



UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

ALLCO RENEWABLE ENERGY LIMITED	)	
OTTER CREEK SOLAR LLC,	)	Case No. 2:20-CV-44
THOMAS MELONE and	)	
PLH VINEYARD SKY LLC	)	
Plaintiffs,	)	
v.	)	
	)	
JOSEPH KULKIN,	)	
JANE DOES 1-3 and	)	
JOHN DOES 1-3.	)	
Defendants.	)	

**REPLY TO PLAINTIFFS' OPPOSITION TO  
MOTION TO QUASH SUBPOENA, MOTION FOR PROTECTIVE ORDER and  
MOTION FOR SANCTIONS**

NOW COME Vermonters for a Clean Environment, Inc. ("VCE") and Annette Smith, Executive Director of VCE, by and through their attorneys, Valsangiacomo, Detora & McQuesten, P.C., and hereby reply to Thomas Melone's opposition to their motions to quash, for protective order and for sanctions and respectfully request that this Honorable Court grant the relief requested.

**REPLY MEMORANDUM**

**I. Updated Facts**

1. On April 1, 2021, the Vermont Public Utility Commission ("PUC") found Thomas Melone's entities (all of which he is the sole owner of and has complete control over) yet again, to have violated Vermont law by commencing site preparation<sup>1</sup> without a Certificate of Public Good ("CPG"), and even more egregious, to have violated the PUC's Temporary Restraining Order ("TRO") by continuing site clearing the very next day after the TRO was

<sup>1</sup> Melone's illegal site preparation commenced with bulldozing trees and brush and destroying the Rare, Threatened and Endangered ("RTE") species of plants that Melone promised to preserve in a Memorandum of Understanding ("MOU") with the Vermont Agency of Natural Resources ("ANR"), which Melone signed to acquire ANR's approval of the Chelsea Solar and Apple Hill Solar projects.

2. This illegal activity occurred at the Chelsea Solar and Apple Hill Solar proposed project sites in Bennington, Vermont. Both cases are currently on appeal pending before the Vermont Supreme Court after being DENIED a CPG by the PUC.<sup>3</sup>

3. The April 1, 2021, Order Maintaining Injunction Prohibiting Further Site Preparation state as follows:

**Conclusion**

In this Order we restate our conclusion that Allco's site-clearing activity without a CPG is a violation of 30 V.S.A. § 248(a)(2)(A), and we enjoin any further site-clearing activity at this time. In our findings, we establish a factual basis for issuing a civil penalty for that violation. To further substantiate the extent of that civil penalty, additional proceedings are required to document the factual basis for the amount of that penalty using the criteria addressed in 30 V.S.A. § 30. . . .

**VI. ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission ("Commission") of the State of Vermont that:

1. Allco initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2)(A).
2. The Commission extends its Order of June 26, 2020, enjoining Allco Renewable Energy Limited, Chelsea Solar LLC, Apple Hill Solar LLC, PLC Vineyard Sky LLC, and PLH LLC, and their affiliates, subsidiaries, and contractors from conducting site preparation on the parcels on Apple Hill in Bennington, Vermont, identified in Docket 8454 and Case No. 17-5024-PET, including both the 27-acre site of the two solar facilities and the adjacent 5-acre site identified in both petitions as mitigating the aesthetic

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<sup>2</sup> See PUC Case No. 20-1611-INV, Order Maintaining Injunction Prohibiting Further Site Preparation, dated April 1, 2021.

<sup>3</sup> Annette Smith of Vermonters for a Clean Environment filed the complaint regarding the potential violations of law occurring on Apple Hill in Bennington, resulting in the PUC commencing an Investigation and holding a hearing on Friday, June 26, 2020, during which a TRO was issued prohibiting any further site clearing of any kind.

The very next morning, Saturday, June 27, 2020 at 9:28am, Thomas Melone electronically filed a Motion for Clarification with the PUC, the contents of which evidence his receipt of the PUC's written TRO. A few hours later, by noontime, Melone's contractor was actively bulldozing the site in violation of the TRO.

