

STATE OF MAINE  
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT  
Location: Portland  
DOCKET NO. BCD-CIV-2024-00046

GOLDEN ANCHOR L.C., )  
)  
Plaintiff, )  
)  
v. )  
)  
TOWN OF BAR HARBOR, )  
)  
Defendant. )

**MOTION TO INTERVENE  
OF CHARLES SIDMAN  
WITH INCORPORATED  
MEMORANDUM OF LAW**

Charles Sidman, proposed Defendant-Intervenor, respectfully moves this Court pursuant to Rule 24 of the Maine Rules of Civil Procedure to intervene in the above-captioned matter on the side of Defendant Town of Bar Harbor (the “Town”). In support of this Motion, Mr. Sidman also submits a supporting affidavit, dated October 25, 2024 (“Sidman Aff.”), and his Answer and Affirmative Defenses to the Complaint filed by Plaintiff Golden Anchor, L.C.

**INTRODUCTION**

This case is the latest chapter in an ongoing saga over efforts by the citizens of Bar Harbor to institute reasonable regulations to limit the number of cruise ship passengers disembarking into their town, the counterefforts by powerful business interests to oppose and thwart those regulations, and a Town government that—although its officials purport to defend the citizen-enacted disembarkation limits—has undermined the will of the voters at every opportunity. As the leader of the petitioning committee that advocated for the adoption of the disembarkation limits, Mr. Sidman has been an essential party in ongoing litigation over those citizen-enacted limits now embodied in the Town’s Land Use Ordinance. This action arises from Town officials’ half-hearted attempt to require a single pier owner to comply with the permitting requirement aspect of the ordinance. For good reasons, Mr. Sidman doubts the Town’s commitment to defending the

ordinance and its commitment to upholding the desires of its voters. Accordingly, Mr. Sidman seeks to intervene in this matter on the side of the Defendant Town to protect his interests and to ensure the Ordinance is adequately defended.

### FACTS

Mr. Sidman is a resident of Bar Harbor and owns two properties there, including a downtown commercial property located at 6 Mount Desert Street. Sidman Aff. ¶¶ 5-6. Mr. Sidman and his wife have owned and operated the Argosy Gallery, a fine art gallery, at his downtown property for twenty-nine years. *Id.* ¶ 7. Argosy Gallery’s location is less than one-half mile, just a few blocks, from the pier located at 55 West Street in Bar Harbor where Plaintiff Golden Anchor, L.C. (“Golden Anchor”) disembarks cruise ship passengers over its land into Bar Harbor that is the subject of this action. *Id.* ¶ 8.

Mr. Sidman and his business are adversely affected by the large crowds of cruise ship passengers who disembark into Bar Harbor between May and October each year. Sidman Aff. ¶ 9. The large crowds of cruise ship passengers who disembark onto land in Bar Harbor cause town-wide congestion and overcrowding leading to the inundation of local services, amenities, and attractions. *Id.* The clientele of Mr. Sidman’s business complain and refuse to come to his gallery on days when cruise ships are disembarking passengers, because Bar Harbor is overrun with cruise ship passengers. *Id.* ¶ 10. Mr. Sidman used to operate Argosy Gallery out of two locations, but it became too much of a nuisance to navigate the crowds caused by cruise ship passengers while shuttling back and forth between locations, and at the end of the 2022 season, he ultimately decided to close his second gallery location. *Id.* ¶ 11.

On March 17, 2022, Mr. Sidman led a seven-member Petitioning Committee that sought to pass an initiative amending the Town’s Land Use Ordinance (the “LUO”) to limit the number

of cruise ship passengers disembarking onto land in the Town to 1,000 per day (the “Initiative”). *Id.* ¶¶ 12-13. The Initiative was adopted by the voters on November 8, 2022, by a vote of 1,780 to 1,273 (58.3%). *Id.* ¶ 15. The Initiative took effect on December 8, 2022, and is incorporated into the LUO, codified as Bar Harbor, Me., Municipal Code, Chapter 125, Article VII, § 125-77(H) (Nov. 8, 2022) (the “Ordinance”). *Id.* ¶ 16; *see* Plaintiff’s Complaint (“Pl. Compl.”), Ex. A.4.

