Nos. 230, 231, 232 & 233 (photos) marked, offered and objected to. Defendant Town of Wells' Exhibit No. 100 (photo) marked, offered - obj. - not admitted.

Exhibits during trial in Lincoln County on 08/04/87 - Plaintiffs' Exhibits Nos. 19 (letter from Burt R. Cooper to Attorney General State of Maine 04/15/41), No. 20 (letter from Raymond E. Rendall Forest Commissioner, to Frank Cowan, A.G. State of Maine 04/23/41), No. 21 (letter from Frank Cowan, A.G. State of Maine to Burt Cooper 05/17/41) and No. 23 (letter from Ray P. Hanscom, Esq. to Burt R. Cooper re: Title - Ogunquit Beach) offered and admitted over objection. Plaintiffs' Exhibits Nos. 24 (Cooper vs. Inh. Town of Wells, York, ss. CV-84-225 05/03/84 entire file), No. 58(a) (Volume I - page 23 (March 1934) Art. 62 repair of breakwater), and No. 58(c) (Volume I - page 245 (March 1937) Art. 34 beach clearing, Art. 36 seawall construction) offered and admitted. Plaintiffs' Exhibit No. 100 (mortgage deed - Kenary to Biddeford Savings Bank 06/11/65) offered and not admitted. Plaintiffs' Exhibits Nos. 182 (Title opinion letter dated 03/19/80 from Verrill & Dana to Maine Savings Bank, Friberg & Van Loan) and No. 183 (Hand drawn map of deed description by Verrill & Dana 03/19/80) offered and admitted over objection. Plaintiffs' Exhibit No. 184 (mortgage - Friberg & Van Loan to Maine Savings Bank unsigned and undated) and No. 193 (letter 07/31/70 to Chief of Police Wells from Leon Walker, Asst. A.G.) offered - obj. - not admitted. Plaintiffs' Exhibit No. 234 (letter to Strater dated 10/3/83) marked, offered - objection.

08/27/87

Defendant Town of Wells' Exhibit No. 101 (list of names of Tier II Group) marked. 23

Exhibits during trial in Lincoln County on 08/05/87 -
Plaintiffs' Exhibit No. 2 (copy of Notice by Bells re: intent to prevent public use of their property 09/14/64) offered and admitted over objection. Plaintiffs' Exhibit No. 3 (copy of "warning" sign signed by Ed Bell) offered and admitted. Plaintiffs' Exhibits No. 4 (letter to Board of Selectmen, Wells to David Strater 07/14/66) and No. 5 (letter to Hoyt from Leon Walker, Asst. A.G. 02/09/73) offered and admitted over objection. Plaintiffs' Exhibit No. 6 (letter to R. Littlefield from E. Bell 03/08/74) offered and admitted. Plaintiffs' Exhibit No. 7 (letter to Mrs. Bell from Mrs. Bob Healey 08/28/77) offered and not admitted. Plaintiffs' Exhibits Nos. 11 (Edward Bell et al vs. Inh. Town of Wells et al, York, ss. CV-78-582 11/13/78 - entire file), No. 13 (photo of Bell's fence 6/21/81), No. 14 (photo of Bell's fence & house 06/21/81), No. 15 (photo (close up) of Bell's fence with signs), No. 16 (photo of beach houses looking west), No. 191 (letter to Robert Littlefield from D. Strater 06/27/78) and No. 192 (letter to Board of Selectmen from D. Strater 08/15/78) offered and admitted. Plaintiffs' Exhibit No. 193 (letter dated 07/31/70 to Chief of Police, Wells from Leon Walker, Asst. A.G.) reoffered and admitted. Plaintiffs' Exhibit No. 194 (03/07/67 Memo to Lawrence Stuart from Jerome Matus - Attorney General's Opinion) offered, admitted over objection. Plaintiffs' Exhibit No. 234 (letter to Strater dated 10/03/83) reoffered and admitted over objection. Defendants' Exhibits No. 101A (letter from D. Strater to E. Bell) and No. 101B (letter from D. Strater to E. Bell w/ second page included) marked. Defendant Town of Wells' Exhibit No. 102 marked; No. 103 (letter to D. Strater from B. Shur dated 08/09/66) marked, offered and admitted, No. 104 (letter to H. Fellman from E. Bell 08/02/66), No. 105 (letter to P. Foster from D. Strater 08/10/66) and No. 108 (letter to E. Bell from F. Tilman, Jr. 11/7/77) marked; No. 109 marked.

Exhibits during trial in Lincoln County on 08/06/87 -
Plaintiffs' Exhibits Nos. 69 (b/w photo of Henderson house & Jones house early 1930's) offered and admitted over objection; No. 70 (1941 b/w photo of Jones House), No. 71 (1946 b/w photo of workers putting in cement seawall) and No. 72 (1977 aerial photo of Moody Beach with Doc's house in center) offered and admitted; No. 73 (1984 photo of accessway #17), No. 74 (1984 photo of accessway #18) and No. 75 (1984 photo of accessway #19) offered and admitted over objection. No. 79 (recent photo of general view of beach) offered and admitted; No. 80 (1985 photo "New Beach Rules" at accessway #19) offered and admitted over objection; Nos. 88, 89 & 90 (photos) offered and admitted; Nos. 91, 92, 93, 94, 95, 96 & 97 (photos) offered - obj - not admitted; No. 141 ("Notice to Guests" using Pope's cabins) offered and admitted; Nos. 142 (letter 06/18/85 to A.G. From Philip Pope), No. 143 (photocopy of fire permit from Wells Beach Fire Dept. to Pope's Lodging) offered - obj. - not admitted; No. 144 (summons dated 07/04/85 for illegal bonfire on beach) objection; No. 145 (Ad in Wells Guide 1981 thru 1984) and No. 146 (map of Moody Beach indicating location of Pope's cabins) offered and admitted; No. 149 (7/83 photo of seawall with "GAY BEACH - WELCOME" spray painted in red) and No. 150 (7/83 photo of seawall with "NUDE BEACH - SIT" spray painted in red) offered and not admitted; Nos. 164 through 171 (photos) offered and admitted over objection; No. 175 (mortgage deed - Stirling to Biddeford Savings Bank 07/16/76) objection - not admitted; No. 177 (1982 photo), No. 178 (1983 photo) and

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No. 179 (1983 photo) offered and admitted; No. 219 (NOTICE TO ALL USERS OF MOODY BEACH signed by Justice Bradford 05/24/84); No. 235 (Conservator's Deed 06/24/68) marked, offered and admitted.

Fifth day of Jury waived trial held before Hon. William S. Brodrick at Lincoln County Superior Court 08/11/87. Cindy Packard, Court Reporter. Debra Nowak, Courtroom Clerk.

Plaintiffs' Exhibit No. 51 (Warrant for Special Town Meeting dated 09/09/49 w/ Proposed Zoning Ordinance) offered and admitted; No. 110 (Deed - Burt to Kirk 08/19/77) and No. 113 (Note from MMC, Inc.'s Hearing Officer 07/25/84) offered and admitted over objection; No. 114 (Application for Abatement of Property Taxes dated 7/30/84 filed by the Kirks) and No. 115 (photos) offered and admitted; No. 117 ("WORLD-O-GRAM" received by Kirk dated 07/09/85) offered - obj. - not admitted; No. 121 (May 1975 Zoning Ordinance, Town of Wells, Maine), No. 152 (Deed - Ryan to Ryan 05/28/82), No. 154 (Scrapbook page with photos) offered and admitted.

Defendants' Exhibits Nos. 68 (map dated 1872 Wells Area), No. 73 (summary of purchase prices - 1960's), No. 74 (1970 Sales Sheet - Summary), No. 75 (Summary 1980's of Purchase and Sales of Plaintiffs) and No. 77 (Kirk Property - Summary) marked, offered and admitted.

Defendant Town of Wells' Exhibits Nos. 111 (photo - south end of Moody Beach) marked; No. 112 (photo - south end of Moody Beach) marked, offered and admitted over objection.

Recessed to 08/12/87 at 9:00 A.M.

Sixth day of Jury waived trial held before Hon. William S. Brodrick at York County Superior Court 08/12/87. Cindy Packard, Court Reporter. Sharon Contois, Courtroom Clerk.

Plaintiffs' Exhibits No. 30 (1960 b/w photo of construction of seawall), No. 31 (1969 b/w photo of construction of seawall), Nos. 32, 33, 34, 35 & 36 (1969 b/w photos of construction of seawall), No. 37 (1960 photo looking down beach during construction of seawall), No. 38 (1969 photo of beach looking towards ocean), No. 40 (1980 photo looking down beach), No. 41 (photo of beach looking east), No. 42 (photo of beach looking east), No. 43 (photo looking down beach), No. 58d (Volume I page 257), No. 58g (Volume J, Page 107 dated March 1942), No. 58m (Volume K, page 289 dated March 1949), No. 61b (Volume L, page 148 dated March 1953), No. 64b (Volume O, page 51 March 1966), No. 124 (Taking Ogunquit Beach District From Tibbetts to Hoyt 04/02/25), No. 221 (U.S. Dept. of the Interior Geological Survey Maine (York County 1889), No. 222 (U.S. Dept. of the Interior Geological Survey Maine - York County 1941), No. 223 (U.S. Dept. of the Interior Geological Survey, Wells Quadrangle 1944), No. 224 (U.S. Dept. of the Interior, Kennebunk Quadrangle, Maine, York County 1941), No. 225 (U.S. Dept. of the Interior, Wells Quadrangle, Maine 1956), No. 226 (Map of Wells, Maine 1983), No. 229 (U.S. Dept. of the Army Corps of Engineers, Geological Survey, Wells Quadrangle 1956) offered and admitted.

Defendant Town of Wells' Exhibits Nos. 110 (deed - Kirk to Burt) marked; No. 113 (warranty deed - Kirk dated 12/26/86) marked, offered and admitted; No. 118 (mortgage deed - Kirk to Maine Savings Bank) marked, offered and admitted.

242 - Notification of Discovery Service filed by Defendants 08/13/87.
Defendants Moody Beach Tier II Group's Answers to Plaintiffs' Interrogatories and Request for Production of Documents (James & Mary Cassidy) served on Counsel 08/10/87.

08/27/87

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Seventh day of Jury waived trial held before Hon. William S. Brodrick at Lincoln County Superior Court 08/13/87. Cindy Packard, Court Reporter. Debra Nowak, Courtroom Clerk. 25

Defendant, Town of Wells, memorandum of law filed.

Plaintiffs' motion in limine and memorandum of law in support of filed. On Plaintiffs' motion in chambers - Defendant, State of Maine, moves for a directed verdict on the taking claim. Under advisement. Defendant, State of Maine, moves to dismiss Mr. Kirk as part of lawsuit - Under Advisement. Town of Wells joins in motion to dismiss Mr. Kirk as part of lawsuit.

Plaintiffs' Exhibit No. 208 (Warrant - Annual Town Meeting, 03/12 & 19/83 to R. Linscott) offered and admitted; No. 236 (Newspaper Article - Re: Drake's Island) and No. 237 (letter to Littlefield from Coulombe) marked. Defendant's Exhibit No. 112a (letter) marked, offered - obj. - not admitted. Defendant Town of Wells' Exhibit No. 119 (Deposition of Paul Kimball) marked, offered and admitted.

Recessed to 08/14/87 at 9:00 A.M.

Eighth day of Jury waived trial held before Hon. William S. Brodrick at Lincoln County Superior Court 08/14/87. Cindy Packard, Court Reporter. Karen A. Cowgill, Courtroom Clerk.

Defendants' Exhibits Nos. 3a - 3f (photos from historical society dated 08/87 & 89) and No. 5 (Postcard Photo taken in front of Forbes Restaurant, Wells, Beach 1920 - 25) marked, offered and admitted over objection; Nos. 6a - 6d (Postcard of Wells & Crescent Beach postmarked 1911, 1912 & 1916) and No. 7 (Ogunquit by the Sea Brochure marked and offered; No. 8 (letter to judiciary by Chas. Tibbetts in 1923), No. 14 (record from Town of Wells 1892) marked, offered and admitted; No. 16 (copies of clippings from Annie Bates diary) and No. 17 (newspaper clippings [articles] by Annie Bates - copies) marked and offered; No. 18 (map of house lots on Ogunquit Beach by Tibbetts) marked, offered and admitted over objection.

Originals of Defendants' Exhibits Nos. 3a - 3f to be substituted 08/17/87.

Court to rule on admissibility of Defendants' Exhibits No. 6a - 6d, 7, 16 & 17 after 2 page memorandum submitted by counsel on documents. Memoranda to be filed by 08/18/87.

Recessed to 08/17/87 at 9:00 A.M.

08/28/87

Ninth day of Jury waived trial held before Hon. William S. Brodrick at Lincoln County Superior Court 08/17/87. Mary Riley, Court Reporter. Karen A. Cowgill, Courtroom Clerk.

Recessed to 08/18/87 at 9:00 A.M.

Tenth day of Jury waived trial held before Hon. William S. Brodrick at Lincoln County Superior Court 08/18/87. Mary Riley, Court Reporter. Karen A. Cowgill, Courtroom Clerk.

Plaintiffs' renew objections to answers to interrogatories by Defendant, Tier II Group - Copy of list of answers received by Plaintiffs - filed. Plaintiffs' objections DENIED - Previous ruling of admissibility to stand.

Defendant Tier II Group's Exhibits Nos. 150 (copy of Charles Grover deed), No. 151 (copy of Robert Tabor deed), No. 152 (7 photos in envelope - Robert & Ruth Tabor - dated 1948, 49, 65, 68 & 70), No. 153 (copy of Beauregard deed, No. 154 (photos in envelope of Beauregards' family and friends on beach dated 1964, 65, 67 & 69),

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No. 155 (copy of original deed to Beauregards & Savages), No. 156 (copy of deed to Garthwaite), No. 157 (copy of deed from Pinkham to Garthwaite), No. 158 (copy of listing sheet to lot purchased by P. Sterling), No. 159 (copy of listing sheet to lot purchased by King) and No. 160 (copy of deed from Olson to Angelucci) marked, offered and admitted. Defendant Tier II Group's Exhibit No. 161 (envelope with photos of Angelucci 7 family [10] taken from 1948 thru 1986) all photos taken prior to 1984 admitted - photos dated 1985 - 1986 to be kept in same envelope but not admitted. Defendant Tier II Group's Exhibits No. 162 (copy of deed from Frasier & Tibbetts Estate to Penny) and No. 163 (copy of deed from Frasier & Tibbetts Estate to Flynn) marked, offered and admitted.

(245) Plaintiffs' memorandum of law in support of objection to introduction of evidence - Defendant, Town of Wells, memorandum of law in support of introduction of evidence filed. (Originals given to Brodrick, J. for ruling).

(246)

Recessed to 08/19/87 at 9:00 A.M.

Eleventh day of Jury waived trial before Hon. William S. Brodrick at Lincoln County Superior Court 08/19/87. Mary Riley, Court Reporter. Karen A. Cowgill, Courtroom Clerk.

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Suggestion of death upon the record of Tier II Group Defendant, Charles Weagle - filed. Motion for substitution of Jane Weagle, Executrix of Estate of Charles Weagle for Defendant Charles Weagle GRANTED.

Defendant Tier II Group's Exhibits Nos. 164 (copy of deed from Goudreau Estate to Demuth), No. 165 (copy of deed from Frasier & Tibbetts Estate to Fortunate), No. 166 (6 photos in envelope - Fortunate) taken between 1967 & 1970), No. 167 (Copy of deed from Dunn to Weagle), No. 168 (7 photos in envelope - Weagle - taken approx. 1966 - 75), No. 169 (copy of mortgage deed for property acquired by Charles Weagle Oct. 26, 1963), No. 170 (photos - C. Weagle - in envelope taken approx. 1966), No. 171 (copy of deed of Ada Cassidy for 2 lots of land), No. 172 (copy of deed of James Cassidy, Jr.), No. 173 (copy of deed from Frasier to Merrifield), No. 174 (copy of deed from Nuccio to Larkin), No. 175 (2 photos in envelope - Larkin - taken approx. 1977 - 1979) and No. 176 (2 photos in envelope - Roche - taken approx. 1977 - 1978) marked, offered and admitted. Defendant, Town of Wells, exhibits No. 6a - d, 7, 16 & 17 admitted into evidence.

Recessed to 08/20/87 at 9:00 A.M.

Twelfth day of Jury waived trial before Hon. William S. Brodrick at Lincoln County Superior Court 08/20/87. Mary Riley, Court Reporter. Karen A. Cowgill, Courtroom Clerk. Plaintiffs' Exhibits Nos. 16a (Kirk's analysis of beaches referred to in A. Bates diary [Def.'s Wells #16]) offered, not admitted. Plaintiffs' Exhibits Nos. 54a (Volume E, page 488 dated March 1898), No. 54b (Volume E, Page 492 dated March 1898), No. 54c (Volume E, page 521 dated March 1898), No. 54d (Volume E, page 548 dated March 1900), No. 54e (Volume E, page 557 dated March 1900), No. 55a (Volume F, page 147 dated March 1907), No. 55b (Volume F, page 157 dated 1907), No. 55f (Volume F, page 271 dated March 1912), No. 55h (Volume F, page 281 dated March 1912), No. 56a (Volume G, page 3 dated March 1913), No. 56b (Volume G, page 10 dated March 1913) No. 56e (Volume G, page 71 dated December 1914), No. 56f (Volume G, page 80 dated March 1915), No. 56g (Volume G, page 88 dated March 1915), No. 56j (Volume G, page 118 dated May 1916), No. 56k (Volume G, page 119 dated May 1916), No. 56p (Volume G, page 272 dated March 1921), No. 56q (Volume G, page 284 dated March 1921), No. 57c (Volume H, page 144 dated

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March 1928), No. 57d (Volume H, page 157 dated March 1928), No. 57e (Volume H, page 215 dated March 1929), NO. 57f (Volume H, page 229 dated March 1929), No. 57g (Volume H, page 247 dated July 1929), No. 57h (Volume H, page 249 dated July 1929), No. 57i (Volume H, page 299 dated March 1930), No. 57j (Volume H, page 307 dated March 1929), No. 58b (Volume I, page 34 dated March 1934), No. 58f (Volume I, page 293 dated March 1938), No. 58h (Volume I, page 326 dated March 1939), No. 58i (Volume I, page 340 dated March 1939), No. 58j (Volume I, page 369 dated March 1940), No. 58k (Volume I, page 373 dated March 1940), NO. 58L (Volume I, page 401 dated March 1940), No. 58m (Volume page 406 dated March 1940), No. 59a (Volume J, page 37 dated March 1941), No. 59b (Volume J, page 57 dated March 1941), No. 59c (Volume J, page 87 dated March 1942), No. 59e (Volume J, page 102 dated March 1942), No. 59f (Volume J, page 104 March 1942), No. 59h (Volume J, page 191 dated March 1943), No. 59i (Volume J, page 207 dated March 1944), No. 59j (Volume J, page 208 dated March 1944), No. 59k (Volume J, page 298 dated March 1944), No. 59m (Volume J, page 317 dated March 1944), No. 59n (Volume J, page 318 dated March 1944), No. 59o (Volume J, page 319 dated March 1944), No. 59p (Volume J, page 355 dated December 1944), No. 59q (Volume J, page 356 dated March 1945), No. 59r (Volume J, page 377 dated March 1945), No. 60b (Volume K, page 11 dated March 1946), No. 60c (Volume K, page 12 dated March 1946), No. 60f (Volume K, page 23 dated March 1946), No. 60g (Volume K, page 24 dated March 1946), No. 60h (Volume K, page 90 dated March 1948), No. 60i (Volume K, page 110 dated March 1948), No. 60j (Volume K, page 180 dated March 1948), No. 60k (Volume K, page 171 dated March 1948), No. 60L (Volume K, page 189 dated March 1948), No. 61a (Volume L, page 147 dated March 1953), No. 61c (Volume L, page 174 dated March 1954), No. 61d (Volume L, page 175 dated March 1954), No. 61e (Volume L, page 242 dated March 1955), No. 62a (Volume M, page 39 dated May 1956), No. 62b (Volume M, page 152 May 1956), No. 62c (Volume M, page 188 dated August 1959), No. 63a (Volume N, page 3 dated March 1960), No. 63b (Volume N, page 75 dated October 1961), No. 63c (Volume N, page 185 dated March 1964), No. 64a (Volume O, page 15 dated March 1965), No. 64c (Volume O, page 108 dated March 1967), No. 65b (Volume P, page 55 dated March 1970), No. 66a (Volume Q, page 63 dated March 1974), No. 66b (Volume Q, page 106 dated March 1975), No. 66c (Volume Q, page 145 dated March 1976), No. 67b (Volume R, page 75 dated March 1979), No. 68a (Volume S, page 15 dated March 1980), No. 68b (Volume S, page 22 dated March 1980), No. 68c (Volume S, page 93 dated Feb. 1982), No. 68f (Volume S, page 134 dated March 1983), No. 68g (Volume S, page 142 dated March 1983), No. 68h (Volume S, page 167 dated March 1982), No. 68j (Volume S, page 174 dated March 1982), No. 68L (Volume S, page 215 dated March 1985) and No. 86m (Volume S, page 223 dated March 1985) offered and admitted. Plaintiffs' Exhibit No. 205 (1979 Guide - Ogunquit, Maine) page 17 offered by Def. Wells, not admitted. Plaintiffs' Exhibit No. 220 (Wells tax map, Moody Beach properties) marked, offered and admitted. Defendants' Exhibit No. 1 (large map) marked, offered and admitted. Defendant Town of Wells Exhibit No. 120 (Act 76th Legislature 1933) marked, offered and admitted.
Recessed to 08/25/87 at 9:00 A.M.

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Notification of Discovery Service filed by Defendant Tier II Group 08/21/87. Notice of Deposition served on S. Thaxter, Esq., W. C. Knowles, Esq., P. Stern, Esq., M. Healy, Esq. and J. Gleason, Esq. 08/20/87.

08/28/87

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Notification of Discovery Service filed by Defendant Tier II Group
08/24/87. Notice of Deposition served on S. Thaxter, Esq. 08/21/87.

