



STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER COURT
LOCATION: PORTLAND
DOCKET NO. BCD-CIV-2024-00046

GOLDEN ANCHOR LC,

Plaintiff,

v.

TOWN OF BAR HARBOR,

Defendant.

**OPPOSITION OF PLAINTIFF
GOLDEN ANCHOR, LC TO
MOTION TO INTERVENE OF
CHARLES SIDMAN**

NOW COMES, Golden Anchor, LC, by and through its attorney, Timothy C. Woodcock, Esq, and files its opposition to the Motion to Intervene of Charles Sidman as follows:

I. INTRODUCTION

Plaintiff, Golden Anchor, LC , has brought suit against the Town of Bar Harbor (“the Town”) challenging the validity of a Town-Council originated ordinance (“the Disembarkation Ordinance”) purporting to govern the disembarkation of “Persons” (with a capital “P”) from cruise ships. Plaintiff also challenges a Notice of Violation the Town has issued to Plaintiff for failing to apply for a permit for the Golden Anchor pier as required by the Disembarkation Ordinance.¹

By motion dated October 28, 2024, Charles Sidman, a Bar Harbor resident and voter, asks this Court to grant him intervenor status and, failing that, “party in interest” status. Mr. Sidman fails to satisfy the criteria for intervention as-of-right² and also fails the test for party-in-

¹ Plaintiff has also appealed the Notice of Violation to the Town’s Board of Appeals (“BOA”). That appeal is pending with the BOA.

² Mr. Sidman does not seek permissive intervention pursuant to Rule 24(b) of the Maine Rules of Civil Procedure.

interest status. As is shown below, Mr. Sidman’s interest in Plaintiff’s legal challenges to the Disembarkation Ordinance is no different than that of any other Bar Harbor resident and voter. His motion should be denied.

II. ARGUMENT

A. STANDARDS FOR INTERVENTION AS OF RIGHT

Rule 24(a) Maine Rules of Civil Procedure: Intervention as of right is governed by Rule 24(a) of the Maine Rules of Civil Procedure. Rule 24(a) provides that an applicant shall be allowed to intervene under three circumstances: First, where a statute so provides;³ second, when the applicant “claims an interest in the property or the transaction” at issue; and, third, when, “as a practical matter” the court’s “disposition of the matter...[would] impair or impede the applicant’s ability to protect [the applicant’s] interest.” M. R. Civ. Pro., Rule 24(a). The third point is not satisfied, however, if “the applicant’s interest is adequately represented by existing parties.” *Id.*; see also, *In re Children of Mary J.*, 2019 ME 2, ¶ 6, 199 A.3d 231.⁴

Nature of Claims at Issue: Rule 24(a) requires a determination “the property or transaction” in dispute. This threshold assessment informs all of the remaining standards.

Plaintiff, Golden Anchor, has owned and operated a pier abutting West Street in Bar Harbor. *Complaint* at ¶ 7. From 2001 to 2008, Golden Anchor has held permits issued by the Town for, among other things, the disembarkation of persons from cruise ships into the Town (“Town Permits”). *Id.* at ¶ 9. They have remained in effect ever since. The disembark ordinance in effect, purports to void them. *Id.*

³ Mr. Sidman does not advance a statutory basis for his intervention application.

⁴ Rule 24(a) also requires that the application’s motion to intervene be “timely”. Rule 24(a) M.R.Civ.Pro. Plaintiff does not contend that Mr. Sidman’s motion was not timely filed.

On June 18, 2024, the Town Council adopted an ordinance titled, “Cruise Ship Disembarkation Ordinance Amendment.” which was codified at Chapter 52 of the Town Code. *Id.*, ¶ 33, Exhibit A-5. (“Disembarkation Ordinance”). The Disembarkation Ordinance was drafted so that it does not apply to disembarking seafarers coming within and protected by 33 C.F.R. § 105.237. *Id.* at § ¶¶ 36-38; see also, *id.* at ¶¶ 27-32; see also, *id.*, Exhibit D at 28-32, 61 (Amended Decision and Order).⁵

The Disembarkation Ordinance attempts to saddle Plaintiff with the responsibility for determining how to distinguish disembarking “Person” (with a capital “P”) only 1,000 of which may disembark in a single day without penalty to Plaintiff, from those protected by the Seafarer Rule. *Id.* at ¶¶ 47-52. The Disembarkation Ordinance also purports to govern Plaintiff’s responsibilities, as a pier owner and operator, for the disembarkation of “Persons” (with a capital “P”) from cruise ships and , without expressly so providing, effectively voids Plaintiff’s Town Permits. *Id.* at ¶¶ 33-52. In addition, without expressly so providing, the Disembarkation Ordinance effectively voids the Town Permits in which Plaintiff holds vested property rights. *Id.* at ¶¶ 40-45, 83-89 (Count III—Vested Rights).

