

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

CASE NO. 217-2020-CV-00026

DAVID MEEHAN, ET AL

v.

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

217-2022-CV-00794	218-2022-CV-01085	218-2023-CV-00065
218-2023-CV-00019	218-2022-CV-01125	218-2023-CV-00074
218-2023-CV-00058	218-2022-CV-01145	217-2022-CV-00701
217-2022-CV-00714	218-2022-CV-01147	218-2023-CV-00132
217-2022-CV-00721	218-2022-CV-01155	218-2023-CV-00130
217-2022-CV-00744	218-2023-CV-00013	218-2023-CV-00262
217-2022-CV-00795	217-2021-CV-00607	218-2023-CV-00261
217-2022-CV-00833	218-2023-CV-00035	
217-2022-CV-00994	218-2023-CV-00075	

**PLAINTIFFS' OMNIBUS OBJECTION TO NFI NORTH, INC.'S OMNIBUS
MOTION TO DISMISS**

Plaintiffs¹, by and through undersigned counsel, object to the omnibus motion to dismiss filed by Contractor Defendant NFI North, Inc.'s ("NFI") on March 20, 2023 (the "Omnibus Motion"), stating in support thereof as follows:

1. NFI has filed a single, Omnibus Motion in the above-captioned matter seeking to dismiss the claims asserted by these 25 Plaintiffs. The Omnibus Motion asserts a myriad of arguments—some of which are common to all Plaintiffs, some of which are not. In general,

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

however, NFI seeks dismissal because, it asserts, (1) each Plaintiff's claims are untimely and (2) each Plaintiff fails to state any claims against NFI upon which relief may be granted.

2. In prior orders, the Court has anticipated that each Plaintiff will file individualized memoranda of law, supported by affidavits, other sworn statements, and other materials, in their individual cases in support of the Omnibus Objection. (*See* Order, Feb. 10, 2023, Index #241 (the "Procedural Order").) Of note, the Court determined that, if any Plaintiff invokes the discovery rule (or its related doctrines), the pending motion to dismiss will convert to one for summary judgment on that issue. (*Id.*) Moreover, upon invocation of the discovery rule (or its related doctrines), the Court has given each Plaintiff thirty (30) days from the date of such invocation "to file an objection supported by such affidavit(s) and exhibits as may be necessary." (*Id.* at 10).

3. On April 28, 2023, Plaintiffs filed a motion to clarify and/or extend their objection deadline. In that motion, Plaintiffs gave preliminary notice of their intent to invoke the discovery rule (and other related doctrines) in opposition to NFI's Omnibus Motion, and sought clarification from the Court as to the process and deadlines for filing of this Omnibus Objection and related, individualized memoranda of law.

4. Plaintiffs oppose NFI's Omnibus Motion *in toto*. With respect to NFI's timeliness arguments, each Plaintiff asserts that, even if his or her claims were untimely under a strict reading of the applicable statute of limitations (i.e. RSA 508:4, I, 508:4-g, or 505:8), they were tolled by at least three equitable doctrines, the discovery rule, equitable tolling (estoppel), and fraudulent concealment. With respect to NFI's remaining arguments, each Plaintiff has more than sufficiently stated claims for breach of fiduciary duty and negligence (Counts VIII and XII), aiding and abetting breach of fiduciary duty (Count X), civil conspiracy (Count XIV), and negligent hiring, training, supervision, and retention (Count XI).

5. Per the Court's Procedural Order, subject to the Plaintiffs' pending motion to extend and clarify, each Plaintiff intends to file individualized memoranda of law, declarations, expert disclosures and reports, and other materials in further support of their opposition within thirty (30) days of this Omnibus Objection. Given the nature of each Plaintiff's arguments, each Plaintiff intends to file these materials in their individual cases, as are identified in **Exhibit A** hereto, on or before May 29, 2023.

WHEREFORE, Plaintiffs respectfully request the Honorable Court

- A. Upon consideration of the individualized memoranda of law, declarations, expert disclosures and reports, and other materials to be filed by each Plaintiff, DENY NFI's Omnibus Motion as to each Plaintiff;
- B. DENY NFI's request for an award of its reasonable costs and attorney's fees; and
- C. GRANT any such further relief as is just and equitable.

Respectfully submitted,

DAVID MEEHAN

Dated: May 1, 2023

By and through counsel,

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

NIXON PEABODY LLP

/s/ Cyrus F. Rilee, III

Cyrus F. Rilee, III, Esq. (Bar No. 15881)

Laurie B. Rilee, Esq. (Bar No. 15373)

264 South River Road

Bedford, NH 03110

T: 603.232.8234

crilee@rileelaw.com

lrilee@rileelaw.com

/s/ David A. Vicinanza

David A. Vicinanza, Esq. (Bar No. 9403)

W. Daniel Deane, Esq. (Bar No. 18700)

Mark Tyler Knights, Esq. (Bar No. 264904)

Nathan Warecki, Esq. (Bar No. 20503)

Erin S. Bucksbaum, Esq. (Bar No. 270151)

Allison K. Regan, Esq. (Bar No. 272296)

900 Elm Street, 14th Floor

Manchester, NH 03101

T: 603-628-4000

dvicinanza@nixonpeabody.com

ddeane@nixonpeabody.com

mknights@nixonpeabody.com

nwarecki@nixonpeabody.com

ebucksbaum@nixonpeabody.com
aregan@nixonpeabody.com

CERTIFICATE OF SERVICE

I certify that on May 1, 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

Plaintiff	Civil Action No.
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