09/14/87

Thirteenth day of Jury waived trial before Hon. William S. Brodrick at Lincoln County Superior Court 08/25/87. Patricia Parks, Court Reporter. Debra Nowak, Courtroom Clerk. Defendant's Exhibits Nos. 24 (Title page of Book - W.G. Faulkenes), No. 25 (Guide to Goldenness), No. 26 (Statement of John Winthrop), No. 27 (Charter granted to Mass. Bay Company), No. 28 (Mass. Court Ruling 1633), No. 29 (1634 Record from Colony of Massachusetts), No. 30 (Excerpt from Winthrops' Journal), No. 32 (Book - Wm. Wood 1634 N.E.'s Prospect), No. 33 (Records of the Colony 1636), No. 34 (1636 Winthrop's Journal 207), No. 35 (Dorchester Town Records 1636), No. 36 (Charter to Sir Ferdinando Gorges Knight), No. 37 (1639 Mass. Colony Record), No. 38 (1639 Winthrop's Journal), No. 39 (Extract from John Winthrop's Journal 1639), No. 41 (copy of Bodies of Liberty of 1641), No. 43 (Statement - John Winthrop's Discords Arbitrary Government), No. 44 (Historical collections Volume IX, Second series, Vol. 1), No. 46 (Petition of Marble Head Fisherman & Courts' Answer), No. 47 (Mass. Records 147 (1636), No. 49 (1648) Laws & Liberties), No. 50 (Mass. General Court Record 284- 1649), No. 51 (Mass. General Court Record 181 - 1649), No. 52 (1652 Court Record - Province of Maine), No. 53 (Sabbath Law - enacted in 1653), No. 56 (Deed 1667 Property in Middlesex County, Mass.), No. 57 (Mass. Records, Pt. 2 427-426, 1669), No. 58 (Deed 1675 Property in Suffolk County, Mass.) No. 59 (Probate Record of Essex County 1680), No. 60 (Letter 1685 from John Dunton), No. 81 (Winthrop's Journal), No. 82 (Winthrop's Papers) No. 86 (Record of Commissioners of the City of Boston), No. 88 (Colonial Laws of Mass. 1660) and No. 90 (Colonial Laws of Mass. - Whitmore) marked, offered and admitted. Defendant's Exhibits Nos. 92A (Quotes from "The Dissolution".) and No. 92B (Commons Debates) marked, offered and admitted over objection. Defendant's Exhibits Nos. 93 (1692 Mass. Law Chap. 92), No. 94 (Province Laws 1711-12), No. 95 (Chapter 5 - Province Laws 1727-28), No. 97 (copy of laws of ME. 1820 Chap. 3) and No. 99 (1641 - p. 345 Mass. Bay in New England) marked, offered and admitted.
Recessed to 08/26/87 at 9:00 A.M.

09/15/87

(251)

Fourteenth day of Jury waived trial before Hon. William S. Brodrick at Lincoln County Superior Court 08/26/87. Patricia Parks, Court Reporter. Karen Cowgill, Courtroom Clerk.

Received Partial Record of Trial of August 17, 1987 filed. Defendant's Exhibits No. 31 (Town of Ipswich Records (1634 - 1650), No. 48 (Mass. General Court Vol. II, Nov. 11, 1647), No. 54 (Quote from Town Records - Boston & the Colony (1880), No. 61 (Bennett's manuscript history 1740), No. 71 (1853 American Edition), No. 96 (Province Laws of 1757 - Chapter 11), and No. 98 (Public Law of Maine 1827 - Chapter 452) marked, offered and admitted.
Recessed to 08/27/87 at 9:00 A.M.

Fifteenth day of Jury waived trial before Hon. William S. Brodrick at Lincoln County Superior Court 08/27/87. Patricia Parks, Court Reporter. Debra Nowak, Courtroom Clerk.

(252)

Received resumes of experts, Richard Slater Dunn, David Thomas Konig, Edwing A. Churchill, and Thomas Garden Barnes, filed.

(253)

Plaintiff's Memo in Support of their Oral Motion to Admit Documents (of 08/05/87) received from Brodrick, J.)

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Docket No. CV-84-125
Docket Sheet No. 15

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Under date of 08/27/87:

29

254

Received Defendants Motion in Limine and for Sanctions and Memo of Law in Support of filed.
Plaintiffs' Exhibit No. 240 (Deposition of Leo Shannon w/ deletions) marked, offered and admitted by stipulation.
Defendant's Exhibits No. 62 ("Trelawny Papers" James P. Baxter), No. 63 ("New England Rareities Discovered" - portion 1668), and No. 64 (Me. Province & Court Records 1674) entry) marked, offered and admitted. Defendant's Exhibit No. 65 (History of Cape Elizabeth 1965 Gordon) marked, offered and admitted over objection. Defendant's Exhibit No. 66 ("History of Wells" Book Greenleaf, et al) and No. 67 ("New England Coast" Samuel Adams Drake) marked, offered and admitted. Defendant's Exhibits No. 70 A-H and 70 J-O (Walker Diaries) and No. 70R (Walker Diary) marked, offered and admitted.
Defendant Tier II Group's Exhibit No. 177 (Deed - G. Harrison to Beauregards) marked and offered. Defendant Tier II Group's Exhibit's No. 178 (Deed - Beauregard to J. Anderson), No. 179 (Deed - Lembree to H. & A Anderson), No. 180 (Deed - Tibbetts to Bertini 1959) and No. 181 (Deed - to Raymond & Judith Morin) marked, offered and admitted
Recessed to 08/28/87 at 9:00 A.M. at the Cumberland County Superior Court.

Sixteenth day of Jury waived trial before Hon. William S. Brodrick at Cumberland County Superior Court 08/28/87. Patricia Parks, Court Reporter. Gail Anderson, Courtroom Clerk.
Defendant Tier II Group's Exhibits No. 181 (envelope of photographs), No. 182 (Copy of Stan Jacobsen's Deed), No. 183 (Copy of John Sullivan's Deed), No. 184 (Copy of Donald Peterson's Deed) and No. 185 (envelope of photographs) marked, offered and admitted.
Defendant Tier II Group moves for admission of Depositions of Kenneth C. Ravioli #186, Marie Walsh #187, John M. Walsh #188 and No. 189 copy of the Deed to Raviolis admitted without objections.
Defendant Tier II Group rests.
Plaintiffs rest.
Defendant Town of Wells rests.
Defendant State rests and moves for a directed verdict - U/A.
Plaintiffs' closing arguments.
Defendant State's closing arguments.
Defendant Town of Wells' closing arguments.
Defendant Tier II Group's closing arguments.
Plaintiffs' rebuttal.
Court takes case under advisement. (Brodrick, J.)

255

— Copy of Defendant Tier II Group's Findings of Fact filed 09/02/87.

256

— State Defendants' Proposed Findings of Fact filed 09/02/87.

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257

Decision filed by the Court 09/14/87. (Brodrick, J.)

Judgment: "On plaintiffs' first, second, eighth, ninth, twelfth and thirteenth claims, judgment is to the plaintiffs. The individual plaintiffs are requested to prepare individual proposed judicial declarations that they are vested with title to their property free and clear of all encumbrances except those of record and further subject only to the public's right to fish, fowl and navigate -- as those terms have been defined by the Law Court -- in the intertidal zones of this State. Plaintiffs are not to

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include in their proposed declarations or proposed judgment any form of equitable relief ordering the Town of Wells to obey the law. The Town of Wells has never indicated that it will not obey the law once the law has been clarified. On the competing motions for summary judgment on plaintiffs' claim 14 regarding the Intertidal Lands Act, summary judgment is granted to plaintiffs and 12 M.R.S.A. §571-573 is declared to be unconstitutional as a violation of the separation of powers clause of the Maine Constitution, Article III, Section 2."

Counsel notified to pick up copy of Decision at the Cumberland County Courthouse on 09/15/87.

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258

Proposed Final Judgments and Declarations of Title filed by Plaintiffs 09/22/87.

259

Objection to Plaintiffs' Proposed Judgment filed by Defendants Town of Wells and State of Maine 09/25/87.

260

Motion to Amend Findings of Fact and to Add Findings of Fact filed by State and Town Defendants 09/25/87.

Memorandum in Support of Motion to Amend Findings of Fact and To Add Findings of Fact filed by State and Town Defendants 08/25/87.

261

Request for Certification of Costs filed by Plaintiffs 09/25/87.

262

Affidavit of John D. Gleason with Respect to Cost of Expert Witness filed 09/25/87.

263

Certificate of Service filed 09/25/87.

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Hearing had in Chambers on Plaintiff's Proposed Final Judgments and Declarations of Title and Defendants' Objections - 'Attorney Bernotavicz to submit Final Judgments and Declarations of Title to reflect Justice Broderick's Order'. (Brodrick, J.) Hearing had in chambers on State and Town Defendants' Motion to Amend Findings of Fact and to Add Findings of Fact - 'Motion Granted in Part and Denied in Part. Attorney Bernotavicz to file Amended Findings of Fact. (Brodrick, J.) Cindy Packard, Court Reporter.

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264

Amendment of Findings of Fact filed by the Court. (Brodrick, J.)

(29) Final Judgments and Declarations of Title filed by the Court. (Brodrick, J.)

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265

Having ordered that judgment be entered for the plaintiff, Edward B. Bell, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED AND DECLARED that the plaintiff, Edward B. Bell, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 1484, Page 422, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

266

Having ordered that judgment be entered for the plaintiffs, Robert V. and Bette J. Stirling, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Robert V. and Bette J. Stirling, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2139, Page 78, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement

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under the Colonial Ordinance of 1648 in the intertidal portion of their property.

267

-Having ordered that judgment be entered for the plaintiff, Phyllis L. Wyne, on all pending counts of her complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Phyllis L. Wyne, is vested with title to her property as described by deed in the York County Registry of Deeds, Book 3083, Page 274, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of her property.

268

-Having ordered that judgment be entered for the plaintiff, Nancy A. Walker, on all pending counts of her complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Nancy A. Walker, is vested with title to her property as described by deed in the York County Registry of Deeds, Book 1560, Page 178, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of her property.

269

-Having ordered that judgment be entered for the plaintiff, George H. Schofield, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, George H. Schofield, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 3026, Page 292, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

270

-Having ordered that judgment be entered for the plaintiffs, George R. Pope, Phillip M. Pope, and Richard M. Pope, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, George R. Pope, Phillip M. Pope, and Richard M. Pope, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2748, Page 38, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

271

-Having ordered that judgment be entered for the plaintiff, Marion E. Lord, on all pending counts of her complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Marion E. Lord, is vested with title to her property as described by deed in the York County Registry of Deeds, Book 2160, Page 546 and Book 3063, Page 145, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of her property.

272

-Having ordered that judgment be entered for the plaintiff, Richard J. King, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Richard J. King, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 2856, Page 92, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

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(273)

Having ordered that judgment be entered for the plaintiff, Jean P. Kennan, on all pending counts of her complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Jean P. Kennan, is vested with title to her property as described by deed in the York County Registry of Deeds, Book 2909, Page 343, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of her property.

(274)

Having ordered that judgment be entered for the plaintiff, Kevin J. Howe, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Kevin J. Howe, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 2162, Page 470, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

(275)

Having ordered that judgment be entered for the plaintiff, John B. Howe, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, John B. Howe, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 2559, Page 112, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

(276)

Having ordered that judgment be entered for the plaintiffs, Norman and Maureen Bissonnett, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Norman and Maureen Bissonnett, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2155, Page 780, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

(277)

Having ordered that judgment be entered for the plaintiffs, Randall Cooper and Jane C. Fall as Trustees of the Cooper Family Trust, on all pending counts of their complaint: It is hereby ORDERED, DECLARED that the plaintiffs, Randall Cooper and Jane C. Fall as Trustees of the Cooper Family Trust, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2010, Page 453, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

(278)

Having ordered that judgment be entered for the plaintiffs, Gordon M. and Lois E. Enfield, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Gordon M. and Lois E. Enfield, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2928, Page 322, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

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(279)

Having ordered that judgment be entered for the plaintiffs, Barbara M. Stetson and Irving G. Marsden, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Barbara M. Stetson and Irving G. Marsden, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2028, Page 8, and Book 2887, Page 89, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

(280)

Having ordered that judgment be entered for the plaintiffs, Robert J. and Joan C. Maloney, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Robert and Joan C. Maloney, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1599, Page 318, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

(281)

Having ordered that judgment be entered for the plaintiffs, Henry J. and Marie K. Magne, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Henry J. and Marie K. Magne, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2470, Page 187, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

(282)

Having ordered that judgment be entered for the plaintiffs, Gerard P. Lamoureux and Rachel Lamoureux, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Gerard P. Lamoureux and Rachel Lamoureux, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2128, Page 257, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

(283)

Having ordered that judgment be entered for the plaintiffs, Richard N. and Bernice R. Kenary, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Richard N. and Bernice R. Kenary, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1659, Page 199, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

(284)

Having ordered that judgment be entered for the plaintiffs, Warren H. and Dorothy P. Jones, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Warren H. and Dorothy P. Jones, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1809, Page 610 and 613, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

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285

Having ordered that judgment be entered for the plaintiffs, Gunnar A. and Anna M. Hagstrom, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Gunnar A. and Anna M. Hagstrom, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1656, Page 123, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

286

Having ordered that judgment be entered for the plaintiffs, Robert G. and Pauline D. Henderson, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Robert G. and Pauline D. Henderson, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1468, Page 132, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

287

Having ordered that judgment be entered for the plaintiffs, Eugene M. VanLoan, III and Gregory M. Telge, on all counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Eugene M. VanLoan, III and Gregory M. Telge, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2633, Page 86, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

288

Having ordered that judgment be entered for the plaintiffs, Susan C. Treiss and Chelsey C. Remington, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Susan C. Treiss and Chelsey C. Remington, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2782, Page 203, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

289

Having ordered that judgment be entered for the plaintiffs, Leo J. and Jane M. Shannon, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Leo J. and Jane M. Shannon, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1854, Page 550, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

290

Having ordered that judgment be entered for the plaintiffs, Winslow E. and Eileen F. Ryan, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Winslow E. and Eileen F. Ryan, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2931, Page 175, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

- 10/01/87 (291) - Having ordered that judgment be entered for the plaintiffs, Francis X. and Alice B. Hogan, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Francis X. and Alice B. Hogan, are vested with title to their property as described by deed in York County Registry of Deeds, Book 1874, Page 766, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.
- (292) - Having ordered that judgment be entered for the plaintiff, Jean M. Hedman, on all pending counts of her complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Jean M. Hedman, is vested with title to her property as described by deed in the York County Registry of Deeds, Book 1906, Page 37, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of her property.
- (293) - Having ordered that judgment be entered for the plaintiff, Edward J. Haseltine, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Edward J. Haseltine, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 2054, Page 216, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.
- Judgment on these actions having been so entered on the docket, a copy of these FINAL JUDGMENTS and DECLARATIONS OF TITLE are to be duly recorded in the York County Registry of Deeds pursuant to 14 M.R.S.A. §6654.
- 10/01/87 Copy of Final Judgments and Declarations of Title mailed to J. Gleason, Esq., P. Stern, Esq., W. Knowles, Esq. and B. Bloom, Esq.
- 10/05/87 (294) - Transcript of Testimony of: Robert Littlefield before Hon. William S. Brodrick on August 13, 1987 filed by Cindy Packard, Official Court Reporter.
- 10/07/87 (295) - Certificate of Costs on Appeal filed by James C. Chute, Clerk of the Law Court, 10/05/87.
- (296) - Defendants' Objections to Plaintiffs' Request for Certification of Costs filed 10/05/87.
- (297) - Defendant Tier II Group's Objections to Plaintiffs' Request for Certification of Costs filed.
- 10/14/87 (298) - Notice of Appeal to the Law Court Under Rule 73(b) filed by Defendants State of Maine, Maine Bureau of Public Lands, the Inh. Town of Wells, and the Selectmen Town of Wells, 10/13/87. Attested copy of Notice of Appeal mailed to P. Stern, Esq., S. St. E. Thaxter, Esq., M. T. Healy, Esq., W. Knowles, Esq., B. Bloom, Esq., H. Richardson, Esq., Cindy Packard, Patricia Parks and Mary Riley, Court Reporters, Hon. William S. Brodrick and to Hon. James C. Chute, Clerk of the Law Court. (Attested copy of docket entries mailed to Mr. Chute).

10/14/87

Appeal Fee - \$100.00 - paid.

"LAW"

11/04/87

Copy of Notice to Counsel filed by the Law Court 10/16/87.
"The clerk must transmit the original record by 11/04/87."

Copy of Certificate of Costs on Appeal filed by the Law Court 10/20/87.

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(300)

Plaintiffs' Amended Request for Certification of Costs filed 10/22/87.
Plaintiffs' Response to Defendants' Objections to Plaintiffs' Request
for Certification of Costs filed 10/22/87.

(301)

Defendants' Response to Plaintiff's Amended Request for Certification
of Cost and Reply to Plaintiffs' Response to Defendants' Objections
to Plaintiffs' Request for Certification of cost filed 11/02/87.

11/19/87

Entire original file, exhibits and attested copy of docket entries
hand delivered to the Law Court this day by Barbara Kunkel, Clerk.

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

EDWARD B. BELL, NORMAN)
 BISSONNETTE, MAUREEN)
 BISSONNETTE, RICHARD F. COOPER)
 and JANE C. FALL, as Trustees of)
 the Cooper Family Trust, MARIE)
 A. DESMARAIS, ALICE CLARE)
 ELLIOTT, GORDON M. and LOIS E.)
 ENFIELD, AUDREY FAMILGETTI,)
 SPENCER and MARY FURBUSH,)
 ESTELLE A. GREENWOOD, GUNNAR A.)
 and ANNA M. HAGSTROM, EDWARD J.)
 HASELTINE, CLAIRE S. HAYES, JEAN)
 M. HEDMAN, ROBERT G. and PAULINE)
 D. HENDERSON, FRANCIS X. and)
 ALICE B. HOGAN, JOHN B. HOWE,)
 KEVIN J. HOWE, WARREN H. JONES)
 and DOROTHY P. JONES, RICHARD N.)
 and BERNICE R. KENARY, JEAN P.)
 KENNAN, RICHARD J. KING, ROBERT)
 D. and JANICE K. KIRK, GERARD P.)
 and RACHEL LAMOUREUX, MARION E.)
 LORD, EVAN C. LUCE, HENRY J. and)
 MARIE K. MAGNE, ROBERT J. and)
 JOAN C. MALONEY, FRANKLIN H.,)
 Jr. and KATHERINE E. PERKINS,)
 PHILLIP POPE, GEORGE R. POPE)
 and RICHARD M. POPE, DONNA F.)
 and SHELTON B. RAY, WINSLOW E.)
 RYAN and EILEEN F. RYAN, GEORGE)
 H. SCHOFIELD, LEO J. and JANE)
 M. SHANNON, JOHN H. and VERA)
 SHINNER, JOSEPH SICO, BARBARA M.)
 STETSON, BARBARA C. BUDDINGTON,)
 IRVING G. MARSDEN and PAUL J.)
 MARSDEN, ROBERT V. and BETTE S.)
 STIRLING, SHIRLEY L. SYMONS,)
 SAMUEL A. TOWNSEND, GUYEN C.)
 TREISS and CHELSEY C. REMINGTON,)
 EUGENE M. VANLOAN III and JOHN)
 E. FRIBERG, DORIS VEZEAU, RICHEY)
 E. and ELIZABETH S. VEZEAU, EDNA)
 R. WALKER, PHYLLIS L. WYNE,)

Plaintiffs)

v.)

INHABITANTS OF THE TOWN OF)
WELLS, H. DONALD JAMES,)

COMPLAINT

HARRY MARGESON, CLARENCE)
MOULTON, ALBERTA WENTWORTH,)
JAMES WIGGIN, selectmen of the)
Town of Wells, STATE OF MAINE)
BUREAU OF PUBLIC LANDS, and all)
users of plaintiffs' property)
other than persons claiming any)
right, title or interest by,)
through, or under an instrument)
recorded in the York County)
Registry of Deeds and all)
persons, heirs, legal represen-)
tatives, devisees, assigns,)
trustees in bankruptcy,)
disseizors, creditors, lienors,)
grantees, and any and all other)
persons unascertained, or not in)
being, or unknown, or out of the)
State, and all other persons)
whomsoever who may claim any)
right, title, interest, or)
estate, legal or equitable, by,)
through, or under such users of)
plaintiffs' property,)
))
Defendants)

NOW COME plaintiffs and complain against defendants as follows:

Parties

1. Plaintiffs own real property in the area formerly known as Ogunquit Beach, now known as Moody Beach, located in the Town of Wells, County of York, State of Maine, which beach extends from the Ogunquit-Wells town line to Moody Point. Each plaintiff owns beachfront property, and each deed to each said property states that said property runs "to the Atlantic Ocean". Each said property is identified in Exhibit A, annexed hereto and incorporated herein. The portion of each said property which is the subject

matter of this action, referred to collectively in this complaint as "plaintiffs' property", extends from the sea wall located on said property to the mean low water mark or 100 rods from the mean high water mark, whichever is less.

2. The Town of Wells is a municipal corporation organized under the laws of the State of Maine and located in the County of York, State of Maine.

3. Defendants H. Donald James, Harry Margeson, Clarence Moulton, Alberta Wentworth, and James Wiggin, (hereafter "the selectmen") are presently selectmen for the Town of Wells, County of York, State of Maine.

4. The State of Maine, Bureau of Public Lands, is trustee of certain limited public rights in intertidal areas between the mean high water mark and the mean low water mark or 100 rods from the mean high water mark, whichever is less. Subsequent references to "defendants" in this action do not include the State of Maine except where specifically stated.

5. Unnamed and unknown defendants who are users of plaintiffs' property other than persons claiming ownership or easements by, through, or under an instrument recorded in the York County Registry of Deeds, (hereafter "individual defendants"), have trespassed upon plaintiffs' property and have used or claim the right to use plaintiffs' property for unlawful uses, including, but not limited to bathing, sunbathing, picnicking and other recreational activities.

Factual Allegations

6. Portions of plaintiffs' property are subject to the ebb and flow of the tides of the Atlantic Ocean.

7. Plaintiffs have title in fee simple absolute to that portion of plaintiffs' property located between the sea wall and the mean high water mark (hereafter the "upland").

8. Generally, individual defendants have certain limited rights in tidal areas between the mean high water mark and the mean low water mark or 100 rods from the mean high water mark, whichever area is less (hereafter the "intertidal zone").

9. Generally, title holders of the upland have absolute title to the intertidal zone, subject only to the exercise of said limited public rights.

10. By deed dated November 23, 1888 and recorded in the York County Registry of Deeds at Book 426 Page 45, the State of Maine conveyed all of its right, title and interest in the whole of Ogunquit Beach, including plaintiffs' property, to Charles W. Tibbetts.

11. By virtue of said conveyance, the State of Maine transferred all right, title and interest of individual defendants in the intertidal zone of Ogunquit Beach, including plaintiffs' property, to said Charles W. Tibbetts, including but not limited to the limited public rights in the intertidal zone.

12. All plaintiffs derive their title to plaintiffs' property through said Charles W. Tibbetts.

13. Individual defendants have no right, title or interest in said upland of plaintiffs' property.

14. Individual defendants have no right, title or interest in said intertidal zone of plaintiffs' property.

15. A portion of the beach area formerly owned by Charles W. Tibbetts is publicly owned having been purchased by the Ogunquit Beach District, a corporation located within the Ogunquit Village Corporation limits in the Town of Wells by deed dated April 7, 1925 recorded in the York County Registry of Deeds at Book 743 Page 288 for the purpose of establishing a public park. Said area is now known as Ogunquit Beach. Plaintiffs claim no interest in said publicly owned beach area and it is not a subject matter of this action.

