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March 31, 2020

Brooke Otis, Clerk
Waldo County Superior Court
11 Market Street
Belfast, ME 04040

Via Email

RE: Jeffrey R. Mabee and Judith B. Grace v. Nordic Aquafarms, Inc., et al.
Docket No. RE-2019-18

Dear Ms. Otis:

I enclose Upstream Watch's Responses and Objections to Nordic Aquafarms, Inc.'s and Richard and Janet Eckrotes' Motions to Dismiss Upstream Watch's counterclaims.

I also enclose Upstream Watch's Motion to Amend Answer and Counter/Cross Claims Against Defendant Nordic Aquafarms, Inc., a Request for Hearing, and a proposed Order.

And further, I enclose Upstream Watch's Motion to Amend Answer and Counter/Cross Claims Against Defendants Janet Eckrote Richard Eckrote, a Request for Hearing, and a proposed Order.

Copies of the enclosed are being served via electronic service pursuant to Rule 5(b) of the Maine Rules of Civil Procedure upon counsel noted below.

Thanks.

Sincerely,



David J. Perkins

/lk

Enclosures

Cc (w/encs.): David M. Kallin, Esq. (via email: dkallin@dwmlaw.com)
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STATE OF MAINE
WALDO, ss.

SUPERIOR COURT
Docket No. WALSC-RE-19-018

JEFFREY R. MABEE and JUDITH B.)
GRACE,)
)
Plaintiffs,)
)
v.)
)
NORDIC AQUAFARMS, INC., JANET)
ECKROTE, RICHARD ECKROTE, et al.)
)
Defendants,)
)
And)
)
UPSTREAM WATCH,)
)
Party-In-Interest.)

**UPSTREAM WATCH’S RESPONSE
AND OBJECTIONS TO NORDIC
AQUAFARMS, INC.’S AND THE
ECKOTES’ MOTIONS TO DISMISS
UPSTREAM
WATCH’S COUNTER-CLAIMS**

INTRODUCTION

Party-In-Interest and Counterclaim-Defendant Upstream Watch (“Upstream”) hereby responds and objects to Nordic Aquafarms, Inc.’s (“Nordic’s”) Motion to Dismiss Upstream’s Counterclaim and Janet Eckrote and Richard Eckrote’s Motion to Dismiss Upstream’s Counterclaim and states as follows.

Factual Background:

(i) Abuse of Process and Malicious Prosecution Claims:

Upstream’s claims for abuse of process and malicious prosecution include the following factual allegations relating to Nordic and Janet Eckrote and Richard Eckrote (the “Eckrotes”):

Upstream was granted a conservation easement on intertidal land owned by Mabee and Grace for a period of time in 2019.

In the late summer or early fall of 2019, Upstream assigned its rights under the conservation easement to the Friends of Harriet Hartley.

While Upstream was named as a party-in-interest in this lawsuit, Upstream did not participate in this lawsuit and did not engage an attorney until Nordic and the Eckrotes filed the tortious interference claim.

In this lawsuit, Nordic filed a tortious interference claim against Upstream alleging that Upstream colluded with Mabee and Grace to create a new legal description for the conservation easement to show falsely that Mabee and Grace owned the intertidal land.

Nordic further alleged that Upstream's conservation easement was somehow a representation by Upstream that tortiously interfered with Nordic's option with the Eckrotes to lay its discharge pipes in the intertidal land.

The option that Nordic has with the Eckrotes has not been terminated.

The fact that Upstream was the holder of a Conservation Easement on the intertidal lands for a period of time in 2019 is not a legitimate basis for Upstream be sued by Nordic and the Eckrotes for tortious interference.

At the time Upstream agreed to hold the Conservation Easement on the intertidal land and thereafter, Upstream had a good faith basis to believe that Mabee and Grace owned the intertidal land based on the survey work and opinions of a Maine licensed surveyor Donald Richards.

At the time Nordic and the Eckrotes filed their tortious interference claims against Upstream, Nordic and the Eckrotes were fully aware that Upstream had a good faith basis for believing Mabee and Grace owned the intertidal land given the findings and opinions of Donald Richards.

Nordic and the Eckrotes filed the tortious interference claims against Upstream for the improper purpose of pressuring Upstream to cease supporting the claims of Mabee and Grace regarding ownership of the dispute intertidal land that is critical to Nordic's project.

Nordic has operated a public campaign to pressure and intimidate Upstream and its members and financial supporters to cease or diminish their opposition to Nordic's industrial fish farm project.

Nordic, or its employee, or a group supported by Nordic, has publicly posted a "Wanted Poster" that shows photographs of Upstream directors and accuses the directors of taking actions to damage Belfast's economy by opposing Nordic's project for the purpose of discouraging Upstream and its directors from continuing to oppose the Nordic project..

Nordic has used the tortious interference claim as a legal procedure for obtaining the identity of Upstream's donors through discovery.

In seeking information regarding Upstream's donor's, Nordic is improperly attempting to interfere with Upstream's financial support from its donors.

Nordic's and the Eckrotes' claims against Upstream are filed in bad faith and without any support.

Nordic's and the Eckrotes' actions involve using legal process in an improper manner.

Nordic has used discovery relating to the tortious interference claim against Upstream to improperly seek to identify, and interfere with, Upstream's donors.

Nordic's and the Eckrotes' filings of the tortious interference claims were motivated by a bad motive on the part of Nordic and the Eckrotes involving their desire to pressure Upstream and its donors to cease financially supporting the Mabee and Grace claims, as well as the Friends of Harriet Hartley claims, to the intertidal land and to cease opposing Nordic's project.

Nordic's use of discovery tools to obtain information regarding Upstream's donors constitutes use of legal process for the improper, collateral objective of pressuring Upstream and its donors to cease opposing Nordic's project and to cease supporting the Mabee/Grace claims of title to the intertidal land.

The Eckrotes have acted in concert with Nordic with the same improper motive of using the tortious interference claims to pressure Upstream to cease support Mabee's and Grace's claims to the disputed intertidal land.

Standard of Review

A motion to dismiss tests the legal sufficiency of the complaint. *Richards v. Soucy*, 610 A.2d 268, 270 (Me. 1992). For purposes of a Rule 12(b)(6) motion, the material allegations of the complaint are taken as admitted, but not conclusions of law, and the court determines "whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory."

In reviewing a motion to dismiss, the Court examines the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory. [*Id.* at 99.]¹ "A dismissal should only occur when it appears 'beyond doubt that a plaintiff is entitled to no relief under any set of facts that he might prove in support of his claim.'" *McAfee v. Cole*, 637 A.2d 463, 465 (Me.1994)(quoting *Hall v. Board of Env'tl. Protection*, 498 A.2d 260, 266 (Me.1985)).

Law and Argument

(i) Maine Law Regarding Abusive Filings:

Maine recognizes two causes of action related to the “misuse of the legal system”: (1) abuse of process; and (2) malicious prosecution (which combines both the wrong use of criminal and civil proceedings).” *Pepperrel Trust Co. v. Mountain Heir Financial Corp.*, 1998 ME 46, ¶ 14, 708 A. 2d 651, 655-56. Malicious prosecution exists where one “initiates, continues, or procures civil proceedings without probable cause,” with a purpose other than securing the proper adjudication, and where the “proceedings have been terminated in favor of the person against whom they are brought.” *Id.* ¶ 15.

