Filed
File Date: 1/10/2025 8:48 PM
Merrimack Superior Court
E-Filed Document

THE STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY **SUPERIOR COURT**

217-2025-CV-00039

Rye Harbor Lobster, LLC
Rye Harbor Lobster Pound, LLC
Sylvia Cheever
Nathan Hanscom

v.

Pease Development Authority
New Hampshire Port Authority
Paul Brean
Geno Marconi

Docket No._____

VERIFIED COMPLAINT
(Jury Trial Demanded)

NOW COMES Rye Harbor Lobster, LLC, Rye Harbor Lobster Pound, LLC, Sylvia Cheever, and Nathan Hanscom, by and through Rath, Young and Pignatelli, P.C., and hereby submit the following Complaint and Demand for Jury Trial, stating further as follows:

PRELIMINARY STATEMENT

Rye Harbor Lobster Pound, owned and operated by Sylvia Cheever and Nathan Hanscom for over 27 years, has been subjected to a campaign of extortion, intimidation, and corruption by the Pease Development Authority (PDA) and its Division of Ports and Harbors (the Port Authority).

Geno Marconi, former Director of the New Hampshire Port Authority, and Paul Brean, Executive Director of the PDA, improperly influenced the PDA and Port Authority, using their power to harm Rye Harbor Lobster Pound.

The New Hampshire Attorney General's Office investigated Marconi for, among other things, actions taken against Rye Harbor Lobster Pound. The AG's office returned indictments against Marconi for actions he took in relation to this investigation.

Despite their mandate to support local businesses and tourism, the PDA and Port Authority implemented harsh, anti-business policies that violate their statutory obligations and lack administrative authority.

These actions specifically target Rye Harbor Lobster Pound due to its competition with Marconi and other businesses aligned with him in Rye Harbor State Marina.

These policies include:

- Imposing an unauthorized and illegal tax, framed as a "concessions fee" of 10% on Rye Harbor Lobster Pound's gross sales, a fee not applied to other similar businesses.
- Interfering with Rye Harbor Lobster Pound's relationships with local fishermen.
- Removing parking spots used by Rye Harbor Lobster Pound's customers.
- Cutting the restaurant's water line and then obstructing its efforts to install a new one.
- Requiring Rye Harbor Lobster Pound to fund a security detail, a requirement not imposed on other similar businesses.
- Implementing an unauthorized land-use rule that limits storage space and forces Rye Harbor Lobster Pound to incur significant expenses to comply.
- Creating a toxic and hostile environment around Plaintiffs' business, including by harassing and interfering with Rye Harbor Lobster Pound customers.

These illegal and anti-competitive practices require judicial intervention.

PARTIES

1. Rye Harbor Lobster Pound, LLC is a New Hampshire limited liability company with a principal office address of 1875 Ocean Boulevard, Unit 5, Rye, New Hampshire, 03870.

2. Rye Harbor Lobster, LLC is a New Hampshire limited liability company with a principal office address of 919 Washington Road, Rye, New Hampshire, 03870.

3. Rye Harbor Lobster, LLC and Rye Harbor Lobster Pound, LLC together own and operate the restaurant known as Rye Harbor Lobster Pound in buildings identified as Unit #5 and Unit #6 at the Rye Harbor State Marina, 1870-1875 Ocean Boulevard, Rye, New Hampshire.

4. Sylvia Cheever is an individual with an address of 91 Gulf Road, Derry, New Hampshire, 03038. Ms. Cheever is the Manager/Member of Rye Harbor Lobster, LLC.

5. Nathan Hanscom is an individual with an address of 91 Gulf Road, Derry, New Hampshire, 03038. Mr. Hanscom is Ms. Cheever's father and is the Manager of Rye Harbor Lobster Pound, LLC.

6. The Pease Development Authority is a state actor with a principal office address of 55 International Drive, Portsmouth, New Hampshire, 03801. The PDA was established by RSA chapter 12-G.

7. The PDA is a "body politic and corporate of the state" pursuant to RSA 12-G. Pursuant to that statute, the PDA is a "public instrumentality, and the exercise by the authority of the powers conferred by [RSA 12-G] shall be deemed and held to be the performance of public and essential government functions of the state."

8. The PDA Board of Directors appoints an Executive Director, who acts, subject to the control of the Board, as the PDA's chief executive, administrative officer, and secretary. The

Executive Director has general and active supervision and direction over the day-to-day business affairs of the PDA and its officers and employees.

9. Paul Brean is the Executive Director of the Pease Development Authority and held that role at all times relevant to this Complaint. In this capacity, Brean has an address of 55 International Drive, Portsmouth, New Hampshire, 03801.

10. The New Hampshire Port Authority is a state actor and division of the Pease Development Authority with a principal office address of 555 Market Street, Portsmouth, New Hampshire, 03801.

11. Geno Marconi is, or was at times relevant to this case, the director of the New Hampshire Port Authority. In his capacity as port director, Marconi's address is 555 Market Street, Portsmouth, New Hampshire, 03801.

