

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

JANE DOES 1-6, JOHN DOES 1-3, JACK  
DOES 1-1000, and JOAN DOES 1-1000

Plaintiff,

v.

JANET T. MILLS, in her official capacity as  
Governor of the State of Maine, et al.

Defendants.

CIVIL ACTION

Docket No: 1:21-cv-00242

**DEFENDANTS MAINEHEALTH, GENESIS HEALTHCARE OF MAINE, LLC,  
GENESIS HEALTHCARE LLC, AND MAINEGENERAL HEALTH'S OPPOSITION TO  
PLAINTIFFS' MOTION TO STAY PROCEEDINGS PENDING INTERLOCUTORY  
APPEAL**

Defendants MaineHealth, Genesis Healthcare of Maine, LLC, Genesis Healthcare LLC, and MaineGeneral Health, by and through counsel, respectfully submit this Partial Opposition to Plaintiffs' Motion to Stay Proceedings Pending Interlocutory Appeal (ECF No. 138) ("Plaintiffs' Motion"). Defendants object to Plaintiffs' request for a stay of the proceedings as outlined in their Motion. Defendants take no position on Plaintiffs' request for a stay of the Court's Order (ECF No. 131) requiring disclosure of Plaintiffs' identities pending their interlocutory appeal. For the reasons outlined below, the Court should deny Plaintiffs' Motion to Stay Proceedings at least through resolution of the pending motions to dismiss. At that point, if any claims remain, the parties and the Court can better assess whether a stay of proceedings pending resolution of the current interlocutory appeal is appropriate.

## I. INTRODUCTION

At its core, the Plaintiffs' Motion represents another attempt to unnecessarily delay these proceedings, which have been ongoing since August of 2021. Plaintiffs represent that they would suffer irreparable harm if the Court allows the proceedings to continue, and that the proper recourse is to stay these proceedings until their appeal is resolved. As the Court has already found, however, Plaintiffs have failed to show that their fear of harm from the disclosure of their identities is objectively reasonable. Defendants nevertheless do not press for an immediate public disclosure; they are content to let that issue be resolved by the First Circuit. With regard to a stay of proceedings, however, Plaintiffs' motion makes no mention of the specific harm that a stay of the proceedings is necessary to prevent. Indeed, they cannot mention such a specific harm, because one simply does not exist. Defendants therefore oppose a stay of all proceedings.

Should the Court determine that Plaintiffs are likely to suffer an irreparable harm from the publication of their identities, rather than from continued proceedings, the Court may resolve the concern by staying the effect of the Court's Order (ECF No. 131) during their appeal. Doing so would allow the Court to proceed with Defendants' motions to dismiss, the determination of which is unrelated to whether or not Plaintiffs' identities are to be revealed. At the same time, as long as Plaintiffs' identities are not published, the status quo they seek to protect would be maintained: the case will proceed, as it has to this point, with Plaintiffs' identities shielded from public view.<sup>1</sup>

---

<sup>1</sup> MTM Intervenors argue that Plaintiffs' motion as to the Court's Order should be denied and their identities disclosed immediately. As noted, Defendants take no position on this point. In the alternative, should the Court stay the Court's Order pending Plaintiffs' appeal, MTM argues that a stay of the proceedings is required to prevent the "the press and public, including Media Intervenors, [from being] deprived of the ability to observe this litigation...". Defendants are not in agreement with this position at this stage of the case.

## II. ARGUMENT

The Supreme Court of the United States has long recognized that the power to stay proceedings flows from a court's inherent power to manage its own docket and maintain an efficient system of justice for counsel, litigants, and itself. *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). When doing so a court must use the “exercise of judgment, which must weigh competing interests and maintain an even balance.” *Id.* (citing *Kansas City Southern R. Co. v. United States*, 282 U.S. 760, 763, 51 S.Ct. 304, 305, 306, 75 L.Ed. 684; *Enelow v. New York Life Ins. Co.*, 293 U.S. 379, 382, 55 S.Ct. 310, 311, 79 L.Ed. 440). While the court's possession of such power is clearly established, the use of this power must carefully applied. *Marquis v. F.D.I.C.*, 965 F.2d 1148, 1155 (1st Cir. 1992) (“...stays cannot be cavalierly dispensed: there must be good cause for their issuance; they must be reasonable in duration; and the court must ensure that competing equities are weighed and balanced.”); *see e.g. Ainsworth Aristocrat Int'l Pty. Ltd. v. Tourism Co. of P.R.*, 818 F.2d 1034, 1039 (1st Cir.1987); *Providence Journal Co. v. FBI*, 595 F.2d 889, 890 (1st Cir.1979) (“[a]ppellants are not, of course, entitled to a stay pending appeal without showing that their appeals have potential merit.”); *Martinez Rodriguez v. Jimenez*, 537 F.2d 1, 2 (1st Cir. 1976).