In contrast, “abuse of process covers the allegedly improper use of individual legal procedures after a suit has been filed properly.” *Id.* ¶ 14 n.8. More specifically, the tort of “abuse of process” is defined as the use of “a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed.” *Restatement (2d) of Torts*, Section 682. As the Supreme Court of California stated: “...’[p]rocess’ as used in the tort of ‘abuse of process,’... has been interpreted broadly to encompass the entire range of ‘procedures’ incident to litigation.’ *Barquis v. Merchants Collection Ass’n*, 7 Cal.3d 94, 104 n.4, 496 P.2d 817, 824 n.4, 101 Cal. Rptr. 745, 752 n.4 (1972). “This broad reach of the ‘abuse of process’ tort can be explained historically, since the tort evolved as a ‘catch-all’ category to cover improper uses of the judicial machinery that did not fit within the earlier established, but narrowly circumscribed, action of malicious prosecution.” *Id.*

As the Maine Law Court has stated, “abuse of process claims arise when litigants misuse individual legal procedures, such as *discovery*, subpoenas, and attachment, after a lawsuit has

been filed.” *Advanced Constr. Corp. v. Pilecki*, 2006 Me. 84, ¶ 23, 901 A. 2d 189 (citing *Pepperrell Trust Co. v Mountain Heir Fin. Corp.*, 1998 Me 46, ¶ 14 n.8, 708 A.2d 651,655).

“The Maine law as to the precise definition of and the essential elements of a claim for abuse of process is somewhat arcane and indistinct. The Maine Law Court has said that abuse of process is ‘the employment of process in a manner not contemplated by the law.’” *Grace v. Yarnall*, 346 F. Supp. 2d 222, 224 (D. Me. 2004)(citing *Nadeau v. State*, 395 A.2d 107, 117 (Me 1978)).

The line between abuse of process and aggressive litigation tactics is articulated by Judge Coffin in *Simon v. Navon*, 71 F.3d. 9, 13-15 (1st Cir. 1995). In *Simon*, Judge Coffin confirmed that the two basic elements of abuse of process are a bad motive and the use of a legal process for an improper, collateral objective. Citing *Restatement (2d) Torts*, Section 682, at 475 (1977) and *W. Page Keeton, et al., Prosser and Keeton on the Law of Torts*, Section 21, Judge Coffin noted that the abuse of process tort is often given wider berth than malicious prosecution, and courts typically will recognize such a claim, regardless of timing, if the plaintiff can show an improper use of process for an immediate purpose other than which is was designed and intended. 71 F.3d at 15. While Courts have found that the filing of a lawsuit is a “regular” use of process, that does not on its own fulfill the requirements of an abusive act, the filing of a lawsuit is transformed into an act of abuse by the coincidence of a threat or other evidence showing a specific link between the use of process and an “impermissible, collateral purpose.” *Id.* at 16.

Citing *Simon v. Navon*, the District Court for the District of Maine has recognized that the filing of a baseless lawsuit alone may constitute abusive conduct where there is a “specific link” between the process at issue (the lawsuit) and an impermissible, collateral purpose. *See*

Earnhardt v. University of New England, Civil No. 95-229-P-H, 1996 WL 400455 at *8 (D. Me. July 3, 1996).

- (ii) Upstream presents a sufficient legal and factual basis for its abuse of process claim to proceed.

Upstream has alleged that Nordic and the Eckrotes have brought the tortious interference claims against Upstream for the improper purpose of pressuring Upstream to stop supporting and funding the legal claims of Mabee, Grace, and the Friends of Harriet Hartley and to cease opposing the permitting of Nordic's project. Upstream clearly alleges a sufficient claim for abuse of process.

Upstream's allegations are taken as admitted, for purposes of Nordic's and the Eckrotes' Motions to Dismiss. The admitted allegations, therefore, are that:

Nordic has coordinated attacks on Upstream and its directors by supporting public attacks on Upstream and its directors, which attacks include a "Wanted" Poster that has been posted online showing photographs of the Upstream's directors with claims that the directors are damaging the Belfast economy by opposing Nordic's project.

Nordic and the Eckrotes have made claims that they know are not true, when Nordic and the Eckrotes claim that Upstream has conspired with Grace and 'Mabee to falsify the legal description for the Mabee and Grace title to the intertidal land.

Nordic and the Eckrotes know that Upstream's act of holding a conservation easement on the intertidal land during the spring and summer of 2019 did not cause Nordic to lose any contractual rights it had with the Eckrotes and did not cause the Eckrotes to lose any contractual rights.

Upstream assigned its conservation easement on the intertidal land to the Friends of Harriet Hartley in the summer or early fall of 2019.

Upstream was named as a party in interest in this lawsuit by Mabee and Grace, but Upstream did not respond or participate in this lawsuit until Nordic filed its counterclaims for tortious interference against Upstream.

This winter, Upstream has opposed Nordic's permit applications before both the Belfast Planning Board and the Maine Bureau of Environmental Protection.

Upstream has received substantial support for many local citizens including financial donations which have been used for analysis by experts on title issues, epidemiology, wildlife and habitat impacts and other highly technical subjects which are relevant to the permitting process.

Faced with Upstream's actions of very effectively opposing Nordic's permitting requests, Nordic and the Eckrotes filed a claim for tortious interference against Upstream with an improper motive – which was to pressure Upstream to cease support for Grace and Mabee's claim of title to the intertidal land and to pressure Upstream and its donors to cease funding opposition to Nordic's permitting efforts.

During this lawsuit, Nordic filed discovery requesting that Upstream provide Nordic with the names of all of Upstream's donors.

The request for the identity of Upstream's donors has no relevance to this lawsuit.

The discovery request shows a specific link between Nordic's use of process and an impermissible, collateral purpose.

The legal process is the filing of the tortious interference counterclaims coupled with the discovery regarding Upstream's donors.

The impermissible purpose is to pressure Upstream and its supporters/donors from: (a) funding the Mabee/Grace litigation over the intertidal land, and (b) continuing Upstream's very effective and well-funded opposition to Nordic's permitting requests.

The improper ulterior purpose of Nordic is evidenced by: Nordic's public campaign to pressure Upstream and its directors to cease opposition to Nordics' project, Nordic seeking discovery of the identity of Upstream's donors for no purpose other than to interfere with Upstream's financial support, and Nordic and the Eckrotes agreeing that Upstream must cease providing funding to Mabee and Grace and the Friends of Harriet Hartley before the tortious interference claims against Upstream will be dismissed.

Under these facts, there is ample evidence for the Jury or Court to find that Nordic and the Eckrotes used process in a manner not proper to the regular conduct of these proceedings with an ulterior motive. See *Goucher v. Dineen*, 471 A.2d. 688, 689 (Me. 1984)(affirming a jury finding of ulterior motive), and *Lindsay v Jenkins*, 574 N.E.2d 324, 326 (Ind. Ct. App. 1991)(ulterior motive for purposes of abuse of process may include a desire "to embarrass, annoy, and ridicule").

(iii) Upstream Pleads a Viable Claim for Malicious Prosecution:

With its Motion to Amend its Counterclaim, Upstream has eliminated the malicious prosecution claim so that the malicious prosecution or wrongful use of civil proceedings can be litigated once the tortious interference claims in this lawsuit are terminated in favor of Upstream.

In the event that the amendment is not allowed, Upstream provides the following response:

Nordic and the Eckrotes argue in their Motions to Dismiss that a claim for malicious prosecution is only available in criminal proceedings. Whether the claim is called malicious

prosecution or wrongful use of civil proceedings, the civil claim for malicious prosecution/wrongful use of civil proceedings is recognized under Maine law. As noted above, *Pepperrel Trust Co. v. Mountain Heir Financial Corp.*, 1998 ME 46, ¶ 14, 708 A.2d 651, 655-56, provides that malicious prosecution in the civil context exists where one “initiates, continues, or procures civil proceedings without probable cause,” with a purpose other than securing the proper adjudication, and where the “proceedings have been terminated in favor of the person against whom they are brought.” *Id.* ¶ 15.

