

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

JANE DOES 1-6, et al.,

Plaintiffs,

v.

JANET T. MILLS, Governor of the State of  
Maine, et al.,

Defendants.

Civil Action No. 1:21-cv-00242-JDL

**DEFENDANT NORTHERN LIGHT EASTERN MAINE  
MEDICAL CENTER’S OPPOSITION TO PLAINTIFFS’ MOTION TO STAY  
PROCEEDINGS PENDING INTERLOCUTORY APPEAL**

**INTRODUCTION**

Defendant Northern Light Eastern Maine Medical Center (hereinafter “EMHS”), hereby submits its opposition to Plaintiffs’ Motion to Stay Proceedings Pending Interlocutory Appeal (ECF No. 138) (the “Motion”).

In the Motion, Plaintiffs request that the Court stay all proceedings in this case pending resolution of their appeal to the First Circuit (ECF No.132) (the “Appeal”) of the Court’s Order granting the Media Intervenors’ Motion to Unseal Plaintiffs’ Identities (ECF No. 131) (the “Order”), which requires the Plaintiffs to amend their Complaint and disclose their identities on the public record. Alternatively, Plaintiffs request that the Court stay the Order going into effect until resolution of the Appeal. EMHS’ position is most clearly expressed if we consider Plaintiffs’ alternative request first.

## ARGUMENT

The Court should not grant Plaintiffs’ alternative request. EMHS agrees with the arguments made by the Media Intervenors in their Opposition to Plaintiffs’ Motion to Stay Proceedings Pending Interlocutory Appeal (ECF No. 139) (the “MI Opposition”) that a stay of the Order is not warranted because application of the standard for staying an interlocutory order in this case weighs in favor of declining the Motion and enforcing the Order. *See* FED. R. CIV. P. 62(c); MI Opposition at 3-8.

As noted in the MI Opposition, the Court properly evaluated the Plaintiffs’ interest in continuing to proceed in this case pseudonymously and determined that disclosure of their identities was merited. *See* Order. For the reasons articulated by the Court in the Order, Plaintiffs are unlikely to make a strong showing of a likelihood of success on the merits – the “sine qua non” of the stay standard. *Coastal Ctys. Workforces, Inc. v. LePage*, No. 17-CV-417-JAW, 2018 WL 545712, at \*2 (D. Me. Jan. 24, 2018) (setting forth the stay standard for interlocutory appeals) (quoting *Acevedo-Garcia v. Vera-Monroig*, 296 F.3d 13, 16-17 (1st Cir. 2022)). On that basis (among others articulated in the MI Opposition), Plaintiffs’ request for a stay of the Order should be denied, an amended complaint should be filed as ordered, and the matter should proceed in the ordinary course.

However, in the event the Court is inclined to grant Plaintiffs’ alternative request to stay the effect of the order until the interlocutory appeal is resolved, EMHS’s position on the appropriate course of the rest of the case grows more nuanced. Given the position set forth in the paragraphs above, it is obvious that EMHS also disagrees with the primary relief sought by Plaintiffs; i.e., an overall stay of this case pending resolution of the Appeal. EMHS opposes such

a request insofar as it would stay proceedings related to the State Defendants' and Provider Defendants' fully briefed Motions to Dismiss.

In evaluating whether to grant a stay pending appeal under Rule 62(c), a court must consider: ““(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.”” *Id.* at \*2 (quoting *Hilton v Braunskill*, 481 U.S. 770, 776 (1987)). All of the foregoing factors weigh in favor of denying Plaintiffs' Motion to stay overall proceedings and therefore EMHS requests that the Motion for an overall stay of this case be denied with respect to the pending Motions to Dismiss and related oral argument.

As noted above, Plaintiffs are unlikely to succeed on the merits of their Appeal, which is the most important consideration for the Court in assessing the Motion. *See id.* Further, if the case moves forward on the Motions to Dismiss – especially if the Order is stayed pending resolution of the Appeal – Plaintiffs will not be irreparably harmed by such decision, which is a factor they do not address in the Motion.<sup>1</sup> Rather, if anything, Plaintiffs will benefit from a decision on the Motions to Dismiss because they will have a final decision concerning their claims or a green light to go forward in the case to discovery. Judicial economy also favors moving forward with proceedings on the Motions to Dismiss because, if such motions are decided in the State Defendants' and/or Provider Defendants' favor, the Appeal will be moot and disclosure of Plaintiffs' identities will no longer be at issue. Moreover, a decision on the Motions to Dismiss would not affect the collateral issue presented by the Appeal in any way.

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<sup>1</sup> Plaintiffs' irreparable harm argument only addresses the harm they allegedly would suffer if forced to disclose their identities under the Order. *See Mot.* at 4-5.

In the event however, that the Court denies EMHS’ Motion to Dismiss, EMHS would then agree that further proceedings from that point – *beyond oral argument and a decision on Defendants’ fully briefed and pending Motions to Dismiss* – should be stayed pending resolution of the Appeal because a decision on the Appeal would be necessary for EMHS to properly defend the case in discovery and would serve judicial economy. *See Whitman v. Aetna Health, Inc.*, No. 1:14-cv-00322-JAW, 2014 WL 4772666, at \*2 (D. Me. Sept. 24, 2014) (granting a temporary stay where “a stay would avoid the possibility of duplication of discovery and certain court proceedings . . .”). Notably here, if Plaintiffs’ representations are accurate, there is a substantial possibility that once they are no longer assured a veil of anonymity because the Appeal is denied and the Order upheld, no Plaintiff, or no Plaintiff asserting claims against EMHS, will wish to move forward. If such circumstances come to pass, entering into an active discovery phase would not be a good use of the Court’s resources or the parties’ resources.

### CONCLUSION

For all of the foregoing reasons, EMHS requests that the Court deny the Motion for an overall stay and deny Plaintiffs’ alternative request to stay the effect of the Order. If the Court denies both requests, the case should simply proceed in the ordinary course.

If, however, the Court is inclined to grant the Plaintiffs’ alternative request and stay the effect of the Order, EMHS asks that the Court continue with proceedings on the fully briefed Motions to Dismiss as scheduled. Only if the case survives the Motions to Dismiss *and* the Court stays the effect of the Order pending resolution of the Appeal should proceedings beyond the Motions to Dismiss be stayed.

Dated at Augusta, Maine, this 13<sup>th</sup> day of June, 2022.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2022, I electronically filed the foregoing Defendant Northern Light Eastern Maine Medical Center's Opposition to Plaintiffs' Motion to Stay Proceedings Pending Interlocutory Appeal with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Ryan P. Dumais  
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