
No. 19-2185

In the
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

Plaintiffs-Appellees,

v.

ROBERT GORDON, in his official capacity as Director of the Michigan
Department of Health and Human Services; JOO YEUN CHANG, in
her official capacity as the Executive Director of the Michigan
Children's Service Agency; DANA NESSEL, in her official capacity as
Attorney General of Michigan,

Defendants-Appellants.

Appeal from the United States District Court
Western District of Michigan, Southern Division
Honorable Robert J. Jonker

**STATE DEFENDANTS-APPELLANTS' EMERGENCY MOTION
FOR STAY PENDING APPEAL**

Appellants Michigan Department of Health and Human Services
(MDHHS) Director Robert Gordon, MDHHS Children's Services Agency

Executive Director JooYeun Chang, and Michigan Attorney General Dana Nessel, in their official capacities, move this Court, under Fed. R. App. P. 8(a)(2)(A)(ii) and 6 Cir. R. 27, for an emergency stay of the preliminary injunction (Injunction) entered by the district court in its September 26, 2019 Opinion (Exhibit 2) and Order (Exhibit 3) (collectively, “Opinion”). Appellants’ Notice of Appeal is Exhibit 1.

On October 22, 2019, the district court denied Appellants’ motion for stay of the Injunction pending appeal, incorporating its Opinion granting the Injunction. (Exhibit 4, Stay Order.) The court granted the Injunction enjoining Appellants from enforcing MDHHS’s non-discrimination policy against Appellee St. Vincent Catholic Charities (SVCC), finding that the policy targets religion and cannot withstand strict scrutiny. (Exhibit 2.) The court denied the stay motion for the same reasons it granted the Injunction. (Exhibit 4.)

This Court should grant an immediate stay pending its review of the district court’s order, which will likely be reversed on appeal.

INTRODUCTION

Absent a stay, the Injunction mandates MDHHS to stand by as SVCC turns away otherwise qualified same-sex and unmarried couples or LGBTQ individuals who want to care for children in the State's care.

The Injunction likely falls on appeal because it is untethered to the facts and law and upends the status quo. It compels the State to turn a blind eye to taxpayer-funded discrimination cloaked in religious exercise.

The Third Circuit and federal district courts have rejected Free Exercise challenges to non-discrimination policies similar to the one here. *E.g.*, *Fulton v. City of Philadelphia*, 320 F. Supp. 3d 661 (E.D. Pa. 2018), *aff'd* 922 F.3d 140 (3d Cir. 2019); *New Hope Family Servs. v. Poole*, No. 5:18-cv-1419, 2019 WL 2138355 (N.D.N.Y. May 16, 2019).

MDHHS's non-discrimination policy prohibits discrimination based on sexual orientation, gender identity, and other characteristics. It is facially neutral and generally applicable and remains aligned with Michigan law, including 2015 Public Act 53 (PA 53). It is also included in SVCC's state contracts and has been since September 2015.

The policy neither imposes an unconstitutional burden on religious exercise nor targets religion. Rather, the status quo established in 2015, which the district court purports to maintain but actually unravels, requires all contracted child placing agencies (CPAs) to provide services to state-supervised children in care without discrimination. These services include conducting home studies and making assessments and placement-related decisions for prospective foster or adoptive parents of children in care (Services), using state-established foster-care-licensing and adoption-approval criteria unrelated to whether a family is LGBTQ.

A CPA becomes obligated to provide Services for a child by accepting a referral from MDHHS. Since PA 53 was enacted in 2015, law and MDHHS policy have permitted a CPA to reject *for any reason*, including a CPA's religious beliefs, an MDHHS referral of a child needing Services. But once a CPA accepts a referral, that law and policy require the CPA to provide Services to the child in compliance with the non-discrimination policy. For example, a CPA cannot refuse to perform a home study because a prospective family is LGBTQ. With the Injunction in place, however, this no longer holds true for SVCC.

Absent a stay, law and policy must take a back seat to the Injunction. MDHHS cannot enforce contractual provisions designed to protect the best interests of children in its care. Under the Injunction, SVCC may refuse Services for children in care by turning away prospective LGBTQ families. And if Appellants are forced to ignore SVCC's violations, the harm to Appellants, prospective families, children in state-supervised care (including those who identify as LGBTQ) and their families, and the LGBT community is immeasurable and irreparable. The message is that they do not measure up. This is unacceptable, and a stay of the Injunction is necessary and supported by the weight of the stay factors.

STANDARD OF REVIEW

The stay factors are: (1) likelihood that Appellants will succeed on the merits on appeal; (2) likelihood that Appellants will suffer irreparable harm absent a stay; (3) the prospect that others will be harmed by the stay; and (4) the public interest in granting the stay. *Coalition to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 244 (6th Cir. 2006). These are not prerequisites, but must be balanced together. *Id.* While “[t]here are several ways to look at the likelihood

that the [Injunction] will be upheld on appeal[,]” here, as in *Granholm*, “each of them holds little promise” that the Injunction can be upheld.

Id.

ARGUMENT

The district court declined to hold an evidentiary hearing on SVCC’s motion for a preliminary injunction and declared that it made no factual findings.¹ (Exhibit 2, n.1.) Yet, the Opinion rests precariously on erroneous factual underpinnings that are directly contradicted by unrefuted affidavits and documents submitted by MDHHS. When MDHHS’s policy is properly analyzed on the correct factual foundation, the Injunction is not likely to be upheld on appeal. Therefore, a stay is warranted.

I. The district court’s analysis supporting the Injunction teeters on three faulty factual pillars.

To begin, the record shows that the lower court clearly erred in its “findings” on at least three critical issues—(1) the status quo between the parties before the Injunction issued; (2) whether MDHHS policy changed at the direction of Nessel after she took office; and (3) whether

¹ Sixth Circuit precedent requires that the district court hold an evidentiary hearing to resolve any factual dispute. *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 553 (6th Cir. 2007). Because the court expressly declined to hold a hearing, the testimony submitted in Appellants’ affidavits constitutes the undisputed factual record on appeal.

Nessel's views expressing her concerns about LGBTQ discrimination and harm to children constitutes religious hostility that should be imputed to MDHHS's 2015 non-discrimination policy.

First, although the court's stated goal was to preserve the status quo, (Exhibit 2; Exhibit 4), it did not do so. It erroneously found that, prior to Nessel taking office, the status quo between MDHHS and state-contracted CPAs allowed agencies to refuse to provide state-supervised children in care with Services that conflict with a CPA's sincerely held religious beliefs. (Exhibit 2.)

The record, however, confirms that the status quo between MDHHS and CPAs, including SVCC, is that CPAs must comply with MDHHS's facially neutral, generally applicable non-discrimination statement (Policy).² The Policy is expressly grafted into SVCC's adoption and foster care case management contracts, and has been since 2015 and 2016 respectively. (Exhibit 5, Adoption Contract;

² MDHHS' non-discrimination statement provides: "The Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs or disability." https://www.michigan.gov/mdhhs/0,5885,7-339-73970_7701_76675-77286--,00.html.

Exhibit 6, FC Contract.) It prohibits discrimination on the basis of sexual orientation, gender identity, and other protected characteristics in the provision of Services to state-supervised children for whom the CPA has accepted a referral. (Exhibit 5; Exhibit 6; Exhibit 7, Bladen Aff. ¶¶ 15-19.) This is consistent with Michigan law.

Second, the court incorrectly found that, after Nessel took office, MDHHS changed its position in pending litigation challenging MDHHS's practice of contracting with faith-based agencies for Services,³ and that Nessel directed MDHHS to adopt a "new" non-discrimination policy and settle the lawsuit based on the purported "new" policy. (Exhibit 2.)

Again, the unrefuted record establishes that the court clearly erred. MDHHS did not change its litigation position after Nessel took office. Rather, MDHHS maintained its authority to contract with faith-based agencies. (Exhibit 8, *Dumont* Settlement Agreement.) Nessel neither directed MDHHS to settle the lawsuit nor dictated the terms of settlement. (Exhibit 7, ¶ 32.) And she did not direct MDHHS to change

³ *Dumont v. Lyon*, Case No. 2:17-cv-13080 (E.D. Mich. Sept. 20, 2017) (*Dumont*).

its Policy. *Id.* MDHHS's Policy remains unchanged, and the settlement requires it to maintain the Policy provisions in its CPA contracts and continue enforcement. (Exhibit 8.)

Third, the court erred in finding that Nessel's views on PA 53, expressed as a private citizen, a candidate, or a public official, support the inference of religious targeting and in reviewing MDHHS's Policy under strict scrutiny. (Exhibit 2.)

A review of Nessel's statements in context confirm the court erred. Nessel's statements as a private citizen and candidate regarding then-pending legislation expressed her concern with LGBTQ-discrimination and harm to children in the context of publicly funded foster care and adoption programs. The statements express no hostility or animosity toward religion generally or any religion specifically. Nor have they changed MDHHS's Policy. (Exhibit 7, ¶ 32.)

Analyzing the Policy under the correct factual foundation and legal framework, Appellants are likely to succeed on appeal. The Injunction should be stayed.

II. The Injunction should be stayed because Appellants are likely to succeed on the merits on appeal.

Appellants are likely to succeed on the merits on appeal because MDHHS's Policy withstands SVCC's Free Exercise challenge. Stripping away the district court's error in applying strict scrutiny, this Court is tasked with analyzing MDHHS's facially neutral and generally applicable Policy under a rational basis review—and the Policy survives that review.

Even under strict scrutiny, the Policy stands. Not only does the Policy serve to end invidious discrimination, it is also the least restrictive means for accomplishing the State's compelling interest of serving the best interests of children in its care.

A. Appellants will succeed on appeal because MDHHS's non-discrimination policy does not unconstitutionally burden SVCC's free exercise rights.

The Policy is a neutral and generally applicable policy that imposes no unconstitutional burden on SVCC's free exercise rights. The contracted Services to be provided to children in care require SVCC to assess whether prospective foster and adoptive families meet State-established criteria, not whether the family is LGBTQ. By signing the

contracts, SVCC agreed to provide these Services and abide by MDHHS's non-discrimination policy.

These Services and the Policy do not unconstitutionally burden religion. Home studies assess whether prospective families meet State-established criteria for licensing as a foster parent or certifying as an adoptive parent, and nothing more. (Exhibit 9, Neitman Aff., ¶ 9-12; Exhibit 10, Hoover Aff., ¶¶ 8-12) CPAs are not asked to endorse, approve, or disavow a familial relationship based on discriminatory factors, including sexual orientation or gender identity. (Exhibit 7, ¶¶ 10-11; Exhibit 9, ¶ 12; Exhibit 11, Goad Aff., Exhibit 11, ¶ 8.) To the contrary, MDHHS's Policy prohibits consideration of such criteria.

For every state-supervised child needing Services, MDHHS asks whether a CPA will accept a referral to provide Services to the child. Law, contracts, and policy permit the CPA, including SVCC, to reject the referral for any reason, including if SVCC believes the Services needed by the child conflict with its religious beliefs. Mich. Comp. Laws § 722.124f; Exhibit 5, ¶ I.,K; Exhibit 6, ¶ 2.9(h). Once a CPA accepts a referral in return for taxpayer funds, however, it is contractually

obligated to provide Services to the child without discrimination. Mich. Comp. Laws § 722.124e; Exhibit 7, ¶ 26.

This choice comports with the Free Exercise Clause, which does not require MDHHS to contract with SVCC on different terms than other CPAs because of its religious beliefs. *See Teen Ranch v. Udow*, 389 F.Supp.2d 827, 838–39 (W.D. Mich. 2005), *aff'd* 479 F.3d 403, 408–09 (6th Cir. 2007) (State department is not required, under the Free Exercise Clause, to contract with a faith-based organization where the organization’s beliefs purportedly prohibit compliance with the department’s policy.) The Supreme Court has long recognized that “the Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens.” *Bowen v. Roy*, 476 U.S. 693, 699 (1986).

Although not binding on this Court, the Ninth Circuit’s analysis in *Navajo Nation v. United States Forest Servs.*, 535 F.3d 1058, 1064 (9th Cir. 2008), is persuasive and aptly summarizes this point:

Our nation recognizes and protects the expression of a great range of religious beliefs. Nevertheless, respecting religious credos is one thing; requiring the government to change its conduct to avoid any perceived slight to them is quite

another. No matter how much we might wish the government to conform its conduct to our religious preferences, act in ways that do not offend our religious sensibilities, and take no action that decreases our spiritual fulfillment, no government--let alone a government that presides over a nation with as many religions as the United States of America--could function were it required to do so. (Internal citations omitted.)

For these same reasons, SVCC's free exercise claim fails, and Appellants are likely to succeed on appeal.

B. The Policy passes rational basis review.

A policy of neutral and general applicability is subject only to rational basis review, even amidst allegations that such policy adversely impacts religion. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 535 (1993).

Nothing in the language of MDHHS's Policy suggests it is aimed at religious conduct. It is facially broad, prohibiting discrimination on several grounds. The Policy is consistent with federal regulations prohibiting discrimination based on sexual orientation and gender identity, 45 C.F.R. § 75.300(c), and mirrors MDHHS's commitment to ending such discrimination—a commitment dictated by the United States Constitution and supported by decisions of the U.S. Supreme

Court and this Court. *See Obergefell v. Hodges*, 135 S. Ct. 2584, 2604–05 (2015); *Gay v. Cabinet for Health & Family Servs.*, No. 18-5285, 2019 WL 1338524, *5 (6th Cir. Jan. 23, 2019).

Accordingly, MDHHS’s Policy must be evaluated and upheld under rational-basis review. The Policy reflects federal requirements and MDHHS’s goal of non-discrimination in the context of foster care and adoption services, and serves the best interests of children. *See* 45 C.F.R. § 75.300(c). It passes rational basis review. *See Fulton v. City of Philadelphia*, 320 F.Supp.3d 661, 686–90, 703–04 (3d Cir. 2018).

Accordingly, Appellants are likely to succeed on appeal.

C. MDHHS’s Policy does not target religion or religious practices, therefore, strict scrutiny does not apply.

SVCC contends—and the district court erroneously found—that despite MDHHS’s Policy remaining in effect since 2015 and being consistent with Michigan law, it now constitutes religious targeting. SVCC and the court point to Nessel. Indeed, the court went so far as to say that Nessel is “at the very heart of the case.” (Exhibit 2.) The court assigned religiously hostile motives to Nessel and to MDHHS Policy based on her statements about LGBTQ discrimination and harm to

children. (Exhibit 2.) But the law, contracts, and policy were in place long before she took office and remain unchanged today. (Exhibit 7, ¶ 8.)

After Nessel took office, she assumed the role of counsel for MDHHS in *Dumont*, a case challenging MDHHS's decision to contract with faith-based agencies. MDHHS decided to settle and agreed to maintain its existing Policy in CPA contracts and continue enforcing it. (Exhibit 7, ¶ 8; Exhibit 8.) The court found that Nessel directed MDHHS to settle the case and that this was a "pretext for religious targeting." (Exhibit 2.)

MDHHS's sworn affidavit testimony directly refutes any notion that Nessel directed MDHHS to adopt its Policy or settle *Dumont*. (Exhibit 7, ¶ 32.) And the court's reliance on *Lukumi* is misplaced. In *Lukumi*, the Court found religious hostility because at the time the ordinance was under debate, the officials themselves made discriminatory statements against a specific religious group. 508 U.S. 520, 540 (1993). Here, Nessel was a private citizen when PA 53 was still pending legislation. She expressed her own private views, as did SVCC, regarding the impact of the bill.

Even *if* the district court is correct that “*Lukumi* puts no artificial limits on the factors” to be considered in determining religious targeting, neither *Lukumi* nor *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719 (2018) supports the court’s use of Nessel’s statements to infer religious hostility and apply strict scrutiny to the Policy. The statements referenced in both Supreme Court opinions were made by council members at or near the time the challenged ordinances or decisions were made. Neither opinion authorizes a court to consider statements made by a private citizen years before taking office, who had no decision-making authority with respect to the policy.

As discussed above, the record confirms that Nessel has no decision-making authority at MDHHS with respect to the Policy, which appeared in SVCC’s contract years before she took office and remains in place today.

Moreover, as explained below, the court’s analysis of and reliance on Nessel’s statements runs afoul of the Supreme Court’s direction in *Trump*. Nessel’s views have no bearing on the Policy. MDHHS

enforces the Policy consistent with Michigan law to protect the best interests of children – or at least it did until the Injunction was entered.

1. Reliance on Nessel’s statements to infer religious hostility affronts binding precedent.

Relying on Nessel’s statements to infer religious animus into MDHHS’s non-discrimination policy runs afoul of the Supreme Court’s instruction in *Trump v. Hawai’i*, 138 S. Ct. 2392, 2416–17 (2018). Here, the Supreme Court confirmed that a federal court’s role is *not* to denounce an official’s statements but, instead, to “consider the significance of those statements in reviewing a . . . directive, neutral on its face.” *Id.* at 2418. This was true even in the face of numerous, slanderous statements—specifically directed at a religion and its followers—by the President and his advisors responsible for the Presidential Proclamation at issue. *Id.* at 2416–17.

Unlike the President, who has direct authority to issue a Presidential Proclamation, Nessel—as a private citizen, candidate, or public official—does not dictate MDHHS policy. In fact, MDHHS confirmed that Nessel’s statements had no effect on MDHHS’s Policy. The Policy first appeared in SVCC’s contracts three years before Nessel

ran for office. (Exhibit 11, ¶¶ 18,19.) It was the basis for the *Dumont* settlement, which occurred after Nessel took office, but “did not announce a new policy,” and, instead, “reaffirmed the Department’s practice of enforcing provisions of the contract, including the Policy, which has been in place for several years.” (Exhibit 7, ¶ 8.) Ms. Stacie Bladen, Deputy Director of MDHHS Children’s Services Agency, testified to this in a sworn affidavit, and it stands unrefuted. (*Id.*) The settlement agreement also supports this, referencing the Policy and clarifying that, “[f]or the avoidance of doubt,” it prohibits CPAs from refusing to provide children with Services on the basis of a prospective foster or adoptive parent’s sexual orientation. (Exhibit 8.)

At no time has Nessel directed MDHHS to adopt, change, or enforce its Policy. (Exhibit 7, ¶ 32.) MDHHS and its staff bear responsibility for these activities—not Nessel. *Id.*

2. Nessel’s statements are pro-children and anti-LGBTQ-discrimination, not anti-religion.

The district court clearly erred in interpreting Nessel’s statements as expressing religious hostility. None of the statements relied on by the court and SVCC reference religion, Catholicism, or anyone holding a

religious view on marriage. And there is no evidence to support the notion that the genesis of hostility or intolerance towards the LGBTQ community is limited to religious views on marriage when, in fact, discrimination against this community exists amongst secular and non-secular individuals, agencies, and organizations. In fact, MDHHS Policy and Michigan law permit a secular CPA to reject an MDHHS referral for any reason, without regard to whether the rejection is religiously based. But, after accepting the referral, a secular CPA cannot refuse to provide the child with Services—including assessing prospective LGBTQ families—simply because of its views on the LGBTQ community.

It is this intolerance that Nessel addressed when, as a private citizen, she expressed her view on pending legislation. For example, she opined that “*a proponent of this type of bill*” would “have to concede that [s/he] dislike[s] gay people more than [s/he] care[s] about the needs of foster care kids,” and that “*These types of laws* are a victory for the hate monger but again a disaster for the children and the

state.”⁴ Even the article quoted in the Opinion, which was written during her campaign, contains only commentary on the prudence of a state law.⁵ Notably, that state law *is not* being challenged in this case.

These statements demonstrate Nessel’s concern for Michigan’s children and over discrimination barring the LGBTQ community from equal participation in publicly-funded foster care and adoption programs.