12. Marconi's personal address is 27 Parkman Brook Lane, Stratham, New Hampshire, 03885.

13. Marconi is on administrative leave from his position as port director because of an investigation by the New Hampshire Attorney General's Office.[1] It has been reported that Marconi has submitted his paperwork to retire from this position.[2]

14. The New Hampshire Attorney General's Office indicted Marconi on two class B felonies and four class A misdemeanors arising from his conduct in response to this investigation.[3]

15. Marconi or his family own and operate Geno's Chowder & Sandwich Shop, a competitor of Rye Harbor Lobster Pound.

---

[1] Kelly O'Brien, *New Hampshire Attorney General's Office looking into Port Authority director*, WMUR (Apr. 25, 2024), https://www.wmur.com/article/nh-attorney-general-port-authority-director-42524/60608998.
[2] Paula Tracy, *Indicted Ports and Harbors Director Geno Marconi, 73, Files for Retirement*, InDepthNH.org (Jan. 7, 2025), https://indepthnh.org/2025/01/07/indicted-ports-and-harbors-director-geno-marconi-73-files-for-retirement.
[3] Press Release, New Hampshire Department of Justice, Indictments of Geno Marconi and Bradley Cook (Oct. 17, 2024), https://www.doj.nh.gov/news-and-media/indictments-geno-marconi-and-bradley-cook.

JURISDICTION

16. This Court has subject matter jurisdiction over this matter pursuant to RSA 491:7 and RSA 541-A:24 ("The validity or applicability of a rule may be determined in an action for declaratory judgment in the Merrimack county superior court if it is alleged that the rule, or its threatened application, interferes with or impairs or threatens to interfere with or impair, the legal rights or privileges of the plaintiff."); *Asmussen v. Comm'r N.H. Dep't of Safety*, 145 N.H. 578, 585 (2000) (conferring standing upon individuals to challenge illegally promulgated rules).

17. This Court has personal jurisdiction over this matter by virtue of the parties' contacts with New Hampshire.

18. Venue is proper in this Court pursuant to RSA 541-A:24, *supra*.

FACTS COMMON TO ALL COUNTS

A. Rye Harbor Lobster Pound operated at its Rye Marina location for approximately 20 years, without issue.

19. Plaintiffs' business, the Rye Harbor Lobster Pound, is a popular lobster pound located in Rye Harbor State Marina. It sells live lobsters and other shellfish and prepares lobster dishes and fluffy chowder. It operates seasonally and is only open for business during the summer, approximately four months each year.

20. Rye Harbor Lobster Pound opened in 1996. Initially, it sold live lobsters and steamers. In 2005, it began preparing and selling foods such as lobster rolls and chowder. It has operated a lobster pound and a take-out restaurant since that time.

21. The PDA and Port Authority assert that businesses must enter into a Right of Entry ("RoE") Agreement to access and operate in the Rye Harbor State Marina and other ports and harbors under their jurisdiction throughout the state, including Hampton Harbor and the Portsmouth Fish Pier. They have done so for decades.

22. In approximately 2001, management of the Rye Harbor State Marina was transferred to the Division of Ports and Harbors ("Port Authority"), which was established as a division of the PDA. *See* RSA 12-G:43.

23. Marconi, on behalf of the PDA and Port Authority, has unilaterally determined the terms of each of the Plaintiffs' RoEs since that time.

24. The PDA approved Plaintiffs' RoEs without the opportunity for comment or negotiations, solely upon the recommendation of Brean and Marconi.

25. From 1996 to 2020, the RoEs between Rye Harbor Lobster Pound and the PDA-Port Authority resembled a typical commercial lease agreement.

26. Those RoE Agreements included, in relevant part, a rental fee of $1,000 per year and a parking fee for Rye Harbor Lobster Pound's customers of $5 for parking in certain spots, payable to PDA-Port Authority, in exchange for Rye Harbor Lobster Pound's use of buildings at the Rye Harbor State Marina for the "Retail Sales of Lobster Catch & Parking."

27. During much of this time frame (1996-2020), customers of Rye Harbor Lobster Pound and surrounding businesses were able to use designated thirty-minute free parking spaces which allowed them to order and then quickly pick up their takeout orders and raw lobster and shellfish orders, without paying a fee.

28. Prior to 2020, the Rye Harbor Lobster Pound and the PDA-Port Authority agreed, pursuant to a Concession Contract, that Plaintiffs were authorized to sell food and beverage items subject to the approval of PDA-Port Authority. PDA-Port Authority never raised any objections about the restaurant items that Rye Harbor Lobster Pound sold (i.e. prepared lobster rolls and chowders) prior to 2020.

29. The Concession Contract in place prior to 2020 did not require Rye Harbor Lobster Pound to pay any additional fee, beyond the $1,000 yearly RoE fee.

B. In 2021, Defendants began targeting Plaintiffs with a regime of oppressive and discriminatory policies.

30. During the COVID pandemic in 2020, Rye Harbor Lobster Pound experienced a significant increase in business because it was already established as a take-out only business and was one of the only restaurants in the area that remained open.

31. After Rye Harbor Lobster Pound had a successful 2020, the PDA and Port Authority, under the direction and influence of Marconi and with the support of Brean, began a campaign against Rye Harbor Lobster Pound, interfering with the business and its ability to operate.

32. At the same time, Geno's Chowder and Sandwich Shop, the restaurant owned and operated by Marconi or his family, planned to expand its businesses. The expansion began in 2021 with, among other things, the distribution of chowder through the Daily Haul, a mobile fish market operated out of Portsmouth, New Hampshire.