After the filing of frivolous motions to alter/amend the TRO were denied by the PUC, Melone improperly and without requesting permission to appeal from either the PUC or the Supreme Court, "appealed" the TRO, an interlocutory order, as if he was entitled to as of right, to the Vermont Supreme Court. It was dismissed by the Court and returned to the PUC for the injunction hearing.

See PUC Case No. 20-1611-INV, Order Maintaining Injunction Prohibiting Further Site Preparation, dated April 1, 2021, at p. 30-31.

4. The PUC Order also stated as follows:

Additionally, **Allco's activities challenge the integrity of the Section 248 permitting process.** The Commission issued an order on May 7, 2020, denying Allco's request to amend a pending application for a certificate of public good. Although Allco sought reconsideration of that order, we denied that motion for reconsideration, and **although Allco has appealed our rulings to the Vermont Supreme Court, Allco has not obtained a stay of our orders. Thus, our decisions remain binding on Allco unless and until the Vermont Supreme Court overrules them. Yet, Allco has gone ahead with making the very same permanent changes to the landscape that we told it not to make when we denied its amendment request. And Allco continued making those changes even after the TRO issued. As ANR correctly notes, this is an affront to the Section 248 permitting process.** It creates a significant risk that undue adverse effects on the environment will occur before the Commission has had a chance to review the proposed project. This does not comply with the applicable statutes or serve the public interest.

*Id.* at p. 29.<sup>4</sup>

## II. Reply to Melone's Opposition

1. Thomas Melone's latest filing has reached new heights of outrageously appalling and reprehensible behavior that has simply never been experienced in the legal systems in the State of Vermont. Melone has the audacity in his opposition memorandum to claim Annette Smith is "stalking" him and to make the following disgraceful, defamatory and actionable statements to clearly and obviously imply that Annette Smith is responsible for "firing upon" a solar array and destroying seven modules with gunshots. Melone's specific language in his opposition memo is as follows:

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<sup>4</sup> The PUC will now enter a Penalty Phase of the Chelsea Solar/Apple Hill Solar Investigation case to fine Thomas Melone for his malfeasance and to deter future behavior, though likely Melone will continue "business as usual," which obviously includes trying to neutralize Annette Smith and VCE's diligent reporting of citizens' concerns of his flagrant violations of the rule of law and the standing valid Orders of the PUC.

5. The Motions included an Affidavit of Annette Smith (the "Smith Affidavit"). Until I read the Smith Affidavit, I had no idea of the depth of Smith's obsession with me personally. The Smith Affidavit goes so far as to include details of family homes and their locations.

**6. One of our solar projects in Vermont that Annette Smith has complained about has been fired upon with seven modules being destroyed by gunshots.**

7. The level of Ms. Smith's obsession and apparent stalking has now caused me to be concerned for the safety of my family members and has caused emotional distress.

These inexcusable, false and preposterous allegations are so outrageous that it compels Ms. Smith to request that this Honorable Court strike such material as scandalous, defamatory and completely without a shred of evidence to support Melone's lies. This is not how law is practiced in Vermont by a Vermont licensed attorney, or anywhere for that matter. Melone should be further sanctioned by this Court for his disgraceful behavior.

5. In response to Thomas Melone's most recent false and defamatory statements regarding Annette Smith "stalking" Melone or his family and firing guns at his solar array, such accusations are unequivocally denied. These contemptible accusations are merely the latest installment of Melone's well-documented pattern of making offensive and defamatory statements against Annette Smith and VCE for the purpose of eliminating her watchdog organization from reporting him for his numerous violations of law.

5. Attorney Melone's ridiculous claims of fear for his safety and of his family strain the bounds of credulity and ethics and is a further demonstration of Thomas Melone's trademark behavior of making utterly baseless claims that are totally devoid of any factual predicate that would support such a charge. It is just more of the same detestable, shameful behavior that Thomas Melone is famous for, inside and outside of Vermont. He has a bad actor reputation which provides Joey Kulkin with an absolute defense to Melone's claim of defamation: the truth.

