STATE OF NEW HAMPSHIRE

MERRIMACK, *ss.* SUPERIOR COURT

217-2020-CV-26

DAVID MEEHAN; MICHAEL GILPATRICK;
CORRINE MURPHY; NATASHA MAUNSELL;
JOHN DOES NOS. 1 THROUGH 351;
JOHN DOES NOS. 353 THROUGH 367;
JOHN DOES NOS. 369 THROUGH 401; AND
JANE DOES NOS. 1 THROUGH 40

v.

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

PLAINTIFFS' MOTION TO LIFT STAY

"The true measure of any society can be found in how it treats its most vulnerable members"
– attributed, variously, to Mahatma Gandhi and Mother Teresa

Plaintiffs,[1] some of the many hundreds of survivors of horrific child abuse at the hands of State agents and employees, respectfully move to lift the stay issued by this Court's Order of February 18, 2022. Plaintiffs, who are now adults, were abused by State actors when they were still young children and unable to speak up for themselves. Plaintiffs have been denied a voice for their entire lives and are still battling to be heard. Five years have passed since the first of these survivors brought their stories to State authorities. While Plaintiffs have been patient and were encouraged by the Attorney General's initial response, in recent months it has become increasingly clear that the State is now resolved on a defense strategy that succeeds by delay. Inasmuch as life is fleeting, the maxim that "justice delayed is justice denied" is apt. The time at last has come to

[1] Undersigned counsel represent the following survivors: David Meehan; Michael Gilpatrick; Corrine Murphy; Natasha Maunsell; John Does Nos. 1 through 351, 353 through 367, and 369 through 401; and Jane Does Nos. 1 through 40 ("Plaintiffs").

allow Plaintiffs to pursue justice and, accordingly, this Court should lift the stay of these cases immediately following the June 29, 2022 structuring conference. In further support of this motion, Plaintiffs state as follows:

1. As indicated by the cases filed by Plaintiffs, there are hundreds (perhaps thousands) of survivors who suffered child abuse at the hands of agents and employees of the State at the Sununu Youth Services Center ("SYSC"), predecessor youth facilities, and adjunct youth facilities over a 60-year period from the 1960's until the present time (collectively "Youth Facilities"). Each and every one of the Plaintiffs was placed in the care and custody of the Defendants to be protected from harm and given a better chance at succeeding in society. *See* NH Rev. Stat. § 621:2 (2017). Instead, through the actions of the Defendants in these matters, Plaintiffs were robbed of their childhoods and left with lifelong physical and emotional scars. The stories these individuals tell reveal unimaginable wrongs, including brutal rapes, forced abortions, broken bones, and weeks on end of isolation where individuals were at times shackled and forced to urinate and defecate, without a toilet, in the same room in which they slept. Plaintiffs were also deprived of their right to an education and therefore an ability to make a better life for themselves. Some Plaintiffs remain illiterate to this day. The conditions that these children were forced to live in were not only atrocious and unacceptable, but also unconstitutional, falling below the minimum standard of living deemed appropriate for even the confinement of adults. *See generally Laaman v. Helgemoe*, 437 F. Supp. 269 (D.N.H. 1977) (discussing standards for confinement, including access to toilets, access to meals, the right to be clothed while in custody, and limiting time in isolation).

2. The deplorable state of juvenile care has been known to public officials in New Hampshire for decades. In 1980, for example, then-Attorney General Thomas Rath told the Associated Press: "There is no question that the potential exists for the YDC (Youth Development

Center) to be the next Laconia [State School] in terms of litigation," referring to the appalling neglect and abuse of mentally challenged persons revealed in Laconia in the 1970s. Lamenting the problems in New Hampshire's juvenile justice system, Rath said, "[i]f there is an area where we have been deficient in this state, it has been in this regard." David Wysocki, *Rath Warns of Suit Over Reformatory*, Boston Globe, Apr. 27, 1980 (1980 WLNR 64867).

3. Unfortunately, brutal acts of child abuse are still occurring at the Youth Facilities operated by the State Defendants to this day. Less than two weeks ago, a child was beaten while handcuffed in his room and had to wait for hours before being taken to Catholic Medical Center with lacerations and a dislocated shoulder. Clearly, until the State is forced to face the truth about its actions and inactions, real change and decent treatment of those committed to New Hampshire's Youth Facilities will not happen.

4. It has been more than five years since the first brave survivor of abuse at the State's Youth Facilities reported his experience to authorities and commenced what would become a roller coaster ride of action and inaction by the State. The lead Plaintiff in the above action, David Meehan,[2] first notified State Police concerning the appalling abuse he had suffered early in 2017. When Mr. Meehan's harrowing story reached Attorney General Gordon MacDonald, he rightfully activated the Criminal Justice Bureau of his office. By July 2019, Attorney General MacDonald announced "a comprehensive, multi-faceted investigation of the YDC and the personnel employed at that agency." Compl. ¶ 104 (quoting *N.H. Dept. of Justice News Release*, (July 25, 2019) https://www.doj.nh.gov/news/2019/20190725-buskey-murphy-indictments.htm). Two years later,

[2] David Meehan was designated as the lead case by this Court pursuant to Court Order dated February 23, 2022.

in July and August 2021, the Attorney General's Office announced that eleven individuals had been indicted on numerous counts of sexual assault and aggravated sexual assault.

