

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

Eden Rogers et al.,	)	
	)	Civil Action No. 6:19-cv-01567-TMC
Plaintiffs,	)	
	)	<b><u>DEFENDANT HENRY MCMASTER'S</u></b>
v.	)	<b><u>MOTION TO STAY PROCEEDINGS</u></b> <sup>1</sup>
	)	
United States Department of Health and Human Services et al.,	)	
	)	
Defendants.	)	

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COMES NOW Defendant Henry McMaster, in his official capacity as Governor of South Carolina, and hereby moves the court for an order staying proceedings in the above-captioned case—including all discovery activities, all disclosure and conference requirements and other requirements under Fed. R. Civ. P. 16 and 26(f), all deadlines for filing or responding to any motions, and all deadlines for filing responsive or other pleadings—pending the court’s resolution of dispositive motions filed in a related action, *Maddonna v. United States Department of Health and Human Services, et al.*, No. 6:19-cv-00448-TMC (D.S.C.).<sup>2</sup> The stay would serve the interests of judicial economy, avoid duplicative and potentially needless briefing, reduce unnecessary hardship on Defendants, avoid prejudice to Plaintiffs, and simplify matters at issue in this case.<sup>3</sup>

**I. BACKGROUND**

Plaintiffs initiated this action by filing a complaint on May 30, 2019 (ECF No. 1) and completed service on Defendants over the following weeks, including serving Governor McMaster with the complaint on June 11, 2019 (ECF No. 19). The action is in its nascent stages: no trial date

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<sup>1</sup> Pursuant to Local Civil Rule 7.04 D.S.C., a full explanation of the motion is provided herein, and, accordingly, a separate supporting memorandum would serve no useful purpose.

<sup>2</sup> Plaintiffs cite *Maddonna* in their complaint (*see* ECF No. 1 ¶ 50 n.20) and identify it as a related case in their response to Local Rule 26.01 interrogatories (*see* ECF No. 3 at 3).

<sup>3</sup> Pursuant to Local Civil Rule 7.02 D.S.C., prior to filing this motion, undersigned counsel conferred with opposing counsel in this proceeding. Counsel for Plaintiffs did not consent to this motion. All the Defendants’ counsel have consented to it.

has been set, no conference or scheduling order has been entered, no discovery has commenced, and no responsive pleading or other motion is due to be filed by any Defendant before July 30, 2019.<sup>4</sup>

In their complaint, Plaintiffs allege that Miracle Hill Ministries (“Miracle Hill”), a private third-party entity that Plaintiffs have not named as a defendant in this suit, is licensed by South Carolina as a child placement agency (“CPA”), making it one of several organizations in the area where Plaintiffs reside that recruit and facilitate the licensing of foster parents. (*See* ECF No. 1 ¶¶ 4, 24–25, 44–47, 73, 82.) Plaintiffs allege that, because of Miracle Hill’s strongly and sincerely held religious beliefs, Miracle Hill recruits only foster parents who share what Plaintiffs describe as Miracle Hill’s “evangelical Protestant Christian[.]” beliefs. (*Id.* ¶ 51; *see also id.* ¶¶ 41–42, 47–50, 79, 81.) Plaintiffs allege Miracle Hill declined their application as potential foster parents and, instead, referred them to several other nearby foster care agencies in light of the fact that Plaintiffs do not share Miracle Hill’s religious beliefs. (*See id.* ¶¶ 80–81.) Plaintiffs further speculate that, although Miracle Hill’s response to their application discussed only their differing religious beliefs, perhaps Miracle Hill’s decision to refer them to other agencies may also have been due to Plaintiffs’ status as a same-sex couple. (*See id.* ¶ 83; *see also id.* ¶¶ 52–53.)

Plaintiffs allege that Governor McMaster’s actions (and those of the other Defendants) have enabled Miracle Hill to maintain its CPA license and to receive government funding despite certain federal regulatory changes (*see id.* ¶¶ 2, 4–5, 54–72) and that the continued licensure of Miracle Hill—South Carolina’s largest private provider of foster care services—decreases the

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<sup>4</sup> The current deadline for Governor McMaster and Director of South Carolina Department of Social Services (“DSS”) Michael Leach to file responsive pleadings is July 30, 2019 (*see* ECF Nos. 27, 29), while the current deadlines for the federal Defendants appears to be either July 30 or August 5, 2019 (*see* ECF Nos. 7-1, 7-3, 7-5, 7-7, 7-9, 8-1, 15-1); *see also* Fed. R. Civ. P. 12(a)(2).