3. MDHHS policy aligns with Michigan law.

Appellants are also likely to succeed on appeal because the district court incorrectly inferred religious animus from Nessel’s views on PA 53. Despite Nessel’s views, MDHHS, consistent with the law, permits CPAs to reject a referral and incorporates the Policy in its contracts. (Exhibit 6.)

While Michigan law and MDHHS contracts allow a CPA to reject MDHHS’s referral of a State-supervised child needing state-contracted,

⁴ See <https://michiganradio.org/post/faith-based-adoption-bills-headed-house-floor> (emphasis added); see also <http://www.fox2detroit.com/news/opponents-say-adoption-bill-discriminates-against-gays-and-lesbians> (emphasis added).

⁵ See <https://apnews.com/a1fc021e8e2e4b3b829586ba56ad9c07>.

foster care or adoption services, neither the law nor the contracts allow a CPA to discriminate in providing services required under foster care case management and adoption contracts with MDHHS. *See Mich. Comp. Laws § 722.124f; Mich. Comp. Laws § 722.124e(7).* Home studies and training are Services that SVCC agreed to provide to children accepted through referrals under contract with MDHHS and for which it receives compensation. (Exhibit 9, ¶¶ 7-9; Exhibit 11, ¶ 7-13.) This makes sense since the “paramount goal” in enacting PA 53 is “placing the child in a safe, loving, and supportive home....” Mich. Comp. Laws § 722.124e(1)(a). Orientation, recruitment and licensing activities are services provided to the children to enable a child’s prompt placement with a family. (Exhibit 10, ¶¶ 8-11.)

PA 53 does not permit a CPA to refuse to provide these Services by “referring” prospective parents to other agencies in violation of the contracts’ non-discrimination provisions. (Exhibit 7, ¶ 26; *Contra* Exhibit 2.) “Referral” as used in PA 53 and MDHHS contracts denotes MDHHS’ offering of child’s case to a CPA. It does not denote directing a prospective parent to a CPA for licensing and, in fact, MDHHS does not permit this. (Exhibit 7, ¶ 17.) Under the plain language of PA 53 (and

the terms of the MDHHS contracts), a CPA can choose to reject a child referred by MDHHS for any reason, but it cannot redirect a prospective family when providing contracted Services merely because the family includes an unmarried couple, a same-sex couple, or an LGBTQ individual. The district court erred in interpreting this provision.

4. MDHHS’s position in *Dumont*, prior to Nessel becoming counsel, is akin to its position here.

The district court inferred religious animus based on its finding that “the State abruptly changed its public litigation position in *Dumont*.” (Exhibit 4.) No such change occurred.

In *Dumont* two same-sex couples sued MDHHS officials, challenging the “provision of taxpayer-funded government services based on religious and discriminatory criteria” as a violation of the Establishment Clause and the Equal Protection Clause. (*Dumont*, R. 1.) The *Dumont* plaintiffs sought to enjoin MDHHS from contracting with faith-based agencies. *Id.* In response, MDHHS asserted that its facially neutral contracting policies neither establish a religion nor discriminate. (*Dumont*, R. 16.) MDHHS defended its right to contract

with any CPA willing to abide by the contracts, including faith-based CPAs.

MDHHS takes the same position here: it “does not seek to end its relationship with St. Vincent in so far as the agency is willing and able to fulfill the contractual obligations it has voluntarily agreed to, including the non-discrimination clause.” (Exhibit 7, ¶ 10.) The purported change in litigation position after Nessel became counsel of record is a fallacy and does not support an inference of religious hostility.

The record and law make clear that MDHHS’s policy was *not* based on religious hostility. It has been in effect since 2015, is consistent with Michigan law, and remains unchanged by Nessel’s views and actions. The policy does not target religion and therefore strict scrutiny is not warranted. The court erred in applying strict scrutiny to find that SVCC is likely to succeed on its free exercise claim. Appellants are likely to succeed on the merits on appeal because MDHHS policy passes rational basis review. The Injunction should be stayed.

D. Even if strict scrutiny is applied, Appellants are likely to succeed on the merits on appeal.

Even if MDHHS's Policy is subjected to strict scrutiny review, it stands. Ending invidious discrimination in government contracts is, in itself, a compelling state interest. *Roberts v. United States Jaycees*, 468 U.S. 609, 628–29 (1984); *Equal Employment Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 590 (6th Cir. 2018), *cert. granted in part sub nom. R.G. & G.R. Harris Funeral Homes, Inc. v. E.E.O.C.*, No. 18-107, 2019 WL 1756679 (U.S. Apr. 22, 2019).

And, requiring compliance with a neutral, generally applicable contract is the least restrictive way to accomplish this compelling interest. *Equal Employment Opportunity Comm'n*, 884 F.3d at 593–97 (enforcing Title VII is the least restrictive means to ending discrimination); see also *Fulton*, 922 F.3d at 163 (“It is black-letter law that ‘eradicating discrimination’ is a compelling interest ... [a]nd mandating compliance is the least restrictive means of pursuing that interest.”) (internal citations and quotations omitted). Moreover, as explained below, the nondiscrimination policy serves a compelling state

interest by allowing MDHHS to serve the best interests of children in its care.

Even applying strict scrutiny review, Appellants are likely to succeed on the merits on appeal.

III. The Injunction should be stayed because without a stay Appellants and others will suffer irreparable harm.

Allowing the Injunction to stand inflicts irreparable harm to Appellants and to children and their families.

The Injunction irreparably harms Appellants because SVCC is permitted to violate the non-discrimination requirements in its state-contracts and block – even temporarily – potentially qualified prospective adoptive and foster care families from participating in these publicly-funded programs. As CSA Deputy Director Stacie Bladen explained, it benefits MDHHS and Michigan’s children “to have as many qualified foster and adoptive parents as possible that can meet the diverse needs of children.” (Exhibit 7, ¶ 13.) Allowing any CPA, including SVCC, to categorically turn away prospective foster and adoptive parents in violation of the non-discrimination policy hinders that goal.

Prospective foster and adoptive parents who are turned away by a CPA due to their sexual orientation may discontinue efforts to participate in publicly funded foster care and adoption programs. This irreparably harms MDHHS, the children in its care, and the affected families who receive the message that they do not measure up.

SVCC has argued that, if it ends its contracts with MDHHS because it refuses to abide by the non-discrimination policy, its families may choose not to participate and leave the program. But a family's *choice* to leave the program pales in comparison to the situation where SVCC's violation of MDHHS's non-discrimination policy blocks a prospective family from participating in the program. LGBTQ families who are turned away because a CPA violates the Policy have no choice. They are rejected not because they fall short of state requirements for licensure or certification, but because SVCC casts them aside, throwing roadblocks in their way and delaying their entry into the program.

On the other hand, families who choose to work only with a certain type of agency, such as a Catholic-affiliated agency, are freely exercising their choice. And they have other options. They can go to any other agency without fear of rejection based on their religious

beliefs because MDHHS's non-discrimination policy protects them. It prohibits every CPA from discriminating—or turning them away—on religious grounds. This is the purpose of MDHHS's Policy—to prohibit a state-contracted CPA from discriminating based on any one of several characteristics, thereby leaving behind a potentially qualified family.

The Injunction also irreparably harms Appellants because they cannot uniformly enforce their CPA contracts, which are rooted to a large extent in state and federal law and regulations. MDHHS benefits from working with CPAs that honor these contractual obligations and suffers irreparable harm when relegated to ad hoc enforcement, even for a short period of time. (Exhibit 7, ¶ 13.)

Moreover, Appellants suffer irreparable harm because the Injunction requires MDHHS to allow a CPA to prevent a child's placement with a same-sex couple or LGBTQ individual or unmarried couple—even when placement is in the child's best interest, such as with the child's relative or a sibling.⁶ This scenario is not just hypothetical.

⁶ Michigan's Foster Care and Adoption Services Act requires that relatives be given first priority in determining placement and that

On at least two prior occasions, even before Nessel took office, MDHHS took contract action against a CPA for violating the non-discrimination policy. In one case, the CPA refused to place a child in care with an LGBTQ relative. In the other, the CPA refused to place a child with siblings already placed with an LGBTQ family. The CPAs refused *because* placing the child with the family conflicted with its religious beliefs. In each situation, MDHHS opened an investigation and required the CPA to provide a corrective action plan to address the violation. (Exhibit 7, ¶¶ 4-9.)

Under the Injunction, MDHHS's hands are tied. SVCC can violate the contracts, the Policy, and Michigan law with impunity. Meanwhile, SVCC will continue to receive taxpayer funds.

IV. The injunction should be stayed because the public interest in a stay is strong.

Staying the injunction also serves the public interest, because enabling MDHHS to enforce contractual obligations serves the public interest. *Certified Restoration Dry Cleaning Network, LLC. v. Tenke*

siblings be placed together, unless such placement is not in the child's best interest. Mich. Comp. Laws § 722.954a.

Corp., 511 F.3d 535, 551 (6th Cir. 2007). This is even more critical when the contractual provision being challenged prohibits discrimination on many grounds, including sexual orientation. There is a strong public interest in ending discrimination against LGBTQ individuals—especially in this context of a private agency’s publicly funded contract with the State to provide foster care and adoption services to children in MDHHS’s care. *See Obergefell*, 135 S. Ct. at 2604; *Fulton*, 320 F. Supp. 3d at 704, n.35. Federal regulations governing a significant portion of the funding behind this program also prohibit discrimination on the basis of sexual orientation, gender identity, and marital status. *See* 45 C.F.R. § 75.300(c).

The Injunction actively undermines these public interests. It requires MDHHS to stand by as SVCC refuses Services for children in care by turning away otherwise qualified same-sex and unmarried couples, or LGBTQ individuals, from its publicly funded foster care and adoption programs. This sends the “message . . . that [LGBTQ individuals] are outsiders, not full members of the political community.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000). The same message rings in the ears of LGBTQ children in MDHHS’s care and for

whom SVCC agrees to provide Services but nevertheless withholds, to the children's detriment.

CONCLUSION AND RELIEF REQUESTED

Appellants have shown a likelihood of success on appeal and respectfully request that this Court grant an immediate stay of the preliminary injunction issued pursuant to the district court's September 26, 2019 Opinion and Order.

Respectfully submitted,

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Respectfully submitted,

Dated: October 29, 2019

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CERTIFICATE OF SERVICE

I certify that on October 29, 2019, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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Dated: October 29, 2019

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limit,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the part of the document exempted by Federal Rule of Appellate Procedure 32(f), this brief contains no more than 5,200 words. This document contains 5045 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Word 2016 in 14-point Century Schoolbook.

Respectfully submitted,

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Respectfully submitted,

Dated: October 29, 2019

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No. 19-2185

In the
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

Plaintiffs-Appellees,

v.

ROBERT GORDON, in his official capacity as Director of the Michigan
Department of Health and Human Services; JOO YEUN CHANG, in
her official capacity as the Executive Director of the Michigan
Children's Service Agency; DANA NESSEL, in her official capacity as
Attorney General of Michigan

Defendants-Appellants.

Appeal from the United States District Court
Western District of Michigan, Southern Division
Honorable Robert J. Jonker

**INDEX OF EXHIBITS TO STATE DEFENDANT-APPELLANTS'
EMERGENCY MOTION FOR STAY PENDING APPEAL**

<u>EXHIBIT</u>	<u>TITLE/DESCRIPTION</u>
Exhibit 1	Notice of Appeal
Exhibit 2	District Court Opinion granting PI (R.69)
Exhibit 3	District Court Order granting PI (R.70)
Exhibit 4	District Court Order denying Motion to Stay PI Pending Appeal (R.84)

- Exhibit 5** **SVCC Adoption Services Contract¹,**
last signed September 8, 2015 (R.34-6)
- Exhibit 6** **SVCC Placing Agency Foster Care Contract,**
last signed July 8, 2016 (R.34-7)
- Exhibit 7** **Affidavit of Stacie Bladen,**
Deputy Director, MDHHS Child Services Agency
(R.34-4)
- Exhibit 8** **Settlement Agreement, *Dumont v. Gordon*,**
Case No. 2:17-cv-13080 (E.D. Mich. 2017)
(R.31-5)
- Exhibit 9** **Affidavit of Patricia Neitman,**
Director, MDHHS Division of Child Welfare
Licensing (R.34-3)
- Exhibit 10** **Affidavit of Catherine Hoover,**
State Administrative Manager, MDHHS Office of
Child Welfare Policy and Programs (R.34-5)
- Exhibit 11** **Affidavit of Sarah Goad,**
State Administrative Manager, MDHHS Office of
Child Welfare Policy and Programs (R.34-2)

¹ Exhibits 5 through 11 were taken from the record presented to the district court in the proceedings from which this appeal is sought, i.e., *Buck v. Gordon*, Case No. 1:19-cv-286 (W.D. Mich. 2019). Specifically, the contracts and affidavits included in Exhibits 5-7 and 9-11 were filed in support of the State Defendants' Response in Opposition to Plaintiffs' Motion for a Preliminary Injunction (R.34) on May 29, 2019. And, the settlement agreement included in Exhibit 8 was filed in support of the State Defendants' Motion to Transfer or, Alternatively, to Dismiss (R.29-31), also on May 29, 2019.

EXHIBIT 1

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

NOTICE OF APPEAL

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendants Michigan Department of Health
and Human Services (MDHHS) Director Robert Gordon, MDHHS Children's
Services Agency Executive Director JooYeun Chang,¹ and Michigan Attorney

¹ Pursuant to Fed. R. Civ. P. 25(d), a state official's successor is automatically substituted as a party. Therefore, this Notice reflects the current state official, JooYeun Chang.

General Dana Nessel (State Defendants) hereby appeal to the United States Court of Appeals for the Sixth Circuit the District Court's order granting preliminary injunctive relief against State Defendants in the Opinion (ECF No. 69) and Order (ECF No. 70) entered on September 26, 2019.

Respectfully submitted,

Dana Nessel
Attorney General

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Dated: October 7, 2019

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELISSA BUCK, *et al.*,

Plaintiffs,

v.

ROBERT GORDON, in his official
Capacity as Director of the Michigan
Department of Health and Human Services,
et al.,

Defendants.

CASE NO. 1:19-CV-286

HON. ROBERT J. JONKER

OPINION

INTRODUCTION

This case is not about whether same-sex couples can be great parents. They can. No one in the case contests that. To the contrary, St. Vincent has placed children for adoption with same-sex couples certified by the State.

What this case is about is whether St. Vincent may continue to do this work and still profess and promote the traditional Catholic belief that marriage as ordained by God is for one man and one woman. In 2015, Michigan's state legislature passed a law designed to ensure it could do just that. And when the State was first sued on the issue, the State defended the right of St. Vincent to maintain its religious belief while it placed children on a non-discriminatory basis in any home approved by the State.

But that changed in the wake of the 2018 general election. While a candidate for Michigan Attorney General, Dana Nessel called the law indefensible. She indicated that she would not defend the State's position in the litigation challenging the law, because she "could not justify

using the state’s money” to defend “a law whose only purpose is discriminatory animus.” Leading up to the campaign, she described proponents of the law as “hate-mongers” who disliked gay people more than they cared about children. Candidate Nessel won the election, and shortly after taking office, she changed the State’s position toward St. Vincent. Under the Attorney General’s current interpretation of Michigan law and the parties’ contracts, St. Vincent must choose between its traditional religious belief, and the privilege of continuing to place children with foster and adoptive parents of all types.

Because the record demonstrates that the State’s new position targets St. Vincent’s religious beliefs, strict scrutiny applies, and St. Vincent has established a basis for preliminary injunctive relief to preserve the status quo while the validity of the State’s new position is tested in plenary litigation.

BACKGROUND

A. The Parties

St. Vincent Catholic Charities (“St. Vincent”) is a non-profit, faith-based organization based in Lansing, Michigan. (Snoeyink aff., ECF No. 6-1, PageID.228-229.) Its mission is “to share the love of Christ by performing the corporal and spiritual works of mercy.” (*Id.*, PageID.229.) St. Vincent focuses on serving children and families and provides a range of services, including, without limitation, adoption and foster placement; professional mental health and substance abuse counseling; marriage and family counseling; and refugee resettlement. (*Id.*, PageID.228-229.) This case centers on St. Vincent’s adoption and foster placement services.

Plaintiffs Chad and Melissa Buck have adopted four siblings through St. Vincent. (M. Buck aff., ECF No. 6-2, PageID.262.) The Bucks “see fostering and adopting not just as a choice we made, but as a ministry and as a calling” based on their Christian beliefs. (*Id.*) They chose to work

with St. Vincent “because we were comfortable working with an agency with a religious mission to serve children.” (*Id.*) Melissa Buck notes that St. Vincent “provides ongoing services to our family[,]” including by facilitating a monthly parent support group that is the “only parent support group for foster parents anywhere in the tri-county area.” (*Id.*, PageID.265.) The group is open to any parents, including same-sex couples, and same-sex couples have attended from time to time. (*Id.*) The Bucks have worked with St. Vincent to recruit foster and adoptive families, and they sometimes help lead the parent support group. (*Id.*) Melissa Buck is “aware of many [adoptive and foster] families who would not be willing or able to transfer their license to another agency and continue adopting or fostering children if St. Vincent were forced to close its foster and adoption programs.” (*Id.*, PageID.266-67.)

Plaintiff Shamber Flore was removed from her birth home when she was five years old after years of abuse, neglect, and exposure to drugs, gangs, and prostitution. (Flore aff., ECF No. 6-3, PageID.272.) St. Vincent placed her and her two siblings with an adoptive family, the Flores. (*Id.*) The Flores “had previously tried to adopt with a state adoptive agency and had a very negative experience.” (*Id.*) They “would not have been able to continue with the adoption process if they had not found in St. Vincent a trusted partner and ally.” (*Id.*) The Flores have adopted sixteen children over the past fourteen years. (*Id.*) Ms. Flore “mentor[s] other foster kids and youth at St. Vincent who have dealt with trauma and abuse.” (*Id.*, PageID.273.) She shares her experience and “encourage[s] them that they, too, can overcome great hardship and find happiness.” (*Id.*) If St. Vincent had to cease its adoption and foster services, Ms. Flore “would lose the opportunity to mentor many of these youth as a volunteer at St. Vincent.” (*Id.*)

Defendant Robert Gordon is the Director of Michigan Department of Health and Human Services (“MDHHS” or “the Department”), which is the state agency responsible for foster care

and adoption services. (ECF No. 1, PageID.7.) Defendant Herman McCall is the Executive Director of Michigan’s Children’s Services Agency (“CSA”), which is a sub-agency of MDHHS that oversees the work of all private child placing agencies. (*Id.*, PageID.8.) Defendant Dana Nessel is the Attorney General of the State of Michigan. (*Id.*) These three Defendants (collectively, the “State Defendants” are sued in their official capacities only. Defendant Alex M. Azar is the Secretary of the United States Department of Health and Human Services (“HHS”) and is sued in his official capacity only. (*Id.*, PageID.8-9.) Defendant HHS is responsible for the promulgation, administration, and enforcement of federal regulations

B. Michigan’s Foster and Adoption System

challenged in this case. (*Id.*, PageID.9.)

“Michigan has a chronic shortage of foster and adoptive homes.” (ECF No. 6-1, PageID.286.) In Michigan, there are “approximately 13,000 children in foster care, about 2,000 of whom have a permanency goal of adoption.” (Neitman aff. ECF No. 34-5, PageID.971.) MDHHS administers the State of Michigan’s Foster Care and Adoption Services programs as the Title IV-E agency in Michigan. (Goad aff., ECF No. 34-2. PageID.966.) MDHHS “holds 137 contracts with 57 private child placing agencies, or CPAs, to provide foster care or adoption services throughout Michigan.” (*Id.*)¹ MDHHS not only contracts with CPAs to provide foster and adoption services but also is itself a CPA that may provide foster care services. (*Id.*, PageID.967.) Most adoption services in Michigan are privatized. (*Id.*) St. Vincent provides both foster and adoption services in Michigan under contracts with the State. “[I]n the last four fiscal years, St. Vincent has served an average of 74 children in its foster care program every year, and through its work over 100 adoptions for foster children were finalized.” (Snoeyink aff., ECF No. 6-1, PageID.228.)

