

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v.

ROBERT GORDON, in his official
capacity as the Director of the Michigan
Department of Health and Human Services;
HERMAN MCCALL, in his official capacity
as the Executive Director of the Michigan
Children's Services Agency; DANA NESSEL,
in her official capacity as Michigan Attorney
General; ALEX AZAR, in his official capacity
as Secretary of Health and Human Services;
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants.

No. 1:19-cv-00286

HON. ROBERT J. JONKER

MAG. PHILLIP J. GREEN

**STATE DEFENDANTS'
MOTION FOR STAY OF
DEADLINES PENDING
RESOLUTION OF THE
DUMONTS' MOTION TO
INTERVENE AND
PROPOSED MOTION TO
TRANSFER, AND BRIEF IN
SUPPORT**

*** EXPEDITED CONSIDERATION REQUESTED ***

**STATE DEFENDANTS' MOTION FOR STAY OF DEADLINES PENDING
RESOLUTION OF THE DUMONTS' MOTION TO INTERVENE AND
PROPOSED MOTION TO TRANSFER, AND BRIEF IN SUPPORT**

Defendants Michigan Department of Health and Human Services (DHHS)

Director Robert Gordon, DHHS Children's Services Agency Executive Director

JooYuen Chang,¹ and Michigan Attorney General Dana Nessel (collectively, "State

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, this joint motio

Defendants”) respectfully move this court for a stay of the deadlines to respond to the Complaint and the Motion for Preliminary Injunction filed by Plaintiffs in the above-captioned case (the “Action”) pending the Court’s ruling on Kristy Dumont and Dana Dumont’s (collectively, “Proposed Intervenors”) Motion to Intervene and Proposed Motion to Transfer Pursuant to 28 U.S.C. § 1404(a). In support of this motion, State Defendants rely on the accompanying brief.

State Defendants respectfully request expedited consideration of this motion under LR 7.1(e) because “the relief requested by [the] motion may be rendered moot before the motion is briefed in accordance with the schedules set forth” in the Local Rules. The current deadlines require State Defendants to file a response to Plaintiffs’ Motion for Preliminary Injunction in 7 days – by May 29, 2019 – and to respond to the Complaint by June 24, 2019. For judicial economy and efficiencies for the parties and counsel, the threshold procedural issues of intervention and transfer should be decided so that the proper court is establishing the procedure and timelines for addressing substantive issues.

Plaintiffs’ claims filed in this Action challenge the enforceability of a settlement agreement entered between DHHS officials and the plaintiffs in a case filed in the Eastern District of Michigan and assigned to District Judge Paul D. Borman, styled *Dumont v. Gordon (Dumont)*, Case No. 2:17-cv-13080. Plaintiffs St. Vincent Catholic Charities, the Bucks, and Shamber Flore intervened as defendants

reflects the substitution of Children’s Services Agency Executive Director JooYuen Chang for former Children’s Services Agency Executive Director Herman McCall, who was named in his official capacity.

in the *Dumont* case, arguing that intervention was required to protect rights they now assert in this case. But, after intervening in *Dumont*, Plaintiffs failed to assert their claims and remained silent after settlement was entered and the case was dismissed. Judge Borman retained jurisdiction over enforcement of the agreement that is the crux of Plaintiffs' claims filed in this new case and this new forum.

In lieu of filing an answer, State Defendants intend to file a motion to transfer under 28 U.S.C. § 1404(a) or, in the alternative, a motion to dismiss. Having to file a brief in opposition to the Plaintiffs' Motion for Injunction nearly a month in advance of the deadline for responding to the Complaint – and before the Dumonts' motion to intervene is decided, along with their motion to transfer – will result in a flurry of motion practice on substantive issues and claims that were initially raised by Plaintiffs in another jurisdiction and that should be transferred back to the original court for consideration together with other substantive matters on a timeline established by the presiding court. Briefing these matters before relevant parties are joined and before this Court determines the threshold procedural issue of whether it is the proper forum to decide claims first raised by Plaintiffs in another court to justify intervention in that case wastes substantial time and resources of this Court, the parties, and their counsel.

1. 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).

2. In the interest of judicial efficiency, courts have prioritized resolution of a transfer motion before getting to the merits of an action. *See, e.g., McDonnell Douglas Corp. v. Polin*, 429 F.2d 30, 31 (3d Cir. 1970) (noting that “[j]udicial economy requires that another district court should not burden itself with the merits of the action until it is decided that a transfer should be effected”).

3. These threshold issues should be resolved at this early stage to avoid wasting time and the resources of this Court on claims and motions that could have and should have been filed by these same Plaintiffs, then-Intervenor Defendants, in the *Dumont* case where they argued they needed to intervene to preserve these same claims. And, until these issues are decided, the deadlines to respond to the Complaint and the motion for preliminary injunction should be stayed in the interest of economy of time and effort for the Court, the parties, and their counsel.

4. Moreover, the balance of harm weighs in favor of granting this Motion to Stay. Plaintiffs contend there is an urgent need for a decision on their Motion for Preliminary Injunctive Relief. However, the proposed transferee court has already considered many of the claims raised in the Plaintiffs’ Motion for Preliminary Injunction in a 92-page Opinion and Order it issued in *Dumont* (Dumont, ECF No.

49), and that court is already familiar with the issues and settlement agreement at the crux of this case. This could very well mean that by staying the briefing, allowing defendants to tailor their briefing to a court already familiar with the issues, and giving that court the ability to control its docket (including expediting the briefing schedule), Plaintiffs may receive a *quicker* decision on their Preliminary Injunction Motion.

5. Pursuant to Local Rule 7.1, State Defendants requested the parties' concurrence in the relief sought in this motion to stay deadlines via electronic mail dated May 20, 2019. On May 21, 2019, Plaintiffs refused to consent "unless all defendants are willing to consent to the relief requested in that [preliminary injunction] motion for the duration of this litigation."

6. For the foregoing reasons, State Defendants respectfully request that this Court enter an order staying all proceedings in the Action until it has decided the Proposed Intervenor's Motion to Intervene and Motion to Transfer.

7. In the event this Court denies the expedited relief requested, State Defendants respectfully request an extension of the current deadline to respond to the Motion for Preliminary Injunction to June 24, 2019, which aligns with the current deadline to respond to the complaint

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Toni L. Harris

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