When considering whether to issue a stay of an interlocutory order pending appeal, the district courts are directed to determine:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

*Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Boston*, 996 F.3d 37, 44 (1st Cir. 2021); *Respect Maine PAC v. McKee*,

622 F.3d 13, 15 (1st Cir. 2010).<sup>2</sup> The First Circuit has noted that first among these factors is the movant's likelihood of success on appeal.<sup>3</sup> *Acevedo-Garcia v. Vera-Monroig*, 296 F.3d 13, 16 (1st Cir. 2002). In considering these factors, courts will seek to avoid engaging in proceedings that would directly interfere with the questions raised in the interlocutory appeal. *United States v. Mala*, 7 F.3d 1058, 1060–61 (1st Cir.1993); *the Pharm. Care Mgmt. Ass'n v. Maine Atty. Gen.*, 332 F. Supp. 2d 258, 259 (D. Me. 2004); *Maine v. Norton*, 148 F.Supp.2d 81 (D.Me.2001).

Plaintiffs are unable satisfy any of the required elements for a stay of these proceedings. They are exceedingly unlikely to succeed on the merits of their appeal. They will not suffer an irreparable injury without a stay of the proceedings. Defendants will be prejudiced by a further delay, and neither judicial economy nor the public interest requires a temporary stay.

#### **A. Plaintiffs Are Unlikely to Succeed on the Merits of their Appeal**

It is exceedingly unlikely that Plaintiffs will succeed on the merits of their appeal in the First Circuit. The Federal courts are averse to allowing litigants to proceed pseudonymously, allowing it only in cases where the seeking party can demonstrate a substantial privacy interest that outweighs the presumption of openness in judicial proceedings. Plaintiffs had numerous opportunities to present evidence of such a substantial privacy interest in their previous filings, and notably failed to do so. *See* ECF No. 131 at 10 (noting that the social ostracization that Plaintiffs could face if their identities were revealed fell far short of a reasonable fear of severe harm). Plaintiffs own conduct further demonstrates that their fears of disclosure are exaggerated. *See id.* (noting that none of the Plaintiffs withdrew from the litigation after the court ordered the

---

<sup>2</sup> Defendants note that Plaintiffs have addressed only three of these four factors in their motion, neglecting to address the likelihood of their success on the merits.

<sup>3</sup> “The sine qua non of the stay pending appeal standard is whether the movants are likely to succeed on the merits. In essence, the issuance of a stay depends on whether the harm caused [to] movant without the stay, in light of the movant's likelihood of eventual success on the merits, outweighs the harm the stay will cause the non-moving party. (quoting *Weaver v. Henderson*, 984 F.2d 11, 12 (1st Cir.1993)).

disclosure of their identities to the Defendants in December of 2021). The scant evidence provided by Plaintiffs does not outweigh the traditional presumption in favor the public's interest in open, transparent judicial process. It is therefore unlikely that the First Circuit would find that this Court abused its discretion when it declined to allowed Plaintiffs to proceed anonymously. *Doe v. Coll. of New Jersey*, 997 F.3d 489, 493 (3d Cir. 2021) (noting that the decision of a district court denying a plaintiff permission to proceed anonymously would be reviewed for abuse of discretion); *see also Coastal Ctys. Workforce, Inc. v. LePage*, 2018 WL 545712, at \*3 (D. Me. Jan. 24, 2018) (noting that “[i]t is difficult for a losing party to successfully make a “strong showing” to the trial court that there is a likelihood of success on appeal, since “if the court had concluded it was likely making the wrong decision, it would have made the right one.””) (quoting *United States v. Burk*, 372 F. Supp. 2d 104, 106 (D. Me. 2005)).

#### **B. Plaintiffs Will Not Suffer Irreparable Injury Absent a Stay of the Proceedings**

Plaintiffs have failed to provide any reason to believe that they will suffer an irreparable injury if the proceedings are not stayed. Plaintiffs allege that they will be irreparably harmed if their identities are disclosed prior to the resolution of their appeal, but they make no mention of the harm they will suffer if the trial court proceedings continue. *See* ECF No. 138 at 4-5. The reason for their failure to detail this harm is straightforward: the Defendants have known Plaintiffs' identities since December 15, 2021, and no decision related to the appeal will change that. Plaintiffs will not suffer any harm from continued proceedings. Similarly, the court has before it fully briefed motions for dismissal that would not be impacted in any way by resolution of the appeal. When combined with Plaintiffs' low chances for success on the merits, it is clear that Plaintiffs cannot demonstrate that they will suffer an irreparable injury absent a stay of the proceedings. *See P.R. Hosp. Supply, Inc. v. Boston Scientific Corp.*, 426 F.3d 503, 507 n.1 (1st

Cir. 2005) (stating that “[w]hat matters ... is not the raw amount of irreparable harm [a] party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits.”).

