STATE OF NEW HAMPSHIRE

ROCKINGHAM, *ss.* SUPERIOR COURT

CASE NO. 217-2020-CV-00026

DAVID MEEHAN

v.

STATE OF NEW HAMPSHIRE, et al.

*****THIS FILING PERTAINS TO PLAINTIFF MEEHAN'S INDIVIDUAL CASE*****
*****THIS FILING DOES NOT PERTAIN TO CONTRACTOR DEFENDANTS*****

REPLY IN SUPPORT OF PLAINTIFF
DAVID MEEHAN'S MOTION FOR RECONSIDERATION

Citing to procedural irregularities, DHHS objects to David Meehan's motion for reconsideration. DHHS's technical objections elevate form over substance and should be disregarded by this Court for the following reasons:

1. DHHS argues that Mr. Meehan's motion is "procedurally improper because it seeks relief that has never been requested in any prior motion." Obj. to Mot. for Recons. at 1. DHHS attempts to recast Mr. Meehan's motion for reconsideration as an untimely motion to set aside the verdict. DHHS's arguments mischaracterize the post-trial procedural history and ignore the fact that these proceedings are presided over by a Court with the inherent power and authority (and, indeed, the obligation) to see that justice is done. *See generally In re Stapleton*, 159 N.H. 694, 696–97 (2010) ("[T]here can be no question of the inherent power of the Court to review its own proceedings to correct error or prevent injustice.") (quoting *Merrimack Valley Wood Prods. v. Near*, 152 N.H. 192, 203 (2005)). These post-trial proceedings are not a board game where DHHS can "win" merely because Mr. Meehan allegedly missed his turn.

2. More to the point, Mr. Meehan's motion is *not* procedurally improper and is *not* months late. Contrary to DHHS's argument, Mr. Meehan timely file a motion for partial judgment notwithstanding the verdict, or, in the alterative, *to set aside verdict as to number of "incidents."* *See* Pl's. Mot., 5/13/2024 (Index #769). Following the Court's preliminary May 22, 2024, Order, the parties filed supplemental memoranda regarding the various post-trial issues. In his supplemental memorandum, Mr. Meehan reiterated his alternative request to set aside the verdict regarding the number of incidents found by the jury. *See* Pl's. Suppl. Mem., 8/21/2024 (Index #846).

3. To be sure, Mr. Meehan did not ask for a for full retrial de novo, which the Court had preliminarily announced to be the next "least incorrect" solution absent DHHS's agreement to additur. *See* 5/22/2024 Order at 4, 40-43. Rather, Mr. Meehan asked the Court to set aside part of the verdict and order a retrial only as to that part—the part concerning the number of "incidents." While the Court declined to fashion the bespoke form of relief Mr. Meehan requested, it is beyond dispute that Mr. Meehan timely moved to set aside the verdict.

4. More significantly, while Mr. Meehan originally abjured from asking for a full retrial, he reminded the Court that it retained authority to grant Mr. Meehan's motion and then refashion the terms of the relief to its own preferences. *See* Pl's. Suppl. Mem. at 9-10 (citing RSA 526:110 (allowing trial court to grant a new trial "in any case when through accident, mistake or misfortune justice has not been done and a further hearing would be equitable") (emphasis added); RSA 526:3 (empowering the trial court to grant a new trial "upon such terms as the court may deem just"); Gordon J. MacDonald, Wiebusch on N.H. Civil Prac. and Proc. § 53.05 (4th Ed. Matthew Bender & Co. 2024) ("The trial court may … grant postverdict or postdecision relief on its own motion.") (citing *Massaro v. Carter*, 122 N.H. 804 (1982), and *Whiting v. Sussman*, 78

N.H. 486 (1917)); id. § 53.11 ("If the court denies a postverdict or postdecision motion, it may either grant alternative relief or confirm the prior verdict.")).

5. Mr. Meehan's motion for judgment notwithstanding the verdict, or, in the alterative, to set aside verdict as to number of "incidents," also expressly requested that the Court "grant such other and further relief as the Court deems just and equitable." Pl's. Mot., 5/13/2024, at 10 (Index #769). In other words, Mr. Meehan timely asked the Court to refashion the remedy to the extent that the Court agreed to set aside the verdict but disagreed with Mr. Meehan's proposed remedy.