¹ Elsewhere the record states that the State contracts with over 90 private agencies to provide foster and adoptive support. (Snoeyink aff., ECF No. 6-1, PageID.232.) This potential factual inconsistency does not affect the preliminary injunction analysis, and the Court is making no findings of fact in this Opinion.

To become a foster or adoptive parent in Michigan, a person or couple must first obtain a license from the State. Private CPAs not only place children in licensed foster and adoptive homes, but also assist prospective foster or adoptive parents in applying to the State for licensure. As part of the application process, a CPA performs a home evaluation of the prospective parent or parents that includes a written assessment and a recommendation that a license be granted or denied. Based partly on the CPA's recommendation, the State itself decides whether to license the prospective foster or adoptive parent.

MDHHS establishes the criteria to consider in performing a home evaluation. (Neitman aff., ECF No. 34-3, PageID.973.) Factors for consideration include, without limitation, the “[s]trengths and weaknesses’ of the parents and the ‘[s]trengths of the relationship’ between couple[;] marital and family status and history, including current and past level of family functioning and relationships, parenting skills and childrearing techniques, values and the role of religion in the family.” (*Id.*) A home evaluation entails “an exhaustive review of the family’s eligibility” that includes an assessment of “the relationships between all the adults living in the home[.]” (Snoeyink aff., ECF No. 6-1, PageID.229-30.) The State’s required home evaluation form spans twelve pages. (*Id.*, Ex. A, PageID.241-253.) The form calls for subjective as well as objective determinations. For example, the evaluating CPA must describe for each adult member of the household “strengths and weaknesses, worker’s assessment in addition to what the applicant tells you.” (*Id.*, PageID.245.) Similarly, the form asks the evaluating CPA to describe “marital and family status and history” and to include as to the current relationship “strengths of relationship, areas of work or attention level of satisfaction, stability.” (*Id.*, PageID.246.) For each child living in the home, the form asks the evaluating CPA to interview the child and describe the “[w]orker’s assessment of the child’s adjustment, development, special needs, relationships with

parents and their significant others, and other strengths and weaknesses.” (*Id.*) The evaluating CPA must note whether “anyone in the household [has] a physical or mental health diagnosis or condition that would make care of the child difficult” and, if so, “describe how it may affect the care of a child.” (*Id.*, PageID.247.) The form asks the evaluating CPA to make a recommendation regarding licensure and to detail “[i]ssues to be considered in making placements.” (*Id.*, PageID.251.)

St. Vincent states that “as a Catholic organization, [it] cannot provide a written recommendation to the State evaluating and endorsing a family situation that would conflict with [its] religious beliefs.” (ECF No. 6-1, PageID.231.) “St. Vincent cannot provide written recommendations and endorsements of unmarried or LGBTQ couples consistent with its Catholic mission. Nor does St. Vincent want to send the State written recommendations that all unmarried or LGBTQ couples who come to it are unsuitable for adoption.” (*Id.*) When an unmarried or LGBTQ couple approaches St. Vincent to assist in the foster or adoption certification process, St. Vincent simply refers the couple to other agencies that can help. St. Vincent provides the prospective unmarried or LGBTQ couple with “written information on the State’s website and contact information for a list of other local adoption or foster care service providers” willing and able to assist the family. (*Id.*, PageID.235.) Thus, “St. Vincent stands aside and allows other qualified agencies to make recommendations on behalf of unmarried or LGBTQ couples.” (*Id.*) Historically, the State of Michigan has permitted St. Vincent to refer prospective parents to other agencies if St. Vincent’s sincerely held religious beliefs prevented it from assisting with the certification and licensing recommendation process.²

² Ms. Snoeyink avers that “[p]rivate agencies in Michigan have always been able to refer families to other agencies (or return a referral to DHHS) for a variety of other reasons,” such as “(1) the family may live further away than the agency would like to drive for home visits, so they refer them to a closer agency, (2) the agency already has a waiting

St. Vincent does not prevent any couples, same-sex or otherwise, from fostering or adopting. (*Id.*, Page ID.235.) To the contrary, same-sex couples “certified through different agencies have been able to adopt children in St. Vincent’s care in the past” using the Michigan Adoption Resource Exchange (“MARE”) process. (*Id.*, PageID.235-36.) MARE’s website “includes information about all children currently seeking adoption in the State[,] ... [and] families certified by any of the numerous private child placing agencies in Michigan are allowed to adopt every child on MARE’s website – no family is disqualified from adopting a child based solely on the agency with which they work.” (*Id.*, PageID.236.) Through this process, any certified adoptive family, whether a same-sex couple or otherwise, may adopt children in St. Vincent’s care. (*Id.*, PageID.235-36.)³ St. Vincent “immediately places all children within its care on MARE.” (Snoeyink aff., ECF No. 42-4, PageID.1662.)

C. Contracts and Funding

The present contract for adoption services (the “adoption contract” or “contract”) between the State of Michigan and St. Vincent became effective on October 1, 2016 and has a termination date of September 30, 2019.⁴ Under the heading “Compliance Requirements,” the adoption contract states:

- c. The Contractor shall comply with the MDHHS non-discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion,

list, (3) the family has not been satisfied with the agency’s services, and (4) the family is looking for a specific type of child not currently in that agency’s care.” (*Id.*, PageID.238.)

³ St. Vincent notes that it “happily serves both LGBTQ individuals and children” in a variety of ways. (*Id.*, PageID.231.) For example, St. Vincent serves LGBTQ children in its foster program and group home, and St. Vincent welcomes LGBTQ couples at the parent support group it facilitates. (*Id.*)

⁴ The adoption services contract between the State and St. Vincent, as amended, may be viewed in its entirety as part of the public record in *Dumont v. Gordon*, Case No. 2:17-cv-13080 (E.D. Mich. Sept. 20, 2017) (ECF Nos. 16-2, 16-10).

age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs or disability.

The above statement applies to all MDHHS supervised children, and to all applications filed for adoptions of MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

(ECF No. 6-12, PageID.352.)⁵

Under the same heading, “Compliance Requirements,” the adoption services contract states:

e. Under 1973 PA 116, as amended by 2015 PA 53, the Contractor has the sole discretion to decide whether or not to accept a referral from MDHHS. Nothing in this Agreement limits or expands the application of the Public Act.

Adoption referrals are initiated by MDHHS. Contractors may not transfer adoption cases to another child placing agency. After acceptance of an adoption referral, the Contractor may not transfer the case back to the Department, except upon the written approval of the County Director, the Children’s Services Agency Director, or the Deputy Director.

(ECF No. 6-12, PageID.352.)

The present contract for foster services (the “foster contract” or the “contract”) between the State of Michigan and St. Vincent became effective on October 1, 2018 and terminates on September 30, 2021. (ECF No. 6-9, PageID.323.) The foster contract states that

[e]xcept as provided in subsection (h), the Contractor shall comply with the following requirements: The Contractor shall comply with the MDHHS non-discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

⁵ The language quoted here is modified to reflect Amendment No. 1, which appears in *Dumont* at ECF No. 16-10, PageID.338-39.

(ECF No. 34-7, PageID.1047-48.)⁶ Subsection (h) provides

Under 1973, PA116, as amended by 2015 PA53, the Contractor has the sole discretion to decide whether to accept or not accept a referral from MDHHS. Nothing in this Agreement limits or expands the application of this Public Act.

(*Id.*, PageID.1049.)

The foster contract also states that

[i]f MDHHS makes a referral to a child placing agency for foster care case management services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral within one hour of receipt of the referral....After acceptance of a foster care referral, the Contractor may not refer the case back to the Department except for the reasons outlined in the Children’s Foster Care Manual (“FOM”) or upon the written approval of the County Director, the Children’s Services Agency Director, or the Deputy Director.

(ECF No. 6-9, PageID.323.)

Michigan pays private CPAs, including St. Vincent, for providing foster and adoptive placements “using a mix of state and federal funds, including funds from Title IV-E and Temporary Assistance for Needy Families block grants.” (ECF No. 6-1, PageID.232.) Michigan generally pays a per diem to the agency overseeing a foster placement only after the CPA places the child with a licensed family. (*Id.*) For most adoptions from foster care, “the State makes payments to the agency as part of the foster care system in pre-adoptive placements, and makes a lump-sum payment to the agency after the adoption is complete.” (*Id.*, PageID.232-33) According to St. Vincent, “[p]rivate agencies generally do not bill the State, nor are they compensated, for performing home studies for prospective foster or adoptive parents.” (*Id.*, PageID.233.) Subject to

⁶ The foster contract in the record (ECF No. 34-7) is an amended version of the foster contract that became effective in 2014 and expired on September 30, 2017. No one has disputed that the same language appears in the foster contract having an effective period from October 1, 2018 – September 30, 2021.

a narrow exception,⁷ St. Vincent itself “pays for home studies, assessments, and its general recruitment with private funds in a cost center that is kept separate from the funding provided by the State for other child welfare activities.” (ECF No. 6-1, PageID.233)

D. Michigan Legislation

Both the adoption and foster contracts refer explicitly to “1973, PA 116, as amended by 2015 PA 53,” codified as MICH. COMP. L. § 722.124e and § 722.124f (the “2015 statute or “2015 law”). In enacting the 2015 law, the Michigan legislature noted, “It is the intent of the legislature to protect child placing agencies’ free exercise of religion protected by the United States constitution and the state constitution of 1963. This amendatory act is not intended to limit or deny any person’s right to adopt a child or participate in foster care.” MICH. COMP. L. § 722.124e,

Historical and Statutory Note. The 2015 statute itself states,

(1) The legislature finds and declares all of the following:

(a) When it is necessary for a child in this state to be placed with an adoptive or foster family, placing the child in a safe, loving, and supportive home is a paramount goal of this state.

....

(c) Having as many possible qualified adoption and foster parent agencies in this state is a substantial benefit to the children of this state who are in need of these placement services and to all of the citizens of this state because the more qualified agencies taking part in this process, the greater the likelihood that permanent child placement can be achieved.

(d) As of the effective date of the [legislation], the adoption and foster care licensees of this state represent a broad spectrum of organizations and groups, some of which are faith based and some of which are not faith based.

(e) Private child placing agencies, including faith-based child placing agencies, have the right to free exercise of religion under both the state and federal constitutions. Under well-settled principles of

⁷ “In exceptional circumstances, the state has unique contracts it provides where it does pay agencies specifically for licensing a relative for a kinship placement.” (*Id.*, PageID.233, PageID.254-59.)

constitutional law, this right includes the freedom to abstain from conduct that conflicts with an agency's sincerely held religious beliefs.

....

(g) Children and families benefit greatly from the adoption and foster care services provided by faith-based and non-faith-based child placing agencies. Ensuring that faith-based child placing agencies can continue to provide adoption and foster care services will benefit the children and families who receive publicly funded services.

(h) Under well-established department contracting practices, a private child placing agency does not receive public funding with respect to a particular child or particular individuals referred by the department unless that agency affirmatively accepts the referral.

(2) To the fullest extent permitted by state and federal law, a child placing agency shall not be required to provide any services if those services conflict with, or provide any services under circumstances that conflict with, the child placing agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the child placing agency.

(3) To the fullest extent permitted by state and federal law, the state or local unit of government shall not take an adverse action against a child placing agency on the basis that the child placing agency has declined or will decline to provide any services that conflict with, or provide any services under circumstances that conflict with, the child placing agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the child placing agency.

(4) If a child placing agency declines to provide any services under subsection (2), the child placing agency shall provide in writing information advising the applicant of the department's website, the Michigan adoption resource exchange or similar subsequently utilized websites, and a listing of adoption or foster care service providers with contact information and shall do at least 1 of the following:

(a) Promptly refer the applicant to another child placing agency that is willing and able to provide the declined services.

(b) Promptly refer the applicant to the webpage on the department's website that identifies other licensed child placement agencies.

....

(6) If a child placing agency declines to provide any services under subsection (2), the child placing agency's decision does not limit the ability of another child placing agency to provide those services.

(7) For the purpose of this section:

(a) "Adverse action" includes, but is not limited to, denying a child placing agency's application for funding, refusing to renew the child placing agency's funding, canceling the child placing agency's funding, declining to enter into a contract with the child placing agency, refusing to renew a contract with the child placing agency, canceling a contract with the child placing agency, declining to issue a license to the child placing agency, refusing to renew the child placing agency's license, canceling the child placing agency's license, taking an enforcement action against a child placing agency, discriminating against the child placing agency in regard to participation in a government program, and taking any action that materially alters the terms or conditions of the child placing agency's funding, contract, or license.

(b) "Services" include any service that a child placing agency provides, except foster care case management and adoption services provided under a contract with the department.

MICH. COMP. L. § 722.124e.

St. Vincent's executive director testified before the legislature in support of the legislation. After the enactment of the 2015 statute, MDHHS updated its adoption services master contracts "to reflect changes to state law that permit a private agency to decline to serve an individual based on the agency's religious beliefs." (Bladen memorandum, ECF No. 6-14, PageID.372.)

E. Dumont Litigation

In 2017, the ACLU on behalf of two same-sex couples sued MDHHS for allowing St. Vincent to refer prospective parents to other agencies for assistance if St. Vincent's sincerely held religious beliefs prevented it from assisting with the certification and licensing recommendation process. *Dumont v. Gordon*, Case No. 2:17-cv-13080 (E.D. Mich. Sept. 20, 2017). Amici curiae in this case were plaintiffs in the *Dumont* case. The State initially defended

the suit, invoking the 2015 statute in support of its position.⁸ But that changed after the general election in November of 2018, when new leaders assumed power in Michigan. During her campaign for Attorney General, Defendant Nessel asserted that there was “no viable defense” for the statutes enacted under 2015 PA53 and that the 2015 statutes’ “only purpose is discriminatory animus.” Ed White, *Dem AG candidate: Adoption law discriminates against gays*, Associated Press (Sept. 27, 2018), <https://apnews.com/a1fc021e8e2e4b3b829586ba56ad9c07> (last visited September 4, 2019). According to the same article, Defendant Nessel indicated that she would not be inclined to defend the *Dumont* lawsuit against MDHHS, because she “could not justify using the state’s money defending a law whose only purpose is discriminatory animus.” (*Id.*)⁹

The ACLU and the State announced a settlement in the *Dumont* litigation in March 2019, and the Court granted a motion for stipulated dismissal. The Court dismissed the plaintiffs’ claims against the State “with prejudice pursuant to the terms of the Settlement Agreement.” The Court retained jurisdiction over the enforcement of the Settlement Agreement under *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), and its progeny. (ECF No. 31-6, PageID.746-47.) The Court was not asked to approve or disapprove the terms of settlement. Nor did the Court reach a final merits determination one way or the other on the issues. Among other things, the Settlement Agreement provides:

Unless prohibited by law or court order:

⁸ Plaintiffs St. Vincent, Chad and Melissa Buck, and Shamber Flore were granted leave to intervene in the *Dumont* case on the side of the State defendants in that case.

⁹ In 2015, before her election, Defendant Nessel reportedly said of PA 53 “[t]hese types of laws are a victory for the hate mongers but again a disaster for the children and the state.” Fox 2 Detroit, *Opponents say adoption bill discriminates against gays and lesbians* (Mar. 4, 2015, 5:34 p.m.), <http://www.fox2detroit.com/news/opponents-say-adoption-bill-discriminates-against-gays-and-lesbians> (last visited September 4, 2019). Another article describes her as stating, “If you are a proponent of this type of bill, you honestly have to concede that you just dislike gay people more than you care about the needs of foster kids.” Rick Pluta, *Faith-based adoption bills headed to House floor*, Michigan Radio NPR (Mar. 4, 2015), <https://www.michiganradio.org/post/faith-based-adoption-bills-headed-house-floor> (last visited September 4, 2019).

a. The Department shall continue including in Contracts, and shall continue requiring all Contractors to include in Subcontracts, the Non-Discrimination provision, or a materially and substantially similar provision....

b. For the avoidance of doubt, policies and practices prohibited under the Non-Discrimination Provision include, without limitation,

i. turning away or referring to another contracted CPA an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a Contract or a Subcontract;

....

iii. refusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a Contract or a Subcontract; and

....

d. The Department shall require all Contractors to enforce the Non-Discrimination provision or Similar Provision against a CPA that the Contractor or the Department determines is in violation of, or is unwilling to comply with, such provisions ... up to and including termination of the Subcontracts ... including without limitation:

i. In the event a CPA refuses to comply with the Non-Discrimination Provision or Similar Provision within a reasonable time after notification by the Contractor or the Department of a Subcontract Violation, the Department will require the Contractor to terminate the CPA's Subcontracts."

(ECF No. 31-5, PageID.719-720.)

In a public statement (the "Summary Statement") summarizing the Settlement Agreement, the State explains that "a significant portion of funding" for the State's foster care case management and adoption services comes from the federal Title IV-E program. Michigan Government, Summary Statement of *Dumont v. Gordon* Settlement Agreement, https://www.michigan.gov/documents/ag/03.22.19_FINAL_Dumont_settlement_summary_650097_7.pdf. Citing 45 C.F.R. 75.300(c), the Summary Statement notes that "as a condition of

receiving these federal funds, the United States Department of Health and Human Services requires that states' Title IV-E-funded programs prohibit discrimination on the basis of sexual orientation or gender identity.” (*Id.*) The Summary Statement explains that “in compliance with this federal requirement, MDHHS contracts mandate that, except for an agency’s sole discretion to decide whether to accept a referral from MDHHS, all agencies must comply with MDHHS’s non-discrimination statement when providing state-contracted services.” (*Id.*)¹⁰ The Summary Statement posits that if an agency accepts an MDHHS referral of a child for foster or adoption services, the agency relinquishes the “discretion to refuse to provide the accepted child or individual with state-contracted foster care case management or adoption services that conflict with its sincerely held religious beliefs” and remains subject to “the terms of the agency’s contract with the State expressly prohibit[ing] discrimination in the provision of these contracted services.” (*Id.*) According to the Summary Statement, prohibited discriminatory conduct includes, without limitation, “refusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the agency for contracted services.” (*Id.*)

The Department of Attorney General “determined that MDHHS may be subject to liability on [the *Dumont*] Plaintiffs’ claims” and “strongly recommended resolving the case on terms that are consistent with the law and existing agency contracts[.]” (*Id.*) The Summary Statement points out that on the dates that St. Vincent referred the *Dumont* plaintiffs elsewhere for certification and recommendation services, St. Vincent “was providing foster care case management services or

¹⁰ The exception is based the statutory provision in MICH. COMP. L. 722.124e(h) that “an agency does not receive public funding with respect to a particular child or particular individual referred by MDHHS unless the agency affirmatively accepts the referral.” (*Id.*)

adoption services for one or more children for whom the agency had accepted an MDHHS referral.” (*Id.*) No exception applied, because “Plaintiffs were not seeking direct-placement or private adoption services, and they did not approach the agencies through an MDHHS referral that the agencies could accept or reject under existing state law.” (*Id.*) The Summary Statement concludes that “consequently, [St. Vincent] was contractually prohibited from discriminating against Plaintiffs as potential qualified foster care or adoptive families for any child for whom the agencies were providing services under contract with MDHHS.” (*Id.*) Under the State’s new position, St. Vincent was no longer permitted based on its religious beliefs to refer unmarried and same-sex couples to other agencies for certification review and assistance, even though it was continuing to make non-discriminatory placements for all the children for whom it had accepted referrals.