5. During that period from 2019 to 2021, Mr. Meehan, through his counsel, entered into discussions with the Attorney General seeking to negotiate a reasonable civil resolution to his claim, as well as class-wide relief on behalf of all the survivors of abuse at the State Youth Facilities. In order to preserve his legal claims, on January 11, 2020, Mr. Meehan filed a putative Class Action Complaint ("Class Action Complaint") against the State of New Hampshire, the State's Department of Health and Human Services ("DHHS") and its Commissioner in her official capacity, and related State agencies, departments, and subdivisions (collectively, the "State Defendants"), as well as various individual employees and agents of the State Defendants (the "Individual Defendants"). The Class Action Complaint alleged personal injury and civil rights claims arising from the State Defendants' decades-long systemic failures to ensure the safety and well-being of children who had been committed to the State's custody and control. The Class Action Complaint identified a putative class of men and women who, while minors, were entrusted to the custody of the State, which in turn committed them to residential facilities where agents and employees of the State subjected them to acts of child abuse, including physical, sexual, and mental or emotional abuse. Moreover, the Class Action Complaint alleged that agents and employees of the State took active steps, in concert with one another, to conceal or otherwise cover-up the systemic abuse, which allowed the egregious conduct to continue unchecked for decades without meaningful corrective action. But, inasmuch as discussions with the Attorney General during this period were productive, and it appeared reasonably promising that the State might agree to a truly victim-centered and trauma-informed process for fairly addressing the harm suffered by the

survivors in Mr. Meehan's proposed class, Mr. Meehan agreed to stand down on his class action and the case was effectively stayed until early 2021.

6. Unfortunately, Plaintiffs detected a change in tenor and direction from the Attorney General's Office following a change in leadership with Attorney General MacDonald's appointment and subsequent confirmation to the New Hampshire Supreme Court in early 2021. Since that time, discussions with the Attorney General stalled, and the State began to adopt tactics seemingly calculated to delay, if not outright deny, justice for the survivors. The State could have stipulated to the class treatment of the action, or negotiated a hybrid process with class-like concepts for the equitable and efficient resolution of the class claims. Instead, the State chose to employ defense tactics more typical in the rough and tumble world of commercial litigation. The State filed a motion to dismiss, not only challenging Mr. Meehan's ability to bring his case on behalf of a class of survivors, but also seeking dismissal of Mr. Meehan's individual claims on statute of limitations grounds, notwithstanding the fact that Mr. Meehan's claims specified abuse at the hands of some of the very same defendants the Criminal Justice Bureau is prosecuting. On May 25, 2021, this Court granted dismissal of the class claims, but denied dismissal of Mr. Meehan's individual claims. The State filed an Answer to Mr. Meehan's Complaint in July 2021.

7. As of the date of this filing, none of the criminal defendants have been convicted, nor have any of their cases proceeded to trial, and no further indictments have been made, despite an abundance of evidence of criminal wrongdoing by additional state employees well within the criminal statute of limitations. While the criminal investigation remains ongoing, and Plaintiffs remain hopeful more perpetrators of their abuse will be criminally indicted, Attorney General John Formella was recently quoted in the Boston Globe as stating that the "investigation and prosecution of these crimes will continue for years." Dugan Arnett, Laura Crimaldi, *The state was supposed to*

rehabilitate them. Instead, hundreds of children were allegedly abused in N.H., Boston Globe, (April 22, 2022), https://www.bostonglobe.com/2022/04/22/metro/state-was-supposed-rehabilitate-them-instead-hundreds-children-were-allegedly-abused-nh/.

8. The New Hampshire legislature's response to this tragedy has also been slow and underwhelming. It was not until late 2021 that the State legislature began discussions on a bill seeking to redress the harm suffered by the survivors. The bill that was ultimately signed into law last month falls well short of the "victim-centered, trauma informed" legislation that the Attorney General and legislators had promised and forces survivors to give up their rights for the mere chance to explore their options in this process. *See An act relative to the administration and settlement of claims of abuse at the youth development center and making appropriation therefor*, HB 1677 (May 27, 2022); *see generally* Josie Albertson-Grover, *YDC Settlement Bill Signed Into Law Over Survivor Advocates' Objections*, Union Leader, (May 28, 2022), https://www.unionleader.com/news/courts/ydc-settlement-bill-signed-into-law-over-survivor-advocates-objections/article_3243b22d-a044-5620-b5c6-6f723eb92879.html.

9. Following the denial of class certification in May 2021, the class members that Mr. Meehan sought to represent started filing their own individual lawsuits in the Fall of 2021. From the outset, there was substantial motion practice, with many of the Defendants, including the State Defendants, moving to dismiss on various grounds. Some motions were granted, but all Plaintiffs have been granted permission to amend their Complaints. Plaintiffs have prepared amendments to be filed in all cases shortly after the case structuring conference.

