

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' REPLY MEMORANDUM IN FURTHER SUPPORT OF THEIR
MOTION TO CLARIFY AND/OR EXTEND OBJECTION DEADLINE**

As noticed pursuant to N.H. Super. Ct. Civ. R. 13A, Plaintiffs¹, by and through their counsel, Rilee & Associates, PLLC and Nixon Peabody LLP, hereby *reply* in further support of their motion to clarify and/or extend the objection deadline related to Defendant NFI North, Inc.'s ("NFI") Omnibus Motion to Dismiss, stating in support thereof as follows:

Argument

At this point, Plaintiffs have already timely filed an Omnibus Objection (the "Omnibus Objection") (Index #314) to NFI's Omnibus Motion to Dismiss (the "Omnibus Motion") (Index

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

#267). In doing so, Plaintiffs invoked the discovery rule with respect to NFI's statute of limitations arguments, and Plaintiffs are now in the process of preparing their individualized memoranda of law, supporting declarations, and other materials for submission in their individual cases. NFI, having moved *en masse* in this consolidated case to dismiss the individual claims of 25 different plaintiffs with 25 different sets of claims, objects to Plaintiffs' reasoned efforts to comply with the Court's prior orders and deadlines without *any* allegation of prejudice. Accordingly, NFI's objection is without merit, and the Court should clarify the objection deadlines as requested by Plaintiffs.

The Court has already set forth procedures for adjudication of NFI's previously-filed Omnibus Motion. Indeed, the Court's February 10, 2023 Procedural Order Related to Claims Against Non-State Defendants (Index #241) (the "Procedural Order")—which the Court entered after the briefing deadlines for NFI's Omnibus Motion were set—transformed the expectations of the Parties, by converting NFI's existing Omnibus Motion into one for summary judgment and transferring onto Plaintiffs an evidentiary burden without disclosure, discovery, or any evidence from NFI. Plaintiffs must each file voluminous materials in their individual cases in response to NFI's single Omnibus Motion. NFI, who has advantage over Plaintiffs in terms of information, documents, records, and other materials related to its operation of facilities where Plaintiffs were abused as children, now exploits its advantage to stomp out the Plaintiffs' claims prematurely.

The Court recognized the burdens facing Plaintiffs in this new procedural posture directly in the Procedural Order, and built into the process a mechanism relied upon by Plaintiffs in their timely filed Omnibus Objection. As the Court ordered, Plaintiffs invocation of the discovery rule automatically converted NFI's Omnibus Objection into one for summary judgment, and the following deadlines:

Within the time for objection (or supplemental objection) plaintiff must then file a brief statement indicating that he or she intends to rely on the discovery rule (or some other doctrine). Plaintiff will then have thirty days to file an objection supported by such affidavit(s) and exhibits as may be necessary. Defendant will have 30 days to respond.

(Procedural Order, 10.) The Procedural Order further anticipated the Court’s approval of “any reasonable agreement between specific plaintiffs and specific contractor defendants regarding the dates and deadlines for motions to dismiss and other dispositive motions.” (*Id.*). On that basis, undersigned counsel has successfully negotiated extensions to various dispositive motion deadlines on behalf of plaintiffs with many of the dozens of contractor defendants.

NFI bucks that trend by objection to Plaintiffs’ motion to clarify and/or extend the objection deadline but, tellingly, claims *no* prejudice which would result from the Plaintiffs’ motion. *See generally Perfetto v. Englander*, No. 2018-0442, 2019 WL 2743486, at *2 (N.H. June 20, 2019) (citing *Buzzard v. F.F. Enterprises*, 161 N.H. 28, 29 (2010) (reviewing a trial court’s order on a plaintiff’s motion for additional time to respond to a motion to dismiss under the unsustainable exercise of discretion standard). At most, NFI complains that Plaintiffs should have responded piecemeal to NFI’s Omnibus Motion in two separate tranches. But that argument holds no sway. For reasons unclear to Plaintiffs, NFI appears to ask the Court to clarify its prior orders, such that Plaintiffs should have known to file 25 individualized objections to NFI’s arguments to dismiss for failure to state a claim, then followed that a separate set 25 individualized objections to NFI’s arguments for summary judgment on account of the statute of limitations. Plaintiffs are at a loss to understand how this process—which would double the number of papers to be filed by Plaintiffs—would be less burdensome to NFI, and cannot contemplate how such fragmented filings would further judicial economy. NFI’s argument trades reason for a procedural advantage.

And finally, NFI makes no effort to explain how its suggested piecemeal approach squares with the Court's Procedural Order. The Procedural Order converted NFI's Omnibus Motion into one for summary judgment by operation of law and imparted upon the parties' certain deadlines and expectations of reasonableness in negotiating those deadlines. Plaintiffs follow the Court's lead. If there is any prejudice to be had from the Court's adjudication of the Plaintiffs' motion, that prejudice will run to Plaintiffs if the motion is denied.

Conclusion

For these reasons, and the others set forth in their motion to clarify and/or extend the objection deadline, Plaintiffs request that the Court clarify and/or extend the deadlines for Plaintiffs to file their memoranda of law, supporting declarations, and other materials in their individual cases on or before May 29, 2023.

Respectfully submitted,

DAVID MEEHAN

By and through counsel,

NIXON PEABODY LLP

Dated: May 16, 2023

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CERTIFICATE OF SERVICE

I certify that on May 16, 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