Upstream alleges that Nordic and the Eckrotes initiated and continue the tortious interference claim without probable cause to claim that Upstream is involved in a conspiracy with Grace and Mabee to change the legal description for the intertidal land claimed by Grace and Mabee. Upstream alleges that Nordic’s and the Eckrotes’ filing of the tortious interference claims are not filed for the purpose of securing the proper adjudication of the claim, but are filed for the purpose of pressuring Upstream and its donors to cease opposing Nordic’s permitting applications and to cease funding the lawsuit filed by Mabee and Grace regarding title to the intertidal land.

Even though Nordic and the Eckrotes were aware that Mabee and Grace have a good faith claim to title to the intertidal land that is based on the opinions of a licensed Maine surveyor, Donald Richards, who is one of the foremost experts in Maine on title and intertidal land issues, Nordic and the Eckrotes have made tortious interference claims against Upstream on the basis that Upstream was at one time the holder of a conservation easement that protected intertidal land owned by Mabee and Grace.

Nordic and the Eckrotes are correct that the tortious interference claim must be decided in favor of Upstream before the malicious prosecution claim is adjudicated. For that reason,

Upstream initially requested that the Court adjudicate Upstream's malicious prosecution claims after Nordic's and the Eckrotes' claims for tortious interference against Upstream have been dismissed in favor of Upstream. In that manner, the Court could adjudicate the malicious prosecution claims in a timely manner that serves the interests of judicial economy.

As noted above, as a precaution, Upstream has moved to eliminate its malicious prosecution claims from this current lawsuit, so that those claims can be litigated in a subsequent lawsuit.

(iv). Upstream's amended pleadings state a claim for civil conspiracy which makes the Eckrotes liable along with Nordic for abuse of process and malicious prosecution:

With its amended counterclaim, Upstream has added a count for civil conspiracy against Nordic and the Eckrotes. The civil conspiracy count alleges that the Eckrotes are liable along with Nordic for abuse of process and malicious prosecution.

To state a claim for civil conspiracy, Upstream must allege that Nordic and the Eckrotes conspired to commit a tort and that acts were taken in furtherance of the conspiracy. *See Cohen v. Bowdoin*, 288 A.2d 106, 112 (Me.1972); Restatement (2d) of Torts § 876 (1977).

Civil conspiracy is not an independent tort. *Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell*, 1998 ME 70, ¶ 8, 708 A.2d 283.

Upstream's civil conspiracy count alleges that Nordic and the Eckrotes have conspired to file the improper and unsupported tortious interference counterclaims for the purpose of pressuring Upstream to cease supporting Mabee, Grace, and the Friends of Harriet Hartley in this lawsuit.

The evidence of a civil conspiracy appears on the very pleadings filed nearly simultaneously by Nordic and the Eckrotes. Nordic and the Eckrotes filed virtually the same tortious interference claim against Upstream at essentially the same time. Nordic and the

Eckrotes then filed motions to dismiss that were virtually the same motion, with Nordic's motion dated March 9, 2020 and the Eckrotes' motion dated March 10, 2020.

Nordic and the Eckrotes have also taken acts to further their conspiracy to pressure Upstream by agreeing among themselves that the tortious interference claims against Upstream will be dismissed only if Upstream agrees to not fund the efforts of Mabee, Grace and the Friends of Harriet Hartley to establish title to the disputed intertidal land.

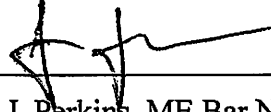
Based on the civil conspiracy claim, the Eckrotes and Nordic are liable to Upstream for conspiring to commit the tort of abuse of process and malicious prosecution

CONCLUSION

Upstream's claims for abuse of process and malicious prosecution/wrongful use of civil proceedings should not be dismissed at the outset of this case. Upstream is not alleging gauzy accusations which, beyond doubt, must be dismissed. Rather, Upstream's pleadings state a sufficient basis for the adjudication of claims stemming from Nordic's abusive litigation. Given that the Eckrotes have acted in concert with Nordic on filing the same tortious interference claims for the same improper reasons and the Eckrotes have conspired with Nordic to pressure Upstream to cease supporting Mabee, Grace, and the Friends of Harriet Hartley, the Eckrotes are jointly liable with Nordic for both abuse of process and malicious prosecution, with the malicious prosecution claim to be adjudicated after these proceedings are terminated in Upstream's favor.

DATED at Portland, Maine on March 31, 2020.

Respectfully submitted,



David J. Perkins, ME Bar Number 3232
Attorney for Upstream Watch

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STATE OF MAINE
WALDO, ss.

SUPERIOR COURT
Docket No. WALSC-RE-19-018

JEFFREY R. MABEE and JUDITH B.)
GRACE,)
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Plaintiffs,)
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v.)
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NORDIC AQUAFARMS, INC., JANET)
ECKROTE, RICHARD ECKROTE, et al.)
)
Defendants,)
)
And)
)
UPSTREAM WATCH,)
)
Party-In-Interest.)

**MOTION TO AMEND
PARTY-IN-INTEREST
UPSTREAM WATCH'S
COUNTERCLAIMS/CROSS-
CLAIMS AGAINST NORDIC
AQUAFARMS, INC.**

NOW COMES Party-In-Interest and Counterclaim Defendant Upstream Watch
("Upstream") and requests the following relief:

1. Upstream is a named party in interest in this lawsuit.
2. Upstream previously filed an Answer and Counterclaims upon Defendant Nordic Aquafarms, Inc. ("Nordic") on or about February 20, 2020, after Nordic filed counterclaims against Upstream for tortious interference.
3. Upstream wishes to file the enclosed Amended Answer and Counterclaim/Cross-claim.
4. The amended counterclaim/cross-claim involve the same abuse of process claim but adds more detailed factual allegations in response to Nordic's claim that the pleadings lack sufficient factual allegations to support the claims. The amended counterclaim/cross-claim removes the malicious prosecution counterclaim, so that claim can be adjudicated after the tortious interference claim is terminated in Upstream's favor.

The amended counterclaim also include a new claim for civil conspiracy which stems from Nordic and the Eckrotes acting in concert in this lawsuit to improperly pressure Upstream to cease supporting the claims of Mabee and Grace to the disputed intertidal lands.

5. Upstream requests that it be authorized to amend its counterclaim/cross-claim in the form of the amended counterclaim/cross-claim attached to this motion.

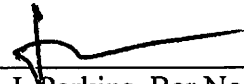
6. Rule 15 of the Maine Rules of Civil Procedure provides that leave to amend shall be freely granted. In this case, there is no prejudice to the other parties as a result of the amended pleading.

7. Given that Nordic's counterclaims against Upstream were filed on February 6, 2020 and Upstream's counterclaims were filed on February 20, 2020, the litigation involving those claims is in its early stage. Accordingly, there is no prejudice to Nordic or the other parties.

Wherefore, Upstream requests authority from the Court allow it to amend its prior answer and counterclaim/cross-claim with the enclosed pleading.

Dated in Portland, Maine this 31st day of March 2020.