10. Following Defendants' motion practice, by Order dated February 18, 2022, the Court stayed the individual cases until a case structuring conference could be scheduled and the parties had an opportunity to determine how to handle the volume of cases filed on behalf of

Plaintiffs who were abused while in the custody and care of the State Defendants. The February 18 Order does not specifically identify when the stay will be lifted. The Court subsequently scheduled the case structuring conference for June 29, 2022, approximately four months after the stay was entered in these matters. Based on the ambiguous language in the February 18 Order, Plaintiffs are concerned that, absent this motion, the stay might remain in force beyond the case structuring conference, and respectfully request that the Court lift the stay, as to all of Plaintiffs' cases, immediately following the conference.

11. In the almost four months that the cases have been stayed, Plaintiffs' counsel have attempted to confer with the State on numerous case management items. As an initial attempt at collaboration, and as a jumping-off point for discussion of case management and discovery issues generally, Plaintiffs' counsel sent the Attorney General's Office a draft of a proposed protective order on March 29, 2022. In part, Plaintiffs' proposed protective order was designed to address the State's concerns about handling voluminous amounts of highly-sensitive, confidential information that might pertain to persons other than Plaintiffs. The Attorney General's Office warned that the redaction of such information could cause significant delays in producing relevant documents. Plaintiffs' proposed protective order outlines a procedure that allows the State to shift most of the burden of redaction of confidential information onto Plaintiffs. During a meet and confer call on April 1, 2022, the State's counsel represented agreement with the concepts in Plaintiffs' proposal, but stated that they had some specific proposed changes to the draft protective order. Notwithstanding the apparent agreement on a protective order more than two months ago, the Attorney General's Office has still not provided any concrete written feedback on Plaintiffs' proposed protective order despite repeated follow-up requests by Plaintiffs' counsel. Plaintiffs have attached their proposed protective order to this motion as **Exhibit A**. As the protective order

is an essential component in the management of this litigation, Plaintiffs plan to file a Motion for Entry of Protective Order, with or without the State's consent, as soon as the stay is lifted. Given the State's refusal to engage on the issues, Plaintiffs ask the court to endorse Plaintiffs' proposed protective order as is.

12. Although Plaintiffs acknowledge the complexity of handling this volume of cases, it would be fundamentally unfair—and potentially unconstitutional—to continue to stay these matters or for the Court to adopt a "bellwether" approach wherein a certain subset of the cases are permitted to proceed while the others remain stayed. Plaintiffs have developed a case management plan that will allow the parties and the Court to efficiently and fairly address all of the Plaintiffs' claims. As Plaintiffs believe it is not impractical to move all of their cases forward at the same time (at least at the pleading and discovery stages), there is no reason to further delay proceedings in these matters.[3] After consulting with the Chief Justice of the Superior Court, Plaintiffs also intend to ease the burden on the Court by filing new complaints in other courts to "spread the load."

13. Plaintiffs acknowledge that the State's delay strategy and its related goal – paying as little compensation to as few victims as possible – is legally allowable to a certain point. But

[3] Plaintiffs plan to file their proposed case structuring order no later than the end of this week. Plaintiffs' counsel have already previewed certain key elements of Plaintiffs' plan to counsel for the State and remain willing to engage in further discussions on these topics. Among other things, Plaintiffs have proposed using a template master complaint setting forth facts and elements common to all Plaintiffs, in conjunction with short, individualized complaints containing only information specific to each individual Plaintiff. This will allow Defendants to challenge, if appropriate, any pleading issues common to all Plaintiffs in a single motion. Similarly, Plaintiffs have proposed utilizing standardized discovery requests that will likely satisfy most of Plaintiffs' and Defendants' discovery needs without litigating discovery on an individualized Plaintiff-by-Plaintiff basis, with the caveat that each party may reserve its rights to seek follow-up discovery as necessary and appropriate in a subsequent round of discovery. Plaintiffs also intend to propose a monthly case management conference to ensure that the cases progress efficiently, and allow the Court to potentially resolve disputes through informal discussions rather than motion practice.

that point has come and gone. After decades of suffering in silence, it is time for Plaintiffs to be heard and receive justice. Accordingly, each Plaintiff individually asserts their constitutional right, under part 1, article 14 of the New Hampshire Constitution, "to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; *promptly, and without delay*; conformably to the laws." N.H. const. pt. 1, art. 14 (emphasis added). As the New Hampshire Supreme Court has explained, "the lapse of time inherent in extended litigation could rise to a constitutional violation [of part 1, article 14] in a given case." *Opinion of the Justices*, 137 N.H. 260, 268 (1993). Plaintiffs have, by and large, already been forced to wait far too long for justice. Forcing a majority of Plaintiffs, or some subset of Plaintiffs, to stand idly by while a handful of others proceed through discovery, dispositive motions, and trial would deny them of their right to prompt justice.

14. Moreover, as a practical matter, it would be nearly impossible to intelligently select representative cases to go forward when there are so many differing factors between Plaintiffs, including the time of the abuse, the extent of the abuse suffered, and the specific perpetrators involved. Staying cases to relieve court congestion is not an adequate basis to deny Plaintiffs of their rights. *Cf. Com. v. Beckett*, 366 N.E.2d 1252, 1256 (Mass. 1977) (construing the analogous "prompt justice" provision of the Massachusetts Constitution, "we will not tolerate court congestion as an adequate ground for denying a reasonably prompt trial to a defendant who actively pursues his constitutional right to such a trial"). While Plaintiffs' cases will not be able to be tried at once, and trials will likely need to be sequenced and possibly consolidated, it is unnecessary, unfair, and impractical to make decisions at this early stage in the proceedings as to which cases should move forward first, and which should hang in limbo. Only upon the receipt of

discovery pertaining to all Plaintiffs will both the parties and this Court have useful and sufficient information on which to make such decisions.

