

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

ROBERT GORDON, 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,

Defendants-Intervenors.

No. 17-cv-13080-PDB-EAS

HON. PAUL D. BORMAN

MAG. ELIZABETH A. STAFFORD

**STATE DEFENDANTS' MOTION FOR A STIPULATED
EXTENSION OF STAY OF PROCEEDINGS UNTIL
MARCH 31, 2019, AND BRIEF IN SUPPORT**

State Defendants Robert Gordon and Herman McCall, by and through undersigned counsel, respectfully move this Court to extend the stay of proceedings until March 31, 2019.

Pursuant to Local Rule 7.1, State Defendants sought concurrence from Plaintiffs and Intervening Defendants in the relief sought.

Plaintiffs stipulate to the requested extension of time, and Intervenor Defendants' counsel took no position on this motion.

In support of its motion, State Defendants rely on the accompanying brief.

Respectfully submitted,

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Dated: February 22, 2019

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**BRIEF IN SUPPORT OF
MOTION FOR STIPULATED EXTENSION OF STAY OF
PROCEEDINGS UNTIL MARCH 31, 2019**

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Whether this Court should extend the stay of proceedings to allow substituted State Defendants additional time to review the case and meaningfully participate in continuing settlement discussions.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

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).

STATEMENT OF FACTS

1. On September 20, 2017, Plaintiffs filed the complaint in this action with the U.S. District Court for the Eastern District of Michigan against then-Michigan Department of Health and Human Services (Department) Director Nick Lyon and then-Executive Director of the Department's Children's Services Agency (CSA) Herman McCall.

2. In mid-January 2019, Robert Gordon was appointed as the new director of the Department. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Director Gordon was "automatically substituted as a party" for former Director Nick Lyon, a party in his official capacity who ceased to hold office during the pendency of this case.

3. Prior to January 24, 2019, as the parties conducted discovery and scheduled several depositions set to begin on January 25, 2019, Plaintiffs and State Defendants undertook initial settlement discussions.

4. On January 24, 2019, the court stayed the case for 30 days, allowing Plaintiffs and State Defendants to continue focusing on settlement discussions. (Doc. 76.)

5. Since his appointment, Director Gordon has been reviewing the numerous areas handled by and the issues affecting the Department, including other pending litigation and this case. For example, the Department is a party to a consent decree, now titled “Implementation, Sustainability & Exit Plan” (ISEP), entered in *Dwayne B. v. Whitmer*, Case No. 2:06-cv-13548, pending in the United States District Court for the Eastern District of Michigan before the Honorable Nancy G. Edmunds. The parties are scheduled to appear for a hearing on March 13, 2019, following the upcoming release of a report by court monitors reviewing and reporting on the State’s progress under the ISEP. Director Gordon has been reviewing materials pertaining to the 14-year-old case and preparing to appear at the March 13 hearing and address the court. In addition, Director Gordon has been preparing to provide testimony at a hearing before the Senate Advice and Consent Committee considering his appointment as the Department Director. The hearing began on February 14, 2019 and will be continued on February 27, 2019.

6. Effective February 25, 2019, Jennifer Wrayno will serve as the Acting Executive Director of the CSA, replacing current Executive

Director Herman McCall, while the Department searches for a new Executive Director. She will be “automatically substituted as a party” for Mr. McCall, a party in his official capacity who ceased to hold office during the pendency of this lawsuit. In preparation for her new role, Director Wrayno has been reviewing the several areas and issues handled by the CSA, including this case and the *Dwayne B.* case.

7. In addition to their extensive management duties, Director Gordon and Acting Director Wrayno are diligently reviewing pleadings, motions, orders, and discovery materials in this case. They are also reviewing the terms of the Department’s contracts with child placing agencies, related Department policy and practice, and applicable law in consultation with counsel.

8. During the stay in the instant case, Plaintiffs and State Defendants have continued to actively engage in productive settlement discussions, including discussing various settlement options and weighing their potential impact. However, Director Gordon and Acting Executive Director Wrayno need additional time to review materials so they can meaningfully participate in these discussions, evaluate any potential resolution, and weigh the impacts.

ARGUMENT

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.”).

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.”). This Motion is brought in good faith based on ongoing productive 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 continue engaging in focused discussions over the coming weeks, rather than preparing for and taking more than a dozen depositions. A continued stay of all proceedings until March 31, 2019, 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.

CONCLUSION AND RELIEF REQUESTED

Therefore, State Defendants respectfully request that this Court extend the stay of proceedings until March 31, 2019. This additional time is needed to allow the newly substituted State Defendants sufficient time to diligently and thoroughly review the case, consult with counsel, and participate in settlement discussions, in addition to carrying out their extensive management duties. Plaintiffs stipulate to the requested extension of time.

Respectfully submitted,

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Dated: February 22, 2019

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on February 22, 2019, I electronically filed **State Defendants' Motion for a Stipulated Extension of Stay of Proceedings Until March 31, 2019, and Brief in Support** with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

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