Respectfully submitted,



David J. Perkins, Bar No. 3232
Attorney for Upstream Watch

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Portland, Maine 04112-7320
207-774-9000

NOTICE: If you want to oppose this motion, you must file a memorandum in opposition with the Clerk's office. The memorandum in opposition must be filed within 21 days of the date of the filing of the motion. If you fail to file a memorandum in opposition within 21 days, it will be assumed that you do not object to the motion. If you fail to file a memorandum in opposition within 21 days, the motion may be granted by the Court without further notice to you and without a hearing.

STATE OF MAINE
WALDO, ss.

SUPERIOR COURT
Docket No. WALSC-RE-19-018

JEFFREY R. MABEE and JUDITH B.)
GRACE,)
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 Plaintiffs,)
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 v.)
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 NORDIC AQUAFARMS, INC., JANET)
ECKROTE, RICHARD ECKROTE, et al.)
)
 Defendants,)
)
 And)
)
 UPSTREAM WATCH,)
)
 Party-In-Interest.)

**ANSWER OF PARTY-IN-INTEREST
UPSTREAM WATCH TO
DEFENDANT NORDIC
AQUAFARMS, INC.’S CROSS-CLAIM
WITH AMENDED COUNTERCLAIM**

Party-In-Interest and Cross-claim Defendant Upstream Watch (“Upstream”) hereby answers the Cross-claims dated February 6, 2020 (“Cross-Claims”) filed by Nordic Aquafarms, Inc.(“Nordic”) and states as follows.

PARTIES

1. Upstream admits the allegations in paragraph 1.
2. Upstream admits the allegations in paragraph 2 regarding Richard Eckrote and Janet Eckrote (the “Eckrotes”) being natural persons who own a parcel of land at 282 Northport Ave, Belfast, Maine. The balance of the allegations in paragraph 2 contain conclusions of law which Upstream neither admits nor denies but put Nordic to its proof.
3. Upstream admits the allegations in paragraph 3.
4. Upstream admits the allegations in paragraph 4.
5. Upstream admits the allegations in paragraph 5.

JURISDICTION AND VENUE

6. Paragraph 6 states conclusions of law which Upstream neither admits nor denies but puts Nordic to its proof.

7. Paragraph 7 states conclusions of law which Upstream neither admits nor denies but puts Nordic to their proof. Upstream admits that it has a place of business in Belfast, Maine.

FACTUAL ALLEGATIONS

1 (sic). Paragraph 1 states conclusions of law which Upstream neither admits nor denies but puts Nordic to its proof. Upstream denies that Janet Eckrote and/or Richard Eckrote hold title to the intertidal zone that is in dispute in this lawsuit.

2. Upstream denies the allegations in paragraph 2.

3. Upstream is without knowledge or information sufficient to respond to the claim that Nordic obtained release deeds from heirs of Harriet Hartley and therefore denies the same. Upstream denies the allegations in paragraph 3 that any release deeds cure the alleged defect resulting from severance of the intertidal zone from Harriet Hartley to Fred Poor.

4. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and therefore deny the same.

5. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 5 and therefore deny the same.

6. Upstream denies the allegations in paragraph 6.

7. Upstream denies the allegations in paragraph 7 as such allegations relate to Upstream. Upstream is without knowledge as to alleged statements made by Jeffrey R.

Mabee and Judith B. Grace (collectively the “Mabees”) and Friends of Harriet Hartley and therefore deny the same.

8. Upstream admits the allegations in paragraph 8.

9. Upstream denies the allegations in paragraph 9.

COUNT I – DELARATORY JUDGMENT

10. Upstream repeats and realleges its answers to preceding paragraphs of the Cross-claim as though set forth here in full.

11. Upstream admits the allegations in paragraph 11 but denies any allegations that the Eckrotes and/or Nordic have rights to the disputed intertidal zone.

12. Paragraph 12 states conclusions of law which Upstream neither admits nor deny but put Nordic to their proof.

13. Upstream admits that Nordic seeks a declaratory judgment as alleged in Paragraph 13 but denies that Nordic is entitled to the relief requested by Nordic.

14. Upstream denies the allegations in paragraph 14.

COUNT II – TORTIOUS INTERFERENCE WITH AN ADVANTAGEOUS RELATIONSHIP

15. Upstream repeats and realleges its answers to the preceding of the Cross-claim as though set forth here in full.

16. Upstream denies the allegations in paragraph 16.

17. Upstream denies the allegations in paragraph 17.

18. Upstream admits the allegations in paragraph 18 except that the Conservation Easement and its terms and scope is a legal document which speaks for itself and any

attempt by Nordic to characterize the meaning or intent of the Conservation Easement is denied.

19. Upstream denies the allegations in paragraph 19.

20. Upstream denies the allegations in paragraph 20. Again, the Conservation Easement is a legal document which speaks for itself and any attempt by Nordic to characterize its legal effect is denied.

21. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 21 and therefore deny the same.

22. Upstream is without knowledge and information sufficient to form a belief as to the truth of the factual allegations in paragraph 22 and therefore deny the same. Upstream objects to any attempt by Nordic to make allegations regarding attorney client communications or other privileged communications, and Upstream denies all such allegations based on privilege.

23. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 23 and therefore deny the same. Upstream objects to any attempt by Nordic to make allegations regarding attorney client communications or other privileged communications, and Upstream denies all such allegations based on privilege.

24. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 24 and therefore deny the same. Upstream objects to any attempt by Nordic to make allegations regarding attorney client communications or other privileged communications, and Upstream denies all such allegations based on privilege.

25. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 25 and therefore deny the same.

26. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 26 and therefore deny the same.

27. Upstream admits the allegations in paragraph 27.

28. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 28 and therefore deny the same.

29. Upstream admits that Upstream declined to enter this lawsuit and that the Conservation Easement was assigned to Friends, but Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 29 and therefore deny the same.

30. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 30 and therefore deny the same.

31. Upstream denies the allegations in paragraph 31 as the allegations relate to Upstream. Upstream is without knowledge and information regarding the allegations relating to the Mabees and Friends and therefore deny the same.

32. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 32 and therefore deny the same.

33. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 33 and therefore deny the same.

34. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 34 and therefore deny the same.

35. Upstream denies the allegations in paragraph 35.

36. Upstream denies the allegations in paragraph 36.

37. Upstream admits that Attorney Tucker represents the Mabees and Friends but denies that Attorney Tucker represents Upstream. Upstream is without knowledge or information sufficient to respond to the remaining allegations in paragraph 37 and therefore denies the same.

38. Upstream denies the allegations in paragraph 38.

39. Upstream denies the allegations in paragraph 39.

Affirmative Defenses

1. The cross-claim? fails to state a claim upon which relief may be granted.

2. Nordic's cross-claims are barred in whole or in part by the doctrines of waiver, release, accord and satisfaction, unclean hands, laches, and/or equitable estoppel.

3. Nordic has failed to mitigate their damages.

4. Nordic's cross-claims are barred by res judicata and collateral estoppel.

5. Upstream reserves the right to add additional affirmative defenses based upon information obtained through discovery in this matter.

6. All factual allegations not expressly admitted are denied by Upstream.

7. All statements made in legal filings are privileged.

8. All claims against Upstream are barred due to the fact that Upstream did not take any of the actions required to allege tortious interference, and Nordic fails to allege that Upstream acted in a manner that makes it liable for tortious interference.

9. Nordic's cross-claims against Upstream are barred due to a failure to demonstrate causation.

Wherefore, Upstream requests that the Cross-claims against Upstream be dismissed and that the Court award Upstream their costs.