number and diversity of homes available to foster children (*see id.* ¶¶ 1, 5–6, 43, 84–96, 106, 108, 119, 121). Asserting standing based (apparently) in part on stigmatic injury or on taxpayer status, Plaintiffs claim that Defendants’ actions violate their rights under the Establishment and Equal Protection Clauses of the federal Constitution. (*See id.* ¶¶ 1, 4–5, 7, 97–156.)<sup>5</sup>

Prior to the commencement of this action, a substantially similar complaint was filed in this court by another plaintiff, Aimee Maddonna. (*See* Compl., *Maddonna*, No. 6:19-cv-00448-TMC (ECF No. 1) [hereinafter *Maddonna* Compl.].) Maddonna’s claims are premised on allegations that parallel those made in Plaintiffs’ complaint in the instant proceeding. Like Plaintiffs, Maddonna does not name Miracle Hill as a defendant but nonetheless alleges that, as a licensed CPA, it is one of several organizations in her area (the same area where Plaintiffs reside) providing foster placement services (*see Maddonna* Compl. ¶¶ 3, 26–30, 105), and that, because of its deeply held religious convictions, Miracle Hill only recruits foster parents and accepts volunteers who share what Maddonna calls its “evangelical Christian religious beliefs” (*id.* ¶ 3; *see also* ¶¶ 40–42, 44, 69–74, 96, 106). Similar to Plaintiffs’ claims, Maddonna alleges that Miracle Hill would not accept her as a volunteer because, as Maddonna acknowledges, she does not share its religious beliefs. (*See id.* ¶¶ 24–25, 31–35, 37–43, 49, 96–97, 138, 153.)<sup>6</sup> As in the instant complaint, Maddonna also alleges that, after a dispute arose in 2018 regarding Miracle Hill’s

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<sup>5</sup> The allegations in the complaint are somewhat ambiguous as to the causes of action pled. Although Counts III and IV are labeled as Equal Protection claims, it is possible Plaintiffs intend to assert an equal protection claim only against the state Defendants while intending to assert a claim under the Due Process Clause against the federal Defendants. (*Compare* ECF No. 1 at 34 (Count III heading), *and id.* at 36 (Count IV heading), *with id.* ¶ 128 (referencing Equal Protection Clause), *and id.* at ¶ 142 (referencing Due Process Clause); *see also id.* at 38 (prayer for declarations that state Defendants violated Equal Protection Clause and that federal Defendants violated Due Process Clause)).

<sup>6</sup> Maddonna does not allege Miracle Hill rejected her on any basis other than her religious beliefs.

licensure in light of newly-promulgated federal regulations, Defendants took certain actions—the same actions at the heart of Plaintiffs’ complaint<sup>7</sup>—that enabled Miracle Hill to maintain its CPA license and receive government funding (*see id.* ¶¶ 3–6, 45–47, 60–93, 95, 99, 122–24), which, she also alleges, decreases the number and diversity of available foster homes in South Carolina (*see id.* at ¶¶ 1–2, 6, 94–99, 101–04, 107–15). Likewise, Maddonna, asserting standing based in part on stigmatic injury and taxpayer status,<sup>8</sup> brings claims for violations of rights under the Establishment, Due Process, and Equal Protection Clauses (*see id.* ¶¶ 121–65)<sup>9</sup> against nearly the same defendants that are named in this action (*see id.* ¶¶ 1, 15–20).<sup>10</sup>

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<sup>7</sup> Both Plaintiffs and Maddonna allege as follows:

- Governor McMaster is liable based on his February 27, 2018 letter to federal officials requesting a waiver from newly-promulgated regulations and his issuance of Executive Order 2018-12 on March 13, 2018 (*compare* ECF No. 1 ¶¶ 3, 61–62, 64, 95, *with Maddonna* Compl. ¶¶ 19, 83–90, 126, *and id.* at 32–33 (Prayer for Relief (b) and (f)));
- The federal Defendants are liable because they granted the requested waiver (*compare* ECF No. 1 ¶¶ 68–69, 96, 115–16, 143–44, 146, *and id.* at 38–39 (Prayer for Relief (B) and (D)), *with Maddonna* Compl. ¶¶ 4, 18, 92–93, 117–18, 120, 125, 129–30, *and id.* at 32–33 (Prayer for Relief (a) and (e))); and
- The Director of DSS is liable for implementing Executive Order 2018-12 and a related budgetary proviso by issuing Miracle Hill a CPA license in accordance with the granted waiver (*compare* ECF No. 1 ¶¶ 3, 65–66, 70, 95, 101, *with Maddonna* Compl. ¶ 127).

