

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

ASSOCIATION TO PRESERVE AND )  
PROTECT LOCAL LIVELIHOODS, *et al.* )

*Plaintiffs,* )

PENOBSCOT BAY AND RIVER PILOTS )  
ASSOCIATION, )

*Plaintiff-Intervenor,* )

v. )

Civil Action No. 1:22-cv-416-LEW

TOWN OF BAR HARBOR, a municipal )  
corporation of the State of Maine, )

*Defendant,* )

CHARLES SIDMAN, )

*Defendant-Intervenor.* )

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**PLAINTIFFS’ OPPOSITION TO DEFENDANT-INTERVENOR’S MOTION TO  
COMPEL DISCLOSURE OF PLAINTIFFS’ MEMBERS AND PRODUCTION OF  
FINANCIAL DOCUMENTS**

Plaintiff, Association to Preserve and Protect Local Livelihoods (“APPLL”) and, Plaintiffs B.H.Piers, L.L.C, Golden Anchor, L.C., Delray Explorer Hull 495, L.L.C., Delray Explorer Hull 493, L.L.C., and Acadia Explorer Hull 492, L.L.C. (the “Pier-Tender Plaintiffs”) (collectively, “the Plaintiffs”) hereby submit their Opposition to Defendant-Intervenor Charles Sidman’s Motion to Compel Disclosure of Plaintiffs’ Members and Production of Financial Documents as follows:

**I. THE PARTIES HAVE YET TO MAKE A GOOD FAITH EFFORT TO RESOLVE THIS DISPUTE PURUSANT TO LOCAL RULE 26(B)**

Local Rule 26(b) provides that, [a] party with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by agreement the issues in dispute. If that good

faith effort is unsuccessful, the moving party shall file a Request for Hearing Re Discovery Dispute using the Court's form seeking a prompt hearing with a judicial officer by telephone or in person. The party seeking the hearing shall confer with opposing counsel and agree on the relevant discovery materials that should be submitted to the Court with the Request for Hearing.

Along with their Motion to Compel, counsel for Charles Sidman checked "yes" to the question: "Has there been a good faith effort to resolve this dispute?" That representation by Mr. Sidman's counsel is incorrect. All the discovery requests at issue were directed at APPLL. The Sidman Motion to Compel is directed at Sidman Requests Nos. 5, 18, and, 19 of the Request to APPLL (Exhibit A); Sidman Interrogatories Nos. 9 and 11 to APPLL (Exhibit C); and, oddly, Request No. 21 of the Request to Produce that that the Town of Bar Harbor, not Mr. Sidman, directed to APPLL (Exhibit B).

Mr. Sidman is correct that APPLL has taken the position that, given the claims and defenses in this case, the discovery requests designed to elicit its entire membership list is beyond the scope of discovery as set by Rule 26(b)(1) of the Federal Rules of Civil Procedure. However, APPLL has **not** taken the position that it not produce **any** information as to its members or as to the effect of the Ordinance on its members.<sup>1</sup>

It may be that Mr. Sidman is unwilling to compromise any aspect of Requests Nos. 5, 18, and 19 his Request to Produce nor any aspect of Interrogatory Nos. 9 and 11. In that event, discussions between counsel would likely be unavailing, but counsel for Mr. Sidman have not engaged in discussions on that point, so counsel for APPLL simply do not know the answer to that question. Beyond that, no matter how firm a party's position may be, the requirement that

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<sup>1</sup> APPLL is involved with discussions with the counsel for the Town of Bar Harbor to determine whether the parties can reach agreement on the Town's request for APPLL member information, including Request No. 21 of the Town's Request to Produce. (see, Exhibit C, Request No. 21). Those discussions are ongoing.

counsel consult on discovery requests before filing a motion to compel is intended to force consideration of resolutions that, while perhaps short of the requesting party's position, may nonetheless serve that party's essential needs.

