Professional Responsibility Board
Filed: 11/20/2025

STATE OF VERMONT
BEFORE THE PROFESSIONAL RESPONSIBILITY BOARD

In Re THOMAS MELONE, (Thomas Melone, Respondent)	PRB File No. 25-120

RESPONDENT'S REPLY TO MR. HANLEY'S OBJECTION TO RESPONDENT'S MOTION TO DISMISS AND MOTION FOR A MORE DEFINITE STATEMENT

Respondent THOMAS MELONE ("**Respondent**") hereby replies to the objection filed by Mr. Michael Hanley to Respondent's motions to dismiss the Petition for Misconduct (the "**Complaint**" or "**Petition**") and for a more definite statement.

INTRODUCTION

Mr. Hanley claims that "Mr. Melone has received notice of the grounds for discipline," and he "can utilize the discovery tools available under the Vermont Rules of Civil Procedure to gain additional information." Tellingly, Mr. Hanley does not claim that Respondent can gain additional information *sufficient to understand* which of Mr. Hanley's allegations support which claims. After all, Mr. Hanley has refused to provide all documents in his possession related to Respondent in response to a subpoena issued to him, which documents might permit provide the clarity that Mr. Hanley's shotgun pleading does not. In particular, Mr. Hanley refuses to produce the documents provided to the probable cause hearing panel, which includes a memorandum that presumably explains the basis for Mr. Hanley's charges. Respondent intends to seek enforcement of the subpoena in Superior Court. Mr. Hanley's concealment of relevant documents reinforces the notion that the entire Complaint is political retribution to retaliate for Thomas Melone's exercise of his First Amendment rights to free speech and to petition the government.

Attorney Jon Alexander has also failed to fully respond to a subpoena issued to him. Attorney Alexander recused himself "on conflict grounds [on the basis that] [t]he complainant, Merrill Bent, is chair of the JCB and I am now Special Counsel to the JCB reporting directly to her on my investigations and prosecutions." *see* **EXHIBIT 1.**

As noted in Respondent's motion, the Complaint was the product of a complaint (the "**Bent Complaint**") filed by Attorney, and Chair of the Judicial Conduct Board, Merrill Bent, who represents the Town of Bennington. Like Respondent, screening counsel Andrew Strauss also had difficulty understanding the basis for much of Attorney Bent's claims of Rule violations. In an email to Jon Alexander dated April 25, 2025, *see* **EXHIBIT 1**, Andrew Strauss wrote:

> Hello Jon,
> I am referring these two complaints to you for investigation. The complainant is Attorney Merrill Bent and the respondents are Attorneys [] Thomas Melone. Both respondent attorneys submitted written responses to the complaint to me, which are on the server. I am referring these complaints to you for these reasons:
> 1. The complaint appears to make out a violation of Rule 4.2 by Thomas Melone, who knowingly sent emails directly to Attorney Bent's client. Attorney Melone claims he is not representing a client, but even so, I think Rule 4.2 would still apply. See https://vtbarcounsel.wordpress.com/2022/09/29/aba-opinion-concludes-that-the-no-contact-rule-applies-to-self-represented-lawyers-should-vermont-amend-its-rule/.
> 2. The complaint also appears to make out a violation of Rule 3.1, in that Attorney Bent is claiming that the Melones brought a frivolous lawsuit for the sole purpose of influencing a separate litigation.
> ***Attorney Bent makes other claims of Rule violations, but I find the ones above are the most clear***.
> Andy

(emphasis added).

Attorney Strauss' descriptor of "the most clear," is telling. He apparently could not see the basis for other rule violations related to the slew of assertions that Ms. Bent made, but which the Complaint nonetheless incorporates. And for the two "most clear" claims, the alleged Rule 4.2 violation is on shaky support by a blog post by Bar Counsel questioning whether Vermont's rule would apply or would need amending to apply in a situation like here (even if it could survive First Amendment scrutiny, which it cannot). And as to the alleged Rule 3.1 violation, there is overwhelming evidence that shows that the purported "frivolous lawsuit" was neither frivolous nor filed "for the sole purpose of influencing a separate litigation." The expert testimony that Respondent provided in connection with its purported "frivolous lawsuit," proves the point on its own. So does the fact that Respondent was not alone in his concerns with the Benn High project, especially, as pointed out by Representative Mary Morrissey, as it related to the safety of children in the basement. Other concerns expressed by the Respondent with the developer himself seem to

be on the verge of being vindicated, now that the Benn High developer has been accused in a lawsuit by his father of apparent immigration law violations and financial mismanagement, including of the Benn High project itself. [1]

The Complaint is also a paradigm of unlawful selective enforcement, as is evidenced, for example, (1) by the failure of the Professional Responsibility Board ("**PRB**") to pursue Respondent's claims against Ms. Bent once they were presented to Screening Counsel, (2) by the failure of the PRB to pursue claims against every attorney that has lost a case based upon lack of subject matter jurisdiction, (3) by the failure to pursue claims against every attorney that is alleged to have made an ex parte communication, (4) by the PRB's failure to pursue a claim against Mr. Hanley for violating A.O. 9, Rule 16 by his allegation in paragraph 90 of the Complaint, and (5) by the PRB's failure to pursue a claim against Mr. Hanley for his actions in *GRABOWSKI-SHAIKH v. CONNECTICUT ATTORNEYS TITLE INSURANCE COMPANY D/B/A CATIC*, case 2:24-cv-686-wks (D. Vt.), where he was accused of threatening criminal prosecution against an opposing party, *see* **EXHIBIT 2.**

I. THE COMPLAINT DOES NOT CONTAIN SUFFICIENT FACTUAL ALLEGATIONS TO SUPPORT THE ELEMENTS OF COUNT II.

Dismissal for failure to state a claim under Vt. R. Civ. P. 12(b) is appropriate if "it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." *Paige v. State*, 2024 VT 7, P6 (internal quotations and citation omitted.) But that standard does not mean Mr. Hanley can fill in the blanks later, or avoid the special particularity pleading requirements of Vt. R. Civ. P. 9 when he wrongly accuses Respondent of making false statements. The motion must be decided on the basis of his allegations. "While a complaint need not contain a detailed statement of facts, it must state a claim and contain sufficient factual allegations to support the elements of the claim." *Herron v. Town of Guilford Selectboard*, 2023 Vt. Unpub. LEXIS 41, 2023 WL 3271526, *7 citing *Paige v. State*, 2018 VT 136, ¶ 10. None of Mr. Hanley's

[1] *See* Attachment 1 to RESPONDENT'S SUPPLEMENT TO RESPONDENT'S SPECIAL MOTION TO STRIKE UNDER 12 V.S.A. § 1041, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, MOTION FOR A MORE DEFINITE STATEMENT dated October 28, 2025.

claims met that standard.

Count II is a clear example of it being beyond doubt that there exist no circumstances that justify Count II. Count II's unmeritorious nature also reinforces Respondent's assertion that the entire Complaint is political retribution. Complaint P117 asserts: "In his communications with ML and DG, Thomas Melone violated: a) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies applications for Certificate of Public Goods (*sic*); and b) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice." There are no plausible allegations that support Mr. Hanley's assertions.

Vt. Rule 4.5 entitled "Threatening criminal prosecution," states: "A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter." Mr. Hanley is somewhat familiar with Rule 4.5 because recently he was accused of threatening criminal prosecution of a homeowner in a federal case. *See*, **EXHIBIT 2**. But unlike Mr. Hanley's conduct in that case, here Respondent never threatened "ML and DG" with either criminal or civil action. That is made perfectly clear by the communications referenced by Mr. Hanley's Complaint.

The paragraphs of the Complaint that reference ML and DG are paragraphs 46-55. Paragraph 46 alleges that "ML and DG were opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good." That, of course, is sort of correct. In Public Utility Commission ("**PUC**") case 23-0249, a corporate entity owned or controlled by ML and/or DG and possibly other individuals or trusts called Down to Earth Golf Course Development, Inc. intervened. That fact is publicly available in the docket at ePUC.[2] Paragraph 47 alleges that "[a]t some point before May 3, 2024, ML and

[2] Generally on a motion to dismiss, the court may not consider matters outside the pleading unless the court converts the motion to a motion for summary judgment. V.R.C.P. 12(b). There are exceptions. One exception is that the court may consider a document if the complaint relies upon it. *Kaplan v. Morgan Stanley & Co*., 2009 VT 78, ¶ 10 n.4, 186 Vt. 605, 987 A.2d 258. Another exception is the court may consider "matters subject to judicial notice, such as statutes and regulations, and matters of public record." *Kaplan*, 186 Vt. 605, 2009 VT 78, ¶ 10 n.4. Matters "integral to the claim" may also be considered. *In re Russo*, 2013 VT 35, ¶ 16 n.4, (quoting 5B Wright & Miller, Federal Practice & Procedure: Civil § 1357 (3d ed.)).

DG filed under the Bankruptcy Act for protection from their creditors." ML and DG filed a petition for bankruptcy on October 1, 2013, which was docketed as case no. 13-10693 in the Vermont federal bankruptcy court, *see* **EXHIBIT 3**, and the discharge was entered on April 11, 2018, resulting in a statute of limitations period being April 11, 2023, 18 U.S.C. § 3282, MORE THAN ONE YEAR PRIOR TO THE MAY 3, 2024 EMAIL referenced in paragraph 48.

Paragraph 48 alleges that "[i]n an email to ML and DG dated May 3, 2024, Thomas Melone said that he had discovered 'property [that] does not seem to have been declared on Schedule A to the bankruptcy petition.'" Paragraphs 49-51 make allegations regarding that email. Said email is attached as **EXHIBIT 4**. It is correct that said email attached a copy of a deed for property in Port St. Lucie Florida and stated: "This information came in after we filed the first round of requests but I do want you to be aware that we will be asking about it in your depositions. This property does not seem to have been declared on Schedule A to the bankruptcy petition." No threat of criminal prosecution was made, and as stated above, the discharge was entered on April 11, 2018, resulting in a statute of limitations period being April 11, 2023, 18 U.S.C. § 3282, MORE THAN ONE YEAR PRIOR TO THE MAY 3, 2024 EMAIL, establishing that the only use Mr. Melone intended to use the information for was impeachment of their credibility, which is exactly what Mr. Melone stated to the attorney that called Mr. Melone on behalf of ML/DG. In other words, the statute of limitations on the failure to disclose the Port St. Lucie transactions expired and no criminal prosecution could be had in any event.

Complaint paragraph 52 alleges that "ML and DG withdrew from the proceedings in the Public Utility Commission." While technically inaccurate because neither ML nor DG were parties, it is correct that a corporate entity owned or controlled by ML and/or DG and/or seemingly other individuals or trusts, called Down to Earth Golf Course Development Inc. filed a notice of withdrawal from "the proceedings" in PUC case no. 23-0249 on May 10, 2024.

Complaint paragraph 53 then states:

> Nonetheless, in an email dated November 20, 2024 to ML and DG, Mr. Melone said:
>
> I assume you have still been following the Chelsea solar case. And

> I understand that you were in attendance at the Planning Commission meeting that looked at the recent plan for Apple Hill solar. As you know, in your filing withdrawing from the Chelsea case you listed various reasons for withdrawing, most of which were not very nice. The Town is repeating those reasons in their filings…. As you also likely know, we requested the PUC to approve deposition subpoenas for you and the PUC denied that. We are appealing that decision to the Vermont Superior Court. I think the only way that the various lingering issues from your involvement can be removed is if you send letters to the PUC, the Planning Commission and the Select Board supporting both projects. This way the other parties would stop trying to get you involved, and would eliminate any need for us to depose the two of you. Please let me know if you are willing to do that.

Said email is attached as **EXHIBIT 5.** No threat of criminal prosecution was made. Complaint 54 then states: "ML and DG did not 'send letters to the PUC, the Planning Commission and the Select Board supporting both projects.'" That is accurate. Complaint P55 states: "On January 12, 2025, Thomas Melone filed 'Further Comments' in the proceedings in the Public Utility Commission regarding Apple Hill's application for a Certificate of Public Good accusing ML and DG of 'defrauding the federal government' and defrauding ML and DG's creditors." Said January 12, 2025, filing in a *different* PUC docket i.e., in PUC docket no. 24-3517, is attached as **EXHIBIT 6**. Neither ML nor DG nor any entity owned or controlled by them was involved in that docket and Mr. Hanley does not allege that they were involved in that docket. Because they were not involved in that docket, the filing would not have been sent to them. Mr. Hanley does not allege that ML/DG were sent that filing. No threat of criminal prosecution was made against ML or DG in that filing in any event. Neither ML nor DG were parties to case 24-3517 and as a result, neither ML nor DG were recipients of the January 12, 2025 filing with the PUC or involved in that civil matter.

Mr. Hanley does not provide with any specificity what communication or communications purportedly threatened to present criminal charges in order to obtain advantage in a civil manner (especially one in which neither ML nor DG were a party). Without that specificity, the charge is frivolous on its face.

There is a single communication from Respondent, *see* Compl. ¶55, that occurred while Respondent and ML/DG were in the Complaint's words "opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a

Certificate of Public Good." Compl. ¶50. In the May 3, 2024 email, Respondent said "I do want you to be aware that we will be asking about it in your depositions." Compl. ¶52. No criminal charges were threatened there.

The conduct of ML/DG of failing to report assets and sale proceeds from those assets in their federal bankruptcy proceeding involved conduct that has been characterized as involving dishonesty, fraud, deceit or misrepresentation. *See*, *In re Palmisano*, 165 Vt. 593, 595 (1996) (Failing to "disclose the receipt of [a $ 10,000 payment] to the bankruptcy court [was] conduct involving dishonesty, fraud, deceit or misrepresentation." Respondent made it clear that he would only be asking about the property transactions in depositions. Respondent did not make any threats or ask ML/DG to take any action.

Petition para. 56 notes that ML/DG withdrew from the PUC proceeding. What it fails to state is that in the withdrawal notice, ML filed a written statement that misrepresented why they were withdrawing in order to disparage Respondent. That statement is a public record in the PUC docket. Respondent did not take any action to correct the vitriolic statements against him in her withdrawal. But when those statements were in some form or another later being used to disparage Respondent in comments by the Town, Respondent made the additional communication to ML/DG recited in Complaint P57. That communication did not threaten anything either. And even though as stated in para. 58 ML/DG took no action, Respondent did nothing in response. But when the Town and then the Vermont Department of Public Service made additional comments at the PUC re-iterating in some form or another the disparaging statements made by ML/DG in their withdrawal, Respondent felt that it was time to set the record straight. That is what led to the filing of **EXHIBIT 6.** But neither that filing nor any other filing or communication threatened criminal proceedings, or asked ML/DG to take any action under threat. And ML/DG had already withdrawn from opposition so there was no advantage to be gained in a civil proceeding in which they were a party in any event.

And Respondent's filing setting the record straight is expressly permitted as explained by the *Restatement (Third) of the Law Governing Lawyers* (the *"**Restatement**"*) *Restatement* §109

dealing with "An Advocate's Public Comment on Pending Litigation."[3] And all relate to Respondent's exercise of his First Amendment rights to free speech and his right to petition the government.

II. THE COMPLAINT DOES NOT CONTAIN SUFFICIENT FACTUAL ALLEGATIONS TO SUPPORT THE ELEMENTS OF COUNT VI.

Vt. RPC 3.3(a) entitled "Candor Toward The Tribunal" states "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Vt. RPC 1.0(f) defines "Knowingly," "known," or "knows" as "actual knowledge of the fact in question." Vt. RPC 3.3(a) "governs the conduct of a lawyer *who is representing a client* in the proceedings of a tribunal." RPC 3.3, Comment [1]. Rule 1.0(m) defines "tribunal" as: "a court and all ancillary court proceedings such as depositions and hearings before a referee or master, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter."

Complaint P125(a) alleges that Respondent's statement in his response to Screening Counsel "specifically that Ms. Bent was liable for defamation per se," violated Rule 3.3(a)(l) because "he knew or should have known that Rule 12 of The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement* provides that communications to the Program, hearing committees or disciplinary counsel relating to lawyer misconduct are absolutely privileged and no lawsuit predicated thereon may be instituted against any complainant or witness."

[3] "(1) In representing a client in a matter before a tribunal, a lawyer may not make a statement outside the proceeding that a reasonable person would expect to be disseminated by means of public communication when the lawyer knows or reasonably should know that the statement will have a substantial likelihood of materially prejudicing a juror or influencing or intimidating a prospective witness in the proceeding. However, a lawyer may in any event make a statement that is reasonably necessary to mitigate the impact on the lawyer's client of substantial, undue, and prejudicial publicity recently initiated by one other than the lawyer or the lawyer's client."

Mr. Hanley failed to allege the following elements of the claim (1) that ABA Model Rule 12 is an enforceable standard in Vermont (it is not), (2) that Screening Counsel is a "tribunal," (he is not), (3) that Respondent was "representing a client," (he was not), (4) that the response to Screening Counsel was "proceedings of a tribunal," (it was not), (5) that Screening Counsel had the authority to "render a binding legal judgment directly affecting a party's interests in a particular matter," (he does not) and (6) that Respondent's statement that "Ms. Bent was liable for defamation per se" was knowingly false and not simply Respondent's opinion. Further, while Mr. Hanley alleged Respondent "knew or should have known" about ABA Model Rule 12, the "should have known" allegation fails to meet the required element of the claim under Rule 3.3(a)(1). The purported claim of a violation of Vt. RPC 3.3(a) must be dismissed.

Vt RPC Rule 4.4(a) provides: "(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person." Mr. Hanley claims that Respondent violated Rule 4.4(a) in that Mr. Melone's "claim to Screening Counsel Straus that Ms. Bent had verbally accosted an employee of her law firm, his threats to sue Ms. Bent for defamation per se, his disclosure of Ms. Bent's complaint to officials, agents and employees of the Town of Bennington and his claim in in the Public Utility Commission that Ms. Bent violated the Rules of Professional Conduct" "showed disrespect for Ms. Bent's rights and he used means that had no substantial purpose other than to embarrass, delay, or burden Ms. Bent."

Mr. Hanley fails to allege that Mr. Melone was prohibited from disclosing the fact that Ms. Bent filed a complaint against him. Mr. Melone is not prohibited from disclosing the Complaint. Mr. Hanley's claim is disproven by his other allegations, specifically the admission that Mr. Melone did not claim that "Ms. Bent had verbally accosted an employee of her law firm." *See*, Complaint P99 ("Thomas Melone then told screening counsel Strauss 'I do not have direct information as to which of the four partners [in Ms. Bent's firm] was accused of abusive behaviors.'") In other words, the Complaint itself exonerates Respondent.

Rule 4.4 expressly applies only "[i]n representing a client." Mr. Hanley fails to allege that

Respondent was representing a client, which is a required element of the claim. Mr. Melone was obviously not representing a client when responding to a complaint made against him individually. Mr. Hanley also fails to allege what "rights" of Ms. Bent were purportedly "disrespected." Mr. Hanley also fails to allege that Ms. Bent was in fact "embarrass[ed], delay[ed], or burden[ed]." The purported claim of a violation of Vt. RPC 4.4(a) must be dismissed.

III. THE COMPLAINT DOES NOT CONTAIN SUFFICIENT FACTUAL ALLEGATIONS TO SUPPORT THE ELEMENTS OF COUNT I.

Count I is essentially all based upon Mr. Hanley's assertion that because a civil RICO claim "must describe 'predicate acts,' specific criminal offenses, that, when committed as part of a pattern, can be the basis for civil actions," *see* Compl. P63, Respondent's statement that he was preparing a complaint against the Town and others that would include a civil RICO count was tantamount to "threatening to present criminal charges in order to obtain advantage in a civil manner." Compl. P115c.

The Second Circuit has held that claim fails as a matter of law. In *Revson v. Cinque & Cinque*, 221 F.3d 71, 81 (2d Cir. 2000), the Second Circuit held "the threat of a civil RICO claim [is not] a threat to bring criminal charges" within the meaning of New York's equivalent attorney disciplinary rule. As the Second Circuit observed, if Mr. Hanley's view "were correct, no attorney could ever threaten to bring a civil RICO suit without violating the ethical rules." For that reason alone, Count I should be dismissed.

If Mr. Hanley's Count I is based upon more than that, then he needs to clarify the basis for Count I because a close reading of the January 10, 2025 filing, *see* **EXHIBIT 7**, which is the sole basis for Count I, does not threaten any particular person with any criminal charges. Count I appears to be based upon Complaint paragraphs 61-63. Paragraph 61 alleges that in **EXHIBIT 7** Respondent "said that all but two members of the Town of Bennington Select Board were in engaged in an active 'cover-up conspiracy' and committed acts of 'forgery,' engaged in 'counterfeiting,' filed 'false certifications to the state and federal government in violation of criminal statutes' and filed at least one 'false statement with the [Public Utility] Commission.'"

That allegation misrepresents what was said. As clearly stated in **EXHIBIT 7,** Respondent stated that the members of the Select Board (other than two) were engaged in "multi-faceted conspiracy to cover up" *the expiration of the Town Plan*. No allegations against any specific person or the Town were made with respect to the "forgery," engaged in "counterfeiting," filing of "false certifications to the state and federal government in violation of criminal statutes" or "false statement with the [Public Utility] Commission." Only the "cover-up" was alleged against the members of the Select Board (other than two). Mr. Hanley's gross misstatement requires dismissal.

Complaint paragraph 62 alleges that Respondent "told the Public Utility Commission that he was 'finalizing' a complaint to be filed in the United States District Court for the District of Vermont against the Town of Bennington for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c)." That too is a misrepresentation. What **EXHIBIT 7** says is Respondent was finalizing a civil complaint against the Town and others (including unidentified does) that would include *various civil claims*, including breach of contract, declaratory and injunctive relief related to the Town Plan, civil rights violations and a civil RICO count. But the Respondent did not state what defendants would be charged in which Count. In other words, as to the Town, the two claims that were certain to be directed to the Town were the breach of contract and the declaration that the Town Plan expired. The allegation in the Complaint misrepresents and overly aggrandizes what was said apparently in an attempt to align with Mr. Hanley's chosen narrative. Mr. Hanley's gross misstatement also requires dismissal.

Count I must also be dismissed because it falls far short of Vt. R.Civ. P. 9's particularity requirement, which applies to allegations of false statements made by Mr. Hanley. *See, e.g., Miller v. United States ex rel. Miller*, 110 F.4th 533, 548 (2d Cir. 2024) (plaintiff is "required to allege the false statements at issue with particularity.") All of Mr. Hanley's falsity allegations fail the particularity requirement of Rule 9. Mr. Hanley must (1) specify the statements that he contends were false, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were false. *Id*. at 544. Without such particularity, Respondent has no

way of knowing exactly what he is being accused of and on what non-frivolous basis those accusations rest. Mr. Hanley's failure to adhere to Rule 9's particularity requirements requires dismissal.

IV. THE COMPLAINT DOES NOT CONTAIN SUFFICIENT FACTUAL ALLEGATIONS TO SUPPORT THE ELEMENTS OF COUNT IV.

Count IV alleges that Respondent's "March 24, 2025 email to Public Utility Commission Chair Ed McNamara violated: a) Rule 3.5(b)(1) in that it was an ex parte communication with a person acting in a judicial or quasi-judicial capacity; and b) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice." *See* Compl. P121. Said legislative email is included in **EXHIBIT 8**. It is admitted that the legislative email was copied to Edward McNamara, who is a Vermont licensed attorney, and that the Legislative email did not also include direct recipients besides legislators and Mr. McNamara. Based upon heavily-redacted documents provided by the PUC, *see* **EXHIBIT 8**, Mr. McNamara caused the legislative email to be forwarded to one or more recipients on March 24, 2025. It was also forwarded on March 25, 2025, and April 14, 2025. Mr. McNamara also caused the legislative email to be filed in PUC cases 23-0249 and 24-3517 on April 21, 2025. There is no explanation as of now as to why, if Mr. McNamara believed the receipt of the legislative email was an ex parte communication, why he waited until April 21, 2025, to file it. The public case log entries on the PUC's ePUC website shows the entries listed on **EXHIBIT 9** from March 24, 2025 to April 21, 2025 for PUC case 24-3517. The Case log entries on the PUC's ePUC website shows the entries listed on **EXHIBIT 10** from March 24, 2025 to April 21, 2025 for PUC case 23-0249. As shown on both those case logs, nothing related to the substance of the legislative email occurred between March 24, 2025 to April 21, 2025. Thus regardless of any other factor, the legislative email was not an ex parte communication because it was timely provided to all participants (which were only government entities) in those PUC cases no later than April 21, 2025. "A written communication to a judicial officer with a copy sent timely to opposing parties or their lawyers is not ex parte." *Restatement (Third) of the Law Governing Lawyers* 113,

Comment c.[4] Even assuming it would otherwise be an ex parte communication (which it was not), the Complaint fails to allege that required element—i.e., that the email was not timely provided to the government parties in PUC cases 23-0249 and 24-3517 that Mr. Hanley asserts should have also been copied on the email.

If Mr. Hanley is basing Count IV on some version of estoppel effect from the hearing officers', not the Public Utility Commission's, ruling on June 17, 2025, then he must say so. That June 17, 2025 hearing officer ruling is an interlocutory ruling that the hearing officers refused to forward to the commissioners for consideration. *See* **EXHIBIT 11**. As a legal matter it has no estoppel effect.

V. THE COMPLAINT DOES NOT CONTAIN SUFFICIENT FACTUAL ALLEGATIONS TO SUPPORT THE ELEMENTS OF COUNT VII.

Count VII alleges, *see* Compl. P130, that "Thomas Melone's communications with officials and employees of the Town of Bennington violated: a) Rule 4.2 in that Thomas Melone's communications were not limited to Town officials who had authority to take or to recommend action in connection with Ms. Bent's complaint to the Professional Responsibility Program, as there was no Town official who had authority to take or recommend action in connection with Ms. Bent's complaint; and b) Rule 8.4(d) in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate a complaining witness in proceeding before the Professional Responsibility Program, Ms. Bent."

The Complaint refers to only one *specific* communication, which was on April 23, 2025. *See* Compl. P103. Said communication is attached as **EXHIBIT 12**.

Rule 4.2 states: *"[i]n representing a client*, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer

[4] The "Introductory Reporter's Note—2009 Amendments" to the VRPC state that "[t]he Vermont Rules of Professional Conduct are amended to incorporate comprehensive and significant changes to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA House of Delegates in 2001-2003." The Introductory Reporter's Note states that "the American Law Institute's Restatement of the Law Governing Lawyers, a comprehensive statement and analysis of the entire legal framework governing the legal profession and the practice of law that can serve as a guide to understanding and application of the principles underlying the Model Rules."

in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Mr. Hanley's Count VII fails to allege the required elements because he cannot do so. *First,* the April 23, 2025, was clearly sent in Respondent's individual capacity. He was not "representing a client." *Second*, the copy of the excerpt from the draft complaint for defamation showed the plaintiff as Thomas Melone in his individual capacity. *Third*, Mr. Hanley does not allege what "matter" Ms. Bent was allegedly representing the Town in as far as the April 25, 2025 communication is concerned. Ms. Bent clearly would not have been able to represent the Town in respect of the draft defamation complaint. The only "matter" at issue in the April 25, 2025, is the PRB complaint filed by Ms. Bent. If Mr. Hanley is alleging that Ms. Bent was representing the Town in connection with the filing of the Bent Complaint against Respondent, then that raises a host of other issues and potential ethical violations by Ms. Bent. Regardless, Count VII should be dismissed or required to be amended to provide the needed clarity for bringing such a charge.

VI. THE COMPLAINT DOES NOT CONTAIN SUFFICIENT FACTUAL ALLEGATIONS TO SUPPORT THE ELEMENTS OF COUNT VIII.

As argued in Respondent's motions, Count VIII is what Mr. Hanley's Complaint was building towards—taking individual events and wrapping them up in one count under Rule 8.4(d) in order to shut down and retaliate against the exercise of Mr. Melone's First Amendment rights, under a provision of the RPC that is vague and has been roundly criticized. But other than referencing Counts I-VII, he provides no other information that can be responded to. In addition to a lack of factual allegations regarding whatever else in the world Mr. Hanley alludes to, RPC 8.4(d) is so vague that courts cannot figure out what the elements of RPC 8.4(d) actually are. For that reason it is the perfect rule to be invoked in order to retaliate against unpopular attorneys.

VII. THE COMPLAINT DOES NOT CONTAIN SUFFICIENT FACTUAL ALLEGATIONS TO SUPPORT THE ELEMENTS OF COUNT III.

Count III targets two things—testimony by Respondent as a fact witness, and the legal issue of what constitutes "site preparation" without a certificate of public good. Count III is extraordinary because if upheld here, then any attorney that loses an issue in a case, or a case, would be the target of disciplinary proceedings.

Compl. P119 states: "In his company's site preparation without a Certificate of Public Good and his 'not credible' testimony in the Public Utility Commission, Thomas Melone violated: a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal; b) Rule 4.3 in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of fact and law; and c) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice."

As argued in Respondent's motion, the Complaint does not specify how either the purported "site preparation without a Certificate of Public Good" or Mr. Melone's purported "'not credible' testimony" were "undignified or discourteous conduct." Nor does the Complaint specify how those were "degrading or disrupting to a tribunal." Those are required elements that must be properly pled, but are not. Additionally, a violation of Rule 3.5(d) requires that the alleged undignified or discourteous conduct be directed "toward the tribunal" itself. *Grievance Adm'r v. Fieger*, 476 Mich. 231, 719 N.W.2d 123, 145 (Mich. 2006). Here, Mr. Hanley does not plead how Mr. Melone's purported "site preparation without a Certificate of Public Good" or Mr. Melone's purported "'not credible' testimony" criticized the PUC or was directed at the PUC or any of its commissioners or the hearing officer. Those are required elements that must be properly pled, but are not.

Mr. Hanley also alleges that certain, but unspecified, statements allegedly made by Respondent "were false statements of fact and law." Mr. Hanley's claim falls far short of what is required to make such a claim. *First*, Count III must also be dismissed because it falls far short of Vt. R.Civ. P. 9's particularity requirement, which applies to allegations of false statements made by Mr. Hanley. *See, e.g., Miller v. United States ex rel. Miller*, 110 F.4th 533, 548 (2d Cir. 2024) (plaintiff is "required to allege the false statements at issue with particularity.") Mr. Hanley's falsity allegation in Count III fails the particularity requirement of Rule 9. Mr. Hanley must (1) specify the statements that he contends were false, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were false. *Id*. at 544. He fails to do so, which requires dismissal.

Second, on its face Count III fails because Mr. Hanley fails to allege that Respondent "knowingly" made false statements. "Knowingly," "known," or "knows" requires "actual knowledge of the fact in question." And here is where we get into the merits of the site preparation issue, which involves Vermont law, the Public Utility Regulatory Policies Act ("**PURPA**"), the Federal Power Act and the current case pending before the Second Circuit, *Allco Finance Ltd. v Roisman*, No. 24-3331 (2d Cir. argued September 3, 2025).

Vermont law and Federal law require certain entities to purchase the electric output from certain electric generating facilities, known as qualifying facilities under regulations of the Federal Energy Regulatory Commission, at avoided costs. The Vermont Standard Offer program is an implementation of PURPA. Respondent contends that the 2.2MW cap in the Standard Offer Program violates the Federal Power Act and PURPA. That issue is currently before the Second Circuit in *Allco Finance Limited v. Roisman*, 24-3331 (2d Cir. argued September 3, 2025). The 2.2 MW cap (aside from being pre-empted by federal law), does not serve any legitimate purpose. In ISO-New England, all distribution connected generating facilities under 5.0MWs are considered "load reducers," which is why GMP builds its solar facilities at 4.99MWs. A 4.99MW limit would serve a legitimate purpose, but a 2.2MW limit does not.

30 V.S.A. § 248 mandates that generally an electric generation project must have a CPG prior to beginning site preparation for the construction of an electric generation facility. But the extent to which section 248 is enforceable is open to question after the Third Circuit's decision in *Transource Pennsylvania, LLC v. Defrank*, No. 24-1045, 2025 U.S. App. LEXIS 22972 (3rd Cir. September 5, 2025) holding that in certain circumstances a State's permitting regime for electric facilities is preempted by federal law. As relevant here, in a 2019 Order changing the rules at the end of the game, the PUC held that the Chelsea Solar project satisfied all of Vermont's requirements for CPG, but nevertheless denied the Chelsea CPG based upon a newly invented Vermont-only "single-plant" rule designed to aggregate the Chelsea and Apple Hill Solar projects into one 4MW solar project, thus purportedly exceeding the 2.2MW eligibility cap for solar QFs under the Standard Offer program. Under *Transource*, that PUC refusal to issue the CPG would

be invalid because the reason the PUC gave for the denial would be pre-empted by federal law if the Second Circuit invalidates the 2.2MW cap. A knock-on effect of that invalidation under *Transource* would be that the PUC's order regarding "site preparation" would be invalid as well. In other words, if under *Transource* the CPG should have been issued for the Chelsea Solar project (which Respondent claims it should have been), then the Chelsea project would have been entitled to engage in the purported "site preparation" at issue in PUC docket 20-1611. As noted, if the Second Circuit invalidates the 2.2MW cap, then under *Transource,* the PUC's denial of the CPG for the Chelsea Solar project in 2019 would be unlawful and would be subject to being overturned under a rule 60 motion. Likewise, the fine and order in PUC case 20-1611 would be subject to being overturned under a rule 60 motion as well.

While the petitioners' applications to build solar electric generation facilities on a 27-acre parcel in Bennington, Vermont, were pending before the PUC, the petitioners sought to use the parcel for farming. A member of the public complained to the PUC that the petitioners' clearing of the parcel for its farming activities would constitute "site preparation" for the construction of an electric generation facility without a certificate of public good, and thus would violate 30 V.S.A. § 248(a)(2). The PUC then *sua sponte* opened up an investigation in which it was the complainant, the prosecutor, the judge and the jury. While the petitioners disputed the charges, pleas to "the same body that approved the charges[] tend to go about as one might expect." *SEC v. Jarkesy,* 144 S. Ct. 2117, 2142 (2024) (Gorsuch, J., concurring). And they did. While the investigation against petitioners initially donned a cloak of purported "environmental protection", in the end, even the PUC was not willing to hold that noxious weeds and plants that can be purchased at Home Depot were entitled to environmental protection. But the PUC issued a penalty despite conceding that there was no threat of environmental damage. The PUC claimed there was "harm to the regulatory process", a concept not in any statute or any administrative law book.

The case involved whether the PUC has the authority to enjoin and/or penalize farming and other activities of a landowner on land that is also a proposed site for an electric generation facility seeking a certificate of public good under 30 V.S.A. §248, and if it does, the scope of that authority.

The PUC's unheralded action against Respondent was to Respondent's knowledge, the first and still only time the PUC issued an injunction against a person that is not a regulated utility. The PUC's action also required it to ignore 50 years of contrary precedent in Vermont regarding what constitutes site preparation for a generating facility. Specifically, the PUC's approach for the past fifty years had been framed by an opinion of the Vermont Attorney General issued shortly after §248 and Act 250 were enacted, as explained in *Petition of Beaver Wood Energy*, 2011 Vt. PUC LEXIS 169 (April 1, 2011) ("*Beaver Wood II*") at *17-18:

> the Vermont Attorney General issued an opinion addressing the issue of what project components should be included as part of an electric generation facility subject to Section 248 jurisdiction, and thus not subject to Act 250 jurisdiction. The Attorney General concluded:
>
> > where a proposed improvement bears a reasonable relationship and can be considered to be part of an electric transmission or generation facility, having in mind the broad meaning to be ascribed to the word 'facility,' it is my opinion the exemption applies and no Act 250 permit can be required prior to construction.
>
> By way of example, the Attorney General's opinion states that "a separate Act No. 250 permit is not required for the construction of impoundments, roads, rail spurs and lagoons in connection with electric generation and transmission facilities." []
>
> This Board has followed the Attorney General's guidance and applied the "reasonable relationship" standard in determining whether a site improvement is part of an electric facility subject to Section 248 jurisdiction. However, as the Department correctly observes, the "reasonably related to" language is sufficiently vague that it can arguably support both sides of the issue before us. Therefore, it is important to recognize that the standard does not simply ask whether the site improvement in question is reasonably related to the generation facility. It also requires, in the words of the Attorney General, that the improvement "can be considered to be part of an electric generation or transmission facility," recognizing the broad meaning of "facility."

In *Beaver Wood II*, an applicant applied for a CPG for approval of a biomass energy facility and wood-pellet manufacturing facility. The applicant asserted that "its proposed wood-pellet manufacturing facilities are reasonably related to, and are a part of, its proposed electrical generation facilities." *Id.* at *6. The applicant "acknowledge[d] that the electric generation facilities could be constructed without the accompanying wood-pellet facilities, but [asserted] the wood-pellet and

electric generation facilities are engineered to function as one unit, with the wood-pellet facility using waste heat and steam from the electrical unit, and the electrical unit using waste (i.e., bark) from the wood-pellet facility as fuel … and that therefore the wood-pellet facility's 'relationship to the electrical facility is the sole reason for its existence.'" *Id.* at *6-7. The PUC held that it did not have jurisdiction over the wood-pellet facility:

> the fact that co-locating the wood-pellet facility with the electric generation facility makes the overall use of the fuel more efficient does not make the pellet plant a part of the generation facility. Such synergistic sharing of inputs to the generation process, while potentially beneficial for society as well as for the financial interests of project developers, does not somehow convert the manufacturing process into an electric generation process.

Where an activity was a precursor to an electric generation facility, the PUC explained that it had jurisdiction when the activity had *no other purpose* except the construction of an electric generation facility. Thus, "temporary wind-measurement towers … were precursors to, and essential for the construction of, the wind generating facility, *and had no other purpose*." *Id.* at 29 (emphasis added). Similarly, in *Petition of Monument Farms Three Gen, LLC*, Docket No. 7592, 2010 Vt. PUC LEXIS 332 (October 22, 2010), the PUC stated that the petitioner could proceed with construction of a component of an electric facility—a digester—based on the applicant's "representation that the digester had agricultural purposes apart from its use in the electric generation facility," even though the express purpose was to commence construction of the electric facility. *See, Petition of Beaver Wood Energy,* 2010 Vt. PUC LEXIS 565, *14 (December 9, 2010) ("*Beaver Wood I*"). But in all cases, the PUC agreed that §248 did not provide jurisdiction over farming activities. *Beaver Wood II*, fn. 22 ("the legislature did not perceive a need to include a farming exemption from Section 248 because it did not intend Section 248 review to extend to the farming operations themselves).

At the end of the PUC hearing on June 26, 2020, Chairman Roisman stated that the PUC would be issuing a temporary restraining order. A temporary restraining order is not effective unless and until it complies with V.C.R.P. 65,[5] which requires, *inter alia*, a statement of the reasons therefor.

[5]V.R.C.P. 65(d) clearly states: "(d) Form and Scope of Restraining Order or Injunction. -- Every

In any case, Mr. Melone told Chris Little of Ecos Energy LLC to tell Robert Kobelia, who was the forester (i.e., person doing the site work) to cease all tree-clearing activity once a written order was issued that restrained Mr. Kobelia's work because until it was in writing Respondent had no ability to predict what the scope of the injunction might be. Mr. Little had thought he had subscribed to case 20-1611-INV in ePUC so that he would be informed of the issuance of the order. Mr. Melone was asleep at the time the order was issued in ePUC during the night of June 26, 2020 (which under the PUC's rules was technically not issued until the following business day, which was Monday, June 29, 2020). Apparently, Mr. Little's subscription request did not take effect so he was not made aware of the issuance of the temporary retraining order until after 1pm EDT on June 27, 2020. Chris Little of Ecos Energy LLC communicated the issuance of the temporary restraining order to Mr. Kobelia at 1:30pm EDT on June 27, 2020, and asked him to cease all activity. According to Mr. Kobelia, shortly thereafter a member of the Bennington police served on Mr. Kobelia a copy of the temporary restraining order. According to Mr. Kobelia he told the officer that he would move his machine out of the work area after he finished his soda which he did five minutes later. Mr. Kobelia then serviced his machine and then smoothed holes in the unpaved access road that could be a safety hazard for those that might legally or illegally walk on the property to the blacktop portion of Willow Road.

At the December 4, 2020 hearing in PUC case 20-1611, in response to a question from PUC Commissioner Cheney, Robert Kobelia was very specific about what he was doing on the morning of Saturday, June 27, 2020. The PUC issued the TRO at 10:30pm the night before. Kobelia stated that what he started doing (but was not completed by the time he was told to stop), was to create a place to park one or two vehicles. He stated that the area contained "lots of invasives, very, very thick honeysuckle, autumn olive, and multiflora rose. It's a jungle." Tr. 49:3-5. "[M]y job on that

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restraining order and every order granting a preliminary or permanent injunction shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

Saturday was the first day I had to not do silt fence installation, but was to actually make a place to park one or two vehicles." Tr. 49:8-11. Robert Kobelia, was very specific about the area where he was attempting to make two parking spaces. "So there's some ash right at the very beginning that were maybe four- to eight-inch diameter trees that were dead. Incidentally, a large component of the trees are ash. Bennington was just notified that emerald ash borer is found in Bennington, so those, all those ash will be dead in three years if they're not already on their way. So that's, that's where I was clearing." Tr. 49:13-20. Robert Kobelia reiterated that the work done on June 27, 2020, was clearing dead trees. *See*, Tr. 63:9-25, 64:1-6:

> Q. … the 100-by-250 clearing area, which we've identified on the exhibit, most of that was cleared before the hearing on the 26th; is that correct?
> A. That is correct. I purposefully left those six-inch dead ash until a day when I had the bulldozer working perfectly, and that was the morning I was there working on those.
> Q. Okay. So that's the, those are the only things that you actually cleared from the area on Saturday, June 27th; is that correct?
> A. That is, that is correct. And I wasn't looking to excavate. That would be a further job. First, we took the little stuff when I first started. Then we took a few of these bigger trees. To get rid of all of the stumps, it would require a further use of an excavator that just would do it so quickly and then a final back-grading to be able to use it for agricultural use. So we were in step two.
> Q. Okay, great. And you had said that you looked up what the white arrowleaf aster looked like, correct, so you'd be able to identify it if you saw it?
> A. That is correct.

Respondent's testimony referred to by Mr. Hanley was not only credible, but accurate. The PUC relied on a single thin reed of it called evidence that the clearing was "explicitly linked" to a plan to construct electric generation facilities. The purported "explicitly linked" evidence is based solely on Respondent's answer on cross-examination to a physics question involving the Pauli Exclusion Principle posed by ANR's Attorney Einhorn. Attorney Einhorn's question asked no more than whether Respondent agreed with the Pauli Exclusion Principle that no two objects can occupy the same space at the same time. Of course, Respondent agreed that no two objects can occupy the same space at the same time. Thus, a solar module cannot be placed where a tree exists, nor could a house, a barn, a garage or crops. Nor could livestock graze on land occupied entirely

by trees. But it is on that physics colloquy that the PUC's orders entirely rest. The actual testimony is as follows:

> Q. [Einhorn] And would you agree with me that, if the area wasn't cleared at all, you could not build the Apple Hill project, correct?
> A. [Witness] If there were trees there, yeah, we couldn't, we obviously could not put solar modules where trees were.
> Q. [Einhorn] Right. So the clearing is necessary to build the project?
> A. [Witness] Well, a cleared area is necessary to build the project.
> Q. [Einhorn] The Apple Hill project location that's proposed requires that trees be cleared before the Apple Hill solar facility can be constructed, correct?
> A. [Witness] Not as we amended it, no.
> Q. [Einhorn] *I'm not talking about when, how, why they're cleared.* I'm simply saying, You would agree with me that, before you can build a solar project where you want to build one for the Apple Hill facility, trees will need to be cleared?
> A. [Witness] I would agree that, if trees were there, they would have to be cleared; that's right.

(emphasis added).

Attorney Einhorn's statement that he does not care why the trees are being cleared reaffirms that all he was asking for related to the physics question of whether two objects can occupy the same space at the same time. But that does not answer the question of whether the sitework was *for the construction of* an electric generation facility as opposed to *for an agricultural use*. Attorney Einhorn conceded that he did not care that the clearing was being done for the purpose of an agricultural use.

Clearing for the proposed agricultural use would be quantitatively and qualitatively different and double the cost showing that the clearing is for an agricultural use and not for the construction of an electric generation facility. Attorney Einhorn asked about the difference in the type of clearing that needs to be done for an agricultural use versus a solar use:

> Q. [Einhorn] ... the activities that are being conducted right now seems to involve removing stumps as well.
> A. [Witness] That's correct, yeah, and that's one difference between clearing for agricultural use and clearing for the solar use.
> Q. [Einhorn] Okay. So the removal of stumps was not contemplated for the

solar use?
A. [Witness] I think, in general, only if they were in the way of the posts.
Q. [Einhorn] Yeah, that was, that was my recollection as well.

Notably, Attorney Einhorn's last question was actually a statement agreeing with Respondent that clearing for an agricultural use is in fact *much different* than clearing for a solar use. And the testimony is clear that the clearing was planned was for an agricultural use. Respondent explained that "the site preparation for the farming use is more expensive and more involved than clearing and site preparation for a solar project. For example, in the case of a solar project, tree stumps do not need to be removed unless they end up being in the way of a post for the support racking of the modules. Clearing for PLH's farming use, however, requires that all the stumps be removed, which can more than double the cost of clearing." Thus, the only linkage is that the sitework is linked to the planned agricultural uses, and the PUC's conclusion to the contrary had no evidentiary basis. The PUC's conclusion is based upon speculation, which is what tends to happen when a single body acts as prosecutor, judge, and jury.

The PUC's conclusion regarding the primary purpose of the agricultural uses was wrong too. As explained in Respondent's uncontradicted testimony, the PUC's assertion the sheep would be placed at the Bennington site primarily to serve the non-existent, contingent solar projects was wrong and wholly without any evidentiary support. Mr. Melone's testimony at the December 2020 hearing, *see* **EXHIBIT 13**, proves that the PUC's conclusion is wrong.

> ROISMAN: It sounds like the sheep that you're proposing here is primarily sheep to be used to graze *at solar projects* and that it, maybe you want to use this area as a, as a way station for sheep that you would be transporting around to sites that have solar projects already built and that need sheep to graze there. Is that a fair characterization?

[emphasis added]

> [Witness]: … that's the primary aspect. ... the plan that the sheep farmer has given to us, I think, does contemplate also the wool being sold as a commodity, and some of the, and I guess some of the sheep as well would be sold. I guess, to the extent that there are new sheep that are born and that are more than we need, then she has that in the business plan, too, as far as a revenue stream. So, I mean, so it really would be while we're getting into the business because of all the solar farms that we operate in the northeast. The

> business plan does also contemplate the normal sheep operations and income of selling the wool and selling some of, of the sheep, you know, if it's more than we need in terms of sheep there.

The PUC Chair's question refers to "solar projects" not the proposed Chelsea and Apple Hill solar projects. That is the crucial difference. Mr. Melone's further testimony re-emphasized that point:

> while the impetus for getting into the farming business was to maintain solar projects owned by Allco and third parties, the farming business will also engage in and realize revenue from the more typical livestock farm revenue streams. The potential use of the sheep to graze at the site in Bennington is an incidental benefit of the overall sheep business, it by no means is the "primary" purpose as concluded by the PUC.

The PUC's contrary conclusion is based upon surmise and speculation. No testimony backs up or provides support for the PUC's conclusion. The only thing the record is "replete with" is that the sitework is for agricultural uses, like the one Vineyard Sky Farms already engages in in Connecticut, and not for site preparation for the construction of a solar facility. The Respondent's testimony further elaborated on that fact:

> the primary aspect of PLH *getting into the business of sheep farming* was "to graze at solar projects" throughout the Northeast. At no time did I state (as Finding #5 claims) that "[t]he sheep grazing is being done 'primarily' to control vegetative growth at the petitioner's planned solar projects at the site." But even if the sheep grazing was being done primarily to control vegetative growth of what is now a non-existent solar array, the activities on the Parcels still include the raising, feeding, and management of sheep which is still farming.
>
> …the grazing at the Bennington site is not dependent at all on a solar facility being on the site one day. The raising, feeding, and management of the sheep is a completely separate business and farming activity, and would commence prior to any solar project being on the site and would continue whether or not a solar project is ever built. PLH would be operating a farming business that would not depend at all, much less primarily on the prospect of a solar facility on the Bennington site. It would make no business sense to commence a farming business that was dependent upon the existence of two solar projects that the PUC has denied CPGs for.
>
> PLH would be engaging in farming and the property would be considered a farm both before and after any solar facility that might be placed in service. The hoped-for solar projects at the site (which the Commission has denied CPGs for both) would be a small portion of the solar projects that would be serviced by the sheep, which would include both Allco-related projects and third-party projects (in New York, Vermont, Massachusetts and Connecticut).

As explained above, the claimed "admissions" were non-existent. The PUC's foundational conclusion that creating an agricultural use for the management and raising of sheep then and planting hemp and building hemp storage buildings then was merely a ruse so the sheep could primarily serve *non-existent* solar projects, which still do not exist today, was without evidentiary foundation. Moreover, even if the PUC's conclusion were correct, the sitework would still be for an agricultural use, and the sheep and hemp business would still constitute farming. Moreover, the part of the land that Kobelia actually had cleared was not the proposed location of solar modules. That area was the site of a proposed agricultural building.

Respondent filed the petition for certiorari on the issue of the petitioners not receiving a trial by jury, which petitioners would be entitled to under the Seventh Amendment to the United States Constitution. The Vermont Supreme Court in somewhat of a first, held that the Vermont Constitution's guarantee of a trial by jury is less protective than the Seventh Amendment.

VIII. THE COMPLAINT DOES NOT CONTAIN SUFFICIENT FACTUAL ALLEGATIONS TO SUPPORT THE ELEMENTS OF COUNT V.

Count V involves what is commonly known as the Benn High project in Bennington. Count V, P123, alleges "[i]n the manner and means Thomas Melone used in his opposition to the Bennington High Project, Thomas Melone violated: a) Rule 3.1 in that Thomas Melone brought or caused to be brought a legal proceeding in the Environmental Division when there was no basis in law to assert that it had subject matter jurisdiction over the matter; b) Rule 3.3(a)(l) in that Thomas Melone demonstrated a lack of candor to both the Environmental Division and the Vermont Supreme Court by making false statements of law regarding the subject matter jurisdiction of the Environmental Division; c) Rule 4.4(a) in that Thomas Melone used means and methods that had no substantial purpose other than to delay or burden a third person, the Bennington High developer; and d) Rule 8.4(d) in that Thomas Melone's conduct was conduct prejudicial to the administration of justice."

Count V must be dismissed because it falls far short of Vt. R.Civ. P. 9's particularity requirement, which applies to allegations of false statements made by Mr. Hanley. *See, e.g., Miller*

v. United States ex rel. Miller, 110 F.4th 533, 548 (2d Cir. 2024) (plaintiff is "required to allege the false statements at issue with particularity.") All of Mr. Hanley's falsity allegations fail the particularity requirement of Rule 9. Mr. Hanley must (1) specify the statements that he contends were false, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were false. *Id*. at 544. Without such particularity, Respondent has no way of knowing exactly what he is being accused of and on what non-frivolous basis those accusations rest.

On its face Count V fails because Mr. Hanley fails to allege that Respondent "knowingly" made false statements. "Knowingly," "known," or "knows" requires "actual knowledge of the fact in question." As argued in Respondent's motions, Respondent had good faith arguments in support of the filings in the Environmental Division, including the following:

(A) <u>The Selectboard in approving the Benn High development was acting in not a legislative capacity but performing development review.</u>

The applicable statute, 24 V.S.A. § 4471, provides that:

> (a) Participation required. *An interested person who has participated in a municipal regulatory proceeding authorized under this title may appeal a decision rendered in that proceeding by an appropriate municipal panel to the Environmental Division.* Participation in a local regulatory proceeding shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. An appeal from a decision of the appropriate municipal panel, or from a decision of the municipal legislative body under subsection 4415(d) of this title, shall be taken in such manner as the Supreme Court may by rule provide for appeals from State agencies governed by 3 V.S.A. §§ 801-816, unless the decision is an appropriate municipal panel decision which the municipality has elected to be subject to review on the record. (emphasis added).

Respondent ran into this issue once before regarding the Environmental Court's jurisdiction over municipal decision making and in the old cases referred to by Ms. Bent (Civil: Docket No. 78-1-18, ED: Docket Nos. 20-2-18 Vtec and 21-2-18 Vtec) (which the Town settled), Mr. Melone used external counsel, PF+C Law in Burlington. That firm had difficulty making heads

or tails of the gray area of exactly which claims against municipalities belong in the Environmental Division versus the Civil Division, both part of one Superior Court.

Somewhat clearer guidance eventually came from the Environmental Division itself in its Order Granting Bennington's Motion to Dismiss in Case 21-2-18 Vtec (*see* **EXHIBIT 14**). In that order the Environmental Court held that the Bennington Select Board could only be the "appropriate municipal panel" called for in § 4471 when it was acting as a "legislative body performing development review" *See* 24 V.S.A. § 4303(3) and pages 5-6 of the Order in Case 21-2-18 Vtec.

In the Benn High case, the Select Board was not acting as a legislative body, it was not creating a law or ordinance. It was actively reviewing a development project, making changes to the project, imposing conditions on the development and deciding whether or not to fund it under a DEVELOPMENT AGREEMENT based on that review. The Environmental Court disagreed and held that the Selectboard's review of the development was a legislative act and Respondent appealed this decision to the Vermont Supreme Court but settled before the Vermont Supreme Court could weigh in on the dispute. "Legislate" means to perform the function of legislation or to make or enact laws[6]. It refers to the process of making a law or putting a law into a formal, written form by a government body set up for that purpose. Nothing about the Selectboard's approval of the DEVELOPMENT AGREEMENT fits under the definition of "legislative".

Although the argument was not successful at the Environmental Division, that does not mean that our argument concerning the nature of the Selectboard's action (*i.e.*, legislative vs. development review) was unmeritorious by any stretch of the imagination and Respondent still feels he would have been successful proving this point at the Vermont Supreme Court.

(B) The Environmental Court has jurisdiction to review municipal contracts under 24 V.S.A. § 4464 APPROPRIATE MUNICIPAL PANELS

The Selectboard also acts as an "appropriate municipal panel" under 24 V.S.A. § 4464(b)(5) which reads:

[6] https://www.merriam-webster.com/dictionary/legislating

> (5) The legislative body may enter into an agreement governing any combination of the timing, financing, and coordination of private or public facilities and improvements *in accordance with the terms and conditions of a municipal land use permit*, provided that agreement is in compliance with all applicable bylaws in effect. (emphasis assed)

Respondent's position is that the DEVELOPMENT AGREEMENT was not in accordance with the permit issued by the Development Review Board because the permit required the project to comply with Bennington's Land Use and Development Regulations (it does not). The Environmental Court, however, read the words "in accordance with" to mean "required by". In other words, because the permit itself did not specifically require the DEVELOPMENT AGREEMENT, the Environmental Court did not have jurisdiction to review it under 24 V.S.A. § 4464(b)(5). "In accordance with" does not mean "required by". In accordance with means "in a way that agrees with or follows (something, such as a rule or request)"[7] In other words, the Environmental Court has the jurisdiction to determine whether or not the DEVELOPMENT AGREEEMENT conforms with the Land Use and Development Regulations, which are incorporated by reference in the permit.

Although the argument was not successful at the Environmental Division, that does not mean that our argument concerning the meaning of "in accordance with" (*i.e.*, required vs. in conformance with) was unmeritorious by any stretch of the imagination and Respondent feels he would have been successful proving this point at the Vermont Supreme Court.

(C) <u>There is an open question as to the existence of a jurisdictional gap in Vermont whether litigants can be left without a remedy with respect to certain municipal decisions.</u>

While the substantive claims against the Town with respect to the Benn High were valid, as described above and in the Respondent's motions, there is as described in Respondent's motions, an open question as to where complete relief can be obtained. Respondent did not want to be on the receiving end of a Supreme Court opinion (as in *Monkton* discussed below) where the

[7] https://www.merriam-webster.com/dictionary/in%20accordance%20with

Supreme Court said that you cannot say that you had no ability to get relief in the Environmental Court because you did not go there first. Count V should be dismissed.

IX. MR. HANLEY WAS NOT DULY APPOINTED.

In a May 20, 2025, letter to Mr. Melone, Merrick Grutchfield stated that "Disciplinary Counsel has a conflict with the complaint made against you. The Chair of the Professional Responsibility Board has assigned Michael Hanley, Esq. to serve as Conflict Disciplinary Counsel." In an October 14, 2025, email to Mr. Melone, Merrick Grutchfield stated that the appointment of Michael Hanley was done under color of authority of "Policy Number 22 [which] allows for the PRB Chair to name an alternate if Disciplinary Counsel has a conflict. AO 9 refers to the appointment of Disciplinary Counsel, versus the appointment of an alternate if Disciplinary Counsel has a conflict." *See* Policy 22 ("*22. When bar counsel, disciplinary counsel, screening counsel or any member of a hearing panel has a conflict or is otherwise disqualified or unable to serve, the Board Chair shall appoint an alternate.")*

While A.O. 9, Rule 1E(1)(c) provides that the PRB's "powers and duties include … Adopt[ing] internal procedures for the administration of the program that are consistent with these rules, including but not limited to guidelines for: … (c) the appointment of alternates when … disciplinary counsel … has a conflict or is otherwise disqualified or unable to serve," and the PRB has adopted Policy #22 that states the "Board Chair shall appoint an alternate,"

a. there is no evidence of his appointment being made by the Board Chair, rather *Exhibit 1 to Mr. Hanley's objection* shows that it was the Program Administrator, Merrick Crutchfield, that "appointed" Mr. Hanley, not Carolyn Anderson. For that reason alone, the Complaint must be dismissed.

b. Carolyn Anderson (if she is the Carolyn Anderson of Green Mountain Power ("**GMP**")) has a direct conflict with Respondent as she is general counsel for GMP and GMP is in active litigation with Respondent in *In Re: Petition of Otter Creek Solar LLC,* Supreme Court docket number 24-AP-374, (appealed from Vermont Public Utility Commission case no. 19-0516-PET). Her conflict prevents her from taking *any action* related to Respondent,

including, if she had the power, appointing Mr. Hanley.

c. Policy 22 has not been approved by the Vermont Supreme Court.

d. Policy 22 is inconsistent with A.O. 9's requirements regarding appointment of disciplinary counsel under A.O. No. 9, Rule 2, which states that Disciplinary Counsel must be appointed by the Court Administrator "[f]ollowing consultation with the Board, and subject to Court approval." The Supreme Court did not approve Mr. Hanley's appointment for this matter following consultation between the PRB and the Court Administrator. The PRB can have a policy regarding "appointment of alternates when … disciplinary counsel … has a conflict or is otherwise disqualified or unable to serve," but that policy cannot bypass the clear requirement of Rule 2.

The unlawful appointment of Michael Hanley renders his purported official actions void *ab initio*. The Complaint against Mr. Melone that Mr. Hanley alone signed and filed is thus a nullity and should be dismissed. Dismissal of the Complaint is warranted because Mr. Hanley was not lawfully exercising governmental authority when he investigated, presented and signed the Complaint. When a court determines that a government actor exercised "power that the actor did not lawfully possess," including because he was not "properly *appointed*," that ruling renders his past actions "void." *Collins v. Yellen*, 594 U.S. 220, 257-58 (2021) (emphasis added); *see id.* at 258 (citing cases). With an improper appointment, the officer at issue cannot "lawfully exercise the statutory power of his office at all in light of the rule that an officer must be properly appointed before he can legally act as an officer." *Id.* at 266 (Thomas, J., concurring). And any "[a]ttempts to do so are void." *Id.* at 283 (Gorsuch, J., concurring in part).

In light of these principles, the United States Supreme Court has invalidated judgments issued or reviewed by an improperly appointed adjudicator. In *Ryder v. United States*, 515 U.S. 177 (1995), for instance, the United States Supreme Court "reversed" the court-martial conviction of a defendant after he successfully challenged the appointment of the intermediate appellate judges who reviewed his case. *Id.* at 188. Likewise, in *Lucia v. SEC*, 585 U.S. 237 (2018), the United States Supreme Court set aside an agency adjudication "tainted with an appointments

violation," making clear that a decision of an improperly appointed official cannot stand. *Id.* at 251.

Similarly, in *United States v. Trump*, 740 F. Supp. 3d 1245 (S.D. Fla. 2024), the court applied these principles when dismissing an indictment because of a defect in the appointment of the prosecutor who secured the charges. The court reasoned that "[i]nvalidation follows directly from the government actor's lack of authority to take the challenged action in the first place." *Id.* at 1302-03.

Declining to dismiss the Complaint would leave Mr. Melone with no remedy for his timely and successful challenge to Mr. Hanley's unauthorized appointment. The fundamental error here thus allows a presumption that Mr. Melone was prejudiced, "and any inquiry into harmless error would [require] unguided speculation." *Bank of Nova Scotia*, 487 U.S. at 257. That Mr. Melone was prejudiced is reinforced by the unmeritoriousness of the Complaint's claims and their targeting Mr. Melone's First Amendment rights to free speech and the right to petition. That Mr. Melone is prejudiced is also shown by the necessity for dragging nearly two dozen witnesses from Bennington, the PUC and other places in order to litigate the issues presented by the Complaint.

Here, the Complaint should be dismissed because of Mr. Hanley's unlawful appointment. When Mr. Hanley investigated Mr. Melone and presented and filed the Complaint in this case, he was exercising power that he "did not lawfully possess." *Collins*, 594 U.S. at 258. It was no different than if a private citizen went before a probable cause hearing panel and purported to authorize the issuance of the Complaint. Thus, the Complaint is "void" and a nullity. *See id.* at 258. It should therefore be dismissed.

X. THE COMPLAINT DOES NOT MEET THE REQUIREMENTS OF VRCP 8.

"[T]he test of whether a particular pleading is sufficient under Rule 8(a) is whether it gives fair notice of the claim and the grounds upon which it rests." *Levinsky v. Diamond*, 140 Vt. 595, 600 (1982). Mr. Hanley recites the claims in his objection, but that recital provides no greater clarity that the pleader "is entitled to relief" and "the grounds upon which it rests." Count VIII is the worse offender of all, simply in conclusory fashion referencing unspecified proceedings and

unspecified conduct that is purportedly "a consistent pattern of misconduct." The vagaries of Count VIII not only fail to provide fair notice of the claim and the grounds upon which it rests, but no notice at all. There is no way for the Respondent to understand the charge in Count VIII or to respond properly to it, or to engage in appropriate trial preparation because Mr. Hanley's generic references, *see* Complaint at P132, to "many years in a variety of forums," is unspecified. If he is limiting that alleged acts to those in Counts I-VII, then he must say so. If not, then he must identify the other yet unidentified acts and forums.

