STATE OF NEW HAMPSHIRE

ROCKINGHAM, *ss.* SUPERIOR COURT

CASE NO. 217-2020-CV-00026
and all consolidated YDC and YDSU CASES
DAVID MEEHAN

v.

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

(IN RE YDC AND YDSU LITIGATION)
(JUDGE SCHULMAN ASSIGNED CASES)

This Reply Applies to More than Five Plaintiffs
This Reply Does Not Apply to Contractor Defendants

REPLY TO STATE'S OBJECTION TO PLAINTIFFS' PROPOSED SECOND AMENDMENT TO CASE STRUCTURING ORDER OF AUGUST 15, 2024

The State's Objection to Plaintiff's Proposed Second Amendment to the Case Structuring Order of August 15, 2024 ("Objection") is part and parcel of its separate but related Motion to Stay all Trials Pending Resolution of Supreme Court Appeals ("Motion to Stay"). Both the Objection and the Motion to Stay seek the same ends—the indefinite delay of trials on the merits of the YDC/YDSU plaintiffs' claims. Plaintiffs' Reply to the Motion to Stay, filed earlier today, already addresses the heart and the substance of the State's delay tactics. This Reply focuses on responding, point-by-point, to several incorrect and misleading assertions in the State's Objection:

Reply to the State's Legal Objections to Plaintiffs' Trial Proposal

1. Although the State presents its legal arguments last, Plaintiffs address those arguments first before proceeding to the State's specific factual and procedural objections.

2. The State objects that both the "court's new proposal," State's Obj. at ¶ 16, and Plaintiffs' new proposal have the effect of "eviscerating most of the existing procedures and

applicable superior court rules," *id*., violating "notions of a fair and just trial process, where the same rules apply that apply to all litigants apply to the parties in these cases," *id*. at ¶ 17, and doubling the amount of "substantial resources already being dedicated to these cases" (with regard to the court's proposed procedure), or "potentially quadrupling those resources" (with regard to Plaintiffs' proposed procedure), *id*. at ¶ 18. The State's objections on these points are mysteriously vague, broad, untimely, and entirely unsubstantiated.

3. First, it is unclear what the State is referring to in its objection to the "court's new proposal." To the extent the State is now objecting to the schedule and procedures set forth in the Court's Case Structuring Order of August 2024 ("August 2024 CSO"), that objection is untimely. As notice of that order was delivered on August 16, 2024, the parties had until August 26, 2024, to file a motion to reconsider. *See* N.H. Sup. Ct. R. 12(e). To the extent the State wishes to present their own alternative to the Court's procedure and schedule, they should file their own motion to amend or modify the August 2024 CSO, as Plaintiffs have done.

4. As it stands, the only alternative trial scheduling plan proposed by the State is to try Mr. Gilpatrick's case "if it does not resolve," and then try John Doe #1's case in August or September "if need be." State Obj. at ¶ 22. Proposing a maximum of two trials (if they don't settle) over the next two years reveals that the State is not taking the task at hand seriously. Consistent with the State's just-filed Motion to Stay, it is abundantly clear that the State does not want any case to proceed to trial. Rather, the State would prefer to bury Plaintiffs and their lawyers in never-ending discovery obligations, leading to countless discovery disputes, and extended motions practice both on discovery issues and statute of limitations. The goal, of course, is to entangle the parties and the Court in a procedural morass and avoid for as long as possible reaching the merits

in any cases. This is not surprising given the landmark $38 million verdict in David Meehan's case, the first YDC/YDSU case that presented the merits to a jury.

5. In any event, for the reasons already stated in Plaintiffs' earlier-filed objection to the State's Motion to Stay, the Court had ample authority and "broad discretion" to impose its August 2024 CSO, and the order itself provides a thoughtful, reasonable, and fair procedure for moving these consolidated cases forward for trials on their merits. *See* Plaintiffs' Obj. to Mot. to Stay at 4 & n.2. Besides the State's vague *ipse dixit* arguments, the State fails to specify how the Court's August 2024 CSO violates court rules and notions of fair process. The Court should disregard those baseless arguments.