15. Discovery on all Plaintiffs' claims will also aid in settlement discussions. Any cases that remain stayed and in limbo will not develop to a point where ADR or relief through the newly-enacted legislation can be explored. Indeed, survivors of abuse at the Youth Facilities can start filing claims pursuant to the new law starting on January 1, 2023. *An act relative to the administration and settlement of claims of abuse at the youth development center and making appropriation therefor*, HB 1677 (May 27, 2022). Staying some cases while others move forward will cause inequities in Plaintiffs' ability to meaningfully assess their claims before deciding on whether to attempt to engage in the State's settlement process.

16. In short, the only effect of continuing the stay would be to unnecessarily and unfairly delay relief and to slow down the legal proceedings in a manner that threatens to prejudice Plaintiffs and violate their constitutional rights. Moreover, as has been demonstrated by their course of conduct over the last few months, it is unlikely that the Defendants will be willing to meaningfully participate in this litigation absent enforced discovery and regular court deadlines. Respectfully, this Court should not countenance excuses from the State premised on a lack of resources or staffing to handle this litigation. As the above-recounted history makes clear, the State has been on notice of the size, scale, and severity of these cases for years. The State has had ample time to prepare for the litigation of these cases and staff-up as necessary. It would be manifestly unjust to further delay, and in some cases effectively deny, Plaintiffs of their day in court based on the State's willful decision to understaff and underprepare.

17. For the foregoing reasons, Plaintiffs request that the stay be lifted and that all cases be permitted to move forward following the conclusion of the case structuring conference on June 29, 2022.

18. No memorandum of law accompanies this Motion, as the relief sought is within this Court's sound discretion and all relevant authority is cited herein. *See Johns-Manville Sales Corp. v. Barton*, 118 N.H. 195, 198 (1978).

19. Counsel for State Defendants has been consulted and does not assent to the relief requested.

WHEREFORE, Plaintiffs, respectfully request that this Honorable Court:

A. Enter an Order lifting the stay issued pursuant to this Court's Order dated February 18, 2022, as to all of Plaintiffs' cases; and

B. Grant any further relief this Court deems just and equitable under the circumstances.

Respectfully Submitted,
DAVID MEEHAN; MICHAEL GILPATRICK;
CORRINE MURPHY; NATASHA MAUNSELL;
JOHN DOES NOS. 1 THROUGH 351;
JOHN DOES NOS. 353 THROUGH 367;
JOHN DOES NOS. 369 THROUGH 401; AND
JANE DOES NOS. 1 THROUGH 40

By and through counsel,

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

Date: June 14, 2022

/s/ Cyrus F. Rilee, III

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Lift Stay* was served on all parties and counsel of record through the court's electronic filing system on this 14th day of June, 2022.

/s/ David A. Vicinanzo
David A. Vicinanzo, Esq.

EXHIBIT A

STATE OF NEW HAMPSHIRE

MERRIMACK, *ss.* SUPERIOR COURT

217-2020-CV-26

DAVID MEEHAN; MICHAEL GILPATRICK;
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v.

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

STIPULATED PROTECTIVE ORDER

Pursuant to N.H. Super. Ct. Civil R. 29(a), the parties, by and through their undersigned counsel, hereby stipulate and agree to this "Protective Order" to facilitate the production, use, and exchange of confidential materials and information under the Rules of the Superior Court of the State of New Hampshire, regardless of the medium or manner in which the documents and/or information are generated, stored, or maintained. Further, this Protective Order shall provide a mechanism whereby confidential and/or privileged information and materials inadvertently disclosed should be returned to the disclosing party while protecting confidences or privileges. Unless modified pursuant to the terms contained in this Order, the parties agree that this Order shall remain in effect as set forth herein.

In support of this Proposed Order, the parties stipulate that:

A. Documents, electronically-stored data, discovery requests and responses, deposition, hearing, and trial transcripts, and other materials containing confidential information that bears significantly on the parties' claims or defenses are likely to be disclosed or produced during the course of this litigation.

B. The parties to this litigation assert that public dissemination and disclosure of confidential information could severely injure or damage the party disclosing or producing the confidential information, and could place that party at a competitive disadvantage.

C. Counsel for the parties receiving such information or documents are presently without sufficient information to accept the representation(s) made by the producing parties as to the confidential, proprietary, and/or trade secret nature of the documents, electronically stored information, discovery responses, and other materials likely to be produced in this litigation.

D. To protect the respective interests of the parties and to facilitate the progress of disclosure and discovery in this case, the parties stipulate and agree that the following Order should issue:

PROPOSED ORDER

I. Applicability.

1. The terms and conditions of this Order will be applicable to and govern all information, documents, and tangible items produced in this action, including, but not limited to, responses to requests for admission, deposition testimony, and deposition transcripts and/or videos, regardless of their medium or format ("Discovery Materials"). Discovery Materials that are designated as "Confidential Information," which includes Confidential Health Information, are referred to herein as Confidential Discovery Materials.

