STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
Docket No. RE-2021-0035

PETER AND KATHY MASUCCI, et al., Plaintiffs v. JUDY'S MOODY LLC, et al., Defendants and AARON FREY, Attorney General for the State of Maine Party in Interest	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AGAINST DEFENDANTS EDWARD PAGE, CHRISTINE PAGE, JAMES LI, KIM NEWBY, and ROBIN HADLOCK SEELEY

Pursuant to M.R. Civ. P. 12(b)(6), Defendants Edward and Christine Page, James Li and Kim Newby, and Robin Hadlock Seeley (collectively "Defendants") hereby move to dismiss all counts of the Complaint against them. In support of this Motion, Defendants state as follows.

INTRODUCTION

Defendants have been sued because they are alleged to have "wrongfully claimed title to intertidal land" and to have "harassed harvesters" by contacting state officials when rockweed was being harvested from their property without permission. Pl. Compl. ¶¶ 25-26, 29-30, 60. Or they have been sued because they allegedly "actively promote the harassment of rockweed harvesters" by "wrongfully claiming that landowners may deny permission for harvesters to cut rockweed on intertidal land" and thereby "deceptively . . . create confusion about the legal rights of landowners and seaweed harvesters." Pl. Compl. ¶¶ 33-35, 62.

Plaintiffs' claim that Defendants are "wrongfully" holding title to intertidal land is wholly unsupported and contrary to hundreds of years of Law Court precedent and real estate

conveyancing in Maine. Fee simple ownership of intertidal land in Maine is held, absent some severance, by the adjacent upland property owner. Not a single court case or dissenting opinion states otherwise. Similarly, Plaintiffs' claim that they can lawfully take seaweed from Defendants' property without permission defies the unanimous Law Court holding issued just two years ago in *Ross v. Acadian Seaplants, Ltd*. Given the total lack of factual or legal support, these allegations of harassment and wrongful conduct are outrageous and without any good faith basis.

Plaintiffs are apparently unhappy with the law in Maine and want to change it. But they are doing so by dragging Defendants into court on claims that have absolutely no support in existing law, nor a reasonable chance of modifying existing law. As such, Plaintiffs have failed to state a cause of action or identify any legal theory under which they could be granted relief. Under M.R. Civ. P. 12(b)(6), Plaintiffs' Complaint must be dismissed on all counts.

FACTUAL BACKGROUND

Defendants are owners of coastal property in Harpswell, Friendship, and Pembroke, Maine. Pl. Compl. ¶¶ 25, 29, 31. Defendants Edward Page, Christine Page, James Li, and Kim Newby have asked seaweed harvesters to stop cutting rockweed from the intertidal land adjoining their upland and have contacted state officials regarding that activity. Pl. Compl. ¶¶ 26, 30. Defendant Robin Hadlock Seeley advocates for the conservation of rockweed, including by making landowners aware of their rights under *Ross v. Acadian Seaplants, Ltd*., Pl. Compl. ¶ 32. The Complaint does not allege any other facts about Defendants, their property, or their conduct.

STANDARD OF REVIEW

"A complaint is properly dismissed when it is beyond doubt that the plaintiff is entitled to no relief under any set of facts that might be proven in support of the claim." *Richardson v.*

Winthrop Sch. Dept., 2009 ME 109, ¶ 5, 983 A.2d 400, 402. The court is "not bound to accept the complaint's legal conclusions." *Bowen v. Eastman*, 645 A.2d 5, 6 (Me. 1994). To survive a motion to dismiss, a complaint must "set forth elements of a cause of action or allege facts that would entitle the plaintiff to relief pursuant to some legal theory." *Livonia v. Town of Rome*, 1998 ME 39, ¶ 5, 707 A.2d 83, 85. The complaint "must allege facts with sufficient particularity so that, if true, they give rise to a cause of action; merely reciting the elements of a claim is not enough." *Meridian Medical Systems, LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 2. A complaint is insufficient when it "merely recites in conclusory fashion" necessary elements of a claim. *Ramsey v. Baxter Title Co.*, 2012 ME 113, ¶ 7.