6. Indeed, the Court continues to retain, even now, the discretion to fashion a remedy that it believes best serves the ends of justice. *See* MacDonald, *supra*, § 53.13 ("The trial court may reconsider its decision on a postverdict or postdecision motion on its own motion at any time before judgment and reverse itself in whole or in part.") (citing *N.E. Redlon Co. v. Franklin Square Corp.*, 91 N.H. 502 (1941)).

7. This Court is rightly focused on identifying the best available remedy in the highly unusual and extraordinary circumstances of this case. In such circumstances, the Court is empowered to employ appropriate procedural devices, such as inviting Mr. Meehan to file a motion for reconsideration asking for a full retrial, rather than a limited retrial, as it has done here. Given the Court's own decision to exercise its discretionary power and authority, it is not important that Mr. Meehan did not ask for that precise form of relief earlier. *See Riso v. Riso*, 172 N.H. 173, 181 n.3 (2019) ("[T]rial courts have discretion whether to consider arguments raised for the first time in a motion to reconsider.") (citing *Smith v. Shepard*, 144 N.H. 262, 265 (1999)).

8. The case cited by DHHS, *Mt. Valley Mall Assocs. v. Conway*, 144 N.H. 642 (2000), is inapposite. In that case, the Supreme Court ruled that the superior court had not abused its discretion when it refused to consider a new argument the plaintiff raised for the first time in a

motion for reconsideration. *See id*. at 654-55. The Supreme Court did *not*, however, rule that the superior court was *required* to refuse to consider new arguments raised for the first time in a motion for reconsideration—and, indeed, that is not the law. *See Riso*, 172 N.H. at 181 n.3.

9. Here, this Court has chosen to exercise its discretion in the opposite direction, inviting Mr. Meehan to reform his specific request for relief. And unlike the plaintiff in *Mt. Valley Mall*, Mr. Meehan is not sandbagging DHHS and the Court with a new issue out of the blue. The respective merits and shortcomings of a full retrial versus a targeted retrial have been debated by the parties and the Court since the Court's May 22, 2024, Order. As the Court has now solidified its view that a full retrial is the best available course of action under the circumstances (or, perhaps, the "least incorrect"), it has reasonably exercised its discretion to invite Mr. Meehan's motion for reconsideration. Mr. Meehan dutifully followed that direction, while simultaneously asking the Court to approve an interlocutory appeal to resolve certain legal issues that may obviate the need for a full retrial.

10. In short, DHHS raises no valid basis for the Court to question its authority and discretion to chart the course that it has. To its credit, the Court has been in search of a "legally correct" result that is also just and equitable, and it has appropriately exercised its inherent powers in furtherance of that objective. If this Court, or the Supreme Court, declines to approve Mr. Meehan's request for an interlocutory appeal, the Court can and should follow-through with its favored resolution by granting Mr. Meehan's motion for reconsideration and ordering a full retrial.

11. One thing is clear. Under no circumstances should the Court grant the relief that DHHS callously continues to request—judgment in the amount of $475,000. This Court has correctly concluded that such a judgment would, under these circumstances, amount to a "gross

and unconscionable miscarriage of justice." 5/22/2024 Order at 40. If nothing else, this Court should not allow itself to be a party to facilitating such a miscarriage of justice.

WHEREFORE, for all the foregoing reasons, and those set forth in Mr. Meehan's original motion, Mr. Meehan respectfully requests that the Court grant his motion for reconsideration and order full retrial de novo, subject to Mr. Meehan's contemporaneously filed motion for interlocutory appeal and motion to stay pending that appeal.

Dated: December 5, 2024

Respectfully submitted,

DAVID MEEHAN

By and through counsel,

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CERTIFICATE OF SERVICE

I certify that, on December 5, 2024, 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 (e-mail addresses) in this case.

/s/ W. Daniel Deane
W. Daniel Deane, Esq.