XI. ALL THE CLAIMS UNDER RULE 8.4(d) MUST BE DISMISSED.

In order to show that the pleader "is entitled to relief," under Rule 8.4(d), Mr. Hanley must do more than just in a conclusory and speculative manner assert that the various acts referenced in Counts I-VII and the other unspecified acts in Count VIII are purportedly "prejudicial to the administration of justice." Given the vagueness of Rule 8.4(d) more is required, such as conduct that has some potentially altering impact. *See, e.g., Fla. Bar v. Martinez*, 412 So. 3d 731, 736 (Fla. 2025) ("Martinez's act in deleting the contents on the drive was prejudicial to the administration of justice because the contents of the drive were relevant to Silverberg's civil case against Martinez.") Mr. Hanley does not allege how or even whether the alleged acts had some potentially altering impact. As the Vermont Supreme Court has stated "This prohibition is typically applied to misconduct that interferes with a judicial proceeding or compromises the integrity of the legal profession." Mr. Hanley makes no effort to allege which of Respondent's acts interferes with a judicial proceeding or compromises the integrity of the legal profession. As a result, all claims under Rule 8.4(d) must be dismissed.

XII. MR. HANLEY'S ESSENTIALLY CONCEDES THAT THE COMPLAINT IS A SHOTGUN PLEADING THAT NEEDS TO BE DISMISSED OR AMENDED.

In Respondent's motion, Respondent explained and cited authorities as to why the Complaint is a shotgun or puzzle pleading that must be dismissed or amended to provide the clarity needed for Respondent to fully understand what the claims are and what alleged acts each claim is based. Mr. Hanley's defense is simply more avoidance and conclusory statements, such as "the

Petition is far more detailed than the petitions in many other disciplinary proceedings in Vermont and far exceeds the requirements of due process," without any citations, evidence or why such a conclusory statement addresses the shotgun and puzzle pleading nature of the Complaint (it does not). Mr. Hanley's further claim that "Mr. Melone has received notice of the grounds for discipline," also fails to engage the issue and is more of the same—his conclusory statements. Mr. Hanley's final assertion is that Respondent "can utilize the discovery tools available under the Vermont Rules of Civil Procedure to gain additional information." Tellingly, Mr. Hanley does not claim that Respondent can gain additional information *sufficient to understand* which of Mr. Hanley's allegations support which claims. Mr. Hanley likely phrased it that way for two reasons. *First*, Mr. Hanley has refused to provide all documents in his possession related to Respondent. Mr. Hanley has also refused to provide a privilege log for documents that he is withholding based upon claims of privilege. If Mr. Hanley is so confident in his Complaint, then what is he afraid will be disclosed if he provides all non-privileged information to Respondent and a privilege log of all alleged privileged information. *Second*, Mr. Hanley's complaint is at bottom political retribution to retaliate for Thomas Melone's exercise of his First Amendment rights to free speech and to petition the government, and clarity is thus his enemy.

For the reasons stated above and in Respondent's motions, the Complaint should be dismissed in its entirety. In the alternative, the Complaint must be revised to clearly and unambiguously connect specific conduct to alleged specific violations.

Dated: November 20, 2025

Respectfully submitted,
/s/Thomas Melone
Thomas Melone
601 S. Ocean Blvd.
Delray Beach, FL 33483
Telephone: (212) 681-1120
Facsimile: (801) 858-8818
Thomas.Melone@AllcoUS.com

EXHIBIT 1

From: Strauss, Andrew
Sent: Friday, April 25, 2025 3:39 PM
To: Alexander, Jon
Cc: Sickles, Brandy; Carolyn Anderson
Subject: RE: PRB Nos. 119-2025, 120-2025

OK, thanks, Jon.

Andrew R. Strauss, Esq.
Licensing Counsel
Office of Attorney Licensing
Costello Courthouse
32 Cherry Street, Suite 213
Burlington, VT 05401
Tel: (802) 951-0139

From: Alexander, Jon <Jon.Alexander@vtcourts.gov>
Sent: Friday, April 25, 2025 12:56 PM
To: Strauss, Andrew <Andrew.Strauss@vtcourts.gov>
Cc: Sickles, Brandy <Brandy.Sickles@vtcourts.gov>; Carolyn Anderson <canders12345@gmail.com>
Subject: RE: PRB Nos. 119-2025, 120-2025

Andy,

I have to decline these referrals on conflict grounds. The complainant, Merrill Bent, is chair of the JCB and I am now Special Counsel to the JCB reporting directly to her on my investigations and prosecutions.

I assume that Carolyn will arrange for conflict counsel to investigate these.

Thanks, Jon

VERMONT JUDICIARY
Jon T. Alexander
Disciplinary Counsel, Professional Responsibility Program
Costello Courthouse, 32 Cherry Street, Suite 213
Burlington, VT 05401
(802) 859-3001 direct office line

From: Strauss, Andrew <Andrew.Strauss@vtcourts.gov>
Sent: Friday, April 25, 2025 12:47 PM
To: Alexander, Jon <Jon.Alexander@vtcourts.gov>
Cc: Sickles, Brandy <Brandy.Sickles@vtcourts.gov>
Subject: PRB Nos. 119-2025, 120-2025

Hello Jon,

I am referring these two complaints to you for investigation. The complainant is Attorney Merrill Bent and the respondents are Attorneys Michael Melone and Thomas Melone. Both respondent attorneys submitted written

responses to the complaint to me, which are on the server. I am referring these complaints to you for these reasons:

1. The complaint appears to make out a violation of Rule 4.2 by Thomas Melone, who knowingly sent emails directly to Attorney Bent's client. Attorney Melone claims he is not representing a client, but even so, I think Rule 4.2 would still apply. See https://vtbarcounsel.wordpress.com/2022/09/29/aba-opinion-concludes-that-the-no-contact-rule-applies-to-self-represented-lawyers-should-vermont-amend-its-rule/.
2. The complaint also appears to make out a violation of Rule 3.1, in that Attorney Bent is claiming that the Melones brought a frivolous lawsuit for the sole purpose of influencing a separate litigation.

Attorney Bent makes other claims of Rule violations, but I find the ones above are the most clear.

Andy

Andrew R. Strauss, Esq.
Licensing Counsel
Office of Attorney Licensing
Costello Courthouse
32 Cherry Street, Suite 213
Burlington, VT 05401
Tel: (802) 951-0139

EXHIBIT 2

In *GRABOWSKI-SHAIKH v. CONNECTICUT ATTORNEYS TITLE INSURANCE COMPANY D/B/A CATIC*, case 2:24-cv-686-wks (D. Vt.), Mr. Hanley represented the plaintiffs. In the Statement of Undisputed Facts filed by the defendant in connection with the Defendant's motion for summary judgment (which was granted), undisputed fact #23 states:

> 36. On October 29, 2023, Plaintiffs, through Attorney Hanley, wrote to Attorney Windish, asserting that Mr. Windish's former law firm had represented Plaintiffs when they acquired their property and threatened Mr. Windish and his former firm with a professional liability claim for failing to advise Plaintiffs that they had no right to park on Mr. Zilian's property and threatened Mr. Zilian with criminal prosecution if he erected a fence or removed trees from the portion of his property to which Plaintiffs claimed to have acquired rights by adverse possession. Exhibit 14 – October 29, 2023 Letter.

The defendant's statement of undisputed facts was supported by an affidavit as well. ECF 8-21. Exhibit 14, the October 29, 2023, letter written by Mr. Hanley. ECF 8-1.

Mr. Hanley's response to the plaintiffs' SUF did not address the accusations with evidence as is required, in order to avoid having it being admitted. Unlike an answer where a blanket "denied" would suffice, that type of response is insufficient in a motion for summary judgment to avoid having it being admitted.

Mr. Hanley's response to the SUF that he threatened plaintiffs with criminal prosecution was:

> RESPONSE: DISPUTED. Mr. Hanley did not "threaten" a professional liability claim. Instead, he advised Mr. Windish to have his professional liability carrier contact Mr. Hanley and advised that cutting the trees would be timber trespass, which is a crime in Vermont.

Exhibit 14

PLANTE & HANLEY, P.C.
LAWYERS
POST OFFICE BOX 708
WHITE RIVER JUNCTION, VERMONT 05001-0708

PETER P. PLANTE (1920-1996)
MICHAEL F. HANLEY*
PAUL J. PERKINS†

*Admitted in VT, NH and ME
†Admitted in VT and NH

TELEPHONE 802-295-3151
FACSIMILE 802-295-5281
MFHANLEY@PLANTEHANLEY.COM
PJPERKINS@PLANTEHANLEY.COM
WWW.PLANTEHANLEY.COM

October 29, 2023

Richard Windish
Primmer Piper Eggleston & Cramer, PC
43 Lincoln Corners Way, Suite 205
Woodstock, VT 05091

BY EMAIL ONLY: rwindish@primmer.com

Re: James Zilian; Asim Grabowski-Shaikh and Cara Grabowski-Shaikh

Dear Richard:

I was taken aback by your letter of October 25, 2023.

Hayes, Windish & Badgewick represented Mr. and Ms. Grabowski-Shaikh when they purchased 4 Pleasant Street in Woodstock in 2017. If the LeClair survey dated July 18, 1979 (recorded in the Woodstock Land Records on March 20, 1981) leads to the conclusion that Ms. Clunan did not own a significant and important part of the real property Mr. and Ms. Grabowski-Shaikh were lead to believe they were purchasing, your firm should have told your former clients about it.

Please ask a representative of Hayes, Windish & Badgewick's professional liability insurance carrier to contact me.

In closing, I note your statements that Mr. Zilian plans to (1) "erect a fence" and (2) "remove . . . several trees." Self-help of this nature would be very unwise.

Erecting a fence of this type is a crime. 24 V.S.A. § 3817. The erection of a fence of this type entitles a party harmed by the erection of such a fence to the recovery of punitive damages.

Removing trees in circumstances like this is a crime. 13 V.S.A. § 3606a. The

penalty for the wrongful removal of one tree is not more than one year of imprisonment, a fine of not more than $20,000, or both. The penalty for the wrongful removal of a second tree is not more than two years of imprisonment, a fine of not more than $50,000, or both.

Respectfully yours,

Michael F. Hanley

MFH/shg
cc: Asim Grabowski-Shaikh (by email only)
Cara Grabowski-Shaikh (by email only)

Exhibit 12

PLANTE & HANLEY, P.C.
LAWYERS
POST OFFICE BOX 708
WHITE RIVER JUNCTION, VERMONT 05001-0708

PETER P. PLANTE (1920-1996)
MICHAEL F. HANLEY*
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May 25, 2023

Benjamin Percy
Davis Steadman Percy & Sluka
PO Box 796
167 N. Main Street
White River Junction, VT 05001

CONFIDENTIAL
SUBJECT TO V.R.E. 408

BY EMAIL ONLY: Percy@WhiteRiverLawyers.com

Re: James Zilian; Asim Grabowski-Shaikh and Cara Grabowski-Shaikh

Dear Mr. Percy:

I understand that you represent James Zilian. I represent Asim Grabowski-Shaikh and Cara Grabowski-Shaikh.

This letter is written in the spirit of compromise, without prejudice to my clients' position.

I note that last weekend Mr. Zilian summoned the Woodstock Police over the manner in which my clients parked their car. The inaction of the Police Department should have demonstrated to Mr. Zilian that the situation with respect to the boundary separating our clients' two parcels is not as simple as he wishes it to be.

As you know, the boundaries of innumerable Vermont properties are not controlled by the competing calls of the adjacent landowners' deeds but, instead, by the mutual recognition of a given line by adjoining landowners, and continuous possession by one of those landowners or his/her predecessor in title to that line for fifteen-years. Beresford v. C.W. Gray & Sons, 138 Vt. 308 (1980); Okemo Mtn., Inc. v. Lysobey, 2005 VT 55; Mahoney v. Tara, LLC, 2012 Vt. Super. Lexis 65; Mahoney v. Tara, LLC , 2014 VT 90. 12 V.S.A. § 501. ("An action for the recovery of lands, or the possession thereof, shall not be maintained, unless commenced within fifteen years after the cause of action first accrues to the plaintiff or those under whom he claims.") Indeed, I think it almost certain that because of this law the opinion on title provided to Mr. Zilian when he purchased 2 Pleasant Street specifically excluded any certification of the boundary lines.

Whatever the parties' deeds may say, the boundary between 2 and 4 Pleasant Street was established over decades by the planting and maintenance of a row of trees, the establishment and maintenance of gardens, the mowing of a portion the area in warm weather, the placement of snow during cold weather and the parking of automobiles.

I hope Mr. Zilian, who has on multiple occasions threatened to cut the trees marking the boundary, will be made aware that doing so would be very imprudent and could result in both criminal and civil proceedings against him.

On the other hand, my clients would like to reestablish a good relationship with their neighbor and would be happy to mediate this dispute in a sincere effort to avoid litigation.

Please advise.

Respectfully yours,

Michael F. Hanley

MFH/shg
cc: Asim Grabowski-Shaikh (by email only)
Cara Grabaowski-Shaikh (by email only)

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ASIM GRABOWSKI-SHAIKH and AND CARA GRABOWSKI-SHAIKH, Plaintiffs,	)	
v.	)	Case No. 2:24-CV-00686
CONNECTICUT ATTORNEYS TITLE INSURANCE COMPANY d/b/a CATIC, Defendant.	)	

ASIM AND CARA GRABOWSKI-SHAIKHS' RESPONSE TO CATICS'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

1. On December 22, 2016, Plaintiffs acquired title to the property known as 4 Pleasant Street in Woodstock, Vermont ("Plaintiffs' Property"), pursuant to a Warranty Deed recorded January 6, 2017 in Book 258 at Pages 236-238 in the Woodstock Land Records. Exhibit 1 – Grabowski-Shaikh Complaint; Exhibit 2 – Expanded Protection Owner Policy.

RESPONSE: DISPUTED BECAUSE INCOMPLETE. The Grabowski-Shaikhs acquired title to 4 Pleasant Street in Woodstock, Vermont on January 6, 2017, the date that the warranty deed from Janice Clunan was recorded in the Woodstock Land Records. However, the Grabowski-Shaikhs did not acquire title to 4 Pleasant Street exclusively by deed. The Grabowski-Shaikhs also obtained title to 4 Pleasant Street by prescription through the possession and use of a portion of a disputed area of land between 2 and 4 Pleasant Street by themselves and/or by their predecessors in title over fifteen continuous years.[1]

[1] *Affidavit of Assim Grabowski-Shaikh*, page 5, ¶ 49; *Affidavit of Cara Grabowski-Shaikh*, page 1, ¶ 4.

objection from the owners of 2 Pleasant Street.[16]

36. On October 29, 2023, Plaintiffs, through Attorney Hanley, wrote to Attorney Windish, asserting that Mr. Windish's former law firm had represented Plaintiffs when they acquired their property and threatened Mr. Windish and his former firm with a professional liability claim for failing to advise Plaintiffs that they had no right to park on Mr. Zilian's property and threatened Mr. Zilian with criminal prosecution if he erected a fence or removed trees from the portion of his property to which Plaintiffs claimed to have acquired rights by adverse possession. Exhibit 14 – October 29, 2023 Letter.

RESPONSE: DISPUTED. Mr. Hanley did not "threaten" a professional liability claim. Instead, he advised Mr. Windish to have his professional liability carrier contact Mr. Hanley and advised that cutting the trees would be timber trespass, which is a crime in Vermont.[17]

37. On October 31, 2023, Plaintiffs, through Attorney Hanley, sent a "Notice of Claim" letter to CATIC ("Notice"). Exhibit 15 – Notice of Claim; Ex. 1 at ¶ 25.

RESPONSE: UNDISPUTED.

38. Plaintiffs requested that "CATIC defend and indemnify [Plaintiffs] in connection with Mr. Zilian's claim." *Id.*

RESPONSE: UNDISPUTED.

39. The Notice included a copy of Zilian's October 25 letter, which it mischaracterized as asserting "that Mr. Zilian owns a portion of the real property insured under the [Policy],"

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16 *Affidavit of Assim Grabowski-Shaikh*, page 5, ¶ 49; *Affidavit of Cara Grabowski-Shaikh*, page 1, ¶ 4; Doc. 8-17, page 6.

17 Doc. 8-16, page 1.

EXHIBIT 3

U.S. Bankruptcy Court
District of Vermont (Rutland)
Bankruptcy Petition #: 13-10693

Assigned to: Judge Colleen A. Brown
Chapter 7
Voluntary
Asset

Date filed: 10/01/2013
Date terminated: 04/26/2018
Debtor discharged: 04/11/2018
Joint debtor discharged: 04/11/2018
341 meeting: 01/06/2014
Deadline for objecting to discharge: 01/31/2014

Debtor disposition: Standard Discharge
Joint debtor disposition: Standard Discharge

Debtor
David L Griffin
1 Bank Street
Bennington, VT 05201
BENNINGTON-VT
SSN / ITIN: xxx-xx-1207
***fdba* President Down to Earth Golf Course Construction, Inc.**
***dba* Down to Earth Land Development dba Mt. Anthony Golf & Tennis**

represented by **Heather Z Cooper**
Facey Goss & McPhee PC
PO Box 578
Rutland, VT 05702-0578
802-773-3300
Fax : 802-775-1581
Email: hcooper@fgmvt.com

John R. Canney, III
PO Box 6626
Rutland, VT 05702-6626
(802) 773-3325
Fax : (802) 773-3399
Email: AttyCanney@aol.com
TERMINATED: 06/02/2017

Joint Debtor
Maria E. Leon
1 Bank Street
Bennington, VT 05201
BENNINGTON-VT
SSN / ITIN: xxx-xx-0016

represented by **Heather Z Cooper**
(See above for address)

John R. Canney, III
(See above for address)
TERMINATED: 06/02/2017

Trustee
Raymond J Obuchowski, Trustee
PO Box 60
Bethel, VT 05032-0060
(802) 234-6244
TERMINATED: 10/01/2013

Trustee
Douglas J. Wolinsky
PO Box 1489
Burlington, VT 05402-1489
(802) 864-0880

represented by **Douglas J. Wolinsky**
PO Box 1489
Burlington, VT 05402-1489
(802) 864-0880
Fax : (802) 864-0328
Email: trustee@ppeclaw.com

Keith A. Roberts
Darby Kolter & Roberts, LLP
89 South Main Street

Waterbury, VT 05676
802-244-7352
Email: kroberts@waterburystowelaw.com

U.S. Trustee
U S Trustee
Office of the United States Trustee
Leo O'Brien Federal Building
11A Clinton Ave., Room 620
Albany, NY 12207-2190
(518) 434-4553

represented by **Kevin Purcell**
Office of the US Trustee
74 Chapel St. Suite 200
Albany, NY 12207
(518) 434-4553
Fax : (518) 434-4459

Lisa M. Penpraze
Office of the United States Trustee
Leo O'Brien Federal Building
11A Clinton Ave., Room 620
Albany, NY 12207
518-434-4553
Fax : 518-434-4459
Email: lisa.penpraze@usdoj.gov

Filing Date	#	Docket Text
10/01/2013	1 (85 pgs)	Chapter 7 Voluntary Petition. Fee Amount $306. Filed by John R. Canney III on behalf of David L Griffin, Maria E. Leon. (Canney, John) (Entered: 10/01/2013)
10/01/2013	2 (2 pgs)	Certificate of Credit Counseling Filed by John R. Canney III on behalf of David L Griffin, Maria E. Leon. (Canney, John) (Entered: 10/01/2013)
10/01/2013		Receipt of Chapter 7 Voluntary Petition(13-10693) [misc,1027u] (306.00) Filing Fee (re: Doc # 1). Receipt number 1562670, Fee amount $ 306.00. (U.S. Treasury) (Entered: 10/01/2013)
10/01/2013	3 (9 pgs; 2 docs)	Debtor's Pay Advices with Cover Sheet Filed by John R. Canney III on behalf of David L Griffin, Maria E. Leon. (Attachments: # 1 Certificate of Service) (Canney, John) (Entered: 10/01/2013)
10/01/2013		Meeting of Creditors. Section 341(a) meeting to be held on 10/28/2013 at 11:30 AM at Location 5: U.S. Trustee Meeting Room, Rutland. Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts is 12/27/2013. (Wennberg, Nancy USBC-VT) (Entered: 10/01/2013)
10/01/2013	4 (1 pg)	Trustee's Rejection of Appointment. Filed by Raymond J Obuchowski, Trustee. (Obuchowski, Trustee, Raymond) (Entered: 10/01/2013)
10/02/2013		Meeting of Creditors. Section 341(a) meeting to be held on 12/2/2013 at 12:30 PM at Location 5: U.S. Trustee Meeting Room, Rutland. Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts is 1/31/2014. (Wennberg, Nancy USBC-VT) (Entered: 10/02/2013)
10/04/2013	5 (5 pgs)	Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines with Certificate of Notice by Bankruptcy Noticing Center Re: Meeting of Creditors. Notice Date 10/04/2013. (Admin.) (Entered: 10/05/2013)
10/08/2013	6 (65 pgs; 5 docs)	Motion for Relief from Stay Regarding Fairview St., Town of Bennington - Book 450, Page 154. Fee Amount $176. Filed by Elizabeth A. Glynn of Ryan Smith & Carbine, Ltd on behalf of People's United Bank. Hearing scheduled for 11/19/2013 at 10:00 AM at 3: U.S. Bankruptcy Court, USPO Bldg, Rutland and the following VT Interactive Technologies sites: Bennington, Montpelier, White River Junction and Williston. Objections due by 10/22/2013. (Attachments: # 1 Notice of Motion Under Default

		Procedure # 2 Waiver of the 30-day limit under Section 362(e) # 3 Proposed Order Granting Relief from Stay # 4 Certificate of Service) (Glynn, Elizabeth). (Entered: 10/08/2013)
10/08/2013		Receipt of Motion for Relief from Stay(13-10693) [motion,mrlfsty] (176.00) Filing Fee (re: Doc # 6). Receipt number 1565360, Fee amount $ 176.00. (U.S. Treasury) (Entered: 10/08/2013)
10/10/2013	7 (62 pgs; 5 docs)	Motion for Relief from Stay Regarding real property at 88 Monument Avenue, Bennington, Vermont. Fee Amount $176. Filed by Elizabeth A. Glynn of Ryan Smith & Carbine, Ltd on behalf of People's United Bank. Hearing scheduled for 11/19/2013 at 10:00 AM at 3: U.S. Bankruptcy Court, USPO Bldg, Rutland and the following VT Interactive Technologies sites: Bennington, Montpelier, White River Junction and Williston. Objections due by 10/28/2013. (Attachments: # 1 Proposed Order # 2 Notice of Motion under Default # 3 Waiver of the 30-day limit under Section 362(e) # 4 Certificate of Service) (Glynn, Elizabeth) (Entered: 10/10/2013)
10/10/2013		Receipt of Motion for Relief from Stay(13-10693) [motion,mrlfsty] (176.00) Filing Fee (re: Doc # 7). Receipt number 1566700, Fee amount $ 176.00. (U.S. Treasury) (Entered: 10/10/2013)
10/14/2013	8 (1 pg)	Creditor Request for Notices Filed by Gilbert Barnett Weisman of Becket & Lee LLP on behalf of American Express Bank FSB. (Weisman, Gilbert) (Entered: 10/14/2013)
10/14/2013	9 (61 pgs; 2 docs)	Stipulation *Order for Relief from Stay* By People's United Bank and Between David L. Griffin and Maria E. Leon by John R. Canney, III and Douglas J. Wolinsky Filed by Elizabeth A. Glynn of Ryan Smith & Carbine, Ltd on behalf of People's United Bank Re: Auto-docket of credit card. (Attachments: # 1 Certificate of Service) (Glynn, Elizabeth) (Entered: 10/14/2013)
10/14/2013		Trustee's Consent Filed by Douglas J. Wolinsky on behalf of Douglas J. Wolinsky Re: 9 Stipulation. (Wolinsky, Douglas) (Entered: 10/14/2013)
10/15/2013		Consent Filed by John R. Canney III on behalf of John R Canney III Re: 9 Stipulation. (Canney, John) (Entered: 10/15/2013)
10/16/2013	10 (4 pgs)	Stipulated Order for Relief from Stay Re: Fairview Street 58.93 acres of land Town of Bennington Re: 9 Stipulation. (Wennberg, Nancy USBC-VT) Modified on 10/16/2013 (Wennberg, Nancy USBC-VT). (Entered: 10/16/2013)
10/18/2013	11 (5 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 10 Order. Notice Date 10/18/2013. (Admin.) (Entered: 10/19/2013)
10/29/2013	12 (1 pg)	Order Granting Motion for Relief From Stay Regarding real property at 88 Monument Avenue, Bennington, Vermont (Related Doc # 7). (Wennberg, Nancy USBC-VT) (Entered: 10/29/2013)
10/31/2013	13 (2 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 12 Order on Motion for Relief From Stay. Notice Date 10/31/2013. (Admin.) (Entered: 11/01/2013)
11/22/2013	14 (2 pgs; 2 docs)	Form 23 - Financial Management Course Certificate Filed by John R. Canney III on behalf of David L Griffin. (Attachments: # 1 Certificate of Service) (Canney, John) (Entered: 11/22/2013)
11/22/2013	15 (2 pgs; 2 docs)	Form 23 - Financial Management Course Certificate Filed by John R. Canney III on behalf of Maria E. Leon. (Attachments: # 1 Certificate of Service) (Canney, John) (Entered: 11/22/2013)
11/26/2013	16 (8 pgs; 4 docs)	Trustee's Application to Employ Primmer Piper Eggleston & Cramer PC as Attorneys for the Estate Filed by Douglas J. Wolinsky on behalf of Douglas J. Wolinsky.

		(Attachments: # 1 Affidavit # 2 Certificate of Service # 3 Proposed Order) (Wolinsky, Douglas) (Entered: 11/26/2013)
12/04/2013		Statement Adjourning Meeting of Creditors. Section 341(a) Meeting of Creditors Continued to 1/6/2014 at 12:30 PM at 5: U.S. Trustee Meeting Room, Rutland. Debtor appeared. Joint Debtor appeared. (Wolinsky, Douglas) (Entered: 12/04/2013)
12/05/2013		Consent *by the United States Trustee to the form and content of the proposed order granting the Trustee's Application to Employ Primmer Piper Eggleston & Cramer PC as Attorneys for the Estate Filed by Douglas J. Wolinsky, Esq., Chapter 7 Trustee* Filed by Kevin Purcell of Office of the US Trustee on behalf of U S Trustee Re: 16 Application to Employ. (Purcell, Kevin) (Entered: 12/05/2013)
12/05/2013	17 (1 pg)	Order Granting Trustee's Application to Employ Primmer Piper Eggleston & Cramer PC as Attorneys for the Estate (Related Doc # 16). (Wennberg, Nancy USBC-VT) (Entered: 12/05/2013)
12/07/2013	18 (2 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 17 Order on Application to Employ. Notice Date 12/07/2013. (Admin.) (Entered: 12/08/2013)
12/11/2013	19 (39 pgs; 6 docs)	Stipulated Motion for Relief from Stay Regarding 3 Maryland Avenue, Armonk, New York. Payment Not Due at this Time: Motion Stipulated. Fee Amount $176. Filed by Grant C. Rees of Lobe, Fortin & Rees, PLC on behalf of Bank of American, N.A.. Hearing scheduled for 1/28/2014 at 10:00 AM at 2: U.S. Bankruptcy Court, Fed Bldg, Burlington. Objections due by 12/27/2013. (Attachments: # 1 Waiver of the 30-day limit under Section 362(e) # 2 Notice of Motion under Default # 3 Proposed Order # 4 Certificate of Service # 5 Exhibit Loan documents) (Rees, Grant) (Entered: 12/11/2013)
12/23/2013		Notice of Appearance and Request for Notice by Heather Z Cooper Filed by Heather Z Cooper of Kenlan Schwiebert Facey & Goss PC on behalf of JP Morgan Chase, NA. (Cooper, Heather) (Entered: 12/23/2013)
12/30/2013	20 (6 pgs; 4 docs)	Trustee's Application to Employ Mark Boyland as Realtor Filed by Douglas J. Wolinsky on behalf of Douglas J. Wolinsky. (Attachments: # 1 Affidavit of Mark Boyland # 2 Certificate of Service # 3 Proposed Order) (Wolinsky, Douglas) (Entered: 12/30/2013)
01/02/2014	21 (2 pgs)	Order Granting Motion for Relief From Stay Regarding 3 Maryland Avenue, Armonk, New York (Related Doc # 19). (Wennberg, Nancy USBC-VT) (Entered: 01/02/2014)
01/04/2014	22 (3 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 21 Order on Motion for Relief From Stay. Notice Date 01/04/2014. (Admin.) (Entered: 01/05/2014)
01/06/2014		Consent *by the United States Trustee to the form and content of the proposed order granting the Trustee's Application to Employ Mark Boyland as Realtor for the Estate, filed by Douglas J. Wolinsky, Esq., Chapter 7 Trustee* Filed by Kevin Purcell of Office of the US Trustee on behalf of U S Trustee Re: 20 Application to Employ. (Purcell, Kevin) (Entered: 01/06/2014)
01/07/2014	23 (1 pg)	Order Authorizing Trustee to Employ Mark Boyland Real Estate Broker (Related Doc # 20). (Wennberg, Nancy USBC-VT) (Entered: 01/07/2014)
01/09/2014	24 (2 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 23 Order on Application to Employ. Notice Date 01/09/2014. (Admin.) (Entered: 01/10/2014)
03/13/2014	25 (71 pgs; 9 docs)	Adversary case 14-01007. Complaint *to Determine Nature, Extent and Validity of Lien.* by JP Morgan Chase Bank, N.A. against David L Griffin, Maria E. Leon, Small Business Administration, The Westchester Bank, N.A., US Mortgage Corporation, Douglas J. Wolinsky Esq.. Fee Amount $293. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8)

		Nature of Suit: 21 (Validity, priority or extent of lien or other interest in property), 91 (Declaratory judgment) (Cooper, Heather) (Entered: 03/13/2014)
06/09/2014		Trustee's Notice of Assets & Request for Notice to Creditors *To File Proofs of Claims* Filed by Douglas J. Wolinsky. (Wolinsky, Douglas) (Entered: 06/09/2014)
06/09/2014	26 (1 pg)	File Claims Deadline Set. Proofs of Claims due by 9/9/2014. Government Proof of Claim due by 9/9/2014. (Wennberg, Nancy USBC-VT) (Entered: 06/09/2014)
06/11/2014	27 (4 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 26 Notice to File Claims. Notice Date 06/11/2014. (Admin.) (Entered: 06/12/2014)
06/17/2014	28 (63 pgs; 9 docs)	Motion for Relief from Stay Regarding 224 Chestnut Ridge Road, Mt. Kisco, New York. Fee Amount $176. Filed by Heather Z Cooper of Kenlan Schwiebert Facey & Goss PC on behalf of JP Morgan Chase, NA. Hearing scheduled for 7/11/2014 at 10:00 AM at 3: U.S. Bankruptcy Court, USPO Bldg, Rutland and the following VT Interactive Technologies sites: Brattleboro, Montpelier, White River Junction and Williston. Objections due by 7/8/2014. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Notice of Motion # 8 Certificate of Service) (Cooper, Heather) (Entered: 06/17/2014)
06/17/2014		Receipt of Motion for Relief from Stay(13-10693) [motion,mrlfsty] (176.00) Filing Fee (re: Doc # 28). Receipt number 1662949, Fee amount $ 176.00. (U.S. Treasury) (Entered: 06/17/2014)
06/18/2014		Consent Filed by John R. Canney III on behalf of John R Canney III Re: 28 Motion for Relief from Stay. (Canney, John) (Entered: 06/18/2014)
07/10/2014	29 (1 pg)	Proposed Order *Granting Relief from Stay.* Filed by Heather Z Cooper of Kenlan Schwiebert Facey & Goss PC on behalf of JP Morgan Chase, NA Re: 28 Motion for Relief from Stay. (Cooper, Heather) (Entered: 07/10/2014)
07/10/2014	30 (1 pg)	Order Granting Motion for Relief From Stay re: 224 Chestnut Ridge Road, Mt. Kisco, New York (Related Doc # 28). (Wennberg, Nancy USBC-VT) (Entered: 07/10/2014)
07/12/2014	31 (2 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 30 Order on Motion for Relief From Stay. Notice Date 07/12/2014. (Admin.) (Entered: 07/13/2014)
07/30/2014		Adversary Proceeding 5:14-ap-1007 Closed. (Ford, Kathleen USBC-VT) (Entered: 07/30/2014)
01/14/2016		Notice of Appearance and Request for Notice by Donald Hayes Filed by Donald Hayes of Lobe, Fortin, Rees and Cykon, PLC on behalf of Bank of American, N.A.. (Hayes, Donald) (Entered: 01/14/2016)
04/19/2016		Notice of Appearance and Request for Notice by Andrew S Cannella Filed by Andrew S Cannella of Bendett & McHugh PC on behalf of Wells Fargo Bank, N.A.. (Cannella, Andrew) (Entered: 04/19/2016)
06/03/2016	32 (20 pgs; 2 docs)	Debtor's Amended Schedules and Amended Matrix. Fee Amount $30. Filed by John R. Canney III on behalf of David L Griffin, Maria E. Leon Re: 1 Chapter 7 Voluntary Petition. (Attachments: # 1 Certificate of Service) (Canney, John) (Entered: 06/03/2016)
06/03/2016		Receipt of Amended Schedules/Amended Matrix(13-10693) [misc,amdsch] (30.00) Filing Fee (re: Doc # 32). Receipt number 1871946, Fee amount $ 30.00. (U.S. Treasury) (Entered: 06/03/2016)
02/09/2017	33 (9 pgs; 3 docs)	Trustee's Notice of Intent to Use, Sell or Lease Various Assets Filed by Douglas J. Wolinsky. Hearing scheduled for 4/12/2017 at 11:00 AM at 2: U.S. Bankruptcy Court,

		Fed Bldg, Burlington. Objections due by 3/2/2017. (Attachments: # 1 Proposed Order # 2 Certificate of Service) (Wolinsky, Douglas) (Entered: 02/09/2017)
03/28/2017	34 (2 pgs)	Proposed Order *(Revised)* Filed by Douglas J. Wolinsky on behalf of Douglas J. Wolinsky Re: 33 Notice of Intent to Sell/Lease/Abandon. (Wolinsky, Douglas) (Entered: 03/28/2017)
03/28/2017	35 (2 pgs)	Order Approving Sale of Non-Exempt Equity in Various Assets Re: 33 Notice of Intent to Sell/Lease/Abandon. (Howe, Emerson-USBCVT) (Entered: 03/28/2017)
03/30/2017	36 (3 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 35 Order. Notice Date 03/30/2017. (Admin.) (Entered: 03/31/2017)
06/01/2017	37 (2 pgs)	Notice of *Substitution of Counsel and Order.* Filed by Heather Z Cooper of Facey Goss & McPhee PC on behalf of David L Griffin. (Cooper, Heather) (Entered: 06/01/2017)
06/01/2017	38 (2 pgs)	Notice of *Substitution of Counsel and Order.* Filed by Heather Z Cooper of Facey Goss & McPhee PC on behalf of Maria E. Leon. (Cooper, Heather) (Entered: 06/01/2017)
06/02/2017	39 (2 pgs)	Notice of Substitution of Counsel and Order Re: 37 Notice (Generic), 38 Notice (Generic). (Howe, Emerson-USBCVT) (Entered: 06/02/2017)
06/04/2017	40 (4 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 39 Order. Notice Date 06/04/2017. (Admin.) (Entered: 06/05/2017)
06/20/2017	41 (1 pg)	Notice of Change of Address Filed by Heather Z Cooper of Facey Goss & McPhee PC on behalf of David L Griffin, Maria E. Leon. (Cooper, Heather) (Entered: 06/20/2017)
09/25/2017	42 (39 pgs; 4 docs)	Chapter 7 Trustee Final Report and Proposed Distribution and Application for Compensation, and Application for Compensation of Professionals filed on behalf of Trustee Douglas J. Wolinsky, Esq for Primmer Piper Eggleston & Cramer, PC, Attorney, Period: 11/26/2013 to 9/25/2017, Fees: $1,495.00, Expenses: $, for Douglas J. Wolinsky, Trustee Chapter 7, Period: 10/1/2013 to 9/25/2017, Fees: $1,000.00, Expenses: $235.88. The United States Trustee has reviewed the Chapter 7 Trustees Final Report, Application for Compensation and Application(s) of Compensation of Professionals. Filed by Lisa M. Penpraze. (Attachments: # 1 Trustee's Application for Compensation and Expenses # 2 Attorney for Trustee Application for Compensation # 3 Proposed Order) (Penpraze, Lisa) (Entered: 09/25/2017)
09/26/2017	43 (11 pgs; 2 docs)	Notice of Filing of Final Account of Trustee, and Notice of Hearing on Application for Commission Filed by Douglas J. Wolinsky on behalf of Douglas J. Wolinsky Re: 42 Chapter 7 Trustee's Final Rpt/Acct-Asset(TFR). Hearing scheduled for 11/1/2017 at 10:00 AM at 2: U.S. Bankruptcy Court, Fed Bldg, Burlington. Objections due by 10/11/2017. (Attachments: # 1 Certificate of Service) (Wolinsky, Douglas) (Entered: 09/26/2017)
10/12/2017	44 (2 pgs)	Order Granting Trustee's Final Report and Distribution (Related Doc # 42) for Douglas J. Wolinsky, Fees awarded: $1000, Expenses awarded: $235.88, Granting Trustee's Final Report and Distribution (Related Doc # 42) for Primmer Piper Eggleston & Cramer, PC, Fees awarded: $1495.00, Expenses awarded: $0.00. (Howe, Emerson-USBCVT) (Entered: 10/12/2017)
10/14/2017	45 (3 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 44 Order Approving Trustee's Final Report and Distribution. Notice Date 10/14/2017. (Admin.) (Entered: 10/15/2017)
02/05/2018	46 (1 pg)	Unclaimed Funds for Claim #3, John Deere Landscapes. Receipt number 48731. Amount $34.06. (Howe, Emerson-USBCVT) (Entered: 02/05/2018)
02/05/2018	47 (1 pg)	Unclaimed Funds for Claim #8, Matrix Turf Solutions. Receipt number 48731. Amount $21.36. (Howe, Emerson-USBCVT) (Entered: 02/05/2018)

02/05/2018	48 (1 pg)	Unclaimed Funds for Claim #9, Custom Golf Materials, Inc. Receipt number 48731. Amount 23.01. (Howe, Emerson-USBCVT) (Entered: 02/05/2018)
04/09/2018	49 (18 pgs)	Chapter 7 Trustees Final Account and Distribution Report, Certification that the Estate has been Fully Administered and Application to be Discharged filed on behalf of Trustee Douglas Wolinsky. The United States Trustee has reviewed the Chapter 7 Trustees Final Account, Certification that the Estate has been Fully Administered and Application of the Trustee to be Discharged. The United States Trustee does not object to the relief requested. Filed by U S Trustee. (Penpraze, Lisa) (Entered: 04/09/2018)
04/11/2018	50 (2 pgs)	Order Discharging Debtor David L Griffin and Joint Debtor Maria E. Leon. (LeClair, Sharrah-USBCVT) (Entered: 04/11/2018)
04/11/2018		Meeting Closed. Filed by Douglas J. Wolinsky Re: Meeting of Creditors. (Wolinsky, Douglas) (Entered: 04/11/2018)
04/13/2018	51 (5 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 50 Order Discharging Debtor. Notice Date 04/13/2018. (Admin.) (Entered: 04/14/2018)
04/26/2018	52 (1 pg)	Final Decree - Bankruptcy Case Closed. (LeClair, Sharrah-USBCVT) (Entered: 04/26/2018)
04/28/2018	53 (2 pgs)	Certificate of Notice by Bankruptcy Noticing CenterRe: 52 Final Decree - Bankruptcy Case Closed. Notice Date 04/28/2018. (Admin.) (Entered: 04/29/2018)
05/17/2018		Trustee Fees Disbursed on 5/17/2018. TR-4 Voucher # 022. Amount Paid $60.00. (Rachek, Catherine USBC-VT) (Entered: 05/17/2018)

PACER Service Center

Transaction Receipt

02/11/2024 13:05:38

PACER Login:	thomas.melone	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	13-10693 Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Headers: included Format: html Page counts for documents: included
Billable Pages:	7	**Cost:**	0.70

EXHIBIT 4

From: **Thomas Melone** <thomas.melone@gmail.com>
Date: Fri, May 3, 2024 at 6:28 PM
Subject: 23-0249 Port St Lucie Deed
To: Maru Leon <maru@mtanthonycc.com>, <dgriffin@tiftschools.com>, <dgriffin@mtanthonycc.com>

Hello David & Maru,

This information came in after we filed the first round of requests but I do want you to be aware that we will be asking about it in your depositions. This property does not seem to have been declared on Schedule A to the bankruptcy petition.

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
157 Church St., 19th floor
New Haven, CT 06510

(212) 681-1120
(801) 858-8818 (fax)

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JOSEPH E. SMITH, CLERK OF THE CIRCUIT COURT - SAINT LUCIE COUNTY
FILE # 4154524 OR BOOK 3831 PAGE 1315, Recorded 01/28/2016 at 12:30 PM
Doc Tax: $105.00

Prepared by, record & return to:
Karen Rae Hyche
PRESTIGE TITLE AGENCY, INC.
736 Colorado Ave. Ste. A
Stuart FL 34994
772-283-5590

Property Appraisers Parcel ID#:
3420-741-0253-000/3

THIS WARRANTY DEED, Made the 22 day of January, 2016 by

DAVID L. GRIFFIN

hereinafter called the Grantor, to **RED BOAT, LLC, a Florida limited liability company**

whose post office address is 757 SE 17th St. Ste. 443, Fort Lauderdale FL 33316
hereinafter called the Grantee.

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the Grantor, for and in consideration of the sum of $10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land, situate in St. Lucie County, State of Florida, viz:

Lot 4, Block 3247, FIRST REPLAT OF PORT ST. LUCIE SECTION 48, a subdivision according to the plat thereof recorded at Plat Book 26, Page 23, in the Public Records of St. Lucie County, Florida.

SUBJECT TO restrictions, reservations, easements & conditions of record; all governmental zoning.

Subject property is vacant, unimproved land and does not constitute the homestead of the grantor nor is it contiguous thereto.

Together, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the Grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2015.

In Witness Whereof, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness Signature (as to first grantor)
Print name: JASON P. MORRISSEY

Witness Signature (as to first grantor)
Print name: Abigail W. Childs

Grantor Signature
David L. Griffin

180 County Club Road
Post Office Address
Bennington VT 05201

STATE OF VERMONT)
COUNTY OF Bennington)

I hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared **DAVID L. GRIFFIN** known to me to be the person(s) described in and who executed the foregoing instrument, who acknowledged before me that he/she/they executed the same, and an oath was not taken. (Check one): ☐ Said person(s) is/are personally known to me. ☒ Said person(s) provided the following type of identification: VT Drivers License # 82576398

SEAL

MY COMMISSION EXPIRES: 2/10/19

Witness my hand and official seal in the County and State last aforesaid this 22 day of January, 2016.

Notary Signature
Print name: Nichole Shepard

EXHIBIT 5

From: **Thomas Melone** <thomas.melone@gmail.com>
Date: Wed, Nov 20, 2024 at 7:55 PM
Subject: Chelsea & Apple Hill Solar
To: Maru Leon <maru@mtanthonycc.com>, Maru Leon <maruleondesign@gmail.com>, <dgriffin@mtanthonycc.com>

Hello Maru & David,

I assume you have still been following the Chelsea solar case. And I understand that you were in attendance at the Planning Commission meeting that looked at the recent plan for Apple Hill solar.

As you know, in your filing withdrawing from the Chelsea case you listed various reasons for withdrawing, most of which were not very nice. The Town is repeating those reasons in their filings.

As you know, the Town is also pressing the issue of the view from the MACC as an issue.

As you also likely know, we requested the PUC to approve deposition subpoenas for you and the PUC denied that. We are appealing that decision to the Vermont Superior Court.

I think the only way that the various lingering issues from your involvement can be removed is if you send letters to the PUC, the Planning Commission and the Select Board supporting both projects. This way the other parties would stop trying to get you involved, and would eliminate any need for us to depose the two of you.

Please let me know if you are willing to do that.

Sincerely,

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
157 Church St., 19th floor
New Haven, CT 06510

(212) 681-1120
(801) 858-8818 (fax)

This e-mail communication is confidential and is intended only for the individual(s) or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, please do not read, copy, use or disclose the contents of this communication to others. Please notify the sender that you have received this e-mail in error by replying to the e-mail or by telephoning (212) 681-1120. Please then delete the e-mail and any copies of it. Thank you

EXHIBIT 6

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Apple Hill Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	))))))	Docket No. 24-3517-PET

APPLE HILL SOLAR LLC'S FURTHER COMMENTS ON THE DEPARTMENT OF PUBLIC SERVICE'S MOTION TO STAY

"*It's not a lie if you believe it*," said Bennington Town Manager Stu Hurd after being accused of lying about the existence of the Bennington Town Plan. Apple Hill Solar LLC ("AHS") files these further comments on the Motion to Stay of the Department of Public Service ("DPS") and the comments of the Town of Bennington. AHS will be prepared to further supplement them at the scheduling conference set for January 13, 2025.

A. The Town of Bennington's Comments.

On January 9, 2025, the Bennington Select Board *and* the Bennington Planning Commission filed joint comments in this case (the "Joint Comments"). The Joint Comments assert in postcard fashion that "[b]efore this matter proceeds, the PUC should require that the Petitioner demonstrate why its application is not precluded under jurisprudential finality doctrines." Joint Comments at 2. The Joint Comments have it backwards. Estoppel (whatever version the Joint Comments might be referring to) is an *affirmative defense*, and as such the burden is on the party raising it to show that it applies. There is nothing that prevents the Town from actually doing the work and filing a motion raising that issue. Of course, the Town's participating in this case at all is a breach of the settlement agreement between AHS and the Town as stated in AHS's preliminary comments.

The second issue raised by the Joint Comments involves the appeal of the standard offer contract extension decision to the Vermont Supreme Court. As explained in AHS's preliminary comments, that appeal has nothing to do with the petition under section 248 because AHS is

submitting the petition as a merchant generator.

The third point made by the Joint Comments is its request that DPS do the Town's dirty work and hire experts "regarding orderly development and aesthetics." Maybe that home team type approach will work here. *After all*, the Town picked up the baton for a core group of opponents to the AHS and Chelsea Solar projects—the Mount Anthony Country Club, Lara Block, Diane Leazer and Rick Carroll, who were like peas in pod. And now the Town is asking DPS to pick up the baton on behalf of the Mount Anthony Country Club, Block, Leazer and Carroll.

But if DPS does agree to do the Town's and the others' dirty work, it would reinforce the notion that when it comes to the climate and the environment, DPS is "All hat, No cattle," and is simply a hired-gun for local opponents. That would be especially so in light of two recent notable developments—one of the reddest States—Montana—holding Montanans have a constitutional right to "a clean and healthful environment and environmental life support system includes a stable climate system." *Held v. Montana*, 2024 MT 312, ¶30, and the average global temperature for 2024 exceeding the 1.5°C mark, a key target in the Paris Agreement to limit global warming.

B. DPS's Motion For A Stay.

AHS's preliminary comments (as supplemented by the above discussion) explain why none of the three reasons enunciated by DPS justify a stay. In addition, the Commission has already ruled that the AHS's project presented in this case is different. It did that in its order of May 7, 2020, when it denied AHS's motion to amend the petition in docket 8454. In denying that amendment the Commission stated: "Further, even if we had jurisdiction over this matter, the Petitioner's request to amend the Petition is untimely because the request came after the case had been appealed and remanded with a limited scope. The Petitioner's motion to amend asks us to look *at a <u>different</u> project with new exhibits* that were not entered into evidence before our Final Order or the remand order." *Petition of Apple Hill Solar LLC*, Order Adopting Proposal For Decision On Remand And Denying Petition, Docket 8454 (May 7, 2020) at 24 (emphasis added). *Id.* at 25 ("the Commission requires that new projects be filed as new projects.")

And as noted in AHS's preliminary comments, the Commission relied heavily on the

"black box" rhetoric. *Id.* at 29 ("The proposal for decision on remand correctly finds that the Facility's 'black box' appearance in a heavily forested area would not be consistent with the requirement to maintain the rural character of the area.") And now as stated in AHS's preliminary comments, the rhetorical "black-box" is gone.

Additionally, the project in docket 8454 was not reviewed using the solar screening ordinance because it did not exist. *Id*. at 30 ("There was no municipal solar screening ordinance adopted pursuant to Section 248(b)(l)(B) by Bennington that was reviewed as part of this case.") But section 248(b)(l)(B) does apply now requiring solar projects to be treated equally as other projects in the Town.

And then there is the Mount Anthony Country Club where the Commission stated that "the whole facility would be prominently visible from the golf course." *Id.* at 37. The purported "evidence" on which that conclusion was based was simply fabricated. It was made up by the core opponents. And when Mount Anthony Country Club sought to repeat that made up claim in case 23-0249, the petitioner sought to depose the purported "owners" of the Mount Anthony Country Club—Maru Leon and David Griffin. But Leon and Griffin knew that if they were deposed the jig was up and their credibility as witnesses would be shattered. So in order to evade a deposition, Leon and Griffin withdrew from case 23-0249 but only after filing a long-winded tirade reciting false reasons why they were withdrawing. Then in subsequent filings, both DPS and the Town regurgitated those false premises for why Leon and Griffin withdrew. And then likewise, the Commission backed the hearing officer's backing the home team by imposing stringent limitations on petitioner's rights to discovery and due process. But Leon and Griffin still appear to be using the other core opponents and the Select Board as puppets to perpetuate the false claims regarding aesthetics from the golf course.

C. So why did Leon and Griffin really drop out?

Leon and Griffin knew their credibility would be shattered if they had to sit for a deposition. As described in filings in case 23-0249, Leon and Griffin operate an entity called Down to Earth Golf Course Development, Inc. ("DTE"), the business registrant for the Mount Anthony Country

Club. That information, however, seemed to directly contradict the information set forth in the Leon/Griffin Bankruptcy Petition. *See*, **Exhibit 1** hereto. It also appeared that Leon and Griffin claimed that they caused the transfer of the golf course, Bennington parcel ID 43504401, to something called the Griffin Family Qualified Domestic Trust. But the Town's Grand List in 2015 listed the owner as DTE. In any case, Leon and Griffin refused to identify the interests of the beneficiaries of the Griffin Family Qualified Domestic Trust. And in SCHEDULE B - PERSONAL PROPERTY to the petition for bankruptcy filed by David Griffin and Maria E. Leon on October 1, 2013, in the Bankruptcy Court for the District of Vermont, David Griffin and Maria E. Leon stated that the fair market value of *their* interest in the Griffin Family Qualified Domestic Trust was only $1.00.

While all of those unexplained events themselves would likely impair their credibility for truthfulness when fully fleshed out, the big bomb came in the form of two land transactions in Florida. Those two land transactions, the deeds for which are attached hereto as **Exhibits 2 and 3**, clearly show that the "owners" of the Mount Anthony Country Club defrauded the Bankruptcy Court and their creditors. Neither the ownership of those real estate properties, nor the sales or proceeds, were disclosed to either the Bankruptcy Court or their creditors either in the original schedules to the petition or in the amended schedules filed on June 3, 2016. Leon and Griffin received their discharge on April 11, 2018, without disclosing those transactions and assets.

If Leon and Griffin had no problem with defrauding the federal government through the Bankruptcy Court or creditors, the filing false testimony with the Commission would seem like a walk in the park. And that false testimony served the purposes of the core opponents of the projects and was in large part used as the basis for the Commission to deny the CPG in docket 8454. That explains why Leon and Griffin dropped out of case 23-0249. In other words, they knew their credibility for truthfulness would be shattered, and it would be revealed that what they were saying would be unreliable.

D. The Bennington Whistleblowers and The Two Honest Select Board Members.

Pursuant to 24 V.S.A. §4387, the 2015 Bennington Town Plan was set to expire on October

6, 2023. The town plan adoption process is laid out in 24 V.S.A. §4302, and §§4381-4387 and is formidable (due to an intervening change in the requirements of the statute) and will often take years to accomplish. Section 4387(b)(1)(A) mandates that the planning commission "engage in community outreach and involvement in updating the plan". As the time to begin the process to head off an October 6, 2023, expiration date of the 2015 Town Plan was fast approaching, the Town was actively involved in litigation with Allco and affiliates over the proposed Chelsea Solar project and the AHS project.

Fearing that Allco would insert itself into the now more onerous planning process with respect to any newly proposed Town Plan, certain Select Board and Planning Commission members (together with the town manager and town planner) hatched a scheme to buy more time, hoping that Allco would have given up by the extended schedule.

The way in which the Town attempted to do that was to claim that the 2015 Town Plan had actually been *re-adopted* in 2018 when the Town passed the Energy Amendment, such that the Town Plan would not expire in 2023 but in 2026. The obvious issue with that scheme (besides getting caught) is that the town plan adoption process in 24 V.S.A. §4302, and §§4381-4387 cannot be circumvented and nothing that was required of the Town to *re-adopt* the Town Plan was actually accomplished in 2018.

Among other things, 24 V.S.A. §4387(a) requires that re-adoption take place in accordance with 24 V.S.A. §4385 which requires public notice and two hearings as a condition precedent to duly adopting a new town plan or re-adopting an old one. The Planning Commission never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Planning Commission never voted on a re-adoption of the Town Plan. The Select Board never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Select Board never voted on a re-adoption of the Town Plan. And, of course, the requirement under §4387(b)(1)(A) that the planning commission "engage in community outreach and involvement in updating the plan" was never done because that is exactly what the players were seeking to avoid when they came up with the lie regarding the Town Plan. All that was ever done by the Town of

Bennington on January 22, 2018, was pass an amendment to the Town Plan (i.e., the Energy Amendment), which was a process that was hijacked by the core opponents of the Chelsea and AHS projects.

Moreover, 24 V.S.A. §4387(b) requires the Planning Commission to take the following actions if it were adopting a Town Plan (none of which occurred):

> (A) consider the recommendations of the regional planning commission provided pursuant to subdivision 4350(c)(2) of this title;
> (B) engage in community outreach and involvement in updating the plan;
> (C) consider consistency with the goals established in section 4302 of this title;
> (D) address the required plan elements under section 4382 of this title;
> (E) evaluate the plan for internal consistency among plan elements, goals, objectives, and community standards;
> (F) address compatibility with the regional plan and the approved plans of adjoining municipalities; and
> (G) establish a program and schedule for implementing the plan.

No matter what the Energy Amendment might say, all that was accomplished by the Select Board was an adoption of the Energy *Amendment*.

And documentation provided by whistleblowers proves beyond a shadow of a doubt that the 2018 exercise of adopting the Energy *Amendment* was an *amendment only* and not a *readoption*. *One* such document (there are many, many others) is shown below:

.

Dan Monks

From: Dan Monks
Sent: Wednesday, January 24, 2018 3:49 PM
To: Jim Sullivan (jsullivan@bcrcvt.org)
Subject: Amended Town Plan
Attachments: 2018 Bennington Energy Plan - final.pdf

Hello Jim:

Please see attached amended Energy Section of the Bennington Town Plan. In accordance with 24 VSA Section 4385(c), the Town of Bennington is providing the Bennington County Regional Commission with a copy of the newly adopted amended Energy Section (Chapter 8) of the Bennington Town Plan.

In addition, the Town of Bennington requests approval by BCRC of the amended Town Plan under the provisions of 24 VSA Section 4350.

Finally, the Town of Bennington requests that BCRC determine that the amended Town Plan meets the energy planning standards (24 VSA Section 4352) of Act 174 of 2016.

Please confirm that you have received this e-mail and the attached Town Plan. Also, please Let me know when the required public hearings for approval of the Town Plan under Section 4350 and Act 174 are scheduled.

Thanks,

Dan

Daniel Monks
Assistant Town Manager
& Planning Director
Town of Bennington
802-447-9708
dmonks@benningtonvt.org

Please note that this email message, along with any response or reply, may be considered public record, and thus, may be subject to disclosure under the Vermont Public Records Law.

That only an *amendment* occurred is reinforced by, *inter alia*, the public notices sent out in advance of the January 8, 2018 and January 22, 2018 Select Board hearings on the Energy Amendment (the "SB Energy Amendment Hearings"), the transcripts of the SB Energy Amendment Hearings, the minutes of the SB Energy Amendment Hearings, the Agendas for the SB Energy Amendment Hearings, the public notice sent out in advance of the Planning Commission meeting discussing the Energy Amendment (the "PC Energy Amendment Hearing"), the minutes for the PC Energy Amendment Hearing, the Agenda for the PC Energy Amendment Hearing, the November 9, 2017, Memorandum from the Planning Commission to the Select Board submitting the Energy Amendment for approval and the Certificate of Energy Compliance issued by the Bennington County Regional Commission on January 22, 2018.

Contrary to the Select Board's big lie, the Energy Amendment did not extend the expiration date of the 2015 Town Plan, because *amendments* to town plans are incapable of extending expiration dates. *See* 24 V.S.A. §4385(c): "An amendment to a plan *does not affect or extend the plan's expiration date*."

Of course, the problem with any big lie is that usually more lies are required to cover it up. And that was the case here. Thus, in seeking and receiving federal and state grants, the players needed to keep telling more lies and violating more laws. But cracks in the scheme started to develop after the election of two new Select Board members who questioned the validity of the story the other players were telling regarding the Town Plan. Whistleblowers then felt more comfortable coming forward.

E. AHS Is Entitled To Discovery If The Commission Entertains A Stay.

Even if the Commission were to entertain a stay (which it should not), AHS should be entitled to engage in discovery of, and depose, the Select Board and Planning Commission members, the town manager and the town planner, because what has come to light casts doubt on the purported justification for a stay as well as the continuing validity of the decision in docket 8454 and the credibility of the evidence on which it was based. And long before the time the Vermont Supreme Court issued its final decision in the 8454 case, the Town's active conspiracy was well underway, hiding vital information from the Court as well as the Commission.

Dated: January 12, 2025

Respectfully Submitted,

APPLE HILL SOLAR LLC
By: */s/ Thomas Melone*
Thomas Melone
Apple Hill Solar LLC
157 Church Street, 19th Floor
New Haven, CT 06510
Thomas.Melone@AllcoUS.com
212-681-1120

EXHIBIT 1

B1 (Official Form 1) (04/13)

United States Bankruptcy Court
District of Vermont

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle): Griffin, David L.	Name of Joint Debtor (Spouse) (Last, First, Middle): Leon, Maria E.
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): fdba President Down to Earth Golf Course Construction, Inc.; dba Down to Earth Land Development dba Mt. Anthony Golf & Tennis	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names): None
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 1207	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 0016
Street Address of Debtor (No. and Street, City, and State) 88 Monument Avenue Bennington, VT ZIPCODE 05201	Street Address of Joint Debtor (No. and Street, City, and State 88 Monument Avenue Bennington, VT ZIPCODE 05201
County of Residence or of the Principal Place of Business: Bennington	County of Residence or of the Principal Place of Business: Bennington
Mailing Address of Debtor (if different from street address): ZIPCODE	Mailing Address of Joint Debtor (if different from street address): ZIPCODE
Location of Principal Assets of Business Debtor (if different from street address above): ZIPCODE	

Type of Debtor (Form of Organization) (Check **one** box)
- [x] Individual (includes Joint Debtors) *See Exhibit D on page 2 of this form.*
- [ ] Corporation (includes LLC and LLP)
- [ ] Partnership
- [ ] Other (If debtor is not one of the above entities, check this box and state type of entity below.)

Nature of Business (Check **one** box)
- [ ] Health Care Business
- [ ] Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B)
- [ ] Railroad
- [ ] Stockbroker
- [ ] Commodity Broker
- [ ] Clearing Bank
- [x] Other N.A.

Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box)
- [x] Chapter 7
- [ ] Chapter 9
- [ ] Chapter 11
- [ ] Chapter 12
- [ ] Chapter 13
- [ ] Chapter 15 Petition for Recognition of a Foreign Main Proceeding
- [ ] Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

Chapter 15 Debtors

Country of debtor's center of main interests: _____

Each country in which a foreign proceeding by, regarding, or against debtor is pending: _____

Tax-Exempt Entity (Check box, if applicable)
- [ ] Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code)

Nature of Debts (Check one box)
- [x] Debts are primarily consumer debts, defined in 11 U.S.C. §101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- [ ] Debts are primarily business debts.

Filing Fee (Check one box)
- [x] Full Filing Fee attached
- [ ] Filing Fee to be paid in installments (applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.
- [ ] Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.

Chapter 11 Debtors

Check one box:
- [ ] Debtor is a small business as defined in 11 U.S.C. § 101(51D)
- [ ] Debtor is not a small business as defined in 11 U.S.C. § 101(51D)

Check if:
- [ ] Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,490,925 *(amount subject to adjustment on 4/01/16 and every three years thereafter).*

Check all applicable boxes
- [ ] A plan is being filed with this petition.
- [ ] Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

Statistical/Administrative Information

THIS SPACE IS FOR COURT USE ONLY

- [ ] Debtor estimates that funds will be available for distribution to unsecured creditors.
- [x] Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

1-49	50-99	100-199	200-999	1,000-5,000	5,001-10,000	10,001-25,000	25,001-50,000	50,001-100,000	Over 100,000
☐	☑	☐	☐	☐	☐	☐	☐	☐	☐

Estimated Assets

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	$100,000,001 to $500 million	$500,000,001 to $1 billion	More than $1 billion
☐	☐	☐	☐	☑	☐	☐	☐	☐	☐

Estimated Liabilities

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	$100,000,001 to $500 million	$500,000,001 to $1 billion	More than $1 billion
☐	☐	☐	☐	☑	☐	☐	☐	☐	☐

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Voluntary Petition
(This page must be completed and filed in every case)

Name of Debtor(s):
David L. Griffin & Maria E. Leon

All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)

Location Where Filed:	Case Number:	Date Filed:
NONE		
Location Where Filed: N.A.	Case Number:	Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:	Case Number:	Date Filed:
NONE		
District:	Relationship:	Judge:

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. § 342(b).

X /s/ John R Canney III October 1, 2013
Signature of Attorney for Debtor(s) Date

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☑ No.

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☑ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☑ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

Information Regarding the Debtor - Venue
(Check any applicable box)

☑ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United Sates in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property
(Check all applicable boxes)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

(Name of landlord that obtained judgment)

(Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(1)).

