

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES
WEST MICHIGAN,

Plaintiff,

v.

MICHIGAN DEPARTMENT
OF HEALTH AND HUMAN
SERVICES; ROBERT GORDON, in
his official capacity as Director
of the Michigan Department of
Health and Human Services;
MICHIGAN CHILDREN'S
SERVICES AGENCY; JENNIFER
WRAYNO, in her official capacity as
Acting Executive Director of
Michigan Children's Services Agency;
DANA NESSEL, in her official
capacity as Attorney General of
Michigan.

Defendants.

No. 2:19-CV-11661-DPH-DRG

HON. DENISE PAGE HOOD

**DEFENDANTS' ANSWER
AND AFFIRMATIVE
DEFENSES**

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**Application for admission
forthcoming*

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ANSWER

NOW COME Defendants, Michigan Department of Health and Human Services (MDHHS), Robert Gordon, Michigan Children Services Agency (MCSA), and JooYuen Chang¹ (collectively “State Defendants”) and Dana Nessel, by and through their attorneys, answering Plaintiff’s Complaint as follows:

1. Admitted that there are approximately 13,000 children in Michigan’s foster care system. The remaining allegations in this paragraph are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

2. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, this reflects the substitution of Children’s Services Agency Executive Director JooYuen Chang for former Acting Children’s Services Agency Executive Director Jennifer Wrayno, who was named in her official capacity.

belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

3. Admitted that 2015 PA 53 (codified at Mich. Comp. Laws §§ 722.124e and 722.124f), 2015 PA 54 (codified at Mich. Comp. Laws § 710.23g); and 2015 PA 55 (codified at Mich. Comp. Laws § 400.5a) were passed by the Michigan Legislature in 2015. Otherwise, this paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

4. This paragraph states legal conclusions and/or arguments to which no response is necessary. Furthermore, while the allegations in this paragraph quote a selected portion of Mich. Comp. Laws § 722.124e(4), the language of the relevant statute speaks for itself. To the extent a response is required, Defendants deny the allegations of this paragraph as untrue in the form stated. Defendants further state that Mich. Comp. Law § 722.124f allows a child placing agency (CPA) to refuse a referral of a child for foster care case management or adoption

services if providing services to such child would conflict with the CPA's "sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the child placing agency." Mich. Comp. Law § 722.124f(1). However, Defendants deny that after accepting such referral, a CPA may refuse to provide foster care case management or adoption services to the child in violation of the nondiscrimination provisions in the CPA's contract with MDHHS, including without limitation by discriminating against any prospective foster or adoptive parent based on such person(s)' sexual orientation, gender identity or other factor identified in the applicable contract's non-discrimination provision. For purposes of the relevant statutes, "services" is defined to include "any service that a child placing agency provides, *except foster care case management and adoption services provided under a contract* with [MDHHS]." Mich. Comp. Law § 722.124e(7) (emphasis added); *see also* Mich. Comp. Law § 400.5a and Mich. Comp. Law § 710.23g (both recognizing that each statute is to be interpreted in accordance with MCL 722.124e and other laws).

5. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required,

Defendants deny the allegations as untrue in the form stated.

Furthermore, while the allegations in this paragraph quote selected portions of Mich. Comp. Laws §§ 722.124e(1)(e), (f) and (g), the language of the relevant statute speaks for itself.

6. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

7. Denied as untrue.

8. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, Defendants deny any wrongdoing and further deny that Plaintiff is entitled to the relief sought. Furthermore, the Complaint speaks for itself.

9. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, Defendants deny the allegations as untrue in the form stated.

10. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, Defendants neither admit nor deny the allegations on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs. Defendants deny any wrongdoing and further deny that Plaintiff is entitled to the relief sought. Furthermore, the Complaint speaks for itself.

11. Denied as untrue in the form stated. This allegation originally pertained to the Michigan Court of Claims, which lacks jurisdiction over the federal claims asserted. MCL § 600.6419. This Court has original jurisdiction over the federal claims and supplemental jurisdiction over the state claims, as asserted by Plaintiff.