ARGUMENT

I. PLAINTIFFS' CLAIM (Counts II and III) THAT THE STATE OWNS ALL INTERTIDAL PROPERTY IN MAINE FAILS TO STATE A CLAIM AS A MATTER OF EXISTING LAW THAT HAS BEEN SETTLED FOR CENTURIES

Plaintiffs seek to invalidate over 370 years of established law governing title to intertidal land in Maine. The framework for intertidal land ownership in Maine was first codified by the Colonial Ordinance of 1641-1647 ("Colonial Ordinance"), which declared that "the Proprietor of the land adjoining" tidal waters "shall have proprietie to the low water mark." *Bell v. Town of Wells*, 510 A.2d 509, 512 (Me. 1986) ("*Bell I*"). That principle has been incorporated into Maine common law and been continuously affirmed for centuries by courts in Maine and Massachusetts without a single dissenting opinion.

Plaintiffs' legal theory is not novel. The identical legal argument has been advanced in briefs filed in multiple cases before the Law Court, which has rejected or ignored it every time. *See, e.g., Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989) ("*Bell II*"). Plaintiffs provide no new facts or legal argument that would distinguish the current Complaint from past attempts.

Plaintiffs acknowledge that their theory of state ownership of intertidal land is not the law in Maine. They simply assert, incorrectly, that the unbroken line of caselaw confirming private ownership of intertidal land is "in error." Pl. Compl. ¶¶ 83-84, 87, 90, 98.

Accordingly, Counts II and III of Plaintiffs' Complaint must be dismissed because they are contrary to Maine law and fail to state a cause of action.

A. Private Ownership of Intertidal Property Has Unambiguously Been the Law in Maine from Colonial Times to the Present

Among the many Law Court cases that have addressed the issue, *Bell I* (1986) and *Bell II* (1989) may contain the most thorough analysis of Maine's framework for private ownership of intertidal land. After a comprehensive review of English common law, the Colonial Ordinance, and subsequent cases in Maine and Massachusetts, the *Bell I* court unanimously confirmed that:

> the Colonial Ordinance was a rule of Massachusetts common law at the time of the separation of Maine from Massachusetts. By force of article X, § 3 of the Maine Constitution and of section 6 of the Act of Separation between Maine and Massachusetts, it must be regarded as incorporated into the common law of Maine. . . . under the Colonial Ordinance the owner of the upland holds title in fee simple to the adjoining intertidal zone subject to the public rights expressed in the Ordinance.

510 A.2d at 513-15.

Three years later, the *Bell II* court reached the same conclusion, stating, "The elaborate legal and historical researches reflected in the extensive briefs filed with us on this second appeal fail to demonstrate any error in the conclusions we reached less than three years ago." 557 A.2d at 171. Even so, the *Bell II* court engaged in its own lengthy analysis and concluded, "In sum, we have long since declared that in Maine, as in Massachusetts, the upland owner's title to the shore [is] as ample as to the upland." *Id*. at 173. Referring to the same legal theories now advanced (again) by Plaintiffs, the Court held, "Any such revisionist view of history comes too late by at least 157 years." *Id*. at 172. The *Bell II* court's holding regarding private title to intertidal land

was unanimous. *See id*. at 185 (Wathen, J., dissenting) ("this Court has followed the lead of Massachusetts in describing the rights of the riparian owner expansively in terms of fee simple ownership.").

Plaintiffs focus on the *Bell* cases as having "stripped the people of Maine" of intertidal ownership. Pl. Compl. at 2. However, the *Bell* cases are only two decisions in an unwavering body of precedent explicitly affirming that fee simple ownership of intertidal land in Maine is held, absent some severance, by the adjacent upland property owner.

Addressing the ownership of intertidal land in Cape Elizabeth shortly before Maine became a state, the Massachusetts Supreme Judicial Court stated, "from [the time of the Colonial Ordinance] to the present, a usage has prevailed, which now has force as our common law, that the owner of lands bounded on the sea or salt water shall hold to low water mark." *Storer v. Freeman*, 6 Mass. 435, 438 (1810). Eleven years after Maine statehood, the Law Court addressed the issue in *Lapish v. Bangor Bank*, 8 Me. 85 (1831). It was argued in *Lapish* that the Colonial Ordinance had never been in force in Maine. The Law Court rejected this contention, stating, "Ever since [*Storer v. Freeman*], as well as long before, the law on this point has been considered as perfectly at rest; and we do not feel ourselves at liberty to discuss it as an open question." *Id*. at 93.