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Voluntary Petition
(This page must be completed and filed in every case)

Name of Debtor(s):
David L. Griffin & Maria E. Leon

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ David L. Griffin
Signature of Debtor

X /s/ Maria E. Leon
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

October 1, 2013
Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 of title 11 are attached.

☐ Pursuant to 11 U.S.C.§ 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X
(Signature of Foreign Representative)

(Printed Name of Foreign Representative)

(Date)

Signature of Attorney*

X /s/ John R Canney III
Signature of Attorney for Debtor(s)

JOHN R CANNEY III 000403131
Printed Name of Attorney for Debtor(s)

Firm Name

P.O. Box 6626
Address

Rutland, VT 05702

(802) 773-3325
Telephone Number

October 1, 2013
Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Signature of Non-Attorney Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, (2) I prepared this document for compensation, and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. § 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social Security Number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.

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B1 D (Official Form 1, Exhibit D) (12/09)

UNITED STATES BANKRUPTCY COURT
District of Vermont

In re David L. Griffin & Maria E. Leon
Debtor(s)

Case No._____
(if known)

EXHIBIT D - INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT

Warning: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors' collection activities.

Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.

☑ 1. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

☐ 2. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 14 days after your bankruptcy case is filed.*

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❒ 3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the seven days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now. *[Summarize exigent circumstances here.]*

If your certification is satisfactory to the court, you must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy petition and promptly file a certificate from the agency that provided the counseling, together with a copy of any debt management plan developed through the agency. Failure to fulfill these requirements may result in dismissal of your case. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. Your case may also be dismissed if the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing.

❒ 4. I am not required to receive a credit counseling briefing because of: *[Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]*

❒ Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);

❒ Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.)**;**

❒ Active military duty in a military combat zone.

❒ 5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district**.**

I certify under penalty of perjury that the information provided above is true and correct.

Signature of Debtor: /s/ David L. Griffin
DAVID L. GRIFFIN

Date: October 1, 2013

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B1 D (Official Form 1, Exhibit D) (12/09)

UNITED STATES BANKRUPTCY COURT
District of Vermont

In re David L. Griffin & Maria E. Leon
Debtor(s)

Case No._____
(if known)

EXHIBIT D - INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT

Warning: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors' collection activities.

Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.

☑ 1. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

☐ 2. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 14 days after your bankruptcy case is filed.*

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❒ 3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the seven days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now. *[Summarize exigent circumstances here.]*

If your certification is satisfactory to the court, you must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy petition and promptly file a certificate from the agency that provided the counseling, together with a copy of any debt management plan developed through the agency. Failure to fulfill these requirements may result in dismissal of your case. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. Your case may also be dismissed if the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing.

❒ 4. I am not required to receive a credit counseling briefing because of: *[Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]*

❒ Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);

❒ Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.)**;**

❒ Active military duty in a military combat zone.

❒ 5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district**.**

I certify under penalty of perjury that the information provided above is true and correct.

Signature of Joint Debtor: /s/ Maria E. Leon
MARIA E. LEON

Date: October 1, 2013

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B6 Cover (Form 6 Cover) (12/07)

FORM 6. SCHEDULES

Summary of Schedules
Statistical Summary of Certain Liabilities and Related Data (28 U.S.C. § 159)

Schedule A - Real Property
Schedule B - Personal Property
Schedule C - Property Claimed as Exempt
Schedule D - Creditors Holding Secured Claims
Schedule E - Creditors Holding Unsecured Priority Claims
Schedule F - Creditors Holding Unsecured Nonpriority Claims
Schedule G - Executory Contracts and Unexpired Leases
Schedule H - Codebtors
Schedule I - Current Income of Individual Debtor(s)
Schedule J - Current Expenditures of Individual Debtor(s)

Unsworn Declaration under Penalty of Perjury

GENERAL INSTRUCTIONS: The first page of the debtor's schedules and the first page of any amendments thereto must contain a caption as in Form 16B. Subsequent pages should be identified with the debtor's name and case number. If the schedules are filed with the petition, the case number should be left blank

Schedules D, E, and F have been designed for the listing of each claim only once. Even when a claim is secured only in part or entitled to priority only in part, it still should be listed only once. A claim which is secured in whole or it part should be listed on Schedule D only, and a claim which is entitled to priority in whole or in part should be listed on Schedule E only. Do not list the same claim twice. If a creditor has more than one claim, such as claims arising from separate transactions, each claim should be scheduled separately.

Review the specific instructions for each schedule before completing the schedule.

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B6A (Official Form 6A) (12/07)

In re David L. Griffin & Maria E. Leon **Case No.** _____
Debtor **(If known)**

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C – Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
3 Maryland Avenue 3 Maryland Avenue Armont, NY	Tenancy by the Entirety	H	350,000.00	Exceeds Value
224 Chestnut Ridge Rd (Bedford) 224 Chestnut Ridge Rd Mount Kisco, NY 10549	Tenancy by the Entirety	J	2,048,951.00	Exceeds Value
		Total ➤	2,398,951.00	

(Report also on Summary of Schedules.)

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B6B (Official Form 6B) (12/07)

In re David L. Griffin & Maria E. Leon Case No. _____
Debtor (If known)

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See. 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.		Cash 88 Monument Avenue Bennington, VT 05201	J	100.00
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Checking Account The Bank of Bennington 155 North Street Bennington, VT 05201	J	200.00
		Checking Account The Bank of Bennington 155 North Street Bennington, VT 05201	W	200.00
		Savings Account The Bank of Bennington 155 North Street Bennington, VT 05201	W	50.00
		Savings Account Heritage Family Credit Union 206 Pleasant Street Bennington, VT 05201	W	114.76

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In re David L. Griffin & Maria E. Leon **Debtor** Case No. _____ **(If known)**

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Household Goods/Furnishings 88 Monument Avenue Bennington, VT 05201	J	2,300.00
5. Books. Pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Clothing 88 Monument Avenue Bennington, VT 05201	J	200.00
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		IRA The Wealth Advisor Group LTD 125 Mason St Greenwich, CT 06830	W	94,131.18
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.		Interest in trust (Griffin Family Qualified Domestic Trust)	J	1.00

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In re David L. Griffin & Maria E. Leon **Debtor** Case No. **(If known)**

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
		88 Monument Bennington, VT 05201		
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlement to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate or a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights of setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. §101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		2006 Toyota Land Cruiser 88 Monument Avenue Bennington, VT 05201	H	13,025.00
		2006 Subaru B9 Tribeca	W	11,400.00

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B6B (Official Form 6B) (12/07) -- Cont.

In re David L. Griffin & Maria E. Leon **Case No.** _____
Debtor **(If known)**

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
		88 Monument Avenue Bennington, VT 05201		
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.		1 dog 88 Monument Avenue Bennington, VT 05201	J	0.00
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

0 continuation sheets attached Total $ 121,721.94

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

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B6C (Official Form 6C) (04/13)

In re David L. Griffin & Maria E. Leon, Debtor — Case No. _____ (If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:
(Check one box)

☑ 11 U.S.C. § 522(b)(2)

☐ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds $155,675*.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Cash	(Wife)11 U.S.C. 522(d)(5)	100.00	100.00
Checking Account	(Wife)11 U.S.C. 522(d)(5)	200.00	200.00
Checking Account	(Wife)11 U.S.C. 522(d)(5)	200.00	200.00
Household Goods/Furnishings	(Wife)11 U.S.C. 522(d)(3)	2,300.00	2,300.00
Clothing	(Wife)11 U.S.C. 522(d)(3)	200.00	200.00
2006 Toyota Land Cruiser	(Husb)11 U.S.C. 522(d)(2) (Husb)11 U.S.C. 522(d)(5)	3,450.00 9,575.00	13,025.00
2006 Subaru B9 Tribeca	(Wife)11 U.S.C. 522(d)(2) (Wife)11 U.S.C. 522(d)(5)	3,450.00 2,841.54	11,400.00
IRA	(Wife)11 U.S.C. 522(d)(12)	94,131.18	94,131.18
Interest in trust (Griffin Family Qualified Domestic Trust)	(Wife)11 U.S.C. 522(d)(5)	1.00	1.00
Savings Account	(Wife)11 U.S.C. 522(d)(5)	50.00	50.00
Savings Account	(Wife)11 U.S.C. 522(d)(5)	114.76	114.76

Amount subject to adjustment on 4/01/16 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

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B6D (Official Form 6D) (12/07)

In re David L. Griffin & Maria E. Leon, **Case No.** _____
Debtor **(If known)**

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (*See Instructions Above.*)	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 222 Bennington Subaru 527 N Bennington Rd Bennington, VT 05201		W	Lien: Vehicle Loan VALUE $ 11,400.00				5,108.46	0.00
ACCOUNT NO. 9587 Chase 3415 Vision Drive Columbus, OH 43219		H	Lien: Second Mortgage 224 Chestnut Ridge Road, Mount Kisco, NY Mortgage not recorded VALUE $ 2,048,951.00				347,240.60	0.00
ACCOUNT NO. 1860683372 Chase Home Finance PO Box 24696 Columbus, OH 43224-4696		J	Lien: First Mortgage 224 Chestnut Ridge Mortgage not recorded VALUE $ 2,048,951.00				1,365,537.80	0.00
2 continuation sheets attached			Subtotal (Total of this page)				$ 1,717,886.86	$ 0.00
			Total (Use only on last page)				$	$
							(Report also on Summary of Schedules)	(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

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B6D (Official Form 6D) (12/07) – Cont.

In re David L. Griffin & Maria E. Leon , **Case No.** _____
Debtor **(If known)**

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (*See Instructions Above.*)	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 0000 Corbally Gartland & Rappleyea LLP PO Box 9547 Portland, ME 04112		H	Down to Earth Golf Construction Inc TD Bank NA VALUE $ 0.00				38,233.80	38,233.80
ACCOUNT NO. 0000 Corbally, Gartland & Rappleyea LLP 35 Market Street Poughkeepsie, NY 12601			TD Bank NA v. Down to Earth Golf Construction, Inc., and David L. Griffin VALUE $ 0.00				Notice Only	Notice Only
ACCOUNT NO. 11-004673-1 Rosicki, Rosicki & Assoc 51 E Bethpage Rd Plainview, NY 11803		H	Lien: First Mortgage 224 Chestnut Ridge Rd, Mount Kisco, NY Chase Acct # 1860683372 Mortgage not recorded VALUE $ 2,048,951.00				1,733,055.25	0.00
ACCOUNT NO. 1361274926 TD Bank PO Box 3002 Phoenixville, PA 19460		H	Lien: Second Mortgage 3 Maryland Ave, Armont, NY VALUE $ 350,000.00				63,890.96	0.00
ACCOUNT NO. 0000 TD Bank NA PO Box 9547 Portland, ME 04112			VALUE $ 0.00				38,233.80	38,233.80

Sheet no. 1 of 2 continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal (s) ➤	$1,873,413.81	$
(Total(s) of this page) ➤		
Total(s) (Use only on last page)	$	$
	(Report also on Summary of Schedules)	(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

4920-1143-1497

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B6D (Official Form 6D) (12/07) – Cont.

In re David L. Griffin & Maria E. Leon , **Case No.** _____
Debtor **(If known)**

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (*See Instructions Above.*)	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 0000 Town of North Castle 17 Bedford Road Town Hall Annex Armonk, NY 10504		J	Lien: Property Taxes 3 Maryland Avenue VALUE $ 350,000.00				3,807.93	0.00
ACCOUNT NO. 0000 Wells Fargo PO Box 10335 Des Moines, IA 50306-0335		H	Lien: First Mortgage 3 Maryland Avenue, Armont, NY VALUE $ 350,000.00				352,000.00	2,000.00
ACCOUNT NO. 0000 Westchester Bank 2100 Central Park Avenue Yonkers, NY		J	Lien: First Mortgage Bedford Mortgage not recorded VALUE $ 2,048,951.00				500,000.00	0.00
ACCOUNT NO. 0000 Zwicker & Assoc PC 120 Allens Creek Rd Rochester, NY 14618		H	American Express Bank FSB VALUE $ 0.00				24,500.91	24,500.91
ACCOUNT NO. 			VALUE $					

Sheet no. 2 of 2 continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal (s) (Total(s) of this page)	$ 880,308.84	$ 26,500.91
Total(s) (Use only on last page)	$ 4,471,609.51	$ 102,968.51
	(Report also on Summary of Schedules)	(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

4920-1143-1497

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B6E (Official Form 6E) (04/13)

David L. Griffin & Maria E. Leon

In re_____, Debtor Case No._____ (if known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed.R.Bankr.P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H,""W,""J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☑ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $12,475* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

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*Amount subject to adjustment on 4/01/16 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

B6E (Official Form 6E) (04/13) - Cont.

In re David L. Griffin & Maria E. Leon, Debtor

Case No._____ (if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to $6,150* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to $2,775* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on 4/01/16, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 **continuation sheets attached**

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B6F (Official Form 6F) (12/07)

In re David L. Griffin & Maria E. Leon , **Case No.** _____
Debtor **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 Agrium Advanced Tech PO Box 532076 Atlanta, GA 30353-2076		H	Down to Earth Golf Course				8,375.64
ACCOUNT NO. 0000 Alan G. Cruse, Inc. Landscape & Golf Course Mat 460 Horseneck Road Fairfield, NJ 07004		H	Down To Earth				3,693.70
ACCOUNT NO. XXXXXXXXX901007 American Express PO Box 2672 Faribault, MN 55021-9672		H	Consideration: Credit card debt				5,644.33
ACCOUNT NO. 12151822 ARSI 555 St Charles Dr, Sui 100 Thousand Oaks, CA 91360-3983		H	Consideration: Credit card debt American Express Ref # 1007				6,887.74

13 continuation sheets attached

Subtotal ➤ $ 24,601.41

Total ➤ $

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 811909225 Associated Credit Svcs, Inc PO Box 5171 Westborough, MA 01581-5171		H	Consideration: Credit card debt TD Bank, N.A. Michael Manieri (employee) Down to Earth Golf				866.27
ACCOUNT NO. 811908029 Associated Credit Svcs, Inc PO Box 5171 Westborough, MA 01581-5171		H	Consideration: Credit card debt TD Bank, N.A. Francisco Javier Franco (employee) Down to Earth Golf				399.96
ACCOUNT NO. 991747647 AT&T Mobility PO Box 6463 Carol Stream, IL 60197-6463		H	Down to Earth Golf Course				174.17
ACCOUNT NO. 2425963 Better Pool Service, Inc. 1 Lupi Plaza Mahopac, NY 10541		H					1,142.93
ACCOUNT NO. 1144561 Bliss Pest Protection PO Box 600425 Jacksonville, FL 32260-0425		H	Previous Acct # 60328567				66.57

Sheet no. 1 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 2,649.90

Total ➤ $

(Use only on last page of the completed Schedule F.)
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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 21540 Bond Auto PO Box 687 Barre, VT 05641		H	Down to Earth Golf Course				2,997.83
ACCOUNT NO. 0050-1845235 Burke Heat 475 Commerce Street Hawthorne, NY 10532		H					Notice Only
ACCOUNT NO. 41100 Callaway Golf PO Box 9002 Carlsbad, CA 92018		H	Down to Earth Golf Course				2,086.95
ACCOUNT NO. 0000 Capital Stack 2715 Coney Isl Ave 2nd Fl Brooklyn, NY 11235		H	Down to Earth Golf Course Development, Inc. Mt Anthony Country Club				Notice Only
ACCOUNT NO. 5477532318690018 Carson Smithfield PO Box 31032 Tampa, FL 33631-3032		H	Consideration: Credit card debt Advanta Bank Corp Down to Earth Golf Course				39,265.52

Sheet no. 2 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 44,350.30

Total ➤ $

(Use only on last page of the completed Schedule F.)
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In re David L. Griffin & Maria E. Leon, **Case No.** _____
Debtor **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 94707 Cleveland Golf/Srixon PO Box 7270 Newport Beach, CA 92658		H	Down to Earth Golf Course				6,553.60
ACCOUNT NO. 100842 Cobra/Puma Golf 10 Lyberty Way Westford, MA 01886		H	Down to Earth Golf Course				2,604.28
ACCOUNT NO. 0000 Corbally Gartland & Rappleyea Bardavon Bldg 35 Market Street Poughkeepsie, NY 12601-3285		H	TD Bank, N.A. Down to Earth Golf				Notice Only
ACCOUNT NO. C100125 Custom Branded Sportswear 7007 College Blvd Sui 700 Overland Park, KS 66211		H	Down to Earth Golf Course				3,600.98
ACCOUNT NO. 0000 E Coast Mines & Mat Corps Route 2 Lewis Road E Quogue, NY 11942		H	Down to Earth Construction				3,617.56

Sheet no. 3 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 16,376.42

Total ➤ $

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In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 56722457 EOS CCA PO Box 5012 Norwell, MA 02061-5012		H	AT&T Mobility				114.56
ACCOUNT NO. MJ70007677005 Forster & Garbus LLP PO Box 9030 Commack, NY 11725-9030		H	American Express Bank, FSB Acct # XXXXXXXXXXX1007				5,644.33
ACCOUNT NO. 01007 GC Svcs LP 6330 Gulfton Houston, TX 77081		H	Consideration: Credit card debt American Express				6,467.98
ACCOUNT NO. 57-7316-3090-0005-0 JAF Station PO Box 1702 New York, NY 10116-1702		H	conEdison 280 Chestnut Ridge Road				2,237.70
ACCOUNT NO. 57-7422-1222-0003-2 JAF Station PO Box 1702 New York, NY 10116-1702		H	conEdison				214.90

Sheet no. 4 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 14,679.47

Total ➤ $

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In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 John Deere Landscapes 1060 Windward Ridge Pkwy Sui 170 Alpharetta, GA 30005		H	Down to Earth Golf Course				16,700.00
ACCOUNT NO. 0000 Jonathan M. Cohen Esq PO Box 4558 Bennington, VT 05201		J	People's United Bank v. David L. Griffin et al. Docket No. 403-11-12 Bncv				Notice Only
ACCOUNT NO. 0000 Landmark Studio W 184 S8425 Challenger Dr Muskego, WI 53150		H	Down to Earth Golf Course				2,724.07
ACCOUNT NO. 0000 M & M Business Ent 4 Grove Roaed Bedford, NY 10506		H	Snow Plowing 224 Chestnut & 1 Maryland				590.56
ACCOUNT NO. 0000 Marshall M Stern PC 17 Cardiff Court Huntington, NY 11746		H	Down to Earth Golf Construction Custom Golf Materials Inc				15,090.44

Sheet no. 5 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 35,105.07

Total ➤ $

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In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 Marshall M Stern PC 17 Cardiff Ct Huntington, NY 11746		H	Down to Earth Golf Course Construction, Inc.				4,522.22
ACCOUNT NO. 10-MOUNTAIN Matrix Turf Solutions 6551 Pottery Road Warners, NY 13164		H	Down to Earth Golf Course				9,481.27
ACCOUNT NO. 000 Murray S Lubitz 245 Main St White Plain, NY 10601		H	Down to Earth Golf Course Construction, Inc.				7,149.47
ACCOUNT NO. 5M5VQU NCO Financial Syst, Inc 507 Prudential Road Horsham, PA 19044		H	Down to Earth Golf Course TD Bank, N.A. Acct # 7920486557OD				1,731.36
ACCOUNT NO. PQ0469 NCO Financial Syst, Inc 7595 Montevideo Rd, Sui 110 Jessup, MD 20794		H	Consideration: Credit card debt American Express Acct # XXXXXXXXXX01007 CID036532307011USD				5,644.33

Sheet no. 6 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 28,528.65

Total ➤ $

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In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. LL9039 NCO Financial Syst, Inc. 507 Prudential Road Horsham, PA 19044			Consideration: Credit card debt American Express Acct XXXXXXXXXX94005 Regarding CID036532307011USD				24,198.91
ACCOUNT NO. XXXXXXXXXXXX0312 Northstar Location Svcs, LLC Attn Financial Svcs Dept 4285 Genesee St Cheektowaga, NY 14225-1943		H	Consideration: Credit card debt TD Bank, N.A.				15,396.99
ACCOUNT NO. 0000 NY State Dept of Tax & Fin Bankruptcy Section PO Box 5300 Albany, NY 12205-0300		H	Down to Earth Golf Course Construction, Inc.				495.48
ACCOUNT NO. 0000 NY State Dept Tax & Fin Bankruptcy Section PO Box 5300 Albany, NY 12205-0300		H	Down to Earth Golf Course Construction, Inc.				1,441.99
ACCOUNT NO. 0000 NY State Dept Tax & Fin Bankruptcy Section PO Box 5300 Albany, NY 12205-0300		H	Down to Earth Golf Course Construction, Inc.				7,924.71

Sheet no. 7 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 49,458.08

Total ➤ $

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In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 NY State Dept Tax & Fin Bankruptcy Section PO Box 5300 Albany, NY 12205-0300		H	Down to Earth Golf Course Construction, Inc.				1,613.80
ACCOUNT NO. 1582984-00001 People's United Bank PO Box 205 Brattleboro, VT 05302-0205		J	88 Monument Avenue				494,506.29
ACCOUNT NO. 101383983-00001 Peoples United Bank PO Box 205 Brattleboro, VT 05302-0205		J	Fairview Street				127,376.26
ACCOUNT NO. 1645900-10 Peoples United Bank PO Box 205 Brattleboro, VT 05302-0205		H	Down to Earth Golf Course				69,953.08
ACCOUNT NO. 1645919-10 Peoples United Bank PO Box 205 Brattleboro, VT 05302-0205		H	Down to Earth Golf Course				182,698.79

Sheet no. 8 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 876,148.22

Total ➤ $

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In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 61269 Peoples United Equip Fin Co PO Box 443 Brattleboro, VT 05302-0443		H	Down to Earth Golf Course Const, Inc				51,702.00
ACCOUNT NO. LL1726 Prince-Parker & Assoc, Inc 8625 Crown Crescent Court PO Box 747690 Charlotte, NC 28247-4690			AT&T Mobility Acct # 991747647				Notice Only
ACCOUNT NO. 002588085-015073745 RMS 4836 Brecksville Road PO Box 539 Richfield, OH 44286		J	Chubb & Son Inc Ref # 001255777803000				620.00
ACCOUNT NO. 0000 Ryan, Smith & Carbine Ltd 98 Merchants Row PO Box 310 Rutland, VT 05702-0310			People's United Bank v. David L. Griffin et al. Docket No. 403-11-12 Bncv				Notice Only
ACCOUNT NO. 3020 Sammarco 173 Oak Street New Rochelle, NY 10801		H	Down to Earth Landscaping				6,384.27

Sheet no. 9 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 58,706.27

Total ➤ $

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In re David L. Griffin & Maria E. Leon, **Case No.** _____
Debtor **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 Saratoga Sod 1670 Route 4 Stillwater, NY 12170		H	Down to Earth Golf Course				16,238.89
ACCOUNT NO. 044438 / 155425 Suburban Propane PO Box 1138 Bennington, VT 05201		H	Down to Earth Golf Course				3,230.72
ACCOUNT NO. 15961070 Sunrise Credit Svcs, Inc PO Box 9100 Farmingdale, NY 11735-9100		H	Burke Fuel & Heat Acct # 1845235				1,070.90
ACCOUNT NO. 17306941 Sunrise Credit Svcs, Inc. PO Box 9100 Farmingdale, NY 11735-9100		H	Verizon Acct # 9142733521037693				174.47
ACCOUNT NO. 39412277 SW Credit Systems, LP 4120 Int Pkwy, Sui 1100 Carrollton, TX 75007-1958		H	AT&T Mobility Acct # 991747647 Down to Earth Golf Course				135.18

Sheet no. 10 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 20,850.16

Total ➤ $

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In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. XXXX-XXXX-XXXX-3590 TD Card Services PO Box 2580 Cherry Hill, NJ 08034-0372			Consideration: Credit card debt Robert Maldonado (employee) Down to Earth Golf				Notice Only
ACCOUNT NO. XXXX-XXXX-XXXX-3333 TD Card Services PO Box 2580 Cherry Hill, NJ 08034-0372			Consideration: Credit card debt Jose Luis Franco (employee) Down to Earth Golf				Notice Only
ACCOUNT NO. XXXX-XXXX-XXXX-3432 TD Card Services PO Box 2580 Cherry Hill, NJ 08034-0372			Consideration: Credit card debt Aramando Gonzalez (employee) Down to Earth Golf				Notice Only
ACCOUNT NO. XXXX-XXXX-XXXX-3382 TD Card Services PO Box 2580 Cherry Hill, NJ 08034-0372			Consideration: Credit card debt Jose Luis Barajas (employee) Down to Earth Golf				Notice Only
ACCOUNT NO. 0000 Ted & Louise Price 40992 Ashton Club Drive Lake Wales, FL 33859		H	Golf course				1,555,000.00

Sheet no. 11 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 1,555,000.00

Total ➤ $

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(Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 Turf Links 29 Gilmore Drive Sutton, MA 01590		H	Down to Earth Golf Course				3,494.68
ACCOUNT NO. 50525013 US Foods PO Box 642554 Pittsburgh, PA 15264-2554		H	Down to Earth Golf Course				5,677.01
ACCOUNT NO. 0000 Vozza & Huguenot F. Frank Vozza 2435 Eastchester Road Bronx, NY 10469		H	Joe Carchi v. Creative Living Development, Inc., Navajo Fields Inc. and Down to Earth Golf Course Construction, Inc. Index 68250/12				Notice Only
ACCOUNT NO. 0157798307 Wells Fargo Home Mtg PO Box 14547 Des Moines, IA 50306-4547		H	1 Bank Street				279,726.29
ACCOUNT NO. 0000 Wide Lending Group 3580 Wilshire Blvd Unit 160 Los Angeles, CA 90010		H	Down to Earth Golf Course				Notice Only

Sheet no. 12 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 288,897.98

Total ➤ $

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In re David L. Griffin & Maria E. Leon, **Debtor**

Case No. _____ **(If known)**

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 Wide Merchant Group, Inc. 1810 E Sahara Ave #100 Las Vegas, NV 89104		H	Down to Earth Golf Course				Notice Only
ACCOUNT NO. 0000 Yellowstone Capital LLC 160 Pearl St New York, NY 10005		H	Down to Earth Golf Development, Inc.				Notice Only
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							

Sheet no. 13 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ $ 0.00

Total ➤ $ 3,015,351.93

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B6G (Official Form 6G) (12/07)

In re David L. Griffin & Maria E. Leon, Debtor

Case No. _____ (if known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

☑ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

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In re David L. Griffin & Maria E. Leon
Debtor

Case No. _____
(if known)

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Griffin Family Qualified Domestic Trust 88 Monument Avenue Bennington, VT 05201	Chase 3415 Vision Drive Columbus, OH 43219
Griffin Family Qualified Domestic Trust 88 Monument Avenue Bennington, VT 05201	Chase Home Finance PO Box 24696 Columbus, OH 43224-4696
Griffin Family Qualified Domestic Trust 88 Monument Avenue Bennington, VT 05201	Peoples United Bank PO Box 205 Brattleboro, VT 05302-0205
Griffin Family Qualified Domestic Trust 88 Monument Avenue Bennington, VT 05201	Rosicki, Rosicki & Assoc 51 E Bethpage Rd Plainview, NY 11803
Griffin Family Qualified Domestic Trust 88 Monument Avenue Bennington, VT 05201	People's United Bank PO Box 205 Brattleboro, VT 05302-0205
Down to Earth Golf Course Development, Inc 180 Country Club Drive Bennington, VT 05201	Capital Stack 2715 Coney Isl Ave 2nd Fl Brooklyn, NY 11235
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Wide Lending Group 3580 Wilshire Blvd Unit 160 Los Angeles, CA 90010

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In re David L. Griffin & Maria E. Leon
Debtor

Case No. _____
(if known)

SCHEDULE H - CODEBTORS
(Continuation Sheet)

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Wide Merchant Group, Inc. 1810 E Sahara Ave #100 Las Vegas, NV 89104
Down to Earth Golf Development, Inc. 180 Country Club Drive Bennington, VT 05201	Yellowstone Capital LLC 160 Pearl Street New York, NY 10005
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Agrium Advanced Tech PO Box 532076 Atlanta, GA 30353-2076
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Bond Auto PO Box 687 Barre, VT 05641
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Callaway Golf PO Box 9002 Carlsbad, CA 92018
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Cleveland Golf/Srixon PO Box 7270 Newport Beach, CA 92658
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Cobra/Puma Golf 10 Lyberty Way Westford, MA 01886
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Custom Branded Sportswear 7007 College Blvd Sui 700 Overland Park, KS 66211
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	John Deere Landscapes 1060 Windward Ridge Pkwy Sui 170 Alpharetta, GA 30005

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In re David L. Griffin & Maria E. Leon
Debtor

Case No. _____
(if known)

SCHEDULE H - CODEBTORS
(Continuation Sheet)

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Landmark Studio W 184 S8425 Challenger Dr Muskego, WI 53150
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Matrix Turf Solutions 6551 Pottery Road Warners, NY 13164
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Saratoga Sod 1670 Route 4 Stillwater, NY 12170
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Suburban Propane PO Box 1138 Bennington, VT 05201
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Turf Links 29 Gilmore Drive Sutton, MA 01590
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	US Foods PO Box 642554 Pittsburgh, PA 15264-2554
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Ted & Louise Price 40992 Ashton Club Drive Lake Wales, FL 33859
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Peoples United Bank PO Box 205 Brattleboro, VT 05302-0205

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B6I (Official Form 6I) (12/07)

In re David L. Griffin & Maria E. Leon **Case** _____
Debtor **(if known)**

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status: Married	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S): son, daughter	AGE(S): 14, 11

Employment:	DEBTOR	SPOUSE
Occupation	Self-employed	Self-employed
Name of Employer		
How long employed	6 Years	6 Years
Address of Employer		

INCOME: (Estimate of average or projected monthly income at time case filed)	DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly.)	$ 4,333.33	$ 550.00
2. Estimated monthly overtime	$ 0.00	$ 0.00
3. SUBTOTAL	$ 4,333.33	$ 550.00
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	$ 331.50	$ 85.02
b. Insurance	$ 0.00	$ 0.00
c. Union Dues	$ 0.00	$ 0.00
d. Other (Specify: _____)	$ 0.00	$ 0.00
5. SUBTOTAL OF PAYROLL DEDUCTIONS	$ 331.50	$ 85.02
6.. TOTAL NET MONTHLY TAKE HOME PAY	$ 4,001.83	$ 464.98
7. Regular income from operation of business or profession or farm (Attach detailed statement)	$ 0.00	$ 0.00
8. Income from real property	$ 0.00	$ 0.00
9. Interest and dividends	$ 0.00	$ 0.00
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	$ 0.00	$ 0.00
11. Social security or other government assistance (Specify) _____	$ 0.00	$ 0.00
12. Pension or retirement income	$ 0.00	$ 0.00
13. Other monthly income _____	$ 0.00	$ 0.00
(Specify) _____	$ 0.00	$ 0.00
14. SUBTOTAL OF LINES 7 THROUGH 13	$ 0.00	$ 0.00
15. AVERAGE MONTHLY INCOME (Add amounts shown on Lines 6 and 14)	$ 4,001.83	$ 464.98
16. COMBINED AVERAGE MONTHLY INCOME (Combine column totals from line 15)	$ 4,466.81	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

None

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In re David L. Griffin & Maria E. Leon **Debtor** Case No. _____ **(if known)**

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made biweekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)	$ 500.00
a. Are real estate taxes included? Yes _____ No ✓	
b. Is property insurance included? Yes _____ No ✓	
2. Utilities: a. Electricity and heating fuel	$ 500.00
b. Water and sewer	$ 0.00
c. Telephone	$ 100.00
d. Other Cable	$ 100.00
3. Home maintenance (repairs and upkeep)	$ 0.00
4. Food	$ 500.00
5. Clothing	$ 200.00
6. Laundry and dry cleaning	$ 20.00
7. Medical and dental expenses	$ 100.00
8. Transportation (not including car payments)	$ 500.00
9. Recreation, clubs and entertainment, newspapers, magazines, etc.	$ 0.00
10.Charitable contributions	$ 75.00
11.Insurance (not deducted from wages or included in home mortgage payments)	
a. Homeowner's or renter's	$ 200.00
b. Life	$ 0.00
c. Health	$ 0.00
d.Auto	$ 100.00
e. Other	$ 0.00
12.Taxes (not deducted from wages or included in home mortgage payments)	
(Specify)	$ 1,100.00
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)	
a. Auto	$ 416.66
b. Other	$ 0.00
c. Other	$ 0.00
14. Alimony, maintenance, and support paid to others	$ 0.00
15. Payments for support of additional dependents not living at your home	$ 0.00
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	$ 0.00
17. Other	$ 0.00
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data)	$ 4,411.66

19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:

None

20. STATEMENT OF MONTHLY NET INCOME

a. Average monthly income from Line 15 of Schedule I (Includes spouse income of $464.98. See Schedule I)	$ 4,466.81
b. Average monthly expenses from Line 18 above	$ 4,411.66
c. Monthly net income (a. minus b.) (Net includes Debtor/Spouse combined Amounts)	$ 55.15

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B6 Summary (Official Form 6 - Summary) (12/07)

United States Bankruptcy Court

District of Vermont

In re David L. Griffin & Maria E. Leon
Debtor

Case No. _____

Chapter 7

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

AMOUNTS SCHEDULED

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A – Real Property	YES	1	$ 2,398,951.00		
B – Personal Property	YES	4	$ 121,721.94		
C – Property Claimed as exempt	YES	1			
D – Creditors Holding Secured Claims	YES	3		$ 4,471,609.51	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	YES	2		$ 0.00	
F - Creditors Holding Unsecured Nonpriority Claims	YES	14		$ 3,015,351.93	
G - Executory Contracts and Unexpired Leases	YES	1			
H - Codebtors	YES	3			
I - Current Income of Individual Debtor(s)	YES	1			$ 4,466.81
J - Current Expenditures of Individual Debtors(s)	YES	1			$ 4,411.66
TOTAL		31	$ 2,520,672.94	$ 7,486,961.44	

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United States Bankruptcy Court
District of Vermont

In re David L. Griffin & Maria E. Leon, Debtor

Case No. _____

Chapter 7

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. §101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	**Amount**
Domestic Support Obligations (from Schedule E)	$ 0.00
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	$ 0.00
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	$ 0.00
Student Loan Obligations (from Schedule F)	$ 0.00
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	$ 0.00
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	$ 0.00
TOTAL	$ 0.00

State the Following:

Average Income (from Schedule I, Line 16)	$ 4,466.81
Average Expenses (from Schedule J, Line 18)	$ 4,411.66
Current Monthly Income (from Form 22A Line 12; **OR**, Form 22B Line 11; **OR**, Form 22C Line 20)	$ 4,333.33

State the Following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		$ 102,968.51
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.	$ 0.00	
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		$ 0.00
4. Total from Schedule F		$ 3,015,351.93
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		$ 3,118,320.44

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B6 (Official Form 6 - Declaration) (12/07)

David L. Griffin & Maria E. Leon

In re _____ **Case No.** _____

Debtor **(If known)**

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 33 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date October 1, 2013 Signature: /s/ David L. Griffin
Debtor

Date October 1, 2013 Signature: /s/ Maria E. Leon
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

_____ _____
Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer — Social Security No. *(Required by 11 U.S.C. § 110.)*

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

_____
_____
_____
Address

X _____ _____
Signature of Bankruptcy Petition Preparer — Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the _____ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the _____ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____sheets *(total shown on summary page plus 1),*and that they are true and correct to the best of my knowledge, information, and belief.

Date _____ Signature: _____

_____
[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

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B7 (Official Form 7) (04/13)

UNITED STATES BANKRUPTCY COURT
District of Vermont

In Re David L. Griffin & Maria E. Leon Case No. _____ (if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. If the answer to an applicable question is "None," mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

---

1. Income from employment or operation of business

None ☐

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
2013(db) 40000.00	
2012(db) H 22009.00	Joint filing
2011(db) H 16937.00	Joint Filing
2013(jdb)	
2012(jdb)	
2011(jdb)	

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2. Income other than from employment or operation of business

None ☒

State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE

None ☐

3. Payments to creditors

Complete a. or b., as appropriate, and c.

a. Individual or joint debtor(s) with primarily consumer debts: List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within 90 days immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than $600. Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
Bennington Subaru 527 N Bennington Rd Bennington, VT 05201	09/11/13	$416.66	$5,108.46
Bennington Subaru 527 N Bennington Rd Bennington, VT 05201	08/11/13	$416.66	$5,108.46
Bennington Subaru 527 N Bennington Rd Bennington, VT 05201	07/11/13	$416.66	$5,108.46

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None ☒ *b. Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than $6,225*. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

**Amount subject to adjustment on 4/01/16, and every three years thereafter with respect to cases commenced on or after date of adjustment.*

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING

None ☒ *c. All debtors:* List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
TD Bank, N.A. vs. Down to Earth Golf Construction, Inc. and David Griffin Index No. 50253/2012	Complaint	Supreme Court of the State of NY County of Westchester	

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CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
Joe Carchi vs. Creative Living Development, Inc., Navajo Fields Inc. and Down to Earth Golf Course Construction, Inc. Index #68250/12	Notice of Motion for Default and Inquest	Supreme Court of the State of NY County of Westchester	
People's United Bank, Successor in Interest by Merger to Chittenden Trust Company dba Chittenden Mortgage Svcs. and d/b/a Chittenden Bank vs. David L. Griffin; et al. Docket No. 459-12-12 Bncv	Judgment Notice of Foreclosure Sale	State of VT Superior Court Bennington Unit Civil Division	
People's United Bank, Successor in Interest By Merger to Chittenden Trust Company dba Chittenden Mortgage Svcs. and d/b/a Chittenden Bank vs. David L. Griffin; et al Docket No. 403-11-12 Bncv	Judgment	State of VT Superior Court Bennington Unit Civil Division	

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CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
People's United Equipment Finance Corp. vs. Down to Earth Golf Course Construction, Inc.; and David Griffin Case No. 2:13-cv-84	Writ of Replevin	United States District Court District of VT	
TD Bank N.A. v. Down to Earth Golf Construction, Inc., and David L. Griffin Index No. 50253-2012	Default Judgment	Supreme Court State of New York IAS Part Westchester County	
John Deere Landscapes et al v. Down to Earth Golf Course Development, Inc. d/b/a Mt. Anthony Development and David Grifin Docket No. 268-7-12 Bncv	Stipulation of Settlement	VT Superior Court Civil Division Bennington Unit	

None ☒ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY

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5. Repossessions, foreclosures and returns

None ☒ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY

6. Assignments and Receiverships

None ☒ a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT

None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY

7. Gifts

None ☒ List all gifts or charitable contributions made within one year immediately preceding the commencement of this case, except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT

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8. Losses

None ☒ List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES, AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
John R Canney III P.O. Box 6626 Rutland, VT 05702	09/13/13	$2,500.00 Attorney Fee $306.00 Filing Fee

10. Other transfers

None ☒ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

None ☒

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY

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11. Closed financial accounts

None ☒ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None ☒ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY

13. Setoffs

None ☒ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF

14. Property held for another person

None ☒ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY

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15. Prior address of debtor

None ☒ If the debtor has moved within the three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY

16. Spouses and Former Spouses

None ☒ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within eight years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Sites

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None ☒ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

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b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

None ☒

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

None ☒

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

18. Nature, location and name of business

None ☐

a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was self-employed in a trade, profession, or other activity either full- or part-time within six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
Down to Earth Land Development dba Mt. Anthony Golf & Tennis	20-5979905	180 Country Club Drive Bennington, VT 05201	Golf course	2007 - Present

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b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

None ☒

NAME ADDRESS

[Questions 19 - 25 are not applicable to this case]

* * * * * *

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date October 1, 2013 Signature of Debtor /s/ David L. Griffin
DAVID L. GRIFFIN

Date October 1, 2013 Signature of Joint Debtor /s/ Maria E. Leon
MARIA E. LEON

0 continuation sheets attached

Penalty for making a false statement: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §152 and 3571

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and required under 11U.S.C. §§ 110(b), 110(h), and 342(b); (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer Social Security No. (Required by 11 U.S.C. § 110(c).)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address

X
Signature of Bankruptcy Petition Preparer Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. §156.

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B8 (Official Form 8) (12/08)

UNITED STATES BANKRUPTCY COURT
District of Vermont

In re David L. Griffin & Maria E. Leon, Debtor — Case No. _____, Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A - Debts secured by property of the estate. *(Part A must be fully completed for **EACH** debt which is secured by property of the estate. Attach additional pages if necessary.)*

Property No. 1

Creditor's Name:	**Describe Property Securing Debt:**
Wells Fargo	3 Maryland Avenue

Property will be *(check one):*

☑ Surrendered ☐ Retained

If retaining the property, I intend to *(check at least one):*

☐ Redeem the property
☐ Reaffirm the debt
☐ Other. Explain _____(for example, avoid lien using 11 U.S.C. §522(f)).

Property is *(check one)*:

☐ Claimed as exempt ☑ Not claimed as exempt

Property No. 2 *(if necessary)*

Creditor's Name:	**Describe Property Securing Debt:**
TD Bank PO Box 3002 Phoenixville, PA 19460	3 Maryland Avenue

Property will be *(check one):*

☑ Surrendered ☐ Retained

If retaining the property, I intend to *(check at least one):*

☐ Redeem the property
☐ Reaffirm the debt
☐ Other. Explain _____(for example, avoid lien using 11 U.S.C. §522(f)).

Property is *(check one)*:

☐ Claimed as exempt ☑ Not claimed as exempt

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PART B - Personal property subject to unexpired leases. *(All three columns of Part B must be completed for Each unexpired lease. Attach additional pages if necessary.)*

Property No. 1 NO Leased Property		
Lessor's Name:	**Describe Leased Property:**	Lease will be Assumed pursuant to 11 U.S.C. §365(p)(2)): ❒ YES ❒ NO

Property No. 2 *(if necessary)*		
Lessor's Name:	**Describe Leased Property:**	Lease will be Assumed pursuant to 11 U.S.C. §365(p)(2)): ❒ YES ❒ NO

Property No. 3 *(if necessary)*		
Lessor's Name:	**Describe Leased Property:**	Lease will be Assumed pursuant to 11 U.S.C. §365(p)(2)): ❒ YES ❒ NO

3 continuation sheets attached *(if any)*

I declare under penalty of perjury that the above indicates my intention as to any property of my Estate securing debt and/or personal property subject to an unexpired lease.

Date: October 1, 2013

/s/ David L. Griffin
Signature of Debtor

/s/ Maria E. Leon
Signature of Joint Debtor

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CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION
(Continuation Sheet)

PART A - Continuation

Property No: 3

Creditor's Name:	**Describe Property Securing Debt:**
Bennington Subaru 527 N Bennington Rd Bennington, VT 05201	2006 Subaru B9 Tribeca

Property will be *(check one):*

☐ Surrendered ☑ Retained

If retaining the property, I intend to *(check at least one):*

☐ Redeem the property

☐ Reaffirm the debt

☑ Other. Explain retain, keep current (for example, avoid lien using 11 U.S.C.§522(f)).

Property is *(check one):*

☑ Claimed as exempt ☐ Not claimed as exempt

Property No: 4

Creditor's Name:	**Describe Property Securing Debt:**
Westchester Bank 2100 Central Park Avenue Yonkers, NY	224 Chestnut Ridge Rd (Bedford)

Property will be *(check one):*

☑ Surrendered ☐ Retained

If retaining the property, I intend to *(check at least one):*

☐ Redeem the property

☐ Reaffirm the debt

☐ Other. Explain _____ (for example, avoid lien using 11 U.S.C.§522(f)).

Property is *(check one):*

☐ Claimed as exempt ☑ Not claimed as exempt

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CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION
(Continuation Sheet)

PART A - Continuation

Property No: 5	
Creditor's Name: Rosicki, Rosicki & Assoc PC 51 East Bethpage Road Plainview, NY 11803	**Describe Property Securing Debt:** 224 Chestnut Ridge Rd (Bedford)

Property will be *(check one):*

☑ Surrendered ☐ Retained

If retaining the property, I intend to *(check at least one):*

☐ Redeem the property

☐ Reaffirm the debt

☐ Other. Explain _____ (for example, avoid lien using 11 U.S.C.§522(f)).

Property is *(check one):*

☐ Claimed as exempt ☑ Not claimed as exempt

Property No: 6	
Creditor's Name: Chase 3415 Vision Drive Columbus, OH 43219	**Describe Property Securing Debt:** 224 Chestnut Ridge Rd (Bedford)

Property will be *(check one):*

☑ Surrendered ☐ Retained

If retaining the property, I intend to *(check at least one):*

☐ Redeem the property

☐ Reaffirm the debt

☐ Other. Explain _____ (for example, avoid lien using 11 U.S.C.§522(f)).

Property is *(check one):*

☐ Claimed as exempt ☑ Not claimed as exempt

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CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION
(Continuation Sheet)

PART A - Continuation

Property No: 7	
Creditor's Name: Chase Home Finance PO Box 24696 Columbus, OH 43224-4696	**Describe Property Securing Debt:** 224 Chestnut Ridge Rd (Bedford)

Property will be *(check one):*

☑ Surrendered ☐ Retained

If retaining the property, I intend to *(check at least one):*

☐ Redeem the property

☐ Reaffirm the debt

☐ Other. Explain _____ (for example, avoid lien using 11 U.S.C.§522(f)).

Property is *(check one):*

☐ Claimed as exempt ☑ Not claimed as exempt

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B 201B (Form 201B) (12/09)

United States Bankruptcy Court
District of Vermont

In re David L. Griffin & Maria E. Leon
Debtor

Case No. _____
(If known)

CERTIFICATION OF NOTICE TO CONSUMER DEBTOR(S) UNDER § 342(b) OF THE BANKRUPTCY CODE

Certification of [Non-Attorney] Bankruptcy Petition Preparer

I, the [non-attorney] bankruptcy petition preparer signing the debtor's petition, hereby certify that I delivered to the debtor the attached notice, as required by § 342(b) of the Bankruptcy Code

_____
Printed name and title, if any, of Bankruptcy Petition Preparer
Address:

_____

_____
Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

X _____
Signature of Bankruptcy Petition Preparer or officer, Principal, responsible person, or partner whose Social Security number is provided above.

Certification of the Debtor

I, (We), the debtor(s), affirm that I (we) have received and read the attached notice, as required by § 342(b) of the Bankruptcy Code

David L. Griffin & Maria E. Leon
Printed Names(s) of Debtor(s)

x /s/ David L. Griffin October 1, 2013
Signature of Debtor Date

Case No. (if known) _____

x /s/ Maria E. Leon October 1, 2013
Signature of Joint Debtor, (if any) Date

Instructions: Attach a copy of Form B 201A, Notice to Consumer Debtor(s) Under § 342(b) of the Bankruptcy Code.

Use this form to certify that the debtor has received the notice required by 11 U.S.C. § 342(b) **only** if the certification has **NOT** been made on the Voluntary Petition, Official Form B1. Exhibit B on page 2 of Form B1 contains a certification by the debtor's attorney that the attorney has given the notice to the debtor. The Declarations made by debtors and bankruptcy petition preparers on page 3 of Form B1 also include this certification.

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Internal Revenue Service
Centralized Insolvency Operation
P.O. Box 21126
Philadelphia, PA 19114

U S Trustee
74 Chapel St Ste 200
Albany, NY 12207

Agrium Advanced Tech
PO Box 532076
Atlanta, GA 30353-2076

Alan G. Cruse, Inc.
Landscape & Golf Course Mat
460 Horseneck Road
Fairfield, NJ 07004

American Express
PO Box 2672
Faribault, MN 55021-9672

ARSI
555 St Charles Dr, Sui 100
Thousand Oaks, CA 91360-3983

Associated Credit Svcs, Inc
PO Box 5171
Westborough, MA 01581-5171

Associated Credit Svcs, Inc
PO Box 5171
Westborough, MA 01581-5171

AT&T Mobility
PO Box 6463
Carol Stream, IL 60197-6463

Bennington Subaru
527 N Bennington Rd
Bennington, VT 05201

Better Pool Service, Inc.
1 Lupi Plaza
Mahopac, NY 10541

Bliss Pest Protection
PO Box 600425
Jacksonville, FL 32260-0425

Bond Auto
PO Box 687
Barre, VT 05641

Burke Heat
475 Commerce Street
Hawthorne, NY 10532

Callaway Golf
PO Box 9002
Carlsbad, CA 92018

Capital Stack
2715 Coney Isl Ave 2nd Fl
Brooklyn, NY 11235

Carson Smithfield
PO Box 31032
Tampa, FL 33631-3032

Chase
3415 Vision Drive
Columbus, OH 43219

Chase Home Finance
PO Box 24696
Columbus, OH 43224-4696

Cleveland Golf/Srixon
PO Box 7270
Newport Beach, CA 92658

Cobra/Puma Golf
10 Lyberty Way
Westford, MA 01886

Corbally Gartland & Rappleyea
Bardavon Bldg
35 Market Street
Poughkeepsie, NY 12601-3285

Corbally Gartland & Rappleyea LLP
PO Box 9547
Portland, ME 04112

Corbally, Gartland & Rappleyea LLP
35 Market Street
Poughkeepsie, NY 12601

Custom Branded Sportswear
7007 College Blvd Sui 700
Overland Park, KS 66211

Down to Earth Golf Course
180 Country Club Drive
Bennington, VT 05201

Down to Earth Golf Course
180 Country Club Drive
Bennington, VT 05201

Down to Earth Golf Course
180 Country Club Drive
Bennington, VT 05201

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Down to Earth Golf Course
180 Country Club Drive
Bennington, VT 05201

Down to Earth Golf Course Development, Inc
180 Country Club Drive
Bennington, VT 05201

Down to Earth Golf Development, Inc.
180 Country Club Drive
Bennington, VT 05201

E Coast Mines & Mat Corps
Route 2 Lewis Road
E Quogue, NY 11942

EOS CCA
PO Box 5012
Norwell, MA 02061-5012

Forster & Garbus LLP
PO Box 9030
Commack, NY 11725-9030

GC Svcs LP
6330 Gulfton
Houston, TX 77081

Griffin Family Qualified Domestic Trust
88 Monument Avenue
Bennington, VT 05201

Griffin Family Qualified Domestic Trust
88 Monument Avenue
Bennington, VT 05201

Griffin Family Qualified Domestic Trust
88 Monument Avenue
Bennington, VT 05201

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88 Monument Avenue
Bennington, VT 05201

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88 Monument Avenue
Bennington, VT 05201

JAF Station
PO Box 1702
New York, NY 10116-1702

JAF Station
PO Box 1702
New York, NY 10116-1702

John Deere Landscapes
1060 Windward Ridge Pkwy Sui 170
Alpharetta, GA 30005

Jonathan M. Cohen Esq
PO Box 4558
Bennington, VT 05201

Landmark Studio
W 184 S8425 Challenger Dr
Muskego, WI 53150

M & M Business Ent
4 Grove Roaed
Bedford, NY 10506

Marshall M Stern PC
17 Cardiff Court
Huntington, NY 11746

Marshall M Stern PC
17 Cardiff Ct
Huntington, NY 11746

Matrix Turf Solutions
6551 Pottery Road
Warners, NY 13164

Murray S Lubitz
245 Main St
White Plain, NY 10601

NCO Financial Syst, Inc
507 Prudential Road
Horsham, PA 19044

NCO Financial Syst, Inc
7595 Montevideo Rd, Sui 110
Jessup, MD 20794

NCO Financial Syst, Inc.
507 Prudential Road
Horsham, PA 19044

Northstar Location Svcs, LLC
Attn Financial Svcs Dept
4285 Genesee St
Cheektowaga, NY 14225-1943

NY State Dept of Tax & Fin
Bankruptcy Section
PO Box 5300
Albany, NY 12205-0300

NY State Dept Tax & Fin
Bankruptcy Section
PO Box 5300
Albany, NY 12205-0300

NY State Dept Tax & Fin
Bankruptcy Section
PO Box 5300
Albany, NY 12205-0300

NY State Dept Tax & Fin
Bankruptcy Section
PO Box 5300
Albany, NY 12205-0300

People's United Bank
PO Box 205
Brattleboro, VT 05302-0205

Peoples United Bank
PO Box 205
Brattleboro, VT 05302-0205

Peoples United Bank
PO Box 205
Brattleboro, VT 05302-0205

Peoples United Bank
PO Box 205
Brattleboro, VT 05302-0205

Peoples United Equip Fin Co
PO Box 443
Brattleboro, VT 05302-0443

Prince-Parker & Assoc, Inc
8625 Crown Crescent Court
PO Box 747690
Charlotte, NC 28247-4690

RMS
4836 Brecksville Road
PO Box 539
Richfield, OH 44286

Rosicki, Rosicki & Assoc
51 E Bethpage Rd
Plainview, NY 11803

Ryan, Smith & Carbine Ltd
98 Merchants Row
PO Box 310
Rutland, VT 05702-0310

Sammarco
173 Oak Street
New Rochelle, NY 10801

Saratoga Sod
1670 Route 4
Stillwater, NY 12170

Suburban Propane
PO Box 1138
Bennington, VT 05201

Sunrise Credit Svcs, Inc
PO Box 9100
Farmingdale, NY 11735-9100

Sunrise Credit Svcs, Inc.
PO Box 9100
Farmingdale, NY 11735-9100

SW Credit Systems, LP
4120 Int Pkwy, Sui 1100
Carrollton, TX 75007-1958

TD Bank
PO Box 3002
Phoenixville, PA 19460

TD Bank NA
PO Box 9547
Portland, ME 04112

TD Card Services
PO Box 2580
Cherry Hill, NJ 08034-0372

TD Card Services
PO Box 2580
Cherry Hill, NJ 08034-0372

TD Card Services
PO Box 2580
Cherry Hill, NJ 08034-0372

TD Card Services
PO Box 2580
Cherry Hill, NJ 08034-0372

Ted & Louise Price
40992 Ashton Club Drive
Lake Wales, FL 33859

Town of North Castle
17 Bedford Road
Town Hall Annex
Armonk, NY 10504

Turf Links
29 Gilmore Drive
Sutton, MA 01590

US Foods
PO Box 642554
Pittsburgh, PA 15264-2554

Vozza & Huguenot
F. Frank Vozza
2435 Eastchester Road
Bronx, NY 10469

Wells Fargo
PO Box 10335
Des Moines, IA 50306-0335

Wells Fargo Home Mtg
PO Box 14547
Des Moines, IA 50306-4547

Westchester Bank
2100 Central Park Avenue
Yonkers, NY

Wide Lending Group
3580 Wilshire Blvd Unit 160
Los Angeles, CA 90010

Wide Merchant Group, Inc.
1810 E Sahara Ave #100
Las Vegas, NV 89104

Yellowstone Capital LLC
160 Pearl St
New York, NY 10005

Zwicker & Assoc PC
120 Allens Creek Rd
Rochester, NY 14618

UNITED STATES BANKRUPTCY COURT
District of Vermont

In re:

David L. Griffin & Maria E. Leon

Case No.
Chapter 7

Debtor(s)

INSERT NAME OF FORM HERE

UNITED STATES BANKRUPTCY COURT
District of Vermont

In re:

David L. Griffin & Maria E. Leon

Case No.
Chapter 7

Debtor(s)

INSERT NAME OF FORM HERE

UNITED STATES BANKRUPTCY COURT
District of Vermont

In re:

David L. Griffin & Maria E. Leon

Case No.
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UNITED STATES BANKRUPTCY COURT
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In re:

David L. Griffin & Maria E. Leon

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David L. Griffin & Maria E. Leon

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David L. Griffin & Maria E. Leon

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District of Vermont

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David L. Griffin & Maria E. Leon

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David L. Griffin & Maria E. Leon

Case No.
Chapter 7

Debtor(s)

INSERT NAME OF FORM HERE

UNITED STATES BANKRUPTCY COURT
District of Vermont

In re:

David L. Griffin & Maria E. Leon

Case No.
Chapter 7

Debtor(s)

INSERT NAME OF FORM HERE

DISCLOSURE OF COMPENSATION -- Rule 2016 (b)

1. Pursuant to 11 U.S.C. §329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-names debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is $2,500.00 .

2. The source of the compensation paid, or to be paid to me was the debtor.

3. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

/s/John R Canney III

Date October 1, 2013

Signature _____

John R Canney III, Bar No.

B203
12/94

United States Bankruptcy Court
District of Vermont

In re David L. Griffin & Maria E. Leon Case No. _____

Chapter 7

Debtor(s)

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR

1. Pursuant to 11 U .S.C. § 329(a) and Fed. Bankr. P. 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follow s:

For legal services, I have agreed to accept ..... $ 2,500.00

Prior to the filing of this statement I have received ..... $ 2,500.00

Balance Due ..... $ 0.00

2. The source of compensation paid to me was:

☑ Debtor ☐ Other (specify)

3. The source of compensation to be paid to me is:

☐ Debtor ☑ Other (specify)

4. ☑ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a other person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation, is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
b. Preparation and filing of any petition, schedules, statements of affairs and plan which may be required;
c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;

6. By agreement with the debtor(s), the above-disclosed fee does not include the following services:

Any services past the 341 Hearing are at the hourly rate of $275.00.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in the bankruptcy proceeding.

October 1, 2013
Date

/s/ John R Canney III
Signature of Attorney

_____
Name of law firm

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In re David L. Griffin & Maria E. Leon
Debtor(s)

Case Number: _____
(If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):
- ☐ **The presumption arises.**
- ☑ **The presumption does not arise.**
- ☐ **The presumption is temporarily inapplicable.**

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor. If none of the exclusions in Part I applies, joint debtors may complete one statement only. If any of the exclusions in Part I applies, joint debtors should complete separate statements if they believe this is required by §707(b)(2)(C).

Part I. MILITARY AND NON-CONSUMER DEBTORS

1A

Disabled Veterans. If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.

☐ **Declaration of Disabled Veteran.** By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).

1B

Non-consumer Debtors. If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.

☐ **Declaration of non-consumer debts.** By checking this box, I declare that my debts are not primarily consumer debts.

1C

Reservists and National Guard Members; active duty or homeland defense activity. Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the "exclusion period"). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for "The presumption is temporarily inapplicable" at the top of this statement, and (3) complete the verification in Part VIII. **During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.**

☐ **Declaration of Reservists and National Guard Members.** By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard

a. ☐ I was called to active duty after September 11, 2001, for a period of at least 90 days and
- ☐ I remain on active duty /or/
- ☐ I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed;

OR

b. ☐ I am performing homeland defense activity for a period of at least 90 days /or/
- ☐ I performed homeland defense activity for a period of at least 90 days, terminating on _____, which is less than 540 days before this bankruptcy case was filed.

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Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

2 **Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed.

a. ☑ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 3-11.**

b. ☐ Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." **Complete only Column A ("Debtor's Income") for Lines 3-11.**

c. ☐ Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. **Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.**

d. ☐ Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.**

	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.	Column A Debtor's Income	Column B Spouse's Income
3	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$ 4,333.33	$ N.A.
4	**Income from the operation of a business, profession or farm**. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part V.**		
	a. Gross receipts — $ 0.00		
	b. Ordinary and necessary business expenses — $ 0.00		
	c. Business income — Subtract Line b from Line a	$ 0.00	$ N.A.
5	**Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part V.**		
	a. Gross receipts — $ 0.00		
	b. Ordinary and necessary operating expenses — $ 0.00		
	c. Rent and other real property income — Subtract Line b from Line a	$ 0.00	$ N.A.
6	**Interest, dividends and royalties.**	$ 0.00	$ N.A.
7	**Pension and retirement income.**	$ 0.00	$ N.A.
8	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose.** Do not include alimony or separate maintenance payments or amounts paid by your spouse if Column B is completed. Each regular payment should be reported in only one column; If a payment is listged in Column A, do not report that payment in Column B.	$ 0.00	$ N.A.
9	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:		
	Unemployment compensation claimed to be a benefit under the Social Security Act — Debtor $ 0.00 — Spouse $ N.A.	$ 0.00	$ N.A.

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10	**Income from all other sources.** Specify source and amount. If necessary, list additional sources on a separate page. **Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance.** Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. a. $ 0.00 b. $ 0.00 Total and enter on Line 10	$ 0.00	$ N.A.
11	**Subtotal of Current Monthly Income for § 707(b)(7).** Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).	$ 4,333.33	$ N.A.
12	**Total Current Monthly Income for § 707(b)(7).** If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.		$ 4,333.33

Part III. APPLICATION OF § 707(b)(7) EXCLUSION

13	**Annualized Current Monthly Income for § 707(b)(7).** Multiply the amount from Line 12 by the number 12 and enter the result.	$ 51,999.96
14	**Applicable median family income.** Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: Vermont b. Enter debtor's household size: 4	$ 85,750.00
15	**Application of Section 707(b)(7).** Check the applicable box and proceed as directed. ☑ **The amount on Line 13 is less than or equal to the amount on Line 14.** Check the "The presumption does not arise" box at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. ☐ **The amount on Line 13 is more than the amount on Line 14.** Complete the remaining parts of this statement.	

Complete Parts IV, V, VI and VII of this statement only if required. (See Line 15).

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)

16	**Enter the amount from Line 12.**	$ N.A.
17	**Marital adjustment**. If you checked the box at Line 2.c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If you did not check box at Line 2.c, enter zero. a. $ b. $ c. $ Total and enter on Line 17.	$ N.A.
18	**Current monthly income for § 707(b)(2).** Subtract Line 17 from Line 16 and enter the result.	$ N.A.

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Part V. CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19A	**National Standards: food, clothing and other items.** Enter in Line 19A the "Total" amount from IRS National Standards for Food, Clothing and Other Items for the applicable number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of person is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.	$ N.A.
19B	**National Standards: health care.** Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 19B.	$ N.A.

Persons under 65 years of age			Persons 65 years of age or older		
a1.	Allowance per person	N.A.	a2.	Allowance per person	N.A.
b1.	Number of persons	N.A.	b2.	Number of persons	
c1.	Subtotal	N.A.	c2.	Subtotal	N.A.

20A	**Local Standards: housing and utilities; non-mortgage expenses.** Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.	$ N.A.
20B	**Local Standards: housing and utilities; mortgage/rent expense.** Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. **Do not enter an amount less than zero.**	$ N.A.

a.	IRS Housing and Utilities Standards; mortgage/rental expense	$ N.A.
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	$ N.A.
c.	Net mortgage/rental expense	Subtract Line b from Line a

21	**Local Standards: housing and utilities; adjustment.** If you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below: _____ _____ _____	$ N.A.