**C. Defendants Will Suffer Prejudice From A Further Delay of These Proceedings**

In contrast to Plaintiffs, Defendants stand to suffer prejudice from a further delay of these proceedings. Defendants have consistently opposed Plaintiffs’ past attempts to needlessly stay these proceedings. After many months of litigation, the Court now has before it fully briefed motions to dismiss, with oral arguments scheduled for June 24, 2022. It is entirely plausible that the merits of this case could be resolved before the appellate process is complete. In contrast to Plaintiffs’ lack of any alleged irreparable harm, Defendants face the prospect of indefinite delay should a stay be granted. Further delay would leave this case in limbo for months while the Plaintiffs’ appeal winds its way through the appellate process.<sup>4</sup>

**D. Neither the Public Interest Nor Judicial Economy Require a Temporary Stay**

Finally, neither judicial economy nor the public interest is served by staying these proceedings. To the extent that the public has an interest in the proceedings of this case, it is in favor of their prompt resolution. The matters raised in this case implicate important matters of public health and the scope and applicability of important civil rights protections. The public deserves to have these matters resolved expeditiously to provide clarity to employers, employees, and the public at large.

---

<sup>4</sup> Plaintiffs did not file this motion to stay until the last possible moment allowed under the Court’s Order, nor have they filed for an expedited hearing in the First Circuit. Plaintiffs’ actions demonstrate that they do not seek or value a speedy resolution of this matter. Moreover, if past is prologue, Plaintiffs may yet again seek emergency relief in the First Circuit, Supreme Court, or both if they are unsuccessful with their current appeal, triggering yet further delay.

Similarly, judicial economy does not weigh in favor of a stay of the proceedings. The identities of the Plaintiffs have been known to the Defendants for months, with no apparent impact on the litigation. The resolution of the appeal does not implicate the merits of the pending litigation at this time, and the staying of the proceedings is not necessary to preserve the status quo as it pertains to Plaintiffs' identities. In contrast, a stay of the proceedings would be inefficient and needlessly delay the possible resolution of this litigation. As mentioned previously, the Court has before it fully briefed motions to dismiss. However these motions are resolved, the result will aid in this case's resolution. Plaintiffs' appeal simply does not present the sort of conflict that has led courts to stay proceedings in other circumstances. *See Pharm. Care Mgmt. Ass'n*, 332 F. Supp. 2d at 260 (holding that a stay is appropriate only when the trial courts' proceedings are inconsistent with the questions presented in the interlocutory appeal); *Maine v. Norton*, 148 F. Supp. 2d 81, 83 (D. Me. 2001) (holding that would-be intervenors, who sought to proceed as parties in trial court proceedings and whose motion to intervene had been denied, were entitled to a stay where allowing further trial court proceedings without their participation would be wholly inconsistent with the question pending on appeal).

## **V. CONCLUSION**

For the reasons provided, Defendants MaineHealth, Genesis Healthcare of Maine, LLC, Genesis Healthcare LLC, and MaineGeneral Health respectfully request that the Court deny Plaintiffs' motion to stay the proceedings.

Dated: June 13, 2022

/s/ James R. Erwin

James R. Erwin

/s/ Katharine I. Rand

Katharine I. Rand

Pierce Atwood LLP  
Merrill's Wharf  
254 Commercial Street  
Portland, Maine 04101  
207-791-1100  
[jerwin@pierceatwood.com](mailto:jerwin@pierceatwood.com)  
[krand@pierceatwood.com](mailto:krand@pierceatwood.com)

*Counsel for Defendants  
MaineHealth, Genesis Healthcare of Maine,  
LLC, Genesis Healthcare LLC and  
MaineGeneral Health*



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2022, I electronically filed the foregoing Partial Opposition to Plaintiffs' Motion to Stay Proceedings Pending Interlocutory Appeal by MaineHealth, Genesis Healthcare of Maine, LLC, Genesis Healthcare LLC, and MaineGeneral Health with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to counsel of record.

Dated: June 13, 2022

/s/ James R. Erwin

James R. Erwin

Pierce Atwood LLP  
Merrill's Wharf  
254 Commercial Street  
Portland, Maine 04101  
[jerwin@pierceanwood.com](mailto:jerwin@pierceanwood.com)

*Counsel for Defendants  
MaineHealth, Genesis Healthcare of  
Maine, LLC, Genesis Healthcare  
LLC and MaineGeneral Health*