In 1882, the Law Court again declared that private intertidal ownership was the law everywhere in Maine, providing compelling reasoning particularly relevant to Plaintiffs' claims:

> [The Colonial Ordinance] has been so often and so fully recognized by the courts both in this State and in Massachusetts as a familiar part of the common law of both, throughout their entire extent, without regard to its source or its limited original force as a piece of legislation for the colony of Massachusetts Bay, that we could not but regard it as a piece of judicial legislation to do away with any part of it or to fail to give it its due force throughout the State until it shall have been changed by the proper law making power. When a statute or ordinance has thus become part of the common law of a State it must be regarded

> as adopted in its entirety and throughout the entire jurisdiction of the court declaring its adoption.
>
> It is not adopted solely at the discretion of the court declaring its adoption, but because the court find that it has been so largely accepted and acted on by the community as law that it would be fraught with mischief to set it aside.
>
> It is not here and now a question whether this ordinance shall be adopted with such modifications as might be deemed proper under the circumstances of the country. It has been long since adopted in all its parts, acted upon by the whole community and its adoption declared by the courts; and now the argument of the plaintiff's counsel aims to have us declare either that it has not the force of law in certain parts of the State, or that the court may change it if satisfied that it does not operate beneficially under present circumstances. We cannot so view it.

Barrows v. McDermott, 73 Me. 441, 448–49 (1882) (citations omitted).

From *Lapish* to *Barrows* to *Bell* to the present, the Law Court has continuously affirmed this rule of private intertidal ownership for two centuries. *See, e.g.*, *Ross v. Acadian Seaplants, Ltd*., 2019 ME 45, ¶ 12 ("The intertidal zone belongs to the owner of the adjacent upland property, or some other person to whom that part of the land has been transferred by the upland owner, subject to certain public rights."); *Britton v. Donnell*, 2011 ME 16, ¶ 7 ("Under the common law, the land of the intertidal zone belongs to the owner of the adjacent upland property, subject to certain public rights."); *Andrews v. King*, 129 A. 298, 299 (Me. 1925) ("The well-settled construction of the Colonial Ordinance, consistently adhered to by the courts of this state and Massachusetts, is this: That it vested the property of the flats in the owner of the upland in fee . . ."); *State v. Leavitt*, 72 A. 875, 876 (Me. 1909) ("By the colonial ordinance of 1641 of the Massachusetts Bay Colony, which by usage and judicial adoption is taken to be a part of the common law of this state, the title to the seashore between high and low water mark, not exceeding 100 rods, was vested in the owner of the upland.") (internal citation omitted); *Marshall v. Walker*, 45 A. 497 (Me. 1900) ("the proprietor of the main holds the shore ... in fee, like other lands"); *Hill v. Lord*, 48 Me. 83, 94-96 (1861) ("It is argued for the defendant, with

apparent seriousness, that if the plaintiff owns the upland, he has no title to the flats, but that the latter belong to the public. . . . These flats belong to the owner of the upland, as appurtenant to it."); *Moulton v. Libbey,* 37 Me. 472, 502 (1854) ("The colonial ordinance of 1641 was adopted by the Commonwealth of Massachusetts, and is common law there and in this State, with all the effect and force of a statute, and it has the sanction of the judicial tribunals, as having the effect of a valid and irrevocable grant of the fee in the soil to the riparian proprietors, subject only to the express reservations contained therein.") (Hathaway, J., dissenting on other grounds); *Deering v. Proprietors of Long Wharf,* 25 Me. 51, 64 (1845) ("By the colonial ordinance of 1641, which is a part of our law, it is declared, that in all creeks, coves and other places about and upon salt water, where the sea ebbs and flows, the proprietor of the lands adjoining, shall have propriety to the low water mark") (internal quotations omitted); *Moore v. Griffin*, 22 Me. 350, 355 (1843) ("The plaintiff having thus established his title to the farm as bounded upon the river, the ordinance of 1641 declares, that the proprietor of the land adjoining shall have propriety to the low water mark . . .") (internal quotations omitted).

Accordingly, there is not a scintilla of uncertainty in the law on this issue.