On August 5, 2024, the Town issued a Notice of Violation (“NOV”) to Plaintiff for failing to apply for a permit as required by the Disembarkation Ordinance and, having failed to so apply, allowing “Persons” (with a capital “P”) to disembark at Plaintiff’s pier and enter into the Town. *Id.* at ¶¶ 53-59; see also, *Id.* at ¶¶ 60-64.

Plaintiff’s claims arise out of and are exclusively directed at the Disembarkation Ordinance and certain actions that the Town has taken under the Disembarkation Ordinance’s

⁵ The Disembarkation Ordinance seeks to exempt disembarking Seafarers from its 1,000-Person-day limit by defining “Persons” (with a capital “P”) include everyone other than those disembarking individuals who are protected by the Seafarer Rule. *Complaint* at ¶¶ 45-48.

authority, including the issuance of the NOV. *Id.* at ¶¶ 65-138 (Count I—IX) ; see also, *Id.* Prayer for Relief at ¶¶ 1-5. Plaintiff’s Complaint does not challenge any other Town ordinance, nor does it challenge any Town action undertaken under any authority other Town ordinance. *Id.*, *passim*.

In Rule 24(a)’s terms, then, the “property or transaction” at issue is whether this ordinance and the actions the Town has taken under its authority, pass muster under the United States and the laws of Maine, including the Maine Constitutions.

B. MR. SIDMAN DOES NOT MEET THE PREREQUISITES FOR INTERVENTION AS OF RIGHT

In assessing the interests advanced by the Rule 24(a) applicant in the context of the matters in dispute in this litigation, the First Circuit Court of Appeals has observed that, “the intervenor’s claim [should] bear a sufficiently close relationship to the dispute.” *Conservation Law Foundation of New England, Inc. v. Mosbacher*, 966 F.2d 39, 41-42 (1st Cir. 1992).⁶

1. Mr. Sidman does not have an interest in the validity *vel non* of the Disembarkation Ordinance or the Notice Violation issued pursuant to its authority.

Noting that the first Rule 24(a) standard—an interest in the matter in litigation—and the second factor—disposition of the action may impede or impair his interest—are often treated together, Mr. Sidman has done so in his motion *Sidman Motion to Intervene* at 7 (“*Sidman Motion*”). Plaintiff agrees with Mr. Sidman on this approach and applies it below.

To meet these conjoined criteria, Mr. Sidman first asserts that he “is the owner of real property and a business in the Town that are adversely impacted by unregulated and uncapped

⁶ *McKeeman v. Duchaine*, 2022 ME 23, ¶ 8, n. 2, 72 A.3d 300 (appropriate for state court to consider case law and commentaries on Federal Rules of Civil Procedure where those rules are “functionally equivalent to Maine’s rules of civil procedure.”)

cruise ship passenger disembarkations” *Id.* at 7. He then asserts that “he was the principal proponent of the adoption of the Ordinance and has an interest in upholding the citizens’ right to independently legislate via citizen initiative and have the results of that initiative properly enforced.” *Id.* Relying on the District Court’s order granting his intervention *APPLL et al. v. Town of Bar Harbor*, Mr. Sidman characterizes both asserted interests in this litigation as “concrete.” *Id.* at 8; see, *id.* at n. 1.

a. Mr. Sidman has not asserted that any particular involvement with the development and adoption of the Disembarkation Ordinance

Taking Mr. Sidman’s two interest claims in reverse order, Plaintiff’s “principal proponent” argument is based on his involvement in drafting and presenting a citizen initiative imposing a 1,000-person-per-day daily limit on all persons disembarking from cruise ship. On November 8, 2022, Bar Harbor voters approved this proposal, following which it was incorporated into the Town’s Land Use Ordinance, Chapter 125 of the Town Code—Chapter 125, Section 77(H). *Id.* at *Id.* at 2—3, 8-9; see also, *Complaint* at ¶¶ 19-20. (“the Ordinance”).

Mr. Sidman’s motion to intervene is based on his professed intent to defend the November 22, 2022 Ordinance. *Sidman Motion* at 6 (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.**”) (emphasis supplied). In effect, Mr. Sidman invokes his involvement with initiation and eventual voter approval of the Ordinance to provide him both with standing and the prerequisites to join this litigation as an intervening party. *Id.* at 9.⁷

⁷ See, *Yniguez v. Arizona*, 939 F.2d 727, 733 (9th Cir. 1991) (noting “[w]hile the interest required to intervene under [Rule 24(a) F.R.Civ. Pro.] is not identical to the interest for standing under Article III, there are substantial similarities between the two.”)