The Ordinance limits the number of passengers from cruise ships allowed to disembark onto land in Bar Harbor without imposing a fee on the landowners to a maximum, in the aggregate, of 1,000 per day. Pl. Compl., Ex. A.4, LUO, Ch. 125, Art. VII, § 125-77(H). The Ordinance requires property owners to secure a permit from the Town’s Code Enforcement Officer (“CEO”) for any passengers disembarking from a cruise ship on, over, or across their land. *Id.* § 125-77(H). Rather than prevent passengers from disembarking, the Harbor Master must report any daily disembarkations above a landowner’s permitted allotment to the CEO, who is charged with assessing a fine on landowner for each excess passenger. *Id.* § 125-77(H)(4). The Ordinance applies to all cruise ship reservations accepted by the Harbor Master after March 17, 2022. *Id.* § 125-77(H)(2), (5).

In or about December 2022, Golden Anchor, among other plaintiffs, filed a lawsuit in the United States District Court for the District of Maine, entitled *Association to Preserve and Protect Local Livelihoods, et al.* [“APPLL”] *v. Town of Bar Harbor*, Docket No. 1:22-cv-00416-LEW (the “Federal Action”), that challenged the lawfulness of the Ordinance and sought an injunction barring its enforcement. Sidman Aff. ¶ 17. The Town adamantly objected to Mr. Sidman’s motion to intervene as its ally in the Federal Action, while simultaneously welcoming the Penobscot Bay and River Pilots Association to intervene against it as a plaintiff. *Id.* ¶ 18. Over the unified objections of the plaintiffs and the Town, the Court permitted Mr. Sidman to intervene in the

Federal Action as a defendant. *Id.* ¶ 19; *see APPLL v. Town of Bar Harbor*, No. 1:22-cv-00416-LEW, 2023 WL 2273949 (D. Me. Feb. 28, 2023) (order granting Mr. Sidman’s motion to intervene).

In granting Mr. Sidman’s motion to intervene in the Federal Action, the Federal District Court (*Walker, J.*) found that “the history of this controversy reflects a decidedly pro cruise ship sentiment on the part of the Bar Harbor Town Council.” *Id.* at \*1. The Court also found that Mr. Sidman’s intervention was appropriate “given the Town’s history of boosterism for the cruise ship industry” (*Id.* at \*3) and because the Town had “actively encouraged the electorate to vote down the initiative” (*Id.* at \*2). The Court found that there was a “strong showing” that the Town had “long given over to one or more agents of the Walsh family enterprises (i.e., most of the nominal plaintiffs) [including Golden Anchor] what appears (upon first impression) to be *carte blanche* in matters of Bar Harbor’s informal and voluntary cruise ship policy.” *Id.* at \*3.

The Town Council also capitulated to the plaintiffs’ demands and agreed to not enforce the Disembarkation Ordinance pending the outcome of the District Court proceedings. *APPLL*, No. 1:22-cv-00416-LEW, 2024 WL 952418, at \*1 (D. Me. Mar. 1, 2024). During the pendency of the Federal Action, then-Town Manager Kevin Sutherland stated on video that the Town would “figure out some sort of terms in which we allow [the cruise ships] to show up anyway,” in defiance of the Ordinance’s prohibition. Sidman Aff. ¶ 20.

On March 1, 2024, following a three-day bench trial and briefing, the Federal District Court issued an amended decision and order upholding the lawfulness of the Ordinance in nearly all respects. *APPLL*, No. 1:22-cv-00416-LEW, 2024 WL 952418, at \*27; Sidman Aff. ¶ 21.