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22A	**Local Standards: transportation; vehicle operation/public transportation expense.** You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8. ☐ 0 ☐ 1 ☐ 2 or more. If you checked 0, enter on Line 22A the "Public Transportation" amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 22A the "Operating Costs" amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$ N.A.
22B	**Local Standards: transportation; additional public transportation expense.** If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 22B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$ N.A.
23	**Local Standards: transportation ownership/lease expense; Vehicle 1.** Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) ☐ 1 ☐ 2 or more. Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. **Do not enter an amount less than zero.**	$ N.A.
24	**Local Standards: transportation ownership/lease expense; Vehicle 2.** Complete this Line only if you checked the "2 or more" Box in Line 23. Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. **Do not enter an amount less than zero.**	$ N.A.
25	**Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. **Do not include real estate or sales taxes.**	$ N.A.
26	**Other Necessary Expenses: involuntary deductions for employment.** Enter the total average monthly payroll deductions that are required for your employment, such as retirement contributions, union dues, and uniform costs. **Do not include discretionary amounts, such as voluntary 401(k) contributions.**	$ N.A.
27	**Other Necessary Expenses: life insurance.** Enter total average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$ N.A.
28	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. **Do not include payments on past due obligations included in Line 44.**	$ N.A.

a.	IRS Transportation Standards, Ownership Costs	$ N.A.
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	$ N.A.
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.

a.	IRS Transportation Standards, Ownership Costs	$ N.A.
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	$ N.A.
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.

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29	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	$ N.A.
30	**Other Necessary Expenses: childcare.** Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$ N.A.
31	**Other Necessary Expenses: health care.** Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 19B. **Do not include payments for health insurance or health savings accounts listed in Line 34.**	$ N.A.
32	**Other Necessary Expenses: telecommunication services.** Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service—such as pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$ N.A.
33	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 19 through 32	$ N.A.
	Subpart B: Additional Living Expense Deductions **Note: Do not include any expenses that you have listed in Lines 19-32.**	
34	**Health Insurance, Disability Insurance and Health Savings Account Expenses.** List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents. a. Health Insurance — $ N.A. b. Disability Insurance — $ N.A. c. Health Savings Account — $ N.A. Total and enter on Line 34. **If you do not actually expend this total amount,** state your actual average expenditures in the space below: $ N.A.	$ N.A.
35	**Continued contributions to the care of household or family members.** Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	$ N.A.
36	**Protection against family violence.** Enter the total average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$ N.A.
37	**Home energy costs** Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities that you actually expend for home energy costs. **You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.**	$ N.A.
38	**Education expenses for dependent children less than 18.** Enter the total average monthly expenses that you actually incur, not to exceed $156.25* per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. **You must provide your case trustee with documentation of your actual expenses and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$ N.A.

**Amount subject to adjustment on 4/01/16, and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

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39	**Additional food and clothing expense.** Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court**.) You must demonstrate that the additional amount claimed is reasonable and necessary.**	$ N.A.
40	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170 (c)(1)-(2)	$ N.A.
41	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 34 through 40.	$ N.A.

Subpart C: Deductions for Debt Payment

42 **Future payments on secured claims.** For each of your debts that is secured by an interest in property that you own, list the name of creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total Average Monthly payments on Line 42.

	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?
a.			$	☐ yes ☐ no
b.			$	☐ yes ☐ no
c.			$	☐ yes ☐ no
			Total: Add Line a, b and c	

$ N.A.

43 **Other payments on secured claims.** If any of the debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
a.			$
b.			$
c.			$

$ N.A.

44	**Payments on prepetition priority claims.** Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing**. Do not include current obligations, such as those set out in Line 28.**	$ N.A.

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45	**Chapter 13 administrative expenses.** If you are eligible to file a case under Chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.	
	a. Projected average monthly Chapter 13 plan payment. — $ N.A.	
	b. Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) — x N.A.	
	c. Average monthly administrative expense of Chapter 13 case — Total: Multiply Lines a and b	$ N.A.
46	**Total Deductions for Debt Payment.** Enter the total of Lines 42 through 45.	$ N.A.
	Subpart D: Total Deductions from Income	
47	**Total of all deductions allowed under § 707(b)(2).** Enter the total of Lines 33, 41, and 46.	$ N.A.
	Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION	
48	**Enter the amount from Line 18 (Current monthly income for § 707(b)(2))**	$ N.A.
49	**Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))**	$ N.A.
50	**Monthly disposable income under § 707(b)(2).** Subtract Line 49 from Line 48 and enter the result.	$ N.A.
51	**60-month disposable income under § 707(b)(2).** Multiply the amount in Line 50 by the number 60 and enter the result.	$ N.A.
52	**Initial presumption determination.** Check the applicable box and proceed as directed. ☑ **The amount on Line 51 is less than $7,475*.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI. ☐ **The amount set forth on Line 51 is more than $12,475*.** Check the "Presumption arises" box at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI. ☐ **The amount on Line 51 is at least $7,475*, but not more than $12,475*.** Complete the remainder of Part VI (Lines 53 through 55).	
53	**Enter the amount of your total non-priority unsecured debt**	$ N.A.
54	**Threshold debt payment amount.** Multiply the amount in Line 53 by the number 0.25 and enter the result.	$ N.A.
55	**Secondary presumption determination.** Check the applicable box and proceed as directed. ☐ **The amount on Line 51 is less than the amount on Line 54.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. ☐ **The amount on Line 51 is equal to or greater than the amount on Line 54.** Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.	
	Part VII: ADDITIONAL EXPENSE CLAIMS	
56	**Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.	

	Expense Description	Monthly Amount
a.		$ N.A.
b.		$ N.A.
c.		$ N.A.
	Total: Add Lines a, b and c	N.A.

**Amounts are subject to adjustment on 4/1/2016, and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

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Part VIII: VERIFICATION	
57	I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this a joint case, both debtors must sign.)* Date: October 1, 2013 Signature: /s/ David L. Griffin *(Debtor)* Date: October 1, 2013 Signature: /s/ Maria E. Leon *(Joint Debtor, if any)*

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Form 22 Continuation Sheet

Income Month 1			Income Month 2		
Gross wages, salary, tips...	4,333.33	2,383.33	Gross wages, salary, tips...	4,333.33	2,383.33
Income from business...	0.00	0.00	Income from business...	0.00	0.00
Rents and real property income...	0.00	0.00	Rents and real property income...	0.00	0.00
Interest, dividends...	0.00	0.00	Interest, dividends...	0.00	0.00
Pension, retirement...	0.00	0.00	Pension, retirement...	0.00	0.00
Contributions to HH Exp...	0.00	0.00	Contributions to HH Exp...	0.00	0.00
Unemployment...	0.00	0.00	Unemployment...	0.00	0.00
Other Income...	0.00	0.00	Other Income...	0.00	0.00

Income Month 3			Income Month 4		
Gross wages, salary, tips...	4,333.33	2,383.33	Gross wages, salary, tips...	4,333.33	2,383.33
Income from business...	0.00	0.00	Income from business...	0.00	0.00
Rents and real property income...	0.00	0.00	Rents and real property income...	0.00	0.00
Interest, dividends...	0.00	0.00	Interest, dividends...	0.00	0.00
Pension, retirement...	0.00	0.00	Pension, retirement...	0.00	0.00
Contributions to HH Exp...	0.00	0.00	Contributions to HH Exp...	0.00	0.00
Unemployment...	0.00	0.00	Unemployment...	0.00	0.00
Other Income...	0.00	0.00	Other Income...	0.00	0.00

Income Month 5			Income Month 6		
Gross wages, salary, tips...	4,333.33	2,383.33	Gross wages, salary, tips...	4,333.33	2,383.33
Income from business...	0.00	0.00	Income from business...	0.00	0.00
Rents and real property income...	0.00	0.00	Rents and real property income...	0.00	0.00
Interest, dividends...	0.00	0.00	Interest, dividends...	0.00	0.00
Pension, retirement...	0.00	0.00	Pension, retirement...	0.00	0.00
Contributions to HH Exp...	0.00	0.00	Contributions to HH Exp...	0.00	0.00
Unemployment...	0.00	0.00	Unemployment...	0.00	0.00
Other Income...	0.00	0.00	Other Income...	0.00	0.00

Additional Items as Designated, if any

Remarks

Bankruptcy2013 © 1991-2013, New Hope Software, Inc., ver. 4.7.2-792 - 31359-301X-***** - Adobe PDF

EXHIBIT 2

9-23-26

91-11-020679

THIS INSTRUMENT PREPARED BY:
NED M. SHANDLOFF, Corporate Counsel
General Development Corporation
2601 S. Bayshore Drive
Miami, Florida 33133

Reserved for use by Clerk of Court

1145272

TRUSTEE'S DEED
WITH THIRD PARTY WARRANTY

A8001554

739500

Property Appraiser's Parcel I.D. #
Grantee(s) S.S. [redacted]

THIS DEED, made this 4TH day of SEPTEMBER, 19 91, by **NCNB NATIONAL BANK OF FLORIDA**, a national banking association, duly organized and existing by virtue of the laws of the United States, as Trustee Under Trust No. 06-01-009-6081954 whose post office address is 400 N. Ashley Drive, 6th Floor; Tampa, FL 33602, hereinafter called the Grantor, to

DAVID L. GRIFFIN

whose post office address is: 600 [illegible]
PO BOX 719
HARRISON, NY 10528

Doc Tax $44.40
Int Tax $ [illegible]
Total $50.40

Deputy Clerk

'91 NOV 12 P2:52
1145272
FILED AND RECORDED
DOUGLAS DIXON CLERK
ST LUCIE COUNTY, FL.

hereinafter called the Grantee.

WITNESSETH: That the Grantor, for and in consideration of the sum of ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells and conveys unto the Grantee, all of Grantor's right, title and interest in that certain real property situate in ST. LUCIE County, Florida, more particularly described as follows:

LOT 5, BLOCK 3247 IN FIRST REPLAT OF PORT ST. LUCIE SECTION 48, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 26, PAGE 23, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.
TO HAVE AND TO HOLD the same in fee simple forever.

In consideration of the foregoing, GENERAL DEVELOPMENT CORPORATION, a Delaware corporation authorized to do business in the State of Florida, as Debtor in Possession Under U.S. Bankruptcy Court Case No.90-12231-BKC-AJC, in and for the Southern District of Florida, hereinafter called GDC, joins in the execution of this document to fully warrant the title to said land and fully defend the same against the lawful claims of all persons whomsoever, as fully and completely as though it were the Grantor hereunder and were executing a warranty deed with full common law covenants.

SUBJECT TO: The lien for property taxes for the year of conveyance; oil, gas and mineral reservations of record, if any; easements, covenants and restrictions of public record common to the neighborhood; Property Owner's Association, if any; special assessments or taxing districts, if any; impact fees, if any; applicable zoning and ordinances; and the right of surface access to the property for the purpose of completing land development work within the area surrounding the property (including the right to remove any soil deposited by General Development Corporation) up to the time a building permit has been issued for the construction of a structure upon the property.

IN WITNESS WHEREOF, Grantor and GDC have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of:
ANN MARIE WILLIAMS
JEANNE MILKEY

NCNB NATIONAL BANK OF FLORIDA, As Trustee under Trust No. 06-01-009-6081954
BY: _____
GREGORY T. SARDZINSKI

Signed, Sealed and delivered in the presence of:
RAMONITA RIVERO
CHERYLL CAMERON

GENERAL DEVELOPMENT CORPORATION, as Debtor in Possession under U.S.Bankruptcy Court Case No. 90-12231-BKC-AJC, in and for the Southern District of Florida
BY: _____
DEED OFFICER: JEAN MASSETT

STATE OF FLORIDA, COUNTY OF HILLSBOROUGH) ss:

The foregoing instrument was acknowledged before me by GREGORY T. SARDZINSKI on this 4TH day of SEPTEMBER, 19 91, as the V.P. & Trust Officer of NCNB NATIONAL BANK OF FLORIDA, a national banking association, duly organized and existing by virtue of the laws of the United States, on behalf of said national banking association, as Trustee, under Trust No. 06-01-009-6081954

RETURN TO:
FIRST AMERICAN TITLE CO.
COURT HOUSE BOX

NOTARY PUBLIC RICHARD REICH
State of Florida at Large

NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: OCT. 7, 1994.
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF FLORIDA, COUNTY OF DADE) ss:

The foregoing instrument was acknowledged before me by JEAN MASSETT, on this 5TH day of SEPTEMBER, 19 91, as the Deeding Officer of GENERAL DEVELOPMENT CORPORATION, a Delaware corporation authorized to do business in the State of Florida, as Debtor in Possession under U.S. Bankruptcy Court Case No. 90-12231-BKC-AJC, in and for the Southern District of Florida, on behalf of the corporation.

NOTARY PUBLIC
State of Florida at Large

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. JAN. 14, 1995
BONDED THRU GENERAL INS. UND.

OR 0763 PAGE 0696

4920-1143-1497

JOSEPH E. SMITH, CLERK OF THE CIRCUIT COURT - SAINT LUCIE COUNTY
FILE # 4154517 OR BOOK 3831 PAGE 1308, Recorded 01/28/2016 at 12:25 PM 000173
Doc Tax: $105.00

Prepared by, record & return to:
Karen Rae Hyche
PRESTIGE TITLE AGENCY, INC.
736 Colorado Ave. Ste. A
Stuart FL 34994
772-283-5590

Property Appraisers Parcel ID#:
3420-741-0254-000/0

THIS WARRANTY DEED, Made the 22 day of January, 2016 by

DAVID L. GRIFFIN

hereinafter called the Grantor, to **RED BOAT, LLC, a Florida limited liability company**

whose post office address is hereinafter called the Grantee. 757 SE 17th St. Ste. 443, Fort Lauderdale FL 33316

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the Grantor, for and in consideration of the sum of $10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land, situate in St. Lucie County, State of Florida, viz:

Lot 5, Block 3247, FIRST REPLAT OF PORT ST. LUCIE SECTION 48, a subdivision according to the plat thereof recorded at Plat Book 26, Page 23, in the Public Records of St. Lucie County, Florida.

SUBJECT TO restrictions, reservations, easements & conditions of record; all governmental zoning.

Subject property is vacant, unimproved land and does not constitute the homestead of the grantor nor is it contiguous thereto.

Together, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the Grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2015.

In Witness Whereof, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness Signature (as to first grantor)

Print name: JASON P. MORRISSEY

Witness Signature (as to first grantor)

Print name: Abigail W. Chilcux

Grantor Signature

David L. Griffin

180 Country Club Rd., Bennington, VT 05201
Post Office Address

STATE OF VERMONT)
COUNTY OF Bennington)

I hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared **DAVID L. GRIFFIN** known to me to be the person(s) described in and who executed the foregoing instrument, who acknowledged before me that he/she/they executed the same, and an oath was not taken. (Check one): ☐ Said person(s) is/are personally known to me. ☒ Said person(s) provided the following type of identification: Vermont Drivers License 82576398

SEAL

MY COMMISSION EXPIRES: 2/10/2019.

Witness my hand and official seal in the County and State last aforesaid this 22 day of January, 2016.

Notary Signature

Print name: Nichole Shepard

EXHIBIT 3

000174

9-23-26 91-11-0288 000175

THIS INSTRUMENT PREPARED BY:
NED M. SHANDLOFF, Corporate Counsel
General Development Corporation
2601 S. Bayshore Drive
Miami, Florida 33133

Reserved for use by Clerk of Court
1145271

TRUSTEE'S DEED WITH THIRD PARTY WARRANTY

A8001553 639500

Property Appraiser's Parcel I.D. #
Grantee(s) S.S. # (s) [redacted]

THIS DEED, made this 4TH day of SEPTEMBER, 19 91, by **NCNB NATIONAL BANK OF FLORIDA**, a national banking association, duly organized and existing by virtue of the laws of the United States, as Trustee Under Trust No. 06-01-009-6081954, whose post office address is 400 N. Ashley Drive, 6th Floor; Tampa, FL 33602, hereinafter called the Grantor, to

DAVID L. GRIFFIN

Rec Fee $ clear
Int. Stamp $
$ 38.40
Int Tax $
Total $ 44.40 Deputy Clerk

whose post office address is: PO BOX 719 HARRISON, NY 10528

'91 NOV 12 P2:52
1145271 PM
FILED AND RECORDED
DOUGLAS DIXON CLERK
ST. LUCIE COUNTY, FL

hereinafter called the Grantee.

WITNESSETH: That the Grantor, for and in consideration of the sum of ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells and conveys unto the Grantee, all of Grantor's right, title and interest in that certain real property situate in ST. LUCIE County, Florida, more particularly described as follows:

LOT 4, BLOCK 3247 IN FIRST REPLAT OF PORT ST. LUCIE SECTION 48, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 26, PAGE 23, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.
TO HAVE AND TO HOLD the same in fee simple forever.

In consideration of the foregoing, GENERAL DEVELOPMENT CORPORATION, a Delaware corporation authorized to do business in the State of Florida, as Debtor in Possession Under U.S. Bankruptcy Court Case No.90-12231-BKC-AJC, in and for the Southern District of Florida, hereinafter called GDC, joins in the execution of this document to fully warrant the title to said land and fully defend the same against the lawful claims of all persons whomsoever, as fully and completely as though it were the Grantor hereunder and were executing a warranty deed with full common law covenants.

SUBJECT TO: The lien for property taxes for the year of conveyance; oil, gas and mineral reservations of record, if any; easements, covenants and restrictions of public record common to the neighborhood; Property Owner's Association, if any; special assessments or taxing districts, if any; impact fees, if any; applicable zoning and ordinances; and the right of surface access to the property for the purpose of completing land development work within the area surrounding the property (including the right to remove any soil deposited by General Development Corporation) up to the time a building permit has been issued for the construction of a structure upon the property.

IN WITNESS WHEREOF, Grantor and GDC have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of:
ANN MARIE WILLIAMS
JEANNE MIKKEY

NCNB NATIONAL BANK OF FLORIDA, As Trustee under Trust No. 06-01-009-6081954
BY: GREGORY T. SARDZINSKI

Signed, Sealed and delivered in the presence of:
RAMONITA RIVERO
CHERYLL CAMERON

GENERAL DEVELOPMENT CORPORATION, as Debtor in Possession under U.S.Bankruptcy Court Case No. 90-12231-BKC-AJC, in and for the Southern District of Florida
BY: DEED OFFICER: JEAN MASSETT

STATE OF FLORIDA, COUNTY OF HILLSBOROUGH) ss:

The foregoing instrument was acknowledged before me by GREGORY T. SARDZINSKI on this 4TH day of SEPTEMBER, 19 91, as the V.P. & Trust Officer of NCNB NATIONAL BANK OF FLORIDA, a national banking association, duly organized and existing by virtue of the laws of the United States, on behalf of said national banking association, as Trustee under Trust No. 06-01-009-6081954

RETURN TO:
FIRST AMERICAN TITLE CO.
COURT HOUSE BOX

NOTARY PUBLIC RICHARD REICH
State of Florida at Large
NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: OCT. 7, 1994.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

STATE OF FLORIDA, COUNTY OF DADE) ss:

The foregoing instrument was acknowledged before me by JEAN MASSETT on this 4TH day of SEPTEMBER, 19 91, as the Deeding Officer of GENERAL DEVELOPMENT CORPORATION, a Delaware corporation authorized to do business in the State of Florida, as Debtor in Possession under U.S. Bankruptcy Court Case No. 90-12231-BKC-AJC, in and for the Southern District of Florida, on behalf of the corporation.

NOTARY PUBLIC
State of Florida at Large
NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. JAN.14,1996
BONDED THRU GENERAL INS. UND.

OR 0763 PAGE 0695

4920-1143-1497

JOSEPH E. SMITH, CLERK OF THE CIRCUIT COURT - SAINT LUCIE COUNTY
FILE # 4154524 OR BOOK 3831 PAGE 1315, Recorded 01/28/2016 at 12:30 PM 000176
Doc Tax: $105.00

Prepared by, record & return to:
Karen Rae Hyche
PRESTIGE TITLE AGENCY, INC.
736 Colorado Ave. Ste. A
Stuart FL 34994
772-283-5590

Property Appraisers Parcel ID#:
3420-741-0253-000/3

THIS WARRANTY DEED, Made the 22 day of January, 2016 by

DAVID L. GRIFFIN

hereinafter called the Grantor, to **RED BOAT, LLC, a Florida limited liability company**

whose post office address is 757 SE 17th St. Ste. 443, Fort Lauderdale FL 33316
hereinafter called the Grantee.

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the Grantor, for and in consideration of the sum of $10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land, situate in St. Lucie County, State of Florida, viz:

Lot 4, Block 3247, FIRST REPLAT OF PORT ST. LUCIE SECTION 48, a subdivision according to the plat thereof recorded at Plat Book 26, Page 23, in the Public Records of St. Lucie County, Florida.

SUBJECT TO restrictions, reservations, easements & conditions of record; all governmental zoning.

Subject property is vacant, unimproved land and does not constitute the homestead of the grantor nor is it contiguous thereto.

Together, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the Grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2015.

In Witness Whereof, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Jason P. Morrissey
Witness Signature (as to first grantor)
Print name: JASON P. MORRISSEY

Witness Signature (as to first grantor)
Print name: Abigail W. Childs

David L Griffin
Grantor Signature
David L. Griffin

180 Country Club Road
Post Office Address
Bennington VT 05201

STATE OF VERMONT)
COUNTY OF Bennington)

I hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared **DAVID L. GRIFFIN** known to me to be the person(s) described in and who executed the foregoing instrument, who acknowledged before me that he/she/they executed the same, and an oath was not taken. (Check one): ☐ Said person(s) is/are personally known to me. ☒ Said person(s) provided the following type of identification: VT Drivers License # 82576398

SEAL

MY COMMISSION EXPIRES: 2/10/19

4920-1143-1497

Witness my hand and official seal in the County and State last aforesaid this 22 day of January, 2016.

Nichole Shepard
Notary Signature
Print name: Nichole Shepard

EXHIBIT 7

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Apple Hill Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	)	Docket No. 24-3517-PET

APPLE HILL SOLAR LLC'S PRELIMINARY COMMENTS OF THE DEPARTMENT OF PUBLIC SERVICE'S MOTION TO STAY

Apple Hill Solar LLC ("AHS") will be prepared to preliminarily address the Motion to Stay of the Department of Public Service ("DPS") and the Town of Benington's comments at the scheduling conference set for January 13, 2025.

In advance of the conference, AHS provides the following preliminary comments.

1. AHS has already explained to DPS that AHS is proceeding with the petition under the assumption that it would be a merchant generator. That is the same basis on which the Commission reviewed the project initially in docket 8797, which then eventually became a project with a standard offer contract *after* the CPG was issued. There is no difference here. AHS is not seeking to rely on any waivers. If DPS needs AHS to say that in different ways or clarify testimony, AHS is happy to do so.

2. With respect to Commission Rule 5.403(A)(19), it is difficult to believe that DPS even raised that point because the existence of Chelsea Solar has such a storied history. AHS has supplemented the testimony to state that the Chelsea Solar LLC project currently before the Commission in Case 23-0249 is a project described in Rule 5.403(A)(19), and that there are no others.

3. With respect to the AHS project in docket 8454, the issue of estoppel may be interesting, after all, the Commission held that the Chelsea Solar project satisfied all the requirements for a CPG but only denied the CPG based upon a then newly announced single plant rule. If estoppel is at play then the CPG for Chelsea Solar in case 23-0249 should be summarily

granted now that the Commission denied the extension of the AHS standard offer contract. Counsel to Chelsea Solar will review the estoppel issue for that proceeding and make the appropriate motion for summary judgment.

4. As for the AHS project itself in this docket, the petition itself describes the differences that would be material from the prior one such as, for example, the smaller footprint, the removal of what the Commission referred to as a "black box," and the growth in existing vegetation.

5. Some of the players have also changed. For example, the closest neighbor to the project has filed written support for the projects. So too have other neighbors. And those neighbors spoke out in support of the project before the Town's planning commission. In fact, more than twice the number of people spoke out in favor of the Project than against it.

6. There are other differences as well, including, *inter alia*, that there is no Bennington Town Plan in effect. Thanks to the doggedness of two honest Bennington Select Board members and a number of whistleblowers, AHS has become aware that the Bennington Town Plan expired under 24 V.S.A. §4387 on October 6, 2023, eight years after its adoption. What has ensued is a multi-faceted conspiracy to cover up that fact for a variety of reasons, including reasons related to the AHS and Chelsea Solar projects. The still active cover-up conspiracy includes all of the Select Board members but the two aforementioned and other Does and has resulted, *inter alia*, in the Town fraudulently obtaining grants from various entities, including federal funds, all of which require a Town Plan to be in effect. The expiration of the Town Plan also resulted, *inter alia*, in the loss of the Downtown Designation and the Town's Bolio Amendment being *void ab initio.*

7. The cover up and overt acts include the forgery, counterfeiting and publication of official town and regional documents in violation of 13 V.S.A §1801 and §1802 and the submission of false certifications to the State and Federal government in violation of 13 V.S.A §2002 and 32 V.S.A §631(a)(9). The dramatic scope of the cover up is not surprising considering that since the expiration of the Town Plan in 2023, the Town has applied for and/or received millions of dollars in state and federal funds through grants and tax benefits as well as other types

of benefits from various programs that specifically require that a duly adopted municipal town plan be in place. The cover-up also includes filing false statements with the Commission that are based upon the existence of a Town Plan, but for which the Town knows does not exist and has not existed since October 6, 2023.

8. AHS's parent Allco Finance Limited is finalizing a complaint to be filed in Federal District Court against the Town of Bennington, its Select Board members (other than the two aforementioned), the town planner and town manager involving their conspiracy to cover-up the fact that the Town Plan expired on October 6, 2023, as well as other claims, such as breach of contract (i.e., the settlement agreement between AHS and the Town), violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.SC. § 1962(c)), injunctive and declaratory relief, and violations of civil rights. The complaint will also set the record straight on why the Mount Anthony Country Club (who the Town was and may still be working with) withdrew as an intervenor in the Chelsea Solar case.

Dated: January 10, 2025

Respectfully Submitted,

APPLE HILL SOLAR LLC
By: */s/ Thomas Melone*
Thomas Melone
Apple Hill Solar LLC
157 Church Street, 19th Floor
New Haven, CT 06510
Thomas.Melone@AllcoUS.com
212-681-1120

EXHIBIT 8

From:	Thomas Melone
To:	kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
Cc:	McNamara, Ed
Subject:	Standard Offer Testimony of Ed McNamara
Date:	Monday, March 24, 2025 10:05:23 AM

You don't often get email from thomas.melone@allcous.com. Learn why this is important

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Greetings Honorable Members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy,

I respectfully request that I be given equal time to testify before you via zoom to address the testimony given by PUC Chair Ed McNamara to the House Committee on February 7, 2025. https://www.goldendomevt.com/VTHouseEnergyDigitalInfra_2025-02-07_11-13.html

Mr. McNamara singled me out (although not by name) as the single developer that has been the cause of almost all the litigation concerning the Standard Offer program. That part is true, but most of the litigation has been focused on the PUC's weaponization of the "single-plant" rule, a concocted PUC rule that has been used (and is still being used) by the PUC to crush non-utility solar projects.

I am (or more accurately my company—Allco) is the single developer that Mr. McNamara focused on in his testimony.

The Vermont Superior Court has referred to Allco as "climate warriors who would subject anything in their path to the broad sweep of their scythe, leaving the path open for all other solar developers." *Otter Creek Solar LLC v. Vermont Pub. Util. Comm'n*, docket 99-1-20-cncv (Vt. Super. November 16, 2021) at *7. Allco has a long list of *successful* litigation challenging unfair practices against small local solar projects, including in California, Connecticut, Massachusetts & Vermont.

Allco's challenges to the bad (and in my view unlawful) aspects of the Standard Offer are part of those.

But the "single-plant" rule is the worst violator of them all. In his testimony, Mr. McNamara provided context that has to date been missing. As he stated, it was around 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed to meet the RES. Shortly thereafter, the PUC weaponized and expanded the single-plant rule by denying the CPG for the very first project awarded a contract under the Standard Offer competitive solicitation rules, which is Chelsea Solar (named after my youngest daughter—a 2015 graduate of Middlebury College).

The PUC's new single-plant rule was applied *retroactively* to Chelsea and Apple Hill Solar (both Allco projects) based upon the demonstrably *false claim* that when the Chelsea Solar and Apple Hill Solar contracts were executed in 2013 & 2014 it was not known that both projects would require GMP to build a new line extension from GMP's nearest then existing three-phase line to the site of both projects. It was known because

the 2013 Standard offer contract that was *approved by the PUC* specifically described the GMP interconnection plan that *clearly and unambiguously* stated that the "new Line" would be needed to interconnect both the Chelsea project and the Apple Hill project. ("Chelsea Solar would require significant reconductoring and addition of phases to the point of interconnection. *These would be shared with Apple Hill* if constructed.") (Emphasis added.)

But the actual facts didn't matter. What appears to matter to the PUC is political connections. Thus, last year when the "single-plant" rule became an obstacle for Global Foundries' solarization of its campus, the PUC ditched the rule for them using another contorted legal argument that the United States Supreme Court has described as "dangerous." The United States Supreme Court has explained that "the meaning of words in a statute cannot change with the statute's application. [] To hold otherwise 'would render every statute a chameleon,' [], and 'would establish within our jurisprudence . . . the dangerous principle that judges can give the same statutory text different meanings in different cases.'" *United States v. Santos*, 553 U.S. 507, 522-523 (2008). 522-23 (internal citations omitted.) "To give the same words a different meaning for each category would be to invent a statute rather than interpret one". *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 709 (2014) citing *Clark* (internal quotations omitted). The PUC's dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco's due process and equal protection rights, is a paradigm of arbitrariness, and is leading to even more litigation.

The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.

I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

Respectfully,

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
157 Church St., 19th Floor
New Haven, CT 06510
(212) 681-1120
(801) 858-8818 (fax)

This e-mail communication is confidential and is intended only for the individual(s) or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, please do not read, copy, use or disclose the contents of this communication to others. Please notify the sender that you have received this e-mail in error by replying to the e-mail or by telephoning (212) 681-1120. Please then delete the e-mail and any copies of it. Thank you



From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: [redacted]
Date: Monday, April 21, 2025 9:37:06 AM
Attachments: [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: [redacted]
To: [redacted]
Subject: [redacted]
Date: Monday, March 24, 2025 5:14:51 PM
Attachments: [redacted]

[redacted]

From: Thomas Melone <thomas.melone@gmail.com> **On Behalf Of** Thomas Melone
Sent: Monday, March 24, 2025 10:03 AM
To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L <lsibilia@leg.state.vt.us>; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow <cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
Cc: McNamara, Ed <Ed.McNamara@vermont.gov>
Subject: Standard Offer Testimony of Ed McNamara

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But the actual facts didn't matter. What appears to matter to the PUC is political connections. Thus, last year when the "single-plant" rule became an obstacle for Global Foundries' solarization of its campus, the PUC ditched the rule for them using another contorted legal argument that the United States Supreme Court has described as "dangerous." The United States Supreme Court has explained that "the meaning of words in a statute cannot change with the statute's application. [] To hold otherwise 'would render every statute a chameleon,' [], and 'would establish within our jurisprudence . . . the dangerous principle that judges can give the same statutory text different meanings in different cases.'" *United States v. Santos*, 553 U.S. 507, 522-523 (2008). 522-23 (internal citations omitted.) "To give the same words a different meaning for each category would be to invent a statute rather than interpret one". *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 709 (2014) citing *Clark* (internal quotations omitted). The PUC's dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco's due process and equal protection rights, is a paradigm of arbitrariness, and is leading to even more litigation.

The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.

I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

Respectfully,

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
157 Church St., 19th Floor
New Haven, CT 06510
(212) 681-1120
(801) 858-8818 (fax)

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From: [redacted]
To: [redacted]
Subject: [redacted]
Date: Monday, April 14, 2025 2:15:45 PM
Attachments: [redacted]

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From: [redacted]
Sent: Monday, April 14, 2025 2:06 PM
To: [redacted]
Subject: [redacted]

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From: [redacted]
Sent: Monday, March 24, 2025 5:15 PM
To: [redacted]
Subject: [redacted]

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[redacted]

From: Thomas Melone <thomas.melone@gmail.com> **On Behalf Of** Thomas Melone
Sent: Monday, March 24, 2025 10:03 AM
To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L <lsibilia@leg.state.vt.us>; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow <cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
Cc: McNamara, Ed <Ed.McNamara@vermont.gov>
Subject: Standard Offer Testimony of Ed McNamara

You don't often get email from thomas.melone@allcous.com. Learn why this is important

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Greetings Honorable Members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy,

I respectfully request that I be given equal time to testify before you via zoom to address the testimony given by PUC Chair Ed McNamara to the House Committee on February 7, 2025. https://www.goldendomevt.com/VTHouseEnergyDigitalInfra_2025-02-07_11-13.html

Mr. McNamara singled me out (although not by name) as the single developer that has been the cause of almost all the litigation concerning the Standard Offer program. That part is true, but most of the litigation has been focused on the PUC's weaponization of the "single-plant" rule, a concocted PUC rule that has been used (and is still being used) by the PUC to crush non-utility solar projects.

I am (or more accurately my company—Allco) is the single developer that Mr. McNamara focused on in his testimony.

The Vermont Superior Court has referred to Allco as "climate warriors who would subject anything in their path to the broad sweep of their scythe, leaving the path open for all other solar developers." *Otter Creek Solar LLC v. Vermont Pub. Util. Comm'n*, docket 99-1-20-cncv (Vt. Super. November 16, 2021) at *7. Allco has a long list of *successful* litigation challenging unfair practices against small local solar projects, including in California, Connecticut, Massachusetts & Vermont.

Allco's challenges to the bad (and in my view unlawful) aspects of the Standard Offer are part of those.

But the "single-plant" rule is the worst violator of them all. In his testimony, Mr. McNamara provided context that has to date been missing. As he stated, it was around 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed to meet the RES. Shortly thereafter, the PUC weaponized and expanded the single-plant rule by denying the CPG for the very first project awarded a contract under the Standard Offer competitive solicitation rules, which is Chelsea Solar (named after my youngest daughter —a 2015 graduate of Middlebury College).

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cannot change with the statute's application. [] To hold otherwise 'would render every statute a chameleon,' [], and 'would establish within our jurisprudence . . . the dangerous principle that judges can give the same statutory text different meanings in different cases.'" *United States v. Santos*, 553 U.S. 507, 522-523 (2008). 522-23 (internal citations omitted.) "To give the same words a different meaning for each category would be to invent a statute rather than interpret one". *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 709 (2014) citing *Clark* (internal quotations omitted). The PUC's dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco's due process and equal protection rights, is a paradigm of arbitrariness, and is leading to even more litigation.

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I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

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From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: [redacted]
Date: Monday, April 21, 2025 12:43:31 PM

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From: [redacted]
Sent: Monday, April 21, 2025 12:08:27 PM
To: [redacted]
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From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: [redacted]
Date: Monday, April 21, 2025 12:08:28 PM
Attachments: [redacted]

[redacted]

EXHIBIT 9

04/21/2025	Sent email notification regarding the issuance of 'Other attachment Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]	
	04/21/2025	04/21/25 Other attachment Attorney Melone Ex-Parte Email Communication issued and entered
	04/21/2025	Sent email notification regarding the issuance of 'Memorandum Requesting Comments Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/21/2025	04/21/25 Memorandum Requesting Comments Memorandum re: Request for Comments sent by Holly R. Anderson [Clerk of the Commission]
	04/14/2025	Sent email notification regarding filing of 'Other document filed with the Commission Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/14/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/14/2025	04/14/25 Other document filed with the Commission Attachment A – Appellant’s Motion for Stay or Extension of Time in VT Docket Nos. 24-AP-341 & 25-AP-004
	04/14/2025	04/14/25 Response to Motion filed by Vermont Department of Public Service [P] in response to Other document filed with the Commission filed by []
	04/14/2025	Sent email notification regarding the issuance of 'Order - Other Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/14/2025	04/14/25 Order - Other Order Quashing Subpoenas issued and

		entered
	04/10/2025	Sent email notification regarding filing of 'Other document filed with the Commission Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/10/2025	Sent email notification regarding filing of 'Reply to Response Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/10/2025	04/10/25 Other document filed with the Commission ANR Reply to NSC Motion
	04/10/2025	04/10/25 Reply to Response filed by Vermont Agency of Natural Resources [P]
	04/08/2025	Sent email notification regarding filing of 'Motion - Change Schedule Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/08/2025	04/8/25 Motion - Change Schedule filed by Apple Hill Solar LLC [PET]
	04/02/2025	Result for 04/4/25 Status Conference changed to Cancelled
	04/02/2025	Sent email notification regarding the issuance of 'Other Clerk-issued document Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/02/2025	04/2/25 Notice of Cancelled Status Conference, issued by Holly R. Anderson [Clerk of the Commission]
	04/02/2025	Sent email notification regarding filing of 'Supplemental Prefiled Testimony Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/02/2025	04/2/25 Supplemental Prefiled Testimony of Jim McClammer [WIT] filed on behalf of Apple Hill Solar LLC [PET]

	04/02/2025	Sent email notification regarding filing of 'Exhibit Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/02/2025	Sent email notification regarding filing of 'Supplemental Prefiled Testimony Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	04/02/2025	04/2/25 Exhibit AH-IJ-4 of Ian A. Jewkes [WIT] filed on behalf of Apple Hill Solar LLC [PET]
	04/02/2025	04/2/25 Supplemental Prefiled Testimony of Ian A. Jewkes [WIT] filed on behalf of Apple Hill Solar LLC [PET]
	03/27/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	03/27/2025	03/27/25 Response to Motion filed by Vermont Department of Public Service [P] in response to Motion - Other filed by Apple Hill Solar LLC [PET]
	03/27/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	03/27/2025	03/27/25 Response to Motion filed by Vermont Agency of Natural Resources [P] in response to Motion - Other filed by Apple Hill Solar LLC [PET]
	03/24/2025	Sent email notification regarding filing of 'Discovery question Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
	03/24/2025	03/24/25 Discovery Request PETITIONER’S NOTICE OF ISSUANCE OF SUBPOENAS filed by Apple Hill Solar LLC [PET]

EXHIBIT 10

04/21/2025	Sent email notification regarding the issuance of 'Other attachment Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]	
	04/21/2025	04/21/25 Other attachment Attorney Melone Ex-Parte Email Communication issued and entered
	04/21/2025	Sent email notification regarding the issuance of 'Memorandum Requesting Comments Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
	04/21/2025	04/21/25 Memorandum Requesting Comments Memorandum re: Request for Comments sent by Holly R. Anderson [Clerk of the Commission]
	04/08/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
	04/08/2025	04/8/25 Response to Motion filed by Town of Bennington [P] in response to Motion - Reconsideration filed by Chelsea Solar LLC [PET]
	03/27/2025	Sent email notification regarding filing of 'Discovery response Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
	03/27/2025	03/27/25 Discovery response Town of Bennington's Supplemental Responses to Petitioner's Discovery filed by Town of Bennington [P]
	03/25/2025	Sent email notification regarding filing of 'Motion - Reconsideration Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
	03/25/2025	03/25/25 Motion - Reconsideration filed by Chelsea Solar LLC [PET]

EXHIBIT 11

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 23-0249-PET

Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of a 2.0 MW solar electric generation facility in Bennington, Vermont	

Case No. 24-3517-PET

Petition of Apple Hill Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operationof a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	

Order entered: 09/23/2025

ORDER DENYING INTERLOCUTORY REVIEW OF ORDER REGARDING *EX PARTE* COMMUNICATION

I. INTRODUCTION

These two cases concern petitions filed with the Vermont Public Utility Commission ("Commission"). In Case No. 23-0249-PET, Chelsea Solar LLC ("Chelsea") filed a petition, pursuant to 30 V.S.A. § 248, for a certificate of public good for a 2 MW solar electric generation facility to be located in Bennington, Vermont. In Case No. 24-3517-PET, Apple Hill Solar LLC ("Apple Hill") filed a petition, pursuant to 30 V.S.A. § 248, for a certificate of public good for a 2 MW solar electric generation facility to be located in Bennington, Vermont.

In this order, we deny the Petitioners' motion for interlocutory review of the hearing officers' order regarding *ex parte* communication.

II. PROCEDURAL HISTORY

On March 24, 2025, counsel for Chelsea and Apple Hill (together, the "Petitioners") sent an email to the Vermont House Legislative Committee on Energy and Digital Infrastructure and the Vermont Senate Legislative Committee on Natural Resources and Energy. Counsel for the Petitioners copied the Chair of the Commission on the email.

On April 21, 2025, the Clerk of the Commission issued a memorandum seeking comments on the March 24, 2025, email communication.

On May 9, 2025, the Petitioners filed comments in response to the Clerk's memo. The Vermont Department of Public Service also filed comments.

On June 17, 2025, the hearing officers assigned to the Chelsea and Apple Hill cases jointly issued an order regarding *ex parte* communication. The order concluded that the email communication from the Petitioners' counsel constituted an ex parte communication in violation of Commission Rule 2.201(E)(4). The hearing officers declined to impose sanctions against counsel regarding the communication.

On July 15, 2025, the Petitioners filed a motion for interlocutory review of the hearing officers' order by the full Commission.[1]

The Commission has not received any response to the Petitioners' motion.

III. DISCUSSION

As a preliminary matter, we address a procedural concern with the motion. In their motion, the Petitioners "request that the full Commission reconsider" the hearing officers' June 17, 2025, order regarding the *ex parte* communication. A hearing officer has been assigned to each case and is presiding over the respective case through the evidentiary hearing.[2] Thus, a motion for reconsideration would necessarily ask the hearing officers to reconsider the order they issued.[3] Instead, the motion is more appropriately considered a motion for interlocutory review by the Commission of the hearing officers' order because the Petitioners request review by the full Commission.

A. Request for Interlocutory Review

The Commission does not have specific rules governing interlocutory appeal when a case is delegated to a hearing officer. Thus, we look to the law applicable to interlocutory appeals of

[1] The motion is styled as a motion for reconsideration, but as we discuss below, the motion is more appropriately viewed as motion for interlocutory review, and we do so here.

[2] 30 V.S.A. § 8(a) ("[A]ny officer or employee of the Commission duly appointed by the Chair of the Commission may inquire into and examine any matter within the jurisdiction of the Commission.").

[3] *Cf. Trayah v. Sweetser*, Case No. 24-AP-196, 2025 WL 1913571 at *2 (Vt. July 11, 2025) ("A motion for a new hearing must be presented to the trial court, not [the Vermont Supreme Court]."); *Rock v. Rock*, 2023 VT 42, ¶ 48, 218 Vt. 292, 308 A.3d 492 (Rule 59 motions are addressed to the trial court).

a court or tribunal's determinations that come before the Vermont Supreme Court.[4] The "decision to refuse permission for an interlocutory appeal is one committed to the discretion of the trial court."[5]

Interlocutory appeals are exceptional departures from the "normal restriction of appellate jurisdiction to the review of final judgements," and piecemeal appellate review has been recognized to cause "unnecessary delay and expense, and wastes scarce judicial resources."[6] The Commission is disadvantaged when undertaking interlocutory review because it is forced to "decide legal questions in a vacuum, without benefit of factual findings," and without sufficient narrowing of the issues in the case afforded by a hearing officer's proposal for decision.[7] The bar to obtaining interlocutory review by the Commission of a hearing officer's procedural rulings is therefore a high one.

To seek interlocutory review under V.R.A.P. 5(b), a party must file a motion "within 14 days after the entry of the order or ruling appealed from."[8] Under V.R.A.P. 5(b)(1), a court "must permit an appeal from an interlocutory order or ruling if the court finds that: (A) the order or ruling involves a controlling question of law about which there exists substantial ground for

[4] *See Investigation pursuant to 30 V.S.A. §§ 30 and 209 regarding the alleged failure of Vermont Gas Systems, Inc. to comply with the certificate of public good in Docket 7970*, Case No. 18-0395-PET, Order of 4/30/21 (denying motion seeking interlocutory review of a liability order issued by the hearing officer for failure to meet legal standards for interlocutory review); *Investigation into New England Telephone and Telegraph Company's tariff filing re: Open Network Architecture*, Docket No. 5713, Order of 6/4/99 (denying request for interlocutory review of the hearing officer's procedural order scheduling further proceedings); *Petition of Portland Street Solar LLC*, Case No, 19-2484-NMP, Order of 8/19/20 (looking to Vermont Rules of Appellate Procedure 5(b) and 5.1(a) when determining whether to conduct interlocutory review and denying request for interlocutory review of the hearing officer's order denying a motion for summary judgment) .

[5] *State v. McCann*, 149 Vt. 147, 151, 541 A.2d 75, 77 (1987).

[6] *In re Pyramid Co. of Burlington*, 141 Vt. 294, 300, 449 A.2d 915, 918 (1982).

[7] *Id*.

[8] V.R.A.P. 5(b)(5)(A).

difference of opinion; and (B) an immediate appeal may materially advance the termination of the litigation."[9] Failure to satisfy any of the criteria precludes interlocutory appellate review.[10]

V.R.A.P. 5.1(a) further instructs that interlocutory review may be permitted if the order appealed qualifies as a "collateral final order." A collateral final order: "(A) conclusively determines a disputed question; (B) resolves an important issue completely separate from the merits of the action; and (C) will be effectively unreviewable on appeal from a final judgement."[11]

The Petitioners' motion is untimely. By analogy, V.R.A.P. 5(b)(5) requires that a request for interlocutory appeal must be filed within 14 days of the order from which an appeal is sought. We issued our order on June 17, 2025. The Petitioners filed their motion seeking Commission review of this decision on July 15, 2025, 28 days after the order issued.

Even assuming the request was filed in time, we would not otherwise grant interlocutory review. The Petitioners have not cited the relevant standards for granting interlocutory review, much less plead how they meet those standards. The motion does not explain how the order at issue involves a controlling question of law, how Commission review of the order would materially advance the termination of this case, or how the order qualifies as a collateral final order. We therefore deny the Petitioners' request for interlocutory review by the Commission because the request is untimely and the Petitioners have not plead any basis for us to grant the motion.

---

[9] *See In re Pyramid Co. of Burlington*, 141 Vt. at 301-02, 449 A.2d at 918 ("The rule's criteria do not draw bright lines: the definitions of "controlling questions of law," 'substantial grounds for difference of opinion,' and 'material advancement of litigation's termination' are not self-evident. This vagueness is deliberate as it furthers the goals of the interlocutory appeal mechanism: 'The statutory purpose to inject an element of flexibility into the technical rules of appellate jurisdiction established for final judgment appeals . . . and for [other] interlocutory appeals . . . , counsels that so long as the [trial] court has made an order, the remaining elements be treated as guiding criteria rather than jurisdictional requisites. The three factors should be viewed together as the statutory language equivalent of a direction to consider the probable gains and losses of immediate appeal.'" (internal citations omitted)).

[10] *Id.*, 141 Vt. at 302, 449 A.2d at 919. The test is conjunctive based on the use of "and" between the three factors. Failure on one factor is, therefore, dispositive.

[11] V.R.A.P. 5.1(a)(1).

B. Request for Reconsideration

While evaluating the motion as a request for interlocutory review is correct given the relief requested by the Petitioners, we would otherwise deny the motion even when reviewed under the standard for a motion for reconsideration.

The Commission reviews motions to reconsider pursuant to Commission Rule 2.221, which incorporates the language of Vermont Rule of Civil Procedure 59 without modification. Reconsideration under Commission Rule 2.221 is appropriate only to avoid an unjust result due to "mistake or inadvertence of the [Commission], and not the fault or neglect of a party."[12] The disposition of a reconsideration motion rests with the discretion of the Commission.[13]

Granting reconsideration is an extraordinary remedy to be used with great caution.[14] Commission Rule 2.221 does not permit parties to relitigate issues or correct previous tactical decisions.[15] It is not a vehicle to introduce new evidence or advance arguments that could have been made previously.[16] The Commission also retains "discretion to deny consideration of discrete issues not raised prior to entry of judgment."[17]

The Petitioners' motion provides no evidence of mistake or inadvertence by the hearing officers in the order regarding *ex parte* communications. The Petitioners instead repeat three arguments that they made in their comments filed on May 9, 2025, related to the applicability of Commission Rules 2.201(E)(1) and (E)(4) to the communication in question, Chair McNamara's ability to participate in deciding these cases, and an alleged violation of the Petitioners' First Amendment rights. Commission Rule 2.221 does not allow the Petitioners to relitigate those issues on a motion for reconsideration.

---

[12] *Rubin v. Sterling Enterprises, Inc.*, 164 Vt. 582, 588, 674 A.2d 782 (1996) (citing *In re Kostenblatt*, 161 Vt. 292, 302, 620 A.2d 39, 45 (1994)).

[13] *Alden v. Alden*, 2010 VT 3, ¶ 7, 187 Vt. 591, 992 A.2d 298.

[14] *Petition of Vermont Gas Systems, Inc.*, Docket No. 8643, Order of 11/3/16 at 2.

[15] *Id*.

[16] *See, e.g.*, *In re B.K.*, 2017 VT 105, ¶ 13, 206 Vt. 110, 179 A.3d 758 ("While the trial court has broad power under Rule 59(e) to reconsider issues previously presented, the rule does not contemplate reopening the evidence or creating a new record.").

[17] *Everbank v. Marini*, 2015 VT 131, ¶ 34, 200 Vt. 490, 134 A.3d 189; *see also* 11C. Wright, Miller & Kane, Federal Practice and procedure § 2810.1 (3d ed.) (2022 Update) ("The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.").

The Petitioners also raise a new argument that a jury trial is required in instances such as this where "civil penalties and/or other substantial economic penalties can be imposed against a person."[18] Again, this argument cannot be taken up on a motion for reconsideration because it could have been raised previously by the Petitioners. Therefore, pursuant to Commission Rule 2.221(B)(2), the Petitioners' motion for reconsideration is denied.

IV. CONCLUSION

The Petitioners motion is deficient when reviewed either as a request for interlocutory review or as a motion for reconsideration. The motion is denied.

SO ORDERED.

[18] Petitioners' Motion for Reconsideration of Order Regarding *Ex Parte* Communication (7/15/25) at 5.

Dated at Montpelier, Vermont, this 23rd day of September, 2025.

Elizabeth Shilling, Esq.
Hearing Officer

Aaron Kisicki, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: September 23, 2025

Attest: _____
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 23-0249-PET - SERVICE LIST

Parties:

*Anson Tebbetts, Secretary
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agr.notice@vermont.gov
(for Vermont Agency of Agriculture, Food and Markets)

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michael.swain@vermont.gov
(for Vermont Department of Public Service)

*Notice of appearance to be filed.

EXHIBIT 12

From:	Thomas Melone
To:	Merrill Bent; Stuart Hurd; cadams@benningtonvt.org; thaley@benningtonvt.org; nwhite@benningtonvt.org; ewoods@benningtonvt.org; jconner@benningtonvt.org; sperrin@benningtonvt.org; jjenkins@benningtonvt.org; jmatts@benningtonvt.org; jsullivan@benningtonvt.org; Dan Monks
Subject:	PRB Complaint; Melone v. Bent and the Town of Bennington
Date:	Wednesday, April 23, 2025 7:12:17 AM
Attachments:	Complaint Melone v Bent et al draft 4_22_25 .pdf PRB 120-2025 Response Letter Thomas Melone 4_23_25.pdf

Good morning All,

Attached you will find the response that I submitted to the Professional Responsibility Board in response to the ethics complaint against me. I am now finalizing the defamation suit which I expect will be able to be filed next week. See excerpt attached as well.

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
157 Church St., 19th floor
New Haven, CT 06510

(212) 681-1120
(801) 858-8818 (fax)

This e-mail communication is confidential and is intended only for the individual(s) or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, please do not read, copy, use or disclose the contents of this communication to others. Please notify the sender that you have received this e-mail in error by replying to the e-mail or by telephoning (212) 681-1120. Please then delete the e-mail and any copies of it. Thank you

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

THOMAS MELONE Plaintiff, v. MERRILL BENT and TOWN OF BENNINGTON, VERMONT. Defendants.	Case No. **COMPLAINT FOR DEFAMATION, INJURIOUS FALSEHOOD AND VIOLATION OF CIVIL RIGHTS**

NATURE OF THE ACTION

1. This diversity and civil rights action arises out of a defamatory complaint filed by the Defendants with the Vermont Professional Responsibility Board in March 2025, which is attached hereto as **Exhibit A** (the "PRB Complaint"). That complaint falsely accused Plaintiff of making a false statement, stated that the Plaintiff was unfit to practice law, and made various other meritless and defamatory accusations about Plaintiff, which constitute defamation *per se*.

2. Plaintiff alleges that the Defendants filed the PRB Complaint in order to retaliate for Plaintiff's exercise of his First Amendment rights to free speech and to petition to communicate with public officials.

3. Plaintiff's statements made to the Bennington Select Board are fully protected by the First Amendment. *See, Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010).

4. Speech such as Plaintiff's, on public issues and petitions to the government, "occupies the core of the protection afforded by the First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995).

5. Plaintiff brings this action to obtain damages to remedy, among other things, the Defendants' defamatory statements about Plaintiff, and the Defendants' retaliation against Plaintiff for Plaintiff's exercise of his First Amendment rights to free speech and to petition.

PARTIES

6. Plaintiff is admitted to practice law in Vermont as well as seven other States—California, New York, New Jersey, Massachusetts, Pennsylvania, Florida and Connecticut. In Plaintiff's 42 years of practicing law, he has had four disciplinary complaints lodged against him (including the PRB Complaint). All four (including the PRB Complaint) were made by persons or their representatives that have opposed or continue to oppose two solar projects in Bennington, Vermont. The first three complaints were dismissed. Plaintiff is a citizen of the State of Florida.

7. Upon information and belief, Defendant Merrill Bent is a citizen of Vermont. Merrill Bent is an attorney who represents the Town of Bennington in multiple legal proceedings where the Town is adverse to companies that Plaintiff directly or indirectly owns.

8. Defendant Town of Bennington is a municipality in Vermont.

FACTS

9. Plaintiff represents before the Vermont Public Utility Commission (the "PUC"), various operating entities that apply for certificates of public good ("CPGs") to construct and operate solar facilities in the state of Vermont. Two of those operating entities implicated here are Chelesa Solar LLC and Apple Hill Solar LLC, each of which are seeking a CPG for two 2.0MW solar facilities in Bennington, Vermont (the "Solar Facilities").

10. Plaintiff is also the sole member of PLH Vineyard Sky LLC, which is the legal titleholder to several parcels of land in Bennington, Vermont, one of which is a 27-acre parcel on which Solar Facilities are proposed to be located. There has been an extraordinary amount of litigation surrounding the Solar Facilities since 2013, including at the PUC and in the Vermont

state and federal courts. There are currently pending two cases at the Second Circuit—Case 24-3331, *Allco Finance Ltd. et al. v. Roisman et al.* and Case 25-22, *PLH Vineyard Sky LLC et al. v. Town of Bennington*. Other cases pending include *Allco Finance Ltd. v. Roisman*, Case 2:20-cv-0103 (which is a remand from a prior Second Circuit decision in *Allco Finance Ltd v. Roisman*, No. 22-2276, 2023 U.S. App. LEXIS 18179 (2d Cir. July 18, 2023)).

11. PLH Vineyard Sky LLC also owns a 28-acre parcel on Stocklee Lane in Bennington, which is hydrologically connected to what is known locally in Bennington as the "Benn High" project.

12. Plaintiff alleges that Bent filed the PRB Complaint on behalf of the Town of Bennington.

13. The Defendants made the following defamatory and false light statement in the PRB Complaint:

> Rule 4.1 provides that "in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person." Thomas Melone violated this rule when he emailed Town officials and told them that their 1977 tax stabilization vote was void because it counted absentee ballots without disclosing that Vermont law expressly provides that voters voting by absentee ballots are considered "present and voting" where that phrase appears in the Vermont statutes.

14. The Defendants have accused Plaintiff of knowingly making a false statement and engaging in a "pattern of misconduct and unethical tactics [that] seriously calls into question [my] fitness to practice law." The Defendants rely on 17 V.S.A. §2550. The statute on which Defendants base their defamatory accusations was enacted **in 1978**. *See*, **Exhibit 1.** The failed vote occurred in March 1977. The 1977 vote failed because it counted absentee ballots. The statute on which the Defendants rely for their defamatory statements wasn't enacted until 1978. The statute on which the Defendants rely was effective in 1978 (more than a year later) and cannot revive a failed vote. Act 269 of 1977 was signed by the Governor on April 21, 1978, and went

into effect on July 1, 1978. Starting in 1961, Vermont law sets the effective date for new acts to start on July 1 following the adoption of law when an effective date is not otherwise identified in the legislation.

15. Under Vermont law, the elements of a defamation claim are: (1) "a false and defamatory statement concerning another"; (2) "some negligence, or greater fault, in publishing the statement"; (3) "publication to at least one third person"; (4) "lack of privilege in the publication"; (5) "special damages, unless actionable per se"; and (6) "some actual harm so as to warrant compensatory damages." *Russin v. Wesson*, 2008 VT 22, ¶ 5, 183 Vt. 301, 303, 949 A.2d 1019, 1020 (quoting *Lent v. Huntoon*, 143 Vt. 539, 470 A.2d 1162, 1168 (Vt. 1983)). The facts of this case demonstrate the existence of each of these elements.

16. The Defendants' false accusations are also defamation *per se*, which includes words that impute a person is unable to perform or lacks integrity in performing her or his employment duties. And here that is exactly what the Defendants imputed, indeed they went beyond that and *expressly* said that through such statements as: "It is a violation of numerous rules, and seriously calls into question the fitness of Michael Melone and Thomas Melone to practice law in this State," and "The pattern of misconduct and unethical tactics seriously calls into question their fitness to practice law."

17. The Defendants' accusation is also actionable as a claim for false light. Plaintiff was placed in a false light before the public as a result of the Defendants' false assertions, the false light Plaintiff was placed in would be highly offensive to a reasonable person, especially an attorney, and the Defendants acted with actual malice, that is, with knowledge that the statements were false or with reckless disregard for whether the statements were true or false.

18. The Defendants made the following additional defamatory and false light statements in the PRB Complaint:

a. "The purpose of the frivolous proceeding is to put a $54 million development project slated to close in Mid-April in jeopardy unless the Town agrees to certain terms in unrelated proceedings before the Vermont Public Utility Commission ('PUC')."

b. "also aware that closing is extremely time sensitive, and that if the project does not close as scheduled, it is likely to terminate entirely because funding sources relying on tax credits are likely to invest their money elsewhere." "The public comment also contained false statements regarding my ability to represent the Town."

c. "presenting to the Environmental Division of the Superior Court a frivolous proceeding without a basis in law to influence wholly unrelated matters."

d. "the Melones targeted the Benn High Project in order to get what they want from the Town in their PUC proceedings."

e. "On January 26, 2025, Thomas Melone submitted a public comment about the project, copying the media and others, in which he made serious (and incorrect) assertions about the project's funding, including the new market tax credits involved in the project. **Exhibit 5**. It was clear from his comments that he did not have a complete understanding of the project. This is because all he has reviewed was the single agreement between the Town and the developer. He has absolutely no understanding about the rest of the project structure."

f. "In the public comment, Melone also made several incorrect statements about requirements for the funding contemplated in the agreement, including the assertion that the Town was not entitled to certain grant funding."

g. "the obvious purpose of Thomas Melone's comments was to sabotage this incredible (and incredibly expensive) development project to leverage support from the Town in the PUC process." "Thomas Melone filed a response laden with insults directed at me, and making more baseless accusations about the Town."

h. "fully aware that it lacked merit because you cannot appeal to the Environmental Division from a contract. In fact, two other appeals they had filed in 2018 had been dismissed by the court for the same exact reason. See Exhibit 2. Motion to Dismiss. The purpose of the frivolous appeal was to threaten the closing, as investors often will not close when there is pending litigation."

i. "Thomas Melone **emailed my client directly**, including the Town Manager and the entire Selectboard—**threatening to file more litigation directed at the unrelated Benn High Project if the Town did not withdraw the motion to dismiss in the Environmental Division."**

j. "Thomas Melone did not have consent to communicate directly with the Town officials regarding pending litigation in which he is an attorney of record, and did so about a specific matter in which he knew the Town was represented. Since he knows that is a violation of Rule 4.2, he called it a "Public Comment." In the email, Thomas Melone also made several misstatements of law. For example, he asserted that a 1977 vote to permit the Town to enter into tax stabilization agreements was void because absentee ballots were counted when the statute specified must be by those "present and voting." He failed to disclose that there is a strict statute of limitations applicable to elections results that would preclude such a challenge more than 40 years later, and that under Vermont law, "A voter voting by early absentee ballot shall be deemed as 'present and voting,' for purposes of any provision in which the phrase 'present and voting' is used in the Vermont Statutes Annotated." 17 V.S.A. § 2550."

k. "Thomas Melone and Michael Melone filed a notice of appeal to the Environmental Court from a contract, knowing that it was not appealable and that the Court did not have jurisdiction, for the purpose of threatening an important town project in order to force the Town to agree to the demanded terms."

l. "Rule 4.2 provides that 'in representing a client, a lawyer shall not communicate about the subject of the representation with a person a lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.' While the Town is a public entity to which the public has access, Thomas Melone's March 1, 2025 email to Town official crossed the line established by 4.2, because it was a demand that the Town take a particular action in specific litigation in which Thomas Melone is aware that the Town is represented by counsel. He was not contacting the Town concerning a municipal function or a general matter of concern, but rather to intimidate the Town into withdrawing a perfectly legitimate motion to dismiss in pending litigation."

m. "Thomas Melone and Michael Melone are using litigation to burden the Town and the developer of the Bennington High Project in order to force the Town to agree to unreasonable terms. There is no other purpose of the Bennington High "appeal." Moreover, Thomas Melone's incorrect assertions to the Town indicating that its attorney was unable to represent it outside of the context of a motion to disqualify were only intended to burden the Town, in hopes that it would believe (incorrectly) that it need to hire a different attorney."

n. "Thomas and Michael Melone are making improper use of the legal system to influence the outcome before the PUC by forcing the Town to reach a certain position."

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over this action pursuant to under 28 U.S.C. §§ 1331 and 1343 because this action arises under the United States Constitution and federal law and under 28 U.S.C. § 1332 because of diversity of citizenship under 28 U.S.C. § 1332 and the amount in controversy exceeds $75,000.

20. This Court has authority to grant relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, and 28 U.S.C. § 1343(a) and 42 U.S.C. § 1983.

ALLCO RENEWABLE ENERGY LIMITED
157 Church Street, 19th Floor
New Haven, CT 06510
Telephone (212) 681-6974

April 23, 2025

Andrew R. Strauss, Esq.
Licensing Counsel
Office of Attorney Licensing
Costello Courthouse
32 Cherry Street, Suite 213
Burlington, VT 05401

Re: PRB File No. 120-2025 Response

Dear Attorney Strauss,

This letter responds to the undated complaint (the "Complaint") filed against me by Merrill Bent, an attorney that represents the Town of Bennington against me in various litigation. As I describe below, Attorney Bent's allegations are actionable defamation.