In emphasizing his role in the development, promotion, and adoption of the Ordinance, Mr. Sidman is seeking to attain, for purposes of intervention, a status akin to what has been termed “legislative standing.” See, *Yniguez v. Arizona*, 939 F.2d 727, 732 (9th Cir. 1991); see also, *Raines v. Byrd*, 521 U.S. 811, 820-821 (1997). The difficulty with Mr. Sidman’s reliance on his support of the Ordinance as the basis for his intervention in **this** litigation is that Plaintiff’s claims are not directed at the Ordinance—they are directed solely at the Disembarkation Ordinance. The Disembarkation Ordinance is a different law which originated with and was approved by the Town Council. *Complaint* at ¶¶ 33-24; see also, *Town of Bar Harbor’s Response to Motion to Intervene of Charles Sidman* (“Town Response”) ¶¶ 8-9; see also, *Affidavit of James L. Smith*, at ¶¶ 22-27 (“Smith Affidavit”).⁸

An examination of Plaintiff’s Complaint demonstrates these points. Plaintiff is only challenging the validity and enforcement of the Disembarkation Ordinance. *Complaint* at ¶¶ 33-64; *id.* at ¶¶ 65-138 (Counts I-IX); see also, *id.*, Prayer for Relief, ¶¶ 1-5. Among other things, Plaintiff is challenging the Disembarkation Ordinance, which did not expressly amend the Land Use Ordinance and, instead was enacted as a separate chapter of the Town Code—Chapter 52, precisely because, in practical effect, it functions as an amendment to the Land Use Ordinance and purports to govern the Land Use Ordinance. see *e.g.*, *id.*, at ¶¶ 65-77 (Count I). In short, Plaintiff contends that the Charter requirement that the Town Meeting alone may amend the Land Use Ordinance—a requirement reinforced by the Land Use Ordinance itself (Chapter

⁸ Although not material to Plaintiff’s claims in this case, the Smith Affidavit asserts that in its March 1, 2024 Amended Decision and Order, the District Court upheld the Ordinance. Smith aff. at ¶ 17. This is not correct. Although the District Court denied most of Plaintiff’s constitutional challenges, it found that the Ordinance was preempted by the Seafarer Rule. *Complaint* at ¶ 30 (citing to Exhibit D, Amended Decision and Order at 28-32, 61). The District Court’s finding that the Seafarer Rule preempted the Ordinance’s application to “persons” eventually led the Town Council to adopt the Disembarkation Ordinance. *Id.* at ¶¶ 36-38; 50-52.

125, Section 9)—is mandatory. If the Town Council on its own can adopt ordinances that govern and even change the meaning of substantive provisions of the Land Use Ordinance, as the Disembarkation Ordinance purports to do, it would allow the Town Council, acting alone, to bypass the Town Meeting and change substance and meaning the Land Use Ordinance. Neither the Town Charter nor the Land Use Ordinance authorizes or tolerates such an end run.

In other words, Plaintiff is asserting that, due to the Disembarkation Ordinance’s assertedly controlling effect on the Land Use Ordinance, it had to be submitted to a Town Meeting for approval by Bar Harbor voters. *Id.* The Town Council, acting alone, simply lacked the authority to adopt but, instead, and in accordance with the Town Charter and by the Land Use Ordinance itself, Chapter 125-9, the Disembarkation Ordinance could only take effect if approved by Bar Harbor voters at a Town Meeting. *Id.*⁹

Although Plaintiff’s claims concern only the Disembarkation Ordinance’s validity and effect, one searches Mr. Sidman’s motion in vain for any reference to the Disembarkation Ordinance at all, much less any claim that he played a distinctive legislative-type role in its adoption by the Town Council. *Sidman Motion, passim.* This omission is not due to oversight; it is because Mr. Sidman had no such role in the Town Council’s drafting and approval of the Disembarkation Ordinance. Without such representations, Mr. Sidman’s “legislative interest” in the Disembarkation Ordinance cannot be distinguished from that of any other Bar Harbor voter or property owner.¹⁰

⁹ Plaintiff does not concede that in substance the Ordinance is in a true land use measure, but that question is not at issue in this case. That Bar Harbor voters approved the Ordinance as an amendment to the Land Use Ordinance and that it was subsequently incorporated into Chapter 125, the Land Use Ordinance, is beyond question. Neither is true of the Disembarkation Ordinance.