33. The series of actions taken against Rye Harbor Lobster Pound were driven by Marconi's desire to harm a competitor to his family business and in retaliation against the Plaintiffs who were not part of Marconi's network of allied businesses and individuals who worked for or were otherwise connected with the Port Authority.

34. On February 17, 2021, PDA-Port Authority, via Marconi, sent a letter to Rye Harbor Lobster Pound stating that Plaintiffs could no longer serve "ready to eat" prepared food items such as chowders and lobster rolls.

35. Marconi's demand that Plaintiffs no longer serve prepared foods was based on his contention that Rye Harbor Lobster Pound's RoE did not permit that activity, and on his contention that Rye Harbor Lobster Pound's success led to overcrowding at the marina.

36. There is no language in the RoE concerning the capacity or size of the business that supports Marconi's contentions.

37. Marconi's and the Port Authority's stated concerns respecting the growth of Plaintiff's business were pretext to support the actions aimed at harming Rye Harbor Lobster Pound.

38. Plaintiffs' business, even after its growth in 2020, generates a fraction of the traffic and congestion that is created by Granite State Whale Watch, another business operating in Rye Harbor subject to an RoE.

39. Upon information and belief, Marconi ordered Rye Harbor Lobster Pound to stop selling chowder and other prepared foods because, among other improper reasons, his family owns and operates Geno's Chowder and Sandwich Shop in Portsmouth, New Hampshire.

40. Marconi, the PDA, and the Port Authority met with Rye Harbor Lobster Pound but failed to provide any justification for this decision other than traffic congestion and littering, issues that were not caused, or not solely caused, by Rye Harbor Lobster Pound's operations in the marina.

41. As a result of their fabricated concerns, the PDA and Port Authority refused to negotiate a Concession Agreement with Rye Harbor Lobster Pound for 2021.

42. In response to the PDA and Port Authority's effective refusal to allow Rye Harbor Lobster Pound to operate for the 2021 season, members of the community signed a petition imploring the PDA and Port Authority, and other government actors, to reverse this action.

43. On April 20, 2021, Governor Sununu issued Rye Harbor Lobster Pound a waiver, which allowed Rye Harbor Lobster Pound to operate for the 2021 season.

44. The waiver required Rye Harbor Lobster Pound to meet certain conditions set by the PDA and Port Authority.

45. These conditions imposed by the PDA and Port Authority required Rye Harbor Lobster Pound to implement crowd and trash management programs during the 2021 season.

46. These conditions imposed by the PDA and Port Authority required Rye Harbor Lobster Pound to Rye Harbor Lobster Pound to submit monthly logs of how many lobsters they purchased and who supplied those lobsters during the 2021 season.

47. There is no legally promulgated rule, statute, or other authority that authorizes the PDA or Port Authority to impose such conditions or collect such reports from Rye Harbor Lobster Pound.

48. The following season, local lobstermen that were identified by Rye Harbor Lobster Pound in its reports to the PDA and Port Authority refused to sell lobsters to Rye Harbor Lobster Pound.

49. Upon information and belief, the Port Authority and Marconi caused these local lobstermen to stop supplying Rye Harbor Lobster Pound.

50. As a result, since the 2022 season, Rye Harbor Lobster Pound has been forced to purchase lobster from fishermen that operate outside the jurisdiction of the Port Authority, at a higher cost to Plaintiffs.

51. When their attempt to severely limit, or destroy, the Plaintiffs' business by prohibiting the sale of prepared foods failed, the PDA and Port Authority illegally hindered the business in other ways.

52. At the request of Brean, Marconi and the Port Authority, the PDA eliminated all the free parking spaces outside of Rye Harbor Lobster Pound which Plaintiffs' customers had used for years, and rerouted traffic through them. This made it significantly more difficult for Rye Harbor Lobster Pound's customers to pick up their orders.

53. The PDA and Port Authority implemented $5.00 all-day parking for all spaces that could be used to access Plaintiffs' business.

54. Rye Harbor Lobster Pound lost customers who refused to pay the $5.00 parking fee to pick up their orders.

55. In some instances, Rye Harbor Lobster Pound was forced to reimburse customers for their parking in order to mitigate the damages caused by the elimination of free parking.

56. The elimination of free parking caused increased traffic congestion, which interfered with the operations of Rye Harbor Lobster Pound and other businesses in the marina.

57. As a result of the increased traffic, the PDA and Port Authority retained Appledore Marine Engineering to improve traffic flow and parking options.

58. Throughout the 2021 season, the Port Authority, through its employees, and, at the direction of Marconi and Brean, monitored Ms. Cheever, Mr. Hanscom, Rye Harbor Lobster Pound, and its customers through camera recordings and in-person observations. No other business was subject to such surveillance by Defendants.

59. The Port Authority created a daily log of activities, which included timestamped updates of the Plaintiffs' actions. It also monitored the Plaintiffs' business in myriad ways, including by counting the vehicles that arrived to patronize Rye Harbor Lobster Pound.

60. These actions significantly harmed Plaintiffs' business, to the point that, at the end of the 2021 season, Rye Harbor Lobster Pound was forced to invest in a second location called The Hungry Lobster.

