

Clerk's Notice of Decision  
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STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

CASE NO. 217-2020-CV-00026

Granted



Honorable Andrew R. Schulman

May 19, 2023

DAVID MEEHAN, ET AL

v.

STATE OF NEW HAMPSHIRE,  
DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.

217-2022-CV-00794  
218-2023-CV-00019  
218-2023-CV-00058  
217-2022-CV-00714  
217-2022-CV-00721  
217-2022-CV-00744  
217-2022-CV-00795  
217-2022-CV-00833  
217-2022-CV-00994

218-2022-CV-01085  
218-2022-CV-01125  
218-2022-CV-01145  
218-2022-CV-01147  
218-2022-CV-01155  
218-2023-CV-00013  
217-2021-CV-00607  
218-2023-CV-00035  
218-2023-CV-00075

218-2023-CV-00065  
218-2023-CV-00074  
217-2022-CV-00701  
218-2023-CV-00132  
218-2023-CV-00130  
218-2023-CV-00262  
218-2023-CV-00261

**PLAINTIFFS' MOTION TO CLARIFY AND/OR EXTEND OBJECTION DEADLINE**

Plaintiffs<sup>1</sup> by and through undersigned counsel, respectfully move for a Court order extending and/or clarifying the deadline for Plaintiffs to file individualized memoranda of law, supporting declarations, and other materials in support of their omnibus objection to the omnibus motion to dismiss filed by NFI North, Inc. (“NFI”) (the “Omnibus Motion”), from April 29, 2023, to May 29, 2023, stating in support thereof as follows:

1. The supplemental claims directed by these Plaintiffs against NFI have been consolidated with the Plaintiffs’ claims against the State Defendants. (*See* Order, Jul. 6, 2022, Index #67 (the “Consolidation Order”); Order, Feb. 10, 2023, Index #241 (the “Procedural

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<sup>1</sup> A full list of the plaintiffs to which this motion relates is set forth in **Exhibit A**.

Order”).) These Plaintiffs, along with hundreds of others, have asserted interwoven claims related to the abuse they suffered as children at both State-run juvenile detention facilities, as well as facilities operated by private entities under State contract, such as NFI.

2. Relying upon the Court’s Procedural Order, NFI filed a single, Omnibus Motion seeking to dismiss the claims asserted by these Plaintiffs and others. The Omnibus Motion asserts as myriad of arguments related to the timeliness of each Plaintiff’s claims, and asserts that each Plaintiff has failed to state any claims against NFI upon which relief may be granted.

3. Plaintiffs will object to NFI’s Omnibus Motion on several grounds for reasons set forth in an omnibus objection (the “Omnibus Objection”). Among the reasons for such objection, each Plaintiff will rely on the discovery rule and other equitable tolling doctrines. Each Plaintiff will further argue that his or her Complaints are sufficiently plead against NFI, and that, despite having been a child at the time he or she was abused, and without knowledge of or access to NFI’s records at any time to this point, their pleadings satisfy New Hampshire’s notice-pleading standard.

4. The exact contours of each Plaintiff’s objection will depend on differing facts and argument. For example, NFI raises timeliness arguments in its Omnibus Motion which can only be resolved with consideration of each Plaintiff’s age, the date of his or her abuse, the nature of the abuse he or she experience, and his or her personal circumstance. In addition, for some, but not all, of the Plaintiffs, NFI raises arguments pertaining to the application of RSA 508:4-g—New Hampshire’s statute of limitations for civil claims based on sexual assault and related offenses.

5. The Court has anticipated procedural concerns relating these arguments in prior orders. According to the Court’s Procedural Order, dated February 10, 2023, a Plaintiff’s invocation of the discovery rule (and its related doctrines) will automatically convert that portion of NFI’s Omnibus Motion into one for summary judgment. Upon such invocation, that Plaintiff

then has “thirty days to file an objection supported by such affidavit(s) and exhibits as may be necessary,” and NFI has thirty days after that to respond. (Procedural Order at 10.)