B. Plaintiffs' Legal Theory for Statewide Intertidal Ownership Has Been Addressed and Rejected by the Law Court, and Continues to Lack Merit

Plaintiffs argue without support that the Maine Law Court has been getting it wrong for hundreds of years in every single case discussed above. Plaintiffs allege that the Colonial Ordinance did not grant title, but rather a "license" to the adjoining upland owner. Pl. Compl. ¶ 70. Plaintiffs allege that, even if the Colonial Ordinance did grant title to the adjoining upland owner, under the "equal footing" doctrine such title was extinguished when Maine became a state. Pl. Compl. ¶¶ 81, 97-98. Plaintiffs allege that the chain of Law Court decisions cited above "lacked any constitutional or statutory authority" and constituted impermissible "judicial

legislation." Pl. Compl. ¶¶ 83-84, 104. These arguments have already been made to and rejected by the Law Court. The *Bell II* Court stated:

> [t]he brief of the amici curiae contends that the State of Maine on coming into the Union on separation from Massachusetts "obtained title to its intertidal lands under the 'equal footing' doctrine," a doctrine that has been most recently discussed by the United States Supreme Court in *Phillips Petroleum Co. v. Mississippi*. Any such revisionist view of history comes too late by at least 157 years.

Bell II, 557 A.2d at 172 (citing *Lapish*, 8 Me. at 93). The amicus curiae referred to in *Bell* was Orlando Delogu, a plaintiff and a signatory of the Complaint in this action. In between *Bell II* and now, Mr. Delogu has submitted amicus briefs making the same legal argument in at least three Law Court appeals. *See Almeder*, 2019 ME 151; *McGarvey*, 2011 ME 97; *Flaherty v. Muther*, 2011 ME 32. In none of those cases did the Court find a reason to revisit Mr. Delogu's arguments.

Plaintiffs' principal theory for state ownership of intertidal land is the claim that, under the equal footing doctrine, "Upon statehood, the state gains title within its borders to the beds of waters then navigable, or tidally influenced." Pl. Compl. ¶¶ 97. Plaintiffs omit that this general concept does not apply where particular states, for example Maine and Massachusetts, elected to alter the framework for intertidal property rights. *See, e.g.*, *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 475 (1988) ("it has been long established that the individual States have the authority to define the limits of the lands held in public trust and to recognize private rights in such lands as they see fit. Some of the original States, for example, did recognize more private interests in tidelands than did others of the 13—more private interests than were recognized at common law, or in the dictates of our public trusts cases.") (citing *Shively v. Bowlby*, 152 U.S. 1, 26 (1894).

The Law Court easily made this distinction when it addressed the question in *Bell II*. "The *Phillips Petroleum* decision in 1988 in no way contradicts the plain and carefully explained decision in 1893 in *Shively v. Bowlby*, that Massachusetts and Maine had much earlier exercised their statehood powers over their intertidal lands and had adopted rules of real property law very different from those prevailing in many other states." 557 A.2d at 172–73. Accordingly, Plaintiffs' central support for state ownership of intertidal land, the "equal footing" doctrine, is inapplicable in Maine, as held by the Law Court in 1989.

Similarly, Plaintiffs' claim that the Maine Judiciary has been violating the separation of powers doctrine for 200 years, Pl. Compl. ¶ 104, is without merit. Plaintiffs describe the numerous Law Court decisions addressing common law intertidal property rights as "judicial legislation" that is "lacking any constitutional or statutory authority." Pl. Compl. ¶ 83. In reality, all of the cases discussed above are examples of core judicial activity, namely the adjudication of concrete property rights disputes between parties to litigation based on the interpretation of case law, statute, and constitution. Plaintiffs' proposed remedy for what they allege is unconstitutional overreach by the judiciary is for the court to now reverse centuries of property law by issuing a declaration of "statewide effect" that would invalidate "the property interests of upland owners not party to these proceedings." Pl. Compl. ¶ 94. A fair reading of the Complaint indicates that Plaintiffs are seeking rather than aggrieved by "judicial legislation."

Plaintiffs are correct in one aspect: Changing the fundamental law governing the ownership of land along the entire coast of Maine is better left to the political and legislative process, within allowable constitutional parameters. The Law Court has explicitly articulated the mandate of separation of powers with respect to judicial action specifically related to the policy goal of expanding public rights in the intertidal zone:

> The solution [to beach access] under our constitutional system, however, is for the State or municipalities to purchase the needed property rights or obtain them by eminent domain through the payment of just compensation, not to take them without compensation through legislative or judicial decree redefining the scope of private property rights.

Bell II, 557 A.2d at 180.

Because Plaintiffs' claim that title to all intertidal land in Maine is held by the state is contrary to centuries of completely settled law and has been heard and rejected by the Law Court, Plaintiffs fail to "set forth elements of a cause of action that would entitle them to relief pursuant to some legal theory." Accordingly, Counts II and III of Plaintiffs' Complaint must be dismissed pursuant to M.R. Civ. P. 12(b)(6).