COUNTERCLAIMS

Now comes Upstream and counterclaims against Nordic as follows:

1. Upstream is a Maine non-profit corporation with a place of business in Belfast, Maine.

2. Nordic is a Delaware corporation with a place of business in Belfast, Maine.

COUNT I: ABUSE OF PROCESS

3. Upstream repeats and realleges all its allegations in the preceding paragraphs.

4. Upstream has taken no actions to interfere in a tortious manner with Nordic's advantageous relationships.

5. The fact that Upstream was the holder of a Conservation Easement on the intertidal lands is not a basis for Upstream be sued by Nordic for tortious interference.

6. At the time Upstream held the Conservation Easement on the intertidal land, Upstream had a good faith basis to believe that Mabee and Grace owned the intertidal land based on the survey work and opinions of surveyor Donald Richards, who is a licensed Maine surveyor who regularly testifies as an expert on surveying issues including intertidal land ownership issues.

7. At the time Nordic filed its tortious interference claim against Upstream, Nordic was fully aware that Upstream had a good faith basis for believing Mabee and Grace owned the intertidal land given the findings and opinions of Donald Richards.

8. Nordic does not have probable cause, or a good faith basis, for bringing tortious interference claims against Upstream.

9. Nordic filed the tortious interference claim against Upstream for the improper purpose of pressuring Upstream to cease supporting the claims of Mabee and Grace regarding ownership of the dispute intertidal land that is critical to Nordic's project.

10. Nordic has operated and/or supported a public campaign to pressure Upstream and its members and financial supporters to cease their opposition to Nordic's industrial fish farm project.

11. Nordic, or its employee, or a group supported by Nordic, has publicly posted a "Wanted Poster" that shows photographs of Upstream directors and accuses the directors of taking actions to damage Belfast's economy by opposing Nordic's project for the purpose of discouraging Upstream and its directors from continuing to oppose the Nordic project.

12. This winter, Upstream opposed Nordic's permit applications before both the Belfast Planning Board and the Maine Bureau of Environmental Protection.

13. Upstream has received substantial support for many local citizens including financial donations which have been used for analysis by experts on title issues, epidemiology, wildlife and habitat impacts and other highly technical subjects which are relevant to the permitting process.

14. Faced with Upstream's actions of very effectively opposing Nordic's permitting requests, Nordic filed a claim for tortious interference against Upstream with an improper motive – which was to pressure Upstream to cease support for Grace and Mabee's claim of title to the intertidal land and to pressure Upstream and its donors to cease funding opposition to Nordic's permitting efforts.

15. Nordic has acted in concert with the Eckrotes to bring the baseless tortious interference claim against Upstream.

16. Nordic has used the tortious interference claim as a basis for attempting to obtain the identity of Upstream's donors through discovery submitted by Nordic in this lawsuit.

17. In seeking information regarding Upstream's donors, Nordic is improperly attempting to interfere with Upstream's financial support from its donors.

18. Nordic's cross-claims against Upstream are filed in bad faith and without any support.

19. Nordic's actions in this lawsuit involve using legal process in an improper manner.

20. Nordic has used discovery relating to Nordic's tortious interference claim to attempt to identify, and interfere with, Upstream's donors.

21. Nordic's filing of the tortious interference was motivated by a bad motive on the part of Nordic involving Nordic's desire to pressure Upstream and its donors to: (i) cease supporting Mabee's and Grace's claims to the intertidal land, and (ii) cease opposing Nordic's project.

22. Nordic's use of discovery to obtain discovery of Upstream's donors constitutes use of legal process for the improper, collateral objective of pressuring Upstream and its donors to cease opposing Nordic's project.

23. Nordic abuse of process has damaged Upstream.

24. Nordic is liable to Upstream for its abuse of process.

Wherefore, Upstream requests that the Court grant judgment in favor of Upstream and against Nordic for abuse of process, and order that Nordic pay Upstream all damages and costs, including attorneys' fees and punitive damages, and such other relief as the Court may determine appropriate.

COUNT II-CIVIL CONSPIRACY

25. Upstream repeats and realleges all its allegations in the preceding paragraphs.

26. Nordic and the Eckrotes have conspired to commit the tort of abuse of process.

27. Nordic and the Eckrotes have jointly prepared the same tortious interference claims and the same motions to dismiss the Upstream claims, while pursuing improper claims for improper purposes against Upstream.

28. Nordic and the Eckrotes have acted in concert to file the improper tortious interference claims against Upstream for the improper purpose of pressuring Upstream to cease support for Mabee, Grace and the Friends of Harriet Hartley, including ceasing all financial support, in the litigation regarding the disputed title to the intertidal land.

29. Upon information and belief, Nordic and the Eckrotes have taken acts to further their conspiracy by agreeing among themselves that the tortious interference claims will be dismissed only if Upstream agrees to not fund the efforts of Mabee, Grace and the Friends of Harriet Hartley to establish title to the disputed intertidal land.

30. Nordic's and the Eckrotes' acts of civil conspiracy have damaged Upstream.

Wherefore, Upstream requests that the Court determine that Nordic and the Eckrotes are liable to Upstream for civil conspiracy and determine that Nordic and the Eckrotes are jointly liable for all available damages suffered by Upstream, including punitive damages and attorneys' fees and costs, and that the Court grant such other and further relief as the Court determines appropriate.

DATED at Portland, Maine on March 31, 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David J. Perkins', is written over a horizontal line.

David J. Perkins, ME Bar Number 3232
Attorney for Upstream Watch

Curtis Thaxter LLC
One Canal Plaza, Suite 1000
Post Office Box 7320
Portland, Maine 04112--7320
207-774-9000

STATE OF MAINE
WALDO, ss.

SUPERIOR COURT
Docket No. WALSC-RE-19-018

JEFFREY R. MABEE and JUDITH B.)
GRACE,)

Plaintiffs,)

v.)

NORDIC AQUAFARMS, INC., JANET)
ECKROTE, RICHARD ECKROTE, et al.)

Defendants,)

And)

UPSTREAM WATCH,)

Party-In-Interest.)

**REQUEST FOR HEARING ON
MOTION TO AMEND
PARTY-IN-INTEREST
UPSTREAM WATCH'S
COUNTERCLAIM/
CROSSCLAIM
AGAINST NORDIC AQUAFARMS, INC.**

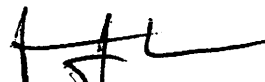
NOW COMES Upstream Watch ("Party-In-Interest") and requests the Clerk schedule a hearing on its Motion to Amend of Party-In-Interest, Upstream Watch's Counterclaim/Crossclaim Against Nordic Aquafarms, Inc.

The matter to be heard is non-testimonial.

To the nearest one-half hour, my good faith estimate of the time which the hearing will take is 1/2 hour.

DATED at Portland, Maine on March 31, 2020.

Respectfully submitted,



David J. Perkins, Bar No. 3232
Attorney for Upstream Watch

Curtis Thaxter LLC
One Canal Plaza, Suite 1000
Post Office Box 7320
Portland, Maine 04112-7320
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STATE OF MAINE
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Defendants,)

And)

UPSTREAM WATCH,)

Party-In-Interest.)

**ORDER ON
MOTION TO AMEND
PARTY-IN-INTEREST
UPSTREAM WATCH'S
COUNTER-CLAIMS
WITH COUNTER-CLAIMS
AGAINST NORDIC
AQUAFARMS, INC.**

Upon the Motion of Party-In-Interest, Upstream Watch ("Upstream"), to Amend its Answer and Cross-claims, the motion is granted.