16. In recent years, unlawful use of plaintiffs' property by individual defendants under claim of right without plaintiffs' consent and over plaintiffs' objections has occurred repeatedly and in ever-increasing numbers.

17. In recent years, the Town of Wells and its selectmen have taken the following actions that deprive plaintiffs of their property rights:

a. Signs erected on the upland by plaintiffs for the purpose of excluding individual defendants from plaintiffs' property have been removed in an illegal manner by Town of Wells police officers acting within the scope of their employment under the direction or with the knowledge of the Town of Wells and its selectmen;

b. The Town of Wells and its selectmen have authorized the use of buses by private campgrounds, motels or other entities for the purpose of transporting individual defendants to Moody Beach to facilitate public recreational use of plaintiffs' property.

c. Recently, the Town of Wells and its selectmen have used public funds to acquire and attempt to acquire portions of certain rights of way to Moody Beach to allow and promote public access to plaintiffs' property for recreational purposes, and said Town and selectmen continue to seek such acquisitions.

d. During the period 1979 to the present, the Town of Wells and its selectmen have employed a lifeguard on Moody Beach to allow and promote public use of plaintiffs' property for recreational purposes.

e. Despite plaintiffs' repeated requests, the Town of Wells and its selectmen have refused to instruct its police officers to protect plaintiffs' property from individual defendants' unlawful use.

f. The Town of Wells and its selectmen have encouraged and failed to restrict the unlawful use by individual defendants of plaintiffs' property.

g. The Town of Wells and its selectmen have created the apprehension that ownership of plaintiffs' property or public rights in plaintiffs' property are claimed by the Town of Wells and/or by individual defendants.

First Claim for Relief
Quiet Title Action at Law

18. Plaintiffs repeat and reallege the allegations set forth in paragraphs one through seventeen above, as if set forth in full herein.

19. This claim is brought pursuant to 14 M.R.S.A. §§6651-6654 to quiet and establish title and to remove any cloud from the title of plaintiffs and those claiming under them to plaintiffs' property identified above, and for a declaratory judgment pursuant to 14 M.R.S.A. §§5951-5963.

20. For more than four (4) years, the plaintiffs and those under whom they claim have been in uninterrupted possession of plaintiffs' property, claiming an estate in fee simple therein.

21. An apprehension exists that defendants, including the State of Maine, claim or may claim some right, title or interest in plaintiffs' property adverse to plaintiffs' estate by reason of the following facts:

That individual defendants in this action have unlawfully used and continue to use plaintiffs' property as a public beach for recreational and other purposes without plaintiffs' permission, over plaintiffs' objections and adversely to plaintiffs' interests; and that defendant Town of Wells and selectmen have taken steps to further this public use, including the acquisition of rights of way to plaintiffs' property.

22. The aforesaid apprehension creates a cloud upon plaintiffs' title and depreciates the market value of plaintiffs' property, and any claim of defendants cannot be met without the production of evidence.

23. Plaintiffs claim title by virtue of the deeds identified herein in Exhibit A.

24. Plaintiffs seek to quiet and establish their title to plaintiffs' property with respect to the claim of rights of defendants herein including the State of Maine.

WHEREFORE, plaintiffs demand judgment against defendants including the State of Maine that:

(a) Defendants and every person claiming by, through or under them be summoned to show cause why they should not bring an action to try their title to plaintiffs' property; and

(b) Defendants and every person claiming by, through or under them be barred absolutely from all claims and any right, title, interest or estate in plaintiffs' property, or, alternatively, defendants and every person claiming by, through or under them be barred absolutely from all claims and any right, title, interest or estate in the upland portion of plaintiffs' property and their rights in the intertidal zone of plaintiffs' property shall be limited to fishing, fowling and navigation only; and

(c) The plaintiffs are vested with title to plaintiffs' property free and clear of all claims by said defendants or any person claiming by, through or under them, or, alternatively, the plaintiffs are vested with title to the upland portion of plaintiffs' property free and clear of all claims by said defendants or any person claiming by, through, or under them, and their title to the intertidal zone of plaintiffs' property shall be subject only to the rights of the individual defendants to use said zone for fishing, fowling and navigation which judgment shall operate directly on plaintiffs' property and shall have the force of a release made by or on behalf of all defendants of all claims inconsistent with the title established or declared hereby; and

(d) The plaintiffs are entitled to costs against any defendant or defendants who shall assert in this action a claim or claims adverse to the plaintiffs; and

(e) The judgment in this action shall be recorded in the Registry of Deeds in this county within thirty (30) days after it is granted; and

(f) The plaintiffs shall have such other and further relief as the court deems just and proper.

Second Claim for Relief
Quiet Title Action in Equity

25. Plaintiffs repeat and reallege the allegations set forth in paragraphs one through twenty-five above, as if set forth in full herein.

26. This action is brought pursuant to 14 M.R.S.A. §§6655-6658 and §6051 to quiet and establish title to and remove any cloud from the title of plaintiffs and those claiming under them to plaintiffs' property identified above, and for a declaratory judgment pursuant to 14 M.R.S.A. §§5951-5963.

27. For more than four (4) years, the plaintiffs and those under whom they claim have been in uninterrupted possession of plaintiffs' property, claiming an estate in fee simple therein.

28. Defendants including the State of Maine claim or may claim, by purchase, descent or otherwise, some right title, interest, or estate in plaintiffs' property by reason of the following facts:

That individual defendants in this action have unlawfully used and continue to use plaintiffs' property as a public beach without plaintiffs' permission, over plaintiffs' objections and adversely to plaintiffs' interests; and that defendants Town of Wells and selectmen have taken steps to further this public use, including the acquisition of rights of way to plaintiffs' property.

29. Said claim depends upon the construction of a written instrument and/or cannot be met by the plaintiffs without the production of evidence.

30. The aforesaid claims and possible claims create a cloud upon the title and depreciate the market value of plaintiffs' property.

31. Plaintiffs claim title by virtue of the deeds identified herein in Exhibit A.

32. Plaintiffs seek to quiet and establish their title to plaintiffs' property.

WHEREFORE, plaintiffs demand judgment against defendants including the State of Maine that:

(a) Defendants and every person claiming by, through or under them be barred from all claims and any right, title, interest or estate in plaintiffs' property, or, alternatively, defendants and every person claiming by, through and under them be barred absolutely from all claims and any

right, title, interest or estate in the upland portion of plaintiffs' property and their rights in the intertidal zone of plaintiffs' property shall be limited to fishing, fowling and navigation only; and

(b) The plaintiffs are vested with title to plaintiffs' property, free and clear of all claims by said defendants or any person claiming by, through or under them, or alternatively, the plaintiffs are vested with title to the upland portion of plaintiffs' property free and clear of all claims by said defendants or any person claiming by, through or under them, and their title to the intertidal zone of plaintiffs' property shall be subject only to the right of the individual defendants to use said zone for fishing, fowling and navigation which judgment shall operate directly on plaintiffs' property or shall have the force of a release made by or on behalf of all defendants of all claims inconsistent with the title established or declared hereby; and

(c) The plaintiffs are entitled to costs against any defendant or defendants who shall assert in this action a claim or claims adverse to the plaintiffs; and

(d) The judgment in this action shall be recorded in the Registry of Deeds in this county within thirty (30) days after it is granted; and

(e) The plaintiffs shall have such other and further relief as the court deems just and proper.

Third Claim for Relief
Taxpayer Suit

33. Plaintiffs repeat and reallege the allegations of paragraphs one through thirty-two above, as if set forth in full herein.

34. Plaintiffs are taxpayers and owners of real property in the Town of Wells.

35. The actions of the Town of Wells as set forth above, including but not limited to the acquisition of rights of way to Moody Beach, including plaintiffs' property, are related to and will adversely affect plaintiffs' status as taxpayers.

36. Said actions, including the acquisition of rights of way to Moody Beach, including plaintiffs' property, involve the raising and spending of public funds for a purpose not authorized by law in that the Town of Wells is fostering and encouraging the unlawful use of Moody Beach, including plaintiffs' property, as a public beach by individual defendants.

37. The Town of Wells has voted to pledge its credit or to raise money by taxation or to exempt property therefrom or to pay money from its treasury, and its officers or agents have attempted to pay out such money for a purpose not authorized by law.

WHEREFORE, plaintiffs request, pursuant to 14 M.R.S.A. §6051(12), that defendants Town of Wells and selectmen be immediately enjoined from acquiring or seeking to acquire rights of way to plaintiffs' property, or to pledge credit, raise money by taxation, exempt property from taxation or to pay money from its treasury and be enjoined in any way from fostering and encouraging the use by individual defendants of plaintiffs' property; and that a declaratory judgment be entered against defendants Town of Wells and selectmen pursuant to 14 M.R.S.A. §§5951-5963 as follows:

(a) That the allocation, reservation or expenditure of funds for the purpose of acquiring or seeking to acquire rights of way to plaintiffs' property or pledging credit, raising money by taxation, exempting property from taxation or paying money from its treasury to foster and encourage the use by individual defendants of plaintiffs' property is a purpose not authorized by law; and

(b) That such invalid expenditure of funds is related to and adversely affects plaintiffs' status as taxpayers; and

(c) That individual defendants have no right to use plaintiffs' property as a public beach; and

(d) That plaintiffs be awarded their costs, including interest, incurred in this action; and

(e) That plaintiffs shall have such other and further relief as the court deems just and proper.

and encouraging the use by individual defendants of plaintiffs' property; and

(b) That a declaratory judgment be entered against defendants Town of Wells and selectmen pursuant to 14 M.R.S.A. §§5951-5963 as follows:

(i) That the acts and failures to act of the Town of Wells, the selectmen and Town of Wells police and other officers or agents described above were performed under color of State law;

(ii) That said acts and failures to act deprive plaintiffs of their property rights without just compensation under the Fifth and Fourteenth Amendments to the United States Constitution;

(iii) That said acts and failures to act have resulted in an unconstitutional taking of plaintiffs' property;

(iv) That said acts and failures to act violate 42 U.S.C. §1983; and

(v) That individual defendants have no right to use plaintiffs' property as a public beach.

(c) In addition, plaintiffs request that they be awarded the reasonable attorneys' fees incurred in this

and encouraging the use by individual defendants of plaintiffs' property; and

(b) That a declaratory judgment be entered against defendants Town of Wells and selectmen pursuant to 14 M.R.S.A. §§5951-5963 as follows:

(i) That the acts and failures to act of the Town of Wells, the selectmen and Town of Wells police and other officers or agents described above were performed under color of State law;

(ii) That said acts and failures to act deprive plaintiffs of their property rights without just compensation under the Fifth and Fourteenth Amendments to the United States Constitution;

(iii) That said acts and failures to act have resulted in an unconstitutional taking of plaintiffs' property;

(iv) That said acts and failures to act violate 42 U.S.C. §1983; and

(v) That individual defendants have no right to use plaintiffs' property as a public beach.

(c) In addition, plaintiffs request that they be awarded the reasonable attorneys' fees incurred in this

action under 42 U.S.C. §1988 and payable by the Town of Wells; and

(d) Plaintiffs further request that they be awarded damages payable by the Town of Wells in such amount as to compensate them for their injuries, plus interest and costs; and

(e) Plaintiffs request such other and further relief as this court deems just and proper.

Fifth Claim For Relief
Constitutional Claims

42. Plaintiffs repeat and reallege the allegations of paragraphs one through forty-one above, as if set forth in full herein.

43. The actions and failures to act of the Town of Wells, the selectmen and Town of Wells police and other officers or agents set forth above, are unconstitutional in that said actions have deprived plaintiffs without just compensation of their property rights protected by the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Sections 6-A, 19 and 21 of the Constitution of the State of Maine.

44. As a direct and proximate result of said actions and failures to act, plaintiffs have suffered grievous injury.

WHEREFORE, plaintiffs request the following relief:

(a) That defendants Town of Wells and selectmen be immediately enjoined from acquiring or seeking to acquire rights of way to plaintiffs' property or in any way fostering and encouraging the use by individual defendants of plaintiffs' property; and

(b) That a declaratory judgment be entered against defendants Town of Wells and selectmen as follows:

(i) That the actions and failures to act of the Town of Wells, the selectmen and Town of Wells police and other officers or agents deprive plaintiffs of their property rights without just compensation under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Sections 6-A, 19 and 21 of the Constitution of the State of Maine;

(ii) That said acts and failures to act have resulted in an unconstitutional taking of plaintiffs' property;


(iii) That individual defendants have no right to use plaintiffs' property as a public beach;

(c) That plaintiff be awarded damages payable by the Town of Wells in such amount as to compensate them for their

injuries, plus interest and costs; and,

(d) That plaintiffs be awarded such other and further relief as this court deems just and proper.

Dated at Portland, Maine, this 7th day of March, 1984.


Kermit V. Lipez
Sidney St. F. Thaxter II
Deborah M. Mann

CURTIS THAXTER LIPEZ STEVENS
BRODER & MICOLEAU
One Canal Plaza
Portland, ME 04112
(207) 775-2361

Attorneys for plaintiffs

R4-013-001

EXHIBIT ALIST OF PLAINTIFFS' PROPERTIES

Certain lots or parcels of land located in the Town of Wells, County of York and State of Maine, being described in the deeds incorporated by reference hereinbelow and comprising a portion of the area which may be described generally as commencing at a point where the boundary line between the Town of Wells, Maine, and the Town of Ogunquit, Maine, intersects the mean low water mark of the Atlantic Ocean or 100 rods from the mean high water mark of the Atlantic Ocean, whichever is less, thence northerly to a point on the northerly sideline of Ocean Avenue at the westerly end of said Ocean Avenue; thence by the southerly sideline of Ocean Avenue to a point where the southerly sideline of Ocean Avenue would intersect a line drawn southerly from the point where Hillside Avenue at Moody Point intersects the northerly sideline of Ocean Avenue; thence southerly to the mean low water mark of the Atlantic Ocean or 100 rods from the mean high water mark of the Atlantic Ocean, whichever is less; thence westerly by the mean low water mark of the Atlantic Ocean or 100 rods from the mean high water mark of the Atlantic Ocean, whichever is less, to the point beginning. The specific property, located within the above described area is described in the following deeds:

| <u>Property of Plaintiffs</u> | <u>Source of Title</u> | <u>Described in York County Registry of Deeds, Book/Page</u> |
|-------------------------------|---|--|
| Bell, Edward B. | McBride, Ora A. | 1484/422 |
| Bissonnette, Norman & Maureen | McKeon, Blance A. | 2155/780 |
| Cooper Family Trust | Cooper, Richard F., Thompson, Barbara C., Fall, Jane C., Adams, Janice C. | 2010/453 |
| Desmarais, Marie A. | Mathews, Gladys N. | 1419/107 |
| Elliott, Alice Clare | Frost, Chester H. to Elliott, William T. Devised to Alice Clare Elliott | 942/488 1049/203 |
| Enfield, Gordon M. & Lois E. | Fall, Ruth F. | 2928/322 |
| Familgetti, Audrey | Foss, Ethel P. | 1794/546 |
| Furbush, Spencer & Mary | Studley, Adella F. | 1539/410 |
| Greenwood, Estelle A. | Beauregard, Fred F. & Mildred A. | 1894/471 |
| Hagstrom, Gunnar A. & Anna M. | Plumer, Leola F. | 1656/123 |
| Haseltine, Edward J. | Mansfield, Harriet E. | 2054/216 |
| Hayes, Claire S. | Hayes, James-H. | 2893/310 |

| <u>Property of Plaintiffs</u> | <u>Source of Title</u> | <u>Described in York County Registry of Deeds, Book/Page</u> |
|--|--|--|
| Hedman, Jean M. | Guillemette, Yvette B. | 1906/37 |
| Henderson, Robert G. & Pauline D. | Howard, Ruth G. | 1468/132 |
| Hogan, Francis X. & Alice B. | Cram, Chester D. Sr. | 1874/766 |
| Howe, John B. | Kolovson, Frances E. | 2559/112 |
| Howe, Kevin J. | Jellison, Marion E. | 2162/470 |
| Jones, Warren H. & Dorothy P. | Perry, Lloyd H. (Conservator's deed) | 1809/610 |
| | Perry, Helen D. (quitclaim deed) | 1809/613 |
| Kenary, Richard N. & Bernice R. | Eddy, Robert G. & Claire B. | 1659/199 |
| Kennan, Jean P. | Penta, Marjorie E. | 2909/343 |
| King, Richard J. | King, Mary E., Kelly Ann, & Richard J. | 2856/92 |
| Kirk, Robert D. & Janice K. | Burt, Doris E. | 2242/117 |
| Lemoureux, Gerard P. & Rachel | Powers, David L. & Runie G. | 2128/257 |
| Lord, Marion E. | Jenks, Calvin L. | 2160/546 See 3063/145 |
| Luce, Evan C. | Luce, Mary H. | 1957/579 |
| Magne, Henry J. & Marie K. | Pence, Lawrence G. & Marjorie L. | 2470/187 |
| Maloney, Robert J. & Joan C. | Adams, Dorothy B. | 1599/318 |
| Perkins, Franklin H., Jr. & Katherine E. | Perkins, Franklin H., Jr. | 1799/572 |
| Pope, George R., Philip M., & Richard M. | Marshall, Shirley S. | 2140/50 |
| Ray, Shelton B. & Donna F. (a/k/a Donna C.) | Flanagan, Helen A. VonWagner, Bonnie E. | 1971/401 2018/179 |
| Ryan, Winslow E. & Eileen F. | Ryan, Winslow E. | 2931/175 |
| Schofield, George H. | Underwood, Kaye & Jon | 3026/292 |

| <u>Property of Plaintiffs</u> | <u>Source of Title</u> | <u>Described in York County Registry of Deeds, Book/Page</u> |
|---|--|--|
| Shannon, Leo J. & Jane M. | Benoit, Hector A. | 1854/550 |
| Shinner, John H. & Vera | Shinner, Vera | 1963/97 |
| Sico, Joseph | Nason, Gladys N. | 1452/466 |
| Stetson, Barbara M. | Marsden, Marion E. (Devise) | 2028/8 |
| Marsden, Irving G. | Clapp, John C. | 2887/89 |
| Buddington, Barbara C. | | |
| Marsden, Paul J. | | |
| Stirling, Robert V. & Bette J. | Kellett, Mirle A. | 2139/78 |
| Symons, Shirley L. (a/k/a Annie S. Symons) | Henderson, Vivian I. | 1184/158 |
| Tamposi, Samuel A. | Prunier, Gerald R. | 2462/162 |
| | Tamposi, Samuel A., Jr. | 2462/163 |
| | Korsak, William P. | 2462/161 |
| Treiss, Susan C. | Connecticut Bank & Trust Co., Trustee for Judith S. Carrier | 2782/203 |
| Remington, Chelsey C. | under the Will of Dorothy H. Carrier | |
| VanLoan, Eugene M. III & Friberg, John E. | Ireland, Donald A. & Genevieve R. | 2633/86 |
| Vezeau, Doris | McKeon, Edward A. & Blance A. | 1301/141 |
| Vezeau, Richey E. & Elizabeth S. | Vezeau, Raymond N. & Doris | 1979/327 |
| Walker, Edna R. | Brooks, Carroll L. & Bessie C. | 1560/178 |
| Wyne, Phyllis L. | Lagrenade, Helen P. | 3083/274 |

EDWARD B. BELL, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 INHABITANTS OF THE TOWN OF)
 WELLS, et al.,)
)
 Defendants)

FIRST AMENDMENT TO
COMPLAINT

Definitions

45. For ease of reference plaintiffs specifically repeat the definition of "uplands" as set forth in paragraph 7 of the complaint.

46. For ease of reference plaintiffs specifically repeat the definition of "intertidal zone" as set forth in paragraph 8 of the complaint.

Sixth Claim For Relief
Trespass by Moody Beach Tier II Group Members

47. Plaintiffs repeat and reallege the allegations set forth in paragraphs one through forty-six above, as if set forth in full herein.

48. Maine law defines a trespass as any unauthorized entry on to another's property.

49. Members of the Moody Beach Tier II Group have made entries on to the upland portions of plaintiffs' properties.

50. For the past several years any and all entries by the Moody Beach Tier II Group Members, on to the upland portions of plaintiffs' properties, have been unauthorized.

51. All such entries are acts of trespass by the members of the Moody Beach Tier II Group.

WHEREFORE, plaintiffs demand judgment against the Moody Beach Tier II Group defendants in the amount of \$500,000 for such acts of trespass plus interest and costs.

Seventh Claim for Relief
Trespass by Town of Wells

52. Plaintiffs repeat and reallege the allegations set forth in paragraphs one through fifty-one above, as if set forth in full herein.

53. The Town of Wells has used town employees and vehicles to clean up the upland portions of plaintiffs properties.

54. The Town of Wells has hired lifeguards, who have entered the upland portions of plaintiffs' properties.

55. Other officials of the Town of Wells have entered the upland portions of the plaintiffs' properties.

56. All entries in the past several years by Town of Wells cleaning personnel, lifeguards, and other officials on the upland portions of plaintiffs' properties were and are unauthorized by plaintiffs.

57. All such entries by Town of Wells personnel constitute acts of trespass.

WHEREFORE, plaintiffs demand judgment against the Town of Wells in the amount of \$500,000 for such acts of trespass plus interest and costs.

Eighth Claim for Relief
Declaratory Judgment Against Moody Beach Tier II Group Members

58. Plaintiffs repeat and reallege the allegations of paragraphs one through fifty-seven above, as if set forth in full herein.

59. This claim is brought for a declaratory judgment pursuant to 14 M.R.S.A. §§5951-5963.

60. Members of the Moody Beach Tier II Group claim that they possess certain rights in the upland portions of plaintiffs' properties.

61. Members of the Moody Beach Tier II Group possess no rights, title or interest of any kind in the upland portions of the plaintiffs' properties.

WHEREFORE, plaintiffs demand this court issue a declaratory judgment as follows:

The Moody Beach Tier II Group defendants have no right, title or interest of any kind, in the upland portions of plaintiffs' properties.

Ninth Claim for Relief
Declaratory Judgment Against Town of Wells

62. Plaintiffs repeat and reallege the allegations of paragraphs one through sixty-one above, as if set forth in full herein.

63. This claim is brought for a declaratory judgment pursuant to 14 M.R.S.A. §§5951-5963.

64. Town of Wells police officers have informed plaintiffs that Moody Beach is public and they will not assist plaintiffs in removing unwanted members of the public from the upland portions of their properties.

84
65. Town of Wells police have informed plaintiffs that plaintiffs order or attempt to remove unwanted members of the public from the upland portions of their properties they will be arrested and/or cited.

WHEREFORE, Plaintiffs demand this Court issue a declaratory judgment as follows:

a) That the Town of Wells has no right, title or interest of any kind in the upland portions of plaintiffs' properties.

b) That the Town of Wells, through its Police Department, assist plaintiffs in removing all unwanted members of the public from the upland portions of their properties.

c) That the Town of Wells, through its Police Department, not threaten to arrest or cite plaintiffs attempting to remove unwanted members of the public from the upland portions of their properties.

d) That the Town of Wells discontinue all entry, by its cleaning personnel, lifeguards and other officials on to the upland portions of plaintiffs' properties.