II. PLAINTIFFS' UNSUPPORTED LEGAL CONCLUSIONS REGARDING EXPANSION OF THE PUBLIC TRUST DOCTRINE (Count IV) FAIL TO STATE A CLAIM

Without reference to any set of facts, Plaintiffs assert that the Maine public trust doctrine "extends to whatever the state sees fit to allow and regulate exercising its sovereign police power and through its own legislative and regulatory processes." Pl. Compl. ¶ 106. This sweeping legal conclusion is untethered to any actual case or controversy and untethered to Maine law on the issue. *See Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45. The *Ross* Court engaged in an exhaustive discussion of the current and potential scope of the public's rights to use the intertidal zone under the state's public trust doctrine. Under the broadest possible reading, *Ross* did not explore the idea that the public's rights were co-extensive with the state's police power.

However, *Ross* did unanimously hold that, under any conceivable framework for the public trust doctrine, the public does not have the right to harvest rockweed growing on someone else's property. *Id.* ¶¶ 33, 43. Thus, Plaintiffs' baseless legal conclusion about the scope of the

public trust doctrine does not support the allegations that Defendants have wrongfully prevented unnamed seaweed harvesters from cutting rockweed on Defendants' property.

The court is "not bound to accept the complaint's legal conclusions." *Bowen v. Eastman*, 645 A.2d 5, 6 (Me. 1994). The Superior Court is of course bound by the Law Court regarding the scope of the public trust doctrine. *See Flaherty v. Muther*, 2009 WL 2703667 (Me. Super. Ct., July 30, 2009) ("The State's request for expanding public trust rights in the intertidal zone does not fall on deaf ears; however, this Court is bound by precedent. Accordingly, the public trust rights in the intertidal zone are limited to fishing, fowling and navigation.") (Crowley, J.).

The Complaint is devoid of facts or law that would entitle Plaintiffs to relief pursuant to some legal theory about the scope of the Maine public trust doctrine. Accordingly, Count IV of Plaintiffs' Complaint must be dismissed pursuant to M.R. Civ. P. 12(b)(6).

III. PLAINTIFFS' CONCLUSORY ALLEGATIONS REGARDING DEFENDANTS' CHAIN OF TITLE (Count V) ARE INSUFFICIENT TO STATE A CLAIM

Plaintiffs' claims regarding Defendants' chain of title are similarly devoid of any concrete facts that could result in relief being granted. In a declaratory judgment action regarding title, the burden is on the plaintiff to show better title than the defendant. *Bell I*, 510 A.2d at 515 ("The plaintiffs in the instant case have the burden of proving title in themselves both to the intertidal zone and the upland."); *Hodgdon v. Campbell*, 411 A.2d 667, 671 (Me. 1980). Plaintiffs in this case fail to allege that they hold any title at all to Defendants' property.

Plaintiffs' sole factual allegations under Count V are that "Defendants each hold title to certain parcels of land in a chain of title dating back to an original conveyance from the 17th Century" and that "The original conveyances do not, and never did make reference to the ocean, cove, sea, or river." Pl. Compl. ¶¶ 109-10. These allegations, even when accepted as true, are so generic that they arguably apply to every piece of property in the state of Maine. They are

conclusions with no underlying fact. Plaintiffs do not allege any facts specific to Defendants' deeds or chain of title. Plaintiffs do not identify the specific property for which they are disputing title. Plaintiffs do not allege any facts specific to Plaintiffs' or anyone else's claim of title to the property at issue. Plaintiffs do not identify any specific title instruments or any relevant language that those instruments might contain. Plaintiffs merely state general principles of law related to deed construction. Pl. Compl. ¶¶ 107-08.

Count V of the Complaint doesn't meet even the liberal notice-pleading standard under Maine law. A complaint is insufficient when it "merely recites in conclusory fashion" necessary elements of a claim. *Ramsey*, 2012 ME 113, ¶ 7. A complaint must "allege facts sufficient to demonstrate that the complaining party has been injured in a way that entitles him or her to relief." *America v. Sunspray Condo. Ass'n*, 2013 ME 19, ¶ 20.

With respect to Count V, Plaintiffs have failed to "allege facts with sufficient particularity so that, if true, they give rise to a cause of action." *Meridian Medical Systems*, 2021 ME 24, ¶ 2. Accordingly, Count V of Plaintiffs' Complaint must be dismissed pursuant to M.R. Civ. P. 12(b)(6).