IT IS SO ORDERED that Upstream is granted leave to amend its answer to assert the amended counterclaim against Nordic Aquafarms, Inc. and the Answer Of Party-In-Interest Upstream Watch To Nordic Aquafarms, Inc.'s Cross-claims With Amended Counterclaim is hereby accepted by the court and deemed filed the date the clerk incorporates this Order in the docket by referenced to Rule 79(a) of the Maine Rules of Civil Procedure.

IT IS FURTHER ORDERED that Nordic Aquafarms, Inc. shall file a response pleading in accordance with Rule 15(a) of the Maine Rules of Civil Procedure to the Answer Of Party-In-Interest Upstream Watch to Nordic Aquafarms, Inc.'s Cross-claim With Amended Counterclaim within 10 days after the date the clerk incorporates this Order in the docket by reference pursuant to Rule 79(a).

The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: _____

Justice, Superior Court

STATE OF MAINE
WALDO, ss.

SUPERIOR COURT
Docket No. WALSC-RE-19-018

JEFFREY R. MABEE and JUDITH B.)
GRACE,)

Plaintiffs,)

v.)

NORDIC AQUAFARMS, INC., JANET)
ECKROTE, RICHARD ECKROTE, et al.)

Defendants,)

And)

UPSTREAM WATCH,)

Party-In-Interest.)

**MOTION TO AMEND
PARTY-IN-INTEREST
UPSTREAM WATCH'S
COUNTERCLAIMS/CROSS-
CLAIMS AGAINST
JANET AND RICHARD ECKROTE**

NOW COMES Party-In-Interest and Counterclaim Defendant Upstream Watch
("Upstream") and requests the following relief:

1. Upstream is a named party in interest in this lawsuit.
2. Upstream previously filed an Answer and Counterclaim upon Defendants Richard Eckrote and Janet Eckrote ("Eckrotes") on or about February 24, 2020, after the Eckrotes filed counterclaims against Upstream for tortious interference.
3. Upstream wishes to file the enclosed Amended Answer and Counterclaims/Cross-claims.
4. The amended counterclaim/cross-claims involve the same abuse of process claim but adds more detailed factual allegations in response to Nordic's claim that the pleadings lack sufficient factual allegations to support the claims. The amended counter/cross claims eliminates the malicious prosecution claim, so that claim can be adjudicated after this lawsuit is terminated. The amended counterclaims also include a

new claim for civil conspiracy which stems from Nordic and the Eckrotes acting in concert in this lawsuit to improperly pressure Upstream to cease supporting the claims of Mabee and Grace to the disputed intertidal lands.

5. Upstream requests that it be authorized to amend its counterclaims/cross-claims in the form of the amended counterclaim/cross-claims attached to this motion.

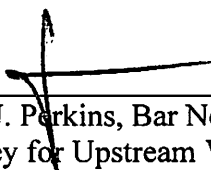
6. Rule 15 of the Maine Rules of Civil Procedure provides that leave to amend shall be freely granted. In this case, there is no prejudice to the other parties as a result of the amended pleading.

7. Given that the Eckrotes' counterclaims against Upstream were filed on February 6, 2020 and Upstream's counterclaims were filed on February 24, 2020, the litigation involving those claims is in its early stage. Accordingly, there is no prejudice to Nordic or the other parties.

Wherefore, Upstream requests the Court permit it to amend its prior answer and counterclaims/cross-claims with the enclosed pleading.

Dated in Portland, Maine this 31st day of March 2020.

Respectfully submitted,



David J. Perkins, Bar No. 3232
Attorney for Upstream Watch

Curtis Thaxter LLC
One Canal Plaza, Suite 1000
Post Office Box 7320
Portland, Maine 04112-7320
207-774-9000

NOTICE: If you want to oppose this motion, you must file a memorandum in opposition with the Clerk's office. The memorandum in opposition must be filed within 21 days of the date of the filing of the motion. If you fail to file a memorandum in opposition within 21 days, it will be assumed that you do not object to the motion. If you fail to file a memorandum in opposition within 21 days, the motion may be granted by the Court without further notice to you and without a hearing.

JEFFREY R. MABEE and JUDITH B.)
GRACE,)
)
)
 Plaintiffs,)

v.)

NORDIC AQUAFARMS, INC., JANET)
ECKROTE, RICHARD ECKROTE, et al.)
)
 Defendants,)

**ANSWER OF PARTY-IN-INTEREST
UPSTREAM WATCH TO
DEFENDANT ECKROTES'
COUNTERCLAIM
WITH AMENDED COUNTERCLAIM**

And)
)
UPSTREAM WATCH,)
)
 Party-In-Interest.)

Party-In-Interest and Counterclaim-Defendant Upstream Watch (“Upstream”) hereby answers the Counterclaim dated February 6, 2020 (“Crossclaims”) filed by Janet Eckrote and Richard Eckrote (collectively, “Eckrotes”) and states as follows.

PARTIES

1. Upstream admits the allegations in paragraph 1.
2. Upstream admits the allegations in paragraph 2 regarding the Eckrotes being natural persons who are residents of New Jersey. The balance of the allegations in Paragraph 2 contain conclusions of law which Upstream neither admits nor denies but put Nordic to its proof.
3. Upstream admits the allegations in paragraph 3.
4. Upstream admits the allegations in paragraph 4.
5. Upstream admits the allegations in paragraph 5.

6. Paragraph 6 states conclusions of law which Upstream neither admits nor denies but puts Nordic to its proof. Upstream is without knowledge of information sufficient to respond to the factual allegations regarding Phyllis Poor being Janet Eckrotes' mother and therefore denies the same.

7. Upstream denies the allegations in Paragraph 7.

8. Upstream denies the allegations in Paragraph 8.

9. Upstream is without knowledge or information sufficient to respond to the allegations in Paragraph 9 and therefore denies the same.

10. Upstream is without knowledge or information sufficient to respond to the allegations in Paragraph 10 and therefore denies the same.

11. Upstream admits the allegations in Paragraph 11 but denies that the easement "purported" to convey such easement as Upstream believes the easement actually conveyed the easement.

12. Upstream admits the allegations in Paragraph 12 but denies that it "purported" to assign as Upstream believes the assignment was legally assigned.

13. Upstream denies the factual allegations in Paragraph 13 relating to Upstream. Upstream is without knowledge of information sufficient to respond to the remaining allegations and therefore denies the same.

14. Upstream is without knowledge or information sufficient to respond to the allegations in Paragraph 14 and therefore denies the same.

COUNTERCLAIM I – DELARATORY JUDGMENT

15. Answering Paragraph 15, Upstream repeats and realleges its answers to the preceding paragraphs of the Crossclaim as though set forth here in full.

16. Upstream admits the allegations in paragraph 16 that the Eckrotes are seeking declaratory judgment but denies any allegations that the Eckrotes and/or Nordic have rights to the disputed intertidal zone.

17. Upstream admits the allegations in paragraph 17 that the Eckrotes are seeking declaratory judgment with the Court being asked to determine that the Counterclaim Defendants have no right, title or interest in the disputed intertidal area but Upstream denies any allegations that the Eckrotes and/or Nordic have rights to the disputed intertidal zone.

COUNTERCLAIM II

18. Answering Paragraph 18, Upstream repeats and realleges its answers to the preceding paragraphs of the Crossclaim as though set forth in full herein.

19. Upstream denies the allegations in Paragraph 19.

20. Upstream denies the allegations in Paragraph 20.

21. Upstream denies the allegations in Paragraph 21.

22. Upstream denies the allegations in Paragraph 22.

COUNTERCLAIM III

23. Answering Paragraph 23, Upstream repeats and realleges its answers to the preceding paragraphs of the Crossclaim as though set forth in full herein.