<sup>8</sup> Fairly read, Maddonna’s complaint asserts standing on her taxpayer status and an alleged injury from the inability to volunteer with or foster through a CPA of her choice. (*See Maddonna* Compl. ¶¶ 12–14, 131–32.) In subsequent briefing, she disclaimed both of these theories of standing and attempted to assert standing based on stigmatic injury instead. (*See* Pl.’s Mem. in Opp’n to State Defs.’ Mot. to Dismiss at 10 n.1, *Maddonna*, No. 6:19-cv-00448-TMC (ECF No. 20).) Governor McMaster has maintained the court should consider—and reject—the theories of standing actually raised in Maddonna’s complaint and dismiss it on that basis. (*See* Def. McMaster’s Reply in Supp. of Mot. to Dismiss at 4 n.3, *Maddonna*, No. 6:19-cv-00448-TMC (ECF No. 33).)

<sup>9</sup> Maddonna’s complaint contains additional claims against the federal defendants pursuant to the Administrative Procedures Act, 5 U.S.C. § 706. (*See Maddonna* Compl. ¶¶ 116–20.)

<sup>10</sup> Maddonna’s complaint includes all the defendants named in the instant suit aside from Lynn Johnson. Additionally, although Maddonna sued Joan Meacham (then the acting Director of DSS), Michael Leach—a Defendant named in the instant suit—is now the Director of DSS and has been automatically substituted as the proper defendant in *Maddonna* as well. *See* Fed. R. Civ. P. 25(d).

In *Maddonna*, the defendants filed Fed. R. Civ. P. 12 motions to dismiss the complaint on the grounds that its allegations—which closely resemble those made in the instant complaint—fail to state a claim for which relief could be granted and that Maddonna’s assertion of standing to bring those claims—which mirrors the standing arguments asserted by Plaintiffs—fails to meet constitutional requirements. (*See* Def. Henry McMaster’s Mot. to Dismiss, *Maddonna*, No. 6:19-cv-00448-TMC (ECF No. 12); Mot. to Dismiss (Def. Joan B. Meachem), *Maddonna*, No. 6:19-cv-00448-TMC (ECF No. 18); Fed. Defs.’ Mot. to Dismiss, *Maddonna*, No. 6:19-cv-00448-TMC (ECF No. 29).) Briefing on the motions was completed on June 10, 2019, (*see* Fed. Defs.’ Reply in Supp. of Mot. to Dismiss, *Maddonna*, No. 6:19-cv-00448-TMC (ECF No. 42)), and counsel anticipates that, following a possible hearing, the court will decide the motions in the near future.

## II. LEGAL STANDARD

“‘The 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.’” *Maryland v. Universal Elections, Inc.*, 729 F.3d 370, 379 (4th Cir. 2013) (brackets omitted) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). “Traditionally, a court may consider the following factors when deciding whether to stay legal proceedings: (1) the potential prejudice to the non-moving party; (2) the hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources that would be saved by avoiding duplicative litigation if the case is in fact stayed.” *Brown-Thomas v. Hynie*, No. 1:18-cv-02191-JMC, 2019 WL 1043724, at \*3 (D.S.C. March 5, 2019) (internal quotation marks omitted). In addition, a court may consider “[4] whether discovery is complete and a trial date is scheduled[ and] ([5]) whether a stay would simplify the matters at issue.” *Saferack, LLC v. Bullard Co.*, No. 2:17-cv-1613-RMG, 2018 WL 3696557, at \*1 (D.S.C. Aug. 3, 2018) (quoting *NAS Nalle Automation Sys., LLC v. DJS*

*Sys., Inc.*, No. 6:10-2462-TMC, 2011 WL 13141594, at \*1 (D.S.C. Nov. 23, 2011)). “A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.” *Brown-Thomas*, 2019 WL 1043724, at \*3 (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 862 (9th Cir. 1979)).

### **III. ARGUMENT**

Considering each of the pertinent factors, the court should stay the proceedings in this case pending resolution of the dispositive motions filed in *Maddonna*. A stay would result in the most efficient use of the court’s resources, would alleviate unnecessary hardship on Defendants, and would impose no prejudice on Plaintiffs. Additionally, the current stage of litigation and the simplification of issues that would result from a stay weigh in favor of granting the Motion.