6. The Court should likewise disregard the State's threat to seek to seek relief in the New Hampshire Supreme Court. State's Obj. at ¶ 22. As stated in Plaintiffs' Motion, Plaintiffs agree that this Court should expedite an interlocutory appeal of this Court's decision to allow consolidated, multi-plaintiff trials. The Supreme Court has already signaled an interest in ruling on that issue, previously granting the State's certiorari petition under Rule 11 of the Rules of the Supreme Court of New Hampshire. That issue, however, does not encompass the State's broader objection to simultaneously *preparing* multiple cases for *individual* trials. The State's objection to consolidated trials primarily implicates concerns of trial fairness, whereas the State's objection to simultaneously preparing multiple cases is premised merely on the State's unsubstantiated assertion that such a process imposes an undue burden on the State.

7. The latter argument—alleged undue burden and costs—has already been decisively and correctly rejected by this Court. *See* August 2024 Order at 1 ("[T]he State certainly has the means to litigate tort claims against its constituent agencies."). As argued in Plaintiffs' objection to the State's Motion to Stay, *see* Plaintiffs' Obj. to Mot. to Stay, at 3-4, Plaintiffs' constitutional

right to a "prompt" judicial remedy outweighs the State's vague and unsubstantiated concerns regarding the costs and burdens of litigation that are likely unavoidable in any event.[1]

8. Moreover, because trial management questions—such as the processing and sequencing of cases for trial—are entrusted to the sound discretion of the trial judge, the Supreme Court will only interrupt lower court proceedings to correct an "unsustainable exercise of discretion." Gordon J. MacDonald, *Wiebusch on New Hampshire Civil Practice and Procedure* § 45.01 (4th Ed. Matthew Bender & Co.) (2024) (stating that the "conduct and control of the trial is committed to the discretion of the judge" and that the trial judge's "rulings and orders relating to the conduct of the case will not be overturned except for error of law or the unsustainable exercise of discretion"); *Blevens v. Town of Bow*, 146 N.H. 67, 72 (2001) ("The manner and timing of the trial of all or part of the issues in an action is a question of justice and convenience within the discretion of the trial judge."). Such discretionary rulings are not compelling grounds for an interlocutory appeal or a petition for original jurisdiction under Supreme Court Rule 11. *See Pet. of N.H. Div. of State Police*, 174 N.H. 176, 180 (2021) (stating that a certiorari petition under Supreme Court Rule 11 "is an extraordinary remedy" that is only granted in the Supreme Court's discretion when the trial court "acted illegally with respect to jurisdiction, authority or observance of the law, or unsustainably exercised its discretion or acted arbitrarily, unreasonably, or capriciously").

---

[1] The State's argument relies on the dubious premise that dragging out the trial process, with only one or two trials per year, would result in less costs and burden to the State in the long run. This Court has already reasonably concluded to the contrary—that setting up cases for trial will help to expedite their resolution:

> "[I]f cases are allowed to linger in a backlog, without firm trial dates, the natural flow towards either settlement or trial stops and the docket becomes stagnant. Then, as more cases are filed, the backlog grows. In contrast, when cases are tried with regularity, the backlog shrinks not only because some cases are actually tried, but also because many more are resolved by the parties on fair terms earlier than they would have been.

August 2024 CSO at 7-8.

Reply to the State's Factual Objections to Plaintiffs' Trial Proposal

9. The State's primary argument is that Plaintiffs' proposed trial plan imposes an "unmanageable burden" on the State because it requires the parties to simultaneously prepare multiple cases for a single trial slot for all trials beginning in August 2025. *See* State's Obj. ¶2. This is a misleading factual assertion. To be sure, Plaintiffs' proposal does require the parties to prepare for multiple trials simultaneously at various points during 2025 and 2026, but that is not the case throughout this period. The Court should consider the following while reviewing the proposed case schedule attached as the Addendum to Plaintiffs' Motion:

- The parties are preparing only one case for trial in May 2025—the Natasha Maunsell case.

- While two cases are potentially eligible for trial in August 2025, one of those cases—Michael Gilpatrick—was already worked up prior to the mediation and conditional settlement pending legislative approval. Under the terms of that settlement, the Attorney General is obligated to "make best efforts to secure Legislative Approval." In the event those efforts are unsuccessful, Mr. Gilpatrick's case can complete preparations in short order. Enhanced automatic disclosures and expert disclosures are complete, most discovery (including Mr. Gilpatrick's deposition) is complete, and summary judgment has been briefed. All that remains is any necessary clean-up discovery, motions in limine, and the standard final pretrial work.

