

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

**\* EXPEDITED CONSIDERATION REQUESTED \***

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

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Date: May 22, 2019

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### **CONCISE STATEMENT OF ISSUES PRESENTED**

1. Whether this Court should stay deadlines to respond to the Complaint and Plaintiffs' Motion for Preliminary Injunction, pending resolution of the proposed intervenors' motion to intervene and motion to transfer pursuant to 28 U.S.C. § 1404(a).

### **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); *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30 (3d Cir. 1970).

## INTRODUCTION

This Court's time, effort and resources, as well as that of the parties and their counsel, should be judiciously spent. This is particularly true here, when time, effort and resources have already been expended by another court on the same issues raised by the same parties. Plaintiffs vociferously requested intervention in *Dumont v. Gordon*, a case filed in the Eastern District of Michigan in 2017, claiming their interests were at stake. The *Dumont* court agreed and allowed Plaintiffs to intervene, and Plaintiffs became fully engaged as a party to that case: filing a motion to dismiss and seeking (and receiving) extensive discovery, but failing to file any counterclaims, cross-claims, or third-party claims asserting the rights they insisted were under threat. As a basis for intervention, Plaintiffs even argued that they needed to protect their right to appeal a settlement agreement, in the event one was reached. But when the time came to do so, they remained silent.

Now, after not asserting any claims for more than a year as intervening defendants in the *Dumont* case, Plaintiffs file a new lawsuit in a new court, collaterally attacking the settlement agreement and asserting the same rights they insisted could only be protected through intervention in that case – where the court then denied their motion to dismiss. Now, they insist that time is of the essence. And they want this Court to disregard their involvement in *Dumont* and grant relief they could not get from the court in *Dumont*. But these threshold issues should be decided before this Court and the parties waste time and resources addressing substantive issues that should have been filed in the *Dumont* case. Accordingly, State Defendants request a stay so that this court can focus on

the threshold issues of whether the Proposed Intervenors should be allowed to intervene in this case, which seeks to challenge the enforcement of its settlement agreement, and, more importantly whether this matter should be transferred to the court that retained jurisdiction to hear such a dispute. For the reasons stated below, State Defendants contend that a stay is warranted.

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.

## STATEMENT OF FACTS

Prior to filing the instant case, Plaintiffs St. Vincent Catholic Charities (“SVCC”), Melissa Buck, Chad Buck, and Shamber Flore moved to intervene by right in a lawsuit filed in the United States District Court for the Eastern District, styled *Dumont v. Gordon*, Case No. 2:17-cv-13080 (Borman, J.) (“*Dumont*”). In *Dumont*, the plaintiffs challenged Michigan Department of Health and Human Services’ contracts with faith-based child placing agencies that refused to comply with the agency contract’s nondiscrimination provisions and Michigan law, 2015 PA 53. In their motion to intervene, filed on December 18, 2017, Plaintiffs SVCC, the Bucks, and Shamber Flore, as then-Proposed Intervenor Defendants, argued that they should be granted intervention to protect their rights and preserve appeal rights in the event the *Dumont* plaintiffs and DHHS officials entered into a settlement:

[H]ave a substantial legal interest that may be impaired, because [the *Dumont* Plaintiffs’] complaint could force St. Vincent to close its foster and adoption programs, and also harm the Buck Family and Shamber Flore through the resulting loss of services. No other party adequately represents Proposed Intervenors’ interests, because the State (a) has not raised the arguments advanced by Proposed Intervenors, (b) cannot adequately advance Proposed Intervenors’ Free Exercise interests (on which the State would be adverse), (c) cannot present the same factual evidence as Proposed Intervenors, and (d) is a purchaser of St. Vincent’s services, and therefore may have different priorities and interest in this litigation. (*Dumont*, ECF No. 18, Pg ID 418, ¶ 2.)

Then-Proposed Intervenor Defendants, now Plaintiffs, also argued that “here Defendants may eventually want to settle this case with Plaintiffs. But the burden of settlement would fall on Proposed Intervenors. Were Proposed Intervenors

unable to immediately appeal and protect their interest, the right to litigate their interest separately would be cold comfort . . . .” (*Dumont*, ECF No. 18, Pg ID 452.)

After the *Dumont* court granted their motion to intervene on March 22, 2018 (*Dumont*, ECF No. 34), SVCC, Chad and Melissa Buck, and Shamber Flore participated in the case as Intervenor Defendants, but did not assert any counterclaims, cross-claims, or third-party claims. They filed a motion to dismiss the *Dumont* plaintiffs’ complaint, which Judge Borman denied (*Dumont*, ECF No. 49). They then engaged in extensive discovery, including serving the *Dumont* plaintiffs and DHHS officials with numerous document requests, interrogatories, and requests to admit. Days before the parties were scheduled to begin weeks of depositions, the *Dumont* plaintiffs and DHHS officials entered into settlement discussions, and Judge Borman stayed the case. (*Dumont*, ECF Nos. 74 and 81.)