2. Any person subject to this Order who receives Confidential Discovery Materials ("Receiving Party") from another person ("Producing Party") shall not disclose such Confidential Discovery Materials, except as expressly permitted hereunder.

3. Discovery Materials that are designated by a non-party as "Confidential Information" will be treated as Confidential Discovery Materials under this Order regardless of whether the non-party is or becomes bound by the terms of this Order.

II. Use and Disclosure of Confidential Discovery Materials.

1. No Receiving Party may disseminate or cause the dissemination of any Confidential Discovery Materials to any person not reasonably involved in the prosecution, defense, or settlement of a civil claim related to allegations of child abuse involving one or more of the same parties or one or more of the same alleged abusers with respect to such a claim.

2. Nothing in this Order will affect or restrict a Producing Party's maintenance, use, and/or disclosure of its own documents or information. Nor will anything in this Order affect or restrict the ability of a Plaintiff about whom Confidential Discovery Materials pertain to use and/or disclose those materials. Disclosures (other than public disclosures) by a Producing Party of its own documents or information will not affect any designation as Confidential Discovery Materials under this Order. Nothing in this Order will prevent or restrict counsel from rendering advice to their clients, and in the course thereof, relying on an examination of Confidential Discovery Materials.

3. The Court may issue additional orders concerning the use and disclosure of Discovery Materials and Confidential Discovery Materials, including in connection with depositions noticed in multiple actions concerning the same perpetrator.

III. Confidential Designation.

1. Any party may designate all or portions of Discovery Materials as "Confidential

Information" to the extent that it believes, in good faith, such designated materials need protection from disclosure under federal, state, or local privacy law because such material contains:

a. "Confidential Information," which includes without limitation (i) non-publicly disclosed information, including data, summaries, and compilations derived therefrom, that contains scientifically, medically, financially, commercially sensitive information and/or private information ("PI") and (ii) Confidential Health Information, as defined below;

b. "Confidential Health Information," includes "protected health information" and "individually identifiable health information," as defined in 45 C.F.R. § 160.103, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended (collectively, "HIPAA"), and which is permitted to be disclosed in the context of judicial and administrative proceedings pursuant to 45 C.F.R. § 164.512(e)(1), subject to certain requirements contained therein. Confidential Health Information includes any information that a party believes, in good faith, needs protection from disclosure under federal, state, or local privacy law because it identifies an individual in any manner and is related to (1) the past, present, or future care, services, or supplies relating to the health or condition of such individual, (2) the provision of health care to such individual, or (3) the past, present, or future payment for the provision of health care to such individual. Confidential Health Information includes medical bills, claim forms, charge sheets, medical records, medical charts, test results, prescriptions, medical notes and dictation, medical invoices, itemized billing statements, remittance advice forms, explanations of benefits, checks in payment of medical services or supplies, medical notices and requests, social security numbers, and similar information. Confidential Health Information includes all notes, summaries, compilations, extracts, abstracts, or oral communications that contain, are based on, or are derived from Confidential Health Information but does not include such information when individual identifiers are not included and/or the information is de-identified in accordance with the HIPAA de-identification standard set forth in 45 C.F.R. § 164.514(a). Confidential Health Information also includes any materials subject to the confidentiality provisions of any applicable federal, state, or local law, including, but not limited to N.H. Rev. Stat. Ann. c. 332-I, the Americans with Disabilities Act, as amended, the Genetic Information Nondiscrimination Act of 2008 ("GINA"), and the Confidentiality of Alcohol and Drug Patient Records under 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2, and other applicable privacy laws, or any applicable statutory or common law.

To the extent reasonably practicable, a Producing Party will limit its designation of Confidential Information to specific portions of material that qualify under this definition. Where it would not be cost effective or would

be burdensome, however, the Producing Party may designate an entire group of Discovery Materials as "CONFIDENTIAL INFORMATION."

2. Depositions. When a deposition includes the disclosure of Confidential Information:

   a. Portions of the deposition and deposition exhibits may be designated as "CONFIDENTIAL INFORMATION" as appropriate, subject to the provisions of this Order either by (i) indicating on the record during the deposition that a question calls for Confidential Information, in which case the reporter will mark the pages of the transcript containing the designated testimony as "Confidential Information Governed by Protective Order," or (ii) notifying the reporter and all counsel of record, in writing, within ten (10) days of receiving the final draft of the transcript from the reporter, of the portion that contains Confidential Information, and the Designating Person shall reproduce that portion with the appropriate designation. During that 10-day period identified above, all parties will treat the entire deposition transcript, video or exhibit as if it had been designated as Confidential Information. The parties may also agree to treat a deposition transcript as Confidential in its entirety until trial.

   b. The Producing Party will have the right to exclude from the deposition, during such time as the Confidential Information is to be disclosed, any person other than the subject of the Confidential Information; the deponent (and his or her counsel); parties and counsel for all parties (including their staff and associates); the court reporter, and the persons identified in Section IV below.