6. And that is the ultimate irony of this case, the only party involved in this

7. The purpose of providing the Court with information about the homes that Mr. Melone owns, was to demonstrate the extreme hypocrisy that the defamatory statements made by Melone, including the horrifyingly despicable claim that Annette Smith is a murderer of people of color because of her opposition to his solar projects. The carbon footprint occupied by Thomas Melone, with his multiple massive “one-percenter” palatial estates, is the most extreme textbook example of the quintessential and ultimate hypocrisy born from the unfettered greed by Thomas Melone’s profit margin: \$1 million profit per year for every 5 acre solar project he manages to site in Vermont.<sup>5</sup>

8. In addition, it is Mr. Melone who involves his many “homes” in his solar array business. The massive house in Florida which address he stated on the record to the PUC, is not just his house, it is his business address for many of his business entities and is the registered address for Melone as registered agent for service of process.

9. The Martha Vineyard’s Property was involved in a highly publicized effort by Melone to stop the off-shore wind project that would spoil his view, which demonstrates that he is a “NIMBY” when it comes to his own backyard (or ocean-front view) despite his use of that term to attempt to demonize any abutting landowner whose opposes any of his solar projects.

10. Moreover, Melone’s claims that one email sent from Annette Smith to Joey Kulkin is some kind of “smoking gun” that proves a conspiracy, a perfectly ridiculous fabrication and false narrative of the words in the email. In fact, the email proves quite the opposite: proof that there was information shared, period. There was no evidence of any nefarious or actionable conduct or communication, because there was none. Factual

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<sup>5</sup> Which is the basis of his suit against Kulkin (\$1 million per year X 25 years). Similarly, his suit against Governor Scott and other government officials, including the individual members of the Public Utility Commission and its predecessor Public Service Board, was for \$75 Million involving three solar projects, each of the three projects making a \$1 million profit per year for 25 years.

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information was conveyed. Nothing more. There was no request, agreement, plan, or conspiracy to do anything. Nor was there any notice to Ms. Smith that Mr. Kulkin intended to do anything with the information. Nor is it her responsibility to control what private citizens do with the information she provides. And Thomas Melone's famous go-to tactic of repeating the same falsehoods over and over, does not make his false narrative true.

11. Consequently, the only correspondence between Kulkin and Annette Smith, does not, in any conceivable way, provide evidence of a conspiracy and Melone needs to be stopped in his disgraceful and offensive assault on Ms. Smith and VCE.

12. Furthermore, in response to the wholly unsupported accusation that Ms. Smith's affidavit falsely denies that she assisted Mr. Kulkin because she was an ally and co-conspirator of Kulkin, such accusation is completely devoid of evidentiary support as well and is, in fact, completely false. Mr. Melone apparently needs to be reminded of his Rule 11 obligation which prohibits a lawyer from making wholly unsupported accusations for which he has no reasonable information and belief. Ms. Smith's affidavit contains true and correct information to the best of Ms. Smith's knowledge and belief. Just because Melone calls her a co-conspirator to try to populate his "Jane Doe #1" placeholder, does make the facts that Melone falsely manufactures true.

13. And the ironies continue: Mr. Melone represents himself as a legal and ethics expert yet he appears to be unaware that the Federal Rules of Civil Procedure were amended in 2016 since he states in his opposition, "discoverable information sought need not be admissible at the trial **if the information sought appears reasonably calculated to lead to the discovery of admissible evidence,**" citing a case from the 1990's. As the Court is well aware, Mr. Melone is mistaken. The quoted language is no longer the standard under Rule 26(b)(1).

14. In addition, Melone makes the specious claim in his Opposition that:

"Kulkin provided his Initial Disclosures of Defendant Joey Kulkin in which he named Smith as an individual likely to have discoverable information in these proceedings (*see* Melone Affidavit, Exhibit B).