61. The Hungry Lobster opened on March 25, 2022 and operates outside the jurisdiction of the PDA and the Port Authority

62. Plaintiffs have incurred additional expenses in order to open and operate the Hungry Lobster.

63. The Plaintiffs would not have opened or continued to operate the Hungry Lobster but for the discriminatory and unlawful actions of the PDA, Port Authority, Brean, and Marconi.

C. In 2022, Defendants continued to target Plaintiffs' business by implementing policies to hinder its operations and delay its opening.

64. On or around February 10, 2022, Appledore Marine Engineering presented Marconi with a parking study that had been commissioned by Defendants.

65. Two of the recommended configurations in this report would have resolved the traffic concerns and would have kept parking spaces, including the formerly free parking spaces.

66. Marconi and the Port Authority refused to present any of Appledore's recommendations to improve parking access and traffic congestion to the PDA, despite Ms. Cheever's request that it do so.

67. Instead, the PDA and Port Authority blocked off parking spaces and created a "fire lane."

68. Appledore Marine Engineering's proposal did not mention the need to implement a fire lane and, upon information and belief, no fire professionals provided a written request for a fire lane.

69. The PDA did not consult with Rye Harbor Lobster Pound to determine its needs or concerns with respect to traffic and parking.

70. In fact, the PDA refused to put Rye Harbor Lobster Pound on its meeting agendas to discuss its concerns.

71. The PDA and Port Authority, through its parking attendants, in a scheme implemented and overseen by Brean and Marconi, interfered with Rye Harbor Lobster Pound's business operations by being hostile to Rye Harbor Lobster Pound's customers.

72. This harassment included, among other things, refusing to allow Rye Harbor Lobster Pound's customers to park to access the restaurant and demanding to review receipts from customers who made purchases at the restaurant.

73. On or around March 4, 2022, the Port Authority, through Marconi, submitted a 214-page report to the PDA and Brean recommending that the PDA enforce Rye Harbor Lobster Pound's RoE and prohibit Rye Harbor Lobster Pound from selling restaurant style food items.

74. This report included the daily log which closely monitored Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom's activities, as well as Rye Harbor Lobster Pound's customers.

75. On or around April 7, 2022, the Port Authority severed the water line to Rye Harbor Lobster Pound's facilities.

76. Although the severed waterline purportedly affected every RoE, Rye Harbor Lobster Pound is the only business in the marina that requires a connection to the water line to operate.

77. The Port Authority informed Rye Harbor Lobster Pound that it would have to pay all expenses to connect to the new water line.

78. The Port Authority initially directed Rye Harbor Lobster Pound to hire a private contractor to do work on the water line.

79. Plaintiffs retained a contractor to complete the work and sought the PDA and Port Authority's approval of the contractor and work to be performed.

80. The day before the contractor Plaintiffs retained was to begin work on the water line, Marconi informed Rye Harbor Lobster Pound that the water line would need to be installed by the Port Authority.

81. Weeks later, the Port Authority hired the same contractor that Rye Harbor Lobster Pound sought to hire, and the Port Authority did so at an inflated cost which it then required Rye Harbor Lobster Pound to pay.

82. The Port Authority purposely delayed notifying Rye Harbor Lobster Pound of its requirement that the Port Authority retain the contractor to install the water line until July 2022 so that Rye Harbor Lobster Pound could not operate its seasonal business for a significant period of the season.

83. In addition to purposefully delaying the Plaintiffs' opening for the 2022 season, the PDA and Port Authority, through Marconi and Brean, again refused to negotiate a Concession Agreement (which Defendants illegally assert is required for Plaintiffs to operate) with Rye Harbor Lobster Pound.

84. On April 21, 2022, the PDA Board voted 4-3 to approve Rye Harbor Lobster Pound's request for a waiver to operate for the season.

85. In order to open in 2022 and comply with this waiver, the PDA and Port Authority required Rye Harbor Lobster Pound to retain and fund security details when they were open on weekends and holidays.

86. The Rye Police Department initially refused to provide a security detail because the Port Authority and Marconi would not negotiate a memorandum of understanding concerning whether the Rye Police Department would enforce PDA's rules.

87. The Port Authority's new and unauthorized security requirement, and subsequent refusal to negotiate a memorandum of understanding with Rye Police Department, further delayed Rye Harbor Lobster Pound's opening for the 2022 season.

88. The PDA and Port Authority ultimately required that Rye Harbor Lobster Pound hire security personnel employed by the Port Authority at $55.50 per hour.

89. The Port Authority also charged an additional "vehicle fee" for the provision of security services by Port Authority personnel of $12.50 per hour, which it failed to disclose prior to charging the fee to Rye Harbor Lobster Pound.

90. The Port Authority security personnel assigned to detail Rye Harbor Lobster Pound were caught sleeping on the job on numerous occasions.

91. The security personnel were overtly hostile towards Rye Harbor Lobster Pound and its customers, which discouraged customers from patronizing Rye Harbor Lobster Pound and generally interfered with its business.

92. No other business subject to a RoE on Rye Harbor State Marina or Hampton Harbor (which is also overseen by the PDA-Port Authority) was required to pay for a security detail as a condition of operating in 2022.

93. The Port Authority monitored Rye Habor Lobster Pound, Ms. Cheever, and Mr. Hanscom to make sure they followed these discriminatory requirements.

94. On May 19, 2022, the PDA Board voted to remove Rye Harbor Lobster Pound's outdoor seating. The removal of outdoor seating discouraged customers from patronizing Rye Harbor Lobster Pound.