Tenth Claim For Relief
Trespass by Moody Beach Tier II Group Members.

66. Plaintiffs repeat and reallege the allegations set forth in paragraphs one through sixty-five above, as if set forth in full herein.

67. Maine law defines a trespass as any unauthorized entry on another's property.

68. Members of the Moody Beach Tier II Group have made entries on to the intertidal zones of plaintiffs' properties.

69. For the past several years any and all entries by the Moody Beach Tier II Group Members on to the intertidal zones of plaintiffs' properties have been unauthorized.

70. All such entries are acts of trespass by the Moody Beach Tier II Group Members.

WHEREFORE, plaintiffs demand judgment against the Moody Beach Tier II Group defendants in the amount of \$500,000 for such acts of trespass plus interest and costs.

Eleventh Claim for Relief
Trespass by Town of Wells

71. Plaintiffs repeat and reallege the allegations set forth in paragraphs one through seventy above, as if set forth in full herein.

72. The Town of Wells has used town employees and vehicles to clean up the intertidal zones of plaintiffs' properties.

73. The Town of Wells has hired lifeguards, who have entered the intertidal zones of plaintiffs' properties.

74. Other officials of the Town of Wells have entered the intertidal zones of plaintiffs' properties.

75. All entries in the past several years by Town of Wells cleaning personnel, lifeguards, and other officials on the intertidal zones of plaintiffs' properties were and are unauthorized by plaintiffs.

76. All such entries by Town of Wells personnel constitute acts of trespass.

WHEREFORE, plaintiffs demand judgment against the Town of Wells in the amount of \$500,000 for such acts of trespass.

Twelfth Claim for Relief
Declaratory Judgment Against Moody Beach Tier II Group Members

77. Plaintiffs repeat and reallege the allegations of paragraphs one through seventy-six above, as if set forth in full herein.

78. This claim is brought for a declaratory judgment pursuant to 14 M.R.S.A. §§5951-5963.

79. Members of the Moody Beach Tier II Group claim that they possess certain rights in the intertidal zones of plaintiffs' properties other than those established by the Colony Ordinance of 1641- 1647.

80. Members of the Moody Beach Tier II Group possess no rights, title or interest other than those established by the Colony Ordinance, in the intertidal zones of the plaintiffs' properties.

WHEREFORE, plaintiffs demand this court issue a declaratory judgment as follows:

The Moody Beach Tier II defendants have no right, title or interest other than those established by the Colony Ordinance, in the intertidal zones of the plaintiffs' properties.

Thirteenth Claim for Relief
Declaratory Judgment Against Town of Wells

81. Plaintiffs repeat and reallege the allegations of paragraphs one through eighty above, as if set forth in full herein.

82. This claim is brought for a declaratory judgment pursuant to 14 M.R.S.A. §§5951-5963.

83. Town of Wells police officers have informed plaintiffs that Moody Beach is public and they will not assist plaintiffs in removing unwanted members of the public from the intertidal zones of their properties.

84. Town of Wells police have informed plaintiffs that if plaintiffs order or attempt to remove unwanted members of the public from the intertidal zones of their properties they will be arrested and/or cited.

WHEREFORE, Plaintiffs demand this Court issue a declaratory judgment as follows:

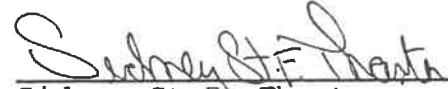
a) That the Town of Wells has no right, title or interest of any kind in the intertidal zones of the plaintiffs' properties.

b) That the Town of Wells, through its Police Department, assist plaintiffs in removing all unwanted members of the public from the intertidal zones of their properties.

c) That the Town of Wells, through its Police Department, not threaten to arrest or cite plaintiffs attempting to remove unwanted members of the public from the intertidal zones of their properties.

d) That the Town of Wells discontinue all entry, by its cleaning personnel, lifeguards and other town officials on to the intertidal zones of plaintiffs' properties.

Dated this 9th day of August, 1985.



Sidney St. F. Thaxter
CURTIS THAXTER STEVENS BRODER
& MICOLEAU

One Canal Plaza
Portland, Maine 04112

Attorney for Plaintiffs

85-219-013

STATE OF MAINE
YORK, 'SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. 84-125

EDWARD B. BELL, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 INHABITANTS OF THE TOWN)
 OF WELLS,)
 and)
 STATE OF MAINE BUREAU)
 OF PUBLIC LANDS, et al.)
)
 Defendants.)

DEFENDANT STATE OF MAINE
BUREAU OF PUBLIC LANDS'
ANSWER

FIRST DEFENSE

The Complaint fails to state a claim against Defendant State of Maine Bureau of Public Lands upon which relief can be granted.

SECOND DEFENSE

The First and Second Claims for Relief of the Complaint, insofar as they seek to adjudicate the extent of public rights, are barred by the doctrine of sovereign immunity.

THIRD DEFENSE

The Court lacks subject matter jurisdiction over the First and Second Claims for Relief of the Complaint.

EXHIBIT B-3

- 2 -

FOURTH DEFENSE

The Plaintiffs have failed to join necessary parties pursuant to M.R. Civ.P. 19. In particular, Plaintiffs have failed to join the State of Maine which, by and through its Attorney General, acts as the trustee and protector of the public rights, and failed to join individual Defendants who may have private rights in the area involved.

FIFTH DEFENSE

The Complaint must be dismissed for failing to present a justiciable controversy.

SIXTH DEFENSE

Plaintiffs' claims are barred because the public has acquired by prescription an easement and rights to use Moody Beach for recreational and other purposes.

SEVENTH DEFENSE

Plaintiffs' claims are barred because the public has acquired by custom the right to use Moody Beach for recreational and other purposes.

EIGHTH DEFENSE

Plaintiffs' claims are barred because the public has acquired by implied dedication an easement and rights to use Moody Beach for recreational and other purposes.

NINTH DEFENSE

Plaintiffs' claims are barred because the public and individual members of the public have public trust rights which include the rights to use the intertidal zone of Moody Beach for recreational and other purposes.

TENTH DEFENSE

Plaintiffs' claims are barred by the doctrine of estoppel.

ELEVENTH DEFENSE

Plaintiffs' claims are barred by the doctrine of acquiescence.

TWELFTH DEFENSE

Plaintiffs' claims are barred by the doctrine of laches.

THIRTEENTH DEFENSE

Plaintiffs' claims are barred by the doctrine of waiver.

- 4 -

ANSWER

1. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.

2. Defendant State of Maine Bureau of Public Lands admits the allegations contained in paragraph 2 of the Complaint.

3. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.

4. Defendant State of Maine Bureau of Public Lands denies the allegations contained in paragraph 4 of the Complaint. In particular, the State of Maine is trustee of the public trust rights in the intertidal zone which is that area between the mean high and mean low water mark.

5. Defendant State of Maine Bureau of Public Lands is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.

6. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint.

7. Defendant State of Maine Bureau of Public Lands is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint.

8. Defendant State of Maine Bureau of Public Lands admits that individual Defendants have public rights and may have private rights in the intertidal area being that area between the mean high water mark and the mean low water mark but denies the characterization of these rights as limited and denies that these rights are bound by a line 100 rods from the mean high water mark.

9. The allegations contained in paragraph 9 of the Complaint represent a characterization of a rule of law and do not require a responsive pleading.

10. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint.

11. Defendant State of Maine Bureau of Public Lands denies the allegations contained in paragraph 11 of the Complaint.

12. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

13. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. Defendant State of Maine Bureau of Public Lands denies the allegations contained in paragraph 14 of the Complaint.

15. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.

16. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.

17. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.

First Claim for Relief
Quiet Title Action at Law

18. Defendant State of Maine Bureau of Public Lands repeats and realleges its answers to paragraphs 1-17 of the Complaint as if set out in full herein.

19. The allegations contained in paragraph 19 of the Complaint represent a characterization of a rule of law and do not require a responsive pleading.

20. Defendant State of Maine Bureau of Public Lands is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint.

21. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.

22. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint.

23. The allegations contained in paragraph 23 of the Complaint represent a characterization of a rule of law and do not require a responsive pleading.

24. Paragraph 24 of the Complaint sets forth Plaintiffs' first prayer for relief and, therefore, response thereto is unnecessary. To the extent any response is necessary, Defendant State of Maine Bureau of Public Lands denies that Plaintiffs are entitled to the relief requested.

Second Claim for Relief
Quiet Title Action in Equity

25. Defendant State of Maine Bureau of Public Lands repeats and realleges its answers to paragraphs 1-24 of the Complaint as if set out in full herein.

26. The allegations contained in paragraph 26 of the Complaint represent a characterization of a rule of law and do not require a responsive pleading.

27. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint.

28. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint.

29. The allegations contained in paragraph 29 of the Complaint represent a characterization of a rule of law and do not require a responsive pleading.

30. Defendant State of Maine Bureau of Public Lands is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint.

31. The allegations contained in paragraph 31 of the Complaint represent a characterization of a rule of law and do not require a responsive pleading.

32. Paragraph 32 of the Complaint sets forth Plaintiffs' second prayer for relief, and, therefore, response thereto is

unnecessary. To the extent any response is necessary,
Defendant State of Maine Bureau of Public Lands denies that
Plaintiffs are entitled to the relief requested in paragraph 32.

Third, Fourth, and Fifth Claims for Relief
Taxpayer Suit
42 U.S.C. § 1983
Constitutional Claims

33. Paragraphs 33 through 44 of the Complaint contain the
Third, Fourth and Fifth Claims for Relief which appear to be
directed against the Town of Wells and its selectmen, and not
against the Defendant State of Maine Bureau of Public Lands.
To the extent such Claims for Relief do assert any causes of
action against Defendant State of Maine Bureau of Public Lands,
the allegations contained in said Claims for Relief are denied.

DATED: April 11, 1984

Respectfully submitted,

JAMES E. TIERNEY
Attorney General

Philip Ahrens

PHILIP AHRENS, Chief
Natural Resources Division
Office of the Attorney General

Paul Stern

PAUL STERN
Assistant Attorney General
State House Station #6
Augusta, Maine 04333
Tel. (207) 289-3051

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-84-125

EDWARD B. BELL, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 INHABITANTS OF THE TOWN)
 OF WELLS, et al.,)
)
 Defendants.)

STATE DEFENDANTS' ANSWER TO
AMENDMENTS TO PLAINTIFFS'
COMPLAINT

By Decision and Order dated June 16, 1986, Plaintiffs' August 9, 1985 Motion to Amend the Complaint was granted in part, and Plaintiffs' June 6, 1986 Motion to Amend the Complaint was granted. State Defendants' answer these amendments to the Complaint as follows:

PLAINTIFFS' EIGHTH, NINTH, TWELFTH AND THIRTEENTH
CLAIMS FOR RELIEF

Paragraphs 45 through 46, 58 through 65, and 77 through 84 of the Complaint, as amended, contain the Eighth, Ninth, Twelfth and Thirteenth Claims for Relief which appear to be directed against the Town of Wells and the Moody Beach Tier II Group members, but not against Defendants State of Maine or Maine Bureau of Public Lands. To the extent Plaintiffs do

assert any causes of action against Defendants State of Maine or Maine Bureau of Public Lands, the allegations contained in said claims for relief are denied.

CLAIM FOR RELIEF 14

1. State Defendants repeat and reallege their defenses and answers to paragraphs 1 through 46, 58 through 65 and 77 through 84 contained in State Defendants' Answers of April 11 and July 9, 1984 and hereinabove, as if set out in full herein.

2. State Defendants admit the Legislature passed L.D. 2380 (112th Legis., 1986), the Governor signed L.D. 2380 into law as P.L. 1986, c. 782 (entitled "AN ACT to Confirm and Recognize Public Trust Rights in Intertidal Land"), and L.D. 2380 was passed and signed into law after the date the original Complaint for this matter was filed and after the date Plaintiffs filed their appeal to the Law Court on sovereign immunity. Otherwise, the record speaks for itself, and response to the allegations in paragraph 2 of Claim for Relief 14 is unnecessary.

3. Paragraph 3 of Claim for Relief 14 appears to seek to set out a portion of P.L. 1986, c. 782. The legislation speaks for itself, and, therefore, response to the allegations in this paragraph is unnecessary.

4. Paragraph 4 of Claim for Relief 14 is a characterization of legislation, and, therefore, a response thereto is unnecessary.

5. Paragraph 5 of Claim for Relief 14 is a conclusion of law, and, therefore, response thereto is unnecessary. To the extent any response is necessary, State Defendants deny the allegations contained in paragraph 5.

6. With respect to the Prayers for Relief designated as paragraphs a) and b) on page 2 of the Motion for Leave to Amend Complaint, a response thereto is unnecessary. However, to the extent any response is necessary, State Defendants deny Plaintiffs are entitled in any way to the relief requested in those paragraphs.

DATED: July 1, 1986

Respectfully submitted,

JAMES E. TIERNEY
Attorney General



PAUL STERN
Assistant Attorney General
State House Station #6
Augusta, Maine 04333
Tel. (207) 289-3661
Attorney for State Defendants

Action

LAW DOCKET NO. YOR-85-373

Intervening Defendants

CLF-NRC

GUARDIAN AD LITEM APPOINTED
3/1/85 - Ralph Austin, Esq.

YOR-87-430

01

EDWARD B. BELL, et als

INH. OF & SELECTMEN TOWN OF WELLS &
vs. STATE OF MAINE-BUR. OF PUBLIC LANDS et

Plaintiff's Attorney

~~Kermit V. Lipez, Esq.~~ Sidney St. F. Thaxter
CURTIS THAXTER LIPEZ STEVENS BRODER & MICOLEAU
One Canal Plaza
Portland, Maine 04112

David Strater, Esq.

~~STRATER, HANCOCK & ERWIN~~

4A Woodbridge Road - Box 69

York, Maine 03909

For: Edward B. Bell

Defendant's Attorney

Michael T. Healy, Esq.

Verrill & Dana

2 Canal Plaza - Box 586

Portland, Maine 04112

For: Town of Wells

Paul Stern, Esq. - Philip Ahrens, Esq.

Assistant Attorney General

State House Station 6

Augusta, Maine 04333

For: State of Maine, B.P.L.

Date of
Entry

1984

- Mar. 7 ¹ Complaint filed.
- 13 ² Summonses filed; Service made on/Selectmen H. Donald James, James Wiggin, Harry Margeson and Clarence Moulton on March 8, 1984. Service made on Defendant Selectmen Alberta Wentworth on March 10, 1984. Service made on Defendant Town of Wells by service on Marion Brown, Clerk on March 8, 1984. Service made on Defendant State of Maine, Bureau of Public Lands by certified mail to James Tierney, Attorney General on March 9, 1984.
- 21 ³ Motion for Alternative Service filed by Plaintiffs. Affidavit of Leo J. Shannon in Support of Motion for Alternative Service filed.
- 21 ⁴ Order for Alternative Service filed by the Court. "It is hereby Ordered that any defendant or his attorney who wishes to oppose this lawsuit, must prepare and file a written answer to the complaint on or before May 7, 1984. It is further Ordered that this Order be published in the York County Coast Star, published in Kennebunk, Maine, once a week for three (3) successive weeks, beginning on or about the 28th day of March, 1984." (Bradford, J.)
Copy of Order mailed to K. V. Lipez, Esq.
- 22 ⁵ Motion to Extend Time in which to Answer filed by Defendants, Town of Wells and Selectmen.
Order filed on Defendants' Motion to Extend Time to Answer. Ordered: "Motion granted." (Brodrick, J.)
Copy of Order mailed to K. V. Lipez, Esq., and to M. T. Healy, Esq.
- 22 ⁶ Amended Order for Alternative Service filed by the Court. "Answer to be filed on or before May 8, 1984. Order to be published in the York County Coast Star, published in Kennebunk, Maine, once a week for three successive weeks, beginning the 28th day of March, 1984." (Bradford, J.)
Copy of Order mailed to K. V. Lipez, Esq., and to M. T. Healy, Esq.
- Apr. 12 ⁷ Answer of Defendant State of Maine Bureau of Public Lands' filed.
⁸ Motion to Reconsider and Vacate or Modify the Amended Order for Alternative Service dated March 22, 1984, filed by Defendant State of Maine Bureau of

| 1984 | | 02 |
|------|----|--|
| Apr. | 12 | Public Lands. Memorandum of Law in support of Defendant State of Maine Bureau of Public Lands' Motion to Reconsider and Vacate or Modify Amended Order for Alternative Service filed. (Original motion forwarded to Justice Bradford in Cumberland County) |
| | 12 | (9) Answer of Inhabitants of the Town of Wells, H. Donald James, Harry Margeson, Clarence Moulton, Alberta Wentworth and James Wiggin filed April 11, 1984. (10) Interrogatories and First Request for Production of Documents to Plaintiffs filed by Defendant - Town of Wells. |
| May | 8 | (11) Answer filed by Unnamed Defendant Natural Resources Council of Maine. Copy of Petition to Intervene filed by Unnamed Defendant Natural Resources Council of Maine. |
| | 10 | (12) Original Petition to Intervene filed by Unnamed Defendant. |
| | 14 | (13) Objections to Interrogatories filed by Plaintiffs. (14) Motion for Extension of Time to Respond to Discovery filed by Plaintiffs. Memorandum of Law in Support of Motion for Extension of Time filed by Plaintiffs. |
| | 18 | (15) Motion to Withdraw Certain Plaintiffs filed by Plaintiffs. |
| | 22 | (16) Memorandum of Law in Opposition to Petition to Intervene filed by Plaintiffs. |
| | 23 | Order filed on Motion to Withdraw Certain Plaintiffs. Ordered: "Motion granted." (Brodrick, J.) Evan C. Luce, Franklin H. Perkins, Jr., and Katherine E. Perkins withdraw themselves without prejudice as party plaintiffs. |
| | 29 | (17) Second Amended Order for Alternative Service filed by the Court. (Bradford, J.) Exhibit B - Notice to All Users of Moody Beach filed by Court. (Bradford, J.) Copy of Order mailed to K. V. Lipez, Esq., M. T. Healy, Esq., and to P. Stern, Esq. |
| | 31 | (18) Special Assignment issued by the Court. "Ordered that Justice William S. Brodrick be and is hereby assigned to hear and dispose of all matters that may arise in connection with said case." (Clifford, C.J. Superior Court) Copy of Order mailed to K. V. Lipez, Esq., M. T. Healy, Esq., and to P. Stern, Esq. |
| June | 29 | (19) Motion to Join Party Defendant filed by Plaintiffs. Memorandum of Law in Support of Motion to Join Defendant filed by Plaintiffs. |
| July | 11 | (20) Answer of Defendant State of Maine filed. (Copy forwarded to Judge Brodrick, South Paris, Maine.) |
| Aug. | 17 | (21) Answers to Defendant Town of Wells' interrogatories and request for production filed by Plaintiffs Edward B. Bell, Norman E. Bissonette and Maureen S. Bissonette, Richard F. Cooper and Jane C. Fall, co-trustees of the Cooper Family Trust, Gordon M. Enfield and Lois E. Enfield, Spencer F. Furbush and Mary C. Furbush, Estelle A. Greenwood, Gunnar A. Hagstrom and Anna M. Hagstrom, Edward |

- 1984
- Aug. 30 (30) Answers to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiff, Edna R. Walker. 04
 (31) Answers to Defendants' Interrogatories and First Request for Production of Documents filed by Plaintiff, Phyllis L. Wyne.
- Sept. 19 (39) Motion to Extend Time in which to Answer Interrogatories filed by Defendant Inh. - Town of Wells.
 Order filed on Defendant Town of Wells Motion to Extend time. "Motion granted." (Goffin, J.)
 Copy of Order mailed to K. V. Lipez, Esq., W. C. Knowles, Esq., and to P. Stern, Esq.
- 21 (45) Response to State's First Request for The Production of Documents filed by Plaintiffs.
- 24 (46) Motion to Extend Time to file Answer filed by Defendant Robert Slipp.
- 28 Everett B. Carson, Esq., enters his appearance for the Natural Resources Council of Maine.
- Oct. 5 (52) First Request for the Production of Documents of Defendants State of Maine Bureau of Public Lands and State of Maine filed by Plaintiffs on October 4, 1984.
 (53) Interrogatories to Defendants filed by Plaintiffs on October 4, 1984.
 (54) Answers to Interrogatories and First Request for Production of Documents filed by Plaintiffs' Barbara Stetson, Irving Marsden, Paul Marsden and Barbara Buddington.
- 25 (55) Supplemental Response to State's First Request for Production of Documents filed by Plaintiffs October 24, 1984.
- 25 (56) Answers to Interrogatories filed by Defendant Town of Wells October 24, 1984.
- 26 (57) Answer and Counterclaim filed by Defendants, Robert P. Slipp and Joan E. Slipp.
- Nov. 1 (63) Affidavit regarding Service by Publication filed by Deborah M. Mann, Esq. on October 31, 1984.
- 2 (64) Request for Extension of Time in Which to Answer Plaintiff's Interrogatories and Request for Production of Documents filed by Defendants State of Maine and Maine Bureau of Public Lands on Nov. 1, 1984.
- (65) Motion for Appointment of Guardian Ad Litem filed by Defendants State of Maine and Maine Bureau of Public Lands on Nov. 1, 1984.
 Memorandum of Law in Support of Motion for Appointment of Guardian Ad Litem filed by Defendants State of Maine and Maine Bureau of Public Lands on Nov. 1, 1984.
- 2 Order filed by the Court on Defendants State of Maine and Maine Bureau of Public Lands Motion for Extension of Time in Which to Answer Plaintiff's Interrogatories and Request for Production of Documents.
 "Motion Granted." (Brodrick, J.)
 Copy of Order mailed to K.V.Lipez, Esq., W.C.Knowles, P.Stern, Esq. & E.V.Caron, Esq.
- 14 (76) Response to Plaintiffs' First Request for Production of Documents filed by State Defendants.