Counsel for Mr. Sidman and APPLL have not had such discussions to date and, therefore, the Sidman motion is not ripe and is not compliant with Local Rule 26(b). APPLL believes that satisfying the consultation requirement of Local Rule 26(b) is a prerequisite to this Court's consideration of the Sidman Motion to Compel on the merits. Therefore, this Court should either dismiss or suspend consideration of the motion to compel until counsel for Mr. Sidman and APPLL have consulted on the discovery issues Mr. Sidman has raised. Even so, out of an abundance of caution, APPLL will respond to the Motion to Compel with the reservation that, in doing so, it is not waiving its position that that at this point, the motion is not in order for a ruling on the merits.

## **II. APPLL'S CLAIMS ARE NARROW AND THE RELIEF IT SEEKS IS LIMITED**

The Parties' rights to discovery in this case are governed by APPLL's claims, including APPLL's request for relief, and Mr. Sidman's defenses to those claims. Rule 26(b)(1), F. R. Civ. Pro. This being so, a clear understanding of APPLL's claims and requested relief is essential to resolving the instant Motion to Compel.

In its verified complaint, APPLL brought claims against the Town of Bar Harbor ("the Town") challenging the constitutionality of the Ordinance adopted by the voters of the Town of Bar Harbor on November 8, 2022 ("Ordinance"). *Complaint*, at ¶ 52 (ECF 1). APPLL challenged the Ordinance's constitutionality on three grounds: First, APPLL alleged that the Ordinance was preempted by federal laws and regulations made superior to the Ordinance by the Supremacy Clause of the U.S. Constitution. *Id.* at ¶¶ 67-90 (Count I); second, APPLL alleged that the

Ordinance violated the interstate and foreign commerce provisions of the Commerce Clause. *Id.* at ¶¶91-124 (Count II); and, finally, APPLL alleged that the Ordinance lacked a rationale nexus between the daily limit of 1,000 persons that it imposed on persons disembarking from cruise ships and any basis for that limitation in violation of the Due Process Clause. *Id.* at ¶¶ 125-128. APPLL sought only declaratory and injunctive relief. *Id.* at Prayer for Relief, 1-4.

To meet Article III case or controversy standards, APPLL cited only federal question jurisdiction pursuant to 28 USC §1331. *Id.* at ¶17. Neither APPLL nor any party in this case pled a claim for damages. *Id, passim.*

**Preemption and Commerce Clause Claims:** At the heart of APPLL’s preemption claim (Count I) is the effect that the Ordinance will have on visits to Bar Harbor by cruise ships—that is, that the enforcement of the Ordinance will cause visits by those cruise ships to cease. *Id.* at ¶¶ 77, 88. By the same token, the Ordinance’s effect in terminating cruise ship visits was also at the center of APPLL’s commerce clause claims (Count II). *Id.* at 109.

The gravamen of both of these claims rested, not on allegations of harm to APPLL, but on the effective ban that the Ordinance imposed on cruise ship visits to Bar Harbor. The merits of these claims was not dependent on the extent to which the Ordinance, if enforced, would cause damage to particular APPLL members.<sup>2</sup>

**Due Process:** Likewise, the gravamen of the due process clause claim was that the Ordinance lacked a rational basis (Count III). Again, the merits of this claim were not dependent on any harm that the Ordinance, if enforced, would cause APPLL members.

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<sup>2</sup> As will be discussed further below, when APPLL filed its complaint, it was not clear whether the Town would enforce the Ordinance during the 2023 cruise season or not. For that reason, APPLL moved for the entry of a preliminary injunction barring such enforcement. ECF 12, *passim.*

As will be discussed further below, the claims set forth in Counts I-III, then, are the claims that are at issue in this case within the meaning of Rule 26(b)(1). It is these claims which govern the defenses that Mr. Sidman (and the Town) may raise to them.

**Motion for Preliminary Injunction:** The Ordinance was retroactive to March 17, 2022 meaning that any cruise ship application that the Town had not confirmed as of that date would be covered by the Ordinance. When Plaintiffs filed their Complaint, there were more than 30 cruise ship application in this situation. Therefore, in addition to declaratory and injunctive relief, Plaintiffs also moved this Court to enter a preliminary injunction restraining the Town from enforcing the Ordinance as to that category of cruise ship applications. ECF 12, at 12, 37; see also, ECF 22, at ¶57. The Motion for Preliminary Injunction dovetailed with similar allegations of imminent injury in the Complaint. ECF 12 at ¶¶ 61-64.