The Summary Statement emphasizes that the Settlement Agreement provides that MDHHS will “maintain federally required non-discrimination provisions in its foster care and adoption agency contracts” and that “settling the *Dumont* litigation on the terms of the settlement agreement “allows MDHHS to avoid liability on Plaintiffs’ claims and remain compliant with federal and state law.” (*Id.*)

F. MDHHS Enforcement

An MDHHS Communication Issuance regarding the *Dumont* settlement notifies recipients, including St. Vincent, of requirements under the Settlement Agreement. (ECF No. 42-2.) The Communication Issuance advises that the Settlement Agreement requires the MDHHS to “investigate reports of alleged non-compliance with the non-discrimination provision” and to “[i]nitiate contract action when violations occur or when an agency expresses unwillingness to comply.” (*Id.*, PageID.1574.) The Communications Issuance reiterates that “policies and practices

prohibited under the non-discrimination provision include, among others: ... [r]efusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a contract or a subcontract.” (*Id.*)

After the filing of the *Dumont* litigation, the MDHHS opened an investigation into allegations that St. Vincent was not complying with the non-discrimination provision. (Neitman aff., ECF No. 34-3, PageID.976.) MDHHS has not finalized its investigation of St. Vincent due to the present lawsuit. (*Id.*, PageID.978.) The State says that after completing the investigation, if a violation is found, “St. Vincent would have the opportunity to complete a corrective action plan demonstrating how it would achieve compliance.” (*Id.*) If St. Vincent elects not to comply, “the Department could take licensing and/or contract action.” (*Id.*) St. Vincent anticipates that the MDHHS will terminate or decline to renew the foster and adoption contracts unless St. Vincent agrees to perform home studies and provide written evaluations and recommendations for same-sex couples who wish to apply for certification. If unable to partner with the State, “St. Vincent would not be able to continue its adoption and foster programs ... either legally or financially.” (Snoeyink aff., ECF No. 6-1, PageID.237.)

G. Current Proceedings

St. Vincent, the Bucks, and Ms. Flore filed this lawsuit on April 15, 2019. Plaintiffs claim that: (1) Defendants have violated the Free Exercise Clause of the First Amendment by “adopting a policy requiring the State to discriminate against child placing agencies with religious objections to same-sex marriage” and granting individualized exemptions from child placing agency requirements selectively (Complaint, ECF No. 1, PageID.42-46); (2) Defendants have violated

the Free Speech Clause of the First Amendment by “conditioning St. Vincent’s license, its contracts with MDHHS, and the ongoing ability to engage in the religious exercise of helping children in need, on St. Vincent’s willingness to make [affirmative statements that contradict St. Vincent’s religious beliefs];” (3) Defendants have retaliated against Plaintiffs for protected speech and religious exercise, in violation of the Free Exercise and Free Speech clauses of the First Amendment; (4) Defendants have violated the Free Exercise and Establishment Clauses of the First Amendment by applying laws in a manner that selectively penalizes Plaintiffs for their religious beliefs; (5) Defendants have violated the Equal Protection Clause of the Fourteenth Amendment by penalizing Plaintiffs because of their religious beliefs while allowing contractors espousing contrary religious beliefs to maintain contractual relationships with the State; and (6) Defendants have violated the RFRA by enforcing federal law in a manner that substantially burdens Plaintiffs’ sincere religious exercise without a compelling government interest and through a means more restrictive than necessary to achieve the stated interest.

Plaintiffs now seek a preliminary injunction that would (1) enjoin State Defendants from terminating or suspending performance of their contracts with St. Vincent, or declining to renew the contracts or taking other adverse action against St. Vincent “for engaging in protected speech and religious exercise, including continuing to refer couples to other agencies when St. Vincent cannot assist those couples due to its religious beliefs”; and (2) enjoin Defendant Azar from “taking any enforcement action under 45 CFR 75.300(c) based upon St. Vincent’s protected speech and religious exercise or upon Michigan’s actions to accommodate such protected speech and religious exercise.” The Federal and State Defendants seek dismissal under Rule 12(b)(2) and 12(b)(6). The motions are fully briefed, and the Court has heard oral argument on the motions. The Court addresses the motions in turn.

LEGAL STANDARDS AND DISCUSSION

I. Motion for Preliminary Injunction

“The purpose of a preliminary injunction is simply to preserve the status quo” until a trial on the merits can be held. *United States v. Edward Rose & Sons*, 384 F.3d 258, 261 (6th Cir. 2004). Accordingly, “findings of facts and conclusions of law made by a district court in granting a preliminary injunction are not binding at a trial on the merits.” *Id.* (citing *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)). To determine whether a preliminary injunction is warranted, a district court considers: “(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; (4) whether the public interest would be served by the issuance of an injunction.” *Hall v. Edgewood Partners Ins. Center, Inc.*, 878 F.3d 524, 526 (6th Cir. 2017) (quotation omitted). “As long as there is some likelihood of success on the merits, these factors are to be balanced, rather than tallied.” *Id.*

A. Likelihood of Success

Plaintiffs have established a likelihood of success on the merits. The record supports a determination that strict scrutiny applies to the Free Exercise claim. Supreme Court cases “establish the general principle that a law that is neutral and of general applicability need not be justified by a compelling interest even if the law has the incidental effect of burdening a particular religious practice.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (citing *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990)). But this general rule “comes with an exception. If the law appears to be neutral and generally applicable on its face, but in practice is riddled with exemptions or worse is a veiled cover for targeting a belief or a faith-based practice, the law satisfies the First Amendment only if

it ‘advance[s] interests of the highest order and [is] narrowly tailored in pursuit of those interests.’” *Ward v. Polite*, 667 F.3d 727, 738 (quoting *Lukumi*, 508 U.S. at 546). Evidence to consider in determining whether a law or regulation is neutral and of general applicability include, among others, “the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body.” *Lukumi*, 508 U.S. at 540. The exception applies here because the historical background, specific series of events, and statements of Defendant Nessel all point toward religious targeting.

The history of this case, the *Dumont* litigation, the Michigan Legislature’s enactment of 2015 PA53, the 2018 campaign for Michigan Attorney General and General Nessel’s statements create a strong inference that the State’s real target is the religious beliefs and confessions of St. Vincent, and not discriminatory conduct. St. Vincent has never prevented a same-sex couple from fostering or adopting a child. St. Vincent has actually placed children through the MARE system with same-sex adoptive parents. And St. Vincent provides parenting support groups at which same-sex parents are welcome and, in fact, attend. This is non-discriminatory conduct consistent with everything the State says it is trying to promote.

The State is willing to prevent St. Vincent from doing all this in the future simply because St. Vincent adheres to its sincerely held religious belief that marriage is an institution created by God to join a single man to a single woman. Because of that religious belief, St. Vincent says it cannot in good conscience review and certify an unmarried or same-sex parental application. St. Vincent would either have to recommend denial of all such applications, no matter how much value they could provide to foster and adoptive children; or St. Vincent would have to subordinate its religious beliefs to the State-mandated orthodoxy, even though the State is not compensating

them for the review services anyway. To avoid the conflict, St. Vincent refers any such applicants and declines the referral, as the contract language permits.¹¹ The State legislature protected this choice by enacting the 2015 statute. Consistent with the contract and the 2015 law, St. Vincent had a longstanding practice of referring to other agencies same-sex and unmarried couples seeking assistance with the certification process. Once the State certifies these couples based on home visits by other agencies, St. Vincent will place children with them, or with any other parents certified by the State, on a non-discriminatory basis. Until January 2019, the State accepted and defended this practice in the *Dumont* litigation as complying fully with the 2015 statute and other applicable law.

Defendant Nessel made St. Vincent's belief and practice a campaign issue by calling it hate. She made the 2015 statute a campaign issue by contending that the only purpose of the statute is discriminatory animus. After Defendant Nessel took office, the State pivoted 180 degrees, reversing its position in the *Dumont* litigation. The State also threatened to terminate its contracts with St. Vincent. The Summary Statement's conclusion – that if an agency accepts even one MDHHS child referral for case management or adoption services, the agency forfeits completely the right to refer new parental applicants to other agencies based on its sincerely held religious beliefs – is at odds with the language of the contracts, with the 2015 law, and with established State practice. Moreover, it actually undermines the State's stated goals of preventing discriminatory conduct and maximizing available placements for children.

This further supports a

¹¹ The contractual language focuses on referrals of the children themselves for foster or adoptive services, not the home visits for new parental applicants. That is natural enough because St. Vincent is paid under the contracts for services provided to the children, not home visits for new parental applicants. Because the contract gives a CPA "sole discretion" to accept or decline referrals of children – whether for religious or any other reason – then *a fortiori*, the parties to the contracts contemplate unfettered discretion when it comes to referrals involving new parental applicants. The record fully supports this established practice. (*See* footnote 2, *supra*.)

finding of pretext for religious targeting. Strict scrutiny applies to the State's position and dictates a likelihood of success on the merits.

The State's position is not likely to survive strict scrutiny on this record. There are two potentially compelling state interests at stake, neither of which supports a State orthodoxy test. The first compelling interest the Court sees is preventing discriminatory conduct in services for which the State pays. Here, the State pays CPAs based on the children they place. And St. Vincent places its children with any certified parent – unmarried couples, same-sex couples, or otherwise. This is precisely the non-discriminatory conduct the State desires. But despite that, the State now wants to cancel St. Vincent's contract if St. Vincent uses its religious beliefs when it comes to referring new parental applicants. That strongly suggests the State's real goal is not to promote non-discriminatory child placements, but to stamp out St. Vincent's religious belief and replace it with the State's own. The State's new position would make the stated "sole discretion" of the private agency to decline a referral illusory. It would also flout the letter and stated intention of the Michigan Legislature in 2015 PA53. It would disrupt a carefully balanced and established practice that ensures non-discrimination in child placements while still accommodating traditional Catholic religious beliefs on marriage. It would replace this with a State-orthodoxy test that prevents Catholic believers from participating.

A second potentially compelling State interest is making available as many properly certified homes for the placement of foster and adopted children as possible. But the State's proposed action here actually undermines that goal. There is nothing in this record that supports a finding that the power of CPAs to decline referrals limits the pool of applicants. To the contrary, any CPA referring an applicant to a different CPA for any reason must provide information on other agencies. Nothing in the referral practice prevents anyone from seeking assistance with the

application process. Instead, it facilitates certification. The record here reflects that St. Vincent affirmatively refers same-sex and unmarried couples seeking that assistance to other agencies available to provide it. And when the applicant is certified, nothing stands in the way of placement of children in certified households of same-sex and unmarried couples. To the contrary, the record reflects that St. Vincent through the MARE system actually places children with same-sex couples certified as foster or adoptive parents. Paradoxically, the State's course of action here would constrict the supply of CPAs and undermine the State's intent of getting certified placements for kids. Again, this strongly suggests that something else – namely, religious targeting – is the State's real purpose.

The recent decision from the Third Circuit in *Fulton v. City of Philadelphia*, 922 F.3d 140 (2019), does not require a different conclusion. *Fulton* differs in key respects factually and analytically. In *Fulton*, the City of Philadelphia declined to renew a contract with a faith-based child placing agency after becoming aware that the agency declined to certify same-sex or unmarried couples as foster parents based on religious objections. *Fulton*, 922 F.3d, 147-48. The city argued that the agency's practice violated a provision in the contract incorporating the city's Fair Practices Ordinance, which prohibits sexual orientation discrimination in public accommodation. *Id.* at 147. But in *Fulton*, the challenged practice was an actual refusal to certify, not a referral to some other agency for an impartial evaluation. The City acted as soon as it became aware of the agency's practice. There was no sudden change in the City's position after new officials who had expressed anti-religious views took office. Nor was there any duly enacted public policy of the State or municipality that aimed to protect the agency's choice to the maximum extent provided by law.¹² Moreover, in *Fulton*, unlike here, there was no record of the agency involved

¹² The Pennsylvania Religious Freedom Act, 70 Pa. Stat. Ann. § 2401 *et seq.* is a general religious freedom law modeled on RFRA that does not focus specifically on child placing agencies as the Michigan 2015 statute does.

actually placing children on a non-discriminatory basis with same-sex parents certified by others. Nor was there any record in *Fulton* of the agency facilitating certification with referrals to other agencies.

The *Fulton* court found no evidence that the city “was motivated by ill will toward a specific religious group or otherwise impermissibly targeted religious conduct.” *Fulton*, 922 F.3d at 153-54. Accordingly, the more deferential analytical framework of *Employment Division v. Smith*, 494 U.S. 872 (1990), and not strict scrutiny, applied. *Id.* at 152-54. Similarly, the court in *New Hope Family Services, Inc. v. Poole*, 387 F. Supp. 3d 194 (N.D.N.Y. 2019), explicitly found the record devoid of evidence of religious animus or targeting and applied the more deferential scrutiny of *Smith*. *New Hope Family Services*, 387 F. Supp. 3d 213-216. Unlike *Fulton* and *New Hope*, the record before the Court in this case supports an inference of religious targeting, which means that strict scrutiny applies. The degree of scrutiny drives the analysis in a Free Exercise case. And the application of strict scrutiny in this case makes it likely that Plaintiffs will succeed on the merits of their Free Exercise Claim.¹³

The federal government has not made any direct statements or threats to St. Vincent about funding or otherwise. But as the case is currently positioned, the Federal Defendants are inextricably in the mix, at least for preliminary injunction purposes. RFRA precludes the federal government from “substantially burden[ing] a person’s exercise of religion even if the burden results from a rule of general applicability” unless the federal government “demonstrates that application of the burden to the person – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling government interest.”

¹³ The Court’s ruling on the probability of success on the Free Exercise claim makes it unnecessary to evaluate separately the probability of success of the compelled speech, retaliation, and equal protection theories. Suffice to say the Court is satisfied that St. Vincent has stated plausible claims sufficient to survive Rule 12(b)(6) review.

42 U.S.C. §§ 2000bb-1(a), (b). The RFRA test is easier for a plaintiff to satisfy than the constitutional test already applied.

The State argues that it must proceed against St. Vincent here to prevent the federal government from cutting off all funds it provides to the State for the purpose of funding foster care and adoption programs. According to the State, \$171 million in federal funding to the State is at risk, and the federal government's obligation to enforce a federal regulation "is not optional." (State Defendants' Resp. to Federal Defendants' Mot. to Dismiss, ECF No. 53, PageID.1875.) Indeed, according to the State, "there *is* a credible threat that the Federal the regulation against MDHHS..." (*Id.*) (emphasis in original). Defendants will enforce

In response, the federal government has not promised to keep funds in place, and has not said that the State is misinterpreting federal law. Moreover, the Federal Defendants themselves have affirmatively noted that the government "can almost *always* change its position on whether to enforce a law or regulation," (ECF No. 61, PageID.2159), which is exactly what St. Vincent is trying to prevent, especially after experiencing the State's change of position. The Federal Defendants point out that States can seek an exemption from the federal regulation at issue, but that is hardly reassuring to St. Vincent, because the State Defendants currently have no interest in that for reasons already addressed. Moreover, as the case demonstrates, government officials can change their minds, re-interpret laws already on the books, and disrupt established practices. Because the Federal Defendants have refused to refute the State's own assertion that there is a credible threat the federal regulation will be triggered against the State if St. Vincent's position prevails, St. Vincent has established a need to enjoin the Federal Defendants from applying the federal regulation to punish the State generally, or St. Vincent in particular, for permitting the continuation of St. Vincent's religiously-based referral practice during the pendency of this case.

B. Balance of Harms

There is a strong likelihood of irreparable harm to St. Vincent absent the preliminary injunction it requests. The loss of rights under the First Amendment is inherently harmful. “The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.” *Newsom v. Norris*, 888 F.3d 371, 378 (6th Cir. 1989) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion of Brennan, J.)). St. Vincent has shown that it is likely to prevail on its constitutional and RFRA claims. Concomitantly, it has shown a likelihood of irreparable harm that warrants injunctive relief.

In addition to the harm inherent in the loss of constitutional rights, St. Vincent risks losing its license to provide foster and adoption services. Without a license, St. Vincent will not be able to provide foster and adoption services lawfully. It would have to cease providing those services. This would harm not only Plaintiffs, but also third parties. Shuttering St. Vincent would create significant disruption for the children in its care, who already face an unpredictable home life and benefit from stability. It would also hurt the foster and adoptive parents who rely on St. Vincent for support and would have to find new resources. And it would harm the employees of St. Vincent who work in the foster and adoption area, who would lose their employment.

The risk of harm to the State, in contrast, is not substantial, especially with concomitant relief against the Federal Defendants. A preliminary injunction would maintain the religious accommodation the State supported for years and defended in the *Dumont* litigation until the 2018 election. Nor is there a risk of harm to prospective adoptive couples, same-sex or otherwise. There are multiple pathways to obtaining certification apart from St. Vincent’s assistance. Allowing St. Vincent to continue its practice does not prevent any licensed same-sex couple from becoming

certified, fostering, or adopting. Nor does it prevent any unmarried or same-sex couple from completing the certification process in the first place with an agency with different religious beliefs or no such beliefs at all.

The balance of harms favors preliminary injunctive relief to preserve the status quo.

C. Public Interest

The public interest factors also favor a preliminary injunction to maintain the status quo.

Preventing constitutional violations is always in the public interest. *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994). Ensuring that as many properly certified homes are available for prospective foster and adoptive children as possible, and that children in the system are placed quickly, is also in the public interest. Allowing St. Vincent to continue its work furthers that interest. The decision of the legislature to enact 2015 PA53 itself reflects a public interest in protecting the ability of faith-based CPAs such as St. Vincent to place children in certified foster and adoptive homes, whether same-sex households or otherwise, while maintaining the ability to exercise their religious beliefs freely by facilitating referrals to other agencies when religious beliefs are implicated. The public interest factors support a preliminary injunction.

For these reasons, all the preliminary injunction factors weigh in favor of granting the preliminary injunction Plaintiffs seek.

2. Motions to Dismiss

A. Standing

The State challenges the individual Plaintiffs' standing, and the Federal Defendants challenge the standing of all the Plaintiffs', as well as the ripeness of Plaintiffs' claims. "Standing under Article III of the Constitution requires that an injury be concrete, particularized, and actual

or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010). In pre-enforcement First Amendment challenges, the doctrines of Article III standing and ripeness, which “originate from the same Article III limitation[,]” merge and are analyzed together. *Winter v. Wolnitzek*, 834 F.3d 681, 687 (6th Cir. 2016) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 n.5 (2014)). In this context, “the line between Article III standing and ripeness ... has evaporated.” *Id.*

The Court finds that Plaintiff St. Vincent has standing to sue both the State and Federal Defendants. The religious injury St. Vincent alleges is fairly traceable to the State and the Federal Defendants. The State’s change of position is the direct and most immediate source of the religious targeting injury alleged. But as already discussed, the federal government is inextricably part of it at this stage based on its refusal to take the \$171 million federal funding issue off the table. The State premises its position toward St. Vincent on concern that the State will lose all federal funding for foster and adoption services if the federal government enforces § 45 C.F.R. 75.300(c). The federal government has not denied that risk. An injunction against enforcing the federal regulation during the pendency of this lawsuit would redress the harm St. Vincent alleges, and protect the State along the way.¹⁴ St. Vincent has standing as to all Defendants.