¹⁰ Plaintiff’s Complaint was careful to differentiate between the initiative that Bar Harbor voters approved on November 8, 2022 which became the Ordinance and the Town Council-approved

Under these circumstances, the authorities that Mr. Sidman cites in support of his motion are entirely inapposite. First, Mr. Sidman cites *Caiazza v. Secretary of State*, 2021 ME 42, ¶ 2, n. 4, 256 A.3d 260. *Caiazza* is inapposite because the intervening party was admitted as the applicant for the contested initiative. *Id.* As is explained below, Mr. Sidman is not the “applicant” for the Disembarkation Ordinance nor did he have any other singular association in or involvement with it.

Mr. Sidman then cites *NECEC Transmission LLC v. Bureau of Parks and Lands*, 2022 ME 48, ¶ 3, n. 4, 281 A.3d 618. But footnote 4 in *NECEC Transmission* is no help; it only lists parties that were granted intervenor status. It does not explain why they attained that status.

Finally, Mr. Sidman cites *Yniguez v. Arizona*, 939 F.2d 727, 733 (9th Cir. 1991). *Yniguez* concerned a challenge to a ballot measure amending the Arizona Constitution. An individual state government employee who was subject to the amendment brought suit challenging its constitutionality. *Id.* at 729. The district court dismissed all the state defendants except the Governor and then rendered judgment finding the amendment facially unconstitutional. *Id.* at 730. The Governor then announced that she would not appeal the district court’s decision. *Id.* Only at this point did an organization supporting the amendment move to intervene. *Id.*

June 18, 2024 Disembarkation Ordinance. Plaintiff consistently referred to the former as “the Ordinance” and the latter as the “Disembarkation Ordinance.” See, *Complaint* at ¶¶ 19, 33. Notwithstanding Plaintiff’s deliberate use of these shorthand references to separate the Ordinance from the Disembarkation Ordinance, Mr. Sidman has confused them. Throughout his affidavit, he refers to the November 8, 2022 Town Meeting-approved Ordinance as the “Disembarkation Ordinance”. *Sidman Motion*, aff. at ¶¶ 16-17, 24,26,-28, 30-32, 37-38, 40-41. This is not helpful. Caution must therefore be exercised in reviewing Mr. Sidman’s affidavit to guard against the impression that it is referring to the June 18, 2024 Disembarkation Ordinance. It is not. Mr. Sidman’s motion does not refer to the June 18, 2024 Disembarkation Ordinance at all.

Relying in part on the absence of a state defendant to prosecute the appeal and in part on an Arizona statute recognizing a “heightened interest” for the sponsor of a ballot initiative, the Ninth Circuit found that the organization seeking intervention had standing to do so. *Id.* at 733.¹¹

Where the Disembarkation Ordinance is concerned, Mr. Sidman’s status resembles none of the cases he has cited. Plaintiff does not dispute Mr. Sidman’s role in formulating and advocating for the Ordinance. But, Plaintiff strongly disputes the relevance of both the Ordinance and Mr. Sidman’s involvement with it to Plaintiff’s challenge to the Disembarkation Ordinance.¹² Simply put, Plaintiff has raised no claims in this litigation against the validity of the Town **Meeting**-approved November 8, 2022 Ordinance. Rather, Plaintiff’s claims are directed exclusively at the validity of the Town **Council**-approved June 18, 2024 Disembarkation Ordinance. In short, the initiated Ordinance is not at issue in this litigation; the Disembarkation Ordinance is at issue.

In sum, Mr. Sidman’s involvement with the Ordinance and whatever particular interest he may have in it is not before this Court. Nor may Mr. Sidman’s involvement with the Ordinance serve as a stand-in for the requirement that he properly present an interest in this Court’s disposition of the validity of the Disembarkation Ordinance. Lacking any allegations that he was

¹¹ It should be noted that *Yniguez v. Arizona* was decided before the Supreme Court’s decision in *Raines v. Byrd*, 521 U.S. 811 (1997). In *Raines*, the Supreme Court held that members of Congress who had opposed the enactment of a statute that diminished the power of Congress vis a vis the Executive did not have “legislative standing” under Article III to challenge the constitutionality of the law in question. *Id.* at 828-829.

¹² Plaintiff’s Complaint described the origins of the Ordinance, its approval at the November 8, 2022 Town Meeting; its unconstitutional, undifferentiated application to “persons”, which included federally protected “seafarers”, and, the Town Council’s approval of the Disembarkation Ordinance as an ineffective attempt to cure the Ordinance’s application to seafarers. *Complaint* at ¶¶ 18-52.

somehow distinctively involved in the Town Council's approval of the Disembarkation Ordinance, Mr. Sidman's has failed to demonstrate that his interest in the Disembarkation Ordinance is different from that of all other Bar Harbor residents and voters. His motion to intervene shows that he holds only "an undifferentiated, generalized interest" in the Disembarkation Ordinance's fate. See, *Public Service Company of New Hampshire v. Patch*, 136 F.3d 197, 205 (1st Cir. 1998); see also, *Town Response* at ¶ 13 ("Mr. Sidman no doubt has a right to express his opinions and use available democratic means to achieve his policy preferences, but that is no truer for Mr. Sidman than it is for any resident or business owner of Bar Harbor.").