**Post-Filing Developments:** After the Complaint and Motion for Preliminary Injunction had been filed, Plaintiffs (and Plaintiff-Intervenors, Penobscot Bay and River Pilots' Association) began discussions with the Town to determine whether they could reach agreement on a period in which the Town would not enforce the Ordinance.

The Parties' efforts in this regard receive an assist when this Court, in its Order granting Mr. Sidman's Motion to Intervene, noted the limited nature of Plaintiffs' claims as falling within a particular category of claims. As the Court put it, "[c]ases of this kind—constitutional challenges to popular enactments—typically move along at a much faster clip than standard civil litigation." *Order Granting Motion to Intervene* at 7 (ECF 63). Picking up on the Court's cue, the Parties proposed an accelerated discovery schedule to the Court, which the Court endorsed. *Scheduling Order* (ECF 82). The Order provided a mere two months for discovery leading to a trial date in July. *Id.*

With the parties having agreed to an expedited route to a decision on the merits, the Town agreed that, until this Court adjudicated Plaintiffs' claims on the merits, it would not enforce the Ordinance. That representation removed any risk to the 2023 cruise ship season which, in turn, prompted Plaintiffs to withdraw their request for preliminary injunctive relief. (ECF. 83). Plaintiffs withdrew their request because, quite simply, with the Town having pledged not to enforce the Ordinance for the immediately upcoming cruise ship season, Plaintiffs lacked a factual basis to support their claims of imminent injury—something they did not know and could have known when they filed their Complaint.

Further proof of this circumstance is found in Plaintiffs' Initial Disclosures. Consistent with Fed. R. Civ. P. Rule 26(a)(1) and Rule 26(b)(1), upon the commencement of discovery, Plaintiffs served Initial Disclosures which expressly omitted any discovery on damages on the express grounds that Plaintiffs are not seeking damages. *Plaintiffs' Initial Disclosures, Attachment A*. No Party has challenged this aspect of Plaintiffs' Initial Disclosures.

Therefore, in the case as currently postured, Defendants are facing **no** claims for damages; they are not even facing claims of irreparable injury for preliminary injunctive relief. Bluntly put, the defenses Mr. Sidman must muster to oppose Plaintiffs claims do not in any way include a claim for damages or even irreparable injury.

### **III. THE LIMITED NATURE OF PLAINTIFFS' CLAIMS AND RELIEF SOUGHT GOVERN THE SCOPE OF DEFENDANTS' DISCOVERY RIGHTS**

The Sidman Motion to Compel is governed by Rule 26(b)(1) which provides: .

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties relative access to the relevant information, the parties resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope is need not be admissible in evidence to be

discoverable.

Rule 26(b)(1), F.R.Civ.Pro.

**Claims and Defenses/Proportionality:** By its plain terms, Rule 26(b)(1) sets two prerequisites for discovery: the discovery request must be “relevant to a party’s claim or defense” and it must be “proportional to the needs of the case.” *Id.*

With respect to “claims and defenses”, the Advisory Committee Notes to the year 2000 revisions to Rule 26(b)(1), the Advisory Committee explained the court’s role in assessing a relevance objection as follows: “[i]f there is an objection that discovery goes beyond material relevant to the parties’ claims or defenses, the court would become involved to determine whether the discovery is relevant to the claims or defenses...”<sup>3</sup> Advisory Committee Notes, reprinted in Thomson Reuters, “Federal Civil Judicial Procedure and Rules” (2023 Edition) at 149. see, *Noble Roman’s, Inc. v. Hattenhauer Distributing Company*, 314 F.R.D. 304, 307-309 (S.D. Ind. 2016) (reviewing Advisory Committee changes to Rule 26(b)(1)).

The Advisory Committee made the 2015 changes in Rule 26(b)(1) “to improve a system of civil litigation that ‘in many cases...has become too expensive, time-consuming, and contentious, inhibiting effective access to the courts.’” *United States ex rel. Customs Fraud Investigations, LLC v. Vitctaulic Company*, 839 F.3d 242, 258-259 (3d Cir. 2016).