In contrast, the Court finds that the allegations of the Bucks and Ms. Flore do not satisfy the elements of Article III standing. They have no contracts with the State, and the State has

~~made no threats against them~~ based on their religious profession or practice, or otherwise. The

¹⁴ To the extent the Federal Defendants argue that the Plaintiffs fail to state a claim, the argument fails. Plaintiffs have alleged a plausible RFRA claim. Plaintiffs allege that the Federal Defendants are requiring Michigan to comply with § 45 C.F.R. 75.300(c); that the regulation is unlawful; and that the regulation forces St. Vincent to violate its sincere religious beliefs in order to comply with the State and federal requirements. They have alleged that the federal government has imposed a substantial burden on their sincere religious exercise, and that the burden is neither justified by a compelling state interest nor the least restrictive means of achieving the interest. Dismissal under Rule 12(b)(6) is not appropriate.

harm to the individual Plaintiffs derives entirely from the alleged harm that will befall St. Vincent. The three individual Plaintiffs have benefitted from St. Vincent, and have engaged in their own adoptive and foster ministries through St. Vincent. But none of these individuals indicates a present intention to foster or adopt through St. Vincent. Nor do they make any convincing showing that they will be unable to continue their engagement on foster and adoptive matters with other agencies, even if St. Vincent were to lose its contracts – something that could happen for many reasons wholly unrelated to this case. Indeed, St. Vincent itself has argued and demonstrated that many other agencies are available for the new potential applicants that it chooses to refer. By the same token, many other outlets – including other faith-based outlets – would remain available to the individual Plaintiffs. Moreover, the alignment of claimed injury and the alleged wrong is also skewed for the individual Plaintiffs. The CPA practice at issue is referring new applicants for religious reasons, and the challenged State action is religious targeting aimed at stopping it. But the individual Plaintiffs are not involved in the referrals and are not being targeted for direct action by the State. Not every beneficiary, supporter, or prospective client of St. Vincent has standing to challenge adverse action the State has focused on St. Vincent itself. The alleged harm to the individual Plaintiffs is too attenuated to support standing.¹⁵

B. Defendant Nessel

The State Defendants seek dismissal of Defendant Nessel from the case. They contend that she is simply the State's chief legal counsel, is not responsible for Michigan's change in policy, and does not belong in the case. The record undercuts the claim. Based on the record to date, Defendant Nessel is at the very heart of the case. She referred to proponents of the 2015 law as

¹⁵ The individual Plaintiffs are welcome to proceed as *amici curiae*.

“hate-mongers” and said the only purpose of the 2015 law was “discriminatory animus.” She described the 2015 law as “indefensible” during her campaign. These statements raise a strong inference of a hostility toward a religious viewpoint. Based on the present record, she was also a pivotal player in the State’s total reversal of position in the *Dumont* litigation. It was her assessment of risk that led the State to move from defending St. Vincent’s position to abandoning it in the first month of her term – and this despite the 2015 law, the language of the contracts, and well-established practice. All of this supports a strong inference that St. Vincent was targeted based on its religious belief, and that it was Defendant Nessel who targeted it. *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1729-31 (2018) (detailing disparaging statements of government decision-makers regarding particular religious beliefs and emphasizing the “State’s duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint”). On this record, dismissal of Defendant Nessel from the case is not warranted.

C. *Res Judicata*

The State Defendants contend that dismissal of the case is proper based on res judicata arising out of the *Dumont* litigation. Contrary to the State’s arguments, res judicata provides no basis for dismissal here. Res judicata requires: “(1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action.” *Kane v. Magna Mixer Co.*, 71 F.3d 555, 560 (6th Cir. 1995). Potential application falters on the very first element: there was never a final decision on the merits in the *Dumont* litigation. The case was resolved by private settlement between the State and the plaintiffs in the case. The Court did not approve the settlement and was

never asked to do so. Nor did the Court in *Dumont* make any final decision on the merits. There is simply no judgment in *Dumont* to which res judicata can attach.

Moreover, it is important to note that St. Vincent and the State were originally on the same side in *Dumont*, defending St. Vincent's religiously-based referral practice. When St. Vincent intervened, it did so as a defendant, aligning with the State. In such a posture, St. Vincent had no obligation to assert any claims against the State, let alone the ones they are now bringing. They were co-parties, and under Rule 13(g), crossclaims are entirely permissive. FED. R. CIV. P. 13(g) added); *United States Confederate Acres Sanitary Sewage and Drainage System, Inc.*, 935 F.2d 796, 799 (6th Cir. 1991). Nor did St. Vincent have any claims it could have asserted against the State anyway because at the time, the State agreed with St. Vincent.

The State Defendants also suggest that the Settlement Agreement bars Plaintiffs' claims. This is an entirely specious claim. Plaintiffs were not parties to the Settlement Agreement. Moreover, even though the State Defendants call the Settlement Agreement a "consent decree," it was no such thing. It was a private contract between the State and the plaintiffs in the case. No one asked St. Vincent what it thought of the settlement. And no one asked the Court what it thought either. The Court simply entered a routine stipulated dismissal and retained jurisdiction over the enforcement of the Settlement Agreement between the parties to that agreement. There is no basis to conclude that the Settlement Agreement is a consent decree, or that it binds any non-party to the Settlement Agreement, including St. Vincent.

CONCLUSION

The State pays St. Vincent to place children with foster or adoptive parents certified as suitable by the State. St. Vincent has done that faithfully, regardless of whether the certified parents

were opposite sex, same-sex, or unmarried couples. St. Vincent would like to continue doing so under existing and renewed contracts with the State.

What St. Vincent has not done and will not do is give up its traditional Catholic belief that marriage as instituted by God is for one man and one woman. Based on that belief, St. Vincent has exercised its discretion to ensure that it is not in the position of having to review and recommend to the State whether to certify a same-sex or unmarried couple, and to refer those cases to agencies that do not have a religious confession preventing an honest evaluation and recommendation. In 2015, the Michigan legislature enacted legislation designed to protect that choice, and until January of 2019, the State defended the right of the State and St. Vincent to make that choice.

That changed when Defendant Attorney General Nessel took office. Leading up to and during the 2018 general election campaign, she made it clear that she considered beliefs like St. Vincent's to be the product of hate. She stated that the 2015 law seeking to protect St. Vincent's practice was indefensible and had discriminatory animus as its sole purpose. After her election, she reversed course in the *Dumont* litigation; re-interpreted the 2015 law; and put St. Vincent in the position of either giving up its belief or giving up its contract with the State. That kind of targeted attack on a sincerely held religious belief is what calls for strict scrutiny in this case and supports entry of a preliminary injunction preserving the status quo while the case is fully litigated.

Dated: September 26, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELISSA BUCK, *et al.*,

Plaintiffs,

v.

ROBERT GORDON, in his official
Capacity as Director of the Michigan
Department of Health and Human Services,
et al.,

Defendants.

CASE NO. 1:19-CV-286

HON. ROBERT J. JONKER

ORDER

In accordance with the Opinion entered this day, **IT IS ORDERED:**

1. Defendants Robert Gordon, Herman McCall, and Dana Nessel's Motion to Dismiss (ECF No. 29) is **GRANTED** to the extent Defendants seek dismissal of Plaintiffs Chad Buck, Melissa Buck, and Shamber Flore under FED. R. CIV. P. 12(b)(2) and is **DENIED** in all other respects.¹

2. Defendants Alex Azar and the United States Department of Health and Human Services' Motion to Dismiss (ECF No. 44) is **GRANTED** to the extent Defendants seek dismissal of Plaintiffs Melissa Buck, Chad Buck, and Shamber Flore under FED. R. CIV. P. 12(b)(2) and is **DENIED** in all other respects.

3. If they choose to do so, Plaintiffs Melissa Buck, Chad Buck, and Shamber Flore may proceed as *amici curiae* in the case.

¹ The Court has already denied the motion to the extent Defendants sought transfer of the case. (ECF No. 52)

4. Plaintiff St. Vincent's Motion for Preliminary Injunction (ECF No. 5) is

GRANTED:

A. Unless and until the Court orders otherwise, Defendants Gordon, McCall, and Nessel, their agents, employees, and those acting in concert with them shall not terminate or suspend performance of their contracts with St. Vincent Catholic Charities, decline to renew those contracts, or take any other adverse action against St. Vincent Catholic Charities based on St. Vincent's protected religious exercise as described in the accompanying Opinion.

B. Unless and until the Court orders otherwise, Defendant Azar shall not take any enforcement action against the State under 45 C.F.R. § 75.300(c) based upon St. Vincent's protected religious exercise as described in the accompanying Opinion, or upon the State of Michigan's obligations under this preliminary injunction to accommodate such protected religious exercise.

IT IS SO ORDERED.

Dated: September 26, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELISSA BUCK, *et al.*,

Plaintiffs,

v.

DANA NESSEL, *et al.*,

Defendants.

CASE NO. 1:19-CV-286

HON. ROBERT J. JONKER

ORDER

By Opinion and Order dated September 26, 2019, this Court entered a preliminary injunction preventing the State Defendants from taking action against St. Vincent based on St. Vincent's religious beliefs and practices, and ensuring that the federal Defendant did not take action against the State because of it. The Court found that strict scrutiny applied to the case after analyzing "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body," as discussed by the Supreme Court in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993). The Court now denies the State Defendants' motion for stay because the State has offered nothing new and has failed to come to grips with the factual basis on the preliminary injunction record that supports the inference of religious targeting in this case.

The factors the Court must consider on a motion for stay are exactly the same factors the Court had to consider in deciding whether to grant a preliminary injunction in the first place. *See, e.g., Coalition to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 244 (6th Cir. 2006). The

Court will not repeat its original analysis here, but will respectfully refer the reader to the Court's original Opinion, which the Court incorporates here. The same reasons that led the Court to enter the original preliminary injunction lead it to deny the motion for stay. The Court will only add comments about three matters that the State Defendants highlight in the wake of this Court's targeting conclusion.

First, the State Defendants suggest that the Court harbors personal animosity toward Attorney General Nessel, or her views. *See, e.g.* State Brief in Support of Motion for Stay, ECF No. 73 at PageID.2546. This is not true, and there is nothing in the record to support it. The Court cited and relied upon public statements the Attorney General made before and after she became Attorney General as part of the targeting analysis. Those statements were part of the overall *Lukumi* mix of information that supports the religious targeting inference. In particular, these public statements helped explain why the State abruptly changed its public litigation position from defending St. Vincent to opposing St. Vincent after the Attorney General took office. The Attorney General does not deny the statements or challenge the historical record of the State's change of position. The Court has articulated why it believes the inference supports religious targeting and corresponding strict scrutiny. But nothing in the Court's analysis suggests personal animosity toward the Attorney General or her views.

Second, the State Defendants suggest that the public statements of the Attorney General are not fair game for weighing in the *Lukumi* analysis because *Trump v. Hawaii* precludes it. But *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), does not categorically preclude consideration of the public statements that officeholders make on their way to winning an election. To the contrary, even though the Supreme Court was unsure the national security matter was properly subject to judicial review at all, *Trump*, 138 S. Ct. at 2407, the Supreme Court considered the campaign

statements of President Trump in the course of its Establishment Clause analysis. *Id.* at 2417-18. The Court ultimately concluded those statements were insufficient to support a preliminary injunction against the Presidential Proclamation at issue; it did not categorically preclude consideration of them. *Id.* at 2417-23. Moreover, when it comes to assessing potential religious targeting in a Free Exercise case, *Lukumi* puts no artificial limits on the factors a Court may consider. *See also Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

Finally, the State Defendants suggest that the Court must, at a minimum, modify the terms of the preliminary injunction. The original argument cites no authority for this and simply asserts the proposition in single paragraph. ECF No. 73 at PageID.2561. In seeking leave to file a Reply Brief (ECF No. 81), the State Defendants amplify their position somewhat but in so doing change the focus from the Court's goal of preserving the status quo during the litigation of this case, to anticipating contractual interpretation issues that may remain a part of the case going forward. There is no need for a reply brief on the motion to stay, and so the Court **DENIES** the State's motion for leave to file one. The Court's preliminary injunction ensures that the contracting parties continue operating during the pendency of this case as they have since at least 2015, and that no action is taken against St. Vincent in the meantime based on its religious beliefs and practices, or against the State for honoring the terms of the preliminary injunction.

Accordingly, the motion for stay (ECF No. 72) is **DENIED**.

Dated: October 22, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT 5

Case 1:19-cv-00286-RJJ-PJG ECF No. 34-6 filed 05/29/19 PageID.1018 Page 2 of 24

AGREEMENT NUMBER: A12-33001

AMENDMENT NUMBER: 7

Received

SEP - 1 2015

Contracts & Purchasing

Between
THE STATE OF MICHIGAN
DEPARTMENT OF HEALTH & HUMAN SERVICES
 And

CONTRACTOR	St. Vincent Catholic Charities
CONTRACTOR ADDRESS	2800 West Willow, Lansing, MI 48917-1833
CONTRACTOR EMAIL	seykaa@stvcc.org

CONTRACT ADMINISTRATOR	EMAIL
Amanda Doane	doanea@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Adoption		
GEOGRAPHIC AREA	Statewide		
INITIAL EFFECTIVE DATE	October 1, 2011	CURRENT EXPIRATION DATE	September 30, 2015
CURRENT AGREEMENT VALUE	\$1,116,000.00		
CONTRACT TYPE	Unit Rate		

AMENDMENT DESCRIPTION			
EXTEND EXPIRATION DATE	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	NEW EXPIRATION DATE September 30, 2016
AMENDMENT AMOUNT	ESTIMATED REVISED AGGREGATE AGREEMENT VALUE		
\$	<input type="checkbox"/> INCREASE	<input type="checkbox"/> DECREASE	\$1,116,000.00
NATURE OF CHANGE	This amendment will revise the contract language and extend the contract for one year using the second of two option years		

The undersigned have the lawful authority to bind the Contractor and DHHS to the terms set forth in this Agreement.

FOR THE CONTRACTOR:

St. Vincent Catholic Charities

Contractor

Andrea E. Seyka

Signature of Director or Authorized Designee

ANDREA E. SEYKA

Print Name

8/31/15

Date

FOR THE STATE:

DEPARTMENT OF HEALTH & HUMAN SERVICES

Kim Stephen

Signature of Director or Authorized Designee

Kim Stephen

Print Name

9-8-15

Date

Agreement Number: A12-33001
Amendment Number: 7

<u>Agreement Period</u>	<u>Amount</u>
October 1, 2011 through September 30, 2016	\$1,116,000.00
Total Amount:	\$1,116,000.00

Check all contract years affected by this amendment:

Year 1 Year 2 Year 3
 Year 4 Year 5 Year 6

**STATE OF MICHIGAN
DEPARTMENT OF HEALTH & HUMAN SERVICES**

WHEREAS, the Department of Health & Human Services of the state of Michigan (hereinafter referred to as "DHHS") entered into a contractual Agreement effective October 1, 2011, with St. Vincent Catholic Charities (hereinafter referred to as "Contractor"), having a mailing address of 2800 West Willow, Lansing, MI 48917-1833, for the provision of certain services as set forth therein; and,

WHEREAS, it is mutually desirable to DHHS and to the Contractor to amend the aforesaid Agreement.

THEREFORE, in consideration of the promises and mutual covenants hereinabove and hereinafter contained, the parties hereto agree to the following amendment of said Agreement. This amendment shall be attached to the Agreement, said Agreement being hereby reaffirmed and made a part hereof.

Article I

This amendment shall be effective on the date of DHHS signature or October 1, 2016, whichever is later.

*2015 ZH
9-3-15*

Article II

DHHS will exercise the second of two, one-year options to extend. Therefore, the end date of the Agreement shall be changed from September 30, 2015 to September 30, 2016.

Article III

Section I., CONTRACTOR RESPONSIBILITIES and Section II., DEPARTMENT RESPONSIBILITIES of the aforesaid Agreement will be deleted in their entirety and replaced as follows:

Agreement Number: A12-33001

Amendment Number: 7

I. CONTRACTOR RESPONSIBILITIES

A. Obligations

The Contractor shall comply with all of its obligations pursuant to this Agreement. Failure by the Contractor to cure a breach, if requested in writing by DHHS, will be considered a breach of this Agreement, and DHHS may terminate this Contract pursuant to the provisions of Section III. Q. 3. of this Agreement.

If the Contractor fails to comply with obligations set forth in this Agreement, and within the mutually established period of time, DHHS may, at its discretion, invoke sanctions on the Contractor which may include actions to collect disallowed costs and cancellation or termination of the Agreement under the provisions of Section III. Q. of this Agreement

B. Email Address

The Contractor authorizes DHHS to use the contact information below to send Agreement related communications. The Contractor shall provide DHHS with updated contact information if it changes. The Contractor confirms that this person is either authorized to sign Agreements or is recognized by this organization to assume this responsibility.

Contact email address: seykaa@stvcc.org

C. Requests for Information

The Contractor may be required to meet and communicate with DHHS representatives and from time to time DHHS may require that the Contractor create reports or fulfill requests for information as necessary to fulfill the DHHS' obligations under statute. The Contractor agrees that it will comply with DHHS' requests for information or requests for reports as required in this subsection.

D. Licensing

The Contractor shall ensure that, for the duration of this agreement, it shall maintain a license for those program areas and services that are provided for in this Agreement. If the Contractor fails to comply with this section, DHHS may terminate this Agreement for default.

The Contractor is licensed to provide service under this agreement under the following license number(s): CB330201019

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Amendment Number: 7

E. Geographic Area

The Contractor shall perform activities described herein in the following geographic area: Statewide

F. Location of Facilities

The Contractor shall provide services described herein at the following location(s): 2800 West Willow, Lansing, MI 48917

G. Client Eligibility Criteria

1. Eligible clients

The Contractor shall perform activities for Michigan permanent wards that are Title IV-E funded and Michigan Children's Institute (MCI) wards for which adoption is the plan or for children from a participating Inter-State Compact (ICPC) state's child welfare system that has been referred for adoption services to Michigan through ICPC.

2. Method for Determination of Eligibility

Determination of eligibility will be made by DHHS.

H. Program Statement

The Contractor shall provide DHHS with copies of its program statements for all programs covered under this Agreement. The program statement shall comply with the requirements of DHHS Division of Child Welfare Licensing (DCWL) standards specific to the license listed in Section I(D) and DHHS policy. The Contractor shall inform DHHS of any changes made to the program statement at any point during the term of this Agreement and provide copies of the new statement to DHHS within 60 days.

I. Credentials

The Contractor shall assure that all staff performing functions under this Agreement, including contractor employees and/or subcontractors, are appropriately credentialed or trained.

J. Compliance with DHHS Modified Settlement Agreement and Consent Order

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The Contractor shall ensure compliance with the applicable requirements of the Dwayne B. v. Rick Snyder Modified Settlement Agreement and Consent Order.

K. Services to be Provided

The Contractor shall comply with all applicable DHHS policy and DHHS policy amendments. Throughout the terms of this Agreement, the Contractor shall ensure that it provides all applicable DHHS policy and DHHS policy amendments to social service staff. The Contractor shall ensure that social service staff complies with all applicable requirements. DHHS policies and DHHS policy amendments are published on the following internet link: <http://www.michigan.gov/dhs>.

The Contractor shall comply with the DHHS non-discrimination statement:

Michigan Department of Health and Human Services (DHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs or disability.

The above statement applies to all applications filed for adoption of DHHS supervised children, including DHHS supervised children assigned to a contracted agency.

If DHHS makes a referral to a child placing agency for adoption services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral within seven working days of receipt of the referral from foster care. Reasons for declining a referral must be documented in MiSACWIS.

Additional Requirements:

1. General Adoption Responsibilities

- a. Place the child for adoption under the provisions of this Agreement or assist in the child's placement by another private agency or DHHS local office.
- b. The Contractor that has the identified adoptive family shall be the agency to perform adoptive activities including: placement, case management, supervision and court related requirements.
- c. When the Contractor has an identified adoptive family for a child under supervision of another agency the Contractor shall work

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cooperatively with the child's agency in coordinating and sharing responsibility for pre- placement activities and associated costs for transportation and other case services.