Here we have Melone twisting a *pro se* litigant’s words in responding to discovery, claiming that Kulkin “implicated” Annette Smith by stating that she may have knowledge of the case, which in no way implicates her as a co-conspirator. Mr. Kulkin answered the question truthfully and turned over the only email that he had. Of course Annette Smith has knowledge of information relevant to the claims and defenses of the parties, not to mention knowledge of many of the outrageous disreputable bad faith actions of Thomas Melone related to his scorched-earth abusive litigation and the many projects he is trying to develop in Vermont. This is obvious from the vast knowledge and information that Annette Smith possesses. She is a Vermont treasure and a Vermonter’s irreplaceable resource and her institutional memory will, unfortunately for Mr. Melone and his bad faith conduct, come back to haunt Melone, again and again and again to shine a bright light on his illegal, abusive and tortious conduct.

15. Melone’s falsehoods and scorched-earth litigation behavior is his normal *modus operandi*, and in this case, the pinnacle of unethical bullying of a *pro se* litigant, as if it is not bad enough that he has brought suit against Kulkin for \$25 million for a claim of a short time delay that the PUC has already explained is Thomas Melone’s own fault. The only obsession involved in this case is Thomas Melone’s greed, and anyone in his way is fair game for utter destruction if they do not get out of his way.

16. Next we turn to Melone’s false excuse for discovery claiming that:

“The intent of Plaintiffs’ discovery is to determine Kulkin’s and the other Defendants’ motivations for sending the November 22<sup>nd</sup> Email, to determine who assisted and/or prompted Kulkin to tortiously interfere with Plaintiffs’ business relationship with Isovolta, and the depth of the working relationship and conspiracy among the Defendants designed to harm Plaintiffs.”

To use the vernacular, you just can’t make this stuff up. Melone is a menace and he needs to be stopped from repeating the same lies over and over to create litigation to harm people who have done nothing wrong, other than to be bold enough to step in front of the Melone Tank in

Tiananmen Square. There are no “Defendants” who were involved in anything to do with Mr. Kulkin’s November 22<sup>nd</sup> email. If Mr. Melone wants to know “the depth of the working relationship and conspiracy among the Defendants,” then why doesn’t he ask Mr. Kulkin? Surely the answer is zero depth, because no working relationship or conspiracy exists. **One informational email does not a conspiracy make**, despite the tales that Melone chooses to spin.

17. Next we turn to Melone’s false claim that Mr. Kulkin has implicated Smith in this case as one of the individuals that “assisted him” as a co-conspirator. The discovery question that was posed was as follows: “The identification of all other involved in the preparation of the “November 22<sup>nd</sup> Email” and/or involved in providing any information contained therein.” This is quintessential Thomas Melone falsely misrepresenting information to the Court. Melone’s compound and imprecise question was: who “assisted in the **preparation. . . and/or involved in providing any information contained therein.**” (emphasis supplied). Melone manipulates Mr. Kulkin’s answer and claims, falsely, that Kulkin’s answer means that Annette Smith assisted as a co-conspirator, instead of merely providing information, which the only email between Smith and Kulkin clearly bears out.

18. Next we turn to Melone’s bogus claim that it is Smith who must demonstrate “undue burden” in order to quash a subpoena to a non-party. This absurd argument ignores the threshold issue of why Melone would be entitled to delve into the private email of non-party citizens of Vermont, or of a non-profit charitable organization at all. Melone has failed to make any showing whatsoever that he is entitled to any private correspondence of Annette Smith or VCE. The email correspondence between Kulkin and Smith was not unavailable from Mr. Kulkin, he actually produced the document! Thus, Melone is using this case as a ruse and Joey Kulkin as a pawn to claim that he is entitled to violate Annette Smith and VCE’s privacy rights and Trade Secret statutory protections under Vermont law. The conduct is nothing short of unethical.

19. Next Melone argues that Smith has not provided a single reason as to why the document request is an “undue burden” on her. It is an undue burden because Thomas Melone is simply not entitled to assault Ms. Smith’s private email or that of her organization, period. Melone has nothing but oppressive lies to support his request. Such abuse should not be enabled by this Court.