I am admitted to practice in Vermont as well as seven other States—California, New York, New Jersey, Massachusetts, Pennsylvania, Florida and Connecticut. There has never been an ethics complaint filed against me in any of those other seven jurisdictions. But in Vermont, persons or their representatives that have opposed or continue to oppose two solar projects in Bennington, Vermont, seem to use the Bar complaint process as an additional avenue to litigate against the solar projects.

The allegations in the Complaint are not only meritless, but actionable defamation *per se*.

Merrill Bent, the nominal complainant and attorney for the Town of Bennington, is a member of the law firm Woolmington, Campbell, Bent & Stasny, P.C. in Manchester Center, Vermont, which lists four attorneys in total. Merrill Bent is listed as the Chair of the Vermont Judicial Conduct Board.[1] Last November a female long-time paralegal at Woolmington, Campbell, Bent & Stasny, P.C., whose name is Lindsay Ralph, accused one of the four partners of the Bent firm of abusive behavior. *See,* **Exhibit 1**. The specific allegation made is stated as:

> On October 3, 2024, the petitioner [Lindsay Ralph] while alone at here [*sic*] office was verbally accosted by one of the partners [Merrill Bent]. The petitioner was subjected to an angry outburst which was unprofessional and caustic, and made

[1] https://www.vermontjudiciary.org/about-vermont-judiciary/boards-and-committees/judicial-conduct.

> the petitioner feel unsafe at work. Due to the extreme hostile environment created by the conduct of the Law Firm partner, the petitioner was constructively discharged and she subsequently resigned as the Law Firm would not properly investigate the incident and consider her version of the events.

I do not have direct information as to which of the four partners was accused of the abusive behavior.

Both my son, Michael Melone, and I represent before the Vermont Public Utility Commission (the "PUC"), various operating entities that apply for certificates of public good ("CPGs") to construct and operate solar facilities in the state. Two of those operating entities implicated here are Chelsea Solar LLC and Apple Hill Solar LLC, each of which are seeking a CPG for two 2.0MW solar facilities in Bennington, Vermont (the "Solar Facilities"). I am also the sole member of PLH Vineyard Sky LLC, which is the legal titleholder to several parcels of land in Bennington, Vermont, one of which is a 27-acre parcel on which Solar Facilities are proposed to be located. There has been an extraordinary amount of litigation surrounding the Solar Facilities since 2013, including at the PUC and in the Vermont state and federal courts. There are currently pending two cases at the Second Circuit—Case 24-3331, *Allco Finance Ltd. et al. v. Roisman et al.* and Case 25-22, *PLH Vineyard Sky LLC et al. v. Town of Bennington*. Other cases pending include *Allco Finance Ltd. v. Roisman*, Case 2:20-cv-0103 (which is a remand from a prior Second Circuit decision in *Allco Finance Ltd v. Roisman*, No. 22-2276, 2023 U.S. App. LEXIS 18179 (2d Cir. July 18, 2023)). There is other litigation continuing at the PUC, the Vermont Supreme Court and the Vermont Superior Court. And there may be even more litigation commencing as well with the Town of Bennington, and Attorney Bent and the Town are aware of that too.

PLH Vineyard Sky LLC also owns a 28-acre parcel on Stocklee Lane in Bennington, which is hydrologically connected to the "Benn High" project that is a focus of the Complaint. The expert declaration filed with the Environmental Court with the opposition to Bent's motion to dismiss shows the environmental connection because the Benn High project and our parcel on Stocklee Lane in Bennington. *See* **Exhibit 2**. Attached is the decision of the Environmental Court. *See* **Exhibit 3**. Attached is the motion for reconsideration filed with respect to the Environmental Court's dismissal. *See* **Exhibit 4**. Both the appeal and the motion for reconsideration detail the environmental issues presented by the Benn High project.

I address each of alleged rule violations below.

I. Rule 4.1 Was Not Violated And Bent's Statements Are Actionable Defamation.

Rule 4.1 provides that "in the course of representing *a client* a lawyer shall not knowingly make a false statement of *material fact or law* to *a third person*." (Emphasis added.) The Complaint alleges that I violated this rule when I "emailed Town officials and told them that their 1977 tax stabilization vote was void because it counted absentee ballots without disclosing that Vermont law expressly provides that voters voting by absentee ballots are considered

'present and voting' where that phrase appears in the Vermont statutes." The same *pro se* issues discussed below are an issue here. So too is whether the Select Board is a "third person" and whether the alleged claim was material.

Putting those aside, Bent has accused me of knowingly making a false statement and engaging in a "pattern of misconduct and unethical tactics [that] seriously calls into question [my] fitness to practice law." Bent relies on 17 V.S.A. §2550.

The statute on which Bent bases her defamatory accusations was enacted **in 1978**. *See*, **Exhibit 5.** The failed vote occurred ***in March 1977***. The 1977 vote failed because it counted absentee ballots. The statute on which Bent relies for her defamatory statements wasn't enacted until 1978. The statute on which Bent relies was effective in 1978 (more than a year later) and cannot revive a failed vote. Act 269 of 1977 was signed by the Governor on April 21, 1978, and went into effect on July 1, 1978. Starting in 1961, Vermont law sets the effective date for new acts to start on July 1 following the adoption of law when an effective date is not otherwise identified in the legislation.

Under Vermont law, the elements of a defamation claim are: (1) "a false and defamatory statement concerning another"; (2) "some negligence, or greater fault, in publishing the statement"; (3) "publication to at least one third person"; (4) "lack of privilege in the publication"; (5) "special damages, unless actionable per se"; and (6) "some actual harm so as to warrant compensatory damages." *Russin v. Wesson*, 2008 VT 22, ¶ 5, 183 Vt. 301, 303, 949 A.2d 1019, 1020 (quoting *Lent v. Huntoon*, 143 Vt. 539, 470 A.2d 1162, 1168 (Vt. 1983)). The facts of this case demonstrate the existence of each of these elements.

Bent's false accusations are also defamation *per se*, which includes words that impute a person is unable to perform or lacks integrity in performing her or his employment duties. And here that is exactly what Bent has imputed, indeed she went beyond that and *expressly* said that.

Bent's accusation is also actionable as a claim for false light. I was placed in a false light before the public as a result of Bent's false assertion, the false light I was placed in would be highly offensive to a reasonable person, especially an attorney, and Bent acted with actual malice, that is, with knowledge that the statements were false or with reckless disregard for whether the statements were true or false.

II. There Is No Violation Of Rule 4.2.

Rule 4.2, *Communication with Person Represented by Counsel*, provides:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

First and foremost, as a property owner of multiple properties in Bennington and taxpayer in Bennington, we have an absolute constitutional right under the First Amendment's

freedom of speech and freedom of petition clauses to communicate with public officials. And it is my communications with public officials that the Bent Complaint takes issue with. Rule 4.2 Comment [5] recognizes this right when it states: "Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government." And communication with the government is exactly what Merrill Bent complains about. All the communications complained of, *see* Compl. Exhibit 2, are public comments to government officials.

My public statements made to the Bennington Select Board are fully protected by the First Amendment. *See, Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010). Speech such as mine on public issues and petitions to the government, "occupies the core of the protection afforded by the First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995).

While the First Amendment implications of restricting attorney communications with government officials under rules similar to Vermont's Rule 4.2 is an open question as it has not been directly addressed by a Vermont court, as the court in *Nicita v. Holladay*, No. 3:19-cv-01960-YY, 2023 U.S. Dist. LEXIS 223822 (D. Or. Jan. 18, 2023) recently noted, there was no reason to decide the constitutional limitations because, as here, the rationale for Rule 4.2 would not apply anyway. The court stated:

> Plaintiff's communications to date have not created one of the problems that RPC 4.2 was designed to prevent. One of the primary purposes of the rule against contacting a represented party is to "prevent injurious disclosures" or "statements which, through ambiguous use of language, may not accurately or fairly reflect the client's position." *Sierra Pac. Indus*., 759 F. Supp. 2d at 1211 (quoting *Continental Ins. Co. v. Superior Court*, 32 Cal. App. 4th 94, 112, 37 Cal. Rptr. 2d 843 (1995); *see also* Stephen M. Sinaiko, *Ex Parte Communication and the Corporate Adversary: A New Approach*, 66 N.Y.U. L. REV. 1456, 1471 (1991) ("An important reason why the ethical rules bar ex parte communication is because statements made by the uncounseled party to an opposing attorney might be offered against that party as admissions in court, thereby seriously damaging her case."). Defendants have not identified any prejudice that has resulted from plaintiff's communications with various city officials; there is no evidence that plaintiff has attempted to gather evidence in the form of statements from any of the officials, has harassed or threatened the officials, or has otherwise attempted to engage with the officials outside of their work roles. See Cardinale, 2020 U.S. Dist. LEXIS 99686, 2020 WL 3046396, at *7 (denying motion for "no contact" order under Georgia's RPC 4.2 because the city did not allege plaintiff's contact with city officials had resulted in prejudice); United States v. Sierra Pac. Indus., 759 F. Supp. 2d 1206, 1213 (E.D. Cal. 2010), amended, 857 F. Supp. 2d 975 (E.D. Cal. 2011) (finding that California rule against contacting represented

> parties was violated where "evidence gathering, not seeking governmental redress, was the point of" the contacts).

Moreover, the policy concerns driving Rule 4.2 are less acute when the "represented party" includes public officials acting on behalf of a government agency. As eloquently explained by the Utah State Bar Ethics Advisory Committee:

> [A] governmental agency is free to instruct its employees that they should refer contacts from private parties' attorneys to a designated agency attorney. . . . If a government agency believes its employees are susceptible to the evils of overreaching attorneys, they may instruct them to refer all matters in dispute to the designated agency counsel. A corollary point is that government entities should be deemed to be able to look after their own interests. The usual application of Rule 4.2 is to protect a private party from an overreaching attorney who tries to bring undue influence or pressure on the party in the absence of that person's attorney. It is hard to see how this public-policy consideration applies to the very government that ostensibly serves the people in general and has access to the most powerful of mechanisms in dealing with the citizenry.

See Utah State Bar EAOC Opinion No. 115R (1994) (available at https://www.utahbar.org/wp-content/uploads/2022/12/1994-115R.pdf); see also Washington D.C. Bar Ethics Opinion 280 (1998) (available at https://dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-280) ("[G]overnment officials generally are presumed to be sufficiently capable of resisting legal or policy arguments that are not proper and genuinely persuasive. Moreover, government officials, by virtue of their experience and expertise, should be competent to decide whether to engage in such discussions with opposing counsel without seeking legal advice or having a lawyer present.").

And here, I copied Merrill Bent as a courtesy on all public comment communications with Town public officials.

Second, because we are representing our own wholly owned private companies before the PUC, we are essentially proceeding *pro se*, which the PUC has confirmed (*see* **Exhibit 6**). Indeed, Merrill Bent's Complaint essentially alleges that fact too: "Although the Melone Entities are separate business entities, they operate cooperatively under the ownership and direction of Thomas Melone." Compl. at 2.

It is entirely unlikely that rule 4.2 is applicable to *pro se* lawyers in Vermont:

> *In representing a client*, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.

expired on October 6, 2023 (which is eight years after its adoption in 2015). 24 V.S.A. §4387. The town plan adoption process is laid out in 24 V.S.A. §4302, and §§4381-4387 and is formidable and will often take years to accomplish. For example, the Town of Bennington has hired consultants to assist it with creating the next version of its Town Plan and has been working on that version for the last two years.[3] Bennington is not alone in letting its town plan expire. *See, e.g., Expired plan nullifies zoning changes,* https://www.timesargus.com/news/local/expired-plan-nullifies-zoning-changes/article_c018dbf2-ac24-11ef-a5b9-af741d61a594.html.

In the January 26, 2025, public comment letter the following points were made:

> Attorney Merrill Bent can no longer advise the Select Board on issues related to the Town Plan. She has been implicated by Stu Hurd (*see* Exhibit 1) and at a minimum would be a key witness which prevents her representing the Select Board. As a result under Vermont Rule of Professional Conduct 3.7, she is prohibited from representing the Select Board.
>
> [] Attorney Merrill Bent can also no longer advise the members of the Select Board for another reason. On January 13, 2025, in a secret executive session meeting, Merrill Bent imposed a gag order on the members of the Select Board, instructing them not say anything about the Town Plan. Right off the bat, Bent's advising all *individual* seven members of the Select Board what to do and what not to do, has created a conflict that prevents her from representing the Board or any member absent informed written consent.

Attorney Bent should be required to clarify her assertions because they, like her others, are without merit.

Third, as demonstrated by PLH's response to the Town's motion to dismiss in the Environmental Court and the motion for reconsideration, PLH has valid claims. Maybe those claims belong in the Civil Division or the Environmental Division or a combination, but the claims are meritorious.

Rule 4.4(a) is simply inapplicable here. Comment [1] indicates the general purpose of the rule:

> [1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from

---

3 https://benningtonvt.org/services/planning___permitting/planning_commission/town_plan_update1.php.

[Emphasis added.]

Self-representation is simply not "representing a client," nor will an average or even sophisticated reader of these words equate the two situations. *See In re Haley*, 126 P.3d 1262, 1267, 1272 (Wash. 2006) (majority and concurring opinions referencing definitions and authorities). Rather, this is an "ingenious bit of legal fiction." *Haley*, at p. 1272 (Sanders, J., concurring). Further, this approach to construing the rule's language renders the phrase "in representing a client" surplusage, contrary to a basic canon of construction.[2]

Vermont Bar Counsel Michael Kennedy has recognized that a rule amendment might be required to address a situation involving *pro se* representation. *See* Kennedy, M., *"ABA opinion concludes that the 'no-contact' rule applies to self-represented lawyers. Should we amend Vermont's rule?"* September 29, 2022.

Thus, even if my communications weren't protected by the First Amendment (which they are), Rule 4.2 would not apply here anyway.

III. Rule 4.4(a) Was Not Violated.

Rule 4.4(a) provides that "[i]n representing *a client*, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a *third person* . . . ." (Emphasis added.) The same *pro se* issue discussed above is an issue here. So too is whether the Select Board is a "third person" and whether the alleged claim was material.

The Complaint alleges that Michael Melone and I "are using litigation to burden the Town and the developer of the Bennington High Project in order to force the Town to agree to unreasonable terms. There is no other purpose of the Bennington High 'appeal.'" Compl. at 7.

The Complaint further alleges that my purported "incorrect assertions to the Town indicating that its attorney was unable to represent it outside of the context of a motion to disqualify were only intended to burden the Town, in hopes that it would believe (incorrectly) that it need (*sic*) to hire a different attorney." Compl. at 7.

First of all, it's not clear what Attorney Bent is saying when she says "outside of the context of a motion to disqualify." If she is claiming that she can freely violate ethics conflict rules so long as no one files a motion to disqualify her, then she is sadly mistaken. And as the chair of the Judicial Conduct Board, she should be well aware of that fact.

Second, some background is appropriate with this issue. We have informed the Town that we intend to file suit in federal court seeking a declaration that the Bennington Town Plan

[2] *See* "Surplusage canon," BLACK'S LAW DICTIONARY (11th ed. 2019) ("if possible, every word and every provision in a legal instrument is to be given effect"), citing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174 (2012) ("it is no more the court's function to revise by subtraction than by addition").

third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

Bent has not alleged (nor could she) that I have obtained evidence in violation of any legal restrictions. Likewise, there has been no unwarranted intrusions into privileged relationships. As noted above, government officials are involved, and they are more than able to restrain themselves from responding to any of my public comments.

IV. Rule 8.4(d) Was Not Violated.

Rule 8.4(d) provides that "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." Bent simply does not like that I have exercised lawful rights as a property owner in Bennington to challenge certain actions of the Select Board. She has presented no valid evidence supporting her meritless assertion under Rule 8.4(d).

V. Rule 3.1 Was Not Violated.

Rule 3.1 provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

Bent asserts that the appeal to the Environmental Division was without merit. Vermont law is less than clear about which division, the Environmental Division or the Civil Division, has jurisdiction over certain claims related to municipal actions. But Bent's motion to dismiss was premised on the fact that the Benn High project has nothing to do with the Solar Facilities and that therefore we had no standing. As the response to Bent's motion to dismiss shows, based upon expert testimony Bent is simply wrong. Moreover, in the appeal to the Environmental Division we asked for a transfer to the Civil Division of claims that the Environmental Division determined that it did not have jurisdiction over. And as noted above, a motion for reconsideration was filed, which is still pending.

For the foregoing reasons, this investigation should be dismissed. Please do not hesitate to contact me if you need further information and thank you for your prompt attention to this matter.

Sincerely,

/s/Thomas Melone
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EXHIBIT 13

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NUMBER 20-1611-INV

INVESTIGATION PURSUANT TO 30 V.S.A. SECTIONS 30 AND 209 INTO WHETHER THE PETITIONER INITIATED SITE PREPARATION AT APPLE HILL IN BENNINGTON, VERMONT, FOR ELECTRIC GENERATION IN VIOLATION OF 30 V.S.A. SECTION 248(a)(2)

December 4, 2020
9:30 a.m.

Preliminary Injunction Hearing held before the Vermont Public Utility Commission via GoToMeeting video conference on December 4, 2020, beginning at 9:30 a.m.

P R E S E N T

Commissioners: Anthony Z. Roisman, Chairman
Margaret Cheney
Sarah Hofmann

Staff: Michael E. Tousley, Staff Attorney
Kyle Landis-Marinello, General Counsel
Ann Bishop, Operations Director

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CHAIRMAN ROISMAN: Good morning. This is an Evidentiary Hearing in Case Number 20-1611-INV, which is the investigation pursuant to 30 V.S.A. Sections 30 and 209 into whether the petitioner initiated site preparation at Apple Hill in Bennington, Vermont, in violation of 30 V.S.A. Section 248(a)(2). My name is Anthony Roisman. I'm the Chair of the Vermont Public Utility Commission, and with me for the moment is fellow Commissioner Sarah Hofmann, and shortly we should be joined either by phone or video or both by Commissioner Margaret Cheney.

One of the little glitches in this kind of remote situation is sometimes not everyone has connections. Think of it as the equivalent of your getting caught in a snowstorm on your way driving to Montpelier for a live hearing. And I'm sure that Commissioner Cheney will be joining us shortly. Also with me today are Kyle Landis-Marinello, our general counsel, and Mike Tousley, a staff attorney assigned to this particular case. Ann Bishop, the Commissions's Operations Director, is serving as the GoToMeeting platform manager for this hearing.

Attending this hearing are also some other staff people and members of the public, and, if you click on your screen, the "view everyone", you will see the

names of all of those people. We don't normally introduce people who are not parties or witnesses, and so you can see them there on your screen if you're interested to know who may be listening in to this meeting.

This case is not about the proposed Willow Road or Apple Hill solar facilities for which we have already issued final orders, both of which are being challenged by the petitioner. We're here because, on Friday, June 26th 2020 at about 1:30, the Commission announced that it was issuing a temporary restraining order against Allco Renewable Energy Limited; its affiliates, which include Chelsea Solar, LLC; Apple Hill Solar, LLC; and PLH, LLC, collectively being referred to here as the developer and the developer's subsidiaries and contractors.

The TRO prohibited any further tree clearing on any of the property for the proposed projects on Apple Hill in Bennington, Vermont, identified in any certificate of public good applications and approved amendments. This includes the sites of the proposed Chelsea, Apple Hill, and Willow Road solar electric generation facilities, including any property identified in the applications for those facilities as being part of the proposed project. A written order

issued that same day.

The TRO was issued based on our jurisdiction over the preparation of sites proposed for the development of an electric generation facility by the developer, in this case, the two proposed solar projects that the developer has, has testified it intends to seek authority to construct and operate, despite our prior denials of CPGs.

This Friday we need to determine whether the Commission should issue further injunctive relief in the form of a continued preliminary injunction or a permanent injunction, and, if so, the scope of that relief. The hearing will also address whether the developer's site work to date constitutes site clearing activities without a certificate of public good in violation of 30 V.S.A. Section 248(a)(2).

And I see Commissioner Cheney has resolved, for the moment at least, the technological problems. Welcome, Commissioner Cheney.

We also need to otherwise determine if further proceedings are appropriate in this investigation pursuant to 30 V.S.A. Sections 30 and 209. If a party or participant intends on recording the hearing via video or audio, please indicate this when you provide your name for the court reporter. We'll now take

appearances, starting with the Department.

ATTORNEY ACEVES: Good morning. Sarah Aceves representing the Department of Public service.

CHAIRMAN ROISMAN: And the developer?

ATTORNEY MELONE: Good morning, Mr. Chairman and Commissioners. Tom Melone for Allco Renewable Energy, PLH, Chelsea Solar, and Apple Hill Solar.

CHAIRMAN ROISMAN: Okay. Mr. Melone, I see that Michael Melone is also on the phone. Are you intending to have him put you on the witness stand and, and control the, the direction of cross-examination of your testimony, or is he here merely as an observer?

ATTORNEY MELONE: He's here, he is here as an observer.

CHAIRMAN ROISMAN: Okay, all right. Thank you. The Agency of Natural Resources?

ATTORNEY EINHORN: Don Einhorn for the Agency of Natural Resources.

CHAIRMAN ROISMAN: And for the Intervenors?

ATTORNEY DINGLEDINE: Brook Dingledine, Your Honor, for Mount Anthony Country Club, Apple Hill Homeowners Association, and Libby Harris.

CHAIRMAN ROISMAN: All right. I think what we ought to do at this point before we get into the procedures for a remote hearing that I'll run over, and

I know you all have discussed with Mr. Tousley previously, is the question of exhibits. Have you all reached a stipulation among yourselves as to the admissibility of the various exhibits and testimony of witnesses that have been proposed by all the parties? We'll start with you, Ms. Aceves.

ATTORNEY ACEVES: It's my understanding the parties haven't stipulated to the admittance of any exhibits, but the Department does not oppose or object to the admittance of anything that's been filed to date.

CHAIRMAN ROISMAN: Okay. Mr. Melone?

ATTORNEY MELONE: We do not object to anything that's been filed to date.

CHAIRMAN ROISMAN: Okay. Mr. Einhorn?

ATTORNEY EINHORN: With two very limited exceptions, the Agency does not object to anything that's been filed to date. Those exceptions are I saw on my screen a, a in-box from ePUC that some additional exhibits were filed this morning. I've not seen those. I don't know who filed those. But, with regard to the testimony that was filed by the developer yesterday afternoon, our limited objection is to Mr. McClammer's testimony, Footnotes 7 and 8 and all of his testimony related to those two footnotes.

The reason for that is there's some sort of a study or a report for which a link was supposedly provided. The link does not work. We're not familiar with that study or report. We haven't seen it, and, and, therefore, we object to it being in the record.

CHAIRMAN ROISMAN: Mr. Einhorn, if, sometime in the next 30 minutes, Mr. McClammer or Mr. Melone are able to fix the link such that you can see the study, will you still object, because you will not have had an opportunity to study the study, or will that solve your concern?

ATTORNEY EINHORN: I, I, we, we, I think that will resolve our concern. That said, we will not obviously have an opportunity to study the study, but, you know, I think, in reality, it's not even relevant to today's proceeding.

CHAIRMAN ROISMAN: Okay, all right. Mr. Melone, are you and Mr. McClammer able to fix the problem that Mr. Einhorn has identified with the link to the study referenced in Mr. McClammer's testimony that does not appear to be operational?

ATTORNEY MELONE: Yes, we can do that. And I'd also say that what we filed this morning is Mr. Popp's testimony that he gave in the Warner solar proceeding, plus, plus exhibits. That was the other

item that, that Mr. Einhorn was, was referencing.

CHAIRMAN ROISMAN: All right. And, Mr. Melone, are you intending to offer those in evidence or, at this time, or are you intending to use them for purposes of cross-examination of Mr. Popp or both?

ATTORNEY MELONE: Both. We would like them to be admitted into evidence, and we intend to do so when we cross-examine Mr. Popp.

CHAIRMAN ROISMAN: Okay. Mr. Einhorn, I can confirm, because I have looked at the exhibits, that they are, in fact, documents all that were filed in 19-0516, and they are, as Mr. Melone described them, related to Mr. Popp's testimony in that proceeding. Assuming that that representation is correct, do you still object to their admission?

ATTORNEY EINHORN: No, we do not object, and we certainly would support admission of those into the record. So the only outstanding objection is with regard to the link.

CHAIRMAN ROISMAN: Great. Okay, thank you. Ms. Dingledine?

ATTORNEY DINGLEDINE: Yes, Your Honor. Thank you. Intervenors would like to object to the add, to the providing of evidence yesterday and today in violation of the order of the PUC. We think it's not

only -- we think it's very disrespectful of the other parties. I have not even looked at these documents that were filed this morning. I tried to review what happened yesterday. I want to make an objection to the process that, that the petitioner is going through. Now, in terms of the substance of those documents, I haven't looked at them, but they seem to pertain to the ANR rare species issues, which are not the issue that my clients really have standing on, but we wanted to make that point.

However, there is one objection to the materials that were sent in yesterday that I wish to make, and I can either, I guess, share the screen, or I can just refer to it. It refers, it's regarding Mr. Melone's prefiled testimony on Page 5, Lines 12 through 14. It states, "On June 24th 2020, the PUC opened an investigation on its own motion in response to a complaint filed in Docket 8454 by anti-renewable energy activist Annette Smith, who has spearheaded the opposition to the two Bennington solar projects".

We would seek to have that statement stricken from the record. We do not think it has any evidentiary support, and we believe that it violates the cautionary warning that the Chair had given Mr. Melone and the other parties at the last hearing in terms of ad

hominem attacks on the character or motivations of other parties or people, and we would like to have that removed from the record, and that's Page 5, Lines 12.

CHAIRMAN ROISMAN: Mr. Melone, do you have a response to what Ms. Dingledine has just stated?

ATTORNEY MELONE: Yes, Mr. Chairman. I don't think it's a personal attack on anyone. It doesn't impugn her character. It's just a, in my view, a statement of fact. If they have facts that contradict that, then they can bring them forward, but the facts that we have, for example, is that, at least for the better part of a couple of years, every, every filing by opponents was posted in an envelope from Annette Smith, and, you know, I, I think the, the facts speak for themselves. If they want to put Annette Smith on the stand to say that's not true, I'm fine with that.

I'm sorry, Mr. Chairman. I can't hear you.

CHAIRMAN ROISMAN: Is the statement that appears in the testimony that Ms. Dingledine has identified directly relevant -- I'm going to turn off my camera. Can you hear me now?

ATTORNEY MELONE: Yes, I can hear you now.

CHAIRMAN ROISMAN: And can you hear me?

ATTORNEY MELONE: Yes, Mr. Chairman, I can hear you.

CHAIRMAN ROISMAN: Okay, all right. I'm going to keep my camera off. I think that will facilitate your hearing me. You don't need to see me anyway.

Mr. Melone, my question was, Is this testimony that Ms. Dingledine has identified directly relevant to any issue that you're making in this case at this point?

ATTORNEY MELONE: It's not relevant to an issue I'm going to raise today, but it certainly is relevant to the origins of the investigation, which in the briefs we filed with the Supreme Court already, have identified that the investigation was not properly according to the statute, and this, this provides the background on why, why it was opened and how it was opened.

CHAIRMAN ROISMAN: All right. And, but do I understand correctly you've made that point already to the Supreme Court in your filings with them?

ATTORNEY MELONE: That's correct. And this statement is, is, or what's in this testimony, it's, if it's not identical, it's fairly close to what's already been before the court.

CHAIRMAN ROISMAN: So, if we granted Ms. Dingledine's request that it be excluded from this

hearing, it would not in any way impede your ability to make the arguments you wish to make to us on the issues in front of us; is that correct?

ATTORNEY MELONE: Well, no. We're providing the factual testimony here that this is -- so the argument that we had made was, in fact, just that argument. Now we are, we are putting this, what we view as a fact, into the testimony to support the argument.

CHAIRMAN ROISMAN: And, Ms. Dingledine, just so we're clear, if the testimony remains in, are you prepared to cross-examine Mr. Melone on the basis for the statement that he made, or is it not the basis for the statement that he made, but the tone or the language used to make it that is objectionable?

ATTORNEY DINGLEDINE: It is the substance of the representations with regard to labeling Ms. Smith in terms of being an anti-renewable individual, and the tone, tone is irrelevant, but this is information that unfortunately Mr. Melone wants to make facts by just repeating the same thing over and over. And we have a similar problem, and I'll get to another, to my second objection in a minute, but, when you rule on this, but this is duplicative, if, if you want to go with the rules of evidence.

There is information in the record, the actual complaint which was filed and put on the public comment portion of the website. We know that's the facts, the actual document. The best evidence rule should rule here in terms of we don't need -- this is not evidence. If Mr. Melone has some opinion about someone's activities and he wants to call her names, well, that's not, this isn't the forum for that. This is about facts.

If he wants to testify and say there was a complaint filed by Annette Smith on this date, we have that in the record, but that would be fine, but to try to continually use this fake news way of providing information by just saying the same fake news over and over, you just keep calling somebody by a name, and we have that problem with Lot Number 1, and it should not be allowed. There is no evidence to support this.

Now, in terms of cross-examining Mr. Melone on this, I am not prepared to cross-examine him on this today after this was filed yesterday afternoon. That is unfair. It is inappropriate. So, if this is allowed into evidence, then I would like an opportunity to cross-examine him at another time.

CHAIRMAN ROISMAN: All right. The Commission is going to consider this objection, but, Ms.

Dingledine, it will facilitate the process of the hearing if you would make your other objections so that we can rule on all the objections at one time, please.

ATTORNEY DINGLEDINE: Certainly. Thank you, Your Honor. So, at the status conference for the TRO before the TRO hearing, I asked that Mr. Melone be, stop calling Lot Number 1, which is the five-acre lot that's north of the Von Nostrum's land, I asked that he stop calling that the Orchard Lot. The reason why I ask that he stop doing is that Libby Harris's lot is actually named the Orchard Lot. That is in her deeds. It is in all the permitting, Act 250, wastewater, subdivision, everything. That is how that lot is identified. And Mr. Melone kept calling it, quote, "the orchard lot".

Yes, there was a remnant orchard on it that is part of the landscaping plan, and additional trees will be added to that lot. He refused to stop calling it that, but then actually has since started calling it "the horticultural lot", because he plans on building that massive, unnecessary spite structure of, you know, massive proportions, instead of planting his trees, and he now seems that he doesn't even care that you've denied his amendment to the petition.

So the reason, apparently, why he's now trying to

call it the horticultural lot and using this fake news name over and over --

CHAIRMAN ROISMAN: Ms. Dingledine, I'm going to ask you. I think "fake news" is the kind of language that you were objecting to in Mr. Melone's filing. It has taken on a character statement that is considered fairly pejorative. I would appreciate it if you would stop using that term. I understand you think that what Mr. Melone is doing is not correct, but I would appreciate it if you would speak to it more directly. Thank you.

ATTORNEY DINGLEDINE: Okay. So the use of the term "horticultural lot" is as a result of the case that Mr. Melone brought to seek permission in Chittenden Superior Court to use Lot Number 1 as part of the solar project, and he was told, You can't do that. The covenants don't allow it. And the judge dismissed him on the pleadings. So the reason why he's now trying to call it the horticultural lot is he's trying to claim that hemp is a horticultural activity, and there is an exception, if you want to have a greenhouse along your primary residence, you can have a horticultural greenhouse, and so he's now trying to characterize this as a horticultural lot. We would like --

CHAIRMAN ROISMAN: Ms. Dingledine, can you tell me, what is the objection to the admissibility of his calling it whatever he chooses to call it that we need to rule on? We don't need to get into why you think it shouldn't be able to be used in the way he wants to use it. What's the objection, and which part of the objection --

ATTORNEY DINGLEDINE: The objection is, the objection is any time he uses the terminology "horticultural lot", that should be stricken, and the terminology "Lot Number 1", which is on his deeds for PLH, LLC, that is the property they own. That is the property where they, where they were supposed to put the landscaping, and we would like the lot to be called Lot Number 1 to avoid confusion. We believe this is an intentional mechanism to try to confuse the record, and we would like the actual name of the lot that is in Mr. Melone's deeds that PLH, LLC took the property as ownership, we want it called number lot, Lot Number 1, which is the identifying name of it in the homeowners association residential subdivision on all deeds and permits.

CHAIRMAN ROISMAN: All right. What's your -- do you have any additional objections to admissibility of any other exhibits or testimony?

ATTORNEY DINGLEDINE: No, no. Thank you, Your Honor.

CHAIRMAN ROISMAN: All right. At this point, the Commissioners will mute their microphones, and we will consult, and we'll come back shortly.

ATTORNEY DINGLEDINE: Oh, Your Honor, but I do want to point out, if I might, that it pertains, not just to his prefiled testimony, but all the exhibits. He has maps, et cetera, that also do not identify that property correctly.

CHAIRMAN ROISMAN: I understand. Thank you.

ATTORNEY DINGLEDINE: Thank you.

(A recess was taken from 9:57 a.m. to 9:58 a.m.)

CHAIRMAN ROISMAN: We are back. Are all the representatives of the parties back? I see Mr. Melone, Ms. Dingledine, Mr. Einhorn, Ms. Aceves. Okay. So we've considered your objections, Ms. Dingledine. With regard to the late-filed documents from the applicant, as you pointed out, they relate to an issue that is not directly relevant to your client, and Mr. Einhorn has indicated, now that he knows what those documents were that were filed this morning, that he did not object to them being admitted.

Mr. Melone, I think, given that all those documents were created months ago, I don't think it was

the best practice to file them the morning of the hearing, and it would have been preferable if you had filed them earlier, given that they relate directly to an issue that obviously you knew was going to come up, but we will allow them in the record.

With regard to Ms. Dingledine's concern about the language that you've used in your prefiled direct testimony related to Ms. Annette Smith, we think it's very inappropriate. We have before admonished parties that referring to other parties in any kind of an ad hominem way is not acceptable practice in front of the Commission. I understand that you have strong feelings about this, but we feel that it is preferable that you express them in a more, a more appropriate manner.

That said, it does not, in our opinion, have anything directly to do with the decision we're going to reach today. We're going to leave it in the record, but, Mr. Melone, if you can control your passion in future filings, that would be much appreciated.

ATTORNEY MELONE: Understood.

CHAIRMAN ROISMAN: And, finally, with regard to Ms. Dingledine's objection to the characterization of what is Lot 1 as the horticultural lot, the Commission is not going to be misled. It understands exactly what the lot is, and we don't think that the

characterization of it by you in your testimony is in any way going to distort the record, and so that objection is overruled. So all of the testimony and exhibits that have been offered will be admitted with the caveats that we will give them the weight that they are entitled to when we reach our final decision. Ms. Dingledine, I see your light is on.

ATTORNEY DINGLEDINE: Thank you, Mr. Roisman. There's just one, one matter that I would just ask in terms of -- well, I'll wait until the evidence is being submitted, if there's different opportunities to object. Never mind. Sorry.

CHAIRMAN ROISMAN: Okay, all right.

ATTORNEY EINHORN: Mr. Chairman, with regard to the admission of all of the prefiled testimony and exhibits, that's still being, coming into the record, that's still with the caveat on fixing the link.

CHAIRMAN ROISMAN: Oh, okay. You have not yet received from Mr. Melone or Mr. McClammer a clarified version of that link?

ATTORNEY EINHORN: Let me see. I have -- I have not. Oh, oh, I see. He's attached, he's emailed me some tables, I guess, that is a, appears to be a two-page document, "Summary of Vermont Organic Farms". I'm assuming that's what that link was to.

CHAIRMAN ROISMAN: All right. Is that correct, Mr. Melone? So he now actually has the document that the link, if it had worked, would have taken him to?

ATTORNEY MELONE: That's correct, Mr. Chairman.

CHAIRMAN ROISMAN: Mr. Einhorn, does that take care of your concern?

ATTORNEY EINHORN: It, it does. Thank you.

CHAIRMAN ROISMAN: Okay, all right. Thank you. All right. Well, that was fun. We'll now move on to discussing the procedure for a remote, web-based hearing. I know you went over these with Mr. Tousley before. As you know, we're limiting our personal contact, essentially none, and you all have agreed to this being a hearing conducted remotely. I want to confirm that all the parties are agreeable to this being a remote hearing and, if any party now objects to this being done as a remote hearing, as we famously say, speak now or forever hold your peace. Anybody? Hearing no objection, we will proceed.

So, for the logistics of this hearing today, we'll be using these special hearing procedures, and I'm going to read them briefly, although I think you've been over these, and, actually, I think all of you have

already been in at least one of our remote evidentiary hearings.

You can raise objections to these procedures either now or at any point during the hearing. In addition to formal objections, you may also raise concerns at any time if the platform is not performing as expected for you or having difficulties. We expect that this hearing will proceed more slowly, and we may need to stop along the way to resolve technical issues, as we have already done. We'll also recognize that, because we're all in remote locations, there may be unexpected interruptions at these locations. All cats, dogs, and children are welcome to attend the hearing until such time as they disrupt the process.

The representatives in this case should keep their cameras on during the entire hearing. Witnesses should leave their cameras off until they are testifying, at which time they should turn them on. Even with your camera turned off, you'll still be able to see everyone, and you will be able to hear everyone. Commission staff may choose whether to leave their cameras on or off. My preference is that people who are not actively participating in the proceeding leave their cameras off so that the pictures of active participants are larger.

Just for your benefit, at the top of your screen where it says "view everyone", one of the options that's available to you is to click the active cameras. That will then turn the screen in front of you into showing only those people who have their cameras on. You can also pick who's talking, which will then create the largest picture. You may wish to do that, for instance, when a witness is being testified, is testifying, and you can show everyone, or you can hide everyone. Those options are available to you. We do not control them, and I leave it up to you as to which of those you want to do.

Commission staff will not mute anyone's microphone, whether a party, a participant, or a member of the public. This means that you should keep yourself on mute unless you are speaking. That way, we can minimize background noises, which can be very disruptive. Each time you begin talking, please identify yourself by name for the court reporter.

If your internet connection cuts out, please try to rejoin the GoToMeeting or call in to the hearing using the GoToMeeting telephone number that was provided. If the audio or video from the hearing has cut out, let me know when you're able to join, and I will summarize what happened, and we will revisit any

questions on which an objection may have been allowed, including any admission of an exhibit. If you're not able to call in or rejoin, notify the platform manager immediately via email or the clerk's office immediately via email or phone, and we'll pause the hearing until the issue is resolved. If we cannot resolve an issue that prevents a party from participating in the proceeding, we will reschedule the proceeding.

Similarly, if, at any point, any of you become aware of another party, participant, or member of the public having trouble accessing the video or the audio feeds of this remote hearing, please let us know immediately. We will pause the hearing until the issue is resolved. If it cannot be resolved, we will reschedule the hearing.

It's very important that we avoid talking over one another. Of course, if you have an objection, then you must raise it at the moment the objection arises. That type of interruption is allowed and required. When objections are issued or raised, I'll ask each representative one by one whether they have a response. We'll go in the following order: essentially, the party who raises the objection and then, after that, the parties in the order in which you entered your appearances, the Department and Mr. Melone and Mr.

Einhorn and, finally, Ms. Dingledine.

When you are asking questions of witnesses, we will make you the presenter in GoToMeeting. That will allow you to put on your screen if you have any exhibits that you want to ask the witness about so the witness and all of us can see exactly where your question is directed. You should share cross exhibits on your screen by clicking the "share screen" icon. Please verbally identify the cross exhibit you are showing for the court reporter. For example, clearly say, "I am showing Department Cross-1", If that is the exhibit. When you're done with the exhibit, please click "stop sharing screen". Whenever you are sharing your screen, I advise you to close out any, out of any unnecessary applications, such as email, to avoid notifications being visible to others in the hearing.

Does anyone have any questions or concerns about these procedures? All right. So the substantive portion of the hearing, we'll begin by the parties each making a brief, five-minute opening statement, and then each party in order, starting with Mr. Melone, followed by Mr. Einhorn, then Ms. Aceves. Does the Department intend to offer any direct testimony in this proceeding?

ATTORNEY ACEVES: No, we will not be offering

any direct testimony.

CHAIRMAN ROISMAN: Okay. And then Ms. Dingledine, and each witness will then be followed by cross-examination by the parties and the Commission with redirect examination and then closing arguments, and, although Mr. Tousley said five minutes, we're going to be generous and give you each ten minutes to do your, to do your closing arguments.

Mr. Melone, when you are the witness, if redirect is needed, you should -- you've indicated that Mr. Michael Melone will not be leading you through redirect. So you will be basically speaking it as a, as a soliloquy. We remind you that, when that happens, as in all redirect, all of your statements must relate directly to statements, issues that have been raised by the cross-examination, and, in prior experience, I've noticed that you're not inclined to speak extensively, so we expect that you'll follow that practice when and if you do redirect of your own testimony.

ATTORNEY MELONE: I will, Mr. Chairman.

CHAIRMAN ROISMAN: Thank you. At the time of the closing arguments, we would like you to indicate whether you believe any further process is needed before the Commission decides to issue a permanent injunction. As you know, technically, by operation of

the rules, we are already in a preliminary injunction. The TRO, by statute, has expired, and it has been converted, by statute, into a preliminary injunction.

So the question that will be in front of us is whether to continue or to dissolve the preliminary injunction but also whether or not to issue or deny a permanent injunction. So one of the questions we'd like you to answer during your ten minutes is whether you believe we have enough record to decide the permanent injunction question or whether you believe we need more record before we can reach that decision.

Also, we'll want post-hearing briefs, and, at the end of the hearing, we'll ask you all to indicate to us a schedule. It may follow the usual practice. The opening briefs will be simultaneous. The reply briefs will be simultaneous. In those post-hearing briefs, we would like you to address one question, along with whatever else you wish to brief, which is, to the extent that you wish to address it in detail, the difference, if any, in the criteria that would be applicable to a continuation of a preliminary injunction, what criteria we would have to decide, and what criteria we would have to decide if we were to issue a permanent injunction. That one legal issue, along with whatever issues you wish to address, would

be included in your post-hearing briefs.

And, unless there's any other preliminary matter, I think we're ready to begin the evidentiary portion of the hearing. Anybody have any preliminary matter before we start with the --

COMMISSIONER HOFMANN: Mr. Chair, I would just want to note to Mr. Einhorn, I don't think you're aware that your microphone is not on mute.

ATTORNEY EINHORN: Oh, I'm sorry. Thank you.

CHAIRMAN ROISMAN: Although we should point out you're in a very silent place, Mr. Einhorn, because we never heard anything either.

We will take a break around 11:00 o'clock of about ten minutes. If, for any reason during the course of the hearing, any party believes they need a break, please speak up, but our current plan is we'll break for about ten minutes around 11:00 o'clock, and, if the hearing is still going on, we would break at 12:30, take an hour lunch break, and come back at 1:30. All those times are flexible. We're not going to stop someone's testimony at exactly 11:00 o'clock if it's the middle of either direct or cross.

All right. Mr. Melone, you may call your first witness.

ATTORNEY MELONE: Thank you, Mr. Chairman.

Bob Kobelia, are you on the line?

ATTORNEY EINHORN: Excuse me, Mr. Chairman. Did, did we still want to do openings, or are we --

CHAIRMAN ROISMAN: Oh, I'm sorry. Yes. No, no. Sorry, my fault. Thank you, Mr. Einhorn. Yes, Mr. Melone, you have a five-minute opening. I'm sorry for that.

ATTORNEY MELONE: Okay. Thank you, Mr. Chairman. Good morning, Mr. Chairman and Commissioners and other parties. Although this is a little bit off topic, I first want to thank the Commission personally for the organization yesterday in the Otter Creek Solar 1 case. I hope that that's in the past and eventually we can resolve all the differences that are outstanding.

Now, getting to this case, the basic issue here is that we have begun a farm business. It's already started in Connecticut. It's part of the operation that's intended to include the Bennington land, and our, our clearing activities are not for the purpose of building or for site preparation or electric generation facilities, they're there for farming purposes.

Now, the way I understand the posture of this case now, the Agency has withdrawn any, any claim to wanting some type of injunction on the, on the five-acre lot,

which, at one point, was going to be the site in our plan for new trees. So the only thing that's left here, again, as I understand the Agency's position, is the, the fate of two plant species that have not been transplanted already to conservation areas on the site, because, as Mr. Kobelia's testimony shows, the clearing plan that we, that we gave to him does not, does not do anything to those conservation areas, and, as Mr. Popp's testimony that he filed in this case shows and attached, where he attached one of the plant reports from Apple Hill, a very limited amount of aster plants that are in the clearing area that were not transplanted.

So, in our view, even if, even if the Agency had or the Commission had some jurisdiction to stop the clearing of those for farming purposes, we think, at the end of the day, whatever final action, if there's a continuation of an injunction of some sort, it really needs to be limited just to those narrow areas and that it would go away if, if those plants, or whatever the threshold that the Agency ceases to object, if those plants were transplanted as well. So we think the injunction should not be continued. It should be dissolved. Thank you, Mr. Chairman.

CHAIRMAN ROISMAN: Thank you, Mr. Melone.

Mr. Einhorn?

ATTORNEY EINHORN: Thank you, Mr. Chairman. Today's proceeding really, when you boil it down, it's a simple exercise. Has site clearing occurred, or is it about to occur for an energy generation project? Will there be irreparable harm as a result, or perhaps has there already been irreparable harm? Yes, I think there will certainly be irreparable harm as a result, if not already, in that there are a significant number of rare plants throughout this site, and including in the areas to be cleared and perhaps even in the area already cleared. This was established in June, for the most part, and there's nothing new today.

There have been a number of filings by the developer. I should say nothing new in the other direction. What's been filing, what's been filed more recently certainly supports those two issues that we addressed in June in the fact that there is clearing going on, that there is irreparable harm or certainly the threat of irreparable harm.

Most of the filings yesterday offer paths that lead to nowhere, and, and, quite frankly, would distract from really the core purpose of today's hearing. A lot of what I saw in these filings talked about, you know, the 248 proceeding and the 248

standard of review.

That's not what we're engaged in here. This isn't a 248 project review to determine if there's an undue adverse impact. This is a hearing to determine if there is irreparable harm. It's a totally different standard. It's a totally different legal issue. This is not about Agency guidance documents on RTE plants, as again was set forth in some of these filings from yesterday, because, as those documents clearly indicate, those are for purposes of reviewing a project's impact under Section 248, which, again, we're not doing that today.

And this is also not about the Agency's plant classifications. There's, there's a lot of effort, I guess, on the developer's part, for lack of a better term, to basically try to say that these plants really aren't rare. That essentially is moot. I mean, the underlying records in 8302, 8454, and 17-5024, Willow Road, are replete with the developer's own expert witnesses identifying these plants as very rare and rare.

I think the argument, again, which really isn't relevant, can be boiled down to the Agency should try, should be required to prove a negative, that is, we have to prove that these plants don't exist anywhere

else but the three known sites in the state, of which this is one of those. So that, that type of an argument just doesn't carry the day.

So, in the end, is there site clearing? Is there the threat of irreparable harm? Yes, there is. Then a preliminary injunction should issue. This was already established, for the most part, in June. I think today's exercise will just reinforce that and perhaps put some, fill in some of the ambiguity that perhaps existed after June's hearing with greater detail, which demonstrates those facts. Thank you.

CHAIRMAN ROISMAN: Thank you, Mr. Einhorn. Ms. Dingledine?

ATTORNEY DINGLEDINE: Thank you, Mr. Roisman. The interests of the Intervenors obviously have to do with the screening that was proposed as part of the project in order to get over the aesthetics analysis to prove that the adverse impact would not be undue. That is -- so the project has been proposed as for the Van Nostrum lands, which are 26.8 acres, and also part of the project site is 5.5 acres, which is Lot Number 1, which is a residential lot in the Apple Hill Homeowners Residential Subdivision.

So now we see with the latest filing of prefiled testimony by Mr. Melone he is explicitly claiming that

Lot Number 1 is not part of the project site. It's a rather, it is an unsupported position. There is not a single case or any precedent provided that would suggest that the landscaping portion of a project site is not part of the project site.

It is an irrational position, but I suppose, because Mr. Melone is making this argument, the PUC will have to make a determination as to what encompasses the project site or site or property that is under the PUC's jurisdiction, because the applicant has put it before you, submitted the lands to your jurisdiction, and part and parcel of that project is the screening that has been indicated would go in, in addition to the orchard trees remaining on the lot.

So Mr. Melone wants to now plant hemp there and a massive structure. You've said that he can't do that. Now he's trying to claim it's not part of the project site, because the court, Chittenden Superior's, told him, You can't do this on this site, because it's part of a residential subdivision that doesn't allow the solar array project to be here. So, so now he's trying to argue it's not part of the site.

So, I guess, part and parcel of the decision that has to be made is to explicitly state that the 5.5 acres, which is Lot Number 1 which Mr. Melone is

calling the horticultural lot or parcel, is, in fact, part of the project site and it, and it is part of the lands that cannot be prepared before a CPG issues.

Now, the interesting part about Lot Number 1 is he wants to go do something else, not the project. He wants to cut the trees, which he's proposing for screening, and plant something different. That is not the application before you. You have denied him that amendment to the application, and I guess that puts you in a position of, we would suggest, that, if Mr. Melone decides to cut the trees, then obviously he will fail on the aesthetics analysis in terms of the screening that was proposed. It will result in an undue adverse impact if he's not going to do that.

So, whether you void his contract; whether you say, You're denied, because you are not doing your screening that you proposed, and that's part of the, the project that you have put before us, you're not going to get your permit, put him on notice, if he cuts down those trees, he has stopped going forward with the plan that he's submitted.

So we would ask that the injunction cover that area and that he be given a warning that, if he violates it, that he will fail on that criteria or the contract will be void, because it will be a material

misrepresentation of fact in the project proposal that they are incapable of doing if they cut the trees and that a spite structure of massive proportions is not allowed in place of the screening of 700-some-odd trees. Thank you.

CHAIRMAN ROISMAN: Thank you, Ms. Dingledine. Ms. Aceves?

ATTORNEY ACEVES: Thank you. Very briefly, we would agree with the assertions made by Mr. Einhorn and will be addressing more specifically whether the criteria for injunctive relief has been met in this case. That said, the Department, as we've said in our previous filings, we remain very concerned about the policy implications and potential abuse of the Section 248 process that this case has represented, and it's possible that, should an injunction of some sort not continue, that abuse may be realized, which could potentially open the door for future petitioners to thwart the requirements of Section 248 and, more specifically, Section 248(A)(2)(a) which prohibits site clearing without a certificate of public good. So that's all we want to say at this point in time, and I look forward to hearing more. Thank you.

CHAIRMAN ROISMAN: Thank you, Ms. Aceves. And now, Mr. Melone, you may call your first witness.

ATTORNEY MELONE: Okay. Thank you, Mr. Chairman. Bob Kobelia, are you on the line?

MR. KOBELIA: I am online, and I'll turn on my camera.

COMMISSIONER CHENEY: Good morning, Mr. Kobelia. I'll start by swearing you in.

ROBERT KOBELIA,

duly sworn to tell the truth, testifies as follows:

DIRECT EXAMINATION BY ATTORNEY MELONE

Q. So can you confirm that the testimony that's been filed in this case under your name is still accurate?

A. It's perfectly accurate.

CHAIRMAN ROISMAN: Mr. Melone, does, have you set an exhibit number? If so, would you refer to it just at this point for the benefit of the court reporter by the exhibit number?

ATTORNEY MELONE: Mr. Chairman, I apologize. I don't know where we had left off on the exhibit numbers from, from the last one, so we didn't assign it a specific exhibit number.

CHAIRMAN ROISMAN: All right. Is he ready for cross-examination, Mr. Melone?

ATTORNEY MELONE: Yes, he's ready for cross-examination.

CHAIRMAN ROISMAN: All right. Mr. Einhorn,

do you have any questions for Mr. Kobelia?

ATTORNEY EINHORN: Thank you. I do not have any questions.

CHAIRMAN ROISMAN: All right. Ms. Dingledine, do you have any questions for Mr. Kobelia?

ATTORNEY DINGLEDINE: Yes, Mr. Roisman, if I could just ask a few questions, this is Brooke Dingledine.

CROSS-EXAMINATION BY ATTORNEY DINGLEDINE

Q. Mr. Kobelia, you attended and testified at the temporary restraining order hearing prior in this matter; is that right?

A. I did that on the Friday of the hearing. I was remote at the time. This format's way better. I was on a cell phone at the Albany, New York, airport, and the service I had there was intermittent. We had some issues, and I did lose my signal at the time the hearing took a break. It was before any decisions were rendered. I didn't hear anything after that. I tried to connect again and lost it, so I drove back to Vermont at that time.

Q. So you were aware that the Commission was making a decision whether or not to stop any site preparation work that you were performing, correct, when you were present and testifying during that hearing?

A. There, at the time, I think a lot of the testimony had taken place. Mine had. And a decision hadn't been made as for what action was going to be taken.
Q. Right. But you knew that the hearing was about issuing an order to tell you to stop work, correct?
A. That may not have been the only issue they would have deliberated on, but I knew that could be one of the decisions.
Q. Okay. Yet you undertook to engage in more work the following day on Saturday without checking with Mr. Melone in terms of what the outcome of the hearing was; is that right?
A. I need to word this properly. As soon as a decision was going to be made that would affect my ability to work, I would work going forth. The weather is, had prior been our biggest obstacle, and that next day, the Saturday, was a very good day to be able to do some activities, and so, unless I heard otherwise, I was going to be on site carrying on with my work.
Q. Did you discuss -- well, let me ask you this. You didn't answer my question. Could you answer my question? Did you undertake to contact Mr. Melone after you left the hearing before you started work the next day to check in with him as to what decision the PUC had made, yes or no? Did you check with him or

not?
A. I did not reach out.
Q. Did he reach out to you before you began work on Saturday?
A. I did not hear any message from Tom Melone.
Q. Did you check your email?
A. I checked email, and I was looking for a written decision. It's not my nature to know how long a deliberation would take. So, being on the front line, if I'm not notified, I'm not notified.
Q. And were you, did you have any discussions with Mr. Melone on Friday in terms of getting in touch with one another to know what the outcome of the hearing was?
A. As I said, any information I had discussed with Mr. Melone on the day of the hearing was just that, it was preliminary. I met him, and then I lost my signal.
Q. So he never undertook to call you after you dropped off of the hearing to tell you that a temporary restraining order had issued and you were not to do any work on the site before you began on Saturday; is that correct?
A. I don't know if he wanted to. I can tell you that I didn't --
Q. Did you hear from, Mr. Kobelia, did you hear from

Mr. Melone in any way, shape, or form between the time when you left the hearing and when you began site work on Saturday, yes or no? Did you hear from him?
A. The answer is, no, I did not. Nothing was --
Q. Thank you. And what time, what time did you start your work on Saturday morning?
A. I'm an early riser. I think I left the house at 6:00 o'clock and was on site at about 7:00 in the morning.
Q. And you began at that time?
A. Once the machine's warmed up, yes. You know, there's a protocol when you run a machine.
Q. Yeah, okay, thank you. But what time was the sheriff's service on you or notification that there was an order prohibiting you from continuing work?
A. The sheriffs arrived while I was eating lunch. My recollection is somewhere around 1:00 o'clock, and I was eating my lunch. Two cars rolled up, and they served me papers, at which time I stopped.
Q. Okay. When you say you stopped, did any more construction work of any sort take place after you were handed that paper by the police or sheriffs?
A. On the subject property, the only thing that would have happened is I had a temporary plastic gate that I would have pulled across to keep unwanted traffic off

the property, but, as far as machinery, I, I put the machine in a good spot to move it away if I had to, and that was the end of it.
Q. Did you have any contact with Tom Melone before the sheriffs handed you that paper on Saturday?
A. To be honest with you, Ms. Dingledine, I have had very little conversation with Tom Melone in my whole life and certainly not that day. I, I've done work for him and his company, but we're not in the chain of command that I would normally be speaking to him.
Q. Who would you normally speak with, if not Mr. Melone?
A. I would normally contact Chris Little, who is one of his folks that work for the company.
Q. Did anyone with the company, Chris Little or any other person, tell you between the time the hearing, you left the hearing and the time that you commenced work or got that order from the sheriffs, anybody, did you have any conversations with anybody in any format who, of your --
A. Yes. To help you out, yes.
Q. Who is that?
A. And I did have a conversation with Chris, and it was to discuss the matter. At the time I spoke with him, there had been no decision.

Q. What time was that?
A. It was after I left the meeting. I believe I was in transit between Albany and Bennington, so --
Q. Okay.
A. I, at that time, we said, Well, I guess we'll wait and see what transpires with the results of the hearing. Knowing that it was a Friday night, I had no idea how long, if the, if the group would be working all night long or wait until Monday to make a decision. It's not my decision to make.
Q. Were you advised by Mr. Little or anyone else that there had been a verbal order that had issued from the PUC and that they were going to follow it up with something in writing?
A. The word "verbal", at the time of my discussions, didn't come out. We were looking for a decision in any way, shape, or form. At the time of my conversation, that word was of a -- your cease and desist would not have been given at that time.
ATTORNEY DINGLEDINE: Okay. That's all I have. Thank you, Your Honor.
CHAIRMAN ROISMAN: Ms. Aceves, do you have any questions for Mr. Kobelia?
ATTORNEY ACEVES: I do not. Thank you.
CHAIRMAN ROISMAN: Commissioner Hofmann, any

questions for Mr. Kobelia?

COMMISSIONER HOFMANN: I just have one clarifying question, Mr. Kobelia. I may have missed kind of the timeframe. Did you talk to Mr. Little on Friday afternoon or evening?

MR. KOBELIA: The time I -- the hearing was in the morning when I was in Albany, New York, and I was speaking to him as I went through Troy, Troy, New York, back to Vermont. So it was at the time of a recess had happened in that hearing, and he and I were speaking as I was driving the car, which would have been early midday. After the -- I, I had no direct communication at night or in the, in the early morning hours. I obviously went home, had dinner with my wife, and went to bed.

COMMISSIONER HOFMANN: Okay. Then, after the early morning hours then between the, when you got to the site at 7:00 and you said the sheriff probably came around 1:00, did you talk to Mr. Little or anyone from the company during that time? I think you answered this for Ms. Dingledine, but I'm not sure.

MR. KOBELIA: Yeah. When I was on site, you understand I have a cell phone, and the bulldozer shakes, and you don't hear it ringing. I had it on my person in my Carhartt jacket, but I did not feel it

vibrate, and I was operating the machine. So after 7:00 in the morning when I got going, I didn't stop except to have a, a lunch break. At the time I took the lunch break, I didn't have any message on my phone.

I looked at my phone while I was eating my sandwich and having a, my lunch, and there was an email at that point saying that I should stop, that they had been served papers and I should stop, and, almost on cue, I looked up from my phone, and in front of me were two sheriffs driving up, or Bennington's finest, driving up Willow Road to my location.

So I asked them. I said -- I know these guys. I know the police force here in my town, and they said they had these papers and that I needed to stop, and I said, "Well, that's fine". They said they'd been outside at the end of the blacktop road of Willow. The part I'm on was pretty low-maintenance, because nobody lives there. So, apparently, they stopped where the blacktop had, were awaiting legal counsel, as they described to me, because there was questions on whether it was valid papers, because they couldn't see a signature. Now, I won't get into the technical reason why the Bennington Police waited until then, but they were waiting until they had legal counsel advise them to serve me the papers.

COMMISSIONER HOFMANN: Okay. And, when you indicated you got a message, was it a text or an email; do you remember?

MR. KOBELIA: I believe that it was a text message from Chris Little, and, at that time, as I just said, I, I looked up from my text message while I was eating my lunch, and I saw the cruisers come. You could, you could see them a couple hundred yards out before they got to my site. It's a dead end.

COMMISSIONER HOFMANN: What the did message from Mr. Little say?

MR. KOBELIA: It was short. It said, "Bob, we've been served the papers to cease and desist, so cease and desist immediately". Well, that's what I got. Albeit he did send me those papers or that information, I didn't get it until just before the police arrived. I have no idea when he got his notification, but that's when I got the message. And it's the same as the police didn't roll their cruisers until they had legal authority to do that, and, as I mentioned, it had something to do with the signature on the papers that they couldn't statutorily serve it as it was blocked out or here. They couldn't tell who signed the papers, so they weren't sure if they were fraudulent.

COMMISSIONER HOFMANN: Okay. Thank you, Mr. Kobelia.

MR. KOBELIA: You're welcome.

CHAIRMAN ROISMAN: Commissioner Cheney, do you have any questions for Mr. Kobelia?

COMMISSIONER CHENEY: Yes, I do. Thanks. Between the, around 7:00 when you arrived and around 1:00 when you took your lunch break, can you describe the nature of the work that you did?

MR. KOBELIA: Sure. The paper prefiling kind of describes it, but do you have a copy of that in front of you or the supplemental map?

CHAIRMAN ROISMAN: Yes, I did read that, and, if that's the extent of it, then you don't need to go further.

MR. KOBELIA: Well, I can be more -- I can clarify things real well. If you look at the map and where Willow Road intersects with this parcel of land, that's, basically, the town road stops there, and the rare and endangered section has a three- or four-foot high orange protective fencing all the way around it and right at that all four sides.

So where I was operating was west of that fence line, and it's an area that I had used before. It's fairly level. It's an ideal place to clear if you need

to park a vehicle, and, right now, most of this land had been in a pioneer stage of reversion to forest. So it had forest cover, lots of invasives, very, very thick honeysuckle, autumn olive, and multiflora rose. It's a jungle.

So, to be able to have a place to park, I had initially made a small opening there when I first started to install silt fence, and then my job on that Saturday was the first day I had to not do silt fence installation, but was to actually make a place to park one or two vehicles if we were going to proceed with the project.

So there's some ash right at the very beginning that were maybe four- to eight-inch diameter trees that were dead. Incidentally, a large component of the trees are ash. Bennington was just notified that emerald ash borer is found in Bennington, so those, all those ash will be dead in three years if they're not already on their way.

So that's, that's where I was clearing was that roughly shaped like a football field, 100 feet by 250, and it's still not cleared. I was going after the easy to push out, honeysuckle and backblading a few bigger trees, but anything real large still is standing, because we were going to use the excavator to do the

proper clearing of those stumps.

CHAIRMAN ROISMAN: Mr. Melone, it will really be helpful now if you will assign an exhibit number to the document that Mr. Kobelia was just referring to, which I believe is a document that has the title site, "A Map of Site Work Performed", and it was filed a couple of days ago. Can you just confirm, first of all, with Mr. Kobelia that that's the map that he was referring to and that the markings on there, sort of the red hash line, show where clearing has taken place and that what he is talking about, the clearing that he had done in response to Commissioner Cheney's question, his area that's identified is roughly 100 by 250 feet and marked on the lower center of that map?