3. Documents. With respect to any Discovery Materials or portion thereof containing Confidential Information other than deposition transcripts and exhibits, the Producing Party or its counsel may designate such information contained in the Discovery Materials as Confidential Information by stamping or otherwise marking as "CONFIDENTIAL INFORMATION" the protected portion in a manner that will not interfere with legibility or audibility. So as to relieve the State of the burden of redacting Confidential Information prior to production, as to any State-produced Discovery Materials which partially contain Confidential Information, upon receipt of such Discovery Materials, Plaintiffs will redact those portions stamped or otherwise marked as Confidential Information. A Plaintiff may elect to waive the designation as it pertains to his or her own Confidential Information, which would obviate the need to redact such information. Plaintiffs shall share with the State copies of the Discovery Materials with the Confidential Information redacted and the designation stamp or other marking stricken (the "Redacted Discovery Materials"). If the State makes no objection to the Redacted Discovery Materials within ten (10) court days of receipt of the same, the Confidential Information designation will be lifted from the Redacted Discovery Materials. If the State objects to any portion of the Redacted Discovery Materials, within ten (10) court days of receipt, it shall send to counsel for Plaintiffs a written notice specifying the

factual and legal bases for its objection. The State and the Plaintiffs shall meet and confer about the objection within ten (10) court days of the Plaintiffs receiving such written notice, unless otherwise agreed. If the State and the Plaintiffs cannot reach an agreement, the State must seek relief from the Court in accordance with its rules and procedures within ten (10) court days of the meet and confer. The State will have the burden of justifying its objection, and the Redacted Discovery Materials will retain Plaintiffs' redactions and the designation will remain stricken unless otherwise ordered by the Court. The State's failure to seek relief from the Court within ten (10) court days of the meet and confer shall operate as a waiver of the State's objection to the Redacted Discovery Materials. In the event that the Court rules that the redactions made to the Redacted Discovery Materials should be changed, the Plaintiffs shall reproduce copies of the Redacted Discovery Materials changed in accordance with the ruling within ten (10) business days of the ruling or the schedule set by the Court, whichever is later. In the event that the Court rules that there was no good faith basis for the State's objection to the Redacted Discovery Materials, the Court may award reasonable attorney's fees and costs to the Plaintiffs, as determined by the Court in its sole discretion. "Written notice" shall include electronic communications.

4. Electronically Stored Information. Electronically stored information ("ESI") that a Producing Party wishes to designate as Confidential Information shall be marked as "CONFIDENTIAL INFORMATION." If the ESI is transmitted through a file transfer protocol or other electronic transmission, it shall be encrypted with the password supplied in separate correspondence to the recipient or otherwise transmitted by secure means.

IV. Disclosure of Confidential Information.

Confidential Information will not be disclosed by the Receiving Party except as permitted by this Order.

1. Permissible Disclosures. A Receiving Party may disclose a Producing Party's Confidential Information only to the following persons:

   a. the parties to a civil claim related to allegations of child abuse involving one or more of the same parties or one or more of the same alleged abusers;

   b. such parties' counsel, which shall mean in-house counsel, outside counsel of record, and other attorneys, paralegals, secretaries, other support staff or vendors (such as litigation support, investigators, copy-service providers, scanning providers, and document-management consultants) employed or retained by counsel;

   c. the Receiving Party's expert witnesses, consultants (e.g., jury consultants and mock jurors), and their support staff, retained by counsel in connection with this action, who first sign an "Agreement To Be Bound by Stipulated Protective Order", in the form attached hereto as Exhibit A, which counsel

for the Receiving Party shall retain;

d. the author, addressee, and/or other person indicated on a document as having received a copy of that document or that a party believes is referenced in a document;

e. a witness who a party's counsel in good faith believes may be called to testify at a deposition or trial, who first signs an "Agreement to be Bound by Stipulated Protective Order" in the form attached hereto as Exhibit A, which counsel for the Receiving Party shall retain;

f. any mediator, arbitrator, referee, special master, or administrator that the parties agree to or that this Court appoints;

g. this Court, including any appellate court, its support and administrative personnel; and

h. any court reporter and associated support staff employed in this litigation.

2. Authorized Disclosures. A Receiving Party may disclose Confidential Information if: (i) the Producing Party or the subject of the Confidential Information, as applicable and to the extent of their authority, consents to such disclosure; (ii) the Court, after notice to the parties and the subject of the Confidential Information, as applicable, allows such disclosure; or (iii) the Receiving Party is required to disclose Confidential Information pursuant to a subpoena or other legal demand, by law, or to a regulatory entity or other government agency, provided that, to the extent permitted by law, the Receiving Party gives prompt notice to counsel for the Producing Party and to the subject of the Confidential Information, as applicable, so that the Producing Party can oppose, with the Receiving Party's reasonable cooperation, or minimize disclosure of such Confidential Information.

3. Disclosures by Covered Entities and/or Health Care Providers and Business Associates. Subject to a properly executed release, all "covered entities" and "business entities" (as defined by 45 C.F.R. § 160.103) and/or "health care providers" (as defined by N.H. Rev. Stat. Ann. 332-I:1, II(b)) are hereby authorized to disclose Confidential Information, including Confidential Health Information, pertaining to this action to those persons designated in paragraph 1.a of this section.