D. Defendants' discriminatory targeting of Plaintiffs' business continued in 2023 through present, including through the formal implementation and collection of so-called concession fees.

95. In 2023, the PDA and Port Authority delayed proposing an RoE or Concession Agreement to Rye Harbor Lobster Pound to interfere with the business' ability to open for the 2023 season.

96. The PDA proposed a new RoE and Concession Agreement on or around June 2, 2023.

97. Brean informed Rye Harbor Lobster Pound that if it did not accept the proposed RoE and Concession Agreements at the PDA's public meeting on June 15, 2023, it would not be able to enter into an agreement before the existing RoE and Concession Agreements were set to expire on June 30, 2023.

98. Brean informed Rye Harbor Lobster Pound that if it did not accept the proposed RoE, it would not be able to operate until at least August 17, 2023.

99. The applicable term respecting so-called concession fees in the 2023-2024 RoE provides that:

> The sale of ready to eat, restaurant style food items and live lobsters and shellfish is not permitted under this ROE; a separate Concession Agreement is required for the sale of such items from or on the Premises. Ready to eat, restaurant style food items shall include, but not be limited to, hamburgers, hot dogs, sandwiches, lobster rolls, prepared shellfish, salads, mac and cheese, chowders/soups, packaged snacks, sodas, juices, coffee tea and breakfast items, and such other edible/consumable items sold in conjunction therewith, The determination of what constitutes such food items is in the sole discretion of the PDA-DPH, which determination shall be final.

100. Rye Harbor Lobster Pound's Concession Agreement now requires that it pay the Port Authority a "concession fee" of 10% of its monthly gross revenue.

101. Marconi, on behalf of the PDA and Port Authority, unilaterally determined the terms of Plaintiffs' Concession Agreements.

102. Rye Harbor Lobster Pound has never been allowed to negotiate the terms of its Concession Agreements.

103. Based on a review of publicly available documentation, only one other business operating at Rye Harbor State Marina, a business called Rye Harborside, was required to enter into a Concession Agreement.

104. Rye Harborside has paid the minimum $1,000 monthly fee under the Concession Agreement.

105. Rye Harborside is owned by Granite State Whale Watch.

106. Granite State Whale Watch is not subject to a separate Concession Agreement for prepared food and beverage items that it sells on its whale watch tours.

107. Granite State Whale Watch is owned and operated by Sue Reynolds and her son Pete Reynolds.

108. Sue Reynolds's partner is Leo Axtin, who at all times relevant to this complaint was the Rye Harbor Master and reported to Marconi as the port director.

109. Upon information and belief, Rye Harbor Lobster Pound's competitor, Granite State Whale Watch, was not required to enter into a Concession Agreement because of Axtin's position as Harbor Master and his relationship with Marconi.

110. In 2023 the Defendants collected $44,246.08 in so-called concession fees from Rye Harbor Lobster Pound.

111. In 2024, the Defendants collected $72,299.29 in so-called concession fees from Rye Harbor Lobster Pound.

112. Upon information and belief, the Defendants collected $4,000 from Rye Harborside in 2023 in so-called concession fees. Upon information and belief, no other business was subject to a concessions agreement which required to payment of so-called concessions fees during this time period.

113. In June 2023, the PDA and Port Authority further interfered with Rye Harbor Lobster Pound's business by placing barriers in front of Rye Harbor Lobster Pound's entrance to discourage customers from entering.

114. Around this time, the PDA implemented a land use rule, concocted and recommended by Marconi and former PDA Board Member Margaret Lamson, that limited the storage space behind the buildings on Rye Harbor State Marina.

115. This rule was implemented to target Rye Harbor Lobster Pound, as it impacts no other business in Rye Harbor State Marina.

116. The PDA, Port Authority, Brean, and Marconi ignored the requirements of RSA ch. 541-A and implemented this purported rule by adding it to the RoE Agreements in 2023.

117. The PDA ratified and approved this purported rule.

118. This purported rule appears as Condition 15 in Rye Harbor Lobster Pound's 2023 RoE Agreement, which states in relevant part:

> The outdoor storage of equipment on the Premises may only be permitted in an area not to exceed ten feet from the rear of the Building on the Premises, subject to the separate written approval of the PDA-DPH. If such written approval is given, such storage shall be neat and orderly at all times.

119. The PDA did not publish any rule limiting storage space behind RoE premises pursuant to RSA ch. 541-A.

120. Rye Harbor Lobster Pound has a propane tank and gray water storage tank that are more than ten feet behind Rye Harbor Lobster Pound's premises.

121. Rye Harbor Lobster Pound cannot move the propane tank or gray water tank to comply with the rule without interfering with public health and safety.

122. Rye Harbor Lobster Pound cannot operate without the propane tank or gray water tank.

123. The PDA and the Port Authority did not enforce this rule in 2023 or issue Rye Harbor Lobster Pound a notice of violation.

124. Despite knowing their conduct was illegal, the PDA, the Port Authority, and Marconi continued discriminating against Rye Harbor Lobster Pound.

125. On or about March 7, 2024, the Port Authority, through Marconi, informed Rye Harbor Lobster Pound that it violated Condition 15 of the RoE Agreement concerning outdoor storage.

126. The Port Authority and Marconi informed Rye Harbor Lobster Pound that it could not operate in 2024 unless it came into compliance with Condition 15.