- The preparation of John Doe #1's case is also at an advanced stage given that he was one of the original "Trial 2" plaintiffs—a slate of six plaintiffs (all with claims of abuse at YDC during the same period as David Meehan) this Court approved for a consolidated trial back on November 9, 2023. That trial was originally scheduled for September 2024 and until the Court issued its August 2024 CSO, the parties had begun preparations for a consolidated trial on that date. The liability case for all the former "Trial 2" plaintiffs is overlapping and John Doe #1's experts are fully disclosed, except for John Doe #1's life care plan, which will be served this week. Therefore, while work remains to be done to prepare John Doe #1's case for trial in August 2025, it is not as if the parties are starting from scratch.

- Trial 5, the September 29, 2025, trial, is the first trial slot that truly requires preparing for multiple trials at once. The plaintiffs proposed for that trial slot are John Does ##1, 2, and 6, and Jane Doe #4. All three John Does were original "Trial 2" plaintiffs, and therefore very far from secrets to the State. Additionally, as John Doe #1 is primarily slotted for Trial 4, there should not be much work

left to make his case ready for Trial 5, in the event his trial slips to that spot. While Jane Doe #4 is a relatively new entrant to the list of potential trial plaintiffs, her claims also involve abuse at YDC during the Meehan period. Accordingly, Plaintiffs' claims and the State's defenses for liability will mostly be well-worn on both sides.

- While the parties will undoubtedly be busy in preparing for the multiple plaintiffs scheduled for Trial 5, that advance work will make subsequent months easier on both sides. Under Plaintiffs' proposal, the only new plaintiff added to the list of potential trial plaintiffs for Trial 6 in January 2026 is John Doe #30. All the other potential plaintiffs listed for Trial 6 would have been largely if not completely prepared in anticipation of going to trial in the Trial 5 slot.

- The same is true of the Trial 7 slot in March 2026. Only one new plaintiff is added to the trial ready list—John Doe #4. Under Plaintiffs' proposal, the other plaintiffs listed for Trial 7 were already prepared for a previous trial slot.

- Under Plaintiffs' proposal, the parties do not again prepare for multiple plaintiffs at a time until Trials 8, 9, and 10, the proposed consolidated trials in 2026. But even these trials are reasonably manageable. Plaintiffs propose only three plaintiffs for each of these trials, rather than the six the Court had selected for the original "Trial 2" consolidated trial.

10. The State next argues that for the cases Plaintiffs propose for trial slots 4 and 5, the selected plaintiffs' "cases arise over various periods of time when YDSU and YDC were managed and staffed by different persons, under different policies, and where events were allegedly witnessed or known to different people." State's Obj. at ¶ 3. This is a demonstrably **false** assertion.

11. The time periods of YDC custody for all of these plaintiffs are overlapping with each other and all are within the period that David Meehan was at YDC (late 1995 to early 2000): John Doe #1 was in YDSU and YDC from 1996 to 1997; John Doe #2 was in YDSU and YDC sporadically from 1995 through 1999; John Doe #6 was in YDC from 1997 to 1999; and Jane Doe #4 was in YDC from 1995 to 1997. While the abusers may vary from one plaintiff to the next, the same DYDS administrators were in place (Peter Favreau, Ronald Adams, Robert Boisvert, Phil Nadeau, Robert Decker, Virgil Bossom, Wayne Eigabroadt) and the same relevant policies governed YDC. As for the standard of care, the same abuse and neglect reporting policy that set

the standard of care in Mr. Meehan's trial (*Meehan* trial, full exhibit #11: Abuse and Neglect of Residents: Investigations of Allegations, dated 7/10/94) was also in full force and effect during the periods that the above Trial 4 and Trial 5 plaintiffs were in custody at YDC.

12. The State next complains that it is unlikely Plaintiffs "will provide timely documents and information so as to permit DHHS to properly prepare for trial[.]" State's Obj. at ¶ 5. In support of this specious argument, the State complains about alleged deficiencies in the enhanced automatic disclosures that Plaintiffs have been ordered to make in the August 2024 CSO. But these complaints are focused on the process of the mass consolidated litigation, which is challenged by the sheer size of the plaintiff class and the added complication of the plaintiffs in this class being in the midst of deciding whether to file a claim in the State's YDC Claims Administration and Settlement Fund ("Settlement Fund").