- d. When a placement for adoption disrupts or a finalized adoption dissolves within eighteen (18) months of the date of the order for placement or finalization the Contractor shall be, unless ordered or directed otherwise by the Court or DHHS, responsible to provide full adoption services for the child/youth as detailed in this contract. The responsible contractor is defined as the Contractor that had adoption planning responsibilities for the child when the initial adoption placement occurred. The exception shall be in a contested case where a child is placed in an adoptive home against the recommendation of the contractor.
 - e. Provide guidance to the child's foster parent in preparation of the child for adoption or in facilitating a transfer of the child's attachment to the adoptive parents.
 - f. In instances where the child's agency has performed pre-placement activities for the adoptive family's agency, the adoptive family's agency shall provide the child's agency with a copy of the court order placing the child in the adoptive home within thirty (30) working days, after receipt of said order.
 - g. The Contractor shall develop plans for the effective use of cross- jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children. This shall include photo listing on the MARE website, networking with other private agencies in determining availability of resource families and other recruitment activities that are statewide and national in nature. The Contractor shall respond to and actively work with, prospective adoptive parents outside of the State of Michigan.
 - h. The Contractor shall maintain documentation of completion of the above listed requirements in the child's adoption case file for review by DHHS.
2. Adoption Recruitment, Orientation and Training
- a. The Contractor shall provide adoption recruitment activities in collaboration with other private agencies and DHHS local offices to focus on children registered on Michigan Adoption Resource Exchange (MARE).

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- b. The Contractor shall work cooperatively with other contracted adoption agencies, DHHS and trained adoptive parents to provide orientation and training. It is recommended that adoptive parent peer mentors be matched to prospective and new adoptive parents.
- c. The Contractor shall involve youth in the planning and organizing of adoption recruitment events.
- d. The Contractor shall develop supports for children and youth moving to permanency through adoption. Best practice research indicates that support groups, peer mentors, informational sessions and individual counseling are effective tools. Developing appropriate rituals and recognition for the transitions experienced shall be part of the adoption process.
- e. The Contractor shall be responsible for providing information to the prospective adoptive parent(s) regarding the adoption assistance programs on behalf of all children available for adoption. If the Contractor fails to provide information, fails to apply for adoption assistance or finalizes an adoption prior to the execution of an adoption assistance agreement, and it is later determined that the child was eligible for adoption assistance, the Contractor shall be responsible for providing financial support to the family equal to the adoption assistance amount and eligible Medicaid coverage, from the time the family makes the request for the re-determination of eligibility and the date DHHS determines that an error occurred based on the Contractor's failure to inform or apply for adoption assistance.

3. MARE Related Responsibilities

The Contractor shall cooperate with MARE related activities and responsibilities, as detailed in this document including but not limited to:

- a. The Contractor shall appropriately inform and prepare children concerning the process of photo listing. Children shall be adequately attired and well groomed. Adequately attired is defined as that which a parent would provide for their child in a school photo. The Contractor is responsible for securing photography services and may request coupons or assistance from the MARE office. The Contractor is responsible for facilitating transportation to key photo sites and supervision of the child(ren) during the process.
- b. The Contractor shall, as appropriate to the child's ability, involve

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- youth over age nine (9) in developing individual recruitment materials and narratives for MARE photo listing.
- c. The Contractor must submit a copy of the Order Placing Child after Consent to the MARE office within ten (10) working days of its issuance by the court.
 - d. Upon determination by the Contractor that the MARE potential family 'match' is appropriate, the child and family agencies shall begin the process towards adoption within ten (10) working days.
 - e. The Contractor shall provide a written brochure (developed by MARE) to adoptive families regarding their right to be included in the MARE prospective family registry and provide an explanation of this process during orientation. This brochure and information shall again be provided to the prospective family during the formal training process.
 - f. The Contractor shall ensure all age appropriate youth available for adoption have knowledge of and access to the MARE newsletter for youth.
 - g. The Contractor shall notify MARE no less than quarterly of planned adoption related events, scheduled or tentatively scheduled for the next quarter. These activities shall include but are not limited to orientation, training dates, workshops, adoption fairs, recruitment activities, post adoption support activities and guest speakers. The Contractor will indicate if the events are open to the public or limited to a specific audience and any costs for family participation.
 - h. If the local court is participating, the Contractor shall cooperate with MARE during planning and implementation of National Adoption Day activities and regionally based adoption events.
 - i. The Contractor shall ensure MARE staff has access to case records, the child, child's worker, and other material or persons necessary for the development and updating of the child's MARE file and recruitment material.
 - j. The Contractor shall submit the completed Disruption/Dissolution survey to MARE within thirty (30) days of receipt of the survey from MARE.
 - k. The Contractor shall provide to MARE by October 30th of each year

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the following:

- 1) The address of all offices.
 - 2) Names, telephone numbers and email addresses of all adoption workers and supervisors.
 - 3) Types of services provided by the Contractor.
- i. The Contractor shall ensure that a supervisor attends the regionally based MARE informational session annually. This individual shall then be responsible to disseminate MARE information and material to appropriate agency staff.

L. Performance Outcomes

1. Fewer than 5% of placements for adoption will end in disruption.
2. Fewer than 5% of finalized adoptions will end in dissolution.
3. By September 30, 2016, not less than 80% of children with a goal of adoption that are legally free for adoption on September 30, 2015 shall have adoptions finalized.
4. By September 30, 2016, not less than 80% of the number of children with a goal of adoption that are legally free for adoption on September 30, 2015 will have the adoption petition filed with the court.

M. Unit Definitions

1. Unit Title: Per Diem Payments
For each child where the adoption case is referred to the Contractor by DHHS except for cases in which the Contractor has responsibility for the foster care case, the Contractor shall receive payment of \$20.00 per diem for each day of adoptive services from acceptance of the case to date of the signed documentation from the court (as determined by DHHS) verifying that the court has accepted the adoption petition and support documentation, or for one hundred fifty (150) days, whichever comes first. The maximum per diem payment amount per child is \$3,000.

The total amount paid for the per diem rate will be deducted from the applicable placement rate when the child is placed for adoption.

The Contractor must submit the Individual Service Agreement (DHS-3600) (for Adoption Services) with the date of acceptance indicated and the completed Adoption Payment Voucher (DHS-1582A).

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2. Unit Title: Placement

All unit definitions below are based on the length of time from the receipt of the written order from the court terminating all parental rights or, the date on which the DHS-3600 is fully executed, if the case has been transferred from DHHS to the Contractor, whichever is later, to the date of the signed documentation from the court (as determined by DHHS) verifying that the court has accepted the adoption petition and support documentation.

If the child's goal changes from adoption to another goal and then changes back to the goal of adoption, the Contractor must obtain a new DHS-3600 (or the applicable court orders for cases in which the agency has foster care responsibility) for adoption services for the updated goal of adoption.

The Contractor must submit the Order Terminating Parental Rights, signed and dated documentation from the court (as determined by DHHS) verifying the date that the court has accepted the adoption petition and support documentation, the Adoption Petition documentation and the Acceptance of Case Transfer documents if applicable. The document indicating the date of acceptance must be signed by a DHHS representative as verification. If there was a per diem payment for the case prior to placement the Contractor must denote "per diem billed" in box 13 of the DHS-1582A.

3. Unit Title: Finalization

Unit Definition: One unit equals receipt of an Order of Adoption for a child for whom a Placement rate was paid.

4. Unit Title: Permanency

Unit Definition: One unit equals an adoption that does not end in dissolution within 182 days of the issuance of an Order of Adoption. The Permanency Unit Rate shall be paid at the same time as the Finalization Unit Rate. The Contractor will be responsible for repayment of the Permanency Unit Rate for those cases for which the adoption ended in dissolution as documented in the DHHS annual Child and Family Services Review (CFSR) report.

5. Unit Title: Baseline

Unit Definition: The Adoption Petition documentation or Order Placing Child is signed and dated by the court more than two hundred ten (210) days, but two hundred forty (240) or fewer days after the date of placement as defined in Subsection I. M. 2 above.

6. Unit Title: Early Adoption Incentive - Level 1

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Unit Definition: The Adoption Petition documentation or Order Placing Child is signed by the court more than one hundred fifty (150) but two hundred ten (210) or fewer days after the date of placement as defined in Subsection I. M. 2 above.

7. Unit Title: Early Adoption Incentive - Level 2

Unit Definition: The Adoption Petition documentation or Order Placing Child is signed and dated by the court one hundred fifty (150) or fewer days after the date of placement as defined in Subsection I. M. 2 above.

8. Unit Title: Late Adoption Penalty - Level 1

Unit Definition: The Adoption Petition documentation or Order Placing Child is signed and dated by the court more than two hundred forty (240) days, but three hundred (300) or fewer days after the date of placement as defined in Subsection I. M. 2 above.

9. Unit Title: Late Adoption Penalty - Level 2

Unit Definition: The Adoption Petition documentation or Order Placing Child is signed and dated by the court more than three hundred (300) days, but three hundred sixty (365) or fewer days after the date of placement as defined in Subsection I. M. 2 above.

10. Unit Title: Late Adoption Penalty - Level 3

Unit Definition: The Adoption Petition documentation or Order Placing Child is signed and dated by the court more than three hundred sixty (365) days after the date of placement as defined in Subsection I. M. 2 above.

11. Unit Title: MARE

Unit Definition: The Order Placing Child is signed and dated by the court for a child who has been registered for photo listing on MARE.

The Contractor is not eligible for the MARE rate if the Contractor photo lists the child. The exception to allow for payment of the MARE rate to the supervising agency requires the Contractor to submit a written request verifying that the child was photo listed for six (6) months and documentation must be provided to demonstrate the family is a newly approved recruited family and the following conditions are true:

- a. The identified family is not a relative or foster parent to the adoptive child.
- b. The identified family has not previously provided care for the child.

The Contractor is eligible for the MARE rate if the child's foster care case remains with D H H S and, at the time of referral, there was no

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identified adoptive resource. The Contractor must register the child for photo listing within 30 days of acceptance of the case if no adoptive resource has been identified. If the Contractor applies for the MARE rate there must be a written explanation of why the adoptive family was not identified as a potential adoptive resource within the first 30 days after acceptance of the case.

12. Unit Title: Residential

Unit Definition: The Order Placing Child is signed and dated by the court for a child who has been placed in residential care (defined as staffed institutional care, not including foster group homes) and the child is under the Contractor's supervision for Adoption Services.

13. Unit Title: MARE and Residential Rate with Pre-placement

Unit Definition: When a child photo-listed with MARE or in a Residential facility is placed into a prospective adoptive home through a foster care placement to allow for a period of adjustment and supervision (prior to petition to place for adoption), the reimbursement for the appropriate rate shall be calculated based on the date the pre-placement began.

The MARE, and Residential Rate will be applied when the court signs the Order Placing Child within two hundred seventy (270) days of placing the child in the home for foster care services.

14. Unit Title: In-State Transfer Services

Unit Definition: The Contractor completes satisfactory services requested for pre-placement activities for a child under the supervision of the Contractor and referred for adoptive placement to another contractor or DHHS local office. The DHHS monitor for the foster care case shall define satisfactory services.

15. Unit Title: Interstate Existing Services

Unit Definition: A child under the adoption services supervision of the Contractor is referred for adoptive placement through a private or public agency in the state where the adoptive family resides and the child has previously been placed with the family through Interstate foster/relative care prior to termination of parental rights and assignment of an adoption worker.

16. Unit Title: Interstate New Services

Unit Definition: A child under the adoption services supervision of the Contractor is referred for adoptive placement through a private or public agency in the state where the adoptive family resides and the child

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has not been placed with the family through Interstate foster/relative care prior to termination of parental rights and assignment of an adoption worker.

17. Unit Title: ICPC Referred from Other U.S. States

A child under the child welfare system of another ICPC participating state is referred to Michigan for adoption services through ICPC. DHS-3600 (for Adoption Services) is required from the local Michigan county.

18. Unit Title: Competing Parties

More than one party is interested in adopting a particular child or sibling group and is assessed by the contractor in one of the following formats: Preliminary Adoptive Family Assessment, BCAL 3130 Initial Foster Home/Adoption Evaluation, or DHHS 612, Adoptive Family Assessment Addendum. The rate paid on a competing parties' case shall not fall below the "Baseline" rate category, unless an agency has failed to act according to the timeframes outlined in policy.

N. Adoptive Family Records

The Contractor shall retain in the case record verification of training provided to the adoptive family including but not limited to:

1. Type of training provided.
2. Date training provided.
3. Subject material covered during training.
4. Actual signature of participants at the specified training.

O. Service Documentation

The Contractor agrees to maintain personnel time reporting, accounting and payroll records to document staff activities.

P. Fiscal and Compliance Requirements

1. The Contractor shall maintain a record system that documents the total number of units of service as defined in this Agreement and delivered during the term of this Agreement. These records shall also document the specific units billed to DHHS under this Agreement.
2. The Contractor shall participate in random moment time studies (RMTS). An RMTS is a process where participants are emailed short surveys and asked to indicate what they are doing at an assigned time. The time study is required to determine the amount of time spent on various activities. Based on these results, DHHS determines the amount that can be charged to various funding sources.

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Q. Billing Method

The Unit Rate Billing Method shall be used in claiming reimbursement under this Agreement.

R. Billing Procedure

The Contractor shall submit a DHS-1582A to:

Michigan Department of Health and Human Services
Office of Child Welfare Policy and Programs
Suite 514 PO Box 30037
Lansing, MI
48909

The DHS-1582A shall indicate the title of the service provided and the pre adoptive and adoptive name, case number and date of birth of the child served. The DHS-1582A and any subsequent corrections must be completed and received in the Office of Child Welfare Policy and Programs within 120 days of the date of the placement or finalization, whichever is applicable, as those terms are defined in Section I(M)(2-3) of this Agreement.

1. Billing for all designated services including: per diem, placement, finalization, permanency, immediate confirmation or disruptions require a copy of the Order Terminating Parental Rights (Permanent Court Ward/Commitment), and the signed and dated documentation by the court (as determined by DHHS) verifying the date that the court has accepted the adoption petition and support documentation.
2. The MARE rates require a copy of the MARE photo listing.
3. The Residential rate requires a copy of the discharge summary from the residential facility and a copy of the placement record including placement with the prospective adoptive parent prior to filing the petition.
4. Billing for finalizations requires a copy of the Order of Adoption.
5. Billing for delayed referrals must include a copy of the Contractors acceptance form with the referral date and statement by DHHS that includes the child's commitment date. The referral form must be signed by a DHHS representative and must have "Delayed Referral" designated on the payment voucher.
6. Billing for placement requires a copy of the referral/acceptance form,

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Order Terminating Parental Rights and Order Placing Child.

7. Disruptions require an Ex Parte Order, or order dismissing, a copy of the initial placement order, initial commitment order, documentation verifying the medical condition of the family member if appropriate, a copy of the placement check and agency disruption report.
8. Legal Risk–Order Placing Child Filed: In cases where a birth parent, individually or through an attorney, has filed a petition to appeal the termination of parental rights the Contractor shall submit a DHS-1582A requesting payment (placement and finalization). The Contractor must also submit a photocopy of the Claim, filed in conformity with MCR 7.203.
9. When billing for the per diem, each payment voucher shall be child specific. Attached to the initial payment voucher the following documents must be included: the DHS-3600 (for Adoption Services) with the date of acceptance indicated and the signed agreement of intent to adopt by a relative or identified family (for matched cases only). Billings shall be submitted on a monthly basis. The Contractor shall identify in Box 13 of the payment voucher the number of days covered, date range, and the number of per diem billings submitted on behalf of the child.
10. When requesting an exception to the payment rate, it is the responsibility of the Contractor to demonstrate that requests for adoption assistance eligibility determination or MCI consent delayed the adoption placement. If the delay was caused by submission of incomplete paperwork or a lack of response to requests for information, the consideration for exception will be denied. There is a thirty (30) day standard of promptness for adoption assistance eligibility determinations and MCI regular and expedited consent requests and a ninety (90) day standard of promptness for MCI consent requests on competing parties. If information is missing, incomplete, or unclear and needing follow-up, the standard of promptness timeframe will not begin until all needed information is available for review, including legal documents and information needed to fulfill policy requirements. The request for exception must be submitted with the completed DHS-1582A.
11. The ICPC rate(s) require copies of the ICPC referral, DHS-3600 (for Adoption Services), adoptive family home study, adoption supervision reports (if applicable), Order Terminating Parental Rights (Permanent Court Ward/Commitment), Adoption Petition documentation and Order of Adoption, if applicable.
12. Billings for competing parties, in which the case would be eligible for a

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rate less than the Baseline rate and the Contractor is requesting the Baseline rate, requires copies of the case acceptance documentation, dates of the initial inquiry from each competing party and copies of the assessment for each competing party.

S. Criminal Background Check

As a condition of this Agreement, the Contractor certifies that the Contractor shall, prior to any individual performing work under this Agreement, conduct or cause to be conducted for each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with:

1. Clients under this Agreement, or who has access to client information, an Internet Criminal History Access Tool (ICHAT) check and a National and State Sex Offender Registry check.

Information about ICHAT can be found at <http://apps.michigan.gov/ichat>.

The Michigan Public Sex Offender Registry web address is <http://www.mipsor.state.mi.us>.

The National Sex Offender Public Website address is <http://www.nsopw.gov>.

2. Children under this Agreement, a Central Registry (CR) check.

Information about CR can be found at <http://www.mi.gov/dhs/0,1607,7-124-5452-7119-48330-180331-,00.html>.

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who has access to client information, under this Agreement to timely notify the Contractor in writing of criminal convictions (felony or misdemeanor) and/or pending felony charges or placement on the Central Registry as a perpetrator.

Additionally, the Contractor shall require each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with clients under this Agreement or who has access to client information and who has not resided or lived in Michigan for each of the previous ten (10) years to sign a waiver attesting to the fact that they have never been convicted of a felony or identified as a perpetrator, or if they have, the nature and recency of the felony.

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The Contractor further certifies that the Contractor shall not submit claims for or assign to duties under this Agreement, any employee, subcontractor, subcontractor employee, or volunteer based on a determination by the Contractor that the results of a positive ICHAT and/or a CR response or reported criminal felony conviction or perpetrator identification make the individual ineligible to provide the services.

The Contractor must have a written policy describing the criteria on which its determinations shall be made and must document the basis for each determination. The Contractor may consider the recency and type of crime when making a determination. Failure to comply with this provision may be cause for immediate cancellation of this Agreement. In addition, the Contractor must further have a written policy regarding acceptable screening practices of new staff members and volunteers who have direct access to clients and/or client's personal information, which serve to protect the organization and its clients that is clearly defined. The Contractor must also assure that any subcontractors have both of these written policies.

If DHHS determines that an individual provided services under this Agreement for any period prior to completion of the required checks as described above, DHHS may require repayment of that individual's salary, fringe benefits, and all related costs of employment for the period that the required checks had not been completed.

T. Adoptive Homes Recruitment, Retention and Support

The Contractor shall develop and implement a plan for adoptive home recruitment, retention, and support consistent with the DHHS DCWL Licensing Standards specific to the Contractor's license specified in Section I(D) and as detailed in Section VIII, Services and Placement Resources, Development and Utilization of the Modified Settlement Agreement.