127. As a result, Rye Harbor Lobster Pound retained a contractor to determine the best way to comply with Condition 15. Together with its contractor, Rye Harbor Lobster Pound determined that replacing its large propane tanks with smaller tanks physically secured onto the back of the RoE building would comply with Condition 15 and allow it to operate. It also determined that, if it limited its business to one of the two shacks from which it operates, it could do so without use of the gray water tank.

128. Rye Harbor Lobster Pound requested that their proposed solution be put on the March 2024 PDA Board meeting agenda.

129. The PDA refused to address Rye Harbor Lobster Pound's concerns at this meeting.

130. Prior to the PDA Board meeting on April 10, 2024, Rye Harbor Lobster Pound received approvals for its proposed solution from their propane vendors and the Fire Marshal with authority over the premises.

131. At the April 10, 2024 meeting, Rye Harbor Lobster Pound presented its proposal to the PDA Board.

132. Marconi acknowledged that this solution would satisfy Condition 15, but informed Rye Harbor Lobster Pound that approval would be contingent on another unpublished rule which he stated required all propane tanks be removed at the end of the season.

133. Rye Harbor Lobster Pound was not on notice of this new purported rule until April 10, 2024.

134. The PDA or Port Authority did not publish any rule, as required by RSA ch. 541-A, mandating that propane tanks to be removed at the end of the season.

135. Marconi, the PDA, and the Port Authority refused to provide Rye Harbor Lobster Pound with a date by which the tanks would have to be removed in compliance with this purported rule.

136. The PDA, Port Authority, Brean, and Marconi refused to provide Rye Harbor Lobster Pound with a written exemption from this rule despite its prior nonconforming use.

137. Upon information and belief, the PDA, Port Authority, Brean, and Marconi did not enforce Condition 15 for any other business at the Rye Harbor State Marina.

138. While Rye Harbor Lobster Pound was permitted to operate for the 2024 season despite its purported violation of Condition 15, Plaintiffs fear that this permission can be revoked at any time based on an asserted violation of an unpublished and unpromulgated rule.

Count I
Violation of Due Process – New Hampshire Administrative Procedures Act
Against Defendants PDA and Port Authority

139. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

140. The PDA is an executive branch agency whose officials exercise substantial control over the Rye Harbor State Marina.

141. The Port Authority is an executive branch agency whose officials exercise substantial control over the Rye Harbor State Marina.

142. The PDA and the Port Authority are subject to RSA 541-A.

143. Actions of the PDA and Port Authority constitute State actions within the meaning of the due process clause of the United States Constitution and Part I, Article 6 of the New Hampshire Constitution.

144. Rye Harbor Lobster Pound, LLC and Rye Harbor Lobster, LLC are New Hampshire limited liability companies and are entitled to all the rights and privileges that flow therefrom.

145. Ms. Cheever and Mr. Hanscom are New Hampshire citizens and are entitled to all the rights and privileges that flow therefrom.

146. In order for the PDA and Port Authority to promulgate any regulation that will be enforced against Rye Harbor Lobster Pound, certain processes must occur, including, but not limited to, notice, publication, input, and legislative endorsement. *See* RSA 541-A:6 – A:14.

147. An agency may not enforce rules or regulations against any New Hampshire citizen without complying with the procedures presented in the New Hampshire Administrative

Procedures Act (the "APA"). *See Asmussen*, 145 N.H. at 585 (conferring standing upon individuals to challenge illegally promulgated rules).

148. The PDA and Port Authority implement and enforce substantive rules through RoEs and Concession Agreements.

149. These agreements are not adopted through an APA-compliant process.

150. Because these regulations were not adopted per the APA requirements, the PDA and Port Authority's enforcement of the rules laid out in its RoE against Rye Harbor Lobster Pound are unconstitutional and violative of Rye Harbor Lobster Pound's due process rights.

151. As a result of the PDA and Port Authority's enforcement of unlawful regulations, Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom's statutory and due process rights are violated and they are being harmed by not being allowed to operate their business without interruption.

Count II
42 U.S.C. § 1983 – Violation of the Fourteenth Amendment of the United States Constitution
Against All Defendants

152. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

153. The Defendants are state actors whose actions must comply with the equal protection clauses articulated in the Fourteenth Amendments to the United States Constitution.

154. The PDA and Port Authority have used substantive rules imposed by the RoEs and Concession Agreements to discriminate against Rye Harbor Lobster Pound.

155. The Defendants proposed, drafted, implemented, approved, ratified, and enforced these unpromulgated rules against Rye Harbor Lobster Pound.

156. The Defendants have not enforced the substantive rules imposed by the RoEs and Concession Agreements against similarly situated businesses operating at the Rye Harbor State Marina.

157. The Defendants continue to enforce these unlawful rules discriminately against Rye Harbor Lobster Pound.

158. The Defendants' disparate treatment of Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom violates Plaintiffs' important and fundamental rights, is unconstitutional, and does not serve any legitimate state interest.

Count III
Part I, Article 15 of the New Hampshire Constitution –Violation of Equal Protection Against All Defendants

159. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

160. The Defendants are state actors whose actions must comply with the equal protection clauses articulated in Part I, Article 15 of the New Hampshire Constitution.