6. Plaintiffs and NFI had, prior to the date of the Court’s Procedural Order, agreed upon a briefing schedule related to NFI’s Omnibus Motion with respect to twenty-one of the Plaintiffs, and submitted such schedule to the Court for approval. On February 2, 2023, the Court approved the proposed schedule, which set the deadline for some—but not all—of the Plaintiffs to respond to NFI’s Omnibus Motion to April 29, 2023. Later, undersigned counsel realized NFI’s motion to dismiss related to 25 Plaintiffs, four of which were later served and thus not referenced in the parties’ February agreement regarding responsive pleading deadlines. Thereafter, those four Plaintiffs moved this court to extend their responsive pleading deadlines consistent with the other twenty-one Plaintiffs. The Court granted this relief on April 17, 2023.

7. On February 10, 2023, however, the Court issued the Procedural Order, providing a wrinkle for these Plaintiffs given that they have invoked the discovery rule in connection with an Omnibus Objection.

8. Plaintiffs interpret the interplay of these orders to mean that it must file their Omnibus Objection by April 29, 2023 in the above-captioned matter. Each Plaintiff will invoke the discovery rule in that Omnibus Objection. Thereafter, within thirty days of that filing—or May 29, 2023—each Plaintiff must then file individualized memoranda of law, supported by affidavits, other sworn statements, and other materials, to oppose NFI’s Omnibus Motion as it pertains to them. Plaintiffs submit that they must submit these memoranda and related materials in their respective cases—not the above-captioned matter—given the individualized nature of their allegations and invocation of the discovery rule.

9. Plaintiffs' counsel has consulted with NFI's counsel relating to their interpretation of these Court orders and the relief requested herein. As of the date of this filing no response has yet been received from NFI.

WHEREFORE, Plaintiffs respectfully request the Honorable Court:

- A. CLARIFY that the deadline for Plaintiffs to file their Omnibus Objection in the above-captioned matter is on or before April 29, 2023;
- B. CLARIFY that Plaintiffs may file memoranda of law, supported by affidavits, sworn statements, and other materials, in each of their individual cases in support of the Omnibus Objection on or before May 29, 2023; and
- C. GRANT any such further relief as is just and equitable.

Respectfully submitted,

**DAVID MEEHAN**

Dated: April 28, 2023

By and through counsel,

**RILEE & ASSOCIATES, P.L.L.C.**

**NIXON PEABODY LLP**

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/s/ David A. Vicinanza

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**CERTIFICATE OF SERVICE**

I certify that on April 28, 2023, I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case.

*/s/ Allison K. Regan* \_\_\_\_\_

# **EXHIBIT A**

<b>Plaintiff</b>	<b>Civil Action No.</b>
Jane Doe #52	217-2022-CV-00794
Jane Doe #74	218-2023-CV-00019
Jane Doe #78	218-2023-CV-00058
John Doe #415	217-2022-CV-00714
John Doe #416	217-2022-CV-00721
John Doe #448	217-2022-CV-00744
John Doe #471	217-2022-CV-00795
John Doe #535	217-2022-CV-00833
John Doe #549	217-2022-CV-00994
John Doe #557	218-2022-CV-01085
John Doe #574	218-2022-CV-01125
John Doe #582	218-2022-CV-01145
John Doe #586	218-2022-CV-01147
John Doe #588	218-2022-CV-01155
John Doe #593	218-2023-CV-00013
John Doe #607	217-2021-CV-00607
John Doe #611	218-2023-CV-00035
John Doe #619	218-2023-CV-00075
John Doe #627	218-2023-CV-00065
John Doe #633	218-2023-CV-00074
John Doe #404	217-2022-CV-00701
John Doe #640	218-2023-CV-00132
John Doe #644	218-2023-CV-00130
John Doe #654	218-2023-CV-00262
John Doe #660	218-2023-CV-00261