Therefore, Mr. Sidman has not shown that, based on his involvement with the Ordinance, he has a distinctive interest in this litigation challenging the Disembarkation Ordinance. Nor consequently has he shown that the "disposition of [this] action may as a practical matter impair or impede" his ability to protect that unarticulated interest. See, Rule 24(a), M.R.Civ.Pro.

b. Mr. Sidman has not articulated any property or commercial interests that may be impaired by the disposition of Golden Anchor's claims.

Mr. Sidman does not rely solely on his involvement with the Ordinance that is **not** at issue in this litigation to support his motion to intervene, he also claims that his economic interests are "adversely affected by cruise ship passenger disembarkation." *Sidman Motion* at 7; see also, *id.* at 8 ("His properties and business are, and have been, adversely affected by continued excessive cruise ship disembarkations"). *Sidman Motion* at 8, *Sidman aff.* at ¶¶ 6-11. But Mr. Sidman's claims of economic injury fare no better than his claims of legislative interest.

In considering Mr. Sidman's intervention motion, it is useful and illuminating to consider basic rules of standing. See, *Yniguez*, 939 F.3d at 732. To have standing in a civil case, one must show that one has a property, pecuniary, or personal right that may be adversely affected by the

litigation's outcome. *Anderson v. Swanson*, 534 A.2d 1286, 1288 (Me. 1987). "A person suffers a particularized injury only when that person suffers injury or harm that is 'in fact distinct from the harm experienced by the public at large.'" *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 15, 973 A.2d 735, quoting *Ricci v. Superintendent, Bureau of Banking*, 485 A.2 645, 647 (Me. 1984). When held against these standards, Mr. Sidman's claims of economic injury as justification for his intervention in this case fail altogether.

Mr. Sidman alleges generally that his business, Argosy II, an art gallery located at 6 Mount Desert Street, is "adversely affected by the large crowds of cruise passengers who disembark into Bar Harbor between May and October each year" and that those passengers "cause wide congestion and overcrowding leading to the inundation of local services, amenities, and attractions." *Sidman Motion* at 2, citing in *Sidman aff.* at ¶ 2, 9.

Mr. Sidman goes on to allege, however, that Argosy II's patrons are discouraged from visiting the gallery on cruise ship days and that on days when cruise ships call on Bar Harbor, patrons will not visit his art gallery. *Id.* at 8, *Sidman aff.* at ¶¶ 6-11. He then claims in his motion (but, notably, **not** in his affidavit) that due to cruise ship visitors, "his business has suffered[]— and if Golden Anchor succeeds, will continue to suffer—concrete harm in the form of lost clientele and sales." *Id.* at 8. Mr. Sidman asserts that these allegations of economic harm satisfy Rule 24(a) because, "potential economic harm weighs heavily in favor of intervention" *Id.* at 8, citing *Public Service Co. of New Hamp., v. Patch*, 136 F.3d 197, 206 (1st Cir. 1998).

First, Mr. Sidman's allegations as to the impact of cruise ship visitors on Bar Harbor as a whole are general allegations which do not support a finding of particularized injury. *Nergaard*, 2009 ME 56 ¶ 15. In addition to these general allegations, Mr. Sidman's also asserts that cruise ship visitors adversely affect Argosy II, but those assertions do not survive close scrutiny.

As has been noted above, Mr. Sidman claims in his **motion** but **not** in his affidavit that because of cruise ship visitors, Argosy II—his art gallery business—has “suffered[]” and (if Golden Anchor prevails in this litigation) “will continue to suffer—concrete harm in the form of lost clientele and sales.” *Cf.*, *Sidman Motion* at 8; Sidman aff. at ¶¶ 9-11. Although neither Mr. Sidman’s motion nor his affidavit explains why he did not assert under oath the economic damage to Argosy II that he claimed in his motion, the answer may lie in Mr. Sidman’s knowledge, confirmed by his own testimony under oath, of Argosy II’s **actual** business experience with cruise ship visitation.

Mr. Sidman testified was questioned about the impact of cruise ship visitors on Argosy II in a discovery deposition in *APPLL et al. v. Town of Bar Harbor* held on May 15, 2023¹³. He was first shown his motion to intervene and directed to the representations he had made as to economic harm to Argosy II in that motion. Attachment A (deposition of Charles Sidman) at 27:5-28:12). However, when asked to describe the economic harm that cruise ship visitation had caused Argosy II, Mr. Sidman came up short. In fact, he could not quantify that “harm” in any way. *Id.* at 32:7-34:8

Mr. Sidman was then shown a “splash page” (marked Deposition Exhibit 98) from Argosy II’s website which he confirmed had been posted in December of 2022. *Id.* at 34:24-25-35:1-25; *id.*, Exhibit 98.¹⁴ The Argosy II splash page announced: “Once again our artists join us in a large thanks for another splendid season. We are tantalizingly close to last year’s **record**.”