Rule 26(b)(1), itself, provides exemplars for the application of this standard by requiring the court and the parties to consider “the importance of the issues at stake in the action.” *Id.* The Rule goes on to explain that these issues include, *inter alia*, “the amount in controversy.” *Id.* In identifying this specific issue, Rule 26(b)(1) tacitly acknowledges that there will be claims in

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<sup>3</sup> At that time, the second prong of the test turned on the “subject matter” of the case. In 2015, “subject matter” was omitted and replaced by the current proportionality standard.

which there is no “amount in controversy” and the absence of such a claim circumscribes what constitutes the “claim and defense” at issue.

Rule 26(b)(1) plainly describes the scope of discovery as extending to “any nonprivileged matters that is relevant to any party’s claims or defense and proportional to the needs of the case, considering the importance of the issues at stake in the case, the amount in controversy, the parties relative access to relevant information, the parties resources, and, whether the burden or expense of the proposed discovery outweighs the likely benefit.”<sup>4</sup> Fed. R. Civ. P. 26(b)(1). Central to Rule 26(b)(1) is that discovery requests must be “relevant to any party’s claims and defenses.” *Id.*

Rule 26(b)(1), itself, confirms the limited character of Plaintiffs’ claims. Indeed, the Notes of the Advisory Committee emphasize that: “[t]he Committee intends that the parties and the court focus on the **actual** claims and defenses.” Fed. R. Civ. P. 26, Advisory Committee Notes (2000 and 2015) (emphasis supplied); *see also Cobell v. Norton*, 226 F.R.D. 67, 82 (D.D.C. 2005) (“the requirement of Rule 26(b)(1) that material sought in discovery should be ‘relevant’ should be firmly applied”). Thus, this Court and the Parties have recognized that Plaintiffs’ very limited claims for declaratory and injunctive relief are, themselves, narrowly focused. In accordance with Rule 26(b)(1), **these** claims, then, govern the scope of discovery.

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In 2015, Rule 26 of the Federal Rules of Civil Procedure was amended to require that all discovery be “proportional” in nature. The old rule permitted discovery of any information “reasonably calculated to lead to the discovery of admissible evidence.” The new rule permits discovery only of information “relevant to any party’s claim or defense and proportional to the needs of the case.” The change ensures that the parties and court share the “collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes.” The objective was hard to miss. It was “to improve a system that ‘in many cases. . . has become too expensive, time-consuming, and contentious, inhibiting effective access to the courts.’”

*Helena Agri-Enterprises, LLC v. Great Lakes Grain, LLC*, 988 F.3d 260, 273 (6th Cir. 2021); *see also* § 2008.1 Relevancy to the Subject Matter—Proportionality, 8 Fed. Prac. & Proc. Civ. § 2008.1 (3d ed.).



**IV. DEFENDANT SIDMAN’S REQUESTS ARE OUTSIDE OF THE SCOPE OF RULE 26(b)(1) DISCOVERY**

**A. THE IDENTITY OF APPLL’S MEMBERS AND PLAINTIFFS’ FINANCIAL RECORDS ARE NOT RELEVANT TO ANY DEFENSE NR PROPORTIONAL TO THE NEEDS OF THE CASE**

Defendant Sidman asserts that APPLL “has refused, without justification, to disclose its members.” *Motion to Compel* at 1 (“Motion”) (ECF 106-1). This is not true, as Plaintiffs have previously provided ample justification as to why this information is not relevant and thus should not be disclosed. *See* (ECF 96).

The Supreme Court has recognized that claims such as this—where the constitutionality of a law is at issue and declaratory relief it sought—are limited and, in such instances, associations such as APPLL may litigate those claims in lieu of the particular entities or persons that comprise the association’s membership.<sup>5</sup> *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343-347 (1977); *see also, Camel Hair and Cashmere Institute of America, Inc v. American Dry Goods Association*, 799 F.2d 6, 10-13 (1<sup>st</sup> Cir. 1986).

