

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE  
Bangor Division**

JANE DOES 1–6, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	Case No. 1:21-cv-00242-JDL
JANET T. MILLS, in her official capacity as	)	
Governor of the State of Maine, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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*“The privacy right to which the appellants lay claim must be vindicated now, or it will be forever lost; as we lately remarked in an analogous context, to [hold otherwise] would be to force a party to let the cat out of the bag, without any effective way of recapturing it . . . .”<sup>1</sup>*

**PLAINTIFFS’ MOTION TO STAY PROCEEDINGS  
PENDING INTERLOCUTORY APPEAL**

Pursuant to Local Rule 7(a), Plaintiffs hereby move the Court for a stay of proceedings pending adjudication of their appeal (ECF No. 132) from the Court’s Order (ECF No. 131) granting Media Intervenor’s motion to require Plaintiffs to disclose their identities. In the alternative, Plaintiffs move for a stay of the Order, such that Plaintiffs are not required to file an amended complaint disclosing their identities by June 7, 2022, while their appeal pends. Defendants oppose a stay of the proceedings, but State Defendants and Defendants MaineHealth, MaineGeneral, and Genesis take no position on a stay of the Court’s Order requiring disclosure of Plaintiffs’ identities pending their interlocutory appeal. Plaintiffs’ motion is, therefore, partially unopposed. For these reasons, and as shown in the memorandum of law incorporated below, the Court should stay these proceedings, or its Order, pending resolution of Plaintiffs’ interlocutory appeal.

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<sup>1</sup> *F.T.C. v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 407 (1st Cir. 1987) (cleaned up).

## **MEMORANDUM OF LAW**

### **I. INTRODUCTION**

As the Court concluded in its prior Order on Plaintiffs' Motion to Proceed Under Pseudonyms and for Protective Order (ECF No. 32), "Plaintiffs have a reasonable fear of harm that outweighs the public's interest in open litigation at this preliminary stage." (ECF No. 32 at 4.) That fear was reasonable at the commencement of this case, it was reasonable when the Court issued its prior order, and it remains reasonable today. The Eastern District of New York observed, in *Does 1–2 v. Hochul*, that "social opprobrium toward individuals in Plaintiffs' position has fluctuated, and may continue to fluctuate," but "credit[ed] that they are afraid and that a 'chilling effect' could result from Plaintiffs' being required to reveal their identities." No. 21-CV-5067 (AMD)(TAM), 2022 WL 836990, at \*7 (E.D.N.Y. Mar. 18, 2022). This Court's conclusion in its most recent Order, that Plaintiffs proved insufficient specific threats to them to merit their continued pseudonymity, discounts the effectiveness of the Court's prior Order and Plaintiffs' prudence in seeking it, and heightens the risk and chilling effect of public harm to Plaintiffs for merely seeking to vindicate their rights.

Plaintiffs seek a stay of these proceedings, or at least a stay of the Court's disclosure order, to "simply suspend judicial alteration of the status quo," *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Comm'n*, 479 U.S. 1312, 1312 (1986), and avoid the inalterable revelation of their identities while their appeal pends. "Once the cat's out of the bag, it's out of the bag." *Does 1–2*, 2022 WL 836990, at \*10 (cleaned up). A temporary stay while a matter of utmost importance to Plaintiffs' sincerely held and reasonable fears of retaliation, ostracism, and opprobrium are adjudicated is reasonable and merited.

## II. ARGUMENT

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Moreover, “it has always been held, that as part of its traditional equipment for the administration of justice, a federal court can stay the enforcement of [an order] pending the outcome of an appeal.” *Nken v. Holder*, 556 U.S. 418, 421 (2009) (cleaned up). “It is beyond cavil that . . . federal district courts possess the inherent power to stay pending litigation when the efficacious management of court dockets reasonably requires such intervention.” *Marquis v. F.D.I.C.*, 965 F.2d 1148, 1154 (1st Cir. 1992); *see also Microfinacial, Inc. v. Premier Holidays Int’l, Inc.*, 385 F.3d 72, 77 (1st Cir. 2004) (“It is apodictic that federal courts possess the inherent power to stay proceedings for prudential reasons.”). Though “[a] stay does not make time stand still,” *Nken*, 556 U.S. at 421, it “does hold a ruling in abeyance to allow an appellate court the time necessary to review it.” *Id.*