4. Challenges to Designation as Confidential Information. A party who objects to any designation as Confidential Information may, at any time before the trial of this action, send to counsel for the Producing Party a written notice, specifying the documents or information that the challenging party contends do not constitute Confidential Information. The challenging party and the Producing Party shall meet and confer about the objection within ten (10) court days of the Producing Party receiving such written notice unless otherwise agreed. If the challenging party and the Producing Party cannot reach agreement, the Producing Party must seek relief from the Court in accordance with its rules and procedures within ten (10) court days of the meet and confer. The Producing Party will have the burden of justifying

the propriety of its designation, which will continue as originally designated, unless (i) otherwise ordered by the Court, (ii) the Producing Party or the subject of the Confidential Information, as applicable, withdraws its designation in writing, or (iii) the Producing Party fails to seek relief from the Court within ten (10) court days of the meet and confer, which failure shall operate as a waiver of the Confidential Information designation on the documents or information subject to the objection. In the event that the Court rules that the challenged material's designation should be changed, the Producing Party shall reproduce copies of all materials with their designations removed or changed in accordance with the ruling within ten (10) business days of the ruling or the schedule set by the Court, whichever is later. In the event that the Court rules that there was no good faith basis for the Producing Party's use of the designation, the Court may award reasonable attorney's fees and costs to the prevailing party, as determined by the Court in its sole discretion. "Writing" and "written notice" shall include electronic communications.

V. Procedures for Filing Confidential Discovery Materials with the Court.

1. If a party wants to file materials containing Confidential Information ("Moving Party"), such filing shall be initially submitted directly to the Court via electronic mail with simultaneous transmission to all other parties to the action. The Confidential Information shall not be filed in the public record until the Court rules on whether the Confidential Information should be redacted or sealed as outlined below.

2. Within five (5) court days of any such submission to the Court, counsel for the Moving Party and the Producing Party shall meet and confer in good faith in an attempt to reach agreement as to appropriate redactions and/or sealing of any Confidential Information contained in the submission. If Counsel for those parties cannot reach agreement, any remaining dispute shall be submitted via a joint letter by those parties to the Court, not to exceed five pages, within ten (10) business days of the meet and confer. Any party may use its portion of any such joint letter to request full briefing of the dispute. The Moving Party shall be responsible for submitting the joint letter to the Court.

3. Within five (5) court days of the Court issuing its ruling on whether the Confidential Information should be redacted or sealed, the Moving Party shall file the material consistent with the Court's ruling. If the Court rules that the Producing Party has met its burden of showing that Confidential Information should be redacted or sealed, the Moving Party shall redact the Confidential Information or file the Confidential Information under seal in accordance with the rules of the Court and the Court's Order.

4. Any party shall be permitted to file under seal Confidential Health Information without seeking leave of court.

VI. Inadvertent Disclosure.

a. Confidential Information. If a party inadvertently produces any materials without a confidentiality designation, the Producing Party may provide written notice to the Receiving Party that the materials are Confidential Discovery Materials under this Order and promptly reproduce the materials with an appropriate designation. The Receiving Party will treat the materials as Confidential Discovery Materials upon receipt of such notice and, within five (5) business days, take all reasonable steps to retrieve such materials from persons to whom the Receiving Party has disclosed such materials without a confidentiality designation or to confirm such persons have destroyed such materials.

b. Privileged Materials. If a Producing Party inadvertently discloses information subject to a claim of attorney-client privilege, attorney-work product doctrine, patient privacy protections, and/or other protections from disclosure ("Inadvertently Disclosed Information"), such disclosure, in and of itself, will not constitute or be deemed a waiver or forfeiture of any claim of privilege and/or other protection from disclosure with respect to the Inadvertently Disclosed Information.

i. Within five (5) business days after a Producing Party provides written notice of such inadvertent disclosure, the Receiving Party will return, sequester, or destroy all such Inadvertently Disclosed Information in its possession and provide to the Producing party a written certification that (a) this has been done, or (b) this has not been done because the Receiving Party has a good faith belief that the information was not inadvertently disclosed or that the information is not the proper subject of any claim of attorney-client privilege, attorney work product doctrine, patient privacy protections, and/or other protections from disclosure. In addition, if the Receiving Party has disclosed such information to others before receiving notice, the Receiving Party will (a) take reasonable steps to retrieve the information or ensure it has been destroyed, or (b) provide to the Producing Party with the names and contact information to whom this information was disclosed.

ii. Within thirty (30) days from the date of the certification referenced in (i), the Producing Party will (a) produce a privilege log for the Inadvertently Disclosed Information, and (b) if the Inadvertently Disclosed Information appears only in portions of documents, produce redacted copies of those documents.

iii. If a Receiving Party thereafter moves the Court for an order compelling production of the Inadvertently Disclosed Information, the Producing Party bears the burden of establishing the privileged or protected nature of any Inadvertently Disclosed Information. Such motion practice shall be governed by the process described in Section 6. Nothing in this Order shall limit the right of any party to

request that the Court conduct an *in camera* review of the Inadvertently Disclosed Information.

c. Consistent with N.H. R. Evid. 511 and any other applicable rules, if a Receiving Party reasonably believes that a document produced by a Producing Party is subject to attorney-client privilege and/or other protection from disclosure, the Receiving Party shall promptly notify the Producing Party. Within ten (10) days from a request by the Producing Party, the Receiving Party will return or destroy all copies of the document and certify in writing that this has been done. In any event, the Receiving Party will immediately cease all use of the materials at issue, will not read any unread portion of the documents, and will not refer to the privileged content during the course of this matter.