24. Upstream denies the allegations in Paragraph 24.

25. Upstream denies the allegations in Paragraph 25.

26. Upstream denies the allegations in Paragraph 26.

27. Upstream denies the allegations in Paragraph 27.

28. Upstream denies the allegations in Paragraph 28.

COUNTERCLAIM IV

29. Answering Paragraph 29, Upstream repeats and realleges its answers to the preceding paragraphs of the Crossclaim as though set forth in full herein.

30. Upstream denies the allegations in Paragraph 30 relating to Upstream. Upstream is without knowledge of information sufficient to respond to the remaining allegations and therefore denies the same.

31. Upstream denies the allegations in Paragraph 31 relating to Upstream. Upstream is without knowledge of information sufficient to respond to the remaining allegations and therefore denies the same.

32. Upstream denies the allegations in Paragraph 32 relating to Upstream. Upstream is without knowledge of information sufficient to respond to the remaining allegations and therefore denies the same.

33. Upstream denies the allegations in Paragraph 33.

COUNTERCLAIM V

34. Answering Paragraph 34, Upstream repeats and realleges its answers to the preceding paragraphs of the Crossclaim as though set forth in full herein.

35. Upstream denies the allegations in Paragraph 35.

36. Upstream denies the allegations in Paragraph 36.

37. Upstream denies the allegations in Paragraph 37.

COUNTERCLAIM VI

38. Answering Paragraph 38, Upstream repeats and realleges its answers to the preceding paragraphs of the Crossclaim as though set forth in full herein.

39. Upstream admits the allegations in Paragraph 39 as to the Eckrotes' apprehension but denies that the Eckrotes have any right, title and interest in the disputed intertidal area.

40. Upstream denies the allegations in Paragraph 40.

41. Upstream denies the allegations in Paragraph 41.

42. Upstream denies that the Eckrotes are entitled to relief in Paragraph 42.

COUNTERCLAIM VII

43. Answering Paragraph 43, Upstream repeats and realleges its answers to the preceding paragraphs of the Crossclaim as though set forth in full herein.

44. Upstream denies the allegations in paragraph 44.

45. Upstream denies the allegations in paragraph 45.

46. Upstream admits the allegations in paragraph 46 as to Mabee/Grace and Upstream creating and recording the Conservation Easement and that Nordic is prevented from burying its seawater pipes on the disputed intertidal land in the event the Court determines Mabee/Grace is the owner of such land, but Upstream denies the remaining allegations in Paragraph 46.

47. Upstream is without knowledge and information sufficient to form a belief as to the truth of the factual allegations in Paragraph 47 and therefore denies the same. Upstream also objects to any attempt by the Eckrotes to make allegations regarding attorney client communications or other privileged communications, and Upstream denies all such allegations based on privilege.

COUNTERCLAIM VIII

48. Answering Paragraph 48, Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 48 and therefore deny the same.

49. Upstream is without knowledge and information sufficient to form a belief as to the truth of the factual allegations in Paragraph 49 and therefore denies the same. Upstream also objects to any attempt by Nordic to make allegations regarding attorney client communications or other privileged communications, and Upstream denies all such allegations based on privilege.

50. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 50 and therefore denies the same. Upstream also objects to any attempt by Nordic to make allegations regarding attorney client communications or other privileged communications, and Upstream denies all such allegations based on privilege.

51. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 51 and therefore denies the same. Upstream also objects to any attempt by Nordic to make allegations regarding attorney client communications or other privileged communications, and Upstream denies all such allegations based on privilege.

52. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 52 and therefore denies the same.

53. Upstream admits the allegations in paragraph 53.

54. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 54 and therefore deny the same.

55. Upstream admits that Upstream declined to enter this lawsuit and that the Conservation Easement was assigned to Friends, but Upstream is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 55 and therefore denies the same.

56. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 56 and therefore denies the same.

57. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and therefore deny the same.

58. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 58 and therefore denies the same.

59. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 59 and therefore denies the same.

60. Upstream denies the allegations in paragraph 60.

61. Upstream denies the allegations in paragraph 61.

62. Upstream admits that Attorney Tucker represents the Mabees and Friends but is without knowledge or information sufficient to respond to the remaining allegations in Paragraph 62 and therefore denies the same.

63. Upstream is without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 63 and therefore denies the same.

64. Upstream denies the allegations in Paragraph 64.

65. Upstream denies the allegations in Paragraph 65.

Affirmative Defenses

1. The counterclaims fail to state a claim upon which relief may be granted.

2. The Eckrottes' claims are barred in whole or in part by the doctrines of waiver, release, accord and satisfaction, unclean hands, laches, and/or equitable estoppel.
3. The Eckrottes have failed to mitigate their damages.
4. The Eckrottes' claims are barred by res judicata and collateral estoppel.
5. Upstream reserves the right to add additional affirmative defenses based upon information obtained through discovery in this matter.
6. All factual allegations not expressly admitted are denied by Upstream.
7. All statements made in legal filings with this Court are privileged.
8. The Eckrottes fail to allege that Upstream acted in a manner that makes it liable for tortious interference.
9. The Eckrottes' claims against Upstream are barred due to a failure to demonstrate causation.
10. The Eckrottes' claims are barred due to Upstream acting in good faith to protect the intertidal zone from pollution and other harm.
11. The Eckrottes lack title or claim of title to the disputed intertidal zone.
12. The Eckrottes' claims are barred by the statute of limitations.

Wherefore, Upstream requests that the Eckrottes' counterclaims against Upstream be dismissed and that the Court award Upstream its costs.

Counterclaims

Now comes Upstream and counterclaims against the Eckrottes as follows:

1. Upstream is a Maine non-profit corporation with a place of business in Belfast, Maine.
2. The Eckrottes are residents of New Jersey and own land in Belfast, Maine.

Count I: Abuse Of Process

3. Upstream repeats and realleges all of its allegations in the preceding paragraphs.

4. Upstream has taken no actions to interfere in a tortious manner with the Eckrotes' advantageous relationships.

5. The fact that Upstream was the holder of a Conservation Easement on the intertidal lands is not a basis for Upstream be sued by the Eckrotes for tortious interference.

6. At the time Upstream held the Conservation Easement on the intertidal land, Upstream had a good faith basis to believe that Mabee and Grace owned the intertidal land based on the survey work and opinions of surveyor Donald Richards, who is a licensed Maine surveyor who regularly testifies as an expert on surveying issues including intertidal land ownership issues.

7. At the time the Eckrotes filed their tortious interference claim against Upstream, the Eckrotes were fully aware that Upstream had a good faith basis for believing Mabee and Grace owned the intertidal land given the findings and opinions of Donald Richards.

8. The Eckrotes do not have probable cause, or a good faith basis, for bringing tortious interference claims against Upstream.

9. The Eckrotes have filed the tortious interference claim against Upstream for the improper purpose of pressuring Upstream to cease supporting the claims of Mabee and Grace regarding ownership of the dispute intertidal land that is critical to the Eckrotes' plan to sell easements to Nordic.

10. Nordic has operated and/or supported a public campaign to pressure Upstream and its members and financial supporters to cease their opposition to Nordic's industrial fish farm project.

11. Nordic, or its employee, or a group supported by Nordic, has publicly posted a “Wanted Poster” that shows photographs of Upstream directors and accuses the directors of taking actions to damage Belfast’s economy by opposing Nordic’s project for the purpose of discouraging Upstream and its directors from continuing to oppose the Nordic project.