“Generally, in evaluating whether to issue a stay, a court will consider three factors: (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party without a stay; and, (3) judicial economy.” *Good v. Altria Grp., Inc.*, 624 F. Supp. 2d 132, 134 (D. Me. 2009). As this Court has recognized, a stay “incidental to the Court’s inherent power to control its docket” is governed by these three factors: *Atl. Salmon Fed’n U.S. v. Merimil Ltd. Part.*, No. 1:21-cv-257-JDL, 2022 WL 951709, at \*5 (D. Me. Mar. 30, 2022); *see also Ramirez-Martir v. Astra Merck, Inc.*, No. Civ. 05-2038(PG), 2005 WL 3088372, at \*1 (D.P.R. Nov. 17, 2005) (same). The pendency of a related proceeding in another tribunal is a “typical reason” for a stay of proceedings. *See Hewlett-Packard Co. v. Berg*, 61 F.3d 101, 105 (1st Cir. 1995).

Plaintiffs’ stay motion satisfies all three. Absent a stay, Plaintiffs will suffer irreparable injury, hardship, and inequity by having to irreversibly disclose their identities to the public while

the question of their protection is under consideration on appeal. (ECF No. 132.) Defendants will suffer no prejudice by a temporary stay pending final adjudication of a question of exceptional importance to Plaintiffs' privacy interests. Finally, judicial economy favors a temporary stay.

**A. Plaintiffs Will Suffer Irreparable Injury Absent a Stay Because the Status Quo Will Be Forever Destroyed and Confidentiality Lost for All Time.**

As the First Circuit has recognized in analogous circumstances, “[m]eaningful review entails having the reviewing court take a fresh look at the decision of the trial court before it becomes irrevocable.” *Providence Journal Co. v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979). Plaintiffs’ interlocutory appeal under the collateral order doctrine (*see* ECF No. 132) “will become moot unless the stay is [entered] pending determination of the appeals. Once [Plaintiffs’ identities] are surrendered pursuant to the lower court’s order, confidentiality will be lost for all time. The status quo could never be restored.” *Id.*

Numerous courts have likewise determined that disclosure of a plaintiff’s identity during the pendency of an appeal seeking continued pseudonymity would impose irreparable harm upon that plaintiff. *See, e.g., Doe v. Coll. of N.J.*, 997 F.3d 489, 494 (3d Cir. 2021) (“[W]e cannot anonymize a litigant’s already publicized identity with a new trial. That bell cannot be unrung.”); *S. Methodist Univ. Ass’n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 712 (5th Cir. 1979) (reasoning that disclosure of plaintiffs’ identities during an appeal “would risk irremediable injury to the rights that plaintiffs assert”).

Simply put, “[w]here, as here, the denial of a stay will utterly destroy the status quo, irreparably harming” Plaintiffs’ privacy interests, a stay is warranted. *See Providence Journal*, 595 F.2d at 890. Thus, this is not the case where “the Court cannot know with any precision what harm” Plaintiffs will experience. *Kourembanas v. InterCoast Colls.*, No. 2:17-cv-331-JAW, 2018 WL 4087999, at \*2 (D. Me. Aug. 27, 2018). The Court has already acknowledged the sincerity of

Plaintiffs' fears of reprisal from the disclosure of their identities. (ECF No. 131 at 12–13.) The harm is known, and it is acute. “The interests asserted by litigants seeking anonymity can be enormously significant [where] severe harm may result from litigating without a pseudonym.” *Doe v. Coll. of New Jersey*, 997 F.3d at 494. There is no return to the status quo ante once Plaintiffs' identities are revealed, thus prejudice and irreparable harm to Plaintiffs favor a stay.