#### **A. A stay would serve the interests of judicial economy.**

Courts typically find that “judicial economy will be served by a stay” when “the resolution of the issues” in another case “will likely have a direct impact on the future course of the [instant] case, including on the next decisions th[e] Court must make,” such as when, “in the absence of a stay, the next step . . . would be for the [defendants] to file either an answer or a motion to dismiss,” and waiting on a ruling in the other case “would likely simplify the Court’s task in resolving a motion to dismiss.” *Int’l Refugee Assistance Project v. Trump*, 323 F. Supp. 3d 726, 732–33 (D. Md. 2018). Another case is likely to have a direct impact on the instant litigation when there is significant overlap in the factual or legal issues to be decided, such that the court’s efforts in one case would largely duplicate its work in the other. *See Bechtel Corp. v. Local 215, Laborers’ Int’l Union of N. Am.*, 544 F.2d 1207, 1215 (3d Cir. 1976) (“In the exercise of its sound discretion, a court may hold one lawsuit in abeyance to abide the outcome of another which may substantially

affect it or be dispositive of the issues.”); *In re Groupon Derivative Litig.*, 882 F. Supp. 2d 1043, 1051 (N.D. Ill. 2012) (“Given the duplicative nature of the facts at issue, staying the present case in favor of the class action would preserve judicial resources and reduce the litigation burden on the parties and the court.”); *State Farm Life Inc. Co. v. Bolin*, No. 5:11-cv-1, 2011 WL 1810591, at \*2 (W.D.N.C. May 11, 2011) (“Whether it is proper to dismiss or stay a case often turns upon whether the questions presented are indeed identical questions.”); *see also Kohlman v. Gen. Motors Fin. Co., Inc.*, No. 5:18-cv-300-BO, 2018 WL 6620888, at \*2 (E.D.N.C. Dec. 18, 2018); *Stone v. Trump*, 365 F. Supp. 3d 505, 518 (D. Md. 2018); *Israel v. Johnson & Johnson*, No. 12-cv-2953-JKB, 2012 WL 6651928, at \*2 (D. Md. Dec. 19, 2012); *In re Mut. Funds Investment Litig.*, MDL No. 1586, 2011 WL 1540134, at \*2 (D. Md. Apr. 20, 2011).

Here, in the absence of a stay, the next step for Defendants is either to file their answers to Plaintiffs’ complaint or to file motions to dismiss. In light of Defendants’ decision to submit such motions in *Maddonna*, it seems likely that Defendants’ next step in the instant litigation would be to file motions to dismiss. Because Plaintiffs’ complaint presents factual and legal issues similar to those presented in *Maddonna*’s complaint, the issues the court would face in motions filed in this case would significantly overlap with the issues the court faces in the motions submitted in *Maddonna*. Thus, the work of deciding dispositive motions filed in the instant case would largely mimic the work of deciding similar motions filed in *Maddonna*. A stay of proceedings would obviate the need for duplicative effort, as resolving the *Maddonna* motions first would help streamline the court’s task of resolving subsequent dispositive motions filed in this case.

**B. A stay would reduce unnecessary hardships on Defendants.**

Absent a stay, Defendants will be forced to duplicate their efforts in litigating substantially the same legal issues arising from very similar operative facts in two separate suits. The duplication

of litigation efforts directed at overlapping legal and factual issues presents an unnecessary hardship on parties that courts attempt to avoid. *See Arris Enters. LLC v. Sony Corp.*, No. 17-cv-02669-BLF, 2017 WL 3283937 (N.D. Cal. Aug. 1, 2017) (granting stay where movant faced two separate actions requiring overlapping and duplicative discovery efforts); *see also Davis v. Biomet Orthopedics, LLC*, No. 12-3738-JKB, 2013 WL 682906, at \*2 (D. Md. Feb. 22, 2013); *Israel v. Johnson & Johnson*, No. 12-cv-2953-JKB, 2012 WL 6651928, at \*3 (D. Md. Dec. 9, 2012). Relatedly, Defendants would suffer an unnecessary hardship from litigating the two cases simultaneously when the disposition of the claims in one case might result practically in the disposition of some or all the claims in the other. *See Sam Yang (U.S.A.), Inc. v. ENI Dist, Inc.*, No. JKB-16-2958, 2016 WL 7188447, at \*4 (D. Md. Dec. 12, 2016) (“Since a pivotal question is duplicated in both cases, and since the [other] case is farther along, the Court finds a strong interest in judicial economy to stay this case. Further, it would create hardship to [the defendant] to actively litigate this case when it is possible that [the plaintiff]’s claim against [the defendant] will be determined unfounded through the rulings made in the [other] case.”).

