

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STACY FOSTER, et al.,

Plaintiffs,

v.

COMMONWEALTH OF
MASSACHUSETTS, et al.,

Defendants.

C.A. No. 1:18-CV-10354

JOINT MOTION TO STAY PROCEEDINGS

Plaintiffs Stacy Foster, Jamie Kimball, Jonathan Riley and Nicole Westcott and the 19 Defendants (“Commonwealth”) hereby submit this joint motion to stay these proceedings for 120 days, including the deadline for Defendants’ response to the Amended Complaint. In support of this motion, the parties state the following:

1. This action seeks class-wide relief on behalf of approximately 28,500 individuals whose convictions were vacated and cases dismissed with prejudice by the Supreme Judicial Court of Massachusetts in 2017 and 2018, and others whose convictions were vacated and whose cases were dismissed after the misconduct in the Hinton and Amherst Drug Labs was revealed to the public, but before the Supreme Judicial Court took official action. Plaintiffs claim that under *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), those individuals are entitled to the return of payments that were exacted from them, compensation for mandatory labor or community service they performed, and return of property seized from them, upon and as consequences of their now-vacated convictions.

2. Plaintiffs filed their Complaint on February 23, 2018. In order to facilitate ongoing discussions between counsel for Plaintiffs and the Commonwealth regarding the litigation, Plaintiffs requested and obtained extensions of the deadline by which to serve the Complaint on the Defendants. The Complaint was served on August 24, 2018, with a response deadline of September 14, 2018. No responsive pleading was filed in response to the Complaint.

3. On September 6, 2018, Plaintiffs filed an Amended Complaint. Defendants have not yet filed a response to the Amended Complaint, which is due October 3, 2018.

4. Since March 2018, counsel for Plaintiffs and the Commonwealth have engaged in regular, productive discussions regarding several complex issues that arise from, inter alia, the size of the proposed class and the length of time at issue.

5. The parties believe that a stay of proceedings for 120 days will allow the parties to continue working towards addressing these complex issues with the goal of identifying areas of agreement and resolving remaining areas of dispute.

6. The parties believe that a 120-day stay is in the interests of justice and will conserve judicial resources.

Accordingly, the parties hereby move this Court to stay these proceedings for 120 days, including Defendants' deadline for responding to the Amended Complaint.

Respectfully submitted,

Plaintiffs	Defendants
<p>STACY FOSTER, JAMIE KIMBALL, JONATHAN RILEY, and NICOLE WESTCOTT,</p> <p>By their Attorneys</p> <p><u>/s/ William W. Fick</u> DANIEL N. MARX, BBO# 674523 WILLIAM W. FICK, BBO# 650562 Fick & Marx LLP 3 Post Office Square, 7th Floor Boston, MA 02109 (857) 321-8360 dmarx@fickmarx.com wfick@fickmarx.com</p> <p>LUKE RYAN, BBO# 664999 Sasson, Turnbull, Ryan & Hoose 100 Main Street, Third Floor Northampton, MA 01060 (413) 586-4800 lryan@strhlaw.com</p> <p>Date: September 13, 2018</p>	<p>COMMONWEALTH OF MASSACHUSETTS; CHARLIE BAKER, Governor; DEBORAH B. GOLDBERG, Treasurer; JONATHAN S. WILLIAMS, Administrator of the Trial Court; EDWARD DOLAN, Commissioner of Probation; MAURA HEALEY, Attorney General; KERRY GILPIN, Massachusetts State Police Superintendent; DANIEL BENNETT, Secretary of the Executive Office of Public Safety and Security; JONATHAN BLODGETT, Essex County District Attorney; DAN CONLEY, Suffolk County District Attorney; TIMOTHY J. CRUZ, Plymouth County District Attorney; MICHAEL MORRISSEY, Norfolk County District Attorney; MICHAEL D. O'KEEFE, Cape and Islands District Attorney; THOMAS M. QUINN III, Bristol County District Attorney; MARIAN T. RYAN, Middlesex County District Attorney; PAUL J. CACCAVIELLO, Berkshire County District Attorney; ANTHONY GULLUNI, Hampden County District Attorney; DAVID E. SULLIVAN, Northwestern District Attorney; and JOSEPH D. EARLY, JR., Worcester County District Attorney,</p> <p>By their Attorneys</p> <p>MAURA HEALEY ATTORNEY GENERAL</p> <p><u>/s/ Anne Sterman</u> Anne Sterman, BBO# 650426 Katherine B. Dirks, BBO# 673674 Assistant Attorneys General Government Bureau/Trial Division One Ashburton Place, Room 1813 Boston, MA 02108 (617) 727-2200 anne.sterman@state.ma.us katherine.dirks@state.ma.us</p> <p>Date: September 13, 2018</p>

CERTIFICATE OF SERVICE

I, Anne Sterman, Assistant Attorney General, hereby certify that I have this day, September 13, 2018, served the foregoing document upon all parties of record, by electronically filing to all ECF-registered parties and by sending a copy, first-class mail, postage prepaid to all unregistered parties.

/s/ Anne Sterman
Anne Sterman