The *Hunt* Court explained this principle by nothing that: “[W]hether an association has standing to invoke the court’s remedial powers on behalf of its members depends in substantial measure on the nature of the relief sought. If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured. Indeed, in all cases in which we have expressly recognized standing in associations to represent

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<sup>5</sup> Mr. Sidman’s reliance on *Nat’l Org. for Marriage v. McKee*, 666 F. Supp. 2d 193 (D. Me. 2009) is misplaced. That case addressed the registration and reporting requirements of Maine’s ballot question statute and did not address the issues presented in Mr. Sidman’s Motion. Likewise, *Bourne v. Arruda*, 2012 WL 2891110 at \*3 (D.N.H July 16, 2012) is not applicable here, as that involved a motion to compel regarding a Plaintiff’s refusal to answer a question during a deposition, which involves analysis under F.R. Civ. P Rules 30 and 37. Similarly, *Miura Corp. v. Davis*, 2020 WL 5224348 at \*4 (C.D. Cal. June 25, 2020) is not applicable, as it pertained to an order denying a request for a temporary restraining order.

their members, the relief sought has been of this kind.” 432 U.S. at 434, quoting, *Warth v. Seldin*, 422 U.S. 490, 515 (1975).

The Court continued, “[t]hus we have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Id.* at 343.

*Hunt* makes clear that, where, as here, declaratory and injunctive relief only are sought, an association, by itself, can bring (or defend) that action on behalf of its members; its members need not join the case. Thus, the very limited scope of Plaintiffs’ claims and the fact they seek no damages make APPLL’s membership list entirely irrelevant and of no benefit to this matter. Mr. Sidman will not be prejudiced in any way in defending the constitutionality of the Ordinance without the APPLL membership list.

Although not essential to maintaining APPLL’s opposition to this Motion to Compel, it is clear that APPLL’s and its members’ First Amendment rights to associate are threatened by Mr. Sidman’s demand for detailed membership information. *Le Union Del Pueblo Entero v. Abbott*, 2022 WL 17574047, \*6, citing *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). Associational freedom is threatened when disclosure of membership information would “chill the associational rights at issue.” *Id.*, citing 357 U.S. at 462-463.

The Ordinance and this litigation has generated considerable publicity and accompanied at times by high emotions on the part of some. APPLL and its members are rightly concerned that, if all members’ identities are disclosed, individual APPLL members will come under pressure from some cruise ship opponents to withdraw from APPLL, thus impairing their First

Amendment rights of association and APPLL's First Amendment right to gain members to support its role in this litigation.

The foregoing risk to APPLL's first amendment rights and those of APPLL members is in addition to APPLL's position that Mr. Sidman's membership requests are neither relevant to any claims or defenses nor proportionate to the needs of this case.

In his Motion to Compel, Mr. Sidman asks this Court to compel APPLL's response to the following Sidman Requests:

**Sidman Request No. 5:** All documents and things identifying the economic interest of each Walsh Family entity or Walsh family member in any business(es) impacted in any way by the "cruise ship tourists...on cruise ships that call on the port of Bar Harbor." ECF 106-2 (Exhibit A, Request No. 5).<sup>6</sup>

It is evident that this request is request seeks the equivalent of damages that have been inflicted on the vaguely described entities and persons when no damages have yet been inflicted and will not be unless and until the Town enforces the Ordinance. Mr. Sidman has not explained, as he is required to do, how this request relates to any defense. If Mr. Sidman took up this challenge, he would find it difficult, if not impossible, for the reason that APPLL is simply not seeking damages.

Beyond that, with APPLL not seeking damages, Mr. Sidman's broad request is clearly not "proportionate to the needs of the case. Nor has Mr. Sidman deigned to explain why it is. Thus depriving APPLL and this Court of the ability to test his rationale on that point.

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<sup>6</sup> Mr. Sidman did not define the terms "Walsh Family Entity" or "Walsh family member" and those terms are inherently ambiguous. APPLL objected to those terms on the grounds that discovery requests proper only to the extent they were directed at **parties**. ECF 106-2, Request No. 5—Objection.

**Sidman Request No. 18:** Request No. 18 seeks a copy of APPLL’s “state income tax returns, including all supporting documents and schedules, from 2003 to 2022.