- 1984
Dec. 28 Affidavit of Deborah M. Mann Regarding Service by Publication filed December 21, 1984. 06
- 1985
Jan. 14 (84) Notice to take Deposition of Plaintiff Norman Bissonnette filed by Defendants State of Maine and Maine Bureau of Public Lands.
Notice to take Deposition of Plaintiff Maureen Bissonnette filed by Defendants State of Maine and Maine Bureau of Public Lands.
Notice to take Deposition of Plaintiffs Richard F. Cooper, Jane C. Fall, Alice Clare Elliott, Edward J. Haseltine, Gordon M. Enfield, Lois E. Enfield, Audrey Familgetti, Spencer Furbish, Mary Furbish, Estelle A. Greenwood, Gunnar A. Hagstrom, Anna M. Hagstrom, Claire S. Hayes, Jean M. Hedman, Robert G. Henderson, Pauline D. Henderson, Francis X. Hogan, Alice B. Hogan, John B. Howe, Kevin J. Howe, Warren H. Jones, Dorothy P. Jones, Richard N. Kenary, Bernice R. Kenary, Jean P. Kennan, Richard J. King, Robert D. Kirk, Janice K. Kirk, Gerard P. Lamoureux, Rachel Lamoureux, Henry J. Magne, Marie K. Magne, Robert J. Maloney, Joan C. Maloney, Phillip Pope, George R. Pope, Richard M. Pope, Winslow E. Ryan, Eileen F. Ryan, Marion E. Lord, George H. Schofield, Joseph Sico, Barbara M. Stetson, Barbara C. Buddington, Irving G. Marsden, Paul J. Marsden, Robert V. Stirling, Bette S. Stirling, Shirley L. Symons, Susan C. Treiss, Chesley C. Remington, Edna R. Walker, Eugene M. VanLoan III, John E. Friberg, Doris Vezeau, Richey Vezeau, Elizabeth S. Vezeau, Phyllis L. Wyne, Jane M. Shannon, Leo J. Shannon and Edward B. Bell filed by Defendants State of Maine and Maine Bureau of Public Lands.
- 22 (85) Objection to Notices of Deposition filed by Plaintiffs January 21, 1985.
- Feb. 11 (86) Motion to Strike and Memorandum of Law in Support Thereof filed by Plaintiffs on February 7, 1985.
- Mar. 1 (87) Conference had in Chambers. Oral motion for enlargement of time to file motion to strike presented by counsel for Plaintiffs - 'Granted. Plaintiff Granted until February 7, 1985.' (Brodrick, J.)
- Order Appointing Guardian Ad Litem filed by the Court. "It is Hereby Ordered, Adjudged and Decreed that: 1. Ralph Austin, Esq. shall be appointed as guardian ad litem pursuant to 14 M.R.S.A. Sec. 6656 to represent the private rights of all unnamed and unknown defendants who have not actually been served with process and who have not appeared in this action; and 2. The duties and obligations of said guardian ad litem shall be: (a) To file an acceptance of this appointment; (b) To file an answer to plaintiffs' complaint, denying all of the allegations of the complaint adverse to said defendants whom he represents; and (c) To appear and be heard at a hearing to consider the private rights of said defendants in the property of the plaintiffs as that property is defined in plaintiffs' complaint." (Brodrick, J.)
Attorney Austin given leave to remove from Court two volumes of individual form answers totalling approximately 934.
Copy of Order mailed to K. Lipez, Esq., M. T. Healy, Esq., P. Stern, Esq., and R. Austin, Esq.
- 11 ~~Acceptance of Appointment as Guardian Ad Litem filed by Ralph W. Austin, Esq. March 4, 1985.~~
Copy of Acceptance mailed to K. Lipez, Esq., M. T. Healy, Esq., P. Stern, Esq. and R. Austin, Esq.

EDWARD HASELTINE

EXHIBIT B-6

- 1 A Oh, probably half of those that we asked didn't leave.
- 2 Q And I mean how many times in a weekend for example might
3 this happen, or during the summer?
- 4 A Oh, in the summer probably every other weekend.
- 5 Q Now do you have a sign posted on your property?
- 6 A Yes, I do.
- 7 Q When was that posted?
- 8 A I can't answer exactly, but the private sign has been
9 on the two steps ever since I owned the property, and I
10 purchased in '74, and it's been on the steps prior to
11 that for at least 15 years while my wife was there, and
12 I used to come down weekends.
- 13 Q So back -- so into the '60s it was there also?
- 14 A Yes.
- 15 Q And what did the sign say?
- 16 A "Private."
- 17 Q And have you taken -- have you done anything else during
18 say within the last 10 years, have you done anything to
19 demark or line out what was your part of the beach, or
20 what you saw as your part of the beach?
- 21 A Yes. People that own the property next-door rent their
22 property and by mutual agreement, I used to put a piece
23 of driftwood down between to mark the property line, and
24 various landlords were very good because they told people
25 that they should use only their front of the beach and

1 not encroach upon ours.

2 Q And in this driftwood, is it on just one side of your
3 property?

4 A No, on both sides.

5 Q How long have you been putting the driftwood on the
6 property?

7 A Oh, off and on until water might take it away for the
8 last 10 or 12 years, 15 years.

9 Q What was the purpose of putting the driftwood out there?

10 A Just to show them where the property line is, where my
11 property line is.

12 Q Now is this home -- is this home winterized?

13 A Yes, it is.

14 Q Do you go there in the fall and the winter?

15 A Yes, I did.

16 Q Did your family go there for holidays?

17 A Yes, we've spent Thanksgiving there on occasion, we've
18 spent Christmas there on occasion.

19 Q Now in the 1970s, did you go there for holidays, was it
20 winterized then?

21 A In the late '70s, yes, we didn't winterize it until 1972.

22 Q When you went there on holidays, were there people using
23 -- strangers using the property in front of your house?

24 A Only walking the beach.

25 Q And where would these people that were walking the beach,

RICHARD KENARY

1 A Well, we had put up the sea wall in the spring of '69,
2 and we were not up there for any length of time until the
3 last two weeks of the season, and I was attempting to
4 backfill behind the sea wall by hand on a Sunday morning
5 before Labor Day. And about 11:30, 11:00, 11:30, two
6 men came up on the sea wall and told me that I was to get
7 the signs down that were out there on the beach, or I'd
8 have trouble, and this was a threat that the trouble
9 might be physical, and that he would see that the signs
10 were out of there if I didn't take them down. And at the
11 same time they indicated they were interested in making
12 this beach semi-public. They wanted to open it up for
13 themselves, and the people over in the Tibbetts area in
14 back of our cottage, and they would like to get a life-
15 guard on the beach, probably have the beach cleaned up,
16 and reserve it in essence for themselves on the beach
17 and themselves over in back, which seemed strange to me
18 at the time since I was trying to keep them off the beach-
19 front and they were trying to keep it so others wouldn't
20 come down other than themselves.

21 Q First of all you mentioned signs, are those signs that
22 you put up?

23 A Probably the first were in 1968, put signs up. We were
24 down there two weeks in '69, we put the signs up. And
25 I don't believe the people who came up to the sea wall

1 were there during that week. I believe they came down
2 for the weekend, the Labor Day weekend, and perhaps was
3 the first time they saw the signs.

4 Q Where did you place the signs?

5 A At about five to 10 feet in front of this, either side
6 of our steps, in front of the sea wall on the beach.

7 Q So there's more than one sign?

8 A I think at the time there was two.

9 Q How large were they, do you recall?

10 A Two feet by 10 inches, 20 by 10 inches.

11 Q What did the sign say?

12 A I think at that time they said -- well, the '68 sign
13 might have said "No Trespassing." And I think perhaps
14 they said that in '69, too.

15 Q Have you had other signs in front of your property?

16 A Well, we've lost so many, yes, we've had other signs,
17 many of them saying "No Trespassing." I have had some
18 signs that were given to me by Mr. Edward Bell which
19 indicate "No Loitering," and "Private to the Low-Water
20 Mark." We've had those up as well.

21 Q When did you first put up the sign that said "No Loitering
22 to Low-Water Mark"?

23 A In or about '72 or '73.

24 Q Where were those signs placed?

25 A Well, they were placed down on the beach, too, and since

1 we were losing signs, I created a new type of base for
2 them. I got a couple five gallon cans and filled them
3 with concrete and put three-inch pipes in there, bolted
4 the signs to the pipes, and buried them in the sand about
5 three feet. They lasted I think overnight.

6 Q What do you mean, lasted overnight?

7 A They were not there I think the next day or so after I
8 put them out. I wondered where they'd gone, and I found
9 them a day or two later out in the -- at the high tide
10 mark in front of the right of way actually. How it got
11 there, I don't know.

12 Q Did you put signs back up after that?

13 A We did put others up, but we would take them in at night.
14 There was no need of leaving them out. I did not put
15 those same signs up again, the ones imbedded in concrete.

16 Q Did the signs remain up then for several years? Did you
17 put up signs through the 1970s?

18 A We did not put up signs throughout the year, we put up
19 signs while we were up there, off and on, when we were
20 there which was the last two weeks of the year. We sug-
21 gested our tenants to use the signs, but they did -- felt
22 that it was not their job to do that, it was our job to
23 protect the beach, not theirs.

24 Q But the signs were up the last two weeks of August?

25 A Usually during the last two weeks of August.

BETTE STIRLING

1 Q What do you say to those people generally?

2 A My usual line is where are you staying, because if
3 they're neighbors, I don't mind. If it's a motel or
4 somewhere, then I just simply say, "I think you should
5 know that this is private beach, and we prefer that you
6 not stay here," and I walk away. They have always left
7 and never come back.

8 Q Have you ever had dogs come onto your property, people
9 with dogs?

10 A Oh, yes.

11 Q Have you asked them to leave as well?

12 A Usually, there was only one instance when someone came
13 with beach chairs and umbrellas and a dog and sat down
14 in front of our house. Other than -- and we did -- they
15 had come all the way from the Norseman in Ogunquit because
16 Ogunquit Beach doesn't allow dogs on their beach, but
17 they left with no incident. Other than that, the dogs
18 are usually just going back and forth.

19 Q Have you ever put up a sign on your property?

20 A Yes, we have.

21 Q When did you do so?

22 A We've had a sign up since -- well, it must be -- it must
23 have been '77 or '78 that we started putting it up
24 regularly.

25 Q Do you know what the sign says?

1 A Yes, I do.

2 Q What does it say?

3 A It says, "Private Beach to Low-Water Mark, No Loitering,
4 Please."

5 Q Have you taken it down at periods as well?

6 A We take it down in the wintertime, and when we first put
7 it up, we would take it down at night so it wouldn't be
8 stolen. This year it's been up constantly.

9 Q And you're there throughout the summer?

10 A Yes.

11 Q Have you ever had occasion to take photographs of
12 individuals on your property?

13 A I have since the incident with the women and the police
14 officer, where we ultimately consulted a lawyer, and he
15 suggested that if we had people who were reluctant to
16 leave, to take a photograph and just put it away, so
17 I've done that.

18 Q I'm going to put before you Plaintiff's Exhibit 179.

19 MR. STERN: I'd like to briefly look at them
20 because the copies were sort of bad.

21 Q (By Mr. Gleason) Mrs. Stirling, I'll put before you
22 Plaintiff's Exhibit 177 first of all, ask if you can
23 identify that photograph?

24 A Yes, I can.

25 Q Is that one that you took?

WILLIAM CASE

1 over the sand dunes, not that many people came right at
2 the Town line where they do today.

3 Q And were you -- you were there in the summer of 1976?

4 A Yes, I was.

5 Q When you were there in the summer of 1976, were there any
6 people who came over and sat on the property that you had
7 from Ogunquit Beach?

8 A There were a few.

9 Q And were there any neighbors who came down and used your
10 property?

11 A Yes.

12 Q Did you know those people?

13 A Most of them or became acquainted with them as time went
14 on.

15 Q And did you -- were you aware of any signs up on any of
16 the adjacent properties?

17 A Yes, I was.

18 Q On whose property?

19 A Well, I don't know exactly all the properties, there were
20 several properties that had signs posted that said,
21 "Private Beach," "Private Property," "No Trespassing,"
22 "No Loitering." There were quite a few of them.

23 Q And did you and Mr. Shannon, or did you and anybody else
24 put up any signs during the time that you were there?

25 A I did, with the assistance of I think at that time probably

1 A Yes, it is.

2 Q What did the sign say?

3 A Simply, "Private Beaches."

4 Q And who else -- you said this was on the Howe property
5 that it was put up?

6 A Right on there, on their boundary line.

7 Q Did anyone else help you with this sign?

8 A I believe Kevin Howe at that point in time, I think Joe
9 Cerrio, my other neighbor did.

10 Q Did you have to replace the sign at any time?

11 A Several times.

12 Q And from -- when did you first put the sign up, if you
13 recall?

14 A When did I put it up?

15 Q Yes.

16 A The first year that I was there, I believe, probably no
17 later than 1977, I believe it was '76.

18 Q Okay. How long did the sign stay up?

19 A Well, the post is still there the last time I was down
20 there, the sign had been ripped off a number of times.
21 Somebody came down with a 4 by 4 truck one night, put a
22 chain around it, tried to pull it out, just ripped the
23 sign off. I think I replaced it at least three times.

24 Q Was there anybody who assisted you in replacing this sign?

25 A I believe either Joe Cerrio, Kevin Howe, Kevin McHugh.

1 Q And when you left, when you sold your property in 1984 --

2 A Yes.

3 Q -- was the sign up?

4 A I believe it was, at least the posts were. I think the
5 sign itself was.

6 Q What was the purpose of the sign?

7 A Well, from a personal standpoint, it was for my protec-
8 tion. As I understood my liability if I did not post my
9 property as private property, I acquiesced to the public
10 use, I was liable for anything that went on. I think
11 there had been an incident somewhere around there where
12 there was a drowning on the beach. I think this brought
13 that particular situation to my attention more so than
14 ever, and other people just who is liable even though
15 there's a dispute over the ownership, safer probably to
16 protect ourselves and have the ability to reject the pub-
17 lic if we so chose.

18 Q Now when you -- at some point in time did the public use
19 of the public coming from Ogunquit Beach, you described
20 a situation where the walkway changed going over the
21 dunes, at some point in time, did the public coming across
22 to the properties adjacent to you increase?

23 A Dramatically so.

24 Q When was that?

25 A It began when they eliminated the walkway over the dunes

STATE OF MAINE

YORK, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-84-125-

EDWARD B. BELL, et al.,)
))
) Plaintiffs)
))
v.)
))
INHABITANTS OF THE TOWN)
OF WELLS, et al.,)
))
) Defendants)

DECISION

INTRODUCTION

Moody Beach is a sandy beach approximately one mile long, and its boundaries are delineated on the north by a rocky point known as Moody Point, on the east by the Atlantic Ocean, on the south by the town line dividing Wells and Ogunquit, and on the west by a seawall. Moody Beach, for purposes of this case, means that portion of the beach below the seawall. There is a large intertidal zone at Moody Beach, and the mean high water mark is below the seawall. However, it is not unusual for the sea to come up to the seawall and at times over it. There are 126 lots of land on Moody Beach and 3 access ways owned by the Town of Wells providing access from Ocean Avenue to the Atlantic Ocean. The lots are generally 50 feet in width, 150 feet in depth from Ocean Avenue to the seawall. The distance from the seawall to the mean low water mark varies but is generally 500 to 600 feet.

There are approximately seven miles of beaches in Wells and Ogunquit. The three beaches that figure in this decision are Ogunquit Beach, Moody Beach and Wells Beach. Moody Beach is in the middle. Like Ogunquit Beach, it is very beautiful. Ogunquit

Beach has been public for many years and has long been crowded with public beach lovers. Until fairly recently, Moody Beach was serene by comparison. The fact that Moody Beach is no longer as serene as it once was is the reason for this lawsuit.

There are 30 plaintiffs in this case. They own a number of the approximately 125 individual lots on Moody Beach, including the fee in the beach in front of them to the low water mark. Plaintiffs are proceeding through individual quiet title and declaratory judgment actions. Plaintiffs seek to have the court declare that the public does not have general recreational rights on Moody Beach, either above or below the high water mark. Plaintiffs maintain that the public is limited to the rights to fish, fowl and navigate in the intertidal zone as granted to the public in the Colonial Ordinance of 1641-48. Plaintiffs also seek to have the recently passed Intertidal Lands Act, 12 M.R.S.A. § 571 et seq. declared unconstitutional.

The Attorney General¹ has vigorously disputed plaintiffs' interpretation of the Colonial Ordinance, arguing that it grants

¹ In a laudable effort to avoid unnecessary duplication, the Attorney General acted as lead counsel on those parts of the case involving the Colonial Ordinance and the Intertidal Lands Act while the Town of Wells took the lead on the issues of local custom, public easement by prescription and implied dedication. Tier II, meaning the back lot owners at Moody Beach, concentrated on its own issue of private easement by prescription. The remaining defendants, meaning the conservation law organizations who were allowed to join this case to help represent the public interest, participated up until the time of trial but did not appear at trial. Obviously, they thought the public interest was well represented by the other defense counsel. They were right.

the public general recreational rights in the intertidal zones of all beaches in the State of Maine, including Moody Beach.

In addition, the Town of Wells has raised the affirmative defenses of local custom, easement by prescription and dedication. The Town argues that the particular factual history of Moody Beach has earned the Inhabitants of Wells the right to use Moody Beach, including both the intertidal zone and the upland area for general recreational purposes.

Finally, Tier Two, a group of approximately 40 parties who own property behind Moody Beach, claim they have earned a private and personal easement by prescription on Moody Beach by their unique personal history of use of the beach.

All parties recently completed a four week trial.

Plaintiffs' Case in Chief

Plaintiffs proved most of their case in chief prior to the first witness taking the stand. The parties stipulated that the individual plaintiffs own the fee in their respective lots as described in their deeds. These deeds establish ownership to the ocean and it is not disputed that by deed or by deed in conjunction with the Colonial Ordinance's grant of the foreshore to adjacent landholders, the plaintiffs all own the upland and the intertidal zone on their respective properties. The parties further stipulated that plaintiffs had been in uninterrupted possession of their properties for four years or more and that their respective properties are identified by description in their deeds.

The plaintiffs' initial witnesses made clear--and the defendants did not dispute--that defendants claimed some right or interest in both the dry sand and wet sand areas of plaintiffs' property on Moody Beach. It was not disputed that the Town of Wells has refused as a matter of police policy to enforce plaintiffs' private property rights on grounds that the public has a right to use the beach. Private campground owners have also promoted Moody Beach as a public beach and have encouraged their customers to use Moody Beach as a public beach.

Finally the Legislature's passage of the Intertidal Lands Act, 12 M.R.S.A. §§ 571-573 (Supp. 1986) created an obvious cloud on plaintiffs' title that was bound to affect the fair market value of at least some of plaintiffs' properties.

Plaintiffs are entitled, as pointed out by the Law Court in its examination of this case a year ago on the issue of sovereign immunity, to have a trial to determine "the public right, if any, to use the upland and the scope of the public right to use the intertidal zone." Bell v. Town of Wells, 510 A.2d 509, 518 (Me. 1986). Because the Tier II defendants claim a private easement by prescription in Moody Beach, plaintiffs became entitled to have Tier II's claims settled as well.

With the plaintiffs' case-in-chief not in dispute, let me turn to the various claims made by defendants on Moody Beach, beginning with the Colonial Ordinance.

I. THE COLONIAL ORDINANCE²

One major issue to be addressed in this case is whether the Colonial Ordinance of 1648, which is the principal source of Maine's common law of the intertidal zone, granted the public a right to use the intertidal zone for general recreational purposes, even though the fee in the intertidal zone was to be privately owned by the adjacent landowner. It is a matter of historical fact that the general public received an easement for free fishing, fowling and navigation in all privately owned intertidal zones

² The provision of the Colonial Ordinance of 1648 that is in dispute in this case reads as follows:

Everie Inhabitant who is an hous-holder shall have free fishing and fowling, in any great Ponds, Bayes, Coves and Rivers so far as the Sea ebbs and flows, within the precincts of the town where they dwell, unless the Free-men of the same town, or the General Court have otherwise appropriated them. Provided that no town shall appropriate to any particular person or persons, any great Pond containing more than ten acres of land: and that no man shall come upon anothers proprietie without their leave otherwise then as hereafter expressed; the which clearly to determine, it is declared that in all creeks, coves and other places, about and upon salt water where the Sea ebs and flows, the Proprietor of the law adjoining shall have proprietie to the low water mark where the Sea doth not ebb above a hundred rods, and not more wherefoever it ebs farther. Provided that such Proprietor shall not by this libertie have power to stop or hinder the passage of boats or other vessels in, or through any sea creeks, or coves to other mens houses or lands. And for great Ponds lying in common though within the bounds of some town, it shall be free for any man to fish and fowl there, and may passe and repasse on foot through any mans proprietie for that end, so they trespass not upon any mans corn or meadow.

under the express terms of the Colonial Ordinance. The first question, then, is the meaning of fishing, fowling and navigation.

HISTORICAL FINDINGS OF FACT

As factfinder, I had the benefit at trial of four historians with expertise in the 17th Century. They were excellent witnesses. Although I did not accept all of their conclusions, which is to be expected, I found all of them to be credible witnesses. Their testimony, in large part, corroborated previous historical discussions by our Law Court or its predecessor Massachusetts court in regard to the Colonial Ordinance. Bell v. Town of Wells, 510 A.2d 509 (Me. 1986); Storer v. Freeman, 6 Mass. 435, 437 (1810); Conant v. Jordan, 107 Me. 227, 77 A.938 (1910). I see no point in repeating many of the historical details concerning the origin of the Colonial Ordinance. I will confine myself to making findings on new facts that have not been clearly stated in previous Law Court discussions of this matter and that are relevant to the issues generated by this case.

1. The 1648 Laws and Liberties, of which the Colonial Ordinance is an important part, was intended to be a broad skeletal outline of the then existing law in the Massachusetts Bay Colony. The principles and laws expressly discussed in the Laws and Liberties were the more important principles and laws. The Laws and Liberties did not discuss all existing laws. Nor did it pretend to serve as a framework for solving future, unknown governmental problems.

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2. The framers of the Colonial Ordinance granted ownership of the intertidal zone to adjacent shorefront owners to encourage the growth and protection of local commerce.

3. The framers of the Colonial Ordinance did not intend fishing, fowling and navigation to mean anything other than fishing, fowling and navigation. In other words, fishing, fowling and navigation was not some kind of code phrase that, by implication, included other rights as well. In particular, fishing, fowling and navigation did not mean general recreation.

4. The framers did not intend fishing, fowling and navigation to exclude other public rights in the intertidal zone that might have existed prior to 1648. For example, the poor roads in 17th Century Colonial America and the dangers that existed in trying to travel inland, both before and after passage of the Colonial Ordinance, made travel along the intertidal zone a public right on both public and private intertidal zones. Testimony of Professors Koni and Barnes and Defendants' Exhibits 35 44 and 86. The Laws and Liberties expressly discussed the right of drovers to rest cattle in open areas. Barnes, The Laws and Liberties of Massachusetts (1982) at p. 18. Other historical documentary evidence makes it clear that the public could use the beaches for their own travel and for driving cattle. This right by necessity and usage apparently did not survive long enough to be formally approved by the courts as a common law right but there can be no doubt that it was a public right in 1648 and for many years thereafter. The framers also expected that public

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rights by custom could develop and be part of the law subsequent to passage of the 1648 Laws and Liberties, so long as they were not immoral. Barnes at p. 45.

5. The Puritans, who dominated political life in 17th Century Massachusetts, even though they did not constitute a majority of the population, looked upon recreation as a necessity for physical and spiritual well-being. Recreation, like all other aspects of puritan life, had to serve a godly purpose. Excessive recreation, like excessive anything else, was anathema to the Puritan.