12. Denied as untrue in the form stated. In further answer, Mich. Ct. R. 2.605 and 3.310 do not apply to this Court.

13. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

14. Admitted.

15. Admitted.

16. Admitted.

17. Denied as untrue. Acting Executive Director of Children's Services Agency Executive Director Jennifer Wrayno was replaced by Executive Director JooYuen Chang. Admitted that the Executive Director is sued in her official capacity only.

18. Admitted that Dana Nessel is the Attorney General of the State of Michigan, is responsible for representing state agencies and enforcing state law, and is sued in her official capacity only. Otherwise denied as untrue.

19. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

20. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

21. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

22. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

23. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

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25. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to

form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

26. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

27. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

28. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs. Furthermore, the language of Catechism of the Catholic Church, no. 1601 speaks for itself.

29. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

30. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs. Furthermore, the language of Exhibit 5 speaks for itself.

31. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

32. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

33. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

34. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

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44. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

45. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

46. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

47. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to

form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

48. Denied as untrue that Catholic Charities offers services without regard to religion, marital status, gender identity or expression, or sexual orientation. The remaining allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

49. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

50. Denied as untrue in the form stated. Admitted that Catholic Charities is a CPA licensed by MDHHS and under contract with MDHHS to provide foster care case management and adoption services in compliance with the contract's terms, including receiving and placing children for foster care and adoption and evaluating and recommending applicants for adoption. Denied that Catholic Charities certifies foster homes for licensure; only MDHHS may license foster homes.

51. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

52. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

53. Denied as untrue in the form stated.

54. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

55. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

56. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to

form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

57. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

58. Denied as untrue in the form stated. In further answer, on June 19, 2019, Catholic Charities had 280 children in foster care. Furthermore, the actual number of children that Catholic Charities has in foster care at any particular time changes. Otherwise, neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

59. Denied as untrue in the form stated. In further answer, on May 31, 2019, Catholic Charities had 133 licensed foster care homes, of which 32 were licensed for relative placement only. Furthermore, the actual number of licensed foster care homes for which Catholic Charities provides services at any particular time changes. Otherwise, neither admitted nor denied on grounds that Defendants are without

knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

60. Denied as untrue in the form stated. In further answer, Catholic Charities is a CPA licensed by MDHHS and under contract with MDHHS to provide foster care case management and adoption services in compliance with the contract's terms. The remaining allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

61. Denied as untrue in the form stated. In further answer, Catholic Charities is a CPA licensed by MDHHS and under contract with MDHHS to provide foster care case management and adoption services in compliance with the contract's terms. The remaining allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

62. Denied as untrue in the form stated. In further answer, Catholic Charities is a CPA licensed by MDHHS and under contract with MDHHS to provide foster care case management and adoption

services in compliance with the contract's terms. The remaining allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

63. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

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68. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

69. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

70. Admitted that Catholic Charities is a CPA licensed by MDHHS and under contract with MDHHS to provide foster care case management and adoption services in compliance with the contract's terms. Infant direct consent adoptions are not programs for which Catholic Charities contracts with MDHHS. The remaining allegations

are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

71. Denied as untrue in the form stated. In further answer, Catholic Charities is a CPA licensed by MDHHS and under contract with MDHHS to provide foster care case management and adoption services in compliance with the contract's terms. Admitted that there are times when children are unable to return home and biological parents lose their right to parent their children.

72. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

73. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

74. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to

form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

75. Denied as untrue in the form stated. In further answer, Catholic Charities is a CPA licensed by MDHHS and under contract with MDHHS to provide foster care case management and adoption services in compliance with the contract's terms, including without limitation recruiting, training, and performing home studies. Catholic Charities has agreed to a corrective action plan where it has violated the terms of the contract by refusing to provide services to children in care by performing home studies for same-sex couples or LGBTQ individuals that may be qualified prospective adoptive or foster families. Otherwise, the allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

76. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

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89. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

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91. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

92. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue in the form stated.

93. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

94. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a

belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

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96. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

97. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

98. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue. Furthermore, the language of this case speaks for itself.

99. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue. Furthermore, the language of this case speaks for itself.

100. Admitted that the Michigan Legislature passed Public Acts 53, 54 and 55 in 2015, and that these Public Acts were codified as Mich. Comp. Laws §§ 400.5a, 710.23g, 722.124e and 722.124f. Otherwise, this paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the remaining allegations are denied as untrue.

101. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue.

102. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue.

103. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue.

104. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue in the form stated.

105. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue in the form stated.

106. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue in the form stated.

107. Admitted.

108. Admitted in part and denied in part as untrue in the form stated. In further answer, MDHHS performs foster care services and contracts with CPAs, without regard to whether they are secular or faith-based, to provide foster care case management services in accordance with the terms of the contract.

109. Admitted in part and denied in part as untrue. In further answer, MDHHS does not provide adoption services and contracts with private CPAs to perform those services.in accordance with the terms of the contract. The remaining allegations are denied as untrue.

110. Denied as untrue in the form stated. In further answer, MDHHS receives federal and state funds to administer Michigan's foster care and adoption programs, including without limitation federal funds under Title IV-E, and Temporary Assistance to Needy Families (TANF).

111. Denied as untrue in the form stated. In further answer, MDHHS receives federal TANF and Title IV-E funds.

112. Admitted. In further answer, MDHHS itself is also a CPA and provides foster care services.

113. Denied as untrue. As of June 2019, MDHHS holds 137 contracts with 57 private CPAs to provide foster care or adoption services throughout Michigan.

114. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

115. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to

form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

116. Denied as untrue in the form stated. In further answer, Catholic Charities has three contracts with MDHHS to provide foster care case management services. Catholic Charities has three contracts with MDHHS to provide public adoption services.

117. Denied as untrue in the form stated. In further answer, the executed contracts speak for themselves. The sample adoption contract attached as Exhibit 7 to the Complaint states that it expires on September 30, 2019, but allows for two one-year options to extend, allowing the possibility that it may continue through September 30, 2021. The sample foster care contract attached as Exhibit 6 to the Complaint states that it expires on September 30, 2021. Furthermore, to the extent that Catholic Charities has other contracts with MDHHS, neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

118. Denied as untrue. Catholic Charities receives payment for all services performed under its contracts with MDHHS.

119. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, Michigan law and MDHHS contracts for foster care case management services and adoption services provide that CPAs have the sole discretion to decide whether to accept or not accept a referral from MDHHS. Furthermore, the contracts speak for themselves.

120. Admitted. In further answer, Catholic Charities accepts a referral to provide contracted foster care or adoption case management services to a particular child or individual from MDHHS by signing a DHS-3600 service agreement.

121. Denied as untrue in the form stated. In further answer, when a child enters foster care there must be a federally recognized primary permanency goal established for the child as well as a concurrent goal, which serves as a back-up plan. If the child's primary permanency goal changes to adoption when he or she is in foster care, then MDHHS would enter into a new service agreement with a CPA to perform adoption services, but the new adoption services agreement would not end the previously signed agreement for foster care services.

122. Admitted. In further answer, the administrative rate paid daily to a private agency is based on the agreement for an individual child. Moreover, the administrative rate includes payment for licensing and recruitment efforts.

123. Denied as untrue in the form stated. In further answer, adoption contractors may bill for adoption services when the court signs the Order Placing the Child for Adoption and/or when the court signs the Order of Adoption. In addition, after a CPA accepts a referral from MDHHS to manage the child's adoption case, the contractor may bill for a portion of the amount under the contract, up to the maximum amount allowed by the contract.

124. Denied as untrue.

125. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue. In further answer, the *Dumont* Complaint speaks for itself.

126. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required,

the allegations are denied as untrue in the form stated. In further answer, the *Dumont* Complaint speaks for itself.

127. Admitted that Attorney General Bill Schuette defended MDHHS Director Gordon and CSA Executive Director Chang (“MDHHS Officials”), or their predecessors, in *Dumont*. Otherwise, denied as untrue.