VII. Additional Provisions

1. Prior Bad Acts. Generally, consistent with the substance of this Order, records of prior bad acts,[1] including previous accusations of child abuse against an alleged child abuse perpetrator, are discoverable and will be disclosed upon request.

2. Treatment of Discovery Materials Upon Termination of Action. Within sixty (60) days of the later of the expiration of the applicable statute(s) of limitations regarding professional malpractice concerning the action or final termination of this action, including any appeals, each party to the action and its counsel must delete, destroy, or return to the Producing Party all Confidential Discovery Materials, including any copies, excerpts, and summaries of Confidential Discovery Materials contained therein. However, counsel to a party to other civil claims related to allegations of child abuse involving one or more of the same parties or one or more of the same alleged abusers is not obligated to delete, destroy, or return Discovery Materials until sixty (60) days after all such claims are terminated, including any appeals. Notwithstanding the foregoing, counsel shall be entitled to retain client communications, attorney work product and, for archival purposes, paper and electronic copies of pleadings, court submissions, including exhibits, correspondence, transcripts and accompanying exhibits, and memoranda that contain, attach or refer to Confidential Discovery Materials, including a complete record of any proceedings before the Court, and will continue to be bound by this Order with respect to all such information that is kept after the conclusion of this action. Nothing herein shall require a party or its counsel to delete Confidential Discovery Materials of another party that may reside on its respective electronic archives or disaster recovery systems, except that such materials will not be retrieved or used for any purpose after the conclusion of this action.

3. No Waiver. Nothing in this Order shall be construed as an abrogation, waiver or

[1] For purposes of Section VII(1), "Prior Bad Acts" are broadly defined to include documents, reports, complaints, notations within personnel files, and elsewhere, of previous accusations of abuse against an alleged child abuse perpetrator.

limitation of any kind by a party or non-party of: (a) its right to object to any discovery request on any ground; (b) any applicable privilege or protection; or (c) its right to object to the admissibility at trial of any document, testimony or other evidence. In addition, nothing in this Order shall be construed as limiting any waiver of physician-patient privilege by Plaintiff by reason of bringing this action and asserting claims for damages. This Order shall not prevent a party from applying to the Court for further or additional protective orders.

4. Non-Applicability of Order. The restrictions and obligations set forth in this Order will not apply to any information that is publicly available, unless the information has become public in violation of this Order. No party will be responsible to another party for disclosure of information that would otherwise be confidential under this Order if such information is not labeled or otherwise identified in accordance with this Order, except that readily recognizable "Confidential Health Information" cannot be disclosed by any party, even if inadvertently produced without a "CONFIDENTIAL INFORMATION" designation.

5. Notices. Transmission by electronic mail is acceptable for all notification purposes under this Order.

6. Modification. This Order may be modified by written agreement of the Parties, subject to approval by the Court, or by application to the Court. The Court reserves the right to modify this Order for any reason that the Court deems appropriate.

7. Duration. This Order only applies to pre-trial matters because the Court acknowledges the standard for redacting or sealing information may be different for trial.

8. Survival. After termination of this action, the provisions of this Order shall continue to be binding, except with respect to those documents and information that become a matter of public record. This Court retains continuing jurisdiction over all persons subject to this Order for enforcement of the provisions of this Order or to impose sanctions for any contempt thereof.

So Ordered,

Date: _____ _____

Presiding Justice

Stipulated as of June 14, 2022, and respectfully submitted to the Court by the parties through their undersigned counsel.

[INSERT SIGNATURE BLOCKS]

EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, have read the foregoing Protective Order ("Order") in this action and have received a copy of the Order. I agree that I will not disclose any Confidential Discovery Materials, as defined in the Order, other than as expressly permitted. I will destroy or return all Confidential Discovery Materials to the attorney who provided it to me, upon request of that attorney, and I shall not retain any copies of said Confidential Discovery Materials or any information contained within those Confidential Discovery Materials designated as Confidential after the termination of this litigation, including all appeals.

By acknowledging these obligations, I understand that I am submitting myself to the jurisdiction of the Superior Court, State of New Hampshire, County of Merrimack concerning any issue or dispute arising hereunder and that my disclosure of Confidential Information in any manner contrary to the terms of the Order may subject me to sanctions for contempt of court.

Dated: _____ Signature: _____

Printed Name: _____

Noonan, Cheryl

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	Lauren Pritchard (lpritchard@bernsteinshur.com) R. James Steiner: R. Steiner (Jim@jimsteinerlaw.com) Other Service Contacts not associated with a party on the case: Myles Matteson (myles.b.matteson@doj.nh.gov) Krystal Hoskins (khoskins@nixonpeabody.com) Sharon Willier (swillier@nixonpeabody.com) Steven Mills (smills@nixonpeabody.com) Jen Lamonday (YDCFilings@nixonpeabody.com) Erin Bucksbaum (ebucksbaum@nixonpeabody.com)
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