13. Under the statute creating the Settlement Fund, any victim of YDC or YDSU abuse who wishes to pursue a settlement via that process must file a claim before June 30, 2025. Providing hundreds of victims with guidance regarding whether to file a claim or continue to pursue a trial date in court is a massive and complex undertaking that has been made even more complicated by the State legislature's and the Attorney General's recent public comments casting doubt as to whether the State will renege on its Settlement Fund promise. *See*, *e.g.*, Annmarie Timmins, *As state runs short on money for YDC victims, NH attorney general opposes spending more now*, New Hampshire Public Radio (Mar. 17, 2025), at: https://www.nhpr.org/nh-news/2025-03-17/as-state-runs-short-on-money-for-ydc-victims-nh-attorney-general-opposes-spending-more-now (last visited Mar. 24, 2025). Our clients were already faced with a difficult decision—whether filing a claim is worth losing trial priority in court. The State's shifting view of the Settlement Fund has only caused more uncertainty among the plaintiff class, causing many

plaintiffs to change their minds after having previously changed their minds. In this climate of uncertainty, undersigned counsel have done their best to advise their clients and make timely (or minimally late) disclosures for any Plaintiffs who have decided against filing a Settlement Fund claim. Plaintiffs' counsel have not made enhanced automatic disclosures for clients who have filed a Settlement Fund claim, or who have instructed us to file a claim imminently, and we have worked to be as diligent as reasonably possible to keep the State apprised as to clients electing into the Settlement Fund.[2]

14. Most importantly, for present purposes, Plaintiffs' counsel has prioritized disclosure of all Plaintiffs listed in Plaintiffs' proposed trial plan. All Plaintiffs identified in Plaintiffs' proposal for Trial slots 3 through 7 have served their enhanced automatic disclosures, except for John Doe #4 (Trial 7). Obtaining necessary information from John Doe #4 is complicated by his present incarceration in an out-of-state prison, which is why Plaintiffs' counsel did not propose him for trial until March 2026 at the earliest, after his release date. Plaintiffs are likewise current on responses to all discovery requests propounded by the State in this high priority set of plaintiffs.

15. Plaintiffs' expert discovery is also up to date for the plaintiffs proposed for trial. Expert disclosures have been completed for all the possible plaintiffs for Trials 3 and 4—i.e., Ms. Maunsell, Mr. Gilpatrick, and John Doe #1 (except for a life care plan that will be served this week). Pursuant to the Court's August 2024 CSO, Plaintiffs' expert disclosures for Trial 5 (the September 2025 trial) are not due until April 2, 2025. IMEs have been completed for John Does

[2] The State declares that Plaintiffs' counsel "are in control of these cases" and can, "at a whim" shift cases back and forth between the Settlement Fund and court. State's Obj. at ¶ 9. Such cavalier statements belie the State's ignorance of the situation. The plaintiffs themselves, not their counsel, must decide whether to file a claim in the Settlement Fund or waive their right to that alternative process and instead pursue their claims solely in court. There are benefits and downsides and consequences to both paths, and therefore each plaintiff must decide for themself which path is better for them given their circumstances. As noted above, the State also ignores its own role in causing confusion and complication by casting doubt on the future of the Settlement Fund.

2 and 6, and Jane Doe #4, and Plaintiffs anticipate they will serve their expert disclosures on time in accordance with the August 2024 CSO.

16. The State also complains that if the Court adopts Plaintiffs' proposal, much of the work required to prepare multiple cases for trial simultaneously "will be for naught or will need to be repeated" because if the parties fail to settle cases at mediation, alternate trial plaintiffs will need to be shifted to later trial slots. State's Obj. at ¶ 10. The State presupposes that if this happens, the initial discovery and trial preparation will become "stale," necessitating additional discovery and trial preparation. This concern is overstated. In each of these cases, the abuse, the breach of duty, and most of the harm was already incurred years ago and these facts will not change while the plaintiffs await their trial date. To be sure, some supplemental discovery on damages (e.g., new medical records and short supplemental expert reports) might become necessary. Perhaps, in some cases, some supplemental discovery on liability might become necessary if new facts relevant to liability come to light that were not known when the initial rounds of discovery were completed. But these are speculative concerns; it is highly unlikely that extensive additional discovery will be required to keep trial cases "fresh" after their initial preparation.