128. Admitted that the *Dumont* plaintiffs and MDHHS Officials in *Dumont* reached a settlement that the Court approved as a Consent Decree in March 2019.

129. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue in the form stated. In further answer, the Consent Decree speaks for itself.

130. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue in the form stated. Furthermore, the language of the Consent Decree speaks for itself.

131. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required,

the allegations are denied as untrue in the form stated. In further answer, the MCSA, an office within MDHHS, issued a Communication Issuance in April 2019 notifying the CPAs of the *Dumont* Consent Decree and that the MDHHS's foster care and adoption contracts prohibit discrimination, including sexual orientation discrimination. Furthermore, the language of the Communication Issuance speaks for itself.

132. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue in the form stated. In further answer, the MDHHS April 10, 2019 Communication Issuance notifies CPAs of the *Dumont* Consent Decree and provides examples of policies and practices prohibited under the MDHHS foster care services and adoption services contracts. Admitted that this paragraph accurately quotes selected portions of the Communication Issuance. Furthermore, the language of the Communication Issuance speaks for itself.

133. Denied as untrue. In further answer, neither the *Dumont* Consent Decree nor the Communication Issuance announces a new policy; rather, they merely reaffirmed MDHHS' practice of enforcing

provisions of existing foster care services and adoption services contracts, including the non-discrimination clause, which has been in place for several years.

134. Denied as untrue.

135. Denied as untrue.

136. Denied as untrue.

137. Denied as untrue.

138. Denied as untrue.

139. Denied as untrue in the form stated.

140. Denied as untrue.

141. Denied as untrue in the form stated.

142. Denied as untrue.

143. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

144. Denied as untrue.

145. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

146. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

147. Denied as untrue.

148. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

149. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

150. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

151. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

152. Denied as untrue.

153. Denied as untrue.

154. Denied as untrue.

155. Denied as untrue.

COUNT I

156. Defendants incorporate by reference their answers to ¶¶ 1 through 155.

157. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue.

158. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue.

159. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue.

160. Denied as untrue.

COUNT II

161. Defendants incorporate by reference their answers to ¶¶ 1 through 160.

162. Admitted that the allegations in this paragraph accurately quote selected portions of Mich. Const. 1963, Art. I, § 4; in further answer, the language of Michigan's Constitution speaks for itself. The remaining allegations are denied as untrue.

163. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegation is denied as untrue.

164. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

165. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

166. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

167. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

168. Denied as untrue.

169. Denied as untrue.

170. Denied as untrue.

171. Denied as untrue.

172. Denied as untrue.

173. Denied as untrue.

174. Denied as untrue.

175. Denied as untrue.

176. Denied as untrue.

177. Denied as untrue.

178. Denied as untrue.

179. Denied as untrue.

180. Denied as untrue.

COUNT III

181. Defendants incorporate by reference their answers to ¶¶ 1 through 180.

182. Admitted that the allegations in this paragraph accurately quote selected portions of Mich. Const. 1963, Art. I, § 5; in further answer, the language of Michigan's Constitution speaks for itself. The remaining allegations are denied as untrue.

183. Denied as untrue.

184. Denied as untrue.

185. Denied as untrue.

186. Denied as untrue.

187. Denied as untrue.

188. Denied as untrue.

189. Denied as untrue.

COUNT IV

190. Defendants incorporate by reference their answers to ¶¶ 1 through 189.

191. Admitted that the allegations in this paragraph accurately quote selected portions of Mich. Const. 1963, Art. I, § 2; in further answer, the language of Michigan's Constitution speaks for itself. The remaining allegations are denied as untrue.

192. Denied as untrue.

193. Denied as untrue.

194. Denied as untrue.

195. Denied as untrue.

COUNT V

196. Defendants incorporate by reference their answers to ¶¶1 through 195.

197. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

198. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

199. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

200. The allegations are neither admitted nor denied on grounds that Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiff to its proofs.