ATTORNEY MELONE: Yes, I can. So this is Exhibit AH-RK-2 called "Map of Site Work Performed". It's submitted with his testimony. So, Bob, can you confirm that the map that was submitted with your testimony and, well, the portion of the map that that shows, that hatched area of 100 by 250 clearing, is the specific area you were just talking about?

(Exhibit AH-RK-2 was shown to the Witness.)

https://epsb.vermont.gov/?q=downloadfile/441501/150086

MR. KOBELIA: I can confirm that that's the correct map.

ATTORNEY MELONE: Thank you.

CHAIRMAN ROISMAN: Okay. Thanks. Thank you, Mr. Melone.

COMMISSIONER CHENEY: You're muted.

MR. KOBELIA: I was speaking to the Chairman.

CHAIRMAN ROISMAN: Talking to me?

COMMISSIONER CHENEY: Sorry about that.

CHAIRMAN ROISMAN: I'm so rarely muted. If you ask my friends and family, they'll tell you that. Before we go back to you, Mr. Melone, for any redirect, does any party have any follow-up questions for Mr. Kobelia in response to the answers given to the questions asked by Commissioners Hofmann or Cheney?

ATTORNEY EINHORN: I do, Mr. Chairman.

CHAIRMAN ROISMAN: Okay. Go ahead, Mr. Einhorn.

CROSS-EXAMINATION BY ATTORNEY EINHORN

Q. Thank you. Mr. Kobelia, I just want to briefly ask you about the area we just discussed that you described as the 100-by-250-foot area that you worked on on that Saturday in June after the TRO hearing. You described clearing out brush, essentially, right, multiflora rose, et cetera, and some trees and, and

backblading. Was it your understanding that there were no rare plants in that area that you were to avoid?
A. To properly answer the question, my understanding was is that the areas that had been identified for the rare and endangered had been properly marked out on site. It didn't mean that there couldn't have been a plant on this, but the difference in forest type was totally different. This was a full forest cover, and my impression was is that these rare and endangered need an open canopy and that's why they were in those sections. The part of this lot that's on the easterly side is a much younger forested stand, early succession.
Q. I understand, Mr. Kobelia. I don't want to interrupt you, but we spent a lot of time last time, and we're hoping to spend not as much time today. As you said in June, you're not a botanist, right?
A. I'm a professional consulting forester. I am not a botanist.
Q. Thank you. And you would not recognize the plants that are, that are at issue in this proceeding, the rare plants?
A. I didn't say that I wouldn't. I, I have a, a -- I pulled up the information on what they look like. I did not see them. I did look for them, though.

Q. Okay. And so, again, you, your understanding here is the three areas that are shown on your Exhibit RK-2, which is the map of the clearing that has been performed, those are the only three areas that you're to avoid with regard to rare plants on this site?
A. That's correct. It doesn't mean I wouldn't have worked around anything I found if I did see it ahead of time, and I routinely do that. If it's a plant that I know I'm looking for, I do my best to make sure. Even if it's in my own yard here in Bennington, I would keep an eye out for it.
Q. Yeah, I understand, but we're talking about this site, not your own yard. You were not instructed to look for any plants in the areas that you were charged with clearing, were you?
A. I'm sorry, Mr. Einhorn. You, you cut out halfway through.
Q. Oh, I'm sorry. The areas that you were hired to clear, which is essentially the green area on your exhibit, you were not instructed to look for or avoid herbaceous plants or these rare plants in those areas in the course of your work; that was not within your scope, correct?
A. I wasn't, it wasn't worded that way, but I'll, I'll accept what you said. It wasn't in my purview. I

was -- can I add one critical sentence, though, to your comment? Is that it had been five years since the issue of rare and endangered was raised and that some examinations had been taken place to inspect the entire property at the proper time of year. So it's not like this was day one. It was, the way it was represented to me is that there's been five years' worth of prior opportunity to look for rare and endangered plants on the entire tract. So that's why I still was looking on my own, but I did not find any.

Q. But my question was, That was not within your scope of work, your contract, correct?

A. I think I need to have you re, requestion, restate the question. I've, I may have gotten off track.

Q. Yeah. You were hired to clear this property, excluding what you've identified as three RTE areas, correct?

A. That's correct.

Q. And, in your scope of work for clearing that property, you were not told to look for or avoid rare plants outside of those three areas, correct?

A. I wouldn't say it that way. I was, if I personally know what it looks like, I would have avoided it. I did not detect those. They did not put that as my charge, but, as a fellow human being, I

don't like to run over anything that is a rare and endangered plant.

Q. Okay, I understand. So you, you were not told to look? If you did look, it was your own personal interest or judgment or whatever we want to call it that you were doing?

A. It's the right thing to do, sure.

ATTORNEY EINHORN: Yeah, I understand. Thank you.

COMMISSIONER HOFMANN: Well, let me follow up a little bit with Mr. Einhorn and Mr. Kobelia. So did you get off your tractor, Mr. Kobelia, and then walk those areas? Because you indicated you were, you were vibrating, the vibration from the bulldozer made it so you couldn't even feel that you had gotten a message earlier. So did you get down and walk that land, based on what you just told Mr. Einhorn?

MR. KOBELIA: That's the best way to do it is to inspect the ground before you start doing any work. You do the best you can to look around. Honeysuckle is very thick. You could look and see, but I, there were some openings. Every place I could go, I preflighted it. You want to know where there's boulders and dangerous things that could damage the machine, so I basically crossed and traversed that area, 100 by 250

feet, before I started doing the work. That's one of the things you do when the machine's warming up.

CHAIRMAN ROISMAN: Anybody else, Ms. Dingledine, Ms. Aceves, before Mr. Melone has a chance for redirect?

ATTORNEY DINGLEDINE: Yes, Your Honor. I'd like to ask some questions. It's Brooke Dingledine.

CHAIRMAN ROISMAN: All right, Ms. Dingledine. I see we're at 11:08. We had hoped to take a break at 11:00. Will this -- if you think you're going to take more than a couple of minutes, maybe we should take our break now. If not, you can go ahead and finish asking your questions.

ATTORNEY DINGLEDINE: I'm, it's not going to be terribly lengthy, but I would really appreciate a break right now myself.

CHAIRMAN ROISMAN: Okay, all right. Good, all right. So it's, it's 11:08, and we'll break until 11:20, and we'll come back then.

(A recess was taken from 11:08 a.m. to 11:20 a.m.)

CHAIRMAN ROISMAN: Okay. Everybody back? Mr. Kobelia, I see you've hydrated. That's good. Okay. Just before we go to you, Ms. Dingledine, we, during the break, we talked a little bit about scheduling, and it, it looks as like, as we thought,

that, because we're remote, it's going a little longer than anybody had anticipated. Would anybody have a problem, and I'm particularly directing this to the court reporter, if we cut the lunch time down to 45 minutes instead of an hour? Please speak up if that's a problem for anybody, including the court reporter.

THE REPORTER: This is the court reporter, and that is certainly fine with me.

CHAIRMAN ROISMAN: Okay, all right. We don't want to keep you from getting the break we know you need, but if 45 minutes works, when we break for lunch around 12:30, we will break for just 45 minutes. Ms. Dingledine, it's your -- you're up.

RECROSS-EXAMINATION BY ATTORNEY DINGLEDINE

Q. Thank you, Your Honor. Mr. Kobelia, could you look at your phone and tell us the time that the text was sent to you by Mr. Little on June 27th?

A. It was right about the, within a few seconds of the police, so it must have been 1:00-ish.

Q. That he actually sent the message to you?

A. I, I, as I said, I was eating lunch. I looked at my phone, and it was roughly 1:00 o'clock that I was eating and I looked at the phone. The text may have come sooner than that. It's just that's when I read it, so --

Q. All right. Could you please look at your phone and tell us the time that the text message was sent to you by Mr. Little?
A. I could do that, but we're going way back in time, June. I've had lots of correspondence with him in the meantime on multiple other topics, so I have no idea how long it would take me to find that text message.
CHAIRMAN ROISMAN: Ms. Dingledine, would it be acceptable if Mr. Kobelia provides that information either through his testimony or provides it to Mr. Melone and he shares it with us? Would the answer to the question trigger some further questions from you, or is it just that you're interested in knowing that particular time?
ATTORNEY DINGLEDINE: I'm interested in knowing that particular time and the specific content of what he was told, so I would appreciate production of screenshots of the, of any texts or emails during that time period between the 26th and the 27th in terms of communication with Mr. Kobelia by his employers.
CHAIRMAN ROISMAN: Mr. Melone, are you agreeable to providing what Ms. Dingledine has asked for, which is a screenshot of any communications that Mr. Kobelia received between the time that he stopped being part of our TRO hearing and the time that he

stopped doing work at the site?

ATTORNEY MELONE: I have no objection.

CHAIRMAN ROISMAN: Okay. Do you think that's something that you could provide either later today or certainly by Monday morning?

MR. KOBELIA: Yes. Tomorrow is muzzleloader opening day and a lot of sitting, so I can go through my Smartphone while I'm on my deer watch.

CHAIRMAN ROISMAN: Okay, all right. That, that sounds like a good plan. All right. Go ahead, Ms. Dingledine, with any other questions for Mr. Kobelia.

ATTORNEY DINGLEDINE: Yes, and I wanted to be able to share the Melone map of site work performed, so can I get permission to share?

CHAIRMAN ROISMAN: Yes, we can make you the presenter. You're now the presenter, Ms. Dingledine. That was a nice picture.

ATTORNEY DINGLEDINE: Picked the wrong one. Sorry.

CHAIRMAN ROISMAN: I like the other picture really well. All right. And, Ms. Dingledine, for the record, please identify it by its exhibit number. I believe it's RK-2. Is that correct, Mr. Melone?

ATTORNEY MELONE: Yes, that's correct, Mr.

Chairman.
BY ATTORNEY DINGLEDINE:
Q. Okay. RK-2 by the petitioner. Mr. Kobelia, I wanted you to look at RK-2, if you would, and describe for us, this perimeter area that's slashed, when was that clearing done datewise, around this whole perimeter area that you have marked out?
A. Yeah. You're looking at a couple-of-week timeframe from when I was contracted to do that project until all of the silt fence was installed, and imagine that perimeter boundary as being a fire break, the trail that I made. There's always been one on this piece of agricultural land. It's just that the old apple trees long since had overtopped with forest. So that represents all of that perimeter, which would be property benefiting by having silt fence installed along the boundary line. It's the lowest points.
Q. So, in terms of this, you basically created a corridor around the property by clearing how wide a strip, exactly?
A. The bulldozer blade is a little more than eight feet. I believe it's eight feet, eight inches. So I've used a number called ten feet, and there's, to access that for, as I indicated in my testimony, we had an ATV with a little utility trailer in it, and we

towed the, the three-foot-high silt fence, which has stakes. They weigh quite a bit. And the total perimeter distance was 3,500 feet or thereabouts. So it's a lot of rolls of that. So, by having it short-hauled to the wherever we were installing it, it was helpful. But the dozer was used to make a level trail so you wouldn't flip the four-wheeler.

Q. Okay. So it's fair to say then that the clearing activity that you were engaged in on the site preceded the hearing by several weeks; is that right?

A. Oh, easily, yeah. All of that, including some of the work in the hatched area that's the 100-by-250, all of that had been completed long before the hearing, and, and, in fact, it was a good week before, as I had scheduled some planned maintenance on the bulldozer. So the dozer wasn't even available until the repair work was done.

Q. Have you also been hired to clear the property up on Lot 1 that's north where the old apple orchard is?

A. Yes, ma'am.

ATTORNEY DINGLEDINE: Okay. Thank you very much. That's all I have. Thank you, Your Honor.

MR. KOBELIA: You're welcome.

CHAIRMAN ROISMAN: Mr. Landis-Marinello, did you have a question or two?

MR. LANDIS-MARINELLO: I, I think that last question might have clarified it. Mr. Kobelia, the, the two exhibits, RK-1 has this 5.7 acre Lot 1 or orchard lot or horticultural use area marked for clearing, and RK-2 does not have that marked for clearing, but it sounds like the plan is still to clear the entirety of that 5.7 acres.

MR. KOBELIA: Is that a question of me?

MR. LANDIS-MARINELLO: Yes. Yeah. Can you just clarify?

MR. KOBELIA: My understanding is that the apples trees, and, upon inspection, I tried to pick some apples at the beautiful time of harvest, and they were a pathetic bunch of apples. They, there's -- the deer would have had a hard time finding apples to eat. So those trees are way past good use, filled full of other brush because of lack of maintenance, so --

ATTORNEY DINGLEDINE: Objection, Your Honor. This is irrelevant testimony, nonresponsive to the question.

CHAIRMAN ROISMAN: Mr. Kobelia, just, if you would, just answer Mr. Landis-Marinello's question.

MR. KOBELIA: Yes, sir. My understanding is is that that would be cleared.

MR. LANDIS-MARINELLO: All right. Thanks.

MR. KOBELIA: Sure.

CHAIRMAN ROISMAN: Okay. Unless anybody else has a question based upon the answers given to the last cross, we're ready, Mr. Melone, for any redirect testimony you have for Mr. Kobelia.

ATTORNEY MELONE: Thank you, Mr. Chairman.

REDIRECT EXAMINATION BY ATTORNEY MELONE

Q. Bob, just two simple or two short questions. So you just said that the 100-by-250 clearing area, which we've identified on the exhibit, most of that was cleared before the hearing on the 26th; is that correct?

A. That is correct. I purposefully left those six-inch dead ash until a day when I had the bulldozer working perfectly, and that was the morning I was there working on those.

Q. Okay. So that's the, those are the only things that you actually cleared from the area on Saturday, June 27th; is that correct?

A. That is, that is correct. And I wasn't looking to excavate. That would be a further job. First, we took the little stuff when I first started. Then we took a few of these bigger trees. To get rid of all of the stumps, it would require a further use of an excavator that just would do it so quickly and then a final

back-grading to be able to use it for agricultural use. So we were in step two.

Q. Okay, great. And you had said that you looked up what the white arrowleaf aster looked like, correct, so you'd be able to identify it if you saw it?

A. That is correct.

Q. And you also said that you did a what you called a preflight, which is a walk-through or a walk inspection of the entire 100-by-250-foot area; is that correct?

ATTORNEY DINGLEDINE: Objection, Your Honor. These are leading questions, and this is the proponent's witness. They should not be suggesting the answer to him on a yes-or-no basis.

CHAIRMAN ROISMAN: Ms. Dingledine, we've usually been pretty generous about leading questions, but, Mr. Melone, if you can do a little less leading, that would be helpful.

BY ATTORNEY MELONE:

Q. Okay. So, Bob, did you do a, an inspection of the 100-to-250-foot area before you cleared it?

A. I did.

Q. And did you see any white arrowleaf asters when you did that inspection?

A. I did not find any.

ATTORNEY MELONE: No further questions, Mr.

Chairman.

CHAIRMAN ROISMAN: I have just one question to clarify. Mr. Kobelia, in your response just now to Mr. Melone, you seemed to indicate that the only work that you did on the 100-by-250-foot area starting Saturday morning of the Saturday following the TRO hearing was to take down some ash trees that were on the property, not to do any other work. Is that correct? Did I understand your answer correctly?

MR. KOBELIA: Not exactly. Let me clarify what I did that morning. When I first started a couple of weeks earlier, I had penetrated the area with the bulldozer and just left the debris, say, for example, a honeysuckle bush that might be ten feet high, big root ball on the bottom. I just pushed those off out of my way. So that material, according to my charge, would have been perfect material to come back and chip and use for biomass for these berms that were part of my charge to build.

So that's material that I just pushed off to the side, approximately 100 feet. At the end of that 100 feet, there's a natural drop-off, and that's where I pushed all of that biomass. So the big stuff standing, yes, they were the smaller ash and trees of that nature, but the brush, the honeysuckle and autumn

olive, those invasives, I had also pushed, and I needed to get those out of the way too.

CHAIRMAN ROISMAN: All right. I'm sorry, Mr. Kobelia, but I'm not sure that I got an answer to my question, and I'm interested here now in a time period.

MR. KOBELIA: Yes.

CHAIRMAN ROISMAN: What, what work did you actually do on Saturday morning before you got the stop order from the sheriff and the message from Mr. Little?

MR. KOBELIA: I didn't want to give the impression that, when I arrived in the morning, this 100-by-250 was only 6-inch trees. I had already moved out the brush into, just, just pushed them out. I hadn't pushed it back. So that's what my purpose was was to clear the site so you could pull in there with a pickup truck and turn around. So, until that time that Saturday morning, you could not do that. So I pushed the debris that had been exhumed a couple of weeks earlier out of the way, plus the new 6-inch trees.

CHAIRMAN ROISMAN: Okay, all right. That, I just wanted to make sure I understood that. And when did you do this site examination? Did you do it on Saturday morning, or had you done it several weeks before, before you did the major bulldozing activity on the 100-to-250-foot square, rectangle?

MR. KOBELIA: Well, that's a very good question. I actually did it a couple of times. Sometimes, when the, when I first got on site, I intentionally looked, as I was the one that took charge and put the flagging up heavily before we did the silt fence. So I had plenty of field time on this property to examine the entirety. I traversed most of the land in my activities. So that would have been -- some of it even happened the day that I was there. I just quick looked around, because there had been some disturbance, and perhaps you might see something better after some of the honeysuckle was gone, but I didn't, I didn't detect any. So it was more than one time that I actually looked at the area.

CHAIRMAN ROISMAN: All right. Thank you. If no one else has any questions in light of any of the last questions and answers that were given by Mr. Kobelia, we can discharge Mr. Kobelia as a witness. Anybody else have any questions? Mr. Kobelia, thank you very much.

MR. KOBELIA: Thank you very much. You folks have a nice day.

CHAIRMAN ROISMAN: Thank you. Mr. Melone?

ATTORNEY MELONE: Thank you, Mr. Chairman. Jim McClammer, are you there? I see you, Jim.

MR. MCCLAMMER: I'm here, and I guess I can see myself and hear myself, so hopefully you can hear me and see me as well.

ATTORNEY MELONE: We can. Yes, we can.

COMMISSIONER CHENEY: We can. Good morning, Mr. McClammer. I'm going to swear you in.

JIM McCLAMMER,

duly sworn to tell the truth, testifies as follows:

DIRECT EXAMINATION BY ATTORNEY MELONE

Q. Thank you, Jim. Can you affirm that the testimony that was submitted under your name yesterday with three exhibits, Exhibit AH-JM-1, 2, and 3, is true and accurate?

A. Yes. That was prepared by me, and it is accurate.

ATTORNEY MELONE: Thank you. Mr. Chairman, the Witness is available for cross-examination.

CHAIRMAN ROISMAN: Okay. Mr. Einhorn?

CROSS-EXAMINATION BY ATTORNEY EINHORN

Q. Thank you. Hello, Mr. McClammer. It's been a while. Nice to see you again.

A. Yeah, thank you. Good to see you.

Q. Did you, were you present and, and listening and able to hear Mr. Kobelia's testimony just a few minutes ago?

A. Yes, I had. I've been following the proceedings

since they opened.
Q. You're familiar with the white arrowleaf aster, correct?
A. Very much so.
Q. Yeah. Would you agree with me that the white arrowleaf aster, as it occurs in Vermont, is not easily identifiable at the species level until it flowers?
A. That's an accurate statement.
Q. And when does that species flower in Vermont, typically?
A. Later in September.
Q. And that's what you experienced at your visits to the Warner solar project, which is not very far from the site that we're talking about today, correct?
A. That's absolutely correct, and that's only about 3,000 feet away, and I would also add I've seen it on the Apple Hill project site and the Stark project site as well.
Q. And okay, thank you. Your March 22nd visit to the Apple Hill site which occurred this year, was that visit before or after the flagging was removed from the nimblewill along the old logging road otherwise referred to by apple, by Arrowwood as the Nimblewill Sites A and B?
A. I, I'm going to be rather frank about my purpose

of my visit was actually to identify whether or not there were any wetlands on or in the vicinity of the project, but I did, out of curiosity, walk across the site, and I observed the conservation areas that have been referred to in the previous testimony that were surrounded by orange silt fence. I also noticed a couple of areas on the site that had flagging around it, but I didn't pay particular attention to what may have been there.

ATTORNEY EINHORN: Okay, thank you. Let me see. Would I be able to share my screen, please?

CHAIRMAN ROISMAN: Yes, you can be made the presenter. You're now presenter, Mr. Einhorn.

ATTORNEY EINHORN: Okay, thank you. Let's see if I get it right. Can everyone see my screen there?

CHAIRMAN ROISMAN: Yes.

MR. McCLAMMER: I can.

(The prefiled testimony of Mr. McClammer was shown to the Witness.)

https://epsb.vermont.gov/?q=downloadfile/441570/150086

BY ATTORNEY EINHORN:
Q. Okay, great. Thank you. So, in, in the testimony that you filed in this matter yesterday, you make reference to an MOU between the Agency and the Apple Hill project developer; do you remember that?
A. Yes.
Q. And I think it's on Page 4 on Line 12. You identify it as the June 29, 2015 MOU, and then you talk about, further down on Line 16, that the conditions have been complied with. Do you see that?
A. Yes.
Q. Are, are you aware that the 2015 MOU that you reference has been superseded?
A. No.
Q. Okay. Let me see. Okay. Can you see my screen now?
A. Yes.
Q. Okay. For the record, what I'm showing Mr. McClammer is a Memorandum of Understanding dated February 22, 2018 from the Apple Hill project Case 8454. We can call that, I guess, for purposes here is as ANR-Cross-1.
(Exhibit ANR-Cross-1 was shown to the Witness.)

A. Okay.
Q. If we scroll down, Mr. McClammer, I have Page 2, Paragraph 2. Do you see that?
A. Yes.
Q. Could you read that into the record for me, please, the entire Paragraph 2? It's only four lines
A. Sure. "The parties agree that the 2015 MOU, which was entered as Exhibit AHS-MOU-ANR on August 18, 2015 in this docket, is hereby withdrawn. The terms and conditions of the 2015 MOU are superseded by the terms and conditions of this MOU. The parties agree that the 2015 MOU is no further, is of no further force or effect and the Commission should not consider or rely on it."
Q. Okay, thank you. Now, in your testimony that we just talked about, you had that line, I think it was, 16 that said that all MOU conditions have been complied with. I take it you were referring to the 2015 MOU when, in that statement, correct?
A. I believe that's correct, yes.
Q. Okay. I'd like to show you a different paragraph in ANR-Cross-1, which is the 2018 MOU. Okay. This is Paragraph Number 15 on Page 10 of ANR-Cross-1, and could you read that paragraph into the record for me, please?

A. Paragraph 15?
Q. Yes. Thank you.
A. It says, "Petitioner shall perform an updated RTE plant survey if project site preparation or construction does not commence by April 30th 2019. In that case, site preparation or construction shall not take place until the Vermont Fish and Wildlife Department has reviewed the updated RTE plant survey and determined that there are no undue adverse impacts to RTE plants or approved appropriate avoidance or mitigation measures."
Q. Okay. Thank you. Now, you said, when you were at the Apple Hill site in March, the purpose was more to look for wetlands, not to do an RTE plant survey, correct?
A. That's correct.
Q. And --
A. Not a good time of the year to find RTE plants.
Q. Yeah. I'm sorry, and I interrupted you. I was just going to ask you, You wouldn't look for them at that time of the year, anyway?
A. We're on the same page, yes.
Q. Okay. And, in between March and the time Mr. Kobelia started clearing the site in June, did you revisit the site to look for RTE plants?

A. I did not.
Q. To your knowledge, did anyone?
A. Not to my knowledge.
Q. Okay. I'll take you back to your testimony, and we're, now we're on Page 4 still, and on Line 18 and 19 you say that all of the aster plants -- and you're referring to the white arrowleaf aster here, correct --
A. Correct.
Q. -- within the area of the proposed solar facility were transplanted.
CHAIRMAN ROISMAN: Excuse me, Mr. Einhorn.
ATTORNEY EINHORN: Yes.
CHAIRMAN ROISMAN: That appears to be Page 3 of Mr. McClammer's testimony. I just want to make sure that we're looking at the same thing. It may be the way my computer printed it.
ATTORNEY EINHORN: No. I'm, I'm sorry. My fault. It's, it's Page 3, but it's .pdf Page 4.
CHAIRMAN ROISMAN: Okay, all right.
ATTORNEY EINHORN: My apologies.
CHAIRMAN ROISMAN: All right. Go ahead. I'm sorry.
BY ATTORNEY EINHORN:
Q. That's okay. And, and, and so, just so I understand, Mr. McClammer is saying that all of the

aster plants within the proposed solar facility were transplanted to the conservation areas by the end of 2018. Would you agree with me, Mr. McClammer, that not, that other asters existed after the end of 2018 on the Apple Hill site, the 27-acre site, in areas other than the area of the proposed solar facility footprint or the three RTE plant areas?

A. Could you repeat that, Mr. Einhorn, the last part of that question?

Q. Sure. I'm sorry. Maybe I can approach it from another angle that might make more sense. If we accept what you have said here as true, would you agree with me that asters existed in other areas within that 27-acre Apple Hill parcel, excluding the RTE conservation areas, that were not transplanted?

A. I think I, I'd agree with that statement and to paraphrase it or rephrase it, I would say there were asters outside the proposed solar project area and that were not within the conservation areas, not transplanted, that were still there.

Q. Okay. Yeah, great. And we were, just a little while ago with Mr. Kobelia, looking at his Exhibit RK-2 that showed the areas where he has cleared so far, and now I have that on the screen, and, just to orient you, the area in the southeast corner of the Apple Hill

parcel is one of the rare plant conservation areas, correct?

(Exhibit AH-RK-2 was shown to the Witness.)

https://epsb.vermont.gov/?q=downloadfile/441501/150086

A. Correct.

Q. And just contiguous with that and to the west of it is the area that he was talking about as the 100-foot-by-250-foot area that he cleared, which sounds like to me both prior to, and then he did some work after the hearing in, in June. Is that your understanding of what that is there?

A. That's correct.

Q. Yeah. So that area has been cleared. I'm going to show you. This is ANR Exhibit 14 to Mr. Popp's testimony, and this is a report from Arrowwood Environmental. It is the 2019 monitoring report for the Apple Hill site, and I'm showing you Figure 1 on Page 3 of that report. Do you see that?

(Exhibit ANR-14 was shown to the Witness.)

https://epsb.vermont.gov/?q=downloadfile/440866/150086

A. Yes, sir.
Q. And do you see the red outline, RTE conservation area?
A. Yes.
Q. And just contiguous to that area and to the west of it are three polygons. Do you see those blue polygons?
A. Yes.
Q. And I'll scroll down a little bit more. Those signify the presence of white arrowleaf asters, correct?
A. That's correct.
Q. And those were not transplanted, correct?
A. That's correct.
Q. And those are in the area that was, that was described by Mr. Kobelia and is shown on his Exhibit RK-2 as an area that has been cleared at this time, correct?
A. That's accurate. That's correct.
Q. Let me take you back to your testimony, and we'll go, and I'm going to try to get the page numbering right this time, which should put us on, I think, Page 5. Okay, yes. Page 5, Question and Answer 7, it talks about the --
CHAIRMAN ROISMAN: Mr. Einhorn, I believe

that's Page 6.

ATTORNEY EINHORN: I'm sorry. Yes. See, I went -- yeah. Struggling with the .pdf versus pagination. Thank you for correcting me.

BY ATTORNEY EINHORN:

Q. So Question and Answer 7 on Lines 15 through 17, you make a statement that, "The aster is not very rare on or near the Warner project site, nor in the Bennington area, where it is known from three localities". Do you see that statement?

A. Yes.

Q. You, you would agree with me that the classification and ranking of plants as to their rarity in Vermont is based on the number of known populations in the state, not the number of plants at a particular population, correct?

A. Generally correct. I, you know, it becomes then -- I literally have to parse the words as, What do you mean by population? And, if you look closely at my testimony, these are occurrences, and, in my mind and based upon sort of the biological interpretations of populations, the plants that are here on the Apple Hill site are part of the same population that occur, occurs on the Warner and, you know, Stark projects --

Q. So --

A. -- on the fact of, you know, it's the known occurrences as opposed to populations.
Q. Okay. Let's explore that a little bit. I don't want to speak for Mr. Popp, but I believe his position and the Agency's position are these are two different populations, and there's one other known, two different, meaning the Warner site and the Apple Hill site, and there's another known population, I think, just near Bennington in Pownal, which gives us three known in the state.

If we agree with you and say the Warner and Apple Hill occurrences are, in fact, one population or occurrence, if we want to use the word, that would effectively mean that there are only two known occurrences or populations in Vermont, would it not?
A. I think that would be accurate, yes.
Q. And, again, the state ranking is --
A. Just a caveat there. I'm sorry, Mr. Einhorn, but I just want to say that I don't honestly know the Pownal population or occurrence, whether or not there actually have been identified accurately as the white arrowleaf aster.
Q. Okay. And I appreciate that, and let's just, for hypothetical, let's say that they are and they have been.

A. Sure.
Q. That would leave us with two populations or occurrences in, in the state that we know of, and that is, in fact --
A. Two populations, yes.
Q. -- and that is, in fact, what the ranking is based on, not the number of individuals at a given occurrence per population, correct?
A. That's correct.
Q. Okay. Let's scroll down a little bit more. I'm going to really try hard to get this one right. So Page 7, Question and Answer 8, this is kind of what we just talked about, the known populations or occurrences. You say the use of five or fewer locations is arbitrary.

Do you agree that this methodology that the Agency uses for classifying the plants is based on the Heritage methodology?
A. I would say that that's generally correct, yes.
Q. And, and the Heritage methodology, which is coordinated throughout the US as well as, I believe, parts of Canada and Central America, by, by nature, sir, is used by Heritage programs throughout the country; is that correct?
A. That's correct.

Q. Would you also agree with me that the white arrowleaf aster is considered by Flora Conservanda as being rare in the New England states?
A. I can't specifically state that I know that.
Q. Are you aware of any occurrences or populations of white arrowleaf aster anywhere in New England other than Vermont?
A. I am not, with the caveat that I really haven't searched for them either.
Q. I understand. I appreciate that. Would you agree with me that the white arrowleaf aster is part of Vermont's natural environment?
A. That is a question I have to be clear in answering. It's, in my mind, it's part of the natural environment, but it is probably not as part of the natural environment as the 248 section classifies the natural environment. I mean, in my mind the natural environment would include the coronavirus, but I don't think that under 248 you want to include coronavirus under 248 criteria.
Q. Yeah. No. I understand. I appreciate that, and I wasn't asking you in the sense of is it, is it a legal definition or does it meet a definition of the statute, but more that it's a, it's a species that is occurring naturally in Vermont?

A. Yeah. I mean, you, doing NEPA work -- that's Environmental Policy Act stuff -- it's certainly a component of the natural environment and not so much a component of the human environment.
Q. Right. Like some introduced horticultural species perhaps would be? Did I -- I'm sorry. I didn't hear your response.
A. Pardon?
Q. I'm sorry. I didn't hear your response.
A. Oh, my response? Yeah, maybe I wasn't clear on what your question was.
Q. Oh, I'm sorry.
A. Can you repeat it?
Q. Yeah. I said, as you said, that it would be -- you referred to your NEPA work and it would be considered as part of the natural environment, and I said I guess my question would be, you know, as opposed to, say, some exotic horticulturally introduced species would not be considered a part of the natural environment?
A. My own opinion, I think horticultural varieties or whatever else are also part of our natural environment and how I conceive the definition of the natural environment outside of the Section 248.
Q. Okay. Would the nimblewill plant that exists at

the Apple Hill site also be considered part of the natural environment of Vermont?
A. Again, in a broad sense, I consider the nimblewill plant to be part of the natural environment in Vermont and elsewhere.
ATTORNEY EINHORN: Thank you, Mr. McClammer. I don't have any further questions.
CHAIRMAN ROISMAN: Mr. Einhorn, do you want to introduce Cross-1 as an exhibit in the case or not?
ATTORNEY EINHORN: I, I don't need to. I mean, Mr. McClammer read, read that into the record, but, you know, let's, let's why not? Let's, let's do it. I mean, it came out of one of the proceedings. So let's move it in, sure.
CHAIRMAN ROISMAN: Okay. Just identify it for the record and by name, and then it will be Cross Exhibit 1, and then we'll see if anyone objects to it.
ATTORNEY EINHORN: Okay. I need to find it. Here it is. It is the, it is the First Amended Memorandum of Understanding between Apple Hill Solar and the Agency dated February 22nd 2018 from Case 8454.
CHAIRMAN ROISMAN: Okay, all right. Does anyone object to the admission of this exhibit? Mr. Melone?
ATTORNEY MELONE: No objection, Mr. Chairman.

CHAIRMAN ROISMAN: Ms. Dingledine?
ATTORNEY DINGLEDINE: No objection.
CHAIRMAN ROISMAN: Ms. Aceves?
ATTORNEY ACEVES: No objection.
CHAIRMAN ROISMAN: Very well, it will be admitted. Thank you, Mr. Einhorn.
ATTORNEY EINHORN: Thank you. I guess I don't need to share anymore. I think I know how to do this. Okay.
CHAIRMAN ROISMAN: Good. All right. Ms. Dingledine, do you have any questions for Mr. McClammer?
ATTORNEY DINGLEDINE: No, thank you, Your Honor.
CHAIRMAN ROISMAN: Okay. Ms. Aceves, do you have any questions for Mr. McClammer?
ATTORNEY ACEVES: I do not. Thank you.
CHAIRMAN ROISMAN: Okay. Commissioner Hofmann, did you have any questions for Mr. McClammer?
COMMISSIONER HOFMANN: I don't. Thank you.
CHAIRMAN ROISMAN: Commissioner Cheney, do you have any questions for Mr. McClammer?
COMMISSIONER CHENEY: No, I don't. Thank you.
CHAIRMAN ROISMAN: Mr. Landis-Marinello, did

you have any questions for Mr. McClammer?

MR. LANDIS-MARINELLO: I just had one, and I think Attorney Einhorn asked similar questions, but, in terms of ANR's classification of RTE, do you view that system as rational?

MR. McCLAMMER: Could you, Mr. Landis, could you repeat that, please, so I can make sure I understand it?

MR. LANDIS-MARINELLO: Do you think that ANR's classification system for RTE is rational?

MR. McCLAMMER: I pause on the word "rational". It's pragmatic. It serves some purpose. But is it definitive in determining whether or not a species may have very limited distribution? That, I wouldn't agree with. So I'm not sure if that answers your question or not. You could maybe ask it in a different manner. Yeah.

MR. LANDIS-MARINELLO: Yeah. I'll ask the reverse. Would you call that system irrational?

MR. McCLAMMER: No, I wouldn't call it irrational. It certainly is, it's a technique that's been applied to try to get a handle on distribution of certain species or taxa. It's not always just species.

MR. LANDIS-MARINELLO: Okay, thanks.

CHAIRMAN ROISMAN: Okay. Anybody have any

questions based on the answer that Mr. Landis-Marinello just heard from Mr. McClammer? Okay. Mr. Melone, do you have any redirect for Mr. McClammer?

ATTORNEY MELONE: Yes, Mr. Chairman, just a couple of questions.

REDIRECT EXAMINATION BY ATTORNEY MELONE

Q. So, Mr. McClammer, Attorney Einhorn asked you about the identification or the ability to identify the aster at the species level, say, outside of the flowering period. So, to an ordinary observer, not a botanist, who would have familiarized themselves with what asters look like, before it flowered would it just potentially look like another aster, they just couldn't identify what type of aster it is?

A. Mr. Melone, you're breaking up a little bit, and so I would ask you to repeat it so I can give you an accurate response.

Q. Okay. So, when someone tries to identify the aster, we know that the exact type of aster cannot be identified until it flowers, correct?

A. Yes, that's an accurate statement.

Q. So what would -- before it flowers, would it look like some other type asters?

A. Yes, it could be confused with several other aster species.

Q. So, if someone like Mr. Kobelia familiarized himself with what asters look like, he would still be able to identify what an aster is, he just couldn't tell whether it was this particular aster; is that correct?

ATTORNEY EINHORN: Object to the form.

ATTORNEY DINGLEDINE: Objection, objection.

ATTORNEY EINHORN: I mean, it's so hypothetical. Mr. Kobelia testified in June that he knows what trees look like, but he doesn't know what herbaceous plants look like, and, just because he looked at a photo of an aster, which probably was in flower, I, I just don't -- he's not a person that's qualified to be looking for this species on any site for that matter, let alone the one he's clearing, and I don't think we need to spend much time exploring this, because I don't -- you know, I could get into a whole bunch of recross and stuff, and I don't think we need to go there.

CHAIRMAN ROISMAN: Ms. Dingledine?

ATTORNEY DINGLEDINE: Yeah, I would also object. I don't think that the Witness is competent to testify as to the matters that he's been asked about. He does not have any factual basis, and there has been no establishment of any basis to admit this kind of

evidence from this particular witness about another witness.

CHAIRMAN ROISMAN: Mr. Melone, what's your response?

ATTORNEY MELONE: Well, Attorney Einhorn had raised the issue, because we just heard Bob Kobelia say that he familiarized himself with the asters, that he went out and looked around the entire site, actually, not only in the cleared area, for asters outside the conservation area and didn't hear any, and, but Attorney Einhorn then asked Mr. McClammer here to confirm that you couldn't identify it at the species level until it flowers which, which is, to me, a lead-in to say that, well, no one -- when Bob Kobelia did his inspection, it wasn't in September. But my point is is that these asters, while you can't identify a white arrowleaf aster before it flowers, you can identify asters in general, and --

CHAIRMAN ROISMAN: All right. And, and, Mr. Melone, I think, I don't think that the objection would go to your asking that question of Mr. McClammer. I think the focus of the objection was asking Mr. McClammer to offer an opinion as to Mr. Kobelia's capability. If you want to reframe the question to ask Mr. McClammer what you just said, which is, Would a

person be able to identify an aster plant, if not this particular species, during a period when they weren't flowering, I don't think that Mr. Einhorn or Ms. Dingledine would object to your asking him that question.

ATTORNEY MELONE: Sure, I can rephrase it that way.

BY ATTORNEY MELONE:

Q. So, Mr. McClammer, would it be possible for an ordinary person, nonbotanist, who familiarized themselves with what asters look like to identify an aster before the flowering period?

A. Well, I'd give sort of a technical answer to that question. When we use the word "aster", it's a vernacular term for what can be applied to several different genera of aster, you know, aster-like, like plants, and so there are several genera that look very similar and are very difficult to even distinguish one genus from another without having flowering material.

But, once you have the flowering material and you become acquainted with those genera and species in a certain area, you could probably, you know, distinguish them based upon morphological characteristics of the leaves, particularly, but it's not easy, unless you have some prior experience in being able to look at the

technical characters so you know whether or not that particular genus and species may be in that area. It sounds like an oblique answer, but I wanted to be as precise as I can.

Q. Thank you for that.

A. If it goes to Mr. Kobelia, I might add I was impressed by his testimony and his knowledge of plants and biology out there, but --

ATTORNEY DINGLEDINE: Objection, Your Honor. This is nonresponsive. The Witness has not been asked such a question, and I move to strike the testimony.

CHAIRMAN ROISMAN: Mr. McClammer, just wait for Mr. Melone to ask you a particular question.

MR. McCLAMMER: Yes, Mr. Chairman.

CHAIRMAN ROISMAN: All right, thank you. Mr. Melone.

BY ATTORNEY MELONE:

Q. So, Mr. McClammer, before the white arrowleaf aster plant would flower in September, what would it look like in, in June?

A. Based upon my experience with that species, it would be still rather diminutive. It may well be obscured by foliage of other plants, such as the buckthorn or the honeysuckle on a site, and it would be hard to even find it, as, not only my previous

testimony has alluded to, but from my experience of trying to find this species on these other solar sites that I've actually looked at, and it's also Arrowwood's experience that, indeed, in their reports they assert that, you know, hey, once the leaves fall on things such a honeysuckle, they're able to see it. So the bottom line is it's difficult to find and identify this species.

Q. Okay. Next question, you went over with Attorney Einhorn the 2015 MOU and 2018 MOU. If the provisions of the 2018 MOU relating to conservation of the RTE plants on the site are identical to those in the 2015 MOU, would your testimony still stand that the conditions of the MOU have been satisfied?

A. The problem is I don't know what the conditions in the amended or super, or the most recent MOU are, but that's, I guess, is my answer to that. If I was more familiar with the more recent MOU, I could answer it more accurately.

Q. Right. Well, I'd like to save everybody the trouble of you reading the 2018 MOU to discover only that the provisions are, in fact, identical. So my question is, If the 2018 provisions on conservation of the RTE are identical to those in the 2015 MOU, would your testimony still stand that, that those provisions

were satisfied?
A. Absolutely.
Q. Okay. And Attorney Einhorn directed your attention to one section in the 2018 MOU that related to a resurvey for RTE that states, if clearing or if site preparation hasn't started by April 30th 2019, then a resurvey would need to be done, but, in fact, if site preparation, if, for example, Mr. Kobelia had, when Apple Hill Solar did have a CPG, started clearing before that date, then is it your opinion that no resurvey would be needed?
A. That's an accurate interpretation of the 2018 MOU.
ATTORNEY MELONE: No further questions, Mr. Chairman.
CHAIRMAN ROISMAN: Anybody have any additional cross in response to the answers to the redirect? Ms. Dingledine?
ATTORNEY DINGLEDINE: Mr. Roisman, I could not make out the last question and answer. There was some disruption that I was hearing with Mr. Melone. So I'm not quite sure that I understood the last question and answer.
CHAIRMAN ROISMAN: All right. Can the court reporter read back the last question and answer, please?

(Question and answer read by the reporter.)

CHAIRMAN ROISMAN: Thank you. Ms. Dingledine? Okay, all right. Well, Mr. McClammer, I think you can be excused at this point. Thank you for your testimony.

MR. McCLAMMER: Thank you, Mr. Chairman.

CHAIRMAN ROISMAN: Mr. Melone, who is next?

ATTORNEY MELONE: I guess it's me. I'm next.

COMMISSIONER CHENEY: All right. Then I'll start by swearing you in as a witness, Mr. Melone.

THOMAS MELONE,

duly sworn to tell the truth, testifies as follows:

CHAIRMAN ROISMAN: All right. And, Mr. Melone, you are going -- you could find it an awkward position that's, technically, you are not only the witness, but the lawyer questioning the witness. We'll see how that works out if the problem arises. For the moment, we'll just simply let you verify if your prefiled direct testimony is still true and accurate to the best of your personal knowledge, if that is true.

ATTORNEY MELONE: Yes, the, the testimony I submitted on December 3rd in this docket, plus the two exhibits, is true and correct and accurate as of today.

CHAIRMAN ROISMAN: All right, okay. Mr. Einhorn, do you have any questions for Mr. Melone?

ATTORNEY EINHORN: I do not. Thank you.

CHAIRMAN ROISMAN: Okay. Ms. Dingledine, do you have questions for Mr. Melone?

ATTORNEY DINGLEDINE: Thank you.

CHAIRMAN ROISMAN: Ms. Dingledine, before I start, we're almost at when we were going take a lunch break, and the question is, Do you think that it would take more than ten minutes to examine Mr. Melone? If so, we might decide to take our lunch break now, rather than break up your cross.

ATTORNEY DINGLEDINE: Yes, I think I am going to be more than ten minutes.

CHAIRMAN ROISMAN: Okay. Well, let's adjourn now at 12:21, and we will reconvene again at 1:06, unless I screwed up my math. Okay. See everybody at 1:06. Have a good lunch.

(A recess was taken from 12:21 p.m. to 1:06 p.m.)

CHAIRMAN ROISMAN: Okay. I think we're all back. Ms. Dingledine, I believe we were ready for you to cross-examine Mr. Melone. Mr. Melone, remember you're still under oath.

ATTORNEY MELONE: Thank you, Mr. Chairman.

CROSS-EXAMINATION BY ATTORNEY DINGLEDINE

Q. Thank you, Your Honor. Good morning, Mr. Melone, or I guess it's afternoon, Mr. Melone.

A. Good afternoon.
Q. Who is the petitioner in the Chelsea Solar project proposal?
A. The petitioner in Docket 8302 and 17-5024 is Chelsea Solar, LLC.
Q. Is that the only party in interest, from your perspective, that has any rights or obligations under that proposed application for a petition?
A. I'm sorry. Can you --
Q. Is Chelsea Solar the only entity that has any interest, position, or standing with regard to the petition for the present Chelsea Solar project proposal?
A. It's the only party in those dockets that's made an appearance, as I recall.
Q. What's, well, what about the landowner?
A. The landowner, I don't think the landowner has made an appearance in that docket.
Q. Okay. So in the, in the, either of the Chelsea Solar dockets, is there any party in interest other than Chelsea Solar, LLC, from your perspective as the petitioner or related to the petitioner?
A. Can you define "party in interest"?
Q. They have standing to be involved.
A. Again, what do you mean by standing?

Q. Okay. You know what? Let's move on. Does Chelsea Solar, LLC have a certificate of public good at this moment in time?
A. No, it does not.
Q. Have they ever had a certificate of public good in either of the dockets related to the Chelsea Solar petitions or applications?
A. No, they have not.
Q. Does Apple Hill Solar, LLC have, is that the other proposal that you have for the Bennington property that is at issue, the Apple Hill Solar project?
A. That's correct.
Q. And is the petitioner in that case Apple Hill Solar, LLC?
A. That's correct.
Q. And does Apple Hill Solar, LLC have a certificate of public good right now?
A. No, it does not.
Q. Okay. During any of the time that Mr. Kobelia did any work for you prior to the temporary restraining order hearing at the end of June, did you, did Apple Hill Solar or Chelsea Solar, LLCs, either of them, have a certificate of public good while any of the work done by Mr. Kobelia was performed?
A. Yes. Mr. Kobelia performed work in April 2019 in

Apple Hill Solar or for the Apple Hill Solar project and, and commenced site preparation there by, by removing some trees.

Q. In April of 2019?

A. April 2019. He actually started, I believe, on April 16th 2019.

Q. And that was on which project site?

A. Apple, Apple Hill Solar.

Q. So he did not testify, either in his prefiled testimony or on cross-examination, about any activities prior to a few weeks before the TRO hearing. So is it your under-oath testimony that you did engage him the prior year in April of 2019 to do site preparation?

A. Yes, I did, yes. At the time, Apple Hill Solar had a CPG.

ATTORNEY DINGLEDINE: May I share my screen, Mr. Roisman? Oops, I got it.

CHAIRMAN ROISMAN: Yes. You'll be made the presenter, and then you can share your screen. You're now the presenter, Ms. Dingledine.

ATTORNEY DINGLEDINE: Great, thank you so much.

BY ATTORNEY DINGLEDINE:

Q. Mr. Melone, I'm showing the site clearing map that Mr. Kobelia testified to. I believe it's TR-2 as the

exhibit number.
A. That's correct, yeah.
Q. Could you describe for us what portion of the site was cleared in April of 2019 by Mr. Kobelia?
A. I don't know exactly where he commenced clearing, but we certainly could get that information from him.
Q. Okay. But is it your testimony that the majority or at least the area here, the 100-by-200-foot section, that definitely was done in 2020; is that right?
A. That's my understanding, yes.
Q. Okay. Thank you very much. Now, Mr. Melone, who owns Chelsea Solar, LLC?
A. Chelsea Solar, LLC is owned by Allco Finance Limited.
Q. And who owns Allco Finance Limited?
A. Allco Finance Limited is owned by Allco Finance Limited, LLC, which is, in turn, owned by me.
Q. I'm sorry. I couldn't hear you. Say it again?
A. Allco Finance Limited is owned by Allco Finance Limited, LLC, which, in turn, is owned by me.
Q. So you own and control, you're the only owner, ultimately, or person in control of Chelsea Solar, LLC, fair to say?
A. Yes.
Q. Who is Apple Hill Solar, LLC owned by?

A. The same parties, Apple Hill Finance Limited.
Q. So Apple Hill Solar, LLC is owned by Allco Finance Limited?
A. Correct.
Q. Okay. And Allco Finance Limited is owned by Allco Finance --
A. Limited, LLC.
Q. -- Limited, LLC?
A. Correct.
Q. And you are the owner of Allco Finance Limited, LLC?
A. Correct.
Q. So you are the sole owner and person in control of Apple Hill Solar, LLC, correct?
A. Indirectly.
Q. You own and control it, correct?
A. I own the entity that ultimately controls it.
Q. Is there any other party who controls or owns any portion of Chelsea Solar, LLC?
A. No.
Q. What about Apple Hill Solar, LLC; anyone else other than Thomas Melone who ultimately is the owner?
A. No.
Q. Okay. What about PLH, LLC?
A. I'm the sole member and owner of that company.

Q. So you, you are the sole owner in control of that entity as well?
A. Correct.
Q. And PLH Vineyard Sky, LLC, same question, who is the owner?
A. Oh, well, actually, PLH, LLC is PLH Vineyard Sky, LLC. The name was changed, and it was, the state of organization was transferred from Indiana to Florida.
Q. Oh, okay. So, so it's the same -- it's a name change, same entity?
A. Same entity, just different, just, yeah, different name, different state of incorporation or organization.
Q. Okay. And then Allco Renewable Energy Limited is owned by?
A. Allco Finance Limited, LLC, which I'm the sole owner of.
Q. Okay. And, lastly, Ecos Energy, LLC, who is the owner of that?
A. Allco --
Q. Beg your pardon?
A. Allco Renewable Energy Limited.
Q. And Allco Renewable Energy Limited is owned by?
A. Allco Finance Limited, LLC.
Q. LLC? And then so you are the owner of every single one of those entities, correct?

A. Indirectly, that's correct.
Q. But, but the sole owner, however indirectly it might be, correct?
A. That's correct.
Q. Okay. Thank you very much for going through that. I appreciate it. Another document that I just wanted to very, oh, so briefly, ask you about if I may be the presenter just for a moment, please.
MS. BISHOP: Ms. Dingledine, you're still the presenter. So, to share your screen, you can, if you move your mouse, you'll see some circles on the bottom of your screen, and one is for your microphone, and one is for the camera, and the one right next to it is screen. If you click on that, you will share your screen.
ATTORNEY DINGLEDINE: Oh, thank you very much.
CHAIRMAN ROISMAN: Just for the benefit of the reporter, that was Ann Bishop, who is our Director of Operations and is also acting as the manager of this remote proceeding.
(Intervenors Exhibit 4 was shown to the Witness.)

https://epsb.vermont.gov/?q=downloadfile/416534/150086

BY ATTORNEY DINGLEDINE:
Q. Mr. Melone, what I'm showing you is -- I'm sorry. Let me go back to the top -- is Intervenors Exhibit Number 4, which could you identify this document for us, please?
A. It looks like a settlement agreement that was signed with the Town of Bennington.
Q. Okay. And I'm going to skip all the way down to the bottom of it and just ask you, do you recognize the signatures on this document?
A. Yes.
Q. It's Michael Melone, Esquire, for Chelsea and for Apple Hill Solar?
A. Correct.
Q. And also for PLH and all of the other entities here, it's Michael Melone who signed it?
A. Correct.
Q. Okay. Was Michael Melone authorized on behalf of all of these entities to enter into this settlement agreement and undertake the responsibility for obligations under it on behalf of each of these entities?
A. Yes.
Q. And so am I correct then in assuming that Paragraph 7, which indicates that the following, quote,

"PLH agrees not to develop 557 Apple Hill Road, Bennington, Vermont (the "Apple Orchard"), in parentheses in quotes, into any other use other than its existing use for the life of the Apple Hill and Chelsea projects. For the avoidance of doubt, neither PLH nor the Developer shall have any obligation to maintain the current condition of the Apple Orchard. This provision is not intended to and does not waive any legal obligations that may exist or the rights of any non-parties to this agreement".

Do you agree that the document in Paragraph 7 says as I read it?

A. I agree that those are the words that are there.

Q. Okay. And was Michael Melone, Esquire, authorized to bind all of the entities, the solar array entities and all of these other LLCs, et cetera, was he authorized to bind them to that provision, yes or no?

A. I think that's been asked and answered.

Q. Could you please answer?

ATTORNEY MELONE: I object to reanswering the same question.

CHAIRMAN ROISMAN: Mr. Melone, it will move it along if you just tell her yes or no.

ATTORNEY MELONE: Yes, he was.

BY ATTORNEY DINGLEDINE:
Q. Okay. And you would agree with me, would you not, that now altering these proposed sites to engage in a different use, i.e. in agriculture or horticulture, would, in fact, be a change of use?
ATTORNEY MELONE: I have to object to this line of questioning, because I think -- I don't see how this is relevant to the issue before the Commission that deals with the aster plants, and the Agency has already stated that it has no interest in this other five-acre parcel for purposes of this injunction.
CHAIRMAN ROISMAN: Ms. Dingledine, your response?
ATTORNEY DINGLEDINE: My response is that this is a document that was actually submitted, promises that were made, and representations that were submitted to the Public Utility Commission and precipitated the withdrawal of the Town of Bennington. There was a representation made that the area under consideration here, the Apple Hill Road location, would not be developed into any other use, and that is exactly what is proposed, and so the question becomes, Is this or is this not a misrepresentation in terms of what is now happening on the site?
CHAIRMAN ROISMAN: Ms. Dingledine, within the

scope of the jurisdiction of the Commission, which I think is what Mr. Melone is raising, what is it that you think we can or should be doing if what you just said is correct, that there is a violation or a proposed violation of an agreement that was entered into between Mr. Melone's companies and the Town of Bennington?

ATTORNEY DINGLEDINE: It goes to two things, Your Honor. It goes to the, to the material representations that were made with regard to the actual pending applications, but it also goes to a more important matter, and that is to the credibility of the Witness in terms of how they are proceeding, what promises that they're making, and I think that that's a very important issue in terms of assessing the credibility of the testimony that you're hearing from Mr. Melone.

This is more information that was presented to the Public Utility Commission, and while it's a private agreement with the Town, it certainly bears on and relates to the use of this property and what promises have been made with regard to actual, actually whether the Town was or was not involved in this. They chose to withdraw based on a series of promises. This is one of them. And now that party is no longer a part of

this because of this agreement, and that is significant in terms of the process and the procedure that's going on right now. We need to know what is the, what is the representation for these projects, what promises were made, what representations exist? This is one of them that's relevant to what they're doing on the site.

CHAIRMAN ROISMAN: All right. We're going to --

ATTORNEY MELONE: Mr. Chairman, could I just say one other thing?

CHAIRMAN ROISMAN: Yes.

ATTORNEY MELONE: The, the agreement is with the Town of Bennington. Bennington has been well aware of our proposed agricultural uses since we proposed them. They have been copied on ePUC. Their attorneys have been copied on all filings in the Supreme Court. They have not come to us and said they have any issue. So I think, aside from this being irrelevant to this proceeding, Ms. Dingledine has no right to speak for the Town in this proceeding either.

CHAIRMAN ROISMAN: All right. We're going to temporarily step away, and Commissioners Cheney and Hofmann and I will discuss this offline, and then we will come back and let you know our response. So, if everybody will just hold on, we're --

(A recess was taken from 1:24 p.m. to 1:34 p.m.)

CHAIRMAN ROISMAN: Okay. We're back. If those of you who are parties, would activate your cameras. Ms. Dingledine?

ATTORNEY DINGLEDINE: Sorry, Your Honor. I was trying to find the right button.

CHAIRMAN ROISMAN: All right. Well, welcome to the new age, Ms. Dingledine. Okay. We're going to overrule the objection, but, Ms. Dingledine, we're going to give you a very short leash. We are not convinced that this is a significant issue that needs a lot of development. The document that you're referring to has been received in evidence, so we have it in front of us. We'll let you explore this for just a little tiny bit, okay?

ATTORNEY DINGLEDINE: Actually, Mr. Roisman, I didn't have much else to ask on it. I just wanted Mr. Melone to answer my pending question.

CHAIRMAN ROISMAN: Okay. Will the court reporter read back the pending question, please?

(Question read by the reporter:

"Q. Okay. And you would agree with me, would you not, that now altering these proposed sites to engage in a different use, i.e. in agriculture or horticulture, would, in fact, be a

change of use?")

CHAIRMAN ROISMAN: Mr. Melone?

ATTORNEY MELONE: Yeah. My answer is "no".

BY ATTORNEY DINGLEDINE:

Q. Mr. Melone, how is it that using property for agricultural or horticultural purposes would not be a different or change in use from a solar array project?

A. Oh, I thought you were talking about the five point, the five-acre parcel, because I believe that's all that provision addresses. The 27-acre parcel is not covered by that provision that you referenced. So I guess I'm not clear on what you're actually asking then.

Q. I'm sorry, Mr. Melone. I'm having trouble hearing you a little bit, but I'm not clear. Could you repeat? I didn't understand.

A. Well, you asked about a solar use. So I, I thought you were talking about the 5-acre parcel, not the 27-acre parcel.

Q. Well, why don't we talk about that then, and we'll come back to this issue? You are taking the position in your latest prefiled testimony that the, that Lot Number 1 of the Apple Hill Homeowners Residential Development, which you call the horticultural use parcel, you are taking the position that is not, that

it is not part of the proposed site of an electric generation facility; is that correct?
A. That's correct.
Q. Okay. And you also take the position in that testimony that the horticultural use parcel, Lot Number 1, is not the proposed site for the two solar projects. Do you have any legal authority in Vermont or from any jurisdiction whatsoever that suggests that landscaping planning that screens a solar array project is not considered part of the project or reasonably related to the project?
A. I, I testified as to the facts, that there is no solar electric generation facility planned for that parcel.
Q. You would agree with me that the landscaping plan that is provided in the exhibits that are already in evidence from your aesthetics experts indicate that the landscaping plan is for the purposes of satisfying the mitigation prong of the Quechee Analysis with regard to aesthetics in terms of buffering or screening the project from the northern residential properties, correct?
A. I don't agree with the statement as to Quechee. I do agree that the trees that were once proposed there at the northern end of that parcel, which, in fact, is

already cleared -- there's nothing that would need to be cleared to put in those trees -- was there to further mitigate the potential view of, of the, at least one of the projects.

Q. Well, you're saying that you don't think it's part of the Quechee Analysis. Then why did your expert put it in the laundry list of items that should be considered with regard to whether there was reasonable mitigation or not on that prong of the Quechee Analysis?

A. My understanding is that the expert reviews the facts. What we, what we asked them to do was to, to create a project that would be invisible, and those trees would certainly make at least the Chelsea Solar project invisible. The Apple Hill solar project has been invisible from that viewpoint anyway, just because of the slope of the land.

Q. So are you suggesting that that's not part of any mitigation plan in terms of the Quechee Analysis in that the PUC should disregard your landscaping plan in terms of whether or not reasonable mitigation has been employed in this matter?

A. I don't follow the question, because it was submitted. The CPG was denied. It's not back at the PUC for any determination.

Q. Mr. Melone, should the PUC consider the landscaping plan as part of your project proposals, or is that no longer going to happen? That row of trees in front of Libby Harris's house up in the northern boundary area of Lot Number 1 that you call the horticultural lot, is that, are those trees going in there or not?
A. No. We made that clear in March of 2020.
Q. And you're aware that the PUC denied your amendment or request for amendment to your petitions that said you were going to not plant those trees and put up a massive barn, hemp-drying structure, correct?
A. I agree that that was what was stated by the PUC. We have a different legal view of what the rule says, and I think the PUC is in the process of trying to amend that rule to have it more align with the interpretation that was in the Apple Hill order.
Q. So, Mr. Melone, as you sit here today, your current proposal is not to put all those trees in for the screening for the northern properties and to build a massive hemp-drying barn instead; is that what you are planning on doing as you sit here today? Tell us under oath, yes or no.
A. The amendment is, is clear that we deleted the, the trees, and I don't necessarily agree with the

characterization that you're giving to the structures that would be on the property.

Q. How long is the hemp-drying barn?

A. What?

Q. What are the dimensions of the hemp-drying barn that you plan on erecting in the location where those buffer trees were supposed to be planted?

A. Oh, I don't recall that. I believe that would be in the amendment.

Q. So 160 feet long, does that sound wrong to you or right?

A. Again, I'd have to look at the amendment.

Q. Okay. Well, I would say my characterization of a 160-foot-long barn, 30 feet height and 16 feet deep, is a massive structure. If you disagree with that characterization, I'm sorry, but that's what I'm going to call it.

So are you going to put that hemp barn with whatever your dimensions are that you have provided with your amendment, not even a motion to amend, you're just going to go do that, right? You're not going to plant the trees, and you're going to put up this barn instead, correct?

A. We're going to -- the plan is to do what is in the amendment, not the trees, and to put up whatever

structure is shown in the amendment.

CHAIRMAN ROISMAN: Let me ask a question here just so I'm clear. Mr. Melone, is it, am I understanding correctly that the initial plan before you filed the amendment was to add some trees on the north side of the Lot 1 that would further screen the view from homes that were north of there if a solar project was built; is that correct? Do I understand that correct?

ATTORNEY MELONE: That's correct.

CHAIRMAN ROISMAN: And did that plan include, as part of the screening effect, keeping what trees were already on Lot 1 on Lot 1?

ATTORNEY MELONE: I don't, I don't know. I don't, I don't recall if that was the case, but I don't know what the, what the expert determined.

CHAIRMAN ROISMAN: And are any of the trees that were there, say, two years ago that nature hasn't caused to fall down, are any of the trees that were on Lot 1 now no longer on Lot 1 because of work that Mr. Kobelia did?

ATTORNEY MELONE: No. My understanding is, no, that Mr. Kobelia hadn't gotten to Lot 1 yet.

CHAIRMAN ROISMAN: Okay. So, except for your intent not to put trees, new trees, on Lot 1 and except

for whatever nature may have done, Lot 1 is as it was two years ago or three years ago, correct?

ATTORNEY MELONE: That's my understanding. I haven't visited it, but that's my understanding.

CHAIRMAN ROISMAN: Okay, all right. Thank you. Thank you, Ms. Dingledine. Sorry to interrupt.

BY ATTORNEY DINGLEDINE:

Q. All right. So now we know that you are taking the position that Lot 1 is not part of the project site, correct?

A. That no electric generation facility is part that's planned to go on.

Q. Are you familiar, are you familiar with the reasonably related doctrine?

A. I think you'd have to explain it to me.

Q. Well, then, obviously, the answer is, No, you're not familiar with it. Thank you.

So do you have any legal precedent whatsoever that suggests that, if you are, if you are building, planting a buffer for a landscape screening for a project, that that is not part of the site, project site, or it is not reasonably related to the project site, do you have any legal precedent whatsoever to establish that?