161. The PDA and Port Authority have used substantive rules imposed by the RoEs and Concession Agreements to discriminate against Rye Harbor Lobster Pound.

162. The Defendants proposed, drafted, implemented, approved, ratified, and enforced these unpromulgated rules against Rye Harbor Lobster Pound.

163. The Defendants have not enforced the substantive rules imposed by the RoEs and Concession Agreements to discriminate against similarly situated businesses operating at the Rye Harbor Marina.

164. The Defendants continue to enforce these unlawful rules discriminately against Rye Harbor Lobster Pound.

165. The Defendants' disparate treatment of Plaintiffs violates their important and fundamental rights, is unconstitutional, and does not serve any legitimate state interest.

Count IV
RSA 356
Against Defendants PDA, Port Authority and Geno Marconi

166. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

167. RSA 356:2 prohibits contracts, combinations, and conspiracies in restraint of trade.

168. RSA 356:11 provides private actors with a private right of action to enforce its provisions.

169. RSA 356, II (d) provides that a contract, combination, or conspiracy unlawfully restrains trade by "[r]efusing to deal, or coercing, persuading or inducing any person to refuse to deal, with another person."

170. The PDA, Port Authority, and Marconi are all persons subject to RSA 356. RSA 356:1 defines a "Person" as "natural persons, trusts, government entities, corporations . . . . and any other legal entity."

171. The PDA, Port Authority, and Marconi all provide "services" subject to RSA 356. "Service[s]" "include[s] any activity which is performed in whole or in part for financial gain."

172. The PDA, Port Authority and Marconi all engage in trade or commerce under RSA 356. "Trade or commerce" "include[s] any economic activity involving or relating to any commodity or service and any other business activity."

173. The PDA, Port Authority and Marconi have violated RSA 356:2, II, by, among other things, combining to refuse to deal with Rye Harbor Lobster Pound by refusing to discuss Rye Harbor Lobster Pound's concerns at public meetings, conspiring with each other to engage in

actions designed to put Rye Harbor Lobster Pound out of business, and otherwise restricting Rye Harbor Lobster Pound's business operations.

174. The PDA, Port Authority and Marconi have violated RSA 356:2, II, by, among other things, requiring that Rye Harbor Lobster Pound enter into Concession Agreements.

175. The PDA, Port Authority and Marconi have further violated this provision by, among other things, agreeing and combining together to discriminately implement and enforce the PDA and Port Authority's illegally promulgated rules against Rye Harbor Lobster Pound.

176. The discriminatory treatment is jointly enforced by the PDA, Port Authority, and Marconi, and limits competition.

177. The PDA and the Port Authority have a pecuniary interest in collecting so-called concession fees from Rye Harbor Lobster Pound.

178. Marconi has a pecuniary interest in restricting Rye Harbor Lobster Pound's operations because his family operates Geno's Chowder and Sandwich Shop, a competitor of Rye Harbor Lobster Pound.

Count V
Part I, Article 8 of the New Hampshire Constitution
Against All Defendants

179. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

180. Part I, Article 8 of the New Hampshire guarantees the right to an open, accessible, accountable, and responsive government, specifically in response to the conduct of magistrate and officers, as well as an "orderly, lawful, and accountable government" whose adherence to the law is subject to judicial review and judicial remedies.

181. The Defendants are, or at all relevant times were, public entities or public agents or employees.

182. The Defendants have violated Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom's rights to an accountable government.

183. The Defendants have engaged in corruption and unlawful conduct against Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom.

184. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom have been injured by the Defendants' unconstitutional conduct. Their injuries include lost revenue and emotional harm.

Count VI
Conversion
Against Defendants PDA and Port Authority

185. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

186. The Defendants exercised dominion over Rye Harbor Lobster Pound's property by unlawfully requiring Rye Harbor Lobster Pound to pay ten percent of its gross revenue to the PDA and Port Authority under a Concession Agreement.

187. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom have been injured by the Defendants' illegal conduct. Their injuries include lost revenue.

188. The Defendants' dominion over these proceeds interferes with Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom's rights to this revenue.

Count VII
Intentional Infliction of Emotional Distress
Against All Defendants

189. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

190. The actions of the Defendants were extreme and outrageous when they interfered with Rye Harbor Lobster Pound's business operations.

191. The actions of the Defendants were extreme and outrageous when they promulgated rules through RoEs that targeted Rye Harbor Lobster Pound.

192. The actions of the Defendants were extreme and outrageous when they, among other things, refused to negotiate a RoE or Concession Agreement with Rye Harbor Lobster Pound.

193. The Defendants engaged in these actions intentionally or recklessly.

194. Ms. Cheever and Mr. Hanscom have suffered severe emotional distress and have had significant health issues as a direct result of the Defendants' actions.

Count VIII
Negligent Infliction of Emotional Distress
Against All Defendants

195. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

196. The Defendants negligently engaged in certain acts as alleged herein and above, which proximately resulted in injury and emotional distress to Ms. Cheever and Mr. Hanscom.

197. At relevant times, the Defendants knew, or in the exercise of ordinary care should have known, that their conduct was unlawful and would adversely affect the business interests of Rye Harbor Lobster Pound.