On March 22, 2019, the *Dumont* plaintiffs and DHHS officials entered into a settlement agreement and filed a stipulated voluntary dismissal with prejudice of the *Dumont* plaintiffs’ claims, with the signed settlement agreement attached. (*Dumont*, ECF No. 82.) Judge Borman entered an Order of Dismissal and “retain[ed] jurisdiction over the enforcement of the Settlement Agreement in the Action.” (*Dumont*, ECF No. 83, Pg ID 1469.) Intervenor Defendants stayed silent on the matter – until they filed a new lawsuit challenging the *Dumont* settlement agreement in this Court weeks later.

On April 15, 2019, Intervenor Defendants-turned-Plaintiffs filed this Action against the same DHHS officials in *Dumont*, and added as defendants Michigan

Attorney General Dana Nessel (together with *Dumont* defendants, collectively “State Defendants”) and Secretary of Health and Human Services Alex Azar and the United States Department of Health and Human Services (collectively, “Federal Defendants”). (ECF No. 1) Their claims assert the same rights they claimed were at risk in *Dumont*, so as to justify intervention. As newly filed here, Plaintiffs’ claims constitute a collateral attack on the settlement agreement in *Dumont*.

On April 16, 2019, Plaintiffs filed a Motion for Preliminary Injunctive Relief (the “PI Motion”) (ECF No. 5), which if granted would have the effect of invalidating the settlement agreement in *Dumont*.

Plaintiffs, State Defendants and Federal Defendants filed a stipulation to extend the deadline to file a response to Plaintiffs’ Motion for Preliminary Injunctive Relief to May 29, 2019, and to extend State Defendants’ deadline to respond to Plaintiffs’ Complaint to June 24, 2019, which this Court granted. (ECF No. 16.)

On May 21, 2019, Proposed Intervenors moved to intervene by right in this Action, alleging that Plaintiffs seek to invalidate the settlement agreement executed by the *Dumont* Plaintiffs and DHHS Defendants in *Dumont*. (ECF No. 18.) State Defendants have consented to intervention by the Dumonts. Plaintiffs refused consent, and Federal Defendants took no position on the matter. (ECF No. 20.)

On May 21, 2019, the Dumonts also filed a proposed motion to transfer pursuant to 28 U.S.C. § 1404(a), requesting that this Court transfer this Action to

the United States District Court for the Eastern District of Michigan. (ECF No. 21.) The Dumonts allege that the proper forum for challenging the settlement agreement entered in *Dumont*, which is the crux of Plaintiffs' claims in the Complaint filed in the instant case, is the United States District Court for the Eastern District of Michigan with District Judge Paul D. Borman, because Judge Borman expressly retained jurisdiction over enforcement of the agreement. State Defendants consent to the transfer. Plaintiffs refused consent, and Federal Defendants took no position on the issue. (ECF No. 23.)

### ARGUMENT

This Court has discretion to consider economy of time and effort when controlling its docket, not just for itself, but for counsel and for litigants. *Landis v. N. Amer. Co.*, 299 U.S. 248, 254 (1936). Additionally, “[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 and such consideration additionally requires that the court which ultimately decides the merits of the action should also decide the various questions which arise during the pendency of the suit instead of considering it in two courts.” *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30, 31 (3d Cir. 1970). Motions for Preliminary Injunctive Relief reach the merits of a case because one of the considerations when deciding such motions is whether the movant is likely to succeed on the merits. *See McNeilly v. Land*, 684 F.3d 611, 615 (6th Cir. 2012).

Here, judicial economy favors staying further proceedings, including the deadlines to respond to Plaintiffs' Motion for Preliminary Injunctive Relief and to respond to the Complaint. A stay pending resolution of the motions to intervene and transfer venue would allow this Court to properly decide the threshold procedural issues submitted in pending motions without having to engage in unnecessary work, in the event it decides to transfer this matter. Moreover, if this Court decides to grant the motion to transfer venue, the stay would allow all parties to then tailor their responses and replies (particularly with regard to Plaintiffs' Motion for Preliminary Injunctive Relief) for a judge who is already familiar with the underlying issues and claims of this matter.

A stay of all proceedings pending resolution of the motion to intervene and the motion to transfer promotes efficiency of time and effort and would be in the interest of all parties, including in the interest of this Court.

## CONCLUSION AND RELIEF REQUESTED

A stay of all proceedings pending resolution of the motion to intervene and the motion to transfer promotes efficiency of time and effort and would be in the interest of all parties, including in the interest of this Court.

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,

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Dated: May 22, 2019

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