Five days later, on March 6, 2024, the Town Council held a Special Town Council Meeting where Council Chair Valerie Peacock read a prepared statement regarding enforcement of the

Ordinance. Sidman Aff. ¶¶ 22-24, Exs. 1-2. In the statement, the Town Council duplicitously stated that enforcement of the Ordinance “will begin immediately,” while also announcing that it “will honor reservations made before the town voted. Passengers from these 2024 ships will not be subject to the disembarkation limits of the Ordinance.” Sidman Aff. ¶ 24, Ex. 2. In other words, contrary to the express language of the Ordinance that it applies to all cruise ship reservations accepted after March 17, 2022, the Town Council announced that it had ordered Town employees not to enforce the Ordinance for any disembarkations from cruise ships that made reservations for the 2024 cruise ship season prior to the November 8, 2022 vote, effectively amending the application date and nullifying the Ordinance for another year.

The change in applicability date is significant, as it purportedly exempted an additional 34 ships with 72,729 passengers from the Ordinance. Sidman Aff. ¶¶ 25-28. Upon information and belief, no landowners have sought a permit to disembark cruise passengers on or over their land in Bar Harbor, no passenger disembarkations have been counted to ensure compliance with the Ordinance’s daily limit of 1,000 passenger, and the Town has not assessed nor collected any fines. *Id.* ¶¶ 31-33. The Town has only issued one notice of violation to a landowner for failure to obtain a permit—the notice of violation issued to Golden Anchor that is the subject of this action. *Id.* ¶ 34. In total, the Town has allowed an additional 93 cruise ships to disembark an additional 101,278 into Bar Harbor during 2024 with no regard to the permitting requirements, fines, and restrictions placed on landowners by the Ordinance. Sidman Aff. ¶¶ 25-26, 30.

Even now, the Town Council is trying to pass superseding legislation to revoke the Ordinance. In June 2024, the Town announced its plan to repeal the Ordinance in its entirety and replace it with a new provision, “Chapter 50,” of the Town of Bar Harbor Municipal Code that would, among other changes, raise the daily cap on cruise ship passenger disembarkations to 3,200

passengers per day—more than triple the daily passenger limit enacted by the voters in 2022—and place autocratic rule over the Town’s cruise ship policy in the hands of the Town Council. Sidman Aff. ¶¶ 35-38, Ex. 3. The Town, the cruise lines, and Golden Anchor negotiated Chapter 50 and its underlying contracts, setting the 3,200 daily proposed cap. *Id.* ¶ 39. The Town Council’s proposed repeal of the Ordinance will be voted on by voters of Bar Harbor at the November 5, 2024 election. *Id.* ¶¶ 40-41, Exs. 4-5.

On August 5, 2024, in lip-service to enforcing the Ordinance, the Town issued a Notice of Violation to Golden Anchor for disembarking cruise ship passengers without a permit. Pl. Compl. Exs. A.1-A.2. In response, on September 4, 2024, Golden Anchor administratively appealed the violation to the Town’s Board of Appeals. That appeal will not be heard until after the November 5, 2024 election. On September 10, 2024, Golden Anchor also commenced this litigation, seeking *inter alia* a declaration that the Ordinance and its accompanying rules are unconstitutional and an injunction against their enforcement.

Given the Town Council’s history of opposing the Ordinance, in solidarity with Golden Anchor’s and the cruise lines’ interests, its attempts to keep the 2024 season intact, and its present efforts to repeal the Ordinance in its entirety, Mr. Sidman disputes the Town’s commitment to defending the validity of the Ordinance from the claims asserted by Golden Anchor. As an owner of properties and a business in the Town, and the leader of the Petitioning Committee that successfully passed the Ordinance, Mr. Sidman seeks to intervene in this matter—like he did in the Federal Action—to protect his interests and defend the lawfulness of the Ordinance.