12. This winter, Upstream opposed Nordic’s permit applications before both the Belfast Planning Board and the Maine Bureau of Environmental Protection.

13. Upstream has received substantial support for many local citizens including financial donations which have been used for analysis by experts on title issues, epidemiology, wildlife and habitat impacts and other highly technical subjects which are relevant to the permitting process.

14. Faced with Upstream’s actions of very effectively opposing Nordic’s permitting requests, Nordic filed a claim for tortious interference against Upstream with an improper motive – which was to pressure Upstream to cease support for Grace and Mabee’s claim of title to the intertidal land and to pressure Upstream and its donors to cease funding opposition to Nordic’s permitting efforts.

15. The Eckrotes have acted in concert with Nordic to bring the baseless tortious interference claim against Upstream.

16. Nordic has used the tortious interference claim as a basis for attempting to obtain the identity of Upstream’s donors through discovery submitted in this lawsuit.

17. In seeking information regarding Upstream’s donors, Nordic is improperly attempting to interfere with Upstream’s financial support from its donors.

18. The Eckrotes’ claims against Upstream are filed in bad faith and without any support.

19. The Eckrotes' actions involve using legal process in an improper manner in concert with Nordic.

20. Nordic has used discovery relating to Nordic's tortious interference claim to attempt to identify, and interfere with, Upstream's donors.

21. Nordic's and the Eckrotes' filing of the tortious interference was motivated by a bad motive on the part of Nordic and the Eckrotes involving Nordic's and the Eckrotes' desire to pressure Upstream and its donors to: (i) cease supporting the Mabee and Grace claims to the intertidal land, and (ii) cease opposing Nordic's project and the Eckrotes claim to the disputed intertidal lands.

22. Nordic's use of discovery to obtain discovery of Upstream's donors constitutes use of legal process for the improper, collateral objective of pressuring Upstream and its donors to cease opposing Nordic's project.

23. Nordic's and the Eckrotes' abuse of process has damaged Upstream.

24. The Eckrotes are liable to Upstream for its abuse of process based on the Eckrotes conspiring with Nordic to abuse process.

Wherefore, Upstream requests that the Court grant judgment in favor of Upstream and against the Eckrotes for abuse of process, and order that Eckrotes pay Upstream all damages and costs, including attorneys' fees and punitive damages, and such other relief as the Court may determine appropriate.

Count II-Civil Conspiracy

25. Upstream repeats and realleges all of its allegations in the preceding paragraphs.

26. Nordic and the Eckrotes have conspired to commit the tort of abuse of process.

27. Nordic and the Eckrotes have jointly prepared the same tortious interference claim and the same motions to dismiss the Upstream claims.

28. Nordic and the Eckrotes share the same improper purpose of pressuring Upstream to cease opposing the Eckrotes' claim to title to the disputed intertidal land and to cease opposing Nordic's permitting requests for its project.

29. Nordic and the Eckrotes have acted in concert to file the improper tortious interference claims against Upstream for the improper purpose of pressuring Upstream to cease support for Mabee, Grace and the Friends of Harriet Hartley, including ceasing all financial support, in the litigation regarding the disputed title to the intertidal land.

30. Nordic and the Eckrotes have taken acts to further their conspiracy to pressure Upstream by seeking the identify of Upstream's donors in order to pressure Upstream to not fund the efforts of Mabee, Grace and the Friends of Harriet Hartley to establish title to the disputed intertidal land.

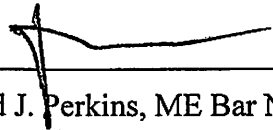
31. Upon information and belief, Nordic and the Eckrotes have taken acts to further their conspiracy by agreeing among themselves that the tortious interference claims will be dismissed only if Upstream agrees to not fund the efforts of Mabee, Grace and the Friends of Harriet Hartley to establish title to the disputed intertidal land.

32. Nordic's and the Eckrotes' civil conspiracy has damaged Upstream.

Wherefore, Upstream requests that the Court determine that Nordic and the Eckrotes are liable to Upstream for civil conspiracy and determine that Nordic and the Eckrotes are jointly liable for all available damages suffered by Upstream, including punitive damages, attorneys fees, and costs, and that the Court grant such other and further relief as the Court determines appropriate.

DATED at Portland, Maine on March 31, 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David J. Perkins", is written over a horizontal line.

David J. Perkins, ME Bar Number 3232
Attorney for Upstream Watch

Curtis Thaxter LLC
One Canal Plaza, Suite 1000
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STATE OF MAINE
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**REQUEST FOR HEARING ON
MOTION TO AMEND
PARTY-IN-INTEREST
UPSTREAM WATCH'S
COUNTER-CLAIMS/
CROSSCLAIMS
AGAINST THE ECKROTES**

NOW COMES Upstream Watch ("Party-In-Interest") and requests the Clerk schedule a hearing on its Motion to Amend of Party-In-Interest, Upstream Watch's Counterclaims/Crossclaims Against Janet Eckrote and Richard Eckrote.

The matter to be heard is non-testimonial.

To the nearest one-half hour, my good faith estimate of the time which the hearing will take is 1/2 hour.

DATED at Portland, Maine on March 31, 2020.

Respectfully submitted,



David J. Perkins, Bar No. 3232
Attorney for Upstream Watch

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MOTION TO AMEND
PARTY-IN-INTEREST
UPSTREAM WATCH'S
COUNTERCLAIM/CROSS-
CLAIM AGAINST THE
JANET AND RICHARD ECKROTE**

Upon the Motion of Party-In-Interest, Upstream Watch ("Upstream"), to Amend its Answer and Counterclaim, the motion is granted.

IT IS SO ORDERED that Upstream is granted leave to amend its answer to assert an amended counterclaim against Janet and Richard Eckrote and the Answer Of Party-In-Interest Upstream Watch To Defendant Eckrotes' Counterclaims With Amended Counterclaim is hereby accepted by the court and deemed filed the date the clerk incorporates this Order in the docket by referenced to Rule 79(a) of the Maine Rules of Civil Procedure.

IT IS FURTHER ORDERED that Janet and Richard Eckrote shall file a response pleading in accordance with Rule 15(a) of the Maine Rules of Civil Procedure to the Answer Of Party-In-Interest Upstream Watch to Defendant Eckrotes' Counterclaim With Amended Counterclaim within 10 days after the date the clerk incorporates this Order in the docket by reference pursuant to Rule 79(a).

The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: _____

Justice, Superior Court

From: [Julie Washburn](mailto:Julie.Washburn)
To: dkallin@dwmlaw.com; gilbert@camdenlaw.com
Cc: [David Perkins](mailto:David.Perkins); dfspcc@gmail.com; k.ervintucker@gmail.com; Amy@goodkarmafarm.com; [Lisa Kubiak](mailto:Lisa.Kubiak); [Julie Washburn](mailto:Julie.Washburn); lthomas@grsm.com
Subject: JEFFREY R. MABEE and JUDITH B. GRACE v. NORDIC AQUAFARMS, INC., JANET ECKROTE, RICHARD ECKROTE, et al. and UPSTREAM WATCH, Docket No. WALSC-RE-19-018
Date: Tuesday, March 31, 2020 11:17:28 AM
Attachments: [2020 03 31 UW Opp MTDs & MTN Am Counter-Cross Claims.pdf](#)

Please see attached being served via electronic service pursuant to Rule 5(b) of the Maine Rules of Civil Procedure.

CURTIS THAXTER

**ATTORNEYS AT
LAW**

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