A. The only precedent that I have is the statute

itself at this time.

CHAIRMAN ROISMAN: Excuse me. Ms. Dingledine, I had just a question of clarification for you. The questions that you're asking Mr. Melone, now that he's a witness and under oath that are asking for legal opinion, are you acknowledging that Mr. Melone is an expert witness on legal issues and that we should treat his opinions as the opinions of a legal expert?

ATTORNEY DINGLEDINE: No. I'm simply looking for some basis to take the -- I don't think this is a factual position. I think this is some opinion of someone. I don't think he's a legal expert, nor is this, this is an ultimate issue, nor would an expert be able to opine and provide you with this. I'm trying to understand where this witness, in terms of presenting this application, ignoring your orders that they're not allowed to amend it, where is he coming from? That's what I'm trying to understand.

And it's about credibility. It's about you're taking a position here based on what? That's what I'm trying to get at. No, he's not an expert. He's the petitioner, and I think that we're entitled to look into what, what the petitioner is doing right now. I don't understand it.

CHAIRMAN ROISMAN: What I'm having problems

with, Ms. Dingledine, is Mr. Melone is going to have to submit a legal brief. You'll submit a legal brief. We will decide the legal questions based upon what's in the legal brief. If Mr. Melone's statements today on what he might include or not include in his legal brief are not expert opinion, I'm not sure what their probative value is or what we gain by having you ask him and him answering that question, outside of the fact that there will be briefs filed on this. If there's something that I'm missing, please let me know. Otherwise, I'm not sure that I see the relevance of asking him what legal standard or what legal precedent he has to support a position. We'll find that out soon enough.

ATTORNEY DINGLEDINE: Mr. Roisman, this is the problem. I don't even know what we're here discussing. I have no idea what this petition is, nor do you, because the gentleman has indicated that the amendment that you denied to him is, is what we're sitting here talking about, and I don't know what to do with that, because it's not.

Just because he says Lot Number 1 isn't part of the project site is preposterous. So I'm trying to determine, What kind of credibility does this guy have that he's saying this kind of information? I've never

heard of such a thing in my 25 years practicing, and this goes back to 1971. The Attorney General in the State of Vermont has issued an opinion about project sites and reasonably related doctrine, and there is a 2019 case on it in Section 248. So I just don't understand what we're doing, and it puts us at a disadvantage to try to present evidence when we don't even know what the project is.

CHAIRMAN ROISMAN: Ms. Dingledine, the problem I'm having, you're referring to evidence, but we're really talking about legal precedent, and legal precedent is usually presented in briefs and oral argument, of course.

ATTORNEY DINGLEDINE: I do appreciate that, Your Honor, I really do, but I'm really at a loss to understand what it is that is going on here, because, without knowing what the actual project that's proposed is, he's telling you it's something different than what is in front of you and what you have accepted. So I honestly am looking for some guidance.

I get what you're saying, this is all going to come out in legal arguments, but I think that you're entitled to know why somebody comes in here and says, The thing I gave you isn't what I'm doing. You told me I couldn't do -- you know, I don't want to do "X". You

told me I couldn't do "Y", but I'm still not going to do "X". So I think it's incumbent on Mr. Melone right now to say if he's proceeding under his petition that was submitted that has been accepted without this latest amendment or not. Because, if he's not going to prosecute that application, then I don't know what we're doing here.

CHAIRMAN ROISMAN: Why don't you ask him that question, Ms. Dingledine?

BY ATTORNEY DINGLEDINE:

Q. Very good, I will. Mr. Melone, what project are we here to discuss? What is your plan, and what you are asking for permission from the PUC to give you a CPG for? Does it include or does it not include landscape plantings on Lot Number 1, as has been depicted by your experts, their testimony, and the exhibits?

A. All I can say is that in this proceeding, like Attorney Einhorn said in the beginning, we're not talking about the 248 approval process. We're talking about alleged irreparable harm to rare plants that would occur from the clearing we intend to do.

Now, we've made it clear in the amendment, whether it's accepted now or not, as to what is going to occur or what our plan is to occur for the farming

activities. Obviously, those have some impact on the, on the petition that is now at the Supreme Court.
Q. Could you answer my question, please? What is the petition pending before the PUC? What are you asking permission for? Does it or does it not include landscaping planting that has been specified for Lot Number 1 and the preservation of the apple orchard trees that reside on that lot?
A. Okay. First of all, there's nothing pending before the PUC in terms of the Apple Hill project. That's at the Supreme Court. Second of all, the, the plan, like we said before the amendment, did include the row of trees. You asked that, and I answered it. It's shown on the plan. The amendment eliminates that. The PUC didn't want to accept the amendment, but that doesn't mean -- well, I don't know what that means, you know, at this point in terms of the, the petition.
Obviously, if we go ahead with the farming activities, which we think we're entitled to do, then, if the petition, you know, comes back to the PUC, then, at that point in time, the record will be corrected to reflect the real facts on the ground as they exist at that time.
ATTORNEY DINGLEDINE: Mr. Roisman, could you ask the Witness to answer the question, please?

CHAIRMAN ROISMAN: Ms. Dingledine, I think he did answer the question. He indicated that there is an application pending with the Commission that includes the trees, that he believes that he's entitled to alter the site irrespective of that application existing in order to put in the agricultural purposes that he wishes to put in.

He acknowledges that we've not allowed him to amend his application to include that, and he's indicated that, if we were to allow him to go ahead and pursue the agricultural purposes, in other words, lift the injunction and not make it a permanent injunction, that, if and when the Supreme Court were to return the Apple Hill case to us, that is, overturn our determination denying the CPG, that the project would then have to be changed to reflect the real world, which would be a world in which there was a sheep farm and a hemp farm and a hemp building.

I think he answered all of that. I mean, I don't know what more he could have answered to your question other than what he did, but if, if there's something you thought he should have answered that wasn't included in that, please pursue it.

BY ATTORNEY DINGLEDINE:

Q. Thank you. I'll move on, Your Honor. Mr. Melone,

you have brought up and wrote all sorts of briefs to the Public Utility Commission about site control, and, in fact, you took issue with the awarding of certain contracts to NextEra, for example, claiming that they didn't have site control over different projects.

So my question to you is, Do you have site control on Lot Number 1 such that you have the rights to incorporate Lot Number 1 for the purposes of planting screening for the solar array projects?

A. Yes.

Q. So do you acknowledge that Judge Helen Toor has already made a, a decision on summary judgment in your case that you, where you sued Libby Harris and the Homeowners Association? Are you, do you remember that she has granted summary judgment against you and said that you don't have any right to maintain any kind of solar facility or plantings for a solar facility on Lot Number 1?

A. I would have to go back and look at the opinion. I know that some of the rulings went against us and went against the defendants.

Q. Well, I can read it to you, but let's cut to the chase here. How is it that, if the Superior Court, on a declaratory ruling, has made a determination which is likely to be upheld when you appeal that to the Supreme

Court, how is it that you think that you have the right to do plantings for this solar array or, for example, to have your access way through that area, which was another count that you brought, in light of the fact that the court has said, no, you don't have the right, doesn't that go to the issue of site control?

A. I don't think it goes to the issue of site control. PLH owns the property, but I think what you're really saying is that the Commission should have accepted the amendment, because the Superior Court, you were saying, said that those trees can't be there, right? I mean, isn't that --

Q. The Superior Court said you're not -- the Superior Court said you didn't have, Russet Drive doesn't exist. They said that you couldn't use Lot Number 1 to access the solar array and that you couldn't plant any of the screening or use that lot for any what they deemed to be a commercial purpose, which was the solar array.

So how is it that you think you can come to the PUC now after having a court decision against you that says you don't have site control, meaning you don't have the right to incorporate this lot into anything to do with this commercial project? We have a Superior Court judge who said its commercial, and you can't do it. How is it that you can present this now to the PUC

after getting your declaratory ruling, yet somehow you think you have site control?
A. Well, again, site control is different, but, you know, I think what you're saying is that, well, we removed those trees. So I'm not sure what the complaint is. You're saying that the, the Superior Court said we couldn't put the trees there. We filed an amendment to remove the trees. So I just don't understand what the point is.
Q. The point is you don't have site control, because you don't have the right to do anything on that property related to the solar array, right?
A. No. Again, you know, I, you know, I disagree with what the meaning of site control is. We own the property, or PLH owns the property.
Q. Yeah, but you can't do what you want to do on the property because of the restrictive covenants. That is what the court looked at and said they run with the land and you can't do what you want to do, correct?
A. Well, what we want to do with the property is not have the trees there.
Q. What you wanted to do with the property was to use it for screening and buffering purposes so that the properties that were residential to the north would not see the solar array, correct? That was the purpose of

it. That's what your, all of the documents say from your experts --

A. But, again --

Q. -- mitigation under Quechee, right?

A. But, again, we have --

Q. Yes or no? Please answer yes or no.

A. To what? What was the question?

ATTORNEY DINGLEDINE: Could the reporter read the question back, please?

(Question read by the reporter:

"Q. What you wanted to do with the property was to use it for screening and buffering purposes so that the properties that were residential to the north would not see the solar array, correct? That was the purpose of it. That's what your, all the documents say from your experts.")

ATTORNEY MELONE: All right. So I will say, again, that, like I said in the petition, the row of trees that was planted or proposed to be planted on the north end was to block the view of the home, the single home that's to the north of it, and but we have now filed the amendment to remove that, so --

BY ATTORNEY DINGLEDINE:

Q. Mr. Melone, let me just clarify. I think you're incorrect in what you just testified to. You said the

single home north, which you're referring to the Harris property. That is incorrect. I would draw your attention to all of your experts' information about this screening and buffering. It's for, primarily for Ms. Harris, but there are other residential properties to the north, correct?

A. There are other residential properties to the north beyond that one particular house, but I don't think they can see over the trees.

Q. And but, regardless of that, your experts testified that this screening was for the benefit of the residential properties, plural, to the north of the site, yes or no?

A. I'd have to go back and look to see specifically what these trees were planted for. I don't think that those trees do anything --

ATTORNEY DINGLEDINE: Objection. Move to strike as unresponsive.

CHAIRMAN ROISMAN: All right. We're going to adjourn this for a few moments and talk among ourselves. This seems to be getting far removed from the narrow question we're having to ask, which is, Should we stop site clearing at this project? So I'm going to, we're going to consult among ourselves, and we will get back to you after we have finished

consulting.

ATTORNEY DINGLEDINE: Mr. Roisman?

CHAIRMAN ROISMAN: Yes.

ATTORNEY DINGLEDINE: I'm almost done. I have one other exhibit with a very quick question, and then I'll be done, just so that you know.

CHAIRMAN ROISMAN: All right. Well, why don't you proceed with that one question?

BY ATTORNEY DINGLEDINE:

Q. Thank you. Mr. Melone, we put in Intervenors Exhibit Number 10, the hemp registration document that you got late summer, and my question is, When was that applied for? What was the date?

A. I'm pretty sure that was June 26th. I think that's what I testified to.

COMMISSIONER HOFMANN: I'm sorry. I didn't hear that, Mr. Melone. Did you say you applied for it on June 26th?

ATTORNEY MELONE: I think so, right.

BY ATTORNEY DINGLEDINE:

Q. Thank you. That actually is consistent with what the Ag. Department told me. It got approved in three days, because it's merely a registration system where the boxes have to be checked. Is that your understanding as well?

A. Well, actually, we, on this registration system, we had no idea how long they would take to approve it, particularly given, given the pandemic.

ATTORNEY DINGLEDINE: Yeah, but it turned right around. Okay, great. That's all I have. Thank you.

CHAIRMAN ROISMAN: All right. Just to clarify on that last question, on Page 14 of Mr. Melone's direct testimony at Lines 12 to 15, he states that the application was filed on June the 26th and that it was issued on June 29th. So that's the specific reference.

Okay. Mr. Einhorn, I can't remember now. Did we offer you the opportunity to cross-examine Mr. Melone, and, if not, would you like to do so? Mr. Einhorn?

ATTORNEY EINHORN: Oh, I'm sorry. I clicked the wrong --

CHAIRMAN ROISMAN: I thought maybe my question had done something that caused you to want to leave.

ATTORNEY EINHORN: No, but something else may. But I, I was asked, thank you, and I do not need to. I said I did not have any cross-examination, and that's still my position. I would reserve perhaps some follow-up after the Commission asks questions, but I do

not have any cross.

CHAIRMAN ROISMAN: Okay. And, Ms. Aceves, did you have any questions for Mr. Melone?

ATTORNEY ACEVES: The Department has no cross at this time.

CHAIRMAN ROISMAN: And, Commissioner Hofmann, do you have any questions for Mr. Melone?

COMMISSIONER HOFMANN: I don't have any questions. Thank you.

CHAIRMAN ROISMAN: And, Commissioner Cheney, do you have any questions for Mr. Melone?

COMMISSIONER CHENEY: Just to complete the circle on the hemp registration, which was received on, if it was three days later, on June 29th, when does that provision expire? I believe there's also an expiration date.

ATTORNEY MELONE: My understanding it's only for the calendar year. So that would be 2020, and we have to reregister, which we plan to do for 2021.

COMMISSIONER CHENEY: Thank you.

CHAIRMAN ROISMAN: Okay. Does, Mr. Landis-Marinello, do you have any questions for Mr. Melone?

MR. LANDIS-MARINELLO: I do have just a couple. Mr. Melone, I'm just trying to figure out on

Page 6 of your testimony, your most recent testimony, you quote the testimony from the previous hearing, and then you go on to say that this was not, the sheep farming is not primarily for solar projects, but I'm just struggling a little with reconciling that. Because the, the previous testimony the Chair had asked, quote, "It sounds like the sheep that you're proposing here is primarily sheep to be used to graze at solar projects", end quote, and it goes on from there and ends with, "Is that a fair characterization?" And your first sentence was, "Yeah, I think that's, that's the primary aspect", end quote.

And then you did go on to explain there were other things that you planned to do with the sheep, but I'm just trying to get clarity. Are you saying that you misspoke when you gave that response before?

ATTORNEY MELONE: No, I'm not saying that I misspoke before. I don't think that that's what this, this says. I mean, somehow, that, that question and answer got turned around to something else, because the actual factual finding says sheep grazing is being done primarily approved at the petitioner planned solar projects at the site, i.e. the Bennington site. That was the factual finding.

MR. LANDIS-MARINELLO: So your dispute is

with where the sheep are controlling the vegetative growth? Was that part of the factual finding? Is that what you're saying, because they're going to be used at other solar sites as well?

ATTORNEY MELONE: Yes, that's right. Right, they will be used at other solar sites as well, and, while I said there they, the primary motivation for getting into the business was the fact that we basically have this captive, you know, I guess, a captive revenue stream, because we have to maintain all these sites anyway, throughout Vermont, Connecticut, and Massachusetts.

So, from a business standpoint, we're going to start a farming business, but you know that at least part of the revenue stream is, is, in a way, fixed. You know that you're going to get the revenue from certain aspects of the business, which is grazing, at least at your own solar project sites, and likely other solar project sites, in addition to the management and selling of sheep and wool and things like that.

MR. LANDIS-MARINELLO: Okay. I think I, I think I understand the clarification now, and I just have one other question. This is on Page 12 of your most recent testimony. At the very end of your, the bottom of that page, the end of Question 6, you have a

statement about there. It says, quote, "There is simply no standard for ordinary people to understand what is permissible and what is not", and then it goes on from there, and I just wanted to ask you if you're aware of our process for a declaratory judgment that we have at the Commission and if that was considered in this as you were trying to determine whether you could do this tree clearing or not.

ATTORNEY MELONE: I am, you know, so I, I am aware that there is the possibility to seek that, but, you know, at least my position is that, you know, there should be clearer standards that landowners can look up and say, All right, this is what the rules say. This is what we can or can't do. And I think it's, it's particularly applicable here, because the, the facts that I had discussed prior to that immediate testimony in that same question, I mean, the, the one case that the PUC ruled on, there actually was construction of part of an electric generation facility, specifically for some tax treatment, as I recall, to take advantage of a grant program that, that was the 1603 Grant Program under the Internal Revenue Code.

So but there, you know, the, the Commission held that, even though the actual construction of part of the facility was specifically intended as part of an

electric generation facility to qualify for tax purposes, that that still didn't make it site preparation or construction without a CPG, because it could be used for something else.

MR. LANDIS-MARINELLO: I'm sorry. I'm doing the lawyer thing. I just had one more question, and then I realized I had one more. The Apple Hill project that's at the Supreme Court, is the relief you're seeking there to get approval of the Apple Hill project as proposed?

ATTORNEY MELONE: Well, I guess you have to clarify what you mean, as proposed.

MR. LANDIS-MARINELLO: So with, with, as you know, we rejected the proposed amendment in March, and so the actual proposal on the table, if you will, for the Apple Hill site is the unamended project, and I, I haven't seen -- I don't know if the briefing has happened yet at the Supreme Court in Apple Hill, but is the request you're making of the Supreme Court that that project be approved, meaning the unamended project?

ATTORNEY MELONE: Well, no. Well, I haven't written a brief yet, but I imagine the very first point is going to be that the amendment should have been considered based on the plain language of the rule. It

says amendments can be filed at any time. And then the Supreme Court will be able to address that and decide whether they, what the scope of their remand was.

So what we're asking the Supreme Court in the first instance is to rule that the scope of the remand was consistent with what's called the Rule of Mandate and that, once we filed the amendment, that the amendment should have been considered. If they rule against us on that, then, obviously, we'll have the alternative arguments.

MR. LANDIS-MARINELLO: And one of the alternative arguments would be that it should have been approved unamended, right?

ATTORNEY MELONE: Probably, yeah. I mean, another one will be that, that all the stuff related to aesthetics is irrelevant, because the, you know, town plan is not a clear community standard and that, even if you took out these, these trees, it still should have been approved.

MR. LANDIS-MARINELLO: Okay, thanks.

CHAIRMAN ROISMAN: Mr. Tousley, did you have any questions for Mr. Melone?

MR. TOUSLEY: Yes, I did, also related to his most recent statement, but, but I'm on Page 8, and I know you had just testified about how you, how you got

into the sheep business and the agriculture business, and, and it, it is in your testimony that your agricultural activity is always a follow-on or a partner to or, or an additional revenue stream associated with a solar project.

You know, are you going to farm and do -- are you going to raise sheep and grow hemp in non, in sites that have no linkage whatsoever to solar activity?

ATTORNEY MELONE: It's possible. I mean, the, we certainly are going to graze sheep and essentially grow hemp, you know, in places like Connecticut as well where the land on which the sheep generally would be doesn't have a solar array, but that there would be a solar array connected to it. So, for example, like the Plainfield, Connecticut, site that, that we, that I had mentioned in my testimony, that site is about 110 acres overall. Currently, there are three 1-megawatt solar projects on it that, that, I guess, take up probably about 15 to 20 acres.

So the sheep will have access to the entire property, but they're there, you know, because, one, you know, the solar arrays. We have a fence around the property. We have security cameras. So it just makes more sense to do it that way now.

You know, we have looked at buying a farm

independently in Massachusetts with, with a cheese operation as well where sheep would be, wouldn't necessarily have the solar farm, but, right now, the plan is to kind of colocate, even if the sheep, you know, graze on, not only the area of the solar array, but on the remainder of the property as well.

MR. TOUSLEY: Okay, okay. Looking again at Page 8 in the center of the page, Line 10, it says, "The raising, feeding, and management of the sheep is a completely separate business and farming activity", and I'll read the sentence, "and would commence prior to any solar project", but there is a solar project.

Is it your testimony that your interest in developing, in getting into the, the sheep-raising and, and hemp-growing business is, arose from your work in the solar industry and that you have no contemplation of -- well, you said it. Is, did it arise from your role as a solar developer?

ATTORNEY MELONE: Yeah, it, yeah, it arose, because, you know, because of the solar projects which we've been developing.

MR. TOUSLEY: So it's, farming and solar is the nature of the business plan?

ATTORNEY MELONE: Well, you know, I know that there's some disagreement as to who can, who, what

companies, you know, control what, but the PLH is separate from the development part of, you know, the business that I own. PLH owns a lot of real property throughout the United States, including on solar farms that we don't own, didn't build, don't operate. So it not only invests in real estate where we own or where the developer would own the project, property of the project, but it invests in real property for any solar developer.

And PLH would, well, owns Vineyard Sky Farm. So the farming business is separate from the solar development business, even though the reason why it made sense to start up the farming business was because we knew the farming business would at least have a guaranteed income stream to some extent. So, if you've got sheep, they don't have to just sit there. They'll realize income over the year from bringing them from point A to point B to point C.

MR. TOUSLEY: I'm also looking at the, the branding of the Vineyard Sky Farms logo on Page 4, and, when I first looked at it, I thought for sure I saw a solar array in the background, and that's because I haven't -- you know, from what your testimony is telling us, I believe, is that, that sheep and solar go together and that's the business plan.

ATTORNEY MELONE: Well, there's -- yeah, again, sheep and solar go together, one, because it's more, better for the environment if you bring sheep to maintain a, you know, vegetative growth on a solar farm compared to using mechanical equipment that's powered by gas, usually. From me as from the perspective of investing in different businesses, it makes sense that this one business, Vineyard Sky Farm, because we can always in the future -- I mean, if a solar company came along and said, you know, Tom, we want to buy the solar projects, solar business, we might sell that, yet we would still keep the farming business.

So it's not part of the same entity. Yeah, from an investment perspective, it makes sense to invest in activities where you can have some, some coordination or where they, you know, potentially benefit each other. I mean, that's one reason why in testimony I described I invested in a hemp company, so because investing in the hemp company gives us access to the technology to plant the hemp, to grow the hemp, to buy the seeds, and to do what we intend to do in Vermont, as well as other places. So, I mean, it's not part of one entity's business plan, yeah. It's part of my investment plan, but it's --

MR. TOUSLEY: Okay. I got it. Thank you. I

don't have any more questions.

CHAIRMAN ROISMAN: Does anybody who has asked questions before have any questions to ask now based upon responses to the questions that were asked by the Commission or its staff? Okay. Mr. Melone, you're excused as a witness but not as a representative of a party.

ATTORNEY MELONE: Thank you, Mr. Chairman. I did, I forgot to mention one thing to Mr. Tousley's question. There is no solar module in the background of the logo. This is completely independent.

MR. TOUSLEY: I was suggesting a correction.

ATTORNEY MELONE: Well, my hope is that, eventually, it can be more milk- and cheese-oriented as well. So this, the primary reason for this logo the way it looks is because I think that will, well, we think it will look good on cheese.

CHAIRMAN ROISMAN: All right. Mr. Melone, do you have any other witnesses?

ATTORNEY MELONE: No, Mr. Chairman.

CHAIRMAN ROISMAN: Okay. Mr. Einhorn, I believe you have one witness, Mr. Popp?

ATTORNEY EINHORN: That is correct.

CHAIRMAN ROISMAN: Okay. Is he online?

ATTORNEY EINHORN: I do believe he is. I

thought I saw him.

CHAIRMAN ROISMAN: Yes, I assume not active cameras yet. He may be just looking in.

ATTORNEY EINHORN: Right.

MR. POPP: Yeah, I'm here. This is Bob Popp.

CHAIRMAN ROISMAN: Okay. Mr. Popp, can you turn on your camera?

MR. POPP: Sure. One second, please.

CHAIRMAN ROISMAN: Okay, all right. Mr. Einhorn.

COMMISSIONER CHENEY: I will start by swearing him in.

CHAIRMAN ROISMAN: Okay.

ROBERT POPP,

duly sworn to tell the truth, testifies as follows:

DIRECT EXAMINATION BY ATTORNEY EINHORN

Q. Mr. Popp, the testimony that you filed on November 25th, is that, along with the exhibits attached to it, true and accurate to the best of your knowledge and belief today?

A. It does.

Q. Okay. Just for the record, Mr. Popp had previously filed testimony and three exhibits in June. His testimony was ANR Exhibit 6. His exhibits then were ANR 7, 8, and 9. In keeping in that order,

logically, his testimony here would be ANR Exhibit 10, it's an affidavit, and then Exhibits 11 through 15, which are various plant reports from 2017 through 2019 for both the Chelsea and Apple Hill project sites.

CHAIRMAN ROISMAN: Okay, all right.

ATTORNEY EINHORN: And I understand they've been admitted into evidence. So Mr. Popp is available for cross-examination.

CHAIRMAN ROISMAN: All right. Mr. Melone, do you have any cross-examination for Mr. Popp?

ATTORNEY MELONE: Yes, I do. Thank you, Mr. Chairman.

CROSS-EXAMINATION BY ATTORNEY MELONE

Q. Good afternoon, Mr. Popp.

A. Good afternoon.

Q. So I'd like to start with the facts related to what the Agency's position is in, in this particular case. I don't know if you recall in June you testified that, if the asters were all transplanted in the conservation area, then there would be no, no alleged irreparable harm to the asters. Is that, is that still your position?

A. That is correct. If they've all been moved, there's no, no undue harm to the asters.

Q. Okay. Now, you have reviewed the Chelsea and

Apple Hill annual reports, correct?
A. I have.
Q. Okay. So I don't know if you recall or you can bring it up. The 2019 annual report for the Chelsea project shows certain locations in figure one of rare plants, and it indicates that they've all been transplanted; is that correct?
A. I don't have access to that figure right at the moment, so I can't say. If you give me a moment, I can try to find it, or you can share your screen and show me.
Q. I don't have that on the computer I'm using for this hearing.
A. What year was that?
Q. 2019. It's an exhibit to your affidavit filed --
A. Yeah.
Q. -- November 25th.
A. But it's the 2019 Arrowwood report?
Q. That's correct.
A. Okay. I think I have that. What figure are you referring to now?
Q. I'm referring to Figure 1.
ATTORNEY DINGLEDINE: Mr. Roisman, I'm going to object that the Witness is looking at a document that nobody else can verify, and I'm not even sure that

the questioner and the Witness are even looking at the same document.

CHAIRMAN ROISMAN: We can solve that problem. Mr. Popp, we can make you the presenter, and, if you have that document available to you electronically, you can show us the cover page of the document to verify that it is a document that we've just received in evidence.

MR. POPP: Okay. Can you see that?

CHAIRMAN ROISMAN: Yes.

MR. POPP: Okay, excellent.

ATTORNEY EINHORN: If I may interrupt --

ATTORNEY MELONE: Well, we can start with that one. I was going to get to that one.

ATTORNEY EINHORN: And I believe that's the 2019 Apple Hill one, right?

ATTORNEY MELONE: Correct, that's right.

ATTORNEY EINHORN: Yeah, I mean, if it makes -- I'm certainly happy, because I have the ANR exhibits that we filed, you know, readily available to me. If it helps move things along, I'm happy to use my screen for sharing purposes.

CHAIRMAN ROISMAN: Okay. Ms. Dingledine, does this deal with your objection?

ATTORNEY DINGLEDINE: I would prefer if Don

were able to use the actual exhibits as opposed to this email. I think I would, that's more correct.

CHAIRMAN ROISMAN: All right. Mr. Einhorn, are you comfortable with doing that?

ATTORNEY EINHORN: Yes.

CHAIRMAN ROISMAN: Okay. So, Mr. Melone, which of the exhibits that we already have in the record is the one that you wish to ask Mr. Popp about? And then Mr. Einhorn, who will now be the presenter, will put that up on the screen for us.

ATTORNEY MELONE: Okay. So we might as well start, if we can, with the Chelsea one, since that's the one I started with. That was -- let's see. That's attached to Mr. Popp's 20, or November 25, 2020 affidavit. It is --

ATTORNEY EINHORN: It's ANR Exhibit 15.

ATTORNEY MELONE: Okay. ANR Exhibit 15? All right. So, if you can go to Figure 1 in that document --

CHAIRMAN ROISMAN: Wait just a second. Ms. Dingledine, does this satisfy your concerns?

ATTORNEY DINGLEDINE: Yes. Thank you very much.

CHAIRMAN ROISMAN: Go ahead, Mr. Melone.

(Exhibit ANR-15 was shown to the Witness.)

https://epsb.vermont.gov/?q=downloadfile/440867/150086

BY ATTORNEY MELONE:

Q. Okay, okay. Thank you, Mr. Chairman. Mr. Popp, so you see those circles there? Those, according to the way I read the legend in the Arrowwood report, indicate locations for the asters, and they all indicate that they were transplanted, correct? Is that your assessment of that report --

A. Yes.

Q. -- or that figure?

A. That's correct. All of the plants that were known at that time were moved.

Q. Right. So, based on this information, there would be, if that area were cleared that is outlined in green, there would be no adverse effect to any asters; is that correct?

ATTORNEY EINHORN: I'm going to object to the form of the question, adverse effect. I think Mr. Popp testified in his recently filed affidavit that his concern is with the destruction of the plants. Adverse effect implies the 248 standard for reviewing a CPG application, and that is not what we're doing today.

CHAIRMAN ROISMAN: Okay. Mr. Melone, are you comfortable with that correction to the question?

ATTORNEY MELONE: Yeah, I can reask the question.

CHAIRMAN ROISMAN: Okay, please. Thank you.

BY ATTORNEY MELONE:

Q. So, Mr. Popp, based on this figure, is it correct to say that all the asters that are located or located on that figure are no longer in those locations?

A. Yes.

Q. And is it correct to say that, since that has been done, there are no asters remaining in that area that would be affected by clearing that area?

A. I cannot say that unequivocally, because there may be additional asters that have either germinated or moved into that site or were overlooked by Arrowwood. The Agency gives three years on any planting incurred. So, if work were done within that three-year period, we're willing to accept some minimal damage, if you will. If it's done beyond that three years, we want to know the inventory done for the very reasons that I stated.

So, in answer to your question, I cannot say that no plants were harmed, but I will say that the Agency would be, would overlook the few plants that could have

been taken that may have moved in after that inventory had been done and, therefore, were not moved.
Q. Okay. So let me put this another way then. Based on the inventory that's represented in this Figure 1, there's, there would be -- well, the Agency is not claiming that there would be any irreparable harm by clearing that area; is that correct?
A. Correct, to the asters, and, if it were done, I think, by on or before May, May 1st of 2021.
Q. Correct. So, just to be clear, follow up on that, if the Commission lifted the injunction to allow us to clear by May 1st 2021, the Agency is not claiming that there would be any adverse, any impact to or any irreparable harm to asters; is that correct?
A. That would be correct.
Q. Okay. So, Don, if you wouldn't mind bringing up the Apple Hill 2019 report. Go to Figure 1 as well. Okay. Now, the same questions as to the asters here. Is it correct to say that all those circles that have some, some version of pink outline represent asters that have been transplanted and are no longer there?
(Exhibit ANR-14 was shown to the Witness.)

https://epsb.vermont.gov/?q=downloadfile/440866/150086

A. Yes, that's my understanding.
Q. So, to get right to the heart of the Agency's position, is, is it limited then to these circles on Figure 1 that haven't been transplanted? Is that the area, or are those the specific plants which the Agency has taken a position would create an irreparable harm if those areas were cleared?
A. Correct. It would be all the blue polygons or blue circles that are not outlined in pink or red. Plus, we didn't talk about the nimblewill yet, but also the nimblewill would be a concern.
Q. Right. But at least -- yeah, I'm going to get to the nimblewill, but, at least as to the asters, the Agency's concern, or is it correct to say that the Agency's concern is just for those blue asters that have blue dots that have not been, where asters have not been transplanted?
A. Yes, with the caveat that clearing occur before May 1st.
Q. Correct, right, right. Now, have you visited the Apple Hill site?
A. I have not personally been there.
Q. Okay. Has anybody from ANR visited the Apple Hill site and seen the flowering asters?
A. The enforcement person, I know, was there. I, I

really can't answer that other than him. There may have been other people.

Q. Okay. Now, in terms of the nimblewill, is it correct that the nimblewill is located, based on this figure, in the areas shown in yellow or the, the line or the blobs shown in yellow?

A. Correct. We use the term "polygon".

Q. Polygon? Okay. Yeah, I got confused with the polygon reference, because I thought a polygon had to have at least one straight side.

A. No.

Q. But okay. So the way I read this is the nimblewill from Site B and Site C and part of Site A have been transplanted; is that correct?

A. Let me -- I need to refresh my memory on that. Site C was indeed transplanted. My understanding was A and B, and I -- let me look at the reports here. Okay. From the Arrowwood 2017 report, they state, "Site B contained many hundreds of plants. Since it was not feasible to transplant all of these plants, only a portion, approximately 10 percent of the population, was transplanted". So 10 percent of many hundreds, they didn't put a total value on there. I don't know offhand about A. I would need to go back and look if that was entirely moved or not.

Q. Okay, all right. But so the, the specific areas, you know, again, where ANR is looking to stop clearing are the areas of the nontransplanted asters and nimblewill shown on this figure; is that correct?
A. That's correct.
Q. Okay. Now, there's been some, some testimony here on, on the definition of a population. Have, so, based on ANR's general guidance, there's a certain threshold, right, I think 10 percent in the case of S1 plants, where those plants can be removed or destroyed without creating any undue adverse effect; is that correct?
ATTORNEY EINHORN: I'm objecting to this question, this line of questioning, if it continues. The document that Mr. Melone is referring is the Agency's Section 248 guidance related to rare, threatened and endangered plants, and, again, we're not reviewing a Section 248 CPG application today. What we're reviewing today is whether or not an injunction should be continued due to the fact that there is a threat of irreparable harm presented for clearing that is, at this time, unauthorized by the Public Utility Commission under Section 248.
ATTORNEY MELONE: Yeah. So this is part of the confusion, the, the part where I get confused, because I'm not sure how you can claim there's

irreparable harm when the Agency itself has some guidelines that, you know, removal of 10 percent of plants of a population don't create undue adverse effect. So I don't see how you can claim that an action that has no undue adverse effect can then cause irreparable harm.

ATTORNEY EINHORN: I mean, that's getting into a legal discussion, but that approach, acknowledging that a CPG applicant can have an adverse impact but cannot have an undue adverse impact, is essentially the legal standard for Section 248, and so that is the difference between what would be considered adverse and acceptable for purposes of a 248 approval, recognizing that any project will have some level of impact. The question is, Will that project have an undue level of impact? That is the purpose of that.

What we're looking at today -- and that is in the context of a project that meets the Section 248 standard and has been approved by the Commission. What we're dealing with today are proposed projects that have not been approved by the Commission, and, in that respect, that standard doesn't apply, and then, in addition to that, because they have not been approved and that site clearing is taking place, they are violative of the 248 prohibition on site preparation.

And so it's a different standard. The standard becomes, Should an injunction issue? And the standard for that is, Is there irreparable harm? And destruction of a plant is by nature irreparable, because that plant is destroyed, and it cannot be put back.

BY ATTORNEY MELONE:

Q. Okay. So that clarifies the Agency's position, Mr. Popp, if you could just confirm that, the Agency's position here is that, even if a single plant is harmed, that that constitutes irreparable harm; is that correct?

A. Well, I, I'm certainly no lawyer.

ATTORNEY DINGLEDINE: Objection. Outside the scope of the direct testimony of this witness, and it's asking for a position of an agency of the State of Vermont. This is a fact witness and an expert in his area, not on the position of ANR with regard to policy.

ATTORNEY EINHORN: I will add to that an objection. We can brief that issue. Mr. Popp can speak to the issue of whether or not the activities that have taken place or the activities that are proposed will result in the destruction of plants.

ATTORNEY MELONE: Well, the last page of Mr. Popp's affidavit, he testifies that, you know, as to

what is in his view is irreparable harm. So I think it's fair for me to ask him what his view is as to what constitutes irreparable harm, since he's testified as to it.

CHAIRMAN ROISMAN: Yeah. I think, Mr. Melone, I think the controversy is the inclusion in your questioning of him as to what the position of the Agency was, and I think the nature of the objection that Ms. Dingledine raised was that Mr. Popp is not qualified or appropriate to ask him what the position of the Agency is. He has stated in his testimony what his position is, and he says, because those plants will be destroyed, the harm will be irreparable. I think it's fair game for you to ask him what constitutes irreparable harm and whether he believes destroying one plant, but confining it to what he believes, because that's what his testimony says.

BY ATTORNEY MELONE:

Q. Okay. Fair enough, Mr. Chairman. So, Mr. Popp, do you believe that destroying one arrowleaf aster plant is irreparable harm?

A. From a biological standpoint, no. From a legal standpoint, again, I'm not a lawyer, and I'm not qualified to answer that.

Q. Okay. And so why, why do you conclude that it's

not irreparable harm from a biological standpoint?
A. Why do I not?
Q. Why do you conclude, yes, that it's not irreparable harm from a biological standpoint?
A. Because it's under the 10 -- one plant would presumably be well below the 10 percent threshold that we allow.
Q. Okay, thank you. Now, based on your review of the reports, have you totaled any of the numbers of, of, say, the blue circles that have not been transplanted and compared those to what you consider to be the population?
A. I actually have, to the best extent that I can. There's only one, one of Arrowwood's reports that actually provide numbers, and it does not provide numbers of plants at all of the polygons. So we still have not had a complete count on the number of asters.
Q. So would, would you be more informed if, if Arrowwood provided the specific number of plants at each of these blue circles that represent plants that were not transplanted?
A. I'm, could you repeat the beginning of your question? There was an outside noise that I didn't quite get. Sorry.
Q. All right. So what I'm asking is, Do you need

more information from Arrowwood as to the exact total number that each of these blue circles represents --
A. Yes.
Q. -- to make such a determination?
A. Yes, absolutely.
Q. And so, if Arrowwood did provide that information to you, then you could at least make some assessment as to whether or not it exceeded the 10 percent threshold you just made, you just mentioned; is that correct?
A. Probably. If we had numbers for all the other polygons and the numbers that were moved, we could conceivably do that.
Q. Okay, all right. So I guess then my question is, Isn't it correct to say that we don't yet, yet have all the information you need to determine whether there's irreparable harm from a biological perspective?
A. We don't have the information that we need to determine if the 10 percent threshold has been reached and gone over, and, until we have that information, yes, I guess we can't make a final decision on, on the amount of irreparable harm. As far, you know, from, again, this is all couched in the terms of ecological damage, and I defer to the legal staff as far as what constitutes damage in the, you know, as far as the legal sense goes. So I just want to make clear that's

what my, my comments are directed completely in that, you know, restricted to that narrow sense.
Q. I understand. All right. So the 10 percent threshold is based on what's called a population; is that correct?
A. That is correct.
Q. And I think we did go over what the, what the Agency's or what you view as the definition of population is, but why do you believe that the, the population at the Chelsea and Apple Hill solar site is not part of the same population as the Warner, Stark, and Battle Creek site, which is right across Route 7?
A. We, we being the Heritage Program, have a convention of what constitutes a population, and we try -- we use that consistently, unless there's, you know, a clear exception, and I'll get into that in a second. And our convention is plants that are more than one kilometer apart or are separated by a major fragmenting feature, such as an interstate highway or a completely different habitat, are considered to be distinct populations.

One exception I can think of off the top of my head would be riparian systems where you have, we have some rare plants that occur up and down river shores, and there may be a mile or two between populations, but

when floods come, when ice scour comes, those plants move up and down. Well, they don't move up quite as much. They usually move downstream. But so there's some high potential for interbreeding, and that's pretty much where we're going with this.

These are plants -- I'm not saying that no interbreeding occurs between populations, but most of it occurs within the population, and, you know, things can interbreed long distances, but it's, it's not, not that common. I mean, most of the cross-pollination is occurring right on site. I could go on, probably.

Q. Okay. Well, on this point, back in June, you know, and I guess you testified to this now. You said plants move around; is that correct?

A. Yeah, that's reasonable. Some more than others.

Q. So how would the aster move around?

A. It can move vegetatively. You know, the roots, it has, like, short, short underground rhizomes. So it can send up new shoots. So it can spread on site. It can also spread via seed. Those would be the two primary means. Obviously, people moving them, we've moved a bunch, or Arrowwood moved a bunch to the conservation area.

Q. Right. So, when, when they -- I'd like to ask about moving by seed. So, when the asters flower, is

that when seeds would be dispersed?
A. Well, no. After the, the seeds are mature, which comes after the flowering.
Q. Okay. And so --
A. They flower in September. The seeds wouldn't be ripe until October, probably, but, yeah, you're in the ball park.
Q. So could the seeds travel by air?
A. Potentially.
Q. Now, we've already been told by the Intervenors that there's very windy conditions there on that site. So wouldn't it be reasonable to conclude that it's possible that the seeds --
ATTORNEY DINGLEDINE: Objection, Your Honor, facts not in evidence.
BY ATTORNEY MELONE:
Q. Well, I'm getting to the question. Isn't it reasonable to conclude that the seeds from either the Apple Hill solar site could have traveled to the Warner and Stark site or vice versa?
ATTORNEY DINGLEDINE: Objection, still to the foundational factual premise provided to the applicant. It could be rephrased, but in this proceeding there is no such evidence.
CHAIRMAN ROISMAN: Mr. Melone?

ATTORNEY MELONE: Well, the Witness has testified to the fact that the, the seeds can travel by air. So that's what I'm asking about.

CHAIRMAN ROISMAN: Do you want to ask him if he is aware of whether there is any wind in Bennington that might cause the seeds to move and, if so, what the direction is of it?

ATTORNEY MELONE: I think it's enough that I ask him, Isn't it reasonable to, or isn't it possible that the seeds could have traveled across Route 7 in either direction?

CHAIRMAN ROISMAN: Ms. Dingledine, if he leaves it that way and leaves out any reference to wind or anybody saying there's wind, does that take care of your objection?

ATTORNEY DINGLEDINE: Certainly, Your Honor. Thank you.

CHAIRMAN ROISMAN: Okay. Mr. Melone, just reask the question so Mr. Popp has it fresh in his mind, please. Thank you.

BY ATTORNEY MELONE:

Q. Okay. So, Mr. Popp, is it a reasonable possibility that the seeds would, the aster seeds, could travel by air across Route 7, either in the direction from Chelsea/Apple Hill westward or from

Warner/Battle Creek eastward?
A. Absolutely, and I think I stated that when I defined what a population was. I said most of the breeding occurs within the population. Occasionally, there can be, there can be gene flow among populations, and I can just give you a quick example. We found a grape fern down in Manchester on Mount Equinox, and the nearest population of it is in Michigan. I mean, how did it get there? You know, a spore must have gotten up in the wind column.

So where I'm going with this is anything's possible, and, of course, there can be some gene transfer or interbreeding, but the vast majority of it is within that population, and that's how we define it. I mean, to say, to completely exclude any inbreeding, we'd have to say there's only one population of the aster in the whole country, because, you know, seeds could blow from Kansas. I don't know. You see where I'm going with this? I mean, it gets ridiculous after a while. You've got to draw some boundaries.
Q. Right. So my next question, just from a factual perspective with the, the asters that exist on the Chelsea/Apple Hill site and the asters that exist across the road on the Warner, et al., sites, have you done any analysis of, that compares the plants to each

site to see whether they are exactly the same?
A. Of course not. I mean, I do not have -- we don't have the capability or the resources to do genetic analysis. That's very, very expensive, and it's only done with very high-profile plants like federally endangered species, and even then not much is known about endangered plants, genetically speaking.
Q. Okay. So then you can't tell for sure whether or not the Chelsea/Apple Hill population is, in fact, different from the Warner/Battle Creek population; is that correct?
ATTORNEY EINHORN: Objection. It's been asked and answered. Mr. Popp has testified as to why they're considered distinct populations and the fact that you could not rule out interbreeding, but the breeding typically takes place or the pollination within the separate populations.
ATTORNEY MELONE: Yeah, I think Mr. Popp has testified as to general rules. I'm asking about the specific facts applicable to this case and whether or not there's -- he said there's been no analysis to compare the two. So what I'm asking is or trying to confirm that there's really no evidence that these are not, these being Apple Hill asters and Warner asters, are not part of the same population.

MR. POPP: Should I answer that? I mean, it's -- okay. I didn't know if the objection --

ATTORNEY EINHORN: I'm sorry. I, I was continuing my objection in that you're asking him to prove a negative, and he said essentially that anything is possible with regard to interbreeding, but it is not likely.

ATTORNEY MELONE: Well, no.

CHAIRMAN ROISMAN: Mr. Melone, given that our standard is more probable than not, maybe you want to frame your question to him in terms of that, is it more probable than not can he say that these asters that are at the Apple Hill site are not the offspring of the asters at Warner?

ATTORNEY DINGLEDINE: Your Honor, may I make an objection? This is Brooke Dingledine. I would like to ask that the Public Utility Commission does not suggest to Mr. Melone, the petitioner or the cross-examiner, how to rephrase his questions. I don't think it's appropriate to help one side versus the other, and that's how it is feeling to the Intervenors when you suggest how he should rephrase. I don't mean to be inappropriate in making that objection, but I do want it on the record, because my clients are concerned about it.

CHAIRMAN ROISMAN: Okay. Ms. Dingledine, just to be clear, our purpose here is to make sure we get a clear and complete record. I'm sorry that it may appear that we're giving assistance to Mr. Melone in framing the question. I think what we were doing was helping the question get framed in a way that would avoid the objections and get the information in the record, but I take your point. Mr. Melone, please proceed.

BY ATTORNEY MELONE:

Q. Thank you, Mr. Chairman. Okay. Mr. Popp, do you think it's more likely than not that the aster populations on the Chelsea/Apple Hill site are part of or related to the population on the Warner/Battle Creek site?

A. I really have no basis to provide an answer to that. I don't know anything about the genetics of this aster. I don't know that any work has been done on it. The best I can do, as I said, we've done very little genetic work. One of the species we actually got some funding to work on was pitch pine up in Colchester, and we found clusters of pitch pine that were, you know, a kilometer apart, like very close, had distinct genetic differences, and that was quite surprising to us. We thought it was going to be genetically uniform, and it

was not. So I can't even speculate how that would apply to the asters, but the potential is there for them to be genetically different.

Q. Okay. Thank you. All right. So I have a question on the, the ranking of the aster. What is the goal or the purpose of the ranking?

A. We use the ranking as part of a national, international network of designating which members of our flora and fauna, I would add, and natural communities are considered rare and worthy of protection. So, just like we have an S1 plant, we have S1 animals, we have S1 natural communities. A natural community being like an old-growth forest or a bog. I'm not saying they're an S1, but I'm just giving you an example.

It, it allows us to prioritize. It allows -- it's used by the federal government to prioritize. I mean, this is a nationwide network. There's 80 different Heritage Programs across the US, Canada, Latin America, and we've all agreed to use this method. So it's been worked on and evolved over years by -- you know, the Heritage Program started in 1984. So you do the math, and that's how long this S-ranking system has been in existence. It's not something that we just made up.

Q. Okay. So, in order to be ranked very rare or S1

in Vermont, is it correct that there needs to be five or fewer known populations in the state?
A. Correct. That's, that's the standard for S1.
Q. Okay. And you said, as a general rule, you would, you know, general rule absent some kind of barriers, that you would treat as one population any plants within a one-kilometer radius; is that correct?
A. That is correct.
Q. So, if you had an open field, a very big open field that was just chock full of asters and that was one kilometer in diameter, how many aster plants could be on that, a million or more?
A. I'm not sure I follow the question. I mean, that, if it's a contiguous population, it, it, contiguous plants, it would be one population, regardless of the area it occupied. We're talking about distances between populations, not within populations. Maybe I don't understand the question.
Q. No. That's right, one contiguous area. Suppose there's one massive field one kilometer wide.
A. That would be one population.
Q. All right. So, if that one-kilometer area was just filled every square inch with asters, wouldn't there be more than, say, a million asters on that site?
A. I have no idea. It's unlikely. You don't get

pure stands of native plants in natural settings. You, that sounds like a cornfield.

ATTORNEY DINGLEDINE: I'd like to object on relevance grounds.

BY ATTORNEY MELONE:

Q. Well, I'm getting to that. But you'd be able to have tens of thousands, at least, right? I mean, because --

A. No. I mean that --

ATTORNEY DINGLEDINE: Objection, relevance.

MR. POPP: I mean, I mean -- no, I don't think you could get that many, because there's competition. There would be other plants there. I mean, if you went out and plowed a field and planted asters in a row like an agricultural field, maybe you'd get thousands of them, but not in a natural situation, even in old fields like that. Yeah, I, that sounds completely unrealistic to me.

CHAIRMAN ROISMAN: Mr. Melone, is there some relevance to where all this is going? And, if so, maybe we ought to get there.

ATTORNEY MELONE: Okay. So, yeah, I'll explain relevance. It's, the way the ranking system works, there could be one aster plant in six different localities in the, in the state, and, that way, the

plant would be no longer very rare the way I understand these rules, but yet you could have tens of thousands of plants in one location, but yet the plant is considered very rare. That's all I'm trying to get on the factual record.

ATTORNEY EINHORN: I'm going to object to this line of questioning. First of all, Mr. Melone obviously doesn't know the biology of asters or any plants, apparently, based on these questions and what he's just explained.

That aside, to the extent, and I think where he's going with this is to attempt to show that this particular species of aster is not a very rare plant in Vermont. That's a moot point as we sit here today, because all of these reports that we're looking at right now, we've been looking at, have been prepared by Arrowwood Environmental working on behalf of the solar facility developers, and those reports clearly say that these plants are S1 in the case of the aster and S2 in the case of the nimblewill. So to debate whether or not that's appropriate is, for our purposes, moot. These report, these, the testimony that preceded these reports from Arrowwood is essentially acknowledging the classification and ranking of these plants.

CHAIRMAN ROISMAN: Mr. Melone?

ATTORNEY MELONE: Yeah, and I disagree, Mr. Chairman. It's not a moot point, because, yeah, it's true those reports just are based on what the Agency has said is an S1. They don't get into whether there's a justifiable basis for it, whether the system makes sense, whether the system has any relation to irreparable harm to either the plants or the natural environment, and the Agency, in fact, has argued that this is the kind of issue that we need to address at the Commission first, because we have asked the Superior Court to rule on this type of issue, and the Agency has objected, saying that we need to go to the Commission for this type of what they consider an as applied challenge.

Now, if the Agency doesn't want us to develop a record on that, then I guess they'll end up needing to withdraw their argument in the Superior Court.

ATTORNEY EINHORN: The reference made in Superior Court was because this was being challenged in the context of an active Section 248 application, the Warner Solar project, Case 19-0516. In these particular projects which form the basis of why we're here today, Apple Hill, Chelsea, and Willow Road, the petitioner in those projects has essentially agreed and admitted that the classifications of these plants as S1

and S2 are effectively appropriate. That's what they are. So that makes this a moot point for the purposes of this proceeding.

ATTORNEY MELONE: No, we haven't acknowledged that just by the fact that we were agreeing to play along by ANR's rules, because now, now we're in a different circumstance. Now we're in a circumstance where ANR is trying to take the whole bundle of sticks related to plants and say that, well, we have to accept the S1 characterization and, based on that, we have to accept the 10 percent threshold and we have to accept the population definition, and the end result is that, oh, well, there's going to be an injunction to stop your farming activities, so --

ATTORNEY EINHORN: The, the identification as the plants, of the plants as S1 and S2 was made and offered by the petitioner's consultants. The proposal to relocate plants to the conservation areas was made by the petitioner's consultants. So I don't see how we go back and we revisit that.

CHAIRMAN ROISMAN: And, Mr. Melone, notwithstanding what you represent was done in the Superior Court, it sounds like what you're asking us to do is to rule on a rule that was adopted by ANR as to whether or not we think they made a rational decision

in developing a rule. I don't think we have any jurisdiction to be ruling on ANR's rule.

There are mechanisms by which you can challenge the way in which ANR classifies plants as endangered, S1, S2, rare, very rare, but I don't, I don't see how that's relevant here, and, even if it were, it sounds like we're having a legal argument, and, of course, that's not the purpose of this hearing. You'll have a chance to brief that, but I don't think we need to explore it any further.

BY ATTORNEY MELONE:

Q. Okay. That, that's fine then. So, Mr. Popp, to, to your knowledge, has the Agency sought to enjoin any other persons from removing asters or nimblewill from their land?

A. I'm sorry. Have we prevented anyone from moving them, removing them?

Q. Have you sought to prevent them?

A. Not to my knowledge.

Q. Okay. Now, the 10 percent threshold that you mentioned before, were you involved in the, the creation of that 10 percent threshold?

A. I was.

Q. And, and when was that, that decided?

A. Oh, in, I don't have the date off the top of my

head, but just prior to the guidelines for inventories being completed for 248 process, and if, I think that document is there somewhere, but there's a date on it. Yeah.

Q. Right. Okay, yeah. So --

A. Go ahead.

ATTORNEY MELONE: Yeah, yeah. So I think that document is, is ANR-RT-3, and I don't know if you can bring this up, Don, on your screen, but the date on that document, according to the copy filed, is October 5th 2016.

ATTORNEY EINHORN: I, I, if, if you're referring -- that's not a document that we've offered, so I don't know if I even have it, and, again, I'm going to object to questioning, any line of questioning on the Agency's Section 248 guidance document, because that is a document that the Agency uses in reviewing 248 petitions. It's a document that the Agency has made available to applicants so that they understand what the Agency's thought process is.

If Mr. Melone wants to ask Mr. Popp questions independently as to what his biological opinion is on the topic of population impact, I think we could allow that, but I also think that's already been done. I don't think it's appropriate in this proceeding to be

discussing a guidance document that is used in the context of 248 project review to determine if something is unduly adverse or simply adverse. And but I don't have that document handy. I could possibly dig it up but with the caveat that I'm objecting to questioning along the lines of that document.

CHAIRMAN ROISMAN: Mr. Melone, you do or don't have that document?

ATTORNEY MELONE: I do have that document. I thought it was in this, in this proceeding. If not, I would certainly like to introduce it. It is marked, the copy that I have is Exhibit ANR-RP-3.

CHAIRMAN ROISMAN: ANR, did you say P, like Paul, 3?

ATTORNEY MELONE: Yes, P, like Paul, 3.

CHAIRMAN ROISMAN: Mr. Einhorn, did you have a document like that?

ATTORNEY EINHORN: Well, I think, and, again, in this proceeding, no. I think that was filed this morning, which is why I don't have it. My understanding is that was filed as an entire packet of Mr. Popp's testimony and exhibits in the Warner solar project. Is that what you're talking about, Mr. Melone?

ATTORNEY MELONE: Yes, it must be in the

Warner solar project testimony that we filed in the record today.

ATTORNEY EINHORN: You filed that today, right? And now I can look for that.

ATTORNEY MELONE: Yeah, I mean, so all I'm trying to get at it is Mr. Popp mentioned the 10 percent threshold that he mentioned earlier was developed in connection with this guidance, and so I was just trying to determine the date, and the date was October 5th 2016.

ATTORNEY EINHORN: As I recall his testimony, it was based on a biological perspective. I don't think he was talking specifically about the guidance document itself and, and how that document was developed, which, again, I'm going to object to questioning about that document. If you want to ask him about his own opinions --

ATTORNEY MELONE: Well, I'm trying to refresh his recollection as to the date when the 10 percent was developed.

ATTORNEY EINHORN: In the document or --

ATTORNEY MELONE: He's the one who referred to the fact that the 10 percent threshold was developed at the time that they came up with and issued the guidance, but he couldn't remember the date. He said

it was years ago. So I'm trying to get, refresh his recollection as to the date, and the best way to do that is to show him the guidance document.

ATTORNEY EINHORN: I can pull the guidance. I think I found it. RP-3?

ATTORNEY MELONE: Yes.

MR. POPP: Yes. It's, October 5th 2016 is when it was signed by the Commission official.

ATTORNEY DINGLEDINE: May I enter an objection, Mr. Roisman, on relevance? I don't understand why we're looking at all these kinds of documents when the petitioner signed MOUs and now they don't like the provision of the MOUs, so they're trying to go after something that's completely moot about methodologies and all of this other jazz about the rare species and how they're calculated and all this. I simply do not understand why this inquiry is even happening. It is completely irrelevant. They are in violation of their promises under an MOU, and that is what is relevant here.

CHAIRMAN ROISMAN: All right. Mr. Melone, we do seem to be getting very, very far afield. As to this simple question, I think we now have been told what the date of this document was, and you heard Mr. Einhorn's objection that, since this document described

at the very beginning the guidance with regard to petitions under 30 V.S.A. Section 248, why should we be concerned, other than that you wanted to know the date, with any further questioning of Mr. Popp about what's contained in the document that's relevant to issues that are not in front of us?

ATTORNEY MELONE: Well, yeah, Mr. Chairman, I first wanted to have him confirm that the timeframe when he developed the 10 percent threshold was this date or around this date. Second --

CHAIRMAN ROISMAN: And you have that now, correct?

ATTORNEY MELONE: Correct. Second, the, so I'm having a difficult time understanding how this proceeding that ANR is claiming that we're engaging in site preparation for an electric generation facility under Section 248 but yet, at the same time, saying anything related to Section 248 is not relevant to hear. It just seems inconsistent to me. I mean, I understand why they don't want to have to address their guidance document here from a substance perspective, but I think the argument's inconsistent, because, otherwise, where is the jurisdiction if it's not --

CHAIRMAN ROISMAN: Well, it sounds like a good legal argument that you will be making in your

brief, Mr. Melone. What I'm trying to figure out is why we're spending a lot of time talking about this. Ms. Dingledine?

ATTORNEY DINGLEDINE: I just wanted to add. The time for Mr. Melone to have asked these questions and to challenge the methodology was before he signed the MOU. There is a contract. He had obligations. He has breached them. That's what this should be about, not whether ANR, any of this methodology stuff. This has no bearing on it. It is irrelevant. Did they or did they not engage in site activities that violated their MOU?

ATTORNEY MELONE: All right. So I would just like to briefly address that. We've heard testimony earlier today from Jim McClammer that we did not violate the MOU, even by this proposed clearing, and, secondly, the fact that we were willing to sign MOUs with ANR to get their support does not mean that, well, in this proceeding, which is totally different, we can't challenge that.

I mean, clearly, the argument we made to the Superior Court and the United States Supreme Court has acknowledged in its almost identical circumstances that the Agency has a coercive effect. They basically say, Unless you play ball with us and abide by these rules,

whether or not they're valid or not, we're going to give you a hard time. So the fact that we did it, okay, that's, that's fine, but now we're having gone way beyond that in trying to, to stop valid activities that are unconnected to 248. That's the difference.

CHAIRMAN ROISMAN: That still doesn't explain, Mr. Melone, why we're going into all these questions about whether or not a guidance document related to 248 is supportable or not supportable by ANR. We're not here -- this case is not about whether or not ANR is doing its job. This case is about whether or not construction has taken place on a site for which a CPG application has been filed in violation of the provisions of the statute and the regulations of the Public Utility Commission. That's the issue. I'd like you to stay focused on that. I mean, it's getting late. We want to finish this today. I'm just not sure where you're headed with this that it's going to advance the record that we need to have made in order to decide the question in front of us.

ATTORNEY MELONE: Well, so you're right there, but there are two separate legal determinations. One is whether or not there's been site preparation for an electric generation facility. The second one, though, is the criteria for an injunction. That, that

goes beyond just whether you conclude that site preparation for an electric generation facility has occurred. There has to be irreparable harm. And what I'm trying to get at by questioning Mr. Popp about the 10 percent threshold, that's what he says is the threshold for irreparable harm. So I would like to at least ask him, apart from the guidance document, where that 10 percent came from. Is it based on any scientific evidence?

CHAIRMAN ROISMAN: And I, I'm not -- I thought he had answered that, but ask him that question, and let's see what his answer is.

BY ATTORNEY MELONE:

Q. Okay. Mr. Popp, how did you develop the 10 percent threshold and on what scientific basis was that developed?

A. It was done collectively by members of the Flora Advisory Group, and then it was discussed within the Agency Planning Department Division, and they accepted it and then, ultimately, with our Commissioner, but the groundwork was done by the Flora Advisory Group, which is a scientific subcommittee of the Endangered Species Committee, and I queried a number of people there. We discussed it at a meeting, and we decided on 10 percent. You know, it's, I think -- yeah, that's, the

Commissioner and the Agency accepted that as reasonable.

Q. All right. So my question was, What was the scientific evidence that supports the 10 percent? Were there any studies of any kind that it was based on?

A. We looked into, you know, some population studies of plants declining, like how much, especially with, like, seed removal, but also, you know, removal of plants, and, you know, not a lot has been done, as you can imagine, with removing individuals of endangered species, just because of the very nature that, you know, they're rare species, and you don't kind of mess with them. So there's really nothing absolutely relevant. You know, it's, most of the removal studies have been done with more common species.

But, yeah, we did look into some literature, and, and we actually looked at what other states do, and, yeah, it was -- and I just want to add it was done more than four years ago. That's when it finally got accepted and approved by our Commissioner, and those of you who work in the State know that there's a bit of bureaucracy and until things get up to the higher levels and get looked at and get approved takes a while. So this was actually discussed two or three years prior to that date. More than discussed, it was

determined that, you know, those were going to be the thresholds we would use.

CHAIRMAN ROISMAN: All right. Mr. Melone, unless you have only one or two more questions, I think we should take a break now. Do you have one or two more questions, or is it more than that?

ATTORNEY MELONE: I can't say it would only be one or two. So I'm fine taking a break right now.

CHAIRMAN ROISMAN: All right. Let's take a break, and we'll get back together again at 3:45.

(A recess was taken from 3:33 p.m. to 3:45 p.m.)

CHAIRMAN ROISMAN: All right. Are we all back? Mr. Melone?

ATTORNEY MELONE: Thank you, Mr. Chairman.

BY ATTORNEY MELONE:

Q. Mr. Popp, do you consider Route 7 to be an isolating barrier between the Apple Hill and Chelsea population on the one hand and the Warner and Battle Creek populations on the other?

ATTORNEY DINGLEDINE: Objection, relevance.

ATTORNEY EINHORN: It's been asked and answered.

CHAIRMAN ROISMAN: I think they're right, Mr. Melone.

ATTORNEY MELONE: I don't think he actually

answered that question.

CHAIRMAN ROISMAN: Mr. Popp, is it a barrier or not?

MR. POPP: It is.

CHAIRMAN ROISMAN: All right, Mr. Melone.

BY ATTORNEY MELONE:

Q. Okay. So then on what basis do you conclude that it's a barrier?

A. It's a completely different habitat. Our guidelines are one kilometer or a barrier that's -- in other words, if there was similar habitat that was continuous, then it wouldn't constitute a barrier. I think an interstate highway is a very different habitat than a regenerating old field.

Q. Okay, that's fine. So, just so I understand, you look at the, the roadway itself not being consistent with the land on each side? Is that how you're looking at it?