¹³ Needless to say, Mr. Sidman’s May 15, 2023 discovery deposition came **after** the District Court’s issuance of the order granting him intervenor status which Mr. Sidman cites in support of his Motion to Intervene in this case.

¹⁴ Exhibit 98 of Mr. Sidman’s deposition included a memorandum that had been filed opposing Mr. Sidman’s intervention in *APPLL v. Town of Bar Harbor* to which the Argosy II “splash page” was attached as an exhibit. Plaintiff has omitted the opposing memorandum from Attachment A and included only the “splash page” from Exhibit 98.

Id. 35:7-11 (emphasis supplied); *id.* Exhibit 98. When questioned about this exuberant representation, Mr. Sidman claimed limited knowledge, deferring to his wife whom he identified as the managing Argosy II; but, when pressed, Mr. Sidman admitted that 2022 was “a fine year”. *Id.* at 37:4-8.¹⁵ In conceding this point, Mr. Sidman also acknowledged that Argosy II’s 2022 season coincided the post-COVID-19 return of cruise ship visits. *Id.*

Given his deposition testimony, therefore, Mr. Sidman cannot claim to this Court that cruise ship visitation caused economic harm to Argosy II in its 2022 season. Therefore, Argosy II’s 2022 season must be excluded from Mr. Sidman’s Rule 24(a) claim of economic harm.¹⁶ That leaves Argosy II’s 2023 and soon-to-be concluded 2024 seasons.

Argosy II’s near-record success in 2022 coupled with Mr. Sidman’s inability in his May 15, 2023 deposition to describe any particular adverse impact on Argosy II’s business due to cruise ship visits raise serious doubts that Argosy II has suffered any adverse economic impact in 2023 or 2024. Nor is apparent that, even if Mr. Sidman were capable of making such a showing, he could also demonstrate the nature and degree of that economic impact on Argosy II. In the event Mr. Sidman could somehow surmount these two hurdles, it is not apparent (nor may it be assumed) that Mr. Sidman could then connect that impact (whatever it might be) to cruise ship visits as opposed to other the other many ordinary business variables that might affect Argosy II’s fortunes from year to year.

¹⁵ Mr. Sidman also noted that he had expressed an apprehension that cruise ship visits might cause his property values to decline but added that that had not occurred and that, in his experience, property values “only go up.” Attachment A, 38:4-23.

¹⁶ Notwithstanding Mr. Sidman’s sworn testimony regarding Argosy II’s highly successful 2022 season, neither in his motion nor in his affidavit, did Mr. Sidman advise this Court that, in weighing his assertions of economic harm, it should exclude the 2022 season.

Limited to his conclusory and entirely unsupported claims of economic harm, the authorities Mr. Sidman has cited in support of intervenor status based on that harm give him no support. In *Public Service*, the First Circuit Court of Appeals considered a motion to intervene several applicants which the Court termed the “Group Appellants.” 136 F.3d at 205. Noting that each of the Grouped Appellants claimed that, depending on the outcome of the litigation, they faced economic injury, the Court observed that “[e]conomic harm to a would-be intervenor is a factor that warrants serious consideration.” *Id.* The Court then added, “[i]t is settled beyond peradventure that, however, that an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right.” *Id.* The Court then closely reviewed the Grouped Applicants’ claims and found they failed to meet Rule 24(a)’s standards. *Id.* at 206-210; *cf. Canadian Nat’l Ry*, 2010 WL 5168003, * 6 (granting intervention where applicant’s “economic destiny is—at least arguably—tied to the outcome of this case”).

Mr. Sidman also cited *Lippoth v. Zoning Board of Appeals of City of South Portland*, 311 A.2d 552, 553-556 & n. 1 (Me.1973). But, as the *Lippoth* Court concluded, the intervenor clearly had standing to intervene because she was “an adjoining land owner and a user of the street involved.” *Id.*

Assuming, *arguendo*, that in his reply brief Mr. Sidman attempts to remedy these fatal deficiencies, he would still have to explain how a decision by this Court on Plaintiff’s challenge to the validity of the Disembarkation Ordinance would affect cruise ship visits or Argosy II’s business fortunes as they may be affected by those visits. This omission is particularly striking because there is no dispute that cruise ships have been visiting Bar Harbor for decades.