17. On the other side of the coin, the State worries about what will happen if most cases settle. *See* State's Obj. at 11. The short answer is that the Court's foresight will come to pass—scheduling trials will succeed in resolving them more quickly. Additionally, Plaintiffs' proposed trial schedule (as opposed to the "straw man" fictional proposal the State concocts for the sake of argument), does not contemplate the Court surprising the parties by moving plaintiffs up in trial priority. While it is always possible the Court may in the future decide that the governing scheduling order needs to be modified or superseded due to shifting circumstances, Plaintiffs' present proposal assigns specific Plaintiffs to specific trial slots. If all the plaintiffs assigned to a

slot settle, no other plaintiffs are moved up to fill that slot. The plaintiffs in each slot must comply with the discovery and other case deadlines already found reasonable by this court in its August 2024 CSO.

Reply to the State's Specific Objection to John Doe #2

18. The State objects to treating John Doe #2's case as having trial priority because he filed a notice of claim with the Settlement Fund Administrator and the Administrator issued a Notice of Claim and [Partial] Stay for filing with this Court. Although the State admits that the Notice of Stay was never filed with this Court, and John Doe #2 subsequently withdrew his claim from the Settlement Fund, the State argues that it is "not clear that simply delaying filing of a Notice with the Superior Court is in keeping in the spirit of RSA 21-M:11-a or this Court's December 2024 Order." State's Obj. at ¶ 31. The State's position on this issue is situationally convenient.

19. The order referenced by the State provides, as follows:

> Individual cases that have not yet been scheduled for trial shall be stayed when (a) a plaintiff submits a claim to the YDC Claims Administration and Settlement Fund established by RSA 21-M:11-a, and (b) *the parties file a notice that they have agreed to a stay*.

Order of December 9, 2024, at ¶ 3 (emphasis added).

20. Part (b) of the order was included at the behest of the State. As the Court will recall, in the context of the State's motion to dismiss Corrine Murphy's case, the State vigorously argued that its motion was proper, and Ms. Murphy's case was not stayed, because, although she had decided to file a Settlement Fund claim, "that decision by itself is of no present significance in this case [because] [n]o Notice of Filing Claim and [Partial] Stay pursuant to RSA 21-M:11-a, VII(e) has yet been filed in this case." DHHS'S Reply Mem. in Support of Mot. to Dismiss Plaintiff Corrine Murphy's Cmpl. (filed 11/4/2024), at 4.

21. In other words, the State again seeks to change its position to suit the convenience of the situation. Although the State itself could have filed the Notice of Stay with this Court, it now blames Plaintiff for the delay in filing the Notice and accuses Plaintiff for the "appearance of gamesmanship." State's Obj. at ¶ 31. If any party is guilty of gamesmanship, it is the State. The State persuaded this Court that Settlement Fund stays should not become effective until the Notice of Stay is filed in this Court by the parties. Having persuaded this Court to adopt that position, the State should be estopped from taking it back to suit its needs in a different situation. *See New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) ("Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position[.]") (quotations and brackets omitted).

22. Because John Doe #2's case was never stayed pursuant to the rule established by this Court at the State's urging, John Doe #2 never lost his priority on the trial docket. *See* Order of December 9, 2024, at ¶ 5.

Conclusion

For all the foregoing reasons, and the reasons presented in Plaintiffs' underlying motion, Plaintiffs respectfully request that the Court grant Plaintiffs' motion, enter Plaintiffs' proposed Second Amendment to Case Structuring Order of August 15, 2024, attached as Exhibit A to Plaintiffs' motion, and grant such other relief as the Court deems necessary and just.

Respectfully submitted,

PLAINTIFFS

Dated: March 24, 2025

By and through counsel,

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

/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

NIXON PEABODY LLP

/s/ W. Daniel Deane
David A. Vicinanzo, 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)
Jonathan O'Neil, Esq. (Bar No. 276336)
900 Elm Street, 14th Floor
Manchester, NH 03101
T: 603-628-4000
dvicinanzo@nixonpeabody.com
ddeane@nixonpeabody.com
mknights@nixonpeabody.com
nwarecki@nixonnpeabody.com
ebucksbaum@nixonpeabody.com
aregan@nixonpeabody.com
joneil@nixonpeabody.com

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2025, a true and accurate copy of this Reply has been served electronically through the Court's e-service system on all attorneys and all other parties who have entered electronic service contacts (e-mail addresses) in this case.

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