201. Denied as untrue.

202. Denied as untrue.

203. Denied as untrue.

204. Denied as untrue.

205. Denied as untrue.

206. Denied as untrue.

207. Denied as untrue.

208. Denied as untrue.

209. Denied as untrue.

210. Denied as untrue.

211. Denied as untrue.

212. Denied as untrue.

COUNT VI

213. Defendants incorporate by reference their answers to ¶¶1 through 212.

214. Denied as untrue.

215. Denied as untrue.

216. Denied as untrue.

217. Denied as untrue.

218. Denied as untrue.

219. Denied as untrue.

220. Denied as untrue.

COUNT VII

221. Defendants incorporate by reference their answers to ¶¶1 through 220.

222. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegation is denied as untrue in the form stated.

223. Denied as untrue.

224. Denied as untrue.

225. Denied as untrue.

226. Denied as untrue.

COUNT VIII

227. Defendants incorporate by reference their answers to ¶¶1 through 155.

228. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue in the form stated. In further answer, the language of the statute speaks for itself. The remaining allegations are denied as untrue.

229. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent a response is required, the allegations are denied as untrue in the form stated. Furthermore, the language of the statute speaks for itself.

230. Denied as untrue in the form stated. In further answer, MDHHS administers its foster care and adoption programs through contracts with private child placing agencies using federal and state funds, including without limitation Title IV-E funds and TANF funds.

231. Denied as untrue.

232. Denied as untrue.

233. Denied as untrue.

WHEREFORE, Defendants respectfully request that the Court enter judgment in their favor, dismiss Plaintiff's Complaint, and award such other relief as this Court deems appropriate.

Respectfully submitted,

Dana Nessel
Attorney General

Fadwa A. Hammoud (P74185)
Solicitor General
Counsel of Record

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Date: June 28, 2019

DEFENDANTS' SPECIAL AND/OR AFFIRMATIVE DEFENSES

NOW COME Defendants, Dana Nessel, Michigan Department of Health and Human Services (MDHHS), Robert Gordon, Michigan Children Services Agency (MCSA), and JooYuen Chang, by and through their attorneys, and for their Special and/or Affirmative Defenses state:

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Plaintiff asserts claims for which there is no private right of action.
3. Plaintiff fails to state claims under 42 U.S.C. § 1983.
4. Plaintiff's claims are barred by governmental immunity, including but not limited to absolute immunity, qualified immunity, sovereign immunity, Eleventh Amendment immunity, and other immunity granted by law.
5. This Court lacks jurisdiction to enter relief for some or all of Plaintiff's claims.
6. Plaintiff lacks standing to assert some or all of its claims.

7. Plaintiff's Complaint must be dismissed in its entirety because there are no genuine issues as to any material fact and the Defendants are entitled to judgment as a matter of law.

8. The Constitutional rights which Plaintiff alleges were violated were not clearly established at the time the alleged violations took place.

9. Plaintiff's request for continued or specific performance is barred because it would create an undue hardship or burden on Defendants.

10. Plaintiff's claims are barred on grounds of claim preclusion, res judicata, collateral estoppel and illegality.

11. Plaintiff's claims are barred are time barred for failure to commence suit within the applicable period of limitations.

12. Plaintiff acquiesced or ratified MDHHS' requirement that a CPA not discriminate against same-sex or LGBTQ individuals by signing the CPA contracts that included the non-discrimination clauses.

13. Plaintiff's claims under the state statutes, Mich. Comp. Laws §§ 400.5a, 710.23g, 722.124e and 722.124f, fail to state a claim upon which relief can be granted because no private cause of action is authorized by such statute.

14. Plaintiff's claim for money damages are speculative and therefore, must be denied.

15. To the extent an assertion contained in any of the Defendants' above answers constitutes an affirmative defense, the same is incorporated by reference as if fully set forth herein.

16. The Defendants reserve the right to amend these special and/or affirmative defenses as further facts become known during the course of discovery.

Respectfully submitted,

Dana Nessel
Attorney General

Fadwa A. Hammoud (P74185)
Solicitor General
Counsel of Record

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P63349

Date: June 28, 2019

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2019, I electronically filed Defendants' Answer and Affirmative Defenses with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Joshua S. Smith
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Attorney for Defendants
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