IV. PLAINTIFFS CANNOT MAINTAIN A DECLARATORY JUDGEMENT ACTION (Count I) BECAUSE THEY LACK STANDING AND THERE IS NO JUSTICIABLE CONTROVERSY

The Maine Declaratory Judgements Act "may be invoked only where there is a genuine controversy." *Patrons Oxford Mut. Ins. Co. v. Garcia*, 1998 ME 38, ¶ 4. The genuine controversy must also be justiciable. A justiciable controversy is "a claim of right buttressed by a sufficiently substantial interest to warrant judicial protection." *Sch. Comm. of Town of York v. Town of York*, 626 A.2d 935, 942 (Me. 1993) ("Justiciability requires two elements: (1) a real

and substantial controversy and (2) a plaintiff with standing to raise the issues."). Plaintiffs have neither raised a genuine controversy, nor have they alleged standing to sue.

As discussed above in Sections I-III, Plaintiffs have not identified a live legal issue or an operative set of facts that the court could properly adjudicate. To the extent there is "controversy," it is solely the result of Plaintiffs' unwillingness to acknowledge the holdings of the Maine judiciary. There is no genuine legal controversy here for the purpose of invoking the Declaratory Judgments Act.

Plaintiffs also lack standing. For Plaintiffs to have standing to challenge Defendants' title to intertidal land, they must allege some protected legal interest of their own in the disputed property. *Lamson v. Cote*, 2001 ME 109, ¶ 11. For example, "An abutter of property that is in dispute, who presents a good faith claim of title or of a statutorily or equitably created interest in the disputed property, has standing to litigate the existence of that interest." *Id.* ¶ 12. With respect to Defendants' property, the Complaint is devoid of any such allegation. Plaintiffs do not "present a good faith claim of title" or other interest in Defendants' intertidal land. Plaintiffs do not allege that they themselves hold title to or any other property right. Plaintiffs allege that title to Defendants' intertidal property is held by the State of Maine. Pl. Compl. ¶ 99. Plaintiffs fail to identify any statutory or common law private right of action that would give them the right to enforce property rights allegedly held by the state.

To the extent that Plaintiffs are alleging that they have a legally protected interest to harvest rockweed growing on and attached to Defendants' intertidal land, that allegation is obviously contrary to Maine law. In *Ross v. Acadian Seaplants, Ltd.*, decided just over two years ago, the Law Court held that "rockweed attached to and growing in the intertidal zone is the private property of the adjacent upland landowner. Harvesting rockweed from the intertidal land

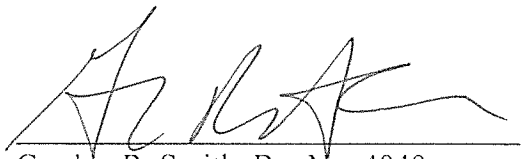
is therefore not within the collection of rights held in trust by the State, and members of the public are not entitled to engage in that activity as a matter of right." 2019 ME 45.

When Defendants asked harvesters to stop cutting rockweed on Defendants' property in reliance on the unequivocal holding in *Ross*, Plaintiffs allege that to be "harassment" that harms them by "interrupting the steady supply of clean and fresh rockweed." Pl. Compl. ¶ 61. When Defendants made the *Ross* holding known to others, Plaintiffs allege that to be "actively promoting the harassment of rockweed harvesters by falsely claiming landowners have a right to deny them access." Pl. Compl. ¶ 62. Plaintiffs' unwillingness to accept and follow decisions of the Maine judiciary does not confer standing upon them.

CONCLUSION

As discussed above, the legal framework for ownership of intertidal property in Maine has been completely at rest, with no countervailing precedent or dissent, for centuries. The legal theories in the Complaint have been raised before and rejected by the Law Court. Plaintiffs' Complaint fails to allege any facts or identify any law that state a claim upon which relief can be granted. Accordingly, Defendants respectfully request that the Court dismiss all counts of Plaintiffs' Complaint with prejudice pursuant to M.R. Civ. P. 12(b)(6).

Dated at Portland, Maine this 26 day of May, 2021.



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NOTICE

Any opposition to this motion must be filed not later than twenty-one (21) days from the date this motion was filed pursuant to Rule 7(c) of the Maine Rules of Civil Procedure. Failure to file a timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.