**B. Defendants Will Suffer No Prejudice From a Temporary Stay.**

Defendants, who have been wholly indifferent towards Media Intervenors' efforts to reveal Plaintiffs' identities (ECF No. 86 at 2; ECF No. 88 at 1; ECF No. 131 at 1–2), will not be prejudiced by a continuation of the status quo. Nonmoving parties are likely to suffer little or no prejudice from the imposition of a temporary stay where—as here—only preliminary proceedings have occurred, and the Court “has not issued any discovery orders or a Scheduling Order.” *Alves v. Prospect Mortg., LLC*, No. 13-10985-JLT, 2013 WL 5755465, at \*3 (D. Mass. Oct. 22, 2013). Though some delay is always inherent in a stay, this Court has recognized that delay alone is not sufficient to decline to stay proceedings. *Good v. Altria Grp., Inc.*, 624 F. Supp. 2d 132, 135 (D. Me. 2009) (“[A]lthough there would be some prejudice (mainly delay) to the [nonmoving parties], the prejudice would not be significant.”).

**C. Judicial Economy Is Best Served by a Temporary Stay.**

As shown above, only preliminary proceedings have occurred in the case so far, and pretrial discovery has not commenced. “Logic dictates that the Court’s interest in preserving judicial and party resources should be more prominent when little if any resources have been expended.” *Ramos-Martir v. Astra Merck, Inc.*, No. Civ. 05-2038(PG), 2005 WL 3088372, at \*1 (D.P.R. Nov. 17, 2005). Thus, judicial economy is served by staying this action pending resolution of the critical issue of Plaintiffs' anonymity.

Moreover, where—as here—proceedings have been instituted in another tribunal, judicial economy is served by a stay to avoid piecemeal litigation, duplicative discovery, or wasted time and resources. *See, e.g., Carney v. Hancock Cnty.*, No. 1:20-cv-349-GZS, 2021 WL 966849, at \*2 (D. Me. Mar. 13, 2021); *Whitman v. Aetna Health, Inc.*, No. 1:14-cv-322-JAW, 2014 WL 4772666, \*2 (D. Me. Sept. 24, 2013) (“because a stay would avoid the possibility of duplication of discovery and certain court proceedings, the interests of judicial economy militate in favor of a stay”); *Alves*, 2013 WL 5755465, at \*3 (finding judicial economy favors temporary stay where “forg[ing] ahead with discovery and other pretrial matters . . . may well waste time and expense on matters that will then be duplicated”); *Automated Transactions, LLC v. Bath Savings Inst.*, No. 2:12-cv-393-JAW, 2013 WL 1346470, at \*2 (D. Me. Mar. 14, 2013) (concluding stay warranted due to “potential cost in time and money, not to mention the waste of judicial resources, inherent in repetitive and overlapping discovery”); *Chedester v. Town of Whately*, 279 F. Supp. 2d 53, 58 (D. Mass. 2003) (reasoning stay would avoid piecemeal litigation and promote judicial economy).

As this Court has recognized, Plaintiffs’ sworn testimony avers that a number of Plaintiffs will remove themselves from this action if proceeding is conditioned on public disclosure of their identities. (ECF No. 131 at 10.) It makes little sense to press on with discovery and other pretrial proceedings with all Plaintiffs while continuing in these proceedings at all is in question for some. Nor does it make sense to ask some Plaintiffs to proceed while others wait for the First Circuit. “To proceed with some but not all of the plaintiff’s claims when they arise from the same nucleus of alleged facts would be inefficient for the court and the parties.” *Dyer v. Penobscot Cnty.*, No. 1:20-cv-224-NT, 2020 WL 5801081, at \*4 (D. Me. Sept. 28, 2020). Thus, judicial economy is best served by awaiting the First Circuit’s determination of the pseudonymity issue.

**CONCLUSION**

Because Plaintiffs face the unquestionable prospect of irreparable harm absent a stay, no prejudice will result to Defendants from a temporary stay pending appeal, and judicial economy favors it, a stay of these proceedings pending Plaintiffs' interlocutory appeal is warranted. In the alternative, the Court should stay its Order (ECF No. 131) requiring Plaintiffs to disclose their identities pending resolution of their appeal from the Order.

Respectfully submitted,

/s/ Stephen C. Whiting

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