20. Turning to Melone’s excuse as to why he has to obtain documents from Ms. Smith, Melone states as follows, which notably relates to this Request #1 only:

“With respect to Plaintiffs’ request no.1 concerning all communications with Kulkin, Plaintiffs have attempted to obtain these documents from Kulkin prior to seeking the documents from Smith (*see* 1(h) in the Kulkin Responses). Rather than provide all communications with the persons Kulkin communicated with regarding Plaintiffs’ solar projects in Rutland, Kulkin provided only three (3) such documents. At a meet and confer conference on March 8, 2021, regarding Kulkin’s lack of discovery responses, Kulkin stated that he was not going to produce other communications because he did not want those people to be subpoenaed.”

Melone’s explanation, that Mr. Kulkin produced only three emails but stated that he was not going to produce other communications because he didn’t want those people subpoenaed, obviously refers to individuals other than Ms. Smith, since her email correspondence was produced. This does not establish any need whatsoever to subpoena Ms. Smith, a non-party. Attorney Melone has failed to follow the appropriate mechanism to compel discovery from the Defendant that he believes he is entitled to. Melone can seek the Court’s assistance if he believes he is entitled to an Order to Compel discovery.<sup>6</sup>

21. Moreover, it is Melone’s complete silence and utter failure to even address or mention Request #2, which speaks volumes and confirms the vague, overly broad and downright ridiculous request for all emails every sent relating to any of the Melone’s projects.

22. Lastly, Melone’s use of frivolous conspiracy theories which are completely

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<sup>6</sup> That would at least give the Court the opportunity to review emails in camera, to protect innocent people who might have corresponded with Kulkin and yet have no role in Melone’s fantastical defamation fairytale and who should not be allowed to be abused by the Melone scorched-earth bad faith litigation machine.

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devoid of evidentiary support appears to be his favorite theme and go-to lawsuit. *See Allco Renewable Energy Limited et al v. Volz et al*, 5:20-cv-00034-gwc, Order of Dismissal dated March 26, 2021.<sup>7</sup>

**DATED** at Town of Randolph, County of Orange, State of Vermont this 9<sup>th</sup> day of April, 2021.

**Vermonters for a Clean Environment &  
Annette Smith**

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<sup>7</sup> “These allegations are devoid of factual content that would allow “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Consequently, the VTCA claim must be dismissed.” Dismissal Order at p.4.

“The court also dismisses Plaintiffs' claims against Governor Scott, because the Complaint alleges no basis on which to hold Governor Scott liable under an *Ex Parle Young* theory or under § 1983.” *Id.* at p. 22.

These quotations are specifically about the Otter Creek Solar cases in Rutland Town:

“The Complaint does not plausibly allege how a letter “purporting to terminate” certain standard offer PPAs upset Plaintiffs' settled investment-backed expectations and caused them millions of dollars in financial loss. Because Plaintiffs have not plausibly alleged each of the elements of a § 1983 conspiracy claim against VEPP, the court grants VEPP's motion to dismiss the federal claims.” Order at 26.

“Although Plaintiffs claim that this action “caused a serious financial loss”. . . , the Complaint alleges no facts regarding the contractual terms giving rise to VEPP's liability. Plaintiffs' allegations regarding the consequences of the purported termination are likewise “no more than ‘mere conclusory statements,’ and do not present sufficient factual matter to state a plausible claim for relief.” *Landmark Ventures, Inc. v. Wave Sys. Corp.*, 513 F. App'x 109, 111 (2d Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678). Consequently, the court dismisses Counts XIII and XIV.

But, as described above, the Complaint has not plausibly alleged that VEPP and the VPUC entered into a conspiracy together or that the injuries of which Plaintiffs complain were caused by the alleged conspiracy. Furthermore, the Complaint lacks nonconclusory allegations regarding the effects of the VPUC's June 2019 order on VEPP and on the parties' contractual obligations. Because the Complaint does not state a plausible claim for relief against VEPP related to the VPUC's June 2019 order, the court dismisses Counts XV and XVI.” Order at 29.

The Complaint's allegations on this point are too conclusory and speculative to enable the court to draw any reasonable inferences about the misconduct alleged or VEPP's liability for that misconduct. *See Iqbal*, 556 U.S. at 678. Consequently, Count XVII must be dismissed. Order at 29-30.