

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

KRISTY DUMONT; DANA DUMONT;  
ERIN BUSK-SUTTON; and REBECCA  
BUSK-SUTTON,

Plaintiffs,

v.

NICK LYON, in his official capacity as  
the Director of the Michigan Department  
of Health and Human Services; and  
HERMAN MCCALL, in his official  
capacity as the Executive Director of the  
Michigan Children’s Services Agency,

Defendants,

and

ST. VINCENT CATHOLIC CHARITIES;  
MELISSA BUCK; CHAD BUCK; and  
SHAMBER FLORE,

Intervenor Defendants.

No. 2:17-cv-13080-PDB-EAS

HON. PAUL D. BORMAN

MAG. ELIZABETH A. STAFFORD

**PLAINTIFFS’ AND STATE  
DEFENDANTS’ JOINT MOTION  
TO STAY PROCEEDINGS**

Plaintiffs Kristy Dumont, Dana Dumont, Erin Busk-Sutton, and  
Rebecca Busk-Sutton (collectively, “Plaintiffs”) and Defendants Nick Lyon and  
Herman McCall (collectively, “State Defendants”) respectfully move this Court for  
a stay of proceedings in the above-captioned action (the “Action”) for sixty (60)

days for the purpose of allowing Plaintiffs and State Defendants to engage in settlement discussions.<sup>1</sup> In support of the motion, Plaintiffs and State Defendants state as follows:

1. On September 20, 2017, Plaintiffs filed the complaint in the Action (the “Complaint”) with the U.S. District Court for the Eastern District of Michigan against the State Defendants. (ECF No. 1.)

2. On December 18, 2017, St. Vincent Catholic Charities, Melissa and Chad Buck, and Shamber Flore (“Intervenor Defendants”) moved to intervene in this case (ECF No. 18), which motion was granted on March 22, 2018. (ECF No. 34.)

3. On September 14, 2018, this Court denied in substantial part the motions to dismiss filed by State Defendants and Intervenor Defendants. (ECF No. 49 at 93.)

4. On September 17, 2018, the Court entered a schedule for discovery and briefing to “manage the progress of the case” (the “September 17 Scheduling Order”). (ECF No. 51 at 1.)

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<sup>1</sup> Concurrently with this motion, the parties will also file a motion for immediate consideration.

5. On October 31, 2018, all Parties jointly moved to modify the September 17 Scheduling Order. (ECF No. 61.) On November 2, 2018, this Court granted in part and denied in part that motion. (ECF No. 62).

6. On November 13, 2018, this Court issued an Amended Scheduling Order (the “November 13 Scheduling Order”), which *inter alia* orders that fact discovery be completed by February 18, 2019 and expert discovery be completed by March 18, 2019. (ECF No. 63.)

7. Pursuant to the November 13 Scheduling Order, the Parties have engaged in substantial discovery, including the exchange of written discovery and document production.

8. In addition, the Parties have collectively noticed the depositions of sixteen individuals or entities, most of which have been noticed by multiple parties. Those depositions are scheduled to begin this Friday January 25, 2019.

9. Plaintiffs and State Defendants have begun preliminary discussions to resolve Plaintiffs’ claims asserted against the State Defendants in the Complaint. Because Plaintiffs and State Defendants have agreed to actively work, and are actively working, to reach a resolution, Plaintiffs and State Defendants request that the Court stay all proceedings, including the deadlines for the close of fact and expert discovery and any dispositive motions, for a period of sixty (60) days.

10. The Court's "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. N. Amer. Co.*, 299 U.S. 248, 254 (1936); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket."). "The most important factor is the balance of the hardships, but the district court must also consider whether granting the stay will further the interest in economical use of judicial time and resources." *F.T.C. v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 628 (6th Cir. 2014) (citation omitted); *see also Iljin USA v. NTN Corp.*, 2006 WL 568351, at \*2 (E.D. Mich. March 7, 2006) (holding that "it is unassailable that issues of judicial economy and balancing the interests of the parties and the Court are to be taken into account.").

11. This motion is brought in good faith based on ongoing discussions between Plaintiffs and State Defendants, such that the parties have a good faith belief that there is a reasonable likelihood that they may be able to settle the case if given sufficient time to engage in focused discussions over the coming weeks, rather than preparing for and taking more than a dozen depositions. A stay of all proceedings would serve judicial economy by facilitating an efficient resolution of Plaintiffs' claims and avoiding the need for both the Court and the Parties to expend resources on the completion of discovery and any dispositive motions.

Indeed, Plaintiffs and State Defendants hope to resolve this case in advance of the time dispositive motions would be fully briefed under the November 13 Scheduling Order. The Sixth Circuit has recognized that courts “should encourage and aid early settlement.” *In re NLO, Inc.*, 5 F.3d 154, 157 (6th Cir. 1993); *see also* Fed. R. Civ. P. 16 advisory committee notes (“Since it obviously eases crowded court dockets and results in savings to the litigants and the judicial system, settlement should be facilitated at as early a stage of the litigation as possible.”).

12. If Plaintiffs and State Defendants have not resolved this matter by sixty (60) days of any order to stay entered by this Court, Plaintiffs and the State Defendants will advise the Court and will be prepared to promptly resume and conclude discovery.

13. Pursuant to Local Rule 7.1, Plaintiffs and State Defendants contacted Intervenor Defendants’ counsel on January 23, 2019 to determine if they would concur in the relief sought. Intervenor Defendants’ counsel took no position as to this motion.

For the foregoing reasons, Plaintiffs and State Defendants respectfully request that the Court enter an order staying proceedings in the Action for sixty (60) days.

Dated: January 23, 2019

/s/ Ann-Elizabeth Ostrager

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**PLAINTIFFS' AND STATE  
DEFENDANTS' BRIEF IN  
SUPPORT OF JOINT MOTION  
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## **CONCISE STATEMENT OF ISSUES PRESENTED**

1. Whether this Court should stay proceedings to allow the parties to engage in settlement discussions?

## **CONTROLLING OR MOST APPROPRIATE AUTHORITY**

*Landis v. N. Amer. Co.*, 299 U.S. 248 (1936); *F.T.C. v. E.M.A. Nationwide, Inc.*, 767 F.3d 611 (6th Cir. 2014); *In re NLO, Inc.*, 5 F.3d 154, 157 (6th Cir. 1993).

## **ARGUMENT**

Plaintiffs and State Defendants rely on the facts set forth in the attached motion and the discretion of this Court to control its docket.

Plaintiffs and State Defendants have begun preliminary discussions to resolve Plaintiffs' claims asserted against the State Defendants in the complaint in the above-captioned action. Because Plaintiffs and State Defendants have agreed to actively work, and are actively working, to reach a resolution, Plaintiffs and State Defendants request that the Court stay all proceedings, including the deadlines for the close of fact and expert discovery and any dispositive motions, for a period of sixty (60) days.

This motion is brought in good faith and based on ongoing discussions between Plaintiffs and State Defendants, such that the parties have a good faith belief that there is a reasonable likelihood that they may be able to settle

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**CERTIFICATE OF SERVICE**

I hereby certify that, on January 23, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: January 23, 2019

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