Complaint at ¶¶ 11-17; see also, *id.* ¶ 30, Exhibit D, pp. 6-13. Yet, according to Mr. Sidman,

notwithstanding cruise ship visits, he has successfully owned and operated Argosy II for 28 uninterrupted years. *Sidman Motion* at 2. Mr. Sidman's omission

Given Argosy II's long term success and its "splendid" performance during the 2022 season, to support his claim of economic harm to Argosy II from cruise ship visits as a principal basis for his intervention in this case, Mr. Sidman may not rest on unsupported, general assertions advanced in his memorandum but not under oath in his affidavit. And, in the event that in his reply memorandum, Mr. Sidman asserts that Argosy II has suffered particular and demonstrable economic reversals, he must also tie those reversals to cruise ship visitation and not to some other cause attributable to other factors.

Without representations of economic harm meeting these standards, Mr. Sidman's claim that he should be allowed to intervene in this action due to economic harm to Argosy II will not satisfy Rule 24(a)'s requirements.

c. Mr. Sidman's interests, such as they are, are adequately represented by Golden Anchor and the Town

Mr. Sidman also asserts that his interests in Plaintiff's challenge to the Disembarkation Ordinance is not "adequately represented by the existing parties to this action." *Sidman Motion* at 9, citing *State of Maine v. MaineHealth*, 20011 ME 115, ¶ 7 31 A.3d 911. In support of this argument, Mr. Sidman cites what he characterizes as "the Town's continued hostility toward the Ordinance [which] makes it clear that it will not adequately represent Mr. Sidman's interests in this litigation, nor the interests of its citizens." *Sidman Motion* at 10.

In support of his argument on this point, Mr. Sidman notes that where the responsible government agency is defending the challenged law or rule, a presumption arises that the applicant's interests will be adequately represented. *Id.* at 9, citing *Maine v. U.S. Director, Fish and Wildlife Service*, 262 F.3d 13, 19 (1st Cir. 2001). He goes on to assert, however, that "the

bar to overcome the presumption of adequate government representation is low.” *Id.*, citing, *B. Fernandez & Hnos, Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 546 (1st Cir. 2001).

The *Fish and Wildlife* Court recognized, where the government is actively defending an ordinance or rule, that gives rise to an “assumption” that the government would provide an adequate defense, “at least where its interests appear to be aligned with those of the proposed intervenor.” 262 F.3d at 19. But, as the Court went on to explain, this “[p]resumption means no more in this context than calling for an adequate explanation as to why what is assumed—here, adequate representation—is not so.” *Id.* In *B. Fernandez*, the First Circuit expanded on this point adding that, by way of example, that “[o]ne way for the intervenor to show inadequate representation is to demonstrate that its interests are sufficiently different in kind or degree from those of the named party.” 440 F.3d at 546.

But, in advancing this rationale for intervention, Mr. Sidman falters out of the gate for the same reason his other arguments fail—that is, Plaintiff’s challenge is not directed at the Chapter 125, Section 77(H) Ordinance; it is directed at the Chapter 52 Disembarkation Ordinance. There is no doubt that the Town will vigorously defend the Disembarkation Ordinance. After all, the Town Council, itself, originated and adopted the Disembarkation Ordinance and it did so to address the unconstitutional application of the Ordinance to disembarking persons protected by the Seafarer Rule. *Complaint* at ¶¶ 33-24; see also, *Town Response* at ¶¶ 8-9; see also, *Smith*, aff. at ¶¶ 22-27. Indeed, at no point in his Motion to Intervene or in his affidavit does Mr. Sidman plainly assert that the Town will not defend the Disembarkation Ordinance, which the Town Council originated and approved; it is the Town’s failure to defend the Ordinance, which originated by citizen petition and which Bar Harbor voters, by Town Meeting, approved that concerns him. *Sidman Motion*, passim; see also, *id.* at 9-10; *Sidman aff.*, passim.

In addition to the foregoing shortcomings in his Motion to Intervene, Mr. Sidman never explains how this Court’s determination of Plaintiff’s challenge to the Disembarkation Ordinance could adversely affect him or his Argosy II art gallery. After all, as Plaintiff has alleged, the Disembarkation Ordinance did not overtly and directly amend or replace the Ordinance nor any other part of the Land Use Ordinance; rather it mimics the Ordinance. *Complaint* at ¶ 45. Therefore, if this Court were to determine that, in whole or in part, the Disembarkation Ordinance is invalid or otherwise constitutionally infirm, that ruling would not affect the Ordinance one whit. The Ordinance—with its 1,000 person (with a small “p”) daily disembarkation ceiling—would simply reemerge, fully intact, from behind the shadow that the Disembarkation Ordinance has cast over it.