6. The Puritans did not believe in exposing themselves to the sun. Neither the Puritans nor anyone else in 17th Century Massachusetts, Maine or England believed in regular bathing as we know it today. Cleanliness was not next to godliness in the 17th Century.

7. There is some scanty documentary evidence (scanty in modern legal terms, apparently significant in modern historical research terms) of occasional recreation by the public on the beach in 17th Century Massachusetts. See defendants' exhibits 32, 59, 60, 63, 93 and 94. There is insufficient evidence to justify a finding that there was any public custom of regular general recreation on the beaches in 17th Century Massachusetts or Maine with the possible exception of recreational fishing and fowling. There is no evidence whatsoever to justify a finding of regular general recreation on privately owned beaches.

8. In the 16th and 17th centuries in England, the privileged few were forming large private parks for their own, exclusive enjoyment, usually hunting. This worked a hardship on the common people and on at least one occasion led to serious riots. The Puritans strongly opposed these parks, partly out of compassion for the poor and partly because they were opposed to any type of conspicuous consumption. The drafters of the Colonial Ordinance did not intend to encourage the development of private recreational parks when they granted ownership of the intertidal zone to adjacent property owners. However, there is no evidence that the drafters of the Colonial Ordinance were even thinking of large, private recreational parks when they drafted the Colonial Ordinance.

9. The Puritans in 17th Century Massachusetts granted small lots of land to each free man to encourage improvement of the land. The town governments held much of the land in common for common use and held much of the land in reserve. Property owners were expected to get along with their neighbors. The Puritans did not view the crossing of someone else's land as a trespass unless some actual damage to the land resulted. When the Colonial Ordinance speaks of "coming upon" the land, it means inflicting damage or removing assets. It does not mean a simple crossing of the land.

10. Although the Puritans had a keen sense of community and communal effort, they also had a keen appreciation of private ownership. Almost all land users in England were tenants of some sort because of feudal law and tradition. The Puritans and other

free men in Massachusetts appreciated the fact that they owned their respective lots and this was a sharp break from the past.

DISCUSSION

The experts were unanimous in their opinions that fishing, fowling and navigation meant just that and nothing more. There is no evidence of any type to rebut that view. The Attorney General conceded at oral argument that the original grant of "fishing, fowling and navigation" rights to the public in the Colonial Ordinance did not include the right of general recreation in the intertidal zone. Instead, the Attorney General argued that the Colonial Ordinance did not preclude additional rights in the intertidal zone that can be identified by the courts through traditional jurisprudential methodology.

Additional public rights in the intertidal zone can be identified by the court when it defines the scope of the public easement in the intertidal zone. Alternatively, the court can recognize a general recreational right in the intertidal zone through its traditional role of recognizing broad common law rights that have been so largely accepted and acted on by the community that it would be "fraught with mischief to set [them] aside." Barrows v. McDermott, 73 Me. 441, 448-49 (1882). Conant v. Jordan, supra. It was through this latter process, of course, that the Law Court recognized that the Colonial Ordinance had transformed itself from a statute applicable to the Massachusetts Bay Colony into a broad common law doctrine applicable to the State of Maine. Common law recognition of public recreational

rights in the intertidal zone would use the Colonial Ordinance as one important source but would draw on other sources as well.

The Attorney General correctly points out that the Maine Law Court has taken a more expansive view of fishing, fowling and navigation than has the Massachusetts Supreme Judicial Court. The Law Court has used its definitional power to make fishing, fowling and navigation include recreational fishing and boating, mooring boats in the intertidal zone, landing boats in the zone and walking on the flats when bare, riding or skating on tidal flats when they are covered by ice, unloading cargo on the flats, digging shellfish in the flats and procuring sea manure.³ The Attorney General also correctly points out that although the Law Court has never ruled that general recreation is part of the public easement in the intertidal zone, it has also never expressly ruled that it isn't. I think it is fair to say that the Attorney General believes that identifying general recreation as part of the fishing, fowling and navigation easement would be a consistent and logical extension of the Law Court's previous efforts to define fishing, fowling and navigation.

³ The procuring of sea manure may have developed as a right growing out of necessity, like driving cattle on the beach, and may have been later identified, carelessly, as one of the rights incidental to fishing, fowling and navigation. Riding and skating on ice may have originated as a public right on great ponds and later identified, carelessly, with the public easement in the intertidal zone. The Law Court has never held that the public's easement in the intertidal zone contains rights that are equal to the public's rights on great ponds, which are owned by the State and held in trust for the public.

I have several problems with this argument. Although not controlling, it is of interest that the Massachusetts Supreme Judicial Court has addressed this very question and ruled that general recreational rights are not included in the fishing, fowling and navigation easement. Butler v. Attorney General, 195 Mass. 79, 80 N.E. 688 (1907).⁴ The Attorney General has argued that the Butler court did not have the benefit of expert historical testimony and did not analyze the issue carefully, as evidenced by the brevity of Butler. As I read Butler, the court did not conduct an extended analysis because they did not think the issue was a close question. Id. at pp. 83-84.

Secondly, the type of intense beach usage sought by the Attorney General for the public in this case (including beach towels, umbrellas, coolers and the slathering of bodies with various oils in search of the perfect suntan) would have been repugnant to the Puritans who drafted the original easement. This modern type of beach usage is no longer repugnant to most modern persons but when the issue is definition of an easement, the intent of the original drafters must be considered.

Thirdly, most of the additional public uses identified by the Law Court in defining the public easement in the intertidal zone are or were incidental to fishing, fowling and navigation. Swimming and sunbathing are simply not incidental to fishing,

⁴ This holding was reaffirmed by the Massachusetts Supreme Judicial Court in Opinion of the Justices 313 N.E.2d 561 (Mass. 1974). However, because it was an opinion only, I do not assign it any weight.

fowling and navigation, unless one is willing to distort the everyday meaning of incidental.

Finally, all of the additional uses identified by the Law Court in the past have been transitory in nature. Yet what the Attorney General seeks in this case is a kind of public right to camp by day on privately owned land. The evidence in this case shows that fishing, fowling and navigation as currently defined by the Law Court imposed only a minimal impact on Moody Beach. It was not until the public began to treat Moody Beach like Ogunquit Beach in recent years that the nature of Moody Beach began to change and it began to lose its serene atmosphere. Extending fishing, fowling and navigation to include sunbathing and swimming and all of the ritual that goes with modern beach usage would cause a dramatic change in the degree and the nature of the burden placed on privately owned beaches.

It is important to remember that the public owns only an easement in privately owned intertidal zones. As clarified in Bell, supra, the State has no interest in the fee in privately owned beaches and there is no public trust doctrine at work here. The easement was spelled out in express terms by the drafters of the Colonial Ordinance. Although this particular easement, like all easements, is subject to continuing judicial interpretation, the basic thrust of the easement must be respected. I am satisfied, on balance, that the easement in the Colonial Ordinance does not include general recreational rights for the public.

As for the argument that a public common law right to use the beaches has evolved from the Colonial Ordinance and other sources, I am similarly unpersuaded.

There was some evidence at trial of swimming in colonial Massachusetts. There was no evidence as to whether swimming was tolerated on privately owned beaches. As for sunbathing, there was no positive evidence at all. Given the Puritans' disapproval of tanned skin (or at least their admiration of white skin) and given the infrequent bathing habits of the English, it seems highly unlikely that there was any consistent usage of public beaches, let alone private beaches, for sunbathing and swimming.

In Blundell v. Catterall, 5 B and ALD.268 (1815) an English court ruled that no public right to utilize private beaches for swimming existed in 1815 or had ever existed, partly because there was no history of usage that would support such a common law customary right. The Attorney General argues correctly that this decision, which was on a three to one vote, has been criticized. However, the majority holding was unanimously affirmed in Brinckman v. Matley, 2 Ch. 313 (1904). Thus in English common law, at least, there was no right to swim and sunbathe on private beaches that grew out of necessity and public usage.

Of course the colonists firmly believed that they were not bound by English common law but were free to develop their own laws as dictated by their own needs and circumstances. Conant v. Jordan, *supra*. at p. 236. Therefore, one has to ask whether the colonists and their descendents developed through need, customs

and usage any consistent enjoyment of recreational rights on private beaches. The record does not favor the Attorney General.

As discussed above, the type of public recreational rights sought by the Attorney General would have been repugnant to the Puritans so we can be sure that the Laws and Liberties of 1648 would not include, by unwritten custom, the type of extensive beach usage sought in this case. The question then becomes whether this type of recreational right--even if it did not exist in England and did not exist in the Massachusetts Bay Colony in 1648--developed subsequent to the drafting of the Colonial Ordinance. If it did, then the fact that the Puritans would not have approved of sunbathing becomes of less significance. In determining the development of general common law doctrine over a long period of time, the focus is on needs, custom and usages over that period of time and not on the intent of the drafters of an easement prior to that period of time.

The evidence is clear that the types of recreational usages sought by the Attorney General for the public have in fact developed over a long period of time, mostly in the last century. However, there is no evidence that would justify a conclusion that these usages were practiced on private beaches as well as public beaches. The lack of evidence on this point is understandable in part. The expert witnesses made it clear how difficult it is to find evidence on recreational customs in ancient times. But even in the last century there is only the skimpiest evidence of the public's use of private beaches for recreational purposes in

Maine. It should be emphasized that the issue here is not whether the public has developed the type of recreational usages that the state seeks to establish in this case. These recreational usages have developed and are obviously important to the public. See, e.g., the findings by our Legislature in 12 M.R.S.A. §§ 571-573. The issue here is whether the public has developed its recreational customs on private beaches. The evidence to support such a conclusion simply does not exist.

The Attorney General argues that the rule of construction in cases involving the granting of public lands favors the public. He points out correctly that "in all grants from the government to the subject, the terms of the grant are to be taken most strongly against the grantee, and in favor of the grantor . "

Commonwealth v. City of Roxbury, 75 Mass. 451, 492, (1857). This rule certainly doesn't hurt the public's case but I don't see how it helps, either. This rule of construction cannot be used to preserve a public right that did not exist at the time of the grant. The fact that the Puritans did not approve of large, private amusement parks does not mean that the ocean front lot owners in 1648 would be governed by a unique form of private property law. Under the Colonial Ordinance the owner of the upland received normal private property rights in the intertidal zone except for the rights reserved for the public under the fishing, fowling and navigation clauses or by some other custom or law. Commonwealth v. Alger, 61 Mass. 53, 68 (1851).

The Attorney General further argues that three other state courts have recognized the right of the public to use beach property for general recreational purposes. Borough of Neptune City v. Borough of Avon-by-the-Sea, 294 A.2d 47 (N.J. 1972); White v. Hughes, 190 So. 446 (Fla. 1939); State ex rel. Thornton v. Hay, 462 P.2d 671 (Ore. 1969).

The problem with these cases is that in all three states, the state owns the fee in the intertidal zone. That particular property law doctrine is, of course, in direct contrast with property law in Maine and Massachusetts. Furthermore the facts of these cases are substantially different from Moody Beach. In the Oregon case, the public not only had a long standing right to use the intertidal zone for recreational purposes but the shorefront owners conceded that at the time they purchased their land, they knew the public had traditionally used the dry sand area of the beach as well as the intertidal zone for recreational purposes. Thornton at p. 674. In the Florida case the public's right to use all beaches below the high water mark for recreational purposes was such a given that it was not in dispute. White at p. 448-449.

The New Jersey case is most helpful to the Attorney General because in that case the Supreme Court of New Jersey rather easily extends the public's traditional English common law public rights of navigation and fishing to include general recreation. Neptune City at p. 54. However, the New Jersey Court takes pains to explain that it is not deciding whether public rights would

exist in intertidal zones bordered by privately owned lands. Id. at p. 54. Neptune City does not deal with a privately owned beach.

It is the private ownership of the intertidal zone and the lack of evidence of any significant public use of privately owned beaches for general recreational purposes that distinguish Maine from other states. The public's need for recreation is important but private property rights are also important. Private property rights should be predictable and not subject to dramatic transformation by the courts when there is an absence of the traditional types of evidence that would normally justify the evolution of a common law doctrine.

For the reasons stated, I conclude that the Colonial Ordinance reserved for the public the right to fish, fowl and navigate in intertidal zones on Maine's beaches. I have been persuaded that the Colonial Ordinance was not exclusive. It did not eliminate other pre-existing common law property rights or preclude the development of new common law property rights. However, I also conclude that a public common law right to use privately owned beach property for general recreational purposes did not exist when the 1648 Colonial Ordinance was drafted and has not developed since.

II. AFFIRMATIVE DEFENSES

The Town of Wells does not rely exclusively on the Colonial Ordinance and general common law development for the establishment of public recreational rights on Moody Beach. The Town also

relies on the law of local custom as it applies to Moody Beach in particular, on the law of easement by prescription and on the law of dedication. These are affirmative defenses raised by the Town and as a result, the burden of persuasion is on the Town. These arguments do not apply to any beaches in the state other than Moody Beach. With regard to these affirmative defenses, I make the following findings of fact.

1. Public attitudes towards private property and trespass were similar in colonial Maine and Massachusetts.

2. The beaches, both private and public, were used by everybody for travel in colonial Maine because of poor roads and the danger from wolves and Indians.

3. Until the mid-nineteenth century there is insufficient documentary evidence to draw any inferences about the use of the beaches in Wells for recreational purposes. However, common sense dictates that the beaches in Wells were occasionally used for swimming and other recreation.

4. The latter half of the nineteenth century saw the beginnings of the "tourist" industry in Wells. Visitors who came to Wells enjoyed the sea air and swimming.

5. By 1856 the principal road to the beaches in Wells traveled from Route 1 to Moody Point, directly between the north end of Moody Beach and the south end of Wells Beach.

6. By 1872 the only beach road in existence in Wells paralleled the beach that is now known as Wells Beach. There was no road running parallel to Moody Beach until Moody Beach was

developed at the turn of the 20th Century. There is no documentary evidence from which one can conclude that local residents and visitors to Wells in the late 19th Century used Moody Beach as opposed to Wells Beach or Ogunquit Beach. Because the only beach road paralleled Wells Beach, it seems more likely that most locals and visitors used Wells Beach. The presence of a lodging house at Moody Point and common sense, once again, dictate that there was occasional public use of Moody Beach for recreational purposes in the second half of the 19th Century.

7. Moody Beach was originally owned by the Town of Wells. At some point that was not made clear during the trial, Moody Beach became privately owned. Moody Beach started to be developed privately by Charles Tibbets and Oscar Hubbard at the turn of the 20th Century.

8. Tibbets and Hubbard, when laying out their 50' lots, left three 35' access ways from Ocean Avenue to the beach at various locations. These access ways have been assumed by everyone to be public access ways, either designed for public recreational use of that portion of the beach in front of the access ways or for emergency vehicles or both.

9. Tibbets and Hubbard did not deed use of the beach to the public or to any back lot owners.

10. A portion of the Tibbets plan shows the easterly boundary of each 50' lot at the seawall above the beach. However, the individual deeds, which control, grant each ocean front lot owner land to the ocean.

11. The Town claims now that it has never taxed the area below the seawall on Moody Beach. I found the Town's property tax system for beach front lots to be incomprehensible. The Town did, however, tax ocean front property at Moody Beach at fair market value in compliance with state law. No ocean front owners were ever told that their property below the seawall was not being taxed.

12. The Town has expended minimal funds on Moody Beach for clean up and police patrol. The Town has expended over \$100,000 on Wells Beach for seawall construction and practically nothing on Moody Beach for seawall construction.

13. The Town has posted a lifeguard at the Moody Beach parking lot since the 1950's. The lifeguard's primary function was to cover the public beach in front of the Moody Beach parking lot although he would occasionally move northward on to Moody Beach as well. The Town thought for years that this public beach belonged to Wells. Sometime in the 1970's a court determined that the Moody Beach parking lot and the beach in front of it belonged to Ogunquit. It was and remains a public beach, regardless of ownership. The Town did not post a lifeguard at the Bourne Avenue public access point until approximately 1978. The Town's lifeguards have patrolled outside the Bourne public access area on occasion and have been told to stay in the public access areas by beach front owners on occasion.

14. The Town built restrooms at the Moody Beach parking lot in 1966.

15. The Town's efforts to clean Moody Beach have been few and fitful and have been opposed by some of the beach front owners.

16. As factfinder, I found most of the lay witnesses on both sides to be sincere people who believed they were telling the truth. I found some of these sincere people to be more credible than others. I found Dr. Warren Jones, in particular, to be an intelligent, observant witness with a good memory. Although, like most of the witnesses, he has an interest in the outcome of this case, I found him to be a highly credible witness. This is not meant to disparage the other lay witnesses. Many of them were intelligent, articulate witnesses. I simply point out that I found Dr. Jones to be particularly credible.

17. Until sometime in the late 1950's or early 1960's, there was minimal use by the public of Moody Beach for sunbathing and swimming on an organized basis. From the turn of the century until the 1960's, members of the public would walk the beach on a regular basis and they would use the beach on occasion for a bonfire or for a ballgame or some other recreational activity. But in terms of taking the family to the beach for a day or a half day and spreading out a blanket and using the beach as the Town seeks to use it now, such public recreational activity was minimal and was confined to the access zones until the 1950's. Until the 1960's, Moody Beach was so large and use of Moody Beach by the public was so minimal that those members of the public who did use Moody Beach outside the access ways for sunbathing and swimming were so few as to not be identifiable as members of the

public. Until the 1960's, Moody Beach had the appearance of a private beach populated by the people who lived in the cottages on the ocean front.

18. In the late 1960's, public usage of the access ways increased to the point where on a good beach day, upwards of 15 members of the public would be spread out from one to four cottages on either side of the access ways and this became a concern of some beach front owners.

19. In the late 1960's, Dr. Jones started telling all strangers who sat on dry sand in front of his cottage (the fourth cottage north of the Bourne Avenue access way) to leave because they were on private property. They would leave, although sometimes reluctantly. Dr. Jones had never heard of Moody Beach being considered a public beach and he posted his land in 1968 as private land as did other beach front owners in the late 1960's and 1970's. Dr. Jones' signs were posted 25' from the seawall in dry sand. Other private property signs were posted at the junction between Ogunquit Beach and Moody Beach in the soft sand in the early 1970's.

20. Dr. Jones never ordered anyone to leave the intertidal zone in front of this cottage except once for a lifeguard. With the possible exception of George Pope and his predecessor in title, no other beach front owners ordered the public off their property in the intertidal zone. Dr. Jones and all of the other beach front owners were willing to let the public walk the beach and remain willing to do so.

21. In 1968 Dr. Jones got in an argument with a police officer over Dr. Jones' right to post his private property sign in the soft sand. The police officer told him to take the sign down. Dr. Jones complied but the next day complained to the Wells town manager, Mr. Littlefield. Mr. Littlefield told Dr. Jones that the police officer was wrong and Dr. Jones could repost the signs. Dr. Jones put out the signs every year until 1984.

22. In the mid 1970's the public usage of Moody Beach began increasing noticeably. It was not until the 1970's that the public began using Moody Beach outside the access zones in significant numbers.

23. A number of plaintiffs other than Dr. Jones have told members of the public using the dry sand in front of their cottages to move because it was private property. Generally the public has moved when told.

24. Plaintiff Edward Bell built a symbolic fence on his dry sand in the late 1960's to provide notice that his property was private. He testified that he got the idea from Harvard College, which apparently has a policy of erecting gates at strategic locations once a year to preserve the privacy of certain routes. Mr. Bell did not build his symbolic fence because the public was using his land in significant numbers. He built his fence and posted notice in the Registry of Deeds because he feared what might happen in the future.

25. Randall Cooper is trustee of the property adjoining the Bourne Avenue public access and has been living there off and on

since the 1950's. Unlike many other plaintiffs, he has never told any members of the public to leave his property, even though the public occasionally used the dry sand area of his property in the 1950's and 60's and with increasing frequency since the 1970's. Mr. Cooper, who is a lawyer, has taken the position that the public uses his property with his permission even though he has never given anyone express permission. Mr. Cooper also took the position that if no one abuses your beach property, you give them permission to share it with you.

26. None of the beach front owners who testified had ever been told that Moody Beach was a public beach. They all were either assured or assumed at the time of purchase that Moody Beach was private. The belief that it was private figured significantly in their decisions to purchase.

27. The non-beach front owners who testified, with one exception, all believed that the public had a right to use Moody Beach for recreational purposes. They did not believe the town had any deeded interest in the beach. They testified that they simply assumed it was public because that's the way it had always been.

28. Real Frechette was a rebuttal witness for the plaintiffs who volunteered to testify after the trial began when he heard or read about the case in the newspaper. He may have been the only totally disinterested witness in the entire trial and I have assigned his testimony some weight. Mr. Frechette worked as a ticket agent at the Wells railroad station from Memorial Day

to Fall in 1943, at a time when almost everyone traveled by train because of the war. Mr. Frechette was told by Mr. Knox, the Wells station master, that Ogunquit Beach and Wells Beach were public but Moody Beach was private and that he should stay away. I interpreted Mr. Frechette's testimony to mean that he was given this information as part of his general instructions so that he could pass this information along to those arriving visitors who asked. However, I am not sure on this last point and it may be Mr. Frechette meant that he was told personally not to use Moody Beach.

29. David Strater, a 66 year old attorney who has lived in the York-Ogunquit area all of his life and who has practiced in the area, has always advised his clients that Moody Beach is private subject only to the Colonial Ordinance. He informed the Town of Wells' officials of this position on behalf of Plaintiff Edward Bell in 1966. He also informed the Town in 1966 that Mr. Bell had posted his land in compliance with the posting statute, 14 M.R.S.A. § 814, at the York County Registry of Deeds.

30. I find the Town's official position on its right to use Moody Beach to be vague. It is clear from defendant's exhibit 103, a letter from Town counsel Barnett Shur to Attorney Strater, that the Town was claiming that the public had the right to use Moody Beach by 1966. However, Attorney Shur was vague about where the Town acquired its rights. When read in its totality, the letter from Attorney Shur seems to be stating that the public's right to use the beaches in Maine was based on the Colonial

Ordinance and thus would not be changed by the statutory postin by Mr. Bell. There is no mention of custom or prescription or dedication. There is only mention of a general public right to use all beaches in the State of Maine. This could refer only to the Colonial Ordinance. Attorney Shur acknowledges in this letter that those rights are in dispute and will have to be decided by the Maine Law Court.

Another example of official vagueness is a road sign posted by the Town of Wells in 1953 on Route 1 reading "Moody Beach, Public Beaches and Free Parking." Plaintiffs exhibit no. 61b. This can be read to be a claim that Moody Beach is a public beach. However it can also be read as a directional sign that, if followed, will lead someone to Moody Beach, to some public beaches and to free parking. At the time the sign was first erected, the sign, if followed, would have brought a tourist to a parking lot. Standing on that parking lot and facing the ocean, a visitor would have found Ogunquit's two mile public beach on his right, Wells' public portion of Moody Beach directly in front of the parking lot and the remainder of Moody Beach with the public accesses on his left. Later, as stated earlier, this situation would change because it was determined in a lawsuit that the public beach directly in front of the parking lot was part of Ogunquit's public beach and did not belong to Wells.