For the reasons set forth above, this Request is not relevant to any claim APPLL is making and, therefore, it is not relevant to any defense. Beyond that, APPLL has only been in existence since December of 2022 and has not filed any tax returns.

**Sidman Request No. 19:** Request No. 19 seeks a copy of APPLL’s “federal income tax returns, including all supporting documents and schedules from 2003 to 2022. This Request is neither relevant nor proportionate for the same reasons Request No. 18 is neither. In addition, as has just been noted, APPLL has not yet filed any tax returns.

**Town Request No. 21:** Town Request No. 21 seeks “[a]ny and all documents relating to Plaintiffs’ financial condition from January 1, 2018 to the present. This request includes finances of any and all business interests owned or operated by members of Plaintiff Association to Preserve and Protect Local Livelihoods that Plaintiffs allege will be impaired by the Ordinance.”

Although for the reasons set forth above, Town Request No. 21 is not relevant to a claim or defense and is not proportionate to the needs of the case, more to the point, this is **the Town’s Request**. APPLL and the Town are attempting to work out an agreement to resolve Town Request No. 21 in a way that would obviate any need for a formal discovery dispute. Mr. Sidman may not raise the Town’s Request on his own when the Town, itself, is attempting to resolve the matter.

**Sidman Interrogatory No. 9:** Sidman Interrogatory No. 9 asks APPLL to “[i]dentify the economic impact of cruise ships for the past twenty (20) years.” This request is not related to any claim or defense because the Ordinance is not being enforced and no damages have been

incurred. Moreover, given its 20 year sweep, it is not proportionate to the needs of the case as the Ordinance was only enacted into law on November 8, 2022.

Beyond that, it is apparent that APPLL answered Interrogatory No. 9, subject to an objection. The answer cited the only systematic evaluation of the economic impact of cruise ship visits of which APPLL is aware, the studies and reports of Todd Gabe, Ph. D.

**Sidman Interrogatory No. 11:** Sidman Interrogatory No. 11 asks APPLL to describe how the Ordinance (if enforced) will reduce revenues to (presumably) APPLL members. This Request, too, is not relevant to any claim APPLL is making and, therefore, it is not relevant to any defense. Nor has Mr. Sidman explained how it is. In addition, APPLL is an association of businesses and others, some of which believe that, if the Ordinance is ever enforced and cruise ships stop coming, they will experience a decline in business with an accompanying decline in revenues.

The partial quote from the Paragraph 62 of the Complaint was alleged when APPLL believed, with good reason, that the Town's enforcement of the Ordinance was imminent and was intending, as it did a short time later, to move for the entry of a preliminary injunction. At this point, with the Town having agreed not to enforce the Ordinance until this Court has ruled on its constitutionality, Interrogatory No. 11 is not related to any claim. Nor is it related to any defense.

Beyond that, APPLL did answer this request in the same way it answered Interrogatory No. 9; that is, providing information subject to an objection. The APPLL answer cited the only systematic evaluation of the economic impact of cruise ship visits of which APPLL is aware, the studies and reports of Todd Gabe, Ph. D. This answer satisfies APPLL's obligations as to both Sidman Interrogatory Nos. 9 and 11.

In sum, APPLL has objected to the production of the aforementioned Requests on several grounds including that they are beyond the scope of discovery given the claims in this case. Again, the very limited scope of APPLL's claims and the fact it seeks no damages make such financial records entirely irrelevant and of no benefit to this matter. Mr. Sidman has no need to mount a defense to the economic harm alleged by the Plaintiffs. This is especially true as the Plaintiffs withdrew their request for preliminary injunctive relief following the Town's advised decision not to enforce the Ordinance until this Court adjudicated the Ordinance's constitutionality.

WHEREFORE, Plaintiffs respectfully request that this Court DENY Defendant-Intervenor Charles Sidman's Motion to Compel Disclosure of Plaintiffs' Members and Production of Financial Documents.

Dated this 5<sup>th</sup> day of June, 2023.

*/s/ Timothy C. Woodcock*

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2023, the foregoing was served to all counsel of record via email.

*/s/ Timothy C. Woodcock*