### **ARGUMENT**

Under Maine law, upon a timely application to the court, an applicant shall be entitled to intervene as a matter of right in any pending action when the applicant (1) claims an interest

relating to the property or transaction that is the subject of the action, (2) the applicant’s interest is so situated that the disposition of the action may as a practical matter impair or impede their ability to protect their interest, and (3) the applicant’s interests will not be adequately represented by the existing parties to the action. M.R. Civ. P. 24(a)(2); *In re Children of Mary J.*, 2019 ME 2, ¶ 6, 199 A.3d 231. These elements should be liberally construed in favor of intervention. 59 Am. Jur. 2d Parties § 151; *Northrop Grumman Info Tech., Inc. v. United States*, 74 Fed. Cl. 407, 412 (Fed. Cl. 2006). The test for intervention as a matter of right is not whether the applicant “will either gain or lose by the direct legal effect of” a judgment in that action, but whether the disposition of the action may “as a practical matter impair or impede the applicant’s ability to protect his interests.” M.R. Civ. P. 24 explanation of amend., Nov. 1, 1966, Me. Judicial Branch website/rules/rules-civil (<https://www.courts.maine.gov/rules/rules-civil.html>) (last visited Oct. 16, 2024).

**I. Mr. Sidman has an interest relating to the subject of Golden Anchor’s action, the disposition of which may impair or impede his ability to protect his interest.**

The first and second elements for intervention as a matter of right are discussed together because they are closely related. *See Canadian Nat. Ry. Co. v. Montreal Maine & Atl. Ry., Inc.*, No. CV 10-452-B-W, 2010 WL 5168003, at \*5 (D. Me. 2010). Here, Mr. Sidman has two significant interests relating to the property and activity that are the subject of Golden Anchor’s complaint: (1) Mr. Sidman is the owner of real property and a business in the Town that are adversely impacted by unregulated and uncapped cruise ship passenger disembarkations, and (2) he was the principal proponent of the adoption of the Ordinance and has an interest upholding the citizens’ right to independently legislate via a citizen initiative and have the results of that initiative properly enforced.

**a. Mr. Sidman has concrete property and business interests that may be impaired or impeded by the disposition of Golden Anchor’s action.**

Mr. Sidman is an owner of real property and a business in the Town. His properties and business are, and have been, adversely impacted by continued, excessive cruise ship passenger disembarkations. Sidman Aff. ¶¶ 6-11. Mr. Sidman’s clientele, purchasers of fine art, will not visit his business on days when cruise ships disembark their passengers in the town. *Id.* ¶ 10. Thus, he is a proponent of the regulation of cruise ship passenger disembarkations into Bar Harbor because of this adverse impact to his business. *Id.* ¶¶ 9-11. Mr. Sidman, through his business, has suffered—and if Golden Anchor succeeds, will continue to suffer—concrete harm in the form of the loss of clientele and sales.<sup>1</sup>

This is a sufficient basis to enable Mr. Sidman to intervene as a matter of right. *See Lippoth v. Zoning Bd. of Appeals, City of South Portland*, 311 A.2d 552, 553-56 & n.1 (Me. 1973) (neighbor who opposed application for setback variance was a proper intervenor because the relief sought by the applicant in his appeal of the zoning board’s denial of the variance could negatively impact the neighbor’s property interest by generating unusual traffic conditions that would affect the entire neighborhood); *see also Pub. Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 206 (1st Cir. 1998) (reasoning that potential economic harm weighs heavily in favor of intervention). Thus, Mr. Sidman has a real interest in avoiding the real harm posed to the use of his property and to his business by unregulated cruise ship passenger disembarkations.

**b. Mr. Sidman has a concrete interest in upholding the validity of the Ordinance as the leader of the Petitioning Committee that led to its adoption.**

Proponents of citizen initiatives like Mr. Sidman are regularly permitted to intervene in

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<sup>1</sup> In words of Chief Judge Walker, Mr. Sidman “has a concrete, personal stake in the local commons that is impacted by the influx of cruise ship passengers throughout an extended season.” *APPLL*, No. 1:22-cv-00416-LEW, 2023 WL 2273949, at \*3.