**C. A stay would not prejudice Plaintiffs.**

The Motion does not ask for an indefinite stay, but requests only a stay that lasts until the motions to dismiss in *Maddonna* are resolved, which are already fully briefed and may be decided by the court relatively soon. Plaintiffs would suffer no prejudice from this brief stay. A short delay while awaiting the resolution of the dispositive motions in *Maddonna* that will decide issues that clearly overlap with issues bearing on Plaintiffs’ complaint does not prejudice them in any significant way. *See Sam Yang*, 2016 WL 7188447, at \*4 (“[T]he Court discerns no significant prejudice to [the plaintiff] derived from a stay to await the outcome of [the other] case . . . when legal bases for both cases clearly overlap.”); *see also Simpson v. Johns*, No. 5:12-CT-3015-BR,

2013 WL 588742, at \*2 (E.D.N.C. Feb. 13, 2013) (“Although a stay would result in a delay of the resolution of the instant matter, delay is an inherent part of any stay. Thus, the court finds that delay alone is insufficient to prevent the stay.”); *Automated Tracking Sols., LLC v. Awarepoint Corp.*, No. 2:11cv424, 2012 WL 12893449, at \*3 (E.D. Va. June 5, 2012) (“Mere delay simply does not demonstrate undue prejudice.” (citing *Nanometrics, Inc. v. Nova Measuring Instruments, Ltd.*, No. C06–2252, 2007 WL 627920, at \*3 (N.D. Cal. Feb. 26, 2007))); *Sorenson ex rel. Sorensen Research & Dev. Trust v. Black & Decker Corp.*, No. 06cv1572BTM, 2007 WL 2696590, at \*4 (S.D. Cal. Sept. 10, 2007) (“The general prejudice of having to wait for resolution is not a persuasive reason to deny the motion for stay.”).

**D. A stay is appropriate in light of the nascent status of this litigation.**

This case is in its early stages, and the parties have invested relatively little time or expense on this proceeding thus far. Plaintiffs filed their complaint fewer than eight weeks ago and only completed service on all Defendants as recently as June 10, 2019. The parties have not engaged in any discovery, and the court has not entered any scheduling or case management order. No trial date has been set either. The incipient nature of the case weighs in favor of granting a stay. *See Michelin Retirement Plan v. Dilworth Paxson LLP*, No. 6:16-cv-03604-HMH-JDA, 2017 WL 9292252, at \*3 (D.S.C. May 10, 2017); *Pleasurecraft Marine Engine Co. v. Idmar Prods. Co., Inc.*, No. 8:14-cv-04507-MGL, 2015 WL 5437181, at \*1 (D.S.C. Sept. 15, 2015); *NAS Nalle Automation Sys. LLC v. DJS Sys. Inc.*, No. 6:10-2462-TMC, 2016 WL 7209807, at \*2 (D.S.C. Aug. 8, 2016).

**E. A stay would aid in simplifying the issues in this case.**

The complaints in this case and in *Maddonna* concern nearly the same claims against nearly the same defendants based on very similar allegations. *See* Part I, *supra*. In such circumstances, the resolution of the dispositive motions in *Maddonna* will likely simplify the resolution of similar

issues in this case because it will provide answers to specific legal questions that directly impact this case and may either clarify the analytical framework applicable to the resolution of the issues in this suit or provide a basis for the parties' resolution of their differences. *See Landis*, 299 U.S. at 255 (noting that, although “a decision in the [other] cause then pending . . . may not settle every question of fact and law in suits by other [plaintiffs],” “in all likelihood it will settle many and simplify them all”); *see also Int'l Refugee Assistance Project*, 323 F. Supp. 3d at 732–33.

#### IV. CONCLUSION

For the foregoing reasons, Governor McMaster requests this court grant his Motion to Stay Proceedings pending the court's resolution of the motions to dismiss filed in *Maddonna* and that this court hold any pending deadlines in abeyance pending its ruling on this motion.

Respectfully submitted

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