31. The rights of way leading from Ocean Avenue to Moody Beach are the Bourne access, the Furbish Road access and the Charles Street access. The Town of Wells took the Bourne access

in 1892 when it laid out Bourne Road. Defendants' Exhibit No. 14. The public started using the Furbish access and the Charles Street access sometime in the 1920's or 1930's, although the evidence on this point was less than clear. In 1938 the Town voted not to abandon the Bourne Avenue right of way, partly because it was used by teams (presumably to gather sea fertilizer). Plaintiffs' Exhibits 58c and d. The three rights of way were never conveyed by the developers of Moody Beach. In March of 1983, the Town took 19 rights of way to Wells Beach and Moody Beach, including the three access ways mentioned above. The town took these rights of way to the low water mark.

32. In 1925 the Ogunquit Beach district, with the cooperation of the Town of Wells, took Ogunquit Beach by eminent domain from Charles Tibbets. Ogunquit Beach is two miles long and lies immediately south of Moody Beach. It was taken to be used as a public beach. This left Mr. Tibbets as private owner of the one mile stretch of Ogunquit Beach now known as Moody Beach. Ogunquit Beach remains a popular, heavily used public beach to this day.

CUSTOM

The first issue to settle in deciding the issue of local custom as an affirmative defense is to determine whether it exists as a defense in the State of Maine. Plaintiffs have argued vigorously that it does not exist in Maine. Although our Law Court has never formally approved the doctrine, Piper v. Vorhees, 130 Me. 305 (1931), I am satisfied that it does exist as part of Maine's common law. The law of custom was part of English common

law and was recognized in the Laws and Liberties of 1648, which, of course, contain the Colonial Ordinance. It was also recognized in the 1801 History of Land Titles by James Sullivan, attorney general of Massachusetts. It has also been implicitly recognized by the Maine Legislature in its posting statute 14 M.R.S.A. § 812, 812-A. It has also been recognized in other jurisdictions. Puffen v. Beverly, 187 N.E.2d 840, 345 Mass. 396 (1963); Knowles v. Dow, 22 N.H. 386 (1851). Our Law Court has recognized the role of custom in shaping our State's general common law. Conant v. Jordan, *supra.*, and the Colonial Ordinance has become part of our common law. If an ancient common law doctrine like local custom is to be abrogated, it should be done by the Legislature or the Law Court, not by the Superior Court.

To prove a local custom, defendant Town of Wells must prove by a preponderance each of seven facts.

1. The custom must have been in effect "so long as the memory of man runneth not to the contrary";
 2. The right must have been exercised without interruption;
 3. The use must be peaceable and free from dispute;
 4. The use must be reasonable;
 5. The land impressed with the custom must have boundaries;
 6. The custom must be obligatory; and
 7. The custom must not be repugnant to other customs or law.
- State ex. rel. Thornton v. Hay, 462 P.2d 677 (Ore. 1969).

Defendant Town of Wells did not satisfy me factually at trial by a preponderance of the evidence of the first and third

criteria and therefore their affirmative defense of custom must fail.

There was insufficient evidence presented at trial to draw any inferences at all as to any kind of consistent use of Moody Beach for recreational purposes by the public from colonial days until the mid-nineteenth century. From the late 1800's until Ogunquit Beach was taken by eminent domain in 1925, there is evidence indicating that Wells' beaches were used for general recreational purposes. However, on the question of which beach was used, what little evidence exists (the road structure on Wells Beach and postcards such as defendants exhibits 5, 6A, B, C and D) suggests that the beach currently known as Wells Beach was the primary public recreational center in Wells. Wells Beach continued to be used as a public beach subsequent to 1925. As for Ogunquit-Moody Beach, the simple fact that Ogunquit Beach was taken for public use while Moody Beach was developed privately, when combined with the eyewitness testimony, proved to me that from 1925 until the 1970's, Ogunquit Beach and the disputed portion of public beach in front of the Moody Beach parking lot served as the public beach for the vast majority of beach users in Wells and Ogunquit. The defendants produced evidence that in the late 1950's and 1960's a few members of the public used the Bourne and Furbish Avenue extensions and spilled over a short distance on either side of those extensions. Defendants also proved that in the 1950's and 1960's there was some spillover northward into Moody Beach for a short distance from the public beach in front of the Moody Beach

parking lot. Defendants also proved that as far back as eyewitness testimony can take us, members of the public consistently strolled up and down the intertidal zone of Moody Beach at low tide and even on the dry sand at high tide. Defendants failed, however, to prove that any significant number of the public started to spread out across Moody Beach with blankets and accompanying paraphenalia until the late 1970's. Even defendant's witnesses testified that on a good beach day in the 50's and 60's, there would be "hundreds" of people on Moody Beach. (See testimony of John Holder and Esther Pisaruk). Hundreds of people on a beach one mile long and 500 to 600' wide at low tide is very few people. They could be accounted for almost in their entirety by the occupants of the then existing ocean front cottages of Moody Beach and the few back cottages then in existence.

Defendants also failed to prove to me as factfinder that the public's right to use Moody Beach was free from dispute. Many witnesses from Wells and from the Tier II group testified that they never knew anyone to suggest that Moody Beach was private. All of the beach front owners testified to the opposite. The only disinterested witness (the assistant ticket agent in 1943) corroborated the beach front owners. The ambivalent position of the Town's officials, specifically Mr. Littlefield and Mr. Shur, the distorted expenditure of public money on Wells Beach as opposed to Moody Beach and the isolating of the lifeguards at the parking lot south of Moody Beach until the 1970's also suggest to me that

the Town of Wells itself was not totally convinced that Moody Beach was a public beach.

In addition, shortly after the public began spilling over the access routes in the 1960's, certain beach front owners began disputing the public's right to use the beach and at least seven of those owners continued to protest visibly until the current suit was filed.

Having failed to meet its burden on two key factual issues, Wells has failed to meet its burden on the common law defense of local custom.

PRESCRIPTION

The party asserting a public easement by prescription must prove continuous use for at least 20 years under a claim of right adverse to the owner, with his knowledge and acquiescence, or a use so open, notorious, visible, and uninterrupted that knowledge and acquiescence will be presumed. Town of Manchester v. August County Club, 477 A.2d 1124, 1128 (Me. 1984). Unlike the majority of jurisdictions our law holds that with regard to creation of public recreation easements by prescription in wild and uncultivated land, open and continuous use raises a rebuttable presumption that the use was permissive. Manchester, supra, at 1130. This rule is predicated on the notion that such use by the general public is consistent with, and in no way diminishes, the right of the owner in his land.

The only open and continuous public use that defendant proved to exist in this case for the 20 years preceding the

filing of this lawsuit in 1983 was the public's (and the plaintiffs' for that matter) consistent habit of strolling up and down the length of Moody Beach. All of the plaintiffs testified that they were perfectly willing to permit this, never complained about it and would continue to permit this activity in the future. This public activity is consistent with and does not diminish the rights of the plaintiffs on their land. It is not adverse use. Inhabitants of Kennebunkport v. Forrester, 791 A.2d 83 (1978). This activity is presumed permissive and will not establish an easement by prescription. The occasional spillover by members of the public from the three access ways prior to 1983 was objected to by almost all of those plaintiffs who testified and who were affected by the spillover during the 20 year period. The one exception among the plaintiffs was Mr. Cooper. Even in Mr. Cooper's case, I don't think the spillover was adverse enough or frequent enough prior to 1970's to justify the creation of an easement by prescription. Mr. Cooper and his family have taken the position that the public has permission to share their beach so long as the public does not abuse the privilege. This generosity of spirit should be encouraged and will be protected by Maine's presumption of permission on privately owned beaches until it becomes factually clear that the public is making an adverse claim. The adverse claim in Mr. Cooper's case did not become clear until the late 1970's.

DEDICATION

To prove dedication, defendants must prove that Moody Beach was dedicated by Mr. Tibbets to the Town or the public and that the public accepted the dedication by some affirmative act. Dedication is an appropriation of land to some public use and there must be evidence of a clear intent to dedicate. Manchester, supra. at p. 1129. This issue does not merit lengthy discussion. There is no clear evidence of Mr. Tibbets' intent to dedicate either expressly or by implication. The evidence on that point (the existence of the access ways, the boundary lines on the portion of the plan still in existence (defendants' exhibit 18) and Mr. Tibbets' alleged failure to protest when he saw someone on Moody Beach back when it was being developed) does not begin to form a clear intent to dedicate.

II. THE INTERTIDAL LANDS ACT

While the Law Court's decision on sovereign immunity was pending in this case, the Legislature enacted "The Public Trust in Intertidal Land Act," Chapter 782 of the 1985 Public Laws. 12 M.R.S.A. § 571-573 (the Intertidal Act).⁵ In the Intertidal Act,

⁵ The pertinent portion of Sections 571-573 is as follows:

§ 571. Legislative findings and purpose

The Legislature finds and declares that the intertidal lands of the State are impressed with a public trust and that the State is responsible for protection of the public's interest in this land.

the Legislature found and declared that all of the intertidal land in Maine are impressed with a public trust. The Legislature declared that this public trust was part of Maine's common law. The Legislature then found that the public trust in the intertidal zones included the rights of fishing, fowling, navigation and recreation.

Plaintiffs claim that the Intertidal Act violates the Maine Constitution's separation of powers, I agree.

The Maine Constitution states that no persons belonging to the legislative, executive and judicial departments "shall exercise any of the powers properly belonging to either of the others, except in case herein expressly directed on or permitted." Art.

The Legislature further finds and declares that this public trust is part of the common law of Maine and generally derived from the practices, conditions and needs in Maine, from English Common Law and from the Massachusetts Colonial Ordinance of 1641-47. The public trust is an evolving doctrine reflective of the customs, traditions, heritage and habits of the Maine People. In Maine, the doctrine has diverged from the laws of England and Massachusetts. The public trust encompasses those uses of intertidal land essential to the health and welfare of the Maine people, which uses include, but are not limited to, fishing, fowling, navigation, use as a footway between points along the shore and use for recreational purposes. These recreational uses are among the most important to the Maine people today who use intertidal land for relaxation from the pressures of modern society and for enjoyment of nature's beauty.

The Legislature further finds and declares that the protection of the public uses referred to in this chapter is of great public interest and grave concern to the State.

1985, c.782.

III, Section 2. The separation of powers mandated by the Maine Constitution is much more rigorous than the same principle as applied to the United States Constitution, where the separation of powers is only inferred. State v. Hunter, 447 A.2d 797, 799 (Me. 1982).

The Legislature is free to codify, alter or abrogate a longstanding rule of common law. Atlantic Oceanic Kampgrounds v. Camden Nat., 473 A.2d 884, 886 (Me. 1984). However, the Legislature must do so by making new law, not by interpreting existing law. Interpreting existing law is the function of the judiciary. Atlantic at p. 887.

Section 571 of the Intertidal Act states that the public trust doctrine found by the Legislature is a presently existing part of Maine's common law that grew out of Maine's conditions, need and practices, the English Common Law and the Colonial Ordinance of 1641-1647. The Legislature found that the public trust is an evolving doctrine that (at the time of passage of the Intertidal Act) included fishing, fowling, navigation and recreation. As the attorney general argues in his brief, "The Legislative history of the Act demonstrates that its purpose was to confirm and legislatively recognize existing public rights." Note the words "confirm", "recognize" and "existing". In other words, the Legislature was not making law, it was recognizing existing law. This interpretation of the Intertidal Act is supported by the Statement of Facts contained in Legislative Document 2380 and by the statement of co-sponsor Senator Trafton, who stated: "The

bill does not create new rights. Rather this bill confirms or recognizes the traditional rights of the people of Maine" Legislative Record, p. 734 (1986).

The problem here is that in writing the Intertidal Act, the Legislature was making common law interpretations that have never been made by the Law Court. The Law Court in Bell, supra., subsequent to enactment of the Intertidal Act, reaffirmed that whatever rights the public enjoys in the intertidal zone under the Colonial Ordinance exist as an easement, not a trust (or at least not yet a trust). Bell also clarified that the State is not responsible to the public as trustee of the public easement in the intertidal zone. Nor has the Law Court ever held that the public easement in intertidal zone includes the right of general recreation. That issue has been presented for the first time in this case and I have concluded in Part I of this decision that the public does not enjoy any general recreational right on privately owned intertidal zones in Maine. Only the judicial branch of government can make that kind of interpretation of existing common law.

It is possible, of course, that the Law Court may eventually redefine or clarify the public easement in the intertidal zone. One of the great strengths of the common law is that it can be subjected to reexamination and reinterpretation to meet society's changing demands. In fact, the Law Court has remarked that the extent of the public rights under the Colonial Ordinance is not entirely clear. Blaney v. Rittall, 312 A.2d 522, 528 n.7 (Me.

1973). However, any such reinterpretation of existing case law can be carried out only by the courts.

For the reasons stated, I conclude that 12 M.R.S.A. § 571-573, the Public Trust in Intertidal Land Act, violates Art. III Sec. 2 of the Maine Constitution. Because of this ruling, there is no need for me to determine whether the Intertidal Act, if it had been written to create new public rights, would be an unconstitutional taking of private property in violation of the United States and Maine Constitutions.

In the event the Law Court disagrees with my conclusion regarding the separation of powers, I make the following findings of fact concerning the takings argument.

1. It is very difficult at this stage to determine the impact of the Intertidal Act on the fair market value of plaintiffs' property. Depending on the location of plaintiffs' various cottages--in particular, their proximity to the public access ways to Moody Beach--the impact of the Intertidal Act will diminish plaintiffs' fair market value from minimal to no more than 25%.

2. Plaintiffs--at least those who testified--purchased their respective properties with the reasonable expectation that they were purchasing a private beach. Some of them knew of the Colonial Ordinance but none expected any significant public use of the beach outside of the public strolling up and down the beach.

IV. TIER II

Approximately 40 parties to this case own property on North and South Tibbets Streets and other locations on the westerly

side of Ocean Avenue across from Moody Beach. They claim personal easements by prescription in Moody Beach because of their unique circumstances. In other words, they claim private easements independent of any rights the public may have in Moody Beach.

In addressing these claims, I make the following findings of fact for each Tier II defendant.

Robert and Madelyn Beauregard

Robert came to Moody Beach for the first time in 1948 as a visitor. He rented in Wells and walked Moody Beach on occasion. He missed some years but came back in 1965 and stayed with the Fortunados. In 1968 he bought a house on South Tibbets Street and moved to an ocean front cottage in 1985 and then moved back to South Tibbets. He has used the beach permanently on a seasonal basis since 1965. He uses the Furbish public access. He usually turns right after entering the beach from Furbish and sits in different locations depending on circumstances (number of people on beach, location of friends, etc.). Madelyn has used Moody on and off since 1938. Like her husband she did not start using Moody on a continuous basis until 1965. She sits at various locations on the beach, utilizing both the intertidal zone and the dry sand. The Beauregards (one or the other) have fished on the beach, played frisbie and ball games and walked the beach.

Frederick and Mildred Beauregard

Frederick and Mildred came to Moody Beach in 1959 with a friend and bought a house on North Tibbets Street that same year. They have used the beach with their ten children continuously

ever since 1959 from March to November for such activities as frisbie, ball playing, kite flying and walking on both the wet and dry sand. They have used three different access points and sit at various locations on the beach. Attorney Hatch, who did considerable real estate work in the Wells area while he was alive, indicated to the Beauregards at the time of purchase of their cottage that they could use the entire beach. Either Mr. or Mrs. Beauregard or both participated in the sit-in in front of plaintiff Kenary's cottage after Mr. Kenary had ordered some Tier II children off his beach.

John and Joanne Anderson

The Andersons first came to Moody Beach in 1963 and rented an ocean front cottage for three years. During that period they would sit in front of their cottage. They bought property on North Tibbets Street in 1965 and built on that property in 1966. Since 1966 they have used the Furbish access. They normally turn right after entering the access, move down three or four cottages and sit down. They use the wet and dry sand. They sunbathe, surf, swim, play frisbie and walk up and down the beach as far as Ogunquit at both low and high tide.

Harold Anderson

Mr. Anderson first came to Moody Beach in 1963 but until 1972, he would visit only on occasional weekends with his brother. In 1972 he bought a duplex on South Tibbets Street. Since then he has continuously used the Furbish access although he moved to the westerly side of Ocean Avenue in 1981 or 82. He turns right and

normally sits with his brother John. He uses the beach for surfcasting, walking and practicing his golf swing.

George and Louise Bertini

George first came to Moody Beach with his parents and grandparents in 1933. He stayed in rentals until 1959 when he purchased a place on South Tibbets Street. Since 1962 he has been living on South Tibbets Street all summer long. Louise first came to Moody Beach in 1958 and has been coming back continuously since 1962. The Bertinis have used the Furbish access since 1962. They turn in both directions and sit in various locations wherever it pleases them from Ogunquit to Furbish.

Raymond and Judith Maureen Morin

The Morins first came to Moody Beach in 1966 to rent. They purchased two properties the same year. They were told by Jim Frazier, who was an heir of the Tibbets estate and who sold Tibbets estate property to a number of Tier II owners, that the public had access to Moody Beach and that the public could use the beach for recreational activities. The Morins use the Furbish access and turn both ways to sit but more often to the left. They swim, walk and have played ball with their children.

Charles Grover

Mr. Grover first came to Moody Beach in 1947. He rented an ocean front cottage for many years for two weeks each summer and while doing so, generally stayed in front of his rental. He bought land in 1965 and built a cottage in 1980. Since 1980 he has used the Furbish access and will sit to the right from four

to six cottages, in both dry and wet sand. The crowd on any given day determines where he sits. Mr. Grover's chief beach activity is walking. He has seen private property signs on the seawall. He has been a member of the Moody Beach Association for 25 to 30 years.

Robert and Ruth Tabor

Mr. and Mrs. Tabor first came to Moody Beach to visit friends in 1947. They have been back every year since and have walked all parts of the beach every year. In 1971 they purchased a property mid-way between the Bourne and Furbish accesses and also a deeded right of way across the Day property to the beach, which they still use. They built on the property in 1981. They sit on the beach in front of their right of way. They saw some private property signs in the early 1980's and Mr. Tabor saw Mr. Bell's symbolic fence. In addition to walking, they swim and play bocci ball.

William F. Savage, Jr.

Mr. Savage first came to Moody Beach in 1959. He bought property in 1959. He uses his cottage from April to October. He has used the beach continuously for such activities as swimming, fishing and walking on both wet and dry sand. He was told by an attorney at the time he purchased his property that he could use the beach by the right of way. He never saw any private property signs on the beach but he remembers Mr. Bell's symbolic fence. He generally sits on the beach as close to the access as

he can. He has used the Furbish access and he has also used Margie's store as an access.

Agnes and Kevin Garthwaite

Mrs. Garthwaite first came to Moody Beach in 1947 and has been staying there continuously as a property owner since 1965. Prior to 1965, her beach excursions were on the public beach in front of the Moody Beach parking lot. She purchased a second cottage in 1972 with a deeded right of way and has used that right of way since. She is a real estate agent who has sold properties on Moody Beach and she has never told anyone the beach is private.

Her son Kevin, also a Tier II party, has used the beach since the 1950's. He purchased a property on the westerly side of Ocean Avenue in 1977 or 1978 and has used the beach continuously since then.

Raymond and Margaret Angelucci

Mr. and Mrs. Angelucci first came to Moody Beach in 1934. They rented a series of cottages on the ocean until 1970 when they started renting on North Tibbets Street. They bought a cottage in 1978. They have used the Furbish access since moving to North Tibbets Street and they do not concentrate on any one spot on the beach. They swim, play games and walk. They saw private property signs approximately five years ago.

William C. and Evelyn Penney

Mr. Penney first came to Moody Beach in 1948 and spent two week vacations in rented cottages until 1963 when he built a

cottage on South Tibbets Street. He has used the Furbish access since building. Mr. Penney was president of the Moody Beach Association for three years and has organized summer games for the children. (The Moody Beach Association held a Fourth of July celebration for children each year, alternating the festivities at the Bourne and Furbish accesses. This was attended by children of both back lot and ocean front owners.) Mr. Penney sits three or four houses to either side of Furbish access now. He has in the past used the beach for horseshoes, softball and volleyball. Until he built his house, he used the Furbish access, access through Margie's store and one other access north of Furbish (Charles Street?). Mr. Penney does not recall the demonstration at the Kenary property although Mr. Ravioli remembers that Mr. Penney was part of it.

Elmer J. Flynn

Mr. Flynn first came to Moody Beach in 1960 but did not start staying there continuously until 1972. He, too, was told by Mr. Frazier of the Tibbets estate that he had a right to use the beach. He has played games on the beach and walked it.

Oscar C. and Yvonne Demuth

Mr. and Mrs. Demuth first came to Moody Beach 35 years ago and stayed at a rental close to Ogunquit Beach. In 1965 they bought a home on South Tibbets Street. They have used the Moody Beach and the Furbish access continuously since 1965 and they vary their beach sitting spot depending on circumstances. Mr. and Mrs. Demuth remember the Kenary sit-in and they remember Mr.

Bell's symbolic fence. They have played ball and flown kites on the beach and Mr. Demuth organized the golf ball driving event as part of the Association's July 4th celebration.

James Fortunato

Mr. Fortunato first visited Moody Beach in 1964 when he visited friends in Wells but he did not start staying at the beach until 1965 when he purchased a lot on South Tibbets Street. He has used the beach continuously since then. He uses the Furbish access, turns right and customarily looks for a comfortable spot one to four cottages down. He was told by Mr. Frazier of his right to use the beach. He has had cookouts on the beach with his children.

Ed and Martha Weagle

Mr. and Mrs. Weagle visited their relatives at Moody Beach on occasional weekends from 1955 to 1965. They did not start continuous use of the beach until 1965 when they purchased a cottage on Bell's Drive. They use the Furbish access and sit at various locations. They walk the beach to Ogunquit and back using both the dry and wet sand. They have 20 days vacation each year and spend it at Moody Beach.

Jane Weagle

Mrs. Weagle's late husband bought a home on Moody Beach in 1963. Mrs. Weagle first came to Moody Beach in 1966. She uses the Furbish access and generally stays in the Furbish area. She has used the beach for games and flying kites and walks the beach.

James and Mary Cassidy

Mr. Cassidy first came to the beach in 1951 as a boy. Mrs. Cassidy first came to the beach in 1965. Mr. Cassidy has used the beach for many activities including swimming, digging, biking, drinking, boating, baseball, softball, volleyball, flying kites and picnics. He has used all the accesses and all the beach, although most of his activity has been on the northern part of the beach near his home. Now he and his wife mostly walk the beach. Mr. Cassidy and his wife have been buying property at Moody Point and South Tibbets Street since 1981 and they rent these properties. Mrs. Cassidy, like some of the other defendants, refers to the Moody Parking Lot Beach as "the public beach."

