



Court's consideration of Defendant's limited response to arguments raised in Plaintiff's response brief").

As more fully set out in the Dumonts' proposed reply, which is attached to this motion as Exhibit A, in opposing the motion to intervene, Plaintiffs St. Vincent Catholic Charities, Melissa and Chad Buck and Shamber Flore misconstrue the law governing intervention. (*Compare* ECF No. 37, PageID.1366 (arguing that movants have a burden to offer "evidence") *with Horrigan v. Thompson*, 1998 WL 246008, \*2 (6th Cir. 1998) ("In determining whether intervention should be allowed, [the Court] must accept as true the non-conclusory allegations of the motion." (internal quotation marks omitted)).) The Dumonts' proposed five-page reply brief and accompanying declarations seek briefly to clarify the standard applicable to the Court's consideration of the Dumonts' motion to intervene. Granting the Dumonts' motion will not result in prejudice to any party and will not delay the Court's adjudication of any other pending motions or other scheduled proceedings in the above-captioned action.

Dated: June 10, 2019

Respectfully submitted,

/s/ Hannah M. Lonky

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**CERTIFICATE OF COMPLIANCE**

This brief complies with the word limit of W.D. Mich. LCivR 7.3(b)(ii) because, excluding the parts exempted by W.D. Mich. LCivR 7.3(b)(i), it contains 279 words. The word count was generated using Microsoft Word 2016.

*/s/ Hannah M. Lonky*

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## **Exhibit A**



Dumonts and the State entered into a settlement agreement pursuant to which the State agreed to enforce and retain the non-discrimination requirement in its contract. *Dumont et al. v. Gordon et al.*, 2:17-cv-13080-PDB-EAS (E.D. Mich. 2019), ECF No. 83.

After having intervened in the *Dumont* Action, the Plaintiffs here asserted no claims in that action, and took no steps before the *Dumont* Court to enforce their rights. Rather, on April 15, 2019, the Plaintiffs filed this litigation seeking relief that would undo the settlement agreement in the *Dumont* action and implicates their constitutional rights. Accordingly, the Dumonts seek to intervene as defendants here because Plaintiffs' requested relief directly implicates a court-endorsed settlement agreement to which the Dumonts are parties; Plaintiffs' requested relief would infringe on the Dumonts' contract rights; and the requested relief, if granted, would again expose the Dumonts to unconstitutional unequal treatment, causing further practical and stigmatic injury. (ECF No. 19, PageID.462-466.) The Dumonts have thus set out a substantial legal interest in this action and intervention as a matter of right or, in the alternative, permissive intervention is warranted under controlling Sixth Circuit precedent. *See, e.g., Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999); *Linton v. Comm'r of Health and Env't.*, 973 F.2d 1311, 1317 (6th Cir. 1992); *Purnell v. City of Akron*, 925 F.2d 941, 950-51 (6th Cir. 1991).

In opposing the Dumonts' intervention motion, Plaintiffs argue that the Dumonts "present no evidence to support the claim that they have a substantial legal interest in this case . . . ." <sup>1</sup> (ECF No. 37, PageID.1366.) But the Dumonts were not required to offer "evidence" in support of the factual allegations in their motion to intervene. *See Parkwest Dev., LLC v. Ellahi*, No. 18-CV-10385, 2018 WL 3640433, at \*2 (E.D. Mich. Aug. 1, 2018) ("Rule 24 . . . does not

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<sup>1</sup> The Dumonts did not oppose St. Vincent's request to intervene in the *Dumont* Action, recognizing that "[St. Vincent]'s ability to continue using religious criteria when performing public child welfare services for the State is at issue in this case." *Dumont*, ECF No. 21, PageID.532.

require that the proposed intervenor conclusively establish its claim before intervention is allowed. By its terms, the rule applies to anyone who ‘claims’ an interest in the action . . . .”). Instead, the law is clear that “[i]n determining whether intervention should be allowed, [the Court] ‘must accept as true the non-conclusory allegations of the motion.’” *Horrigan v. Thompson*, 145 F.3d 1331, 1998 WL 246008, at \*2 (6th Cir. 1998) (quoting *Lake Inv’rs Dev. Grp. v. Egidi Dev. Grp.*, 715 F.2d 1256, 1258 (7th Cir. 1983)); *see also Parkwest*, at \*2. Accordingly, the Court must accept as true the Dumonts’ factual allegations, including that they have an ongoing desire to adopt a child from foster care. (*See* ECF No. 19, PageID.462 (“[T]he relief the *Buck* Plaintiffs seek would mean that the Dumonts would be subjected to the practical and stigmatic injuries of having to pursue their desire to adopt a child from foster care in a system in which agencies may discriminate against them.”).)