In sum, for the reasons set forth above, Mr. Sidman’s Motion pursuant to Rule 24(a) to join this litigation as an intervenor as of right and his motion should be denied.

C. MR. SIDMAN DOES NOT SEEK NOR DOES HE MEET THE STANDARD FOR RULE 24(b) PERMISSIVE INTERVENTION

Rule 24(b) provides that an applicant for intervention may also seek to intervene pursuant to Rule 24(b)—permissive intervention. Mr. Sidman’s Motion does not seek intervenor status under Rule 24(b). *Sidman Motion, passim*. However, out of an abundance of caution, Plaintiff will address Rule 24(b)’s standards.

Rule 24(b) allows for “permissive” intervention when the applicant shows that the applicant’s “claim or defense and the main action have a question of law or fact in common.” Rule 24(b) M.R.Civ.Pro; see also, *MaineHealth*, 2011 ME 115 at ¶ 15. Focused exclusively on the Ordinance, Chapter 125, Section 77(H), Mr. Sidman has not explained how he has a “claim or defense” to Plaintiff’s challenge to the validity of Chapter 52, the Disembarkation Ordinance. *Sidman Motion, passim*.

Rule 24(b) also requires that the permissive intervenor's participation in the case should not 'unduly delay or prejudice the adjudication of the rights of the parties.' M.R.Civ.Pro. Rule 24(b); see also, *MaineHealth*, 2011 ME 115 at ¶15-16. Plaintiff views this challenge to the validity of the Disembarkation Ordinance as presenting straightforward questions of law. Without presuming to speak for the Town, Plaintiff believes that given the nature of its legal challenge, it is likely that Plaintiff and the Town may be able to stipulate much or all of the record and present the case to the Court on an expedited basis. Mr. Sidman's motion does not address what, if any, particular proposals he may have for the course of litigation. As has been explained above, if he plans to focus on the Ordinance as opposed to the Disembarkation Ordinance, that would fall outside of the scope of Plaintiff's claims.

Therefore, to the extent Mr. Sidman is seeking permissive intervention pursuant to Rule 24(b), his motion should be denied.

D. MR. SIDMAN SHOULD NOT BE ALLOWED "PARTY IN INTEREST" STATUS

In the event that this Court denies Mr. Sidman's motion to intervene as of right, he asks that he be accorded "party in interest" status which would allow him to provide this Court with "oral comment and written submissions". *Sidman Motion*. at 10.¹⁷ Once again, Mr. Sidman premises this request on the claims he imagines Plaintiff is bringing against the Ordinance but which are no part of this litigation. Absent from his party-in-interest request is any reference to the Disembarkation Ordinance—the sole object of Plaintiff's legal claims in this action.

¹⁷ Mr. Sidman's vague description of the role he would assume as a party in interest would open a host of questions as to when and in what form he could participate. In the form requested, Mr. Sidman's party-in-interest role would appear likely to generate numerous points at which the Parties and the Court would be called upon to lend definition to his role and the

Mr. Sidman cannot, therefore, meet the amorphous public interest-based party-in-interest concept to which the Law Court authorities Mr. Sidman cited adverted. *Id.* at 10, citing *Pike Industries, Inc. v. City of Westbrook* 2012 ME 78, ¶ 24, n. 4; *State v. Maine Health*, 2011 ME 115, ¶¶ 5-6, 15-16, 31 A.3d 911. Mr. Sidman’s request for party-in-interest status should be denied.

III. CONCLUSION

For the reasons set forth above, Mr. Sidman has not set forth interests sufficient to give him standing to participate in this litigation; he has not alleged “legislative” or economic interests in the Disembarkation Ordinance (as opposed to the Ordinance which is not here at issue) to meet the requirements for intervention as of right under Rule 24(a) does not meet the standards imposed by Rule 24(a) for intervention as of right in Plaintiff’s challenge to and the Town’s defense of the Disembarkation Ordinance; he does not claim nor has he alleged sufficient bases to allow his admission under permissive intervention pursuant to Rule 24(b). Nor has Mr. Sidman provided sufficient, well supported information warranting his participation in Plaintiff’s challenge to the Disembarkation Ordinance as a “party in interest” serving some form of public interest.

WHEREFORE, Plaintiff respectfully urges this Court to deny Mr. Sidman’s motion to intervene as of right and his request for party-in-interest status.

Dated at Bangor, this 18th day of November, 2024

GOLDEN ANCHOR LC

By its attorneys,



Timothy C. Woodcock, Bar No. 1663

twoodcock@eatonpeabody.com

P. Andrew Hamilton, Bar No. 2933

ahamilton@eatonpeabody.com

Eaton Peabody, P.A.

Bangor, ME 04401

Tel: (207) 947-0111