A. There is no potential whatsoever for any kind of colonization by the aster in that intervening area, because it's concrete, and there, and the road sides are mowed. So there's no possibility of plants, a population starting in between the two existing populations. That's what we mean by a barrier. If the, if the habitat was contiguous, there might be some

potential, in which case -- I'll stop there.
Q. So would that mean that a regular paved street, a two-lane road, is an isolating barrier as well?
A. No. It's got to be of a certain size.
Q. Okay. So, so that's my question. What standard is there for the size?
A. I mean, I guess we don't have a, a definition in writing. I mean, a four- or six-lane highway is pretty substantially different than a sidewalk or a logging road or even a regular road. Anybody would, would, I think anybody would, would agree to that.
Q. Right, right. I would agree with that too. I'm just saying, how do you determine where the line is?
A. An interstate's a barrier. A single town road is not or, yeah, wouldn't likely be.
Q. And that's because of the width?
A. The width and also the use, but, yeah, mostly the width. Interstates are, you know, not only are they wide, but the, the medians are mowed constantly or regularly. So it's unlikely that any rare plant would get established in the median. So it's not just the concrete, it's the whole cleared area that's the barrier.
Q. Okay. But, but it's correct to say that there's no specific standard anywhere that you're basing this

on?
A. There may be, but I don't, I'm not aware of any off the top of my head.
ATTORNEY MELONE: Okay, all right. Thank you, Mr. Popp. Mr. Chairman, that concludes my questions.
CHAIRMAN ROISMAN: Okay. Ms. Aceves, do you have any questions for Mr. Popp?
ATTORNEY ACEVES: I do not.
CHAIRMAN ROISMAN: Okay. Ms. Dingledine?
ATTORNEY DINGLEDINE: No, thank you, Your Honor.
CHAIRMAN ROISMAN: Did you say "yes" or "no"? I'm sorry.
ATTORNEY DINGLEDINE: I beg your pardon. I didn't mean to interrupt. I don't have any questions. Thank you.
CHAIRMAN ROISMAN: Okay. Thank you. Commissioner Hofmann, any questions for Mr. Popp?
COMMISSIONER HOFMANN: No, I don't. Thank you, Mr. Chairman.
CHAIRMAN ROISMAN: Commissioner Cheney?
COMMISSIONER CHENEY: Neither do I. Thank you.
CHAIRMAN ROISMAN: Mr. Landis-Marinello, any

questions for Mr. Popp?

MR. LANDIS-MARINELLO: No, I do not. Thanks.

CHAIRMAN ROISMAN: Mr. Tousley, any questions for Mr. Popp?

MR. TOUSLEY: I do not. Thank you.

CHAIRMAN ROISMAN: Okay. Mr. Einhorn, do you have any redirect questions for your witness?

ATTORNEY EINHORN: I do, Mr. Chairman, very limited.

REDIRECT EXAMINATION BY ATTORNEY EINHORN

Q. Mr. Popp, Mr. Melone asked you a number of questions focused around the percentage of plants impacted for, as you explained it, understanding damage to plants from a biological perspective, whether the percent, if you would, of impact is 10 percent or 20 percent or some other percentage. Do you remember that?

A. Yes, I do.

Q. And, when you were talking about the damage from a biological perspective based on the percent of plants impacted, you were, were you talking about damage to the population, or were you talking about damage to the individual plant which has been harmed or damaged?

A. It was certainly intended to be damage towards the population. Our thought is the population could

withstand that limit of, of impact. Obviously, if, if you impact an individual plant, that plant is, is, you know, is then, is done for if it's destroyed.

Q. Okay. Or, if it's a number of plants, it's that number of plants, whether --

A. Correct.

Q. -- it's above or below 10 percent of the population?

A. Right.

Q. And Mr. Melone, I shared my screen, if you remember. He discussed the Apple Hill monitoring report with you that showed some asters that were not transplanted. Do you recall that?

A. I do.

Q. And, again, that was kind of within the questioning of percent of the overall population, and I think there was some discussion about, well, we really don't know. We would need additional information from Arrowwood Environmental to determine how many asters are out there entirely, how many have been moved, how many are still where they originally were and, in effect, in harm's way. Do you remember that?

A. I do.

Q. Okay. So the plants that those blue polygons that we've talked about that weren't surrounded by the

little pink circles, those plants that you said would be destroyed, you don't know the exact number, as we sit here today, of those plants, do you?
A. That's correct. We know it's more than 110.
Q. Okay.
A. Because Arrowwood provided some numbers, but not all of the numbers.
Q. Okay.
A. There's some numbers that were unlabeled.
Q. Okay. So more than 110 based on the information provided from Arrowwood, but it could be more?
A. Yes, it would be more, because there's some, as I said, unlabeled polygons that would be destroyed.
Q. I understand. And, and a polygon here, it could be --
A. Yeah.
Q. -- it could be 1 plant, it could be 10 plants, it could be 50 plants in a, in a single polygon that we see here?
A. Correct. We have no way of knowing.
Q. Okay. Are the asters the only plants that are considered rare or very rare on this site that are also in harm's way as we sit here today?
A. Well, no. The nimblewill is considered rare also.
Q. And do we know -- again, he, Mr. Melone, made

reference to the polygons in yellow of the nimblewill, and he suggested he was going to ask you about that, but I don't recall him coming back to that, but he did bring it up, and I just want to understand from you.

Do we have any idea, based on the Arrowwood reports, or do you have any idea about how many plants are, are still in locations where Arrowwood observed them and those same locations are locations that are proposed to be cleared?

A. The best estimate we have is what I told Mr. Melone, that Arrowwood's report said Site A and Site B have many hundreds of plants, and their guess or estimate was about 10 percent of those got moved. So, I, I mean, we have to interpret what many hundreds means, but you can all do the math as well as I can. So it's, it's vague, but there's a lot of plants left on site. I guess that's the bottom line.

Q. So the equation would be X representing the number of plants left on site right now in harm's way of clearing, times Y, which is .9, equals how many plants?

A. Right. Yeah. So 90 percent of the plants in A and B are still there, and I guess all of D is still there as well.

ATTORNEY EINHORN: But D, I believe -- okay, yeah. That's, that's all that I have. Thank you.

CHAIRMAN ROISMAN: Okay. Anybody who has asked questions previously have any follow-up questions now after the redirect? Mr. Melone?

ATTORNEY MELONE: Thank you, Mr. Chairman.

RECROSS-EXAMINATION BY ATTORNEY MELONE

Q. Mr. Popp, you just testified that you think that there are a minimum of 110 --

CHAIRMAN ROISMAN: Mr. Melone, put your microphone up close to your mouth, please.

BY ATTORNEY MELONE:

Q. I apologize for that. Mr. Popp, you just testified that you believe that there is at least 110 plants in the area or represented by the blue, blue circles that don't have any pink. One of your exhibits, ANR-11, it's the 2017 Apple Hill plant report, and Page 33 actually does give a specific number and, and just a quick calculation doesn't make it seem anywhere near 110. So I'm just wondering where you got the 110 number from.

A. Can you put that up? I'm not familiar with that number that you just put out there. And then I'll answer your question.

ATTORNEY MELONE: Don, do you have that? It's Exhibit ANR-11.

CHAIRMAN ROISMAN: Mr. Einhorn, you're on

mute.

ATTORNEY EINHORN: I'm sorry. Thank you. Mr. Melone, you're looking for Exhibit Number 11 that we filed last week?

ATTORNEY MELONE: That's correct.

ATTORNEY EINHORN: Yes, I, I have it up on my screen. If I can share my screen, then we will have it.

MS. BISHOP: Mr. Einhorn, you're still the presenter. So, if you just move your mouse on the bottom when you see the circles, the second from the right will be screen, and, if you just click on that, you'll share your screen again.

ATTORNEY EINHORN: Okay. And I think we have it now. And what page was that?

ATTORNEY MELONE: We can go to Page 32. It's actually on both Page 32 and 33. I think it's --

ATTORNEY EINHORN: Let's try that. 32, 33. I got it.

ATTORNEY MELONE: Okay. So you might have to zoom in a little bit to actually see the numbers and not, that are depicted in those circles.

CHAIRMAN ROISMAN: Mr. Melone, which circles are you asking the Witness to focus on, the pink ones or the yellow?

ATTORNEY MELONE: The pink ones that are at the southern end of the property that are outside the that green border.

CHAIRMAN ROISMAN: Oh, okay.

(Exhibit ANR-11 was shown to the Witness.)

https://epsb.vermont.gov/?q=downloadfile/440863/150086

BY ATTORNEY MELONE:

Q. So, kind of looking left to right, there's one that has the number 7. Another one has the number 35. Another one has 9. Another one's 6. So it was my intention to ask for some further information from Arrowwood just to confirm that these numbers represent numbers of plants, but that's the way I read these.

So, Mr. Popp, I'm wondering where you get the 110 number from.

A. I added up all those numbers, and that's what I came up with. I believe there were -- just give me one moment here. Okay. I found a total of 14 polygons outside of the array where plants were not moved. 12 of them had numbers. There were 2 additional polygons that were added in the 2019 report without numbers. I added the numbers up in those 12 polygons and came to 110, plus the 2 polygons that were unlabeled, and

that's why I said 110-plus. So one, two, three, four, five, six, seven, eight, nine, ten, eleven. I still count twelve polygons there. Somebody can check my math if they would like.

Q. And you're saying that those are all in the, in the clearing area? I'll get that plan.

A. Yeah. So it's, it's -- yeah, you have to overlay them. It's approximate, but it's the best we can do.

CHAIRMAN ROISMAN: And, just so we're clear, Mr. Popp, the ones you counted are the ones that are not inside any of the green borders; is that correct, not inside the red border?

MR. POPP: That is correct. Oh, you can't see my cursor. I could show you the 12 that I counted, but you could probably figure that out.

CHAIRMAN ROISMAN: Yes, I can see them.

BY ATTORNEY MELONE:

Q. Now, so the, the, at least the way when I -- so are you counting the 10 and the 20 at the very bottom of the screen?

A. I did.

Q. But, if you pick up the clearing plan that was attached to Kobelia's testimony, the clearing plan goes straight across from the southern border of the, of the conservation, which would exclude the 10 and the 20,

because I think that that's not, that's not on the landowner's property.

CHAIRMAN ROISMAN: Mr. Melone, are you asking a question, or are you making a statement?

MR. POPP: I can respond to that.

CHAIRMAN ROISMAN: Let him answer. Go ahead, Mr. Popp.

MR. POPP: I was going to say or ask Mr. Melone, Are those plants flagged? We know from Mr. Kobelia he's bringing heavy equipment in, bulldozers. It looks like Polygon 20 is right adjacent to the road, and you're bringing in heavy equipment on a, on an old logging road. I've had numerous, a lot of experience where roadside plants get totally crushed by heavy equipment. So, unless those plants are flagged and fenced, and fenced, not just flagged, they're not, they're in jeopardy. We've had plants on construction sites that were flagged and fenced with construction fencing, and they were still bulldozed. So, yeah, they're in jeopardy.

BY ATTORNEY MELONE:

Q. Okay. So you would think, since the clearing plan doesn't contemplate clearing the 10 and the 20, that, that all that would need to be done is to fence them off; is that correct?

A. Well, fence off those two or all of them, are you proposing?
Q. Well, yeah. I was just talking about the two that are not on --
A. Well, if you can fence those, that would protect those two, and then, remember, there's two others that are not shown on this plan, because they were only discovered in 2019. If you go to the 2019 plan and compare it with this one, you'll see two additional circles.
Q. Two additional circles? Well, yeah, I see one, but I don't see a second one.
A. There's one on the west side of Willow Road just up to the uncleared area, and then there's one at the southwest corner of the array, just outside the green line, that are not depicted on the earlier plan.
Q. All right. Yeah. So, so you don't have those, those numbers?
A. That is correct.
Q. So, again, you couldn't tell, until you get that number, whether, where things sat with the 10 percent threshold; is that correct?
A. That would be correct.
ATTORNEY MELONE: Okay. That, that ends my questioning, Mr. Chairman.

CHAIRMAN ROISMAN: Okay. Any additional questions based upon responses to Mr. Melone's recross?

ATTORNEY EINHORN: Yes, I do.

REDIRECT EXAMINATION BY ATTORNEY EINHORN

Q. While we're looking at this ANR Exhibit 14, which is the 2019 plant report for Apple Hill on which the two new polygons appeared, Mr. Popp, I want to direct your attention to the three polygons directly to the west of the conservation area and sort of in the lower part of that triangle between the Willow Road extension, the conservation area, and the solar array. Do you see those?

A. I do.

Q. I'm going to bring up the Exhibit RK-2, which was filed yesterday, depicting the site work that Mr. Kobelia has performed, and did you hear him testify earlier today?

(Exhibit AH-RK-2 was shown to the Witness.)

https://epsb.vermont.gov/?q=downloadfile/441501/150086

A. I did.

Q. And I want to ask you if you've had an opportunity to review what he has done according to this plan and what he described in his testimony today and compare

that to the 2019 plan we were just talking about, and, if, if you have had that opportunity, do you have any conclusion with regard to the status of those three polygons?

A. The plants in those three polygons are destroyed as depicted on the, the site-clearing plan. They're, they're certainly within that, that rectangle, and it's possible the two, there's two other polygons to the north that may be -- they're kind of on the edge -- that might be included in the clearing area.

Q. And, just adjacent to and to the north of that conservation area, there's the cleared area that continues, it kind of runs along it from east to west or west to east, and Mr. Kobelia described that, I believe, this morning as approximately ten feet wide. Do you see that?

A. I'm sorry. You're talking about the, along the northern boundary of the conservation area?

Q. Yes.

A. Yeah, I do.

Q. And are there any nimblewill in that area as depicted by --

A. Yeah. Well, it cuts right across a swath of nimblewill that Arrowwood left in place, because it was outside the proposed solar array.

Q. What's your conclusion with regard to the plants that were in that swath of clearing?
A. They'd be destroyed as well.
ATTORNEY EINHORN: Okay, thank you. I don't have any further questions.
CHAIRMAN ROISMAN: Any additional questions from anyone? Mr. Popp, thank you very much.
MR. POPP: You're welcome. Thank you.
CHAIRMAN ROISMAN: Mr. Einhorn, do you have any additional witnesses?
ATTORNEY EINHORN: I do not.
CHAIRMAN ROISMAN: Ms. Aceves, I believe you previously said you had no witnesses. Has anything changed?
ATTORNEY ACEVES: No, we have no witnesses.
CHAIRMAN ROISMAN: Okay. Unless I'm having a senior moment here, it looks like the evidentiary portion of the hearing is concluded and we can go to ten-minute closing statements. Does anybody have anything that we need to address at this point with regard to the evidentiary portion of the hearing that's not going to be covered in your ten minutes?
ATTORNEY DINGLEDINE: Mr. Roisman, this is Brooke Dingledine. In terms of any emails or text messages between the Melone entities and Mr. Kobelia,

we'd like to try to get those before the briefs are due.

CHAIRMAN ROISMAN: Okay. I think, Mr. Melone, you had indicated that, or maybe Mr. Kobelia had indicated that we could probably get those by Monday, and, unless I'm very mistaken, I doubt that anybody is going to propose briefing by Monday.

ATTORNEY MELONE: That's correct.

CHAIRMAN ROISMAN: Okay. And, by the way, once they're produced, can we get any agreement at this point that they will be admitted into evidence, or is that something that everyone wants to reserve on? We can always do it by emails if people want to look at them before they say, yes, put them in or don't put them in, but any, any thoughts on that from anybody?

ATTORNEY MELONE: We would like to reserve.

CHAIRMAN ROISMAN: Okay, all right. So they'll get produced. If anybody, after they're produced, wants to have them made as an exhibit, file something in ePUC that requests that they be made an exhibit. We'll use a quick, 24-hour turnaround time for anybody who has an objection, and then we'll either admit them or not admit them as the case may be.

ATTORNEY DINGLEDINE: Mr. Roisman, may I ask that the production be pursuant to an interrogatory and

request to produce that has to be responded to under oath so that there's a very clear written record as to what is being requested to be produced so there is no misunderstanding of that end and Mr. Melone answer under oath that those are the only materials that, once he produces them, in response to that?

CHAIRMAN ROISMAN: If, Ms. Dingledine, if you'll file before the end of the day today in ePUC that request, then, Mr. Melone, when you respond, you can respond to the request including, if you so choose, any objection you have to whatever Ms. Dingledine has asked for, and we'll receive it in that format, and we'll take both the questions and the answers as being filed in ePUC. I know it's been our practice that often in hearings responses to the requests are not themselves filed in ePUC, but, in this case, we will have it filed in ePUC. Okay? And, Mr. Melone, please, if you are not going to be able to produce by noon on Monday, will you just send a note around to everyone, again, through ePUC indicating when you're going to produce?

ATTORNEY MELONE: Yes, I will, Mr. Chairman.

CHAIRMAN ROISMAN: Great, thank you. All right. So, Mr. Melone, you have ten minutes.

ATTORNEY MELONE: Thank you, Mr. Chairman.

Thank you to you and the other Commissioners for spending the time today. So you asked as part of closing, I think, whether we think any further process is needed. I think the answer to that is "yes", to a small extent. That is that I think we need to produce the actual numbers of the unknown polygons, because, without that, I don't see how there is an evidentiary basis to calculate whether there's irreparable harm or not, even under ANR's purview.

We also have served discovery on ANR, which we would like to be responded to, and Mr. Popp earlier today in determining, or referenced studies on which his, his 10 percent threshold is based. We would like ANR to produce those studies.

So the, the two issues here are whether site preparation for construction of an electric generation facility is taking place or would take place based on, on the proposed clearing for the farm use, and our view is we've sent our, and our view is that this is site preparation for the farming activities. It is not site preparation for an electric generation facility. To conclude otherwise requires the Commission to do a 180-degree turn from every other one of its rulings on what constitutes site preparation for an electric generation facility, and we cite those, those decisions

in our, in our memo or my testimony as well.

And, even if it, if there were site preparation for an electric generation facility, that still doesn't mean, from a legal perspective, that an injunction is appropriate. There has to be irreparable harm from the site-clearing activities, and we don't believe there's any irreparable harm. Mr. Popp has testified that there's no irreparable harm if the 10 percent threshold is not reached, and we think the evidence will support that the 10 percent threshold is not reached, so that there's no basis for the temporary or the injunction of any kind.

We, we continue to sufferer irreparable harm by not being able to engage in those activities, and, even if the Commission continues some type of injunction, what we've heard from Mr. Popp today, it should be limited to just the southern end of the Apple Hill or the southern end of the 27-acre parcel, because that's the only area where there are plants that have not been transplanted. There's no, there's no basis to expand it beyond where, where there are no plants that have not been transplanted.

So that's all I have to say. Thank you again for the time today.

CHAIRMAN ROISMAN: Okay. Thank you, Mr.

Melone. Mr. Einhorn?

ATTORNEY EINHORN: Thank you, Mr. Chairman. At the outset, I said this is really a simple exercise today, or I thought it would be, anyway, despite the fact that we've spent a fair number of hours on it, and that is, Is site clearing which is prohibited by Section 248 occurring, or has it even occurred? It appears that it has, and it appears that it will continue to occur if there is no injunction. And will that result in irreparable harm?

So, to test the factors as we know, is there exists a threat of irreparable harm? Yes, there clearly is. Percentages aside, which really are dealing with the total plant population, as Mr. Popp testified, there are rare plants, and a significant number of those at that, that are at risk of being destroyed by the clearing. In fact, it appears as though there have been plants of both species that have been destroyed. In that regard, discussing, even if we were to use a 10 percent number, Mr. Popp said that 90 percent of the nimblewill population, which amounts to hundreds of plants, are, in fact, in harm's way.

So another thing that hasn't been discussed here is, even if there were no rare plants on this site, it's a forested site. Those trees would be cleared,

and those trees would be effectively destroyed. Trees do grow back, but they don't grow back when they are cut down for purposes of land conversion, which is what we're dealing with here, and, essentially, those are the types of projects that the Commission reviews and approves in Section 248, land conversion projects to convert a parcel to a generation facility or a transmission facility.

That's what's being proposed here. So the clearing of the trees is for land conversion. It's not for silviculture or forestry activities, and, in that respect, those trees will also be gone, and they can't be put back immediately when they're gone, and these activities would be occurring without a permit to do it, because the parcel is still under the Commission's jurisdiction, because we still have solar facilities being pursued there under Section 248.

Does the irreparable harm outweigh the potential harm to the developer? I believe it does. The threat is certainly definite if the clearing proceeds. We know it. It's probably started to occur already. The developer's harm is, seems like the potential for harm there is still somewhat speculative. This horticultural plan, it was hatched recently. I think these projects go back to 2014, at least, when we talk

about the standard offer contract. So the developer still has the ability to go through the approval process for these projects. That's in front of the Supreme Court now. Who knows where that will go? It hasn't been exhausted.

The likelihood of success on the merits, I think there's a very high likelihood of success on the merits, because Section 248 is very clear in that site clearing is prohibited without a certificate of public good. It's also very clear that there are natural resources that will be destroyed as a result of site clearing, and the injunctive relief is certainly in the public's interest.

The public has a very, very high interest in the integrity of the 248 process, and that is what is, not to belittle the natural resources that exist at this site, but I think the integrity of the 248 process is probably foremost in this instance here, especially given the history of, of these projects and how we've gotten to the point where we've gotten now. Obviously, preventing harm to natural resources is also in the public's interest.

I, I also will raise the issue, because I think, Chairman Roisman, you, you, if you didn't mention it today, I think I may have seen it in the order, is that

permanent injunction or temporary injunction, and then, I guess, that also overlaps with, Is further process needed? Clearly, further process is not needed at this time for a temporary injunction, and I would say that it really doesn't matter whether it's called a temporary or a permanent, although I don't see any need to call it permanent, because the duration of either, it runs with the underlying proposals to develop energy generation at this property.

Once those projects are either approved by the Commission, then there's no need for an injunction, and it dissolves by itself. If those projects are denied, if the appeals are denied and they're over and they're done and there's no longer a project being proposed, then the injunction goes away as well, because, effectively, the Commission's jurisdiction will go away at that point.

If CPGs are granted, the Commission will retain jurisdiction to enforce conditions of those CPGs, but that's a different matter. So I think, you know, as to preliminary or permanent, I think the duration ends up being the same in this case. I think a preliminary is fine at this point. I think we meet the standard for a preliminary injunction, and, for that reason, I don't think there's the need for any further process.

I, we got discovery served on us on the eve of Thanksgiving, I think, at 6:30 at night, expecting answers by the following Wednesday, far beyond the pale of the civil rules, but, also, most of them, as my quick review of the questions, are really irrelevant to the issues at hand today, and I think we, we dealt with those, that those are in the, several times in the course of the, of the proceeding today. To the extent that that discovery is out there, I think most of it is irrelevant. If we were to have to respond to it, we would obviously need 30 days to deal with that. Thank you.

CHAIRMAN ROISMAN: Okay. Ms. Dingledine?

ATTORNEY DINGLEDINE: Thank you, Your Honor. Let me just follow up, first of all, by, on the discovery issue, that, supposedly, a party in this proceeding has served discovery on ANR. Such is not the case. Apparently, Michael Melone took a set of discovery requests from another case, changed the caption, and forgot to change who was asking the questions. So Otter Creek Solar, LLC has asked some discovery questions of ANR with this case's caption on it. They're not a party in interest, so I don't believe there are any discovery requests pending right now that have been served on ANR, at least by any

entity that has any relationship to this, to either of these cases or this investigation.

We also would like to point out we think it was a terribly abusive use of discovery. We would like to mention to the Court and remind everybody about the timeline here. We had a June 26 TRO hearing. The next day a written, or that evening a written order issued. Mr. Melone doesn't follow written orders. He was told verbally and then received the written order that he was to make sure all of his contractors and anyone associated with his companies were notified and that they would respond and follow any TRO that was issued by the PUC.

That didn't happen. Mr. Melone did not contact, to the best that we can tell so far, the contractor, Mr. Kobelia. Obviously, it was expected. Mr. Melone was told verbally during the daytime that there would be a TRO issuing. So the, the concern that the Intervenors have besides the next issue I'll get to in just a moment, but that we seem to be in a situation where all of the rules continue to be flouted, not followed.

There are agreements that are entered into, for example, the MOU. Now we're hearing, even though someone was authorized to enter into that agreement,

that somehow they were coerced into signing it now. There was a settlement agreement with the Town. Now we -- I don't understand why it was even signed if they're not going to abide by it. To suggest that now changing the use of this property to agricultural or horticultural instead of a solar array, how can that not violate that, that rule?

The credibility of the petitioner is, the positions that are being taken here just strain credulity. You are now facing a, a petitioner who flouts your denial of his amendment and has testified that he plans to go forward, regardless of what you said about his screening. He says that that Lot 1 is not part of the solar array project. Well, I know he has drawn his little, you know, perimeters around the Van Nostrum lands only, and he continually talks about how the project site is only 27 or 28 acres, but, in fact, that isn't true, and just because Mr. Melone says the same thing over and over and writes the same thing over and over does not make it true.

Now, in terms of the, the Lot Number 1 not being a part of the project site, we would submit it's a preposterous, unsupportable suggestion, which we think violates Rule 11, and had, if we had the proper timing to be able to serve Mr. Melone a motion under Rule 11

to advise him to withdraw his unsupportable legal positions, there isn't enough time to do that, but I think that it is still incumbent upon the PUC to ensure that our rule, Vermont Civil Rules of Procedure, is abided by, that lawyers are held to a standard to do their due diligence, not put in evidence that is incorrect, to, to not make frivolous claims and arguments that cannot be supported through the law.

Unfortunately, we don't have the timing to be able to give him the opportunity to revise or to remove those offending positions, but I would ask the PUC to be very cognizant of the pattern and practice here we have of making agreements and breaking them, making, entering into MOUs and then claiming they were coerced, asking for amendments or just declaring that amendments are going to happen and not caring whether the PUC approves or denies them.

This is an abuse of this process, and we have been dragged through this situation for years and years. It is time for the PUC to stand up to this gentleman and say, What you're doing is wrong, and the mantra, "It's easier to ask for forgiveness than to ask for permission", is not the way that the PUC does business. Please institute an injunction that stops any site preparation, including any cutting of the orchard

trees. Whether they produce great apples or not, that's not the point. They are part and parcel and proposed as part of the screening that has been represented as being part of the reasonable mitigation.

And, as I said in the beginning, one of two things needs to happen here from our perspective. That is, if Mr. Melone isn't going to follow through with his proposed project without the amendment that was denied, then he ought to be on notice that he no longer has a project pending and it's akin to withdrawal.

On the other hand, the other approach is the standard offer contract and the petition that was provided under it, if there were material misrepresentations of fact between that proposal and what is on the ground or intended to be on the ground, then, in our opinion, that would be a, a situation where incorrect information formed the basis of the reason why the contract and the permitting would have been allowed, and you can't change tracks now and play a bait and switch.

If you asked for "X", you get an answer on whether you get to do "X" or not. You don't get to do "Y" instead. And, if they're going to do that, the underlying contract that allows them to go forward with this, these sites ought to be voided, because the

material misrepresentations of fact no longer suffice to be able to allow them to go forward with the altered project that was denied. Thank you very much.

CHAIRMAN ROISMAN: Thank you. Ms. Aceves?

ATTORNEY ACEVES: Thank you. I just have a few brief comments to add. We believe continuing a preliminary injunction is appropriate here. I agree with the Agency of Natural Resources's assertions regarding the specific criteria that must be met for an injunction, and I just want to add that the main prerequisite to obtaining injunctive relief is a finding that a party is being threatened by some injury for which it has no adequate legal remedy, and we believe the site clearing that has already taken place here has no adequate legal remedy, thus making injunctive relief appropriate.

And, as I alluded to further, I would posit that there are larger policy implications at play here. Should the Commission refrain from issuing an injunction and dissolve the TRO, it could create the potential to both undermine the Commission's authority over the solar siting process generally, as well as open the door for abuse of the Section 248 process, and this is because doing so would allow this petitioner and other petitioners to thwart what is a clear

requirement under the statute, no site preparation without a CPG, which they could potentially do without repercussions should an injunction not stand. And that is all I have. Thank you.

CHAIRMAN ROISMAN: Thank you all very much. A couple of matters that have come up that I think I need to get, we need to get some clarification on. Mr. Melone, you indicated that you feel that we don't, the record's not yet ready for a resolution, because we need the polygon count. If I understand correctly, that is a matter within the, the, the knowledge of your consultant. Is it your intent to have Arrowhead -- or is it Arrowwood? I'm sorry.

ATTORNEY MELONE: Arrowwood.

CHAIRMAN ROISMAN: Arrowwood file a, a, some kind of a supplemental document that indicates what the count is in the, in the 2019 uncounted polygons? Is That how you figure that could be done?

ATTORNEY MELONE: Yes.

CHAIRMAN ROISMAN: All right. And when do you expect that to happen?

ATTORNEY MELONE: I think we could have it done early next week, depending on what their schedule is.

CHAIRMAN ROISMAN: Okay. You also indicated

that there were some studies that were referenced by Mr. Popp, I believe, that form the basis, oh, or one of the bases for the development of the 10 percent number.

ATTORNEY MELONE: Yes.

CHAIRMAN ROISMAN: I think, if you wish to have ANR respond to that, as we've done already on other matters, you should file, ideally before the end of the day today, although, candidly, the day is pretty much done, a request for copies of those. If something more informal will work for you, you might just talk with Mr. Einhorn. If it's just a matter of sending a couple of links that you can have access to and that works for you, I think that's fine.

You also indicated you wanted discovery, answers to the discovery. Mr. Einhorn has expressed his belief that the discovery is inappropriate, and I believe Ms. Dingledine has also indicated she thinks it's inappropriate. Mr. Einhorn, I would suggest that, at your earliest convenience just so we don't drag our feet here, you file any objections that you have to the discovery and, at that time, indicate, to the extent that any of the discovery requests are going to be answered, when, when they'll be answered.

But, that said, I heard, I think it was, from you, Ms. Dingledine, that the questions that were asked are

actually a replica of discovery that was filed in 0516. If that's -- the Warner case. If that's true, then I believe that we already received from, I think it was you, Mr. Melone, this morning, Mr. Popp's responses to discovery that took place in 0516. If all the questions that have been asked in this proceeding have already been answered in 0516, can't we just file those answers? And, if somebody objects to them being included in the record, to the extent they're different than the ones we've already accepted in the record, they can speak up when they're filed.

Am I correct, Ms. Dingledine, that, the, the document that was filed here by Mr. Melone or by Michael Melone is an actual replica of the very discovery that was filed in 19-0516; is that correct?

ATTORNEY DINGLEDINE: Well, Your Honor, I'm not involved in that other docket, so I haven't seen the discovery requests in there, but what I have seen served in this case is the caption of this case, and then it's, you know, it says, Otter Creek Solar, LLC asks the following discovery questions of ANR, and then it is signed by Michael Melone as the lawyer for Otter Creek Solar, LLC. So I assume it's the same.

CHAIRMAN ROISMAN: All right. Mr. Melone and Mr. Einhorn, if you could speak to each other on Monday

and ascertain whether or not that discovery request has effectively already been answered and can reach some resolution, that would be great. If you can't reach a resolution, file the papers you need to file to bring the issue up for us to decide, and we will decide it. Is that acceptable to both of you, Mr. Einhorn?

ATTORNEY EINHORN: That's fine. I'm happy to talk with Mr. Melone on Monday. I don't know if what we were sent on Thanksgiving eve are the same questions that were propounded on us in the Warner project. We did answer two rounds of discovery questions in the Warner project. They're really covering a lot of the topics that Mr. Melone was asking about and that I was objecting to today. And, you know, I can talk with him about that. We may be able to just make this really easy and just move in the responses from the Warner discovery. That said, I would still be objecting to the relevancy.

CHAIRMAN ROISMAN: I understand.

ATTORNEY EINHORN: But I will discuss that with Mr. Melone if that works for him.

CHAIRMAN ROISMAN: Okay. If you guys can work that out, that would be great. The second thing is that on this issue of the standards for the preliminary versus the permanent injunction, I would

just ask all the parties, when you file briefs with us, to please look at two cases, City of St. Albans, 2008 Vermont 36, and in re: Wood, then a whole lot of other stuff, 2013 Vermont 40, and address what those cases in your filing with regard to the standards applicable to a permanent injunction versus the standards applicable to a preliminary injunction.

Now, briefing, have you all had a chance to think about when you think top-side briefs should be due? And I would suggest, in light of Mr. Melone's feeling that the record needs to be completed and we are going to at least wait on the email information coming on Monday, that we set a time "X" days from when all discovery is completed, whatever that may be, rather than try to pick a date certain. Are you all comfortable with doing it that way? If so, does anybody want to start by proposing a first briefing date?

ATTORNEY MELONE: I'm comfortable with that approach. We would prefer a shorter timeframe as opposed to a longer one. So we would be prepared to do our brief within two weeks.

CHAIRMAN ROISMAN: Two weeks after any outstanding discovery responses have been filed or objections to discovery has been resolved?

ATTORNEY MELONE: That's correct.

CHAIRMAN ROISMAN: Okay. Mr. Einhorn, how does that work for you, keeping in mind, everyone, that we're at that time of year when two weeks might end up on Christmas Eve.

ATTORNEY EINHORN: Right.

CHAIRMAN ROISMAN: Putting that aside for the moment.

ATTORNEY EINHORN: Yeah. Simply put, it does not work for me. Despite my persistence today by repeatedly saying this is not a 248 application we're reviewing and a CPG proceeding that we're engaged in, my request would be to use the briefing schedule that we normally use in 248 cases, which is 30 days or, I'm sorry, 2 weeks, 4 weeks for initial briefs and 2 weeks for replies.

CHAIRMAN ROISMAN: Okay. Before I circle back around to you, Mr. Melone, Ms. Dingledine, what's your thinking on, on a briefing schedule?

ATTORNEY DINGLEDINE: My only issue is what date it starts so that I can see where we're at for when it's actually due, but I would tend to agree with Mr. Einhorn. Like, right now, if we had four weeks, we could get the discovery, and that would make me feel a little more comfortable timing-wise if we also say,

well, four weeks from today, at least.

CHAIRMAN ROISMAN: Well, yeah, that's right. We're proposing, for the moment, and I thought you all were in agreement, that we'll start the days for briefing once we've completed the discovery process. If it ends on Monday, it ends on Monday. If it ends two weeks from Monday, it starts then. Are you all right with that approach, Ms. Dingledine?

ATTORNEY DINGLEDINE: Yes, that would be fine. If something comes up, for example, right now, four weeks from now is January. So I think that's fine. It gets us over the holidays. So I wouldn't have any objection.

CHAIRMAN ROISMAN: All right. And has Ms. Aceves views on now some competing proposed scheduling?

ATTORNEY ACEVES: I think we would prefer four weeks for initial briefs. You know, that would give time for discovery. It would also give time for the transcript to be part of the record, and, just, as state agencies, there's a lot more red tape that we have to deal with, and so more time in that respect would be useful.

CHAIRMAN ROISMAN: Okay. Well, thank you for mentioning the transcript. The court reporter is obviously still on. What looks reasonable for you in

terms of when a transcript would be available?

THE REPORTER: I think the earliest would be the end of next week if that is agreeable for everyone.

CHAIRMAN ROISMAN: All right. So let's, let's take that as a given, that there will be no transcript available, realistically, until Monday, a week from this coming Monday. So that's the first time we'd have a transcript available. All right. Mr. Melone, you asked for two weeks. Mr. Einhorn, Ms. Aceves, and Ms. Dingledine asked for four. What do you have to say?

ATTORNEY MELONE: I would be fine with four if it ran from today, since I suspect we'll be able to resolve the discovery questions within the next two weeks. So it would put it to January 4th. But, if it's going to be based off when discovery is, is totally resolved, then I think two is appropriate, because everyone knows what the issues are, what the briefing is. So maybe it's two weeks from when the transcript is issued. I think that that would be a reasonable position.

CHAIRMAN ROISMAN: All right, okay. Back to you, Mr. Einhorn. Four weeks from today or two weeks from when the transcript is going to be due, which is probably not until a week from today?

ATTORNEY EINHORN: It doesn't work. Based on what we've experienced so far in this proceeding, the Agency, assuming for a moment that we may not, Mr. Melone and myself, reach an agreement resolving discovery quickly by filing something that's already been done, the Agency is not interested and frankly not equipped to both engage in what will be a pretty heavy lift responding to discovery or objecting and then resolving all those issues while at the same time briefing this case.

CHAIRMAN ROISMAN: All right. Ms. Dingledine, what do you say to Mr. Melone's suggestion, four weeks from today or two weeks from a week from next Monday, basically?

ATTORNEY DINGLEDINE: Well, I have to say I do have concerns, as ANR does, in terms of this discovery, and I do want to just mention that, you know, discovery was asked for back in the summer instead of having our preliminary injunction hearing, and then, instead of serving discovery, the case was appealed. Under the rules that was improper, and no permission was asked for. So, at this point, you're bending over backwards to give the applicant time for discovery, even though now he's served it under some other entity's name.

So I don't want to be in the situation where we're waiting on this discovery stuff and then, all of a sudden, we're jammed up in time because they can't get an agreement about what's going on. So but let me finish by saying, as long as it's in January after the first couple days, I'm okay.

CHAIRMAN ROISMAN: Okay. Ms. Aceves?

ATTORNEY DINGLEDINE: I beg your pardon. So long as there's sufficient time between when we get everything resolved and when it's due for briefing.

CHAIRMAN ROISMAN: Okay. Ms. Aceves?

ATTORNEY ACEVES: I guess I would agree with Ms. Dingledine as far as, you know, if it's in January, that we would be amenable to that.

CHAIRMAN ROISMAN: Okay. Commissioners Cheney and Hofmann, do you want to talk about this between us and make a decision right now?

COMMISSIONER HOFMANN: I think we should. I think we should get on our separate line and talk about it for a minute.

CHAIRMAN ROISMAN: Okay. So we're going to put you guys -- we're going to mute.

(A recess was taken from 4:52 p.m. to 4:59 p.m.)

CHAIRMAN ROISMAN: Okay. I think we've got everybody. Yes? Looks like it. Good. Okay. So

we're back on the record. We're going to accept Mr. Melone's suggestion with a tiny variation. Four weeks from today would be the 4th of January. That's the first Monday after New Year's. We don't think it's realistic to think that any of you are going to be working on New Year's Day, New Year's Eve, and the weekend immediately following.

So we're going to set the deadline for the briefing at the 8th of January for the upside brief, subject to if you all cannot work out the discovery problems such that you really have most of that time and that ANR does not find itself in the bind of simultaneously trying to write a brief and respond to an extremely complex and prolix discovery request, you'll come back to us.

I will note that, as Ms. Dingledine has pointed out, the particular discovery request that we're talking about appears not to have been validly filed in this case at all and that we, in our order at the time that we granted the TRO last summer, urged the parties to do their discovery back then. You all have, to some extent, been a little lax in getting your discovery done. We've been a little generous in letting you do it, and, and it, except for Ms. Aceves, it actually applies to all of you. Everybody has put in a

discovery request well after what we thought would be the, the discovery request time.

That said, if you all can work it out, make sure you've got a record that everyone's comfortable with that allows you to make the case you want to make, we aren't going to get hypertechnical with you. So, for now, your initial briefs will be due on the 8th of January, and we will allow ten days for reply briefs. If that works for everybody and you really need two weeks, raise your hand now on reply briefs. These are, these would then be due on the 18th of January if we did it that way.

Okay, all right. So this, this hearing is closed for now, but the record is not yet closed, and there will be, when and if you either file something that has shown up in discovery that you want to have or conclude that you have nothing more to add. The record is not open for new witnesses, new exhibits, new testimony, other than whatever responses you get from these discovery exchanges. Any questions?

ATTORNEY DINGLEDINE: Mr. Roisman, this is Brooke Dingledine. Given the late hour, I have plans this evening, and getting out a discovery request would be burdensome on me this evening, because I'm going to be running late. So I was wondering if I could get

that to Mr. Melone tomorrow.

CHAIRMAN ROISMAN: If it's okay with him. I think he knows exactly what you want. I think you wanted to make sure there was a formal document that he responded to. So I would assume that, Mr. Melone, if you got it on Saturday, when you were ready to file your response, you would simply have the piece of paper that you would respond to in your hand. Will that work for you?

ATTORNEY MELONE: Yes, that would be fine, Mr. Chairman, because I don't think that we can get our, our discovery requests out to ANR by tonight either, but we certainly can by the end of the weekend.

ATTORNEY EINHORN: Mr. Chairman, just for the record, back in September the Agency had indicated that it saw that no further process was needed, and that meant that we never intended to do discovery at that time, and we still don't see the need to do discovery. So we're not asking to do discovery.

CHAIRMAN ROISMAN: I understand that, yes. Thank you for that clarification, Mr. Einhorn. Okay. Well, it's been a full day, everybody. Thank you for a most interesting hearing, and we are going to take everything under advisement, obviously, and we look forward to your next filings. Have a good and safe

weekend.

(Whereupon at 5:05 p.m. the hearing was adjourned.)

C E R T I F I C A T E

I, Sunnie Donath, RMR, do hereby certify that I recorded by stenographic means the Evidentiary Hearing Re: Investigation pursuant to 30 V.S.A. Sections 30 and 209 into whether the petitioner initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. Section 248(a)(2) via GoToMeeting video conference on December 4, 2020, beginning at 9:30 a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 223 pages are a transcript of the stenographic notes taken by me of the evidence and the proceedings to the best of my ability.

I further certify that I am not related to any of the parties thereto or their counsel, and I am in no way interested in the outcome of said cause.

Dated at Westminster, Vermont, this 11th day of December, 2020.

//Sunnie Donath, RMR

EXHIBIT 14

STATE OF VERMONT

SUPERIOR COURT — ENVIRONMENTAL DIVISION
Docket No. 21-2-18 Vtec

PLH, LLC v Town of Bennington et al

ENTRY REGARDING MOTION

Count 1, Municipal Other Civil Action (21-2-18 Vtec)
Count 2, Municipal Other Civil Action (21-2-18 Vtec)

Title: Motion to Dismiss Appeal & Complaint (Motion 1)

Filer: Town of Bennington

Attorney: Merrill E. Bent

Filed Date: March 12, 2018

Response in Opposition filed on 03/28/2018 by Attorney David M. Pocius for party 2 Co-counsel

Reply to Opposition filed on 04/06/2018 by Attorney Merrill E. Bent for Defendant Town of Bennington

The motion is GRANTED.

Title: Motion for Costs and Fees and to Stay (Motion 2)

Filer: Town of Bennington

Attorney: Merrill E. Bent

Filed Date: March 28, 2018

Response in Opposition filed on 04/16/2018 by Attorney David M. Pocius for PLH LLC

Reply in Support filed on 05/04/2018 by Attorney Merrill E. Bent for Defendant Town of Bennington

The motion is DENIED.

In this matter, PLH LLC files a complaint against the Town of Bennington (Town) concerning the Town's adoption of the Bennington Town Plan Energy Element (Energy Amendment) which amends the Bennington Town Plan. PLH LLC requests declaratory and injunctive relieve, seeks review of governmental action pursuant to V.R.C.P. Rule 75, alleges statutory violations for violations of 24 V.S.A. Chapter 117, and seeks damages.

PLH LLC is represented by David Pocius, Esq. and John Sartore, Esq. of Paul Frank + Collins P.C., and the Town is represented by Merrill E. Bent, Esq. of Woolmington, Campbell, Bernal & Bent, P.C.

Standard of Review

The Town moves to dismiss this matter for "failure to state a claim upon which relief can be granted" pursuant to V.R.C.P. Rule 12(b)(6) and for lack of subject matter jurisdiction.

We grant a 12(b)(6) motion "only if 'it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.'" Birchwood Land Co. v. Krizan, 2015 VT 37, ¶ 6, 198 Vt. 420 (quoting Dernier v. Mortg. Network, Inc., 2013 VT 96, ¶ 23, 195 Vt. 113). "We assume as true all facts as pleaded in the complaint, accept as true all reasonable inferences derived therefrom, and assume as false all contravening assertions in the defendant's pleadings." Id.

The motion to dismiss also raises the question of subject matter jurisdiction. Where a party challenges the Court's subject matter jurisdiction, we accept "all uncontroverted factual allegations of the complaint" as true and construe those allegations in the "light most favorable to the nonmoving party." Rheaume v. Pallito, 2011 VT 72, ¶ 2, 190 Vt. 245 (citing Jordan v. State Agency of Transp., 166 Vt. 509, 511 (1997)).

Background

On January 22, 2018, the Town Selectboard voted to enact the Bennington Town Plan Energy Amendment. On February 21, 2018, PLH LLC filed a complaint concerning the Energy Amendment with this Court. PLH LLC requests declaratory and injunctive relief, seeks review of governmental action pursuant to V.R.C.P. Rule 75, alleges a statutory violation for an alleged violation of 24 V.S.A. Chapter 117, and seeks damages.

Prior to this matter, on January 25, 2018, PLH LLC initiated a complaint in the Superior Court Civil Division, Chittenden County setting forth similar challenges to the Energy Amendment and more. The Town removed the matter to the United States District Court on February 26, 2018, and PLH LLC then dismissed the action on February 28, 2018.

In this matter, PLH LLC does not take issue with an act or decision of the Town's administrative officer or a Town municipal panel. PLH LLC challenges the adoption of the Energy Amendment generally with regard to the Town's compliance with statutory and constitutional requirements. Again, there is no "decision" on appeal; rather, PLH LLC challenges the Selectboard's adoption of the Energy Amendment.

Discussion

In this action, PLH LLC challenges the validity of the Town's adoption of the Energy Amendment. There are several ways to raise such a challenge.

First, a party may challenge zoning regulations on constitutional grounds. A constitutional challenge can be a facial challenge, made on its own, without appealing a specific zoning decision. E.g. Hinsdale v. Vill. of Essex Junction, 153 Vt. 618, 627 (1990); Littlefield v. Town of Colchester, 150 Vt. 249, 250 (1988). The Civil Division has jurisdiction over such cases. 24 V.S.A. § 4472(b).

Alternatively, a party can present an as-applied constitutional challenge in the context of a case that already falls into the Environmental Division's jurisdiction, such as by appealing the denial or approval of a permit application. See, e.g., In re Appeal of JAM Golf, LLC, 2008 VT 110, ¶ 17, 185 Vt. 201. The Environmental Division has jurisdiction over these cases. 24 V.S.A. § 4472(b).

Next, a party may challenge a zoning ordinance by alleging that the ordinances were adopted in a manner that violated statutory requirements. When a party brings a standalone statutory challenge without also appealing specific zoning decisions they must do so before the Civil Division (formerly known as the Civil Court). E.g. Kalakowski v. Town of Clarendon, 139 Vt. 519, 521 (1981) (challenge brought in Superior (Civil) Court as a "civil action"); Smith v. Town of St. Johnsbury, 150 Vt. 351 (1988) (declaratory judgment action including standalone statutory and constitutional claims brought in the Superior (Civil) Court); Paynter v. Town of Pittsford Planning Comm'n, Selectboard, No. 2009-307 (Jan. 15, 2010) (unpub. mem.) (challenge brought in the Civil Division pursuant to V.R.C.P. Rule 75).[1]

A caveat applies to this scheme. If a zoning administrator makes a specific zoning decision, such as an approval or denial of a permit application, and a party fails to appeal that decision, the party is barred from collaterally attacking the finality of that decision by bringing a standalone statutory challenge, or an as-applied constitutional challenge, to the validity of the underlying zoning regulation. Galanes v. Town of Brattleboro, 136 Vt. 235, 237 (1978) (explaining

[1] We note that Paynter v. Town of Pittsford, in particular, illustrates the manner in which cases similar to the one now before us have been treated in the past. In that case, a plaintiff brought a standalone statutory challenge to the validity of zoning regulations in the Civil Division pursuant to V.R.C.P. Rule 75. Id. at *1. Shortly after filing this civil action, the same plaintiff filed an application for a permit under the same zoning regulations, his permit application was denied, and he followed the appeal process set out in 24 V.S.A. § 4472 to bring an as-applied statutory challenge in the Environmental Division. In re Paynter 2-Lot Subdivision, 2010 VT 28, ¶ 2, 187 Vt. 637 (mem.).

Treating standalone statutory challenges in this way is consistent with other situations where selectboard decisions are challenged in the Civil Division pursuant to Rule 75. See, e.g., Coutu v. Town of Cavendish, Vt. Transp. Bd. & Vt. Agency of Transp., 2011 VT 27, ¶ 12, 189 Vt. 336 (because there was no statutory right to direct appeal selectboard decision to withhold approval of helipad, an appeal under Rule 75 is exclusive remedy); Richards v. Town of Norwich, 169 Vt. 44, 47–48 (1999) (selectboard decision authorizing septic permit properly challenged through Rule 75); but see Dunnett v. Town of Ludlow Zoning Bd. of Adjustment, No. 2002-042, slip op. at *2 (Aug. 2002) (unpub. mem.) (holding that plaintiff could not bring a standalone statutory challenge to zoning regulations under Rule 75 because he did not have standing under exclusive remedy procedure pursuant to 24 V.S.A. § 4472(a)).

that, upon failure to appeal denial of a variance, the underlying zoning regulation cannot be challenged except on constitutional grounds); Hinsdale v. Vill. of Essex Junction, 153 Vt. 618, 627 (1990) (barring an as-applied constitutional challenge after party failed to appeal zoning decision). The bar on collateral attacks is set out in 24 V.S.A. § 4472(d), which is triggered when a specific zoning decision is left unappealed. See In re Burns Two-Unit Residential Bldg., 2016 VT 63, ¶ 16 (May 27, 2016) (explaining how § 4472(d) is triggered). This caveat is partially addressed in the Civil Division's observation that after the enactment of 24 V.S.A. § 4472, a declaratory judgment action could only be brought by following the procedures set out in that statute, including the requirement to first appeal a zoning decision to the appropriate municipal panel. Gould v. Town of Monkton, No. 67-3-13 Ancv, slip op. 3–4 (Super. Ct. Civ. Div. Nov. 6, 2014) (Mello, J.) (citing Fisher v. Town of Marlboro, 131 Vt. 534, 534 (1973) (Fisher I)).

As with constitutional claims, a statutory claim can alternatively be raised in proceedings over which the Environmental Division already has jurisdiction, such as an appeal from a municipal panel's approval or denial of a permit application. Paynter 2-Lot Subdivision, 2010 VT 28, ¶ 2. The Environmental Division has jurisdiction over these statutory claims which are joined with proper Environmental Division appeals. 24 V.S.A. § 4472(a).

We note that standalone challenges to the validity of zoning regulations have been permitted subsequent to Fisher I. See Kalakowski, 139 Vt. 519; Smith, 150 Vt. 351; Paynter, No. 2009-307. At least one of these cases, Smith, was a declaratory judgment action. 150 Vt. at 352.

Fisher I may be distinguished from these standalone challenges because Fisher I began with the plaintiff filing a subdivision application which was not immediately approved. Fisher v. Town of Marlboro, 132 Vt. 533, 533 (1974) (Fisher II). Rather than attempting to secure approval for the application through the proper administrative process, plaintiff filed a separate declaratory judgment action in the Superior Court. Id. Fisher I was therefore not a standalone statutory challenge—rather, it was an impermissible collateral attack on the administrative zoning process below. The outcome in Fisher I and Fisher II, and subsequent cases, is consistent with the principle that standalone statutory challenges may be brought directly to the Civil Division, unless a specific zoning decision is at issue, in which case the challenge can be joined with proper Environmental Division appeals. Once a specific zoning decision has been made and left unappealed, such challenges are no longer standalone, but instead are treated as impermissible collateral attacks on the appeal process set out in 24 V.S.A. § 4472.

Jurisdiction over PLH LLC's Claim

Here, PHL LLC alleges that the Selectboard failed to follow statutory and constitutional requirements when it enacted the Energy Amendment. The complaint presents a standalone challenge, in that it is not based in any specific permit denial or zoning decision.

PLH LLC offers Gould as authority for the Environmental Division having jurisdiction over standalone challenges. See Gould v. Town of Monkton, 2016 VT 84, 202 Vt. 535.

While Mr. Gould originally filed his claim in the Civil Division, the Supreme Court held that his "statutory challenge is governed by 24 V.S.A. § 4472(a), and our case law concerning the effect of that statute is clear: suits that challenge the procedural enactment of municipal planning laws must be brought before the Environmental Division." Id., 2016 VT 84, ¶ 16 (citing Harvey v. Town of Waitsfield, 137 Vt. 80, 83 (1979), *overruled on other grounds by* Mohr v. Vill. of Manchester, 161 Vt. 562 (1993) and 24 V.S.A. § 4472(a)).

Section 4472(a) states that, apart from constitutional challenges to zoning regulations:

> [T]he exclusive remedy of an interested person with respect to any decision or act taken, or any failure to act, under [Chapter 117] . . . shall be the appeal to the appropriate panel under section 4465 of this title, and the appeal to the Environmental Division from an adverse decision upon such appeal under section 4471 of this title.

24 V.S.A. § 4472(a).

Section 4465, in turn, specifies that an "interested person may appeal any decision or act taken by the administrative officer in any municipality [to] the secretary of the board of adjustment or development review board . . . or with the clerk . . . if no such secretary has been elected," and goes on to define "interested person." 24 V.S.A. § 4465(a). Section 4471(a) states that "[a]n interested person who has participated in a municipal regulatory proceeding authorized under this title may appeal a decision rendered in that proceeding by an appropriate municipal panel to the Environmental Division." 24 V.S.A. § 4471(a).

In short, the plain language of this statutory scheme allows a party to appeal first to the appropriate municipal panel, and then allows a party to appeal the decision of that panel to the Environmental Division. Here, there has been no appeal to a municipal panel. Because we are only authorized to exercise jurisdiction over an appeal from a municipal panel decision under §§ 4465, 4471, and 4472, and there is no such decision here, we are unable to exercise jurisdiction over PLH LLC's appeal.

A selectboard is not listed in § 4465 as a municipal panel to which one may appeal an act or decision. Elsewhere, a selectboard is defined as an "appropriate municipal panel" only when

it acts as a "legislative body performing development review." 24 V.S.A. § 4303(3). In the present action, the Selectboard was acting in its legislative capacity and adopting an amendment to the Town Plan. Therefore, the Selectboard was not a "appropriate municipal panel" called for in §§ 4465, 4471, and 4472.

PLH LLC did not apply for a permit or approval so § 4472(a) was not triggered. PLH LLC was therefore not foreclosed from bringing, and in fact did bring, a standalone statutory or constitutional challenge in the Civil Division.

As there is no specific permit denial or zoning decision under § 4465, and therefore no challenge to any adverse decision from that appropriate municipal panel to the Environmental Division under § 4471, we are unable to exercise jurisdiction under §§ 4471 and 4472(a). Because the present matter is outside the scope of this Court's jurisdiction, we cannot provide declaratory relief requested by PLH LLC. See 12 V.S.A. § 4711 (providing for Superior Courts with the power to provide declaratory judgement "within their jurisdictions."). Nor is it within our authority to provide the preliminary injunction requested. Therefore, the Town's motion to dismiss is **GRANTED**. PLH LLC's complaint must therefore be **DISMISSED** for lack of subject matter jurisdiction pursuant to V.R.C.P. 12(h)(3).

Motions for Transfer and Costs and Fees

Even though we do not have jurisdiction, we must address PLH LLC's motion to transfer and the Town's motion seeking costs and attorneys' fees. Any other motions are **DENIED AS MOOT**.

First, as to transfer. With the restructuring and unification of the Vermont Judiciary in 2010, all of Vermont's trial courts were reconstituted as one Superior Court, with individual divisions entitled the Criminal, Civil, Family, Probate, and Environmental Divisions. 4 V.S.A. § 30(a)(1).

Petitioners' counsel correctly notes that "the transfer of cases between divisions" was anticipated in this restructuring process. See 4 V.S.A. § 30(a)(2) ("The Supreme Court shall promulgate rules, subject to review by the Legislative Committee on Judicial Rules under 12 V.S.A. Chapter 1, which establish criteria for the transfer of cases between divisions.")

While the Supreme Court has not yet promulgated specific rules governing the transfer of cases from the Environmental Division, the Supreme Court itself directed that a case originally filed in the Family Division be transferred to the Civil Division. See Gould v. Robinson, No. 2012-312 (Vt. Feb Term, 2013) (unpub. mem.) *available at* http://vermontjudiciary.org/sites/default/files/documents/eo12-312.pdf. The Gould case

involved a request for relief from abuse filed by someone who was not a domestic partner or cohabitator with the alleged abuser. Thus, jurisdiction over such emergency abuse claims had once been (and remains) within the sole jurisdictional authority of the "superior court." Id. at 2; see also 12 V.S.A. § 5132(a). The Gould Court concluded that the Civil Division was the proper venue for this abuse claim and not the Family Division. The Court reasoned, however, that since authority to hear such claims now rests with the unified Superior Court, the Supreme Court directed that the claim be transferred to the Civil Division of the Superior Court and remanded the claim to that Division, so that it could properly address the claim. The question before us now is whether this Court may likewise transfer venue to a different division of the Superior Court when such transfer would be appropriate.

Decisions by a three-justice panel are not precedential, and while we believe that the Gould entry order provides helpful guidance considering a request for transfer, we believe that the facts in the matter at hand do not support granting a transfer. We note that the Vermont Rules of Environmental Court Procedure allow this Court to "make other orders that will promote expeditious and fair proceedings and avoid unnecessary costs or delay" when the same violation or project involves multiple proceedings before this Court or when different violations or projects share common issues of law and fact. V.R.E.C.P. 2(b). Although we generally rely on this provision in coordinating cases within our own docket, we believe that under the facts and circumstances of this case, it would be inappropriate to read Rule 2(b) as enabling us to transfer a case to another division as the interests of justice, jurisdictional constraints, and judicial economy are not realized.

In support of their motion to transfer, PLH LLC cites to University Mall, LLC, v. City of S. Burlington, in which the Environmental Division transferred an action to the Civil Division of the Superior Court after dismissing the matter for lack of subject matter jurisdiction. No. 102-8-12 Vtec, slip op. at 2-3 (Vt. Super. Ct. Envtl. Div. Jan. 29, 2013) (Durkin, J.). While University Mall accurately sets forth the standard for transferring cases within the Superior Court, it is factually distinct from the present matter. Most importantly, the petitioner in University Mall had not previously filed, and then voluntarily dismissed, a substantially similar case in the division it sought transfer to.

We see no justification to transfer this matter to the Civil Division. PLH LLC first brought an action in the Civil Division. That action contained claims arising out the same Energy Amendment and raised similar statutory and constitutional challenges to the amendment as presently raised in the present matter. Once the matter was removed to the Federal level, PLH

LLC then voluntarily dismissed the action. Because we can find no persuasive justification for transferring this matter back to a court that PLH LLC voluntarily abandoned, we decline to transfer the matter back.

We therefore **DENY** the motion for transfer.

In considering a request for reimbursement of fees and costs, Vermont prescribes to the American Rule. That is, each party is responsible for its own attorney's fees unless there is a statute or agreement between the parties authorizing an award of reimbursement of attorney's fees. See, e.g., Grice v. Vt. Elec. Power Co., 2008 VT 64, ¶ 29, 184 Vt. 132. Courts can deviate from the American rule "but 'only in exceptional cases and for dominating reasons of justice.'" See Monahan v. GMAC Mortg. Corp., 2005 VT 110, ¶ 76, 179 Vt. 167 (quoting Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 167 (1939)).

The Town additionally offers V.R.C.P. Rule 41(d) in support of their motion for costs and fees. Rule 41(d) states that:

> [i]f a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such an order for the payment of costs of the action dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

V.R.C.P Rule 41(d).[2]

An award of costs and fees under Rule 41(d) is discretionary and the Court may refuse to impose an award if "it appears there was a good reason for the dismissal of the prior action." Id. (citations omitted). Further, "the Court should not impose any costs associated with work that will still be useful to defendants in the instant litigation." Esquival v. Arau, 913 F. Supp. 1382, 1388 (C.D. Cal. 1996).

We begin by noting PLH LLC's assertion that it dismissed the original action because it concluded the Civil Division did not have subject matter jurisdiction over the cause of action and the Environmental Division was the proper court. However, for the reasons set forth above, this conclusion was in error and, in fact, this Court lacks subject matter jurisdiction over the case.

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[2] Federal law interpreting the federal rule, which the Vermont rule is substantially similar to, is split on the issue of whether attorney's fees may be recovered as a part of the costs set forth in Rule 41(d). Compare Horowitz v. 148 S. Emerson Assocs. LLC, 888 F.3d 13, 24 (2nd Cir. 2018) (concluding attorney's fees may be recovered under Rule 41(d)); Evans v. Safeway Stores, Inc., 623 F.2d 121, 122 (8th Cir. 1980) (reaching the same conclusion without much analysis); Meredith v. Stovall, 216 F.3d 1087 (10th Cir. 2000) (unpublished) (same); with Rogers v. Wal-Mart Stores, 230 F.3d 868, 874 (6th Cir. 2000) (concluding attorney's fees are never available under Rule 41(d)); and Portillo v. Cunningham, 872 F.3d 728, 738-39 (5th Cir. 2017) (concluding that attorneys' fees are generally not recoverable, with the exception of when the statute serving as the basis of the original suit allows for such an award); Andrews v. America's Living Ctrs., LLC, 827 F.3d 306, 309-12 (4th Cir. 2016) (same); Esposito v. Piatrowski, 223 F.3d 497, 501 (7th Cir. 2000) (same). However, for the reasons set forth above, we do not need to reach the issue of whether such fees can be recoverable under Rule 41(d).

Further, the present matter has only been pending in this Court for five months. While there was a prior compliant filed approximately one month before this action, this matter remains relatively new. Additionally, this case is still at the early stage of litigation and we are not aware of substantial discovery being conducted.

Because of PLH LLC's jurisdictional reasons for filing the present appeal, the procedural posture of the matter, and the overarching American Rule regarding the awards of costs and fees, we decline to impose such costs. Therefore, the Town's motion for costs and fees is **DENIED**.

Conclusion

For the foregoing reasons, we **GRANT** the Town's motion to dismiss the matter and **DENY** the motions to transfer and for costs and fees. All other pending motions are **DENIED AS MOOT**.

This completes the matter before the Court.

So ordered.

Electronically signed on July 11, 2018 at 10:02 AM pursuant to V.R.E.F. 7(d).



_____

Thomas G. Walsh, Judge
Superior Court, Environmental Division

Notifications:
John Thornton Sartore (ERN 2176), Attorney for Plaintiff PLH, LLC
Merrill E. Bent (ERN 5013), Attorney for Defendant Town of Bennington
Defendant Bennington Cty Regional Comm.
David M. Pocius (ERN 1492), Attorney for party 2 Co-counsel