In any event, after the settlement of the *Dumont* Action and prior to the filing of this lawsuit, the Dumonts “resumed evaluating child placing agencies in our county and inquiring about fostering and adopting a child from the Michigan child welfare system.” (Declaration of Kristy Dumont at ¶ 9, attached hereto as Exhibit A-1; Declaration of Dana Dumont at ¶ 9, attached hereto as Exhibit A-2.) The Dumonts “are actively pursuing fostering and adopting one or more children from the Michigan public child welfare system” and “want to have the full range of options available to [them] that everyone else has.” (Kristy Dumont Decl. ¶ 11; Dana Dumont Decl. ¶ 11.)

In their Response, Plaintiffs also incorrectly state that the Dumonts “no longer make any claim that they want to work with St. Vincent.” (ECF No. 37, PageID.1375.) This is legally irrelevant because the Dumonts have a substantial interest in the litigation for many reasons unrelated to a desire to work with St. Vincent. (ECF No. 19, PageID.462-466; *see also Dumont*

v. *Lyon*, 341 F. Supp. 3d 706, 720 & n.2 (E.D. Mich. 2018), *motion to certify appeal denied*, 2018 WL 5292022 (E.D. Mich. Oct. 25, 2018) (applying Article III standing inquiry, rather than mere “substantial interest” inquiry, and finding standing because “stigmatic injury can accord a basis for standing to those persons who are personally denied equal treatment by the challenged discriminatory conduct” and the *Dumont* “Plaintiffs have claimed injury from stigma caused by an actual incident directed to them personally, being turned away from certain faith-based child placing agencies, and not from abstract stigmatic harm generally to same-sex couples”) (internal quotation marks omitted)). In any event, the Dumonts in fact did “consider[] contacting St. Vincent a third time, but did not do so because, in light of St. Vincent’s public statements and its statements in the *Dumont* Case, [they] thought it would likely turn [them] away again.” (Kristy Dumont Decl. ¶ 10; Dana Dumont Decl. ¶ 10.)

Thus, as set out in the intervention motion, the Dumonts have a substantial interest in this litigation because, among other reasons, “[t]he relief the *Buck* Plaintiffs seek would mean that the Dumonts would be subjected to the practical and stigmatic injuries of having to pursue their desire to adopt a child from foster care in a system in which agencies may discriminate against them.” (ECF No. 19, PageID.462.)

For the reasons set forth in the Dumont’s brief in support of their motion to intervene (ECF No. 19) and those above, the Dumonts respectfully ask that the Court grant their motion to intervene in this action.

Dated: June 10, 2019

Respectfully submitted,

*/s/ Hannah M. Lonky*

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\*Admission pending

## **Exhibit A-1**



3. In summer 2016, Dana called Bethany Christian Services in East Lansing, Michigan and told them that she and I were interested in adopting a child from Michigan's foster care system. Bethany told her that the agency does not work with same-sex couples.
4. In summer 2016, I called St. Vincent Catholic Charities in Lansing, Michigan and told them that my wife Dana and I were interested in adopting a child from Michigan's foster care system. St. Vincent told me that the agency does not work with same-sex couples.
5. In March 2017, I called St. Vincent Catholic Charities again and told the person who answered the phone that I was calling to inquire about adopting a child from foster care, and I was transferred to the voicemail of someone in the child welfare department. I left a detailed message explaining that I had previously been told that the agency did not work with same-sex couples and asking if that was still the case, but St. Vincent never returned my call.
6. In March 2017, I also called Bethany Christian Services again and told them that my wife Dana and I were interested in adopting a child from the foster care system; the Bethany representative told me that Bethany does not work with same-sex couples.
7. On September 20, 2017, Dana and I, together with another same-sex couple who had been turned away by a State-contracted, taxpayer-funded child placing agency for religious reasons, filed a lawsuit in the Eastern District of Michigan (No. 17-cv-13080) (the "*Dumont Case*").
8. The *Dumont Case* challenged the State of Michigan's practice or policy of allowing State-contracted, taxpayer-funded child placing agencies to disqualify or exclude prospective families headed by same-sex couples based on agencies' religious beliefs, and the suit

sought to ensure that lesbian and gay individuals and couples are treated the same as heterosexual individuals and couples by State-contracted child placing agencies.