198. Ms. Cheever and Mr. Hanscom have suffered severe emotional distress as a result of the Defendants' actions.

Count IX
Injunctive Relief
Against Defendants PDA and Port Authority

199. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

200. To operate its business, the PDA and Port Authority have required Rye Harbor Lobster Pound to enter into RoE Agreements and Concession Agreements with the PDA and Port Authority

201. The PDA and Port Authority implement and enforce substantive rules through RoE Agreements, including the requirement that Rye Harbor Lobster Pound enter into Concession Agreements.

202. The substantive rules in the RoE and Concession Agreements are not adopted through an APA-compliant process.

203. The Concession Agreement constitutes an unlawful tax that was promulgated by the PDA and Port Authority without legislative authority.

204. The PDA and Port Authority do not have statutory authority to promulgate rules through RoE Agreements with Rye Harbor Lobster Pound or any other business at the Rye Harbor State Marina.

205. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom are entitled to injunctive relief rescinding the unlawfully promulgated provisions of the RoE Agreement, including the requirement that Rye Harbor Lobster Pound enter into a Concession Agreement and the implementation of unlawful restrictions conditions of operation.

Count X
Declaratory Judgment
Against All Defendants

206. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

207. Rye Harbor Lobster Pound is subject to a RoE and a Concession Agreement with the PDA and Port Authority.

208. The PDA and Port Authority implement and enforce substantive rules through RoE Agreements.

209. The RoE and Concession Agreements are not adopted through an APA-compliant process.

210. The RoE Agreement implements unlawful substantive rules such as restricting Rye Harbor Lobster Pound from storing equipment and requiring that Rye Harbor Lobster Pound enter into a Concession Agreement.

211. The Concession Agreement constitutes an unlawful tax that was promulgated by the PDA and Port Authority without legislative authority.

212. As a result of the facts described in the forgoing paragraphs, an actual controversy of sufficient immediacy exists between Rye Harbor Lobster Pound and the Defendants as to the validity of the RoE and Concession Agreements.

213. Resolution of validity of the substantive rules promulgated through the RoE Agreement as well as the parties' respective rights and duties thereunder by declaration of the Court is necessary, as there exists no adequate remedy at law.

214. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom are entitled to a judgment declaring that the substantive rules promulgated through the RoE Agreement, including

the requirement of a Concession Agreement and the implementation of Condition 15 of Rye Harbor Lobster Pound's RoE, are unenforceable as a matter of law.

215. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom are entitled to a judgment declaring that the substantive rules promulgated through the RoE Agreement, including the requirement of a Concession Agreement and the implementation of Condition 15 of Rye Harbor Lobster Pound's RoE, are invalid and further declaring the parties' respective rights and obligations thereunder.

216. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom are entitled to a judgment declaring that the Defendants violated its rights under the Fourteenth Amendment of the United States Constitution and Part I Article 6, Part I, Article 8, and Part I, Article 15 of the New Hampshire Constitution.

Count XIII
Civil Conspiracy
Against All Defendants

217. Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom incorporate the allegations of the preceding paragraphs by reference, as if they were fully stated herein.

218. The Defendants are all linked together by public appointment, election, or employment, as supervisors, managers, or officers of the PDA and Port Authority.

219. Their conduct, as set forth in this complaint, is the product of overt agreements among and between the Defendants, acting in concert, unlawfully, and inflicted injury on Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom, as set forth above.

PRAYER FOR RELIEF

WHEREFORE, Rye Harbor Lobster Pound, Ms. Cheever, and Mr. Hanscom respectfully request that this Court:

A. Enter a judgment for Plaintiffs on all counts;

B. Enter a judgment declaring the substantive rules promulgated through the RoE Agreements violate the right to due process guaranteed by the United States Constitution, the New Hampshire Constitution, and the NH Administrative Procedures Act;

C. Grant compensatory damages, including general, actual, consequential, special, and enhanced compensatory damages, in an amount to be proven at trial;

D. Grant pre- and post-judgment interest as allowed by law;

E. Enter a judgment enjoining the Defendants from applying and enforcing their illegal rules to Rye Harbor Lobster Pound's prejudice;

F. Award costs and attorney's fees, including those provided by statute; and

G. Grant such other further relief as this Court may deem just, equitable, and proper.

Respectfully submitted,

RYE HARBOR LOBSTER POUND, LLC
RYE HARBOR LOBSTER, LLC
SYLVIA CHEEVER
NATHAN HANSCOM

By their attorneys,

Date: January 10, 2025

/s/ Michael K. O'Neil

Michael O'Neil (NH # 21198)
Cassandra Moran (NH # 275270)
RATH, YOUNG AND PIGNATELLI, P.C.
One Capital Plaza
Concord, New Hampshire 03302-1500
mko@rathlaw.com
cam@rathlaw.com
(603) 226-2600
(603) 226-2700 (fax)

VERIFICATION

STATE OF ~~NEW HAMPSHIRE~~ Florida
COUNTY OF ~~Rockingham~~ Marion

I, Sylvia Cheever, member and manager of Rye Harbor Lobster, LLC, upon oath, depose and state, that I have read the contents of the foregoing Verified Complaint, and the contents thereof are true and correct to the best of my knowledge, information and belief.

Sylvia Cheever

Subscribed and sworn to before me this 6 day of ~~December, 2024~~ January 2025

Notary Public

HAYASHIRA CUEVAS ERAZO
Notary Public - State of Florida
Commission # HH 308054
My Comm. Expires Sep 5, 2026