litigation concerning the validity and lawfulness of an initiative they commenced and support. *See, e.g., Caiazza v. Secretary of State*, 2021 ME 42, ¶ 2 & n.2, 256 A.3d 260 (individual applicant for direct initiative legislation permitted to intervene in action challenging the validity of the initiative); *NECEC Transmission LLC v. Bureau of Parks and Lands*, 2022 ME 48, ¶ 3 n.4, 281 A.3d 618 (allowing thirteen interested organizations and voters to intervene to defend public referendum); *see also Yniguez v. Arizona*, 939 F.2d 727, 733 (9th Cir. 1991) (discussing legislative standing in the context of a ballot initiative commenced by a citizens group). As an opponent of the “carte blanche” control over Bar Harbor’s cruise ship policies that the Town has handed to Golden Anchor, and as the principal advocate for the adoption of the Ordinance, Mr. Sidman should be permitted to intervene to defend the validity, application, and enforcement of the Ordinance.

## **II. Mr. Sidman’s interest is not adequately represented by the existing parties.**

The Law Court has not established a standard to determine whether a party’s interest is, or is not, adequately represented by the existing parties to the action. *See State v. MaineHealth*, 2011 ME 115, ¶ 7, 31 A.3d 911. In cases when a citizen wishes to intervene to defend governmental action which the government is itself defending, the Court of Appeals for the First Circuit applies a presumption that the proposed intervenor’s rights will be adequately represented. *State v. Director, U.S. Fish and Wildlife Servs.*, 262 F.3d 13, 19 (1st Cir. 2001). However, the bar to overcome the presumption of adequate government representation is low. *B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 546 (1st Cir. 2006). A proposed intervenor “need only offer ‘an adequate explanation as to why’ it is not sufficiently represented” by the government party. *Id.* A proposed intervenor may overcome this presumption by demonstrating that his interests are sufficiently different in kind or degree from those of the named party. *Id.*

Here, the Town’s continued hostility towards the Ordinance makes clear that it will not adequately represent Mr. Sidman’s interests in this litigation, nor the interests of its citizens. Historically, Town officials have embraced a “pro cruise ship sentiment.” The Town Council actively campaigned against the passage of the Ordinance. Sidman Aff. ¶¶ 14, 20. Even after the Town and Mr. Sidman prevailed in the Federal Action, the Town Council sought to nullify the Ordinance for the 2024 season. *Id.* ¶¶ 22-24. The Town is presently advocating that voters repeal the Ordinance at the upcoming election. *Id.* ¶¶ 35-41. It is clear the Town will do everything it can to not enforce the Ordinance and would like nothing more than to see Golden Anchor prevail in this litigation. For these reasons, the Town will not adequately protect Mr. Sidman’s property, business, and legislative interests by vigorously defending the Ordinance from Golden Anchor’s challenge. Accordingly, Mr. Sidman should be permitted to intervene in this matter.

**III. In the event Mr. Sidman is not permitted to intervene, Mr. Sidman should be permitted to participate in this proceeding as a party-in-interest.**

Alternatively, in the event that Mr. Sidman is not permitted to intervene, this Court should permit him to participate as a party-in-interest through oral comment and written submissions. *See Pike Industries, Inc. v. City of Westbrook*, 2012 ME 78, ¶ 24 n.4, 45 A.3d 707; *State v. MaineHealth*, 2011 ME 115, ¶¶ 5-6, 15-16, 31 A.3d 911. As discussed, Mr. Sidman was the main proponent of the Ordinance, which mitigates the negative impact of cruise ship passenger disembarkations into Bar Harbor. As an advocate for the public’s welfare, Mr. Sidman should be permitted to participate as a party-in-interest in the event that the Court declines to permit his intervene as party in this lawsuit.

**CONCLUSION**

Charles Sidman respectfully moves this Court to permit him to intervene in this proceeding as a defendant, or in the alternative, allow him to participate as a party-in-interest.

Dated: October 28, 2024

*/s/ Jason J. Theobald*

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**NOTICE**

Pursuant to Rule 7 of the Maine Rules of Civil Procedure, opposition to this Motion must be filed not later than 21 days after the filing of the Motion, unless another time is provided by the Rules of Court. Failure to file a timely objection will be deemed a waiver of all objections to this Motion which may be granted without further notice or hearing.