9. Soon after settlement of the *Dumont* Case, and prior to the initiation of the *Buck* Case, Dana and I resumed evaluating child placing agencies in our county and inquiring about fostering and adopting a child from the Michigan child welfare system.
10. My wife and I considered contacting St. Vincent a third time but did not do so because, in light of St. Vincent's public statements and its statements in the *Dumont* Case, we thought it would likely turn us away again. We did not want to again experience the sadness and frustration we felt each previous time we were rejected.
11. We are actively pursuing fostering and adopting one or more children from the Michigan public child welfare system. As we do so, we want to have the full range of options available to us that everyone else has.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 10, 2019



Kristy Dumont

## **Exhibit A-2**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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MELISSA BUCK; CHAD BUCK; 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; JOOYEUN CHANG, in her official capacity as the Executive Director of the Michigan Children’s Services Agency; DANA NESSEL, in her official capacity as Attorney General of Michigan; ALEX AZAR, in his official capacity as the Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

----- X

No. 1:19-cv-00286-RJJ-PJG

HON. ROBERT J. JONKER

**DECLARATION OF DANA DUMONT  
IN SUPPORT OF [PROPOSED]  
REPLY BRIEF IN SUPPORT OF  
MOTION TO INTERVENE**

I, Dana Dumont, hereby declare under penalty of perjury that the following is true and correct:

1. My wife Kristy Dumont and I are proposed intervenor defendants in the above-captioned action (the “*Buck Case*”). This Declaration is based on my personal knowledge, and I would be competent to testify to the following facts if called upon to do so.
2. Kristy and I are ready, willing and able to provide a “forever family” to one or more children in the Michigan foster care system.

3. In summer 2016, I called Bethany Christian Services in East Lansing, Michigan and told them that my wife Kristy and I were interested in adopting a child from Michigan's foster care system. Bethany told me that the agency does not work with same-sex couples.
4. In summer 2016, Kristy called St. Vincent Catholic Charities in Lansing, Michigan and told them that she and I were interested in adopting a child from Michigan's foster care system. St. Vincent told her that the agency does not work with same-sex couples.
5. In March 2017, Kristy called St. Vincent Catholic Charities again and told the person who answered the phone that she was calling to inquire about adopting a child from foster care, and she was transferred to the voicemail of someone in the child welfare department. She left a detailed message explaining that she had previously been told that the agency did not work with same-sex couples and asking if that was still the case, but St. Vincent never returned her call.
6. In March 2017, Kristy also called Bethany Christian Services again and told them that she and I were interested in adopting a child from the foster care system; the Bethany representative told her that Bethany does not work with same-sex couples.
7. On September 20, 2017, Kristy and I, together with another same-sex couple who had been turned away by a State-contracted, taxpayer-funded child placing agency for religious reasons, filed a lawsuit in the Eastern District of Michigan (No. 17-cv-13080) (the "*Dumont Case*").
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sought to ensure that lesbian and gay individuals and couples are treated the same as heterosexual individuals and couples by State-contracted child placing agencies.

9. Soon after settlement of the *Dumont* Case, and prior to the initiation of the *Buck* Case, Kristy and I resumed evaluating child placing agencies in our county and inquiring about fostering and adopting a child from the Michigan child welfare system.
10. My wife and I considered contacting St. Vincent a third time but did not do so because, in light of St. Vincent's public statements and its statements in the *Dumont* Case, we thought it would likely turn us away again. We did not want to again experience the sadness and frustration we felt each previous time we were rejected.
11. We are actively pursuing fostering and adopting one or more children from the Michigan public child welfare system. As we do so, we want to have the full range of options available to us that everyone else has.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 10, 2019

A handwritten signature in black ink, appearing to read "Dana Dumont", with a long horizontal flourish extending to the right.

Dana Dumont