U. Additional Provisions

The Contractor shall comply with the provisions of:

1. 1984 Public Act, 114, as amended, being M.C.L. 3.711 *et seq.*, Interstate Compact on the Placement of Children.
2. 1939 Public Act 288, Chapter X, being M.C.L. 710.1 *et seq.*, Michigan Adoption Code.
3. 1984 Public Act 203, as amended, being M.C.L. 722.951 *et seq.*, Michigan Foster Care and Adoption Services Act.
4. The Social Security Act as amended by the Multiethnic Placement Act

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of 1994 (MEPA); Public Law 103-382, and as amended by Section 1808 of the Small Business Job Protection, the Interethnic Adoption Provision (IEAP).

5. The Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.*
6. P.L. 110-351, known as the Fostering Connections to Success and Increasing Adoptions Act of 2008

V. Private Agency MiSACWIS

The Contractor shall ensure that Adoption/Social Service staff has access to the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) through a web-based interface. Requirements for MiSACWIS for CPA Contracts may be found at: http://www.michigan.gov/documents/dhs/Private_Agency_MiSACWIS_for_CPA_Contracts_461044_7.doc?20140701073234

W. Financial Audit Requirements

1. The Contractor shall have an annual financial statement audit conducted by an independent certified public accountant. Audits must be conducted in compliance with Generally Accepted Accounting Principles (GAAP) Auditing Standards (GAAS) and all federal audit requirements.
2. The Contractor shall submit to DHHS – Office of Contracts and Purchasing (OCP), no later than the fifteenth day of the ninth month following the end of the Contractor's fiscal year, copies of:
 - a. Audited financial statements.
 - b. The Independent Auditor's Report to the Contractor.
 - c. A Supplemental Schedule of Expenditures (SSE) completed in accordance with the SSE instructions. The SSE shall identify actual costs incurred for services performed under this Agreement for the period covered in the annual financial audit. Failure to submit the SSE with the annual financial audit may result in delay in payment or non-payment by DHHS for administrative costs incurred or services rendered by the Contractor. Instructions for the SSE can be found at http://www.michigan.gov/documents/dhs/DHS-0573_351803_7.pdf

Reports shall be submitted electronically to DHS-OCP@michigan.gov.

Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

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3. If an OMB-A133a Single Audit is required because of other Federal funding sources, the Contractor is required to provide the Audit report and all opinions and management letters to DHS-OCP@michigan.gov. The Audit must be submitted no later than the fifteenth day of the ninth month following the end of the Contractor's fiscal year.

X. Cost Reporting

The Contractor shall submit annual financial cost reports based on the state's fiscal year which begins October 1 and ends September 30 in the following calendar year. The reports shall contain the actual costs incurred by providers in delivering services required in this agreement to DHHS clients for the reporting period. Costs for non- DHHS children are not to be included. Reports will be submitted using a template provided by DHHS. The financial reports shall be submitted annually, and will be due November 30th of each fiscal year. The Contractor must comply with all other program and fiscal reporting procedures as are or may hereinafter be established by DHHS. Reports shall be submitted electronically to DHS-OCP@Michigan.gov with the subject line: Adoption Actual Cost Report.

II. DEPARTMENT RESPONSIBILITIES

A. Referrals

1. At the time of referral to a private agency, DHHS shall provide that agency with a complete referral packet as prescribed in Section 210 of the Adoption Services Manual (ADM 210).
2. When an eligible child is photo-listed on MARE and the Contractor notifies the local DHHS county office that the Contractor has a studied and approved available family, DHHS shall send a copy of the case file to the Contractor within ten (10) working days of receipt of notification.

B. Payment

DHHS shall make payments to the Contractor pursuant to MCL 17.51-17.57 and State of Michigan Financial Management Guide, Part II- Accounting and Financial Reporting, Chapter 25, Section 100, "Prompt Payment for Goods and Services."

1. DHHS shall make the following payments to the Contractor:

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Rate Category	Placement	Finalization	Permanency
Early Adoption Incentive Level 2	\$6,900	\$3,450	\$1,150
Early Adoption Incentive Level 1	\$6,000	\$3,000	\$1,000
Baseline	\$5,400	\$2,700	\$900
Late Adoption Penalty Level 1	\$4,800	\$2,400	\$800
Late Adoption Penalty Level 2	\$4,200	\$2,100	\$700
Late Adoption Penalty Level 3	\$3,000	\$1,500	\$500
MARE	\$12,240	\$6,120	\$2,040
Residential	\$7,980	\$3,990	\$1,330
In-State Transfer Services	\$1,800		
Inter-State Existing Services	\$1,800		
Inter-State New Services	\$3,500		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoptive Home Study Denial	\$2000		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoptive Home Study Approval	\$2000		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoption Supervision with applicable reports	\$500 at Placement \$500 at Finalization		

2. Per Diem Payments

For each child where the adoption case is referred to the Contractor by DHHS, except for cases in which the Contractor has responsibility for the

foster care case, the Contractor shall receive payment of \$20.00 per diem for each day of adoptive services from acceptance of the case to the date of the signed documentation from the court (as determined by DHHS) verifying that the court has accepted the petition and support documentation, or for one hundred fifty (150) days, whichever comes first. The maximum per diem payment amount per child is \$3,000.

Payment of the initial placement rate: the total of all per diem payments for each child shall be deducted from the applicable placement rate to be paid as listed in Subsection II. B. 1 above.

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3. Adoption Training Payments

A payment will be made to the Contractor for each staff that completes training and passes competency tests as required in Section VI. Staff Qualifications, Training, Caseloads and Supervision of the Modified Settlement Agreement according to the following schedule:

a. Completion of the Caseworker Training

Payment will be \$6,000 for completion of a DHHS pre-service training that includes a total of nine weeks of competency-based classroom and field training within 16 weeks of hire.

b. Completion of the Child Welfare Certificate (CWC) Training

Payment will be a maximum of \$3,000, calculated on an actual cost reimbursement basis, for completion of the Child Welfare Training Institute (CWTI)-CWC training. This training includes a minimum of five weeks of competency-based classroom, and field training if the caseworker certificate holder passes the competency evaluation.

c. Completion of the Child Welfare Supervisor Training.

Payment will be a maximum of \$1500, calculated on an actual cost reimbursement basis for completion of the Supervisor Training. This includes a minimum of one week of training within 90 days of hire/promotion if the supervisor passes the competency-based evaluation including the written exam through CWTI.

d. Completion of the adoption Program Specific Transfer Training (PSTT) within 6 months of hire.

Payment will be a maximum of \$2,800, calculated on an actual cost reimbursement basis for completion of the adoption PSTT training. This training is the same as the Adoption Core Training for adoption caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated. If a supervisor has not completed this training since April 1, 2006, they need to complete this PSTT Training within 6 months of hire.

4. The Contractor must submit the following with the completed DHS-1582A

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to the Adoption Services Unit in central office:

- a. A copy of the transcript reflecting the completion of the CWTI pre- service training for each adoption worker.
- b. A statement confirming that 50% of the adoption worker's caseload will be children in the DHHS foster care system.

5. Placement Disruption:

Payment after Placement for adoptions ending in disruption will only be made in the following cases:

- a. Disruption Due to Medical Condition of Prospective Family Member: If the adoptive family experiences a documented chronic medical condition requiring long term care or a condition anticipated to result in the death of a family member after the adoptive placement of a child, the Contractor shall be eligible for a per-diem rate. The payment shall be a portion of the appropriate rate for finalization, which shall be established by dividing the duration (number of days) of the adoptive placement until disruption by 182 days. The disruption rate shall not exceed the rate that would have otherwise been paid had finalization occurred.
- b. Death of an Adoptive Child: In cases where a child dies between order placing in the adoptive home and the final order of adoption, the Contractor shall be eligible for a per-diem from the date of placement to the date of death (unless cause of death is determined to be neglect or abuse) not to exceed the rate that would have otherwise been paid had finalization occurred.
- c. Disruption after Order Placing Child in the adoptive home: When the disruption order is issued more than 182 days from the date of the order placing the child in the adoptive home, the Contractor shall be paid the full finalization rate.
- d. Disruption of Placement Determined by MCI Superintendent: In a case where the child is placed in a home based on the decision of the MCI Superintendent, against the recommendation of the Contractor, the Contractor shall be eligible for a per-diem rate. The payment shall be a portion of the appropriate rate for finalization, which shall be established by dividing the duration (number of days) of the adoptive placement until disruption by 182 days. The disruption rate shall not exceed the rate that would have otherwise been paid

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had finalization occurred. Payment for subsequent placements will not reflect a disruption.

6. Adoption Dissolution:

DHHS shall recover, from the Contractor, the Permanency Unit Rate for adoptions that end in dissolution within 182 days of issuance of an Order of Adoption as documented in the Department's annual Child and Family Services Review (CFSR) report.

7. Payment – Re-Placement of Child after Disruption by Same Contractor:

Re-placement of child photo listed on MARE or from a Residential facility:

Subsequent adoptive placement and finalization by the same Contractor (that placed the child in the disrupted/dissolved home) for a child previously reimbursed at one of the MARE rates or the Residential rate, shall not exceed the Baseline rate for a second adoptive placement/finalization. The maximum rate for any re-placement of a child photo listed on MARE or from a Residential facility beyond the second placement shall not exceed the Late Adoption Penalty Level 3 rate if paid to the same Contractor.

Re-placement by the same Contractor of a child under any rate other than a MARE or Residential rate shall not exceed the Baseline rate.

Exceptions may be made to the re-placement rate. The Contractor must submit documentation of efforts that were required to prepare a child for subsequent placement and the recruitment of an adoptive family. Submit request for exceptions to the Adoption Analyst in DHHS Central Office and stipulate the rate requested.

C. Performance Evaluation and Monitoring

The services provided by the Contractor under this Agreement shall be evaluated and assess at least annually by DHHS on the basis of the criteria outlined in Section I. L.

DHHS shall perform contract monitoring through activities such as:

1. Performance reviews at outlined in Section III. U. of this Agreement.
2. Compliance audits as outlined in Section III. G. 2. of this Agreement.

EXHIBIT 6

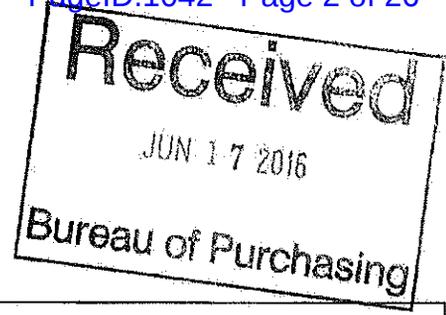
AGREEMENT NUMBER: PAFC15-33001

AMENDMENT NUMBER: 3

Between

THE STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES

And



CONTRACTOR	St. Vincent Catholic Charities
CONTRACTOR ADDRESS	2800 W. Willow Street, Lansing, Michigan 48917-1833
CONTRACTOR EMAIL	seykaa@stvcc.org

CONTRACT ADMINISTRATOR	EMAIL
Sarah Goad	GoadS@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Placing Agency Foster Care		
GEOGRAPHIC AREA	Statewide		
INITIAL EFFECTIVE DATE	October 1, 2014	CURRENT EXPIRATION DATE	September 30, 2016
CURRENT AGREEMENT VALUE	\$1,790,000.00		
AGREEMENT TYPE	Unit Rate/Per Diem		

AMENDMENT DESCRIPTION			
EXTEND EXPIRATION DATE	<input checked="" type="checkbox"/> YES	NEW EXPIRATION DATE	September 30, 2017
AMENDMENT AMOUNT		ESTIMATED REVISED AGGREGATE AGREEMENT VALUE	
\$895,000.00	<input checked="" type="checkbox"/> INCREASE	\$2,685,000.00	
NATURE OF CHANGE	This amendment extends this Agreement for one year, adds money, changes the Agreement format and changes Agreement language that pertains to MDHHS organizational name changes, Cost Accounting, Financial Audit Requirements and Modified Settlement Agreement.		

The undersigned have the lawful authority to bind the Contractor and the Michigan Department of Health and Human Services (MDHHS) to the terms set forth in this Agreement.

FOR THE CONTRACTOR:
St. Vincent Catholic Charities
Contractor

Signature of Director or Authorized Designee
ANDREA E. SEYKA
Print Name
6/15/16
Date

FOR THE STATE:
MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

Signature of Director or Authorized Designee
Kim Stephen
Print Name
7/8/16
Date

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	<u>Agreement Period</u>	<u>Amount</u>
Year 1	October 1, 2014 through September 30, 2015	\$895,000.00
Year 2	October 1, 2015 through September 30, 2016	\$895,000.00
Year 3	October 1, 2016 through September 30, 2017	\$895,000.00
Total Amount:		\$2,685,000.00

Check all agreement years affected by this amendment:
 Year 1 Year 2 Year 3
 Year 4 Year 5 Year 6

**STATE OF MICHIGAN
 DEPARTMENT OF HEALTH & HUMAN SERVICES**

WHEREAS, the Department of Health & Human Services of the state of Michigan (hereinafter referred to as "MDHHS") entered into a contractual Agreement effective October 1, 2014, with St. Vincent Catholic Charities (hereinafter referred to as "Contractor"), having a mailing address of 2800 W. Willow Street, Lansing, Michigan 48917-1833, for the provision of certain services as set forth therein; and,

WHEREAS, it is mutually desirable to MDHHS and to the Contractor to amend the aforesaid Agreement.

THEREFORE, in consideration of the promises and mutual covenants hereinabove and hereinafter contained, the parties hereto agree to the following amendment of said Agreement. This amendment shall be attached to the Agreement, said Agreement being hereby reaffirmed and made a part hereof.

Article I

This amendment shall be effective on the date of MDHHS signature.

Article II

MDHHS will exercise the first of two, one-year options to extend. Therefore, the end date of the Agreement shall be changed from September 30, 2016 to September 30, 2017.

Article III

The maximum dollar amount of the Agreement shall be increased by \$895,000.00 from \$1,790,000.00 to \$2,685,000.00 for the period October 1, 2014, through September 30, 2017.

Article IV

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The following are major language changes in this amendment:

1. The amendment contains updates to the general formatting of the contract, and reflects MDHHS organizational name changes and small programmatic changes.
2. The amendment reflects necessary changes related to Dwayne B. v. Snyder, et al., 2:06-cv-13548. Language containing the term Modified Settlement Agreement is replaced with the term Implementation, Sustainability, and Exit Plan (ISEP).
3. The amendment reflects necessary changes related to the Cost Reporting and Financial Audit Requirements.

Article V

Section I., CONTRACTOR RESPONSIBILITIES, and Section II., MDHHS RESPONSIBILITIES shall be deleted and replaced with Number 1., PROGRAM REQUIREMENTS, Number 2., CONTRACTOR RESPONSIBILITIES, and Number 3., MDHHS RESPONSIBILITIES as follows:

1. PROGRAM REQUIREMENTS

1.1. Client Eligibility Criteria

a. Eligible Clients

Children for whom the family court has issued an order which makes the Michigan Department of Health and Human Services responsible for the child's placement, care and supervision.

OR

Children for whom the family court has authorized a placement in the parental home in a Trial Reunification living arrangement.

The period of time eligible for a Trial Reunification shall not exceed 180 days from the date of the child(ren)'s placement in a parental home. Child(ren) must enter Trial Reunification directly from foster care and the family court must retain jurisdiction with care and custody continuing with MDHHS.

b. Determination of Eligibility

If MDHHS makes a referral to a child placing agency for foster care case management services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral within one hour of

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receipt of the referral. If a need for placement is imminent, MDHHS may make referrals for placement concurrently to other contracted providers. Contractor may not transfer a foster care case to another child placing agency. After acceptance of a foster care referral, the Contractor may not refer the case back to the Department except for the reasons outlined in the Children's Foster Care Manual (FOM) or upon the written approval of the County Director, the Children's Services Agency Director, or the Deputy Director.

1.2. Referrals

- a. The Contractor accepts a referral from MDHHS by doing either of the following:
- 1) Submitting to MDHHS a written agreement to perform the services related to the particular child or particular individuals that the Department referred to the Contractor; or
 - 2) Engaging in any other activity that results in MDHHS being obligated to pay the Contractor for the services related to the particular child or particular individuals that the Department referred to the Contractor.
- b. Upon placement, MDHHS shall provide the Contractor at minimum, with a court order, a Medical Authorization Card (DHS-3762), the Individual Service Agreement (DHS-3600) and all known information about the child and family.

1.3. Legal or Court Related

MDHHS shall involve the Contractor, to the extent allowed by law, in matters relating to any legal or court activities concerning the child while in the Contractor's care. If the Contractor is to be involved in the court proceedings, MDHHS shall provide the Contractor with written reports for court use upon request, subject to confidentiality requirements imposed by statute.

2. CONTRACTOR RESPONSIBILITIES

2.1. Email Address

The Contractor authorizes MDHHS to use the contact information below to send Agreement related notifications/information. The Contractor shall provide MDHHS with updated contact information if it changes.

Contact email address: seykaa@stvcc.org

2.2. Requests for Information

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The Contractor may be required to meet and communicate with MDHHS representatives and from time to time MDHHS may require that the Contractor create reports or fulfill requests for information as necessary to fulfill the MDHHS' obligations under statute and/or Dwayne B. v. Snyder, et al., 2:06-cv-13548, herein referred to as the Implementation, Sustainability, and Exit Plan (ISEP).

The Contractor shall make available to MDHHS copies of any outside reviews, non-redacted FOIA requests, or audits relating to the contracted program.

2.3. Geographic Area

The Contractor shall provide services described herein in the following geographic area: Statewide

2.4. Licensing Requirements

The MDHHS Division of Child Welfare Licensing (DCWL) is the licensing agency for Child Placing Agencies (CPA). A license is issued to a certain person or organization at a specific location, is non-transferable, and remains the property of the Department. Therefore, a child placing agency must be established at a specific location.

The Contractor shall ensure that, for the duration of this agreement, it shall maintain a license for those program areas and services that are provided for in this Agreement. If the Contractor fails to comply with this section, MDHHS may terminate this Agreement for default.

The Contractor is licensed to provide service under this agreement under the following license number: CB330201019

2.5. Location of Facilities

The Contractor shall provide services described herein at the following location(s):

2800 West Willow
Lansing, MI 48917

Direct foster care services shall be provided in client, relative caregiver, and foster parent homes.

2.6. Program Focus and Name

Placement Agency Foster Care (PAFC) is a program that provides a comprehensive and coordinated set of activities designed to place and supervise children in out of home placement.

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Foster care supervision includes the provision of services as throughout this Agreement and when necessary the referral for additional services that will enhance the child's and the family's functioning and ameliorate the conditions that caused the child's removal from parental custody.

Foster care supervision includes developing and implementing a treatment plan and service agreement to comply with the Foster Care Manual which facilitates permanency planning according to the following guidelines:

- . Reunification
- . Adoption
- . Guardianship
- . Permanent Placement with a Fit and Willing Relative.
- . Another Planned Permanent Living Arrangement (AAPLA)

2.7. Provider Numbers

MISACWIS Provider Number: 10400303

Bridges Provider Number: 6356725

2.8. Credentials

The Contractor shall assure that all staff performing functions under this Agreement, including contractor employees, volunteers and/or subcontractors, are appropriately screened, credentialed, and trained in accordance with licensing rule. Additional staff requirements are identified in Section 2.10 d. of this Agreement.

2.9. Compliance Requirements

Except in subsection (h), the Contractor shall comply with the following requirements:

- a. The Contractor shall comply with all applicable MDHHS policy in the Children's Foster Care (FOM), Guardianship (GDM), Confidentiality (SRM 131), Interstate Compact (ICM), and Adoption (ADM) Manuals and MDHHS policy amendments (including interim policy bulletins).
- b. Throughout the term of this Agreement, the Contractor shall ensure that it provides all applicable MDHHS policy and MDHHS policy amendments (including interim policy bulletins) and applicable Administrative Codes to social service staff. The Contractor shall ensure that social service staff complies with all applicable requirements.