Richard Merrifield

Mr. Merrifield visited Moody Beach on day visits as a child but didn't start continuous use of the beach until 1967 when he started living in a house he built on North Tibbets Street. He uses two public accesses to the beach. He owns and rents four units somewhere at the beach. He walks the beach regularly on both the dry and wet sand.

Helene and Wayne Larkin

Mr. and Mrs. Larkin have been walking Moody Beach since 1965 but they did not start continuous use of the beach until 1977 when they bought property on the westerly side of Ocean Avenue. They swim on the beach and walk the beach.

Robert Roche

Mr. Roche has been using the beach continuously since 1963, first as a renter and since 1970 as a property owner. He is a member of the Moody Beach Association and has played badminton, football and bocci on the beach. He swims every day for an hour at the beach. Where he sits on the beach is determined by how many people are on the beach.

John and Mary Iritano

Mrs. Iritano has been using the beach continuously for 61 years and Mr. Iritano since 1944. At first Mrs. Iritano would cut across an empty lot to the ocean. She has been using the Furbish access since her parents bought a property in 1957. She bought in 1962 on South Tibbets Street. They swim, sunbathe, and walk the beach and sit in various locations although they favor the left. They use both the wet and dry sand areas.

George Bushee

Mr. Bushee first came to Moody Beach to visit friends in 1962 but he did not start continuous use until 1975 when he bought a house at Moody Beach. He uses the Furbish access. He walks the beach to Ogunquit every day on both the wet and dry sand. He sits on the beach in various locations.

R. Stanley Jacobson

Mr. Jacobson first came to Moody Beach 58 years ago and has been using the beach continuously since after World War II. He built his own house in 1965. He uses the Furbish access and turns both ways. He walks the entire beach on both wet and dry sand.

John J. Sullivan, Jr.

Mr. Sullivan first came to Moody Beach in 1962 and rented cottages. He has occupied his own place off South Tibbets Street since 1966. He uses the Furbish access and turns left or right to sit, depending on who is on the beach. In the last few years he has been going four, five or six houses away from the access before sitting.

Dr. Paul Sharkey

Dr. Sharkey first came to Moody Beach in the 1950's to visit friends who had an ocean side cottage. In 1963 he purchased his own place on the westerly side of Ocean Avenue and has used the beach continuously since then. He used the Furbish access mostly until 10 years ago when he purchased his own right of way. He sits in different areas on the beach and has always walked the beach on both wet and dry sand.

Donald Peterson

Mr. Peterson visited friends and a brother and uncle and walked the beach when he visited. In 1976 he began continuous use of the beach when he purchased his property on Furbish Road. He sits in various locations on the beach, depending on where his friends are. He swims and walks the beach in both the wet and dry sand area. He has also driven golf balls on the beach.

Kenneth C. Ravioli

Mr. Ravioli first visited Moody Beach in 1950. He has visited the beach every year since then except for 1968 and part of 1969 when he was in Vietnam. From 1957 to the present Mr. Ravioli has

used the Furbish access. After entering the beach access he turns to the right and sits in front of the first or second house. Mr. Ravioli testified that when the number of people using the access way increased five years ago, he might have to go up to five houses to the right. Mr. Ravioli participated in the Kenary demonstration approximately ten years ago. He remembers Mr. Kenary claiming that his beach was private and then a half dozen back-lotters sat in front of Mr. Kenary's cottage to demonstrate their right to use the beach. Mr. Kenary came out and argued with them. A police officer arrived and stated that he didn't know what to do. Mr. Kenary asked the officer to evict the demonstrators. The officer asked the demonstrators to leave to avoid a confrontation. The demonstration lasted approximately thirty minutes and there was no more trouble.

Mr. Ravioli has swum and walked the beach for years. He uses the wet and dry sand.

John and Marie Walsh

Mr. and Mrs. Walsh have been coming to Moody Beach since 1957. Until 1974 they came to Moody Beach on occasion to visit a friend. Their continuous use of the beach began in 1974 when they purchased a cottage on the westerly side of Ocean Avenue. Since 1974 they have used a variety of accesses and have sat in a variety of locations on the beach.

Common Findings of Fact

Except for the confrontation that several of the Tier II members had with Mr. Kenary, none of them ever had any problems

on the beach with any plaintiffs or anyone else. No Tier II members ever asked permission to use the beach and none ever received permission. They all just assumed they had a right to use the beach.

DISCUSSION

To establish a personal easement by prescription, the Tier II members must prove what the Town had to prove on its public easement by prescription. They must prove continuous use for twenty years under a claim of right adverse to the owner, with his knowledge and acquiescence, or a use so open, notorious, visible, and uninterrupted that knowledge and acquiescence will be presumed.

Many of the Tier II members had not established twenty years of continuous use of Moody Beach prior to the filing of this lawsuit. Those who did prove twenty years of continuous use take nothing against these particular plaintiffs. The Tier II owners, for the most part, used the Furbish access, not the Bourne access. The only plaintiff located in the vicinity of the Furbish access is Mr. Kenary. He objected to the public's use of dry sand beach approximately ten years ago and called the police to have the public ejected. Although the police refused to order anyone to move, it was clear that Mr. Kenary was not acquiescing in the public's use of his dry sand area. Mr. Kenary's objection was well known among the Tier II group, perhaps because he was the only ocean front owner who objected to the public's use of his land in the Furbish area. It meets the requirements for an

effective denial and remonstrance as discussed in Dartnell v. Bidwell, 115 Me. 227, 231 (1916).

Even if Mr. Kenary had not objected, it is difficult to see how Tier II members could establish an individual easement by prescription against individual plaintiffs on a beach that is divided into 120 or so individual lots. The testimony was unanimous that none of the Tier II members sat in front of the same cottage on a regular basis. Some sat in the same general area on a fairly regular basis but not in front of the same cottage. How could an individual plaintiff be put on notice that a particular person is attempting to establish a private easement on a particular lot when the private person keeps sitting in different locations? It would not seem fair to allow a person to establish a private easement by prescription on a particular ocean front lot when the person seeking to establish the private easement may well not have ever sat on that particular lot at all and at least not on a consistent basis. That is the state of the record for all the Tier II members. It will not support the creation of a private easement by prescription independent of the general public's rights.

CONCLUSION

For the reasons stated above, I am satisfied that plaintiffs own their respective lots at Moody Beach subject only to the public's easement to fish, fowl and navigate in the intertidal zone and subject to those uses incidental to fishing, fowling and navigation that have been previously recognized by the Law Court

to exist in the intertidal zone along Maine's shorefront. These rights do not include general recreation. This decision does not necessarily mark the final chapter in the development of Moody Beach. This decision in no way diminishes the power of the Town of Wells or the State to transform Moody Beach into a public beach or a combination public-private beach by eminent domain, if they choose to do so.

The entry by the clerk will be:

On plaintiffs' first, second, eighth, ninth, twelfth and thirteenth claims, judgment is to the plaintiffs. The individual plaintiffs are requested to prepare individual proposed judicial declarations that they are vested with title to their property free and clear of all encumbrances except those of record and further subject only to the public's right to fish, fowl and navigate--as those terms have been defined by the Law Court--in the intertidal zones of this State. Plaintiffs are not to include in their proposed declarations or proposed judgment any form of equitable relief ordering the Town of Wells to obey the law. The Town of Wells has never indicated that it will not obey the law once the law has been clarified. On the competing motions for summary judgment on plaintiffs' claim 14 regarding the Intertidal Lands Act, summary judgment is granted to plaintiffs and 12 M.R.S.A. §§ 571-573 is declared to be unconstitutional as a violation of the separation of powers clause of the Maine Constitution, Article III, Section 2.

DATED: September 14, 1987

William S. Brodrick

William S. Brodrick
Justice, Superior Court

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-84-125

EDWARD B. BELL, et. al.,)
)
 Plaintiffs)
)
 v.)
)
 INHABITANTS OF THE TOWN OF)
 WELLS, et. al.,)
)
 Defendants)

AMENDMENT OF
FINDINGS OF FACT

Pursuant to M.R.Civ.P. § 52(b), the Court ORDERS that the following amendments or corrections be made to the findings of fact contained within its Decision of September 14, 1987:

1. At Page 20, line 10 of the Decision, the following sentence from finding of fact #7 should be deleted:

Moody Beach was originally owned by the Town of Wells.

2. At Page 21 of the Decision, finding of fact #13 reads in part:

The Town thought for years that this public beach belonged to Wells. Sometime in the 1970's a Court determined that the Moody Beach parking lot and the beach in front of it belonged to Ogunquit. It was and remains a public beach regardless of ownership.

The amended version of these findings should now read:

The Town eventually came to believe that the public beach in front of the Moody Beach parking lot belonged to Wells and not Ogunquit. In 1983, a Court determined that the Moody Beach parking lot and the beach in front

of it belonged to Ogunquit. It was and remains a public beach.

3. At Page 24 of the Decision, the first sentence of finding of fact #21 should be amended to read "1969" rather than "1968".

4. At Page 27 of the Decision, finding of fact #30 now reads in part:

Standing on that parking lot and facing the Ocean, a visitor would have found Ogunquit's two mile public beach on his right, Wells' public portion of Moody Beach directly in front of the parking lot and the remainder of Moody Beach with the public accesses on the left.

The amended version of these findings should now read:

Standing on that parking lot and facing the Ocean, a visitor would have found Ogunquit's two mile public beach on his right and directly in front of the parking lot, and Moody Beach with the public accesses on his left.

5. At Page 30, the Decision states as follows:

As for Ogunquit-Moody Beach, the simple fact that Ogunquit Beach was taken for public use while Moody Beach was developed privately, when combined with the eyewitness testimony, proved to me that from 1925 until the 1970's, Ogunquit Beach and the disputed portion of public beach in front of the Moody Beach parking lot served as the public beach for the vast majority of beach users in Wells and Ogunquit.

This excerpt is amended to read as follows:

As for Ogunquit-Moody Beach, the simple fact that ~~Ogunquit Beach was taken for public use while Moody Beach was developed privately,~~ when combined with the eyewitness testimony, proved to me that from 1925 until the 1970's, Ogunquit Beach including the portion of Ogunquit Beach in front of the Moody Beach parking lot

served as the public beach for the vast majority of beach users in Wells and Ogunquit.

SO ORDERED,

Dated: 9/30/87

W. S. Brodrick
William S. Brodrick
Justice, Superior Court

LAQOD

Date of Entry

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09/15/87

Under date of 08/27/87:

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254

Received Defendants Motion in Limine and for Sanctions and Memo of Law in Support of filed.
 Plaintiffs' Exhibit No. 240 (Deposition of Leo Shannon w/ deletions) marked, offered and admitted by stipulation.
 Defendant's Exhibits No. 62 ("Trelawny Papers" James P. Baxter), No. 63 ("New England Rareities Discovered" - portion 1668), and No. 64 (Me. Province & Court Records 1674) entry) marked, offered and admitted. Defendant's Exhibit No. 65 (History of Cape Elizabeth 1965 Gordon) marked, offered and admitted over objection. Defendant's Exhibit No. 66 ("History of Wells" Book Greenleaf, et al) and No. 67 ("New England Coast" Samuel Adams Drake) marked, offered and admitted. Defendant's Exhibits No. 70 A-H and 70 J-O (Walker Diaries) and No. 70R (Walker Diary) marked, offered and admitted.
 Defendant Tier II Group's Exhibit No. 177 (Deed - G. Harrison to Beauregards) marked and offered. Defendant Tier II Group's Exhibit's No. 178 (Deed - Beauregard to J. Anderson), No. 179 (Deed - Lembree to H. & A Anderson), No. 180 (Deed - Tibbetts to Bertini 1959) and No. 181 (Deed - to Raymond & Judith Morin) marked, offered and admitted
 Recessed to 08/28/87 at 9:00 A.M. at the Cumberland County Superior Court.

Sixteenth day of Jury waived trial before Hon. William S. Brodrick at Cumberland County Superior Court 08/28/87. Patricia Parks, Court Reporter. Gail Anderson, Courtroom Clerk.
 Defendant Tier II Group's Exhibits No. 181 (envelope of photographs), No. 182 (Copy of Stan Jacobsen's Deed), No. 183 (Copy of John Sullivan' Deed), No. 184 (Copy of Donald Peterson's Deed) and No.185 (envelope of photographs) marked, offered and admitted.
 Defendant Tier II Group moves for admission of Depositions of Kenneth C. Ravioli #186, Marie Walsh #187, John M. Walsh #188 and No. 189 copy of the Deed to Raviolis admitted without objections.
 Defendant Tier II Group rests.
 Plaintiffs rest.
 Defendant Town of Wells rests.
 Defendant State rests and moves for a directed verdict - U/A.
 Plaintiffs' closing arguments.
 Defendant State's closing arguments.
 Defendant Town of Wells' closing arguments.
 Defendant Tier II Group's closing arguments.
 Plaintiffs' rebuttal.
 Court takes case under advisement. (Brodrick, J.)

255

— Copy of Defendant Tier II Group's Findings of Fact filed 09/02/87.

256

— State Defendants' Proposed Findings of Fact filed 09/02/87.

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257

Decision filed by the Court 09/14/87. (Brodrick, J.)

Judgment: "On plaintiffs' first, second, eighth, ninth, twelfth and thirteenth claims, judgment is to the plaintiffs. The individual plaintiffs are requested to prepare individual proposed judicial ~~declarations that they are vested with title to their property free and clear of all encumbrances except those of record and~~ further subject only to the public's right to fish, fowl and navigate -- as those terms have been defined by the Law Court -- in the intertidal zones of this State. Plaintiffs are not to

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include in their proposed declarations or proposed judgment any form of equitable relief ordering the Town of Wells to obey the law. The Town of Wells has never indicated that it will not obey the law once the law has been clarified. On the competing motions for summary judgment on plaintiffs' claim 14 regarding the Intertidal Lands Act, summary judgment is granted to plaintiffs and 12 M.R.S.A. §571-573 is declared to be unconstitutional as a violation of the separation of powers clause of the Maine Constitution, Article III, Section 2."

Counsel notified to pick up copy of Decision at the Cumberland County Courthouse on 09/15/87.

09/25/87

258

Proposed Final Judgments and Declarations of Title filed by Plaintiffs 09/22/87.

259

Objection to Plaintiffs' Proposed Judgment filed by Defendants Town of Wells and State of Maine 09/25/87.

260

Motion to Amend Findings of Fact and to Add Findings of Fact filed by State and Town Defendants 09/25/87.

Memorandum in Support of Motion to Amend Findings of Fact and To Add Findings of Fact filed by State and Town Defendants 08/25/87.

261

Request for Certification of Costs filed by Plaintiffs 09/25/87.

262

Affidavit of John D. Gleason with Respect to Cost of Expert Witness filed 09/25/87.

263

Certificate of Service filed 09/25/87.

09/25/87

Hearing had in Chambers on Plaintiff's Proposed Final Judgments and Declarations of Title and Defendants' Objections - 'Attorney Bernotavicz to submit Final Judgments and Declarations of Title to reflect Justice Broderick's Order'. (Brodrick, J.) Hearing had in chambers on State and Town Defendants' Motion to Amend Findings of Fact and to Add Findings of Fact - 'Motion Granted in Part and Denied in Part. Attorney Bernotavicz to file Amended Findings of Fact. (Brodrick, J.) Cindy Packard, Court Reporter.

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264

Amendment of Findings of Fact filed by the Court. (Brodrick, J.)

(29) Final Judgments and Declarations of Title filed by the Court. (Brodrick, J.)

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265

Having ordered that judgment be entered for the plaintiff, Edward B. Bell, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED AND DECLARED that the plaintiff, Edward B. Bell, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 1484, Page 422, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

266

Having ordered that judgment be entered for the plaintiffs, Robert V. and Bette J. Stirling, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Robert V. and Bette J. Stirling, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2139, Page 78, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement

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under the Colonial Ordinance of 1648 in the intertidal portion of their property.

267

-Having ordered that judgment be entered for the plaintiff, Phyllis L. Wyne, on all pending counts of her complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Phyllis L. Wyne, is vested with title to her property as described by deed in the York County Registry of Deeds, Book 3083, Page 274, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of her property.

268

-Having ordered that judgment be entered for the plaintiff, Nancy A. Walker, on all pending counts of her complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Nancy A. Walker, is vested with title to her property as described by deed in the York County Registry of Deeds, Book 1560, Page 178, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of her property.

269

-Having ordered that judgment be entered for the plaintiff, George H. Schofield, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, George H. Schofield, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 3026, Page 292, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

270

-Having ordered that judgment be entered for the plaintiffs, George R. Pope, Phillip M. Pope, and Richard M. Pope, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, George R. Pope, Phillip M. Pope, and Richard M. Pope, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2748, Page 38, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

271

-Having ordered that judgment be entered for the plaintiff, Marion E. Lord, on all pending counts of her complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Marion E. Lord, is vested with title to her property as described by deed in the York County Registry of Deeds, Book 2160, Page 546 and Book 3063, Page 145, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of her property.

272

-Having ordered that judgment be entered for the plaintiff, Richard J. King, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Richard J. King, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 2856, Page 92, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

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(273)

Having ordered that judgment be entered for the plaintiff, Jean P. Kennan, on all pending counts of her complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Jean P. Kennan, is vested with title to her property as described by deed in the York County Registry of Deeds, Book 2909, Page 343, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of her property.

(274)

Having ordered that judgment be entered for the plaintiff, Kevin J. Howe, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Kevin J. Howe, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 2162, Page 470, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

(275)

Having ordered that judgment be entered for the plaintiff, John B. Howe, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, John B. Howe, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 2559, Page 112, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.

(276)

Having ordered that judgment be entered for the plaintiffs, Norman and Maureen Bissonnett, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Norman and Maureen Bissonnett, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2155, Page 780, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

(277)

Having ordered that judgment be entered for the plaintiffs, Randall Cooper and Jane C. Fall as Trustees of the Cooper Family Trust, on all pending counts of their complaint: It is hereby ORDERED, DECLARED that the plaintiffs, Randall Cooper and Jane C. Fall as Trustees of the Cooper Family Trust, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2010, Page 453, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

(278)

Having ordered that judgment be entered for the plaintiffs, Gordon M. and Lois E. Enfield, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Gordon M. and Lois E. Enfield, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2928, Page 322, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

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279

Having ordered that judgment be entered for the plaintiffs, Barbara M. Stetson and Irving G. Marsden, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Barbara M. Stetson and Irving G. Marsden, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2028, Page 8, and Book 2887, Page 89, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

280

Having ordered that judgment be entered for the plaintiffs, Robert J. and Joan C. Maloney, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Robert and Joan C. Maloney, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1599, Page 318, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

281

Having ordered that judgment be entered for the plaintiffs, Henry J. and Marie K. Magne, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Henry J. and Marie K. Magne, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2470, Page 187, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

282

Having ordered that judgment be entered for the plaintiffs, Gerard P. Lamoureux and Rachel Lamoureux, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Gerard P. Lamoureux and Rachel Lamoureux, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2128, Page 257, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

283

Having ordered that judgment be entered for the plaintiffs, Richard N. and Bernice R. Kenary, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Richard N. and Bernice R. Kenary, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1659, Page 199, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

284

Having ordered that judgment be entered for the plaintiffs, Warren H. and Dorothy P. Jones, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Warren H. and Dorothy P. Jones, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1809, Page 610 and 613, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

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285

Having ordered that judgment be entered for the plaintiffs, Gunnar A. and Anna M. Hagstrom, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Gunnar A. and Anna M. Hagstrom, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1656, Page 123, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

286

Having ordered that judgment be entered for the plaintiffs, Robert G. and Pauline D. Henderson, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Robert G. and Pauline D. Henderson, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1468, Page 132, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

287

Having ordered that judgment be entered for the plaintiffs, Eugene M. VanLoan, III and Gregory M. Telge, on all counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Eugene M. VanLoan, III and Gregory M. Telge, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2633, Page 86, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

288

Having ordered that judgment be entered for the plaintiffs, Susan C. Treiss and Chelsey C. Remington, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Susan C. Treiss and Chelsey C. Remington, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2782, Page 203, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

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Having ordered that judgment be entered for the plaintiffs, Leo J. and Jane M. Shannon, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Leo J. and Jane M. Shannon, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 1854, Page 550, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

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Having ordered that judgment be entered for the plaintiffs, Winslow E. and Eileen F. Ryan, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Winslow E. and Eileen F. Ryan, are vested with title to their property as described by deed in the York County Registry of Deeds, Book 2931, Page 175, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.

- 10/01/87 (291) - Having ordered that judgment be entered for the plaintiffs, Francis X. and Alice B. Hogan, on all pending counts of their complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiffs, Francis X. and Alice B. Hogan, are vested with title to their property as described by deed in York County Registry of Deeds, Book 1874, Page 766, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of their property.
- (292) - Having ordered that judgment be entered for the plaintiff, Jean M. Hedman, on all pending counts of her complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Jean M. Hedman, is vested with title to her property as described by deed in the York County Registry of Deeds, Book 1906, Page 37, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of her property.
- (293) - Having ordered that judgment be entered for the plaintiff, Edward J. Haseltine, on all pending counts of his complaint: It is hereby ORDERED, ADJUDGED and DECLARED that the plaintiff, Edward J. Haseltine, is vested with title to his property as described by deed in the York County Registry of Deeds, Book 2054, Page 216, free and clear of all encumbrances except those of record, if any, and further subject only to the public easement under the Colonial Ordinance of 1648 in the intertidal portion of his property.
- Judgment on these actions having been so entered on the docket, a copy of these FINAL JUDGMENTS and DECLARATIONS OF TITLE are to be duly recorded in the York County Registry of Deeds pursuant to 14 M.R.S.A. §6654.
- 10/01/87 Copy of Final Judgments and Declarations of Title mailed to J. Gleason, Esq., P. Stern, Esq., W. Knowles, Esq. and B. Bloom, Esq.
- 10/05/87 (294) - Transcript of Testimony of: Robert Littlefield before Hon. William S. Brodrick on August 13, 1987 filed by Cindy Packard, Official Court Reporter.
- 10/07/87 (295) - Certificate of Costs on Appeal filed by James C. Chute, Clerk of the Law Court, 10/05/87.
- (296) - Defendants' Objections to Plaintiffs' Request for Certification of Costs filed 10/05/87.
- (297) - Defendant Tier II Group's Objections to Plaintiffs' Request for Certification of Costs filed.
- 10/14/87 (298) - Notice of Appeal to the Law Court Under Rule 73(b) filed by Defendants State of Maine, Maine Bureau of Public Lands, the Inh. Town of Wells, and the Selectmen Town of Wells, 10/13/87. Attested copy of Notice of Appeal mailed to P. Stern, Esq., S. St. E. Thaxter, Esq., M. T. Healy, Esq., W. Knowles, Esq., B. Bloom, Esq., H. Richardson, Esq., Cindy Packard, Patricia Parks and Mary Riley, Court Reporters, Hon. William S. Brodrick and to Hon. James C. Chute, Clerk of the Law Court. (Attested copy of docket entries mailed to Mr. Chute).