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MDHHS policies, amendments and policy bulletins, are published on the following internet link: <http://www.michigan.gov/dhs>. Administrative Codes are published at on the following internet link: http://michigan.gov/lara/0,4601,7-154-35738_5698-118524-.00.html

c. The Contractor shall comply with the MDHHS non-discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

- d. The Contractor shall provide services within the framework of Michigan's Child Welfare Practice Model, MiTEAM. The Contractor shall utilize the skills of engagement, assessment, teaming and mentoring in partnering and building relationships with families and children by exhibiting empathy, professionalism, genuineness and respect. Treatment planning shall be from the perspective of family/child centered practice.
- e. The contractor shall ensure all directives and services ordered by the court are completed to the satisfaction of the court within the timeframes ordered.
- f. The Contractor shall participate in random moment time studies (RMTS). An RMTS is a process where participants are emailed short surveys and asked to indicate what they were doing at an assigned time. The time study is required to determine the amount of time spent on various activities. Based on these results, MDHHS determines the amount that can be charged to various funding sources.
- g. The Contractor shall assure the coordination of all services based on an assessment of the parent's needs. The Contractor shall assure the coordination and provision of all treatment services required based on an assessment of each child's needs. Treatment services include, but are not limited to the provision of counseling/therapy for each child. The Contractor shall ensure the provision of all medical, dental and behavioral health services required based on an assessment of each child's needs. The Contractor may utilize Medicaid (or private insurance) reimbursable services to comply with this requirement. If a counseling or therapy service is not available or accessible for each child, the Contractor is responsible for the direct provision of the service.

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h. Under 1973, PA 116, as amended by 2015 PA 53, the Contractor has the sole discretion to decide whether to accept or not accept a referral from MDHHS. Nothing in this Agreement limits or expands the application of this Public Act.

i. Compliance with MDHHS Implementation, Sustainability, and Exit Plan

The Contractor shall ensure compliance with all applicable provisions and requirements of *Dwayne B. v. Snyder, et al.*, 2:06-cv-13548, Implementation Sustainability and Exit Plan.

j. Prudent Parent Expectations

The Contractor shall ensure prudent parent expectations are followed as outlined in FOM 722-11, Prudent Parent Standard & Delegation of Parental Consent.

Additional Compliance Provisions

The Contractor shall comply with the provisions of:

- a. 1984 Public Act, 114, as amended being M.C.L. 3.711 *et seq.*, Interstate Compact on the Placement of Children.
- a. 1975 Public Act 238, as amended, being M.C.L. 722.621 *et seq.*, Child Protection Law.
- c. 1982 Public Act 162, as amended, being M.C.L. 450.2101 *et seq.*, Michigan Nonprofit Corporation Act.
- d. 1994 Public Act 204, as amended, being M.C.L. 722.921 *et seq.*, Michigan Children's Ombudsman Act.
- e. 1973 Public Act 116, as amended, being M.C.L. 722.111 *et seq.*, Michigan Child Care Organization Act.
- f. 1939 Public Act 288, Chapter X, being M.C.L. 710.1 *et seq.*, Michigan Adoption Code.
- g. 1984 Public Act 203, as amended, being M.C.L. 722.951 *et seq.*, Michigan Foster Care and Adoption Services Act.
- h. The Social Security Act as amended by the Multiethnic Placement Act of 1994 (MEPA); Public Law 103-382, and as amended by Section 1808 of the Small Business Job Protection, the Interethnic Adoption Provision (IEAP).
- i. The Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.*
- j. 1976 Public Act 453, as amended, being M.C.L. 37.2101 *et seq.*, Elliott-Larsen Civil Rights Act.
- k. Fostering Connections to Success Act of 2008
- l. Preventing Sex Trafficking and Strengthening Families Act, Federal PL 113-183

Compliance with ICWA Requirements

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The Contractor shall provide case management services in accordance with the "Active Efforts" requirements established in the ICWA; Public Law 95-608 being 25 U.S.C 1901 *et seq.* These requirements include but are not limited to the following:

- a. Establish an American Indian child as a member of a Tribe in accordance with ICWA and as defined in the MDHHS Native American Affairs (NAA) manual.
- b. Provide "Active Efforts" case management services in with in accordance with ICWA and as defined in the NAA manual.
- c. Provide placement of American Indian children in accordance with "Placement Priorities" as established in ICWA and defined in the NAA manual.
- d. Provide "Expert Witness" testimony in accordance with ICWA and as defined in the NAA manual.
- e. Provide services to American Indian families within the context of their culture and ethnicity. Maintaining knowledge in the following:
 - 1) How culture and rituals influence parenting decisions.
 - 2) Determine what services and supports will be most effective.
 - 3) Knowledge and respect of tribal practices.

2.10. Services to be Provided

a. Foster Home Licensing Data Entry

The Contractor shall document all recruitment and licensing activities into the tracking system identified by MDHHS.

b. Caseload Tracking and Reporting

The Contractor shall report to MDHHS caseload ratios for social services supervisors, social service staff and licensing staff in a format and within timeframes as determined by MDHHS.

c. Service Standards for Trial Reunification

Trial Reunification is a court-ordered placement where the child is returned from an out-of-home placement to the care of the parent or guardian from whom he or she was removed. The child remains under court supervision during the Trial Reunification period with the MDHHS retaining placement care and custody

- 1) The Contractor shall provide the following services to children in trial reunification:

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- a) Assist in preparing the parent, child, and caregiver for the transition to trial reunification. See FOM 722-7B.
- b) A Family Team Meeting prior to placement of a child in the parental home to develop a transition plan with the parent, caregiver and child, if age appropriate. The Contractor shall have Family Team Meetings quarterly until case closure. See FOM 722-06B.
- c) Complete a new Family Assessment of Needs and Strengths, Child Assessment of Needs and Strengths, and Safety Assessment and Safety Plan. See FOM 722-8A, 722-8B and 722-9B.
- d) Continue case worker visit expectations as required in FOM 722-6H.
- e) Maintain support services until case closure. The Contractor shall document services needed to continue to meet the child's needs and identified providers for such services to provide continuity of services. See FOM 722-7B.
- f) Continue assessing and monitoring of the case plan and safety plan.

d. Staff Training

1) Child Welfare Training Institute: Requirements

The Contractor shall ensure that staff transferring to a foster care social service position from another children's services position that has successfully completed the Child Welfare Training Institute (CWTI) Pre-Service Institute (PSI) training in that program, shall attend and complete CWTI-Foster Care Private Agency Program Specific Transfer Training (PSTT) within six months of assuming the foster care position.

2) Child Welfare Training Institute: Registration Process

- a) The Contractor shall register all staff required to attend CWTI training by each individual staff member using the preferred method of CWTI by going directly to the CWTI web site at <http://www.michiganchildwelfaretraining.com/>.
- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To cancel or change training registration, the Contractor will need to directly contact CWTI by telephone or email.
- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by MDHHS at least seven days before the training commences.

3) Foster Home Certification Supervisory Staff: Training Requirements

The Contractor shall ensure that all foster home certification supervisors successfully complete certification training, prior to assuming supervisory

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responsibility for social service workers who perform foster home licensing functions.

4) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of CWTI training and DCWL Certification Training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

e. Relative Licensing

The Contractor may elect to facilitate the licensure of relative caregivers providing care to children in out-of-home placements that are under the direct care and supervision of MDHHS. Facilitation of licensure includes but is not limited to the following activities:

- 1) Accept referrals of unlicensed relative caregivers from MDHHS, for possible licensure as a foster family home, based on the Contractor's capacity to complete the licensing process as outlined in foster care policy.
- 2) On forms provided by MDHHS, and when requested by MDHHS, the Contractor shall report to MDHHS monthly on the number and characteristics of unlicensed relative homes and the children in those homes, and on progress in licensing the homes.

f. Adoption and Foster Care Analysis Reporting System Requirements

The Contractor shall enter all child and family information into the Michigan Statewide Automated Child Welfare System (MISACWIS) to enable MDHHS to comply with Federal Adoption and Foster Care Analysis and Reporting System (AFCARS) reporting requirements. Failure to comply with this reporting requirement shall result in a penalty for the Contractor as specified in Section 3.1 f. of this Agreement.

2.11. Expected Program Performance Outcomes

During the period of this Agreement, the Contractor shall work toward the achievement of the performance measures listed below.

MDHHS shall obtain data from its systems on a quarterly basis to be determined by MDHHS, in the format specified by MDHHS. If, based on an evaluation of submitted data, there is a gap between the performance of a Contractor and the

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performance objective, the Contractor shall within 90 days of receiving the data from MDHHS develop a plan to eliminate the performance gap.

a. Placement Stability

Children supervised by the Contractor shall have no more than two placement settings while supervised by the individual Contractor's program, using the following minimum acceptable standards:

- 1) 0-365 days = 86% or more will have no more than two placement settings.
- 2) 366-730 days = 73% or more will have no more than two placement settings.
- 3) 731 + days = 45% or more will have no more than two placement settings.

b. Timeliness of Reunification

No fewer than 43% of children supervised by the Contractor for 30 days or more shall be discharged from foster care to the home of a parent or legal guardian within 12 months of removal.

c. Permanency of Reunification

No more than 4% of children supervised by the Contractor who were discharged from foster care to the home of a parent or legal guardian within 12 months of removal.

d. Timeliness of Adoptions

No fewer than 36.6% of children supervised by the Contractor for 30 days or more shall be discharged from foster care to a finalized adoption within 24 months of removal.

e. Discharge to Permanency for Children in Foster Care for Long Periods of Time

No fewer than 29.1% of children supervised by the Contractor for the most recent 24 months shall be discharged to a permanent placement prior to their 18th birthday. Permanent placement is defined as Adoption, Guardianship or Reunification.

f. Legally-Free Children in Foster Care for Long Period of Time Who Are Discharged to Permanency

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No fewer than 98% of children supervised by the Contractor for the most recent 12 months and legally free for adoption shall be discharged to a permanent placement prior to their 18th birthday. Permanent placement is defined as Adoption, Guardianship or Reunification. (A discharge to Reunification for children "legally free" occurs when they are placed with a relative for 6 months or longer. This is for AFCARS reporting purposes by MDHHS.).

g. Sibling Placement

No fewer than 90% of children supervised by the Contractor shall be placed with all members of their sibling group (out of home minor siblings only) unless it has been determined that the placement with the siblings is contrary to the best interests of the children. Contrary to the best interests of the children is defined as:

- 1) Placement together is harmful to one or more of the siblings; or
- 2) One of the siblings has exceptional needs that can only be met in a specialized program or facility; or
- 3) The size of the sibling group makes such placement impractical, notwithstanding diligent efforts to place the group together.

2.12. Audit Requirements

Contractor/Vendor Relationship

This Agreement constitutes a contractor/vendor relationship with MDHHS. The Contractor must immediately report to the MDHHS Bureau of Audit any audit findings of a Going Concern or accounting irregularities, including noncompliance with provisions of this Agreement.

2.13. Financial Audit Requirements

a. Required Audit or Notification Letter

Contractors must submit to the Department either a Single Audit, Financial Statement Audit, or Audit Status Notification Letter as described below. If submitting a Single Audit or Financial Statement Audit, Contractors must also submit a Corrective Action Plan for any audit findings that impact MDHHS-funded programs, and management letter (if issued) with a response.

1) Single Audit

Contractors that are a non-profit organization and that expend \$750,000 or more in federal awards during the Contractor's fiscal year, must submit a Single Audit to the Department, regardless of the amount of funding received from the Department. The Single Audit must comply with the requirements of Title 2 Code of Federal Regulations, Subpart F.

2) Financial Statement Audit

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Contractors exempt from the Single Audit requirements with fiscal years that receive \$500,000 or more in **total funding** from the Department in State and Federal grant funding must submit to the Department a Financial Statement Audit prepared in accordance with generally accepted auditing standards (GAAS).

3) Audit Status Notification Letter

Contractors exempt from the Single Audit and Financial Statement Audit requirements (1 and 2 above) must submit an Audit Status Notification Letter that certifies these exemptions. The template Audit Status Notification Letter and further instructions are available at <http://www.michigan.gov/mdhhs> by selecting Inside MDHHS menu, then MDHHS Audit, then Audit Reporting.

b. Due Date and Where to Send

The required audit and any other required submissions (i.e. Corrective Action Plan and management letter with a response), or Audit Status Notification Letter must be submitted to the Department within nine months after the end of the Contractor's fiscal year by e-mail to the Department at MDHHS-AuditReports@michigan.gov. The required submissions must be in PDF files and compatible with Adobe Acrobat (read only). The subject line must state the agency name and fiscal year end. The Department reserves the right to request a hard copy of the audit materials if for any reason the electronic submission process is not successful.

c. Penalty

Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

d. Other Audits

The Department or federal agencies may also conduct or arrange for "agreed upon procedures" or additional audits to meet their needs.

2.14. Cost Reporting

The Contractor shall submit annual financial cost reports based on the state's fiscal year which begins October 1 and ends September 30 in the following calendar year. The reports shall contain the actual costs incurred by providers in delivering services required in this agreement to MDHHS clients for the reporting period. Costs for non-MDHHS children are not to be included. Reports will be submitted using a template provided by MDHHS. The financial reports shall be submitted annually, and will be due November 30 of each fiscal year. The Contractor must comply with all other program and fiscal reporting procedures as are or may hereinafter be established by MDHHS. Reports shall be submitted electronically to MDHHS-Foster-Care-Audits@michigan.gov with the subject line: PAFC Actual Cost Report. Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

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2.15. Service Documentation

The Contractor agrees to maintain program records required by MDHHS, program statistical records required by MDHHS, and to produce program narrative and statistical data at times prescribed by, and on forms furnished by, MDHHS.

2.16. Private Agency MiSACWIS

The Contractor shall ensure that private agency payment staff has access to the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) through a web-based interface, henceforth referred to as the "MiSACWIS application." Requirements for MiSACWIS for CPA contracts may be found at http://www.michigan.gov/mdhhs/0,5885,7-339-71551_7199--,00.html

For all agency assigned cases in MiSACWIS, the Contractor shall enter all case management activities, including payments and all required documentation per policy in MiSACWIS.

2.17. Billing

The Contractor shall submit through the MiSACWIS system the bi-weekly roster for any child in the Contractor's care per the instructions within the MiSACWIS system. The billing shall indicate the units of service provided by the Contractor and shall be submitted to MDHHS within 30 days from the end of the billing period.

No original request for payment submitted by the Contractor more than three years after the close of the two week billing period during which services were provided shall be honored for payment.

When the Contractor's financial records reveal that payment for a child has not been provided by MDHHS within 90 days of the date of service, the Contractor will seek payment resolution by contacting the direct supervisor of the assigned MDHHS worker in writing. Any concerns over a payment authorization or issuance that cannot be resolved within 60 days of the written notice must be reported to the MDHHS County Director for immediate resolution. The Contractor will apprise MDHHS of any ongoing, unresolved payment concerns.

2.18. Fees and Other Sources of Funding

The Contractor guarantees that any claims made to MDHHS under this Agreement shall not be financed by any source other than MDHHS under the terms of this Agreement. If funding is received through any other source, the Contractor agrees to deduct from the amount billed to MDHHS the greater of either the fee amounts, or the actual costs of the services provided.

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The Contractor may not accept reimbursement from a client unless the Agreement specifically authorizes such reimbursement in the "Contractor Responsibility" Section. In such case, a detailed fee scale and criteria for charging the fee must be included. If the Contractor accepts reimbursement from a client in accordance with the terms of the Agreement, the Contractor shall deduct these fees from billings to MDHHS.

Other third party funding sources, e.g., insurance companies, may be billed for contracted client services. Third party reimbursement shall be considered payment in full unless the third party fund source requires a co-pay, in which case MDHHS may be billed for the amount of the co-pay. No supplemental billing is allowed.

2.19. Recoupment of Funding and Repayment of Debts

a. Recoupment of Funding

If the Contractor fails to comply with requirements as set forth in this Agreement, or fails to submit a revised payment request within allotted time frames established by MDHHS in consultation with the Contractor, MDHHS may, at its discretion, recoup or require the Contractor to reimburse payments made under this Agreement which MDHHS has determined that the Contractor has been overpaid. The Contractor is liable for any cost incurred by MDHHS in the recoupment of any funding.

Upon notification by MDHHS that repayment is required, the Contractor shall make payment directly to MDHHS within 30 days or MDHHS may withhold current or future payments made under this or any other agreements, current or future, between MDHHS and the Contractor.

If the Contractor fails to: (1) correct noncompliance activities identified by MDHHS, (2) submit revised billings as requested as part of a Corrective Action Plan when required; or (3) remit overpayments or make arrangements to have the overpayments deducted from future payments within 30 days, such failure shall constitute grounds to terminate immediately any or all of MDHHS' agreements with the Contractor. MDHHS shall also report noncompliance of the Contractor to Michigan's Department of Technology, Management and Budget. Such report may result in the Contractor's debarment from further contracts with the state of Michigan.

b. Repayment of Debts and Other Amounts due MDHHS

By entering into this Agreement, the Contractor agrees to honor all prior repayment agreements established by MDHHS with the Contractor or Contractor's predecessors. If the Contractor has an outstanding debt due to MDHHS but does not have a repayment agreement, the Contractor agrees to

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make monthly payments to MDHHS at an amount not less than 5% of any outstanding balance and to begin on the date this Agreement is executed.

If the Contractor fails to honor prior repayment agreements, or the Contractor fails to begin repayment on an obligation due MDHHS that is not subject to a repayment agreement, MDHHS will initiate the administrative process to reduce payments to the Contractor under this Agreement to recoup the debt. The payment reduction will be made at the amount originally established in the repayment agreement or at an amount not less than 5% of any outstanding balance effective on the date this Agreement is executed.

2.20 Child Protection Law Reporting Requirements

- a. The Contractor shall ensure that all employees who have reasonable cause to suspect child abuse or neglect shall report any suspected abuse or neglect of a child in care to MDHHS for investigation as required by Public Acts of 1975, Act Number 238.
- b. Failure of the Contractor or its employees to report suspected abuse or neglect of a child to MDHHS shall result in an immediate investigation to determine the appropriate corrective action up to and including termination of the contract.
- c. Failure of the Contractor or its employees to report suspected child abuse or neglect two or more times within a one-year period shall result in a review of the contract agency's violations by a designated Administrative Review Team, which shall include the Director of CSA and the Director of DCWL or its successor agency, that shall consider mitigating and aggravating circumstances to determine the appropriate corrective action up to and included license revocation and contract termination.

2.21 The Division of Child Welfare Licensing (DCWL)

DCWL shall be responsible for review of the Contractor's compliance with the Agreement and any court orders, via an Annual Compliance Review (ACR) and Special Investigations. DCWL may review, analyze and comment on all activities covered within the terms of the Agreement or court order. If the ACR or Special Investigation reveals that the Contractor has not complied with the requirements of this Agreement or court order, the following procedures shall be implemented:

- a. DCWL shall notify the Contractor of the Agreement or court noncompliance. This notification shall occur verbally during an exit conference, and be followed with a written report of the findings. The Contractor may request a meeting to discuss and examine the identified Agreement or court noncompliance.

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- b. Following the identification of the Agreement or court noncompliance, DCWL will request the Contractor submit a Corrective Action Plans (CAP) to DCWL within 15 days of receiving the written report of findings.
- c. After the Contractor's CAP has been reviewed and approved by DCWL, the Contractor's compliance with the CAP shall be reviewed in accordance with time frames established by DCWL in the written notification of acceptance of the CAP.
- d. Based on the severity or repeated nature of cited violations, a recommendation may be made by DCWL at any time to place a moratorium on new placements with the contractor or to cancel the contract. If either recommendation is made, a meeting will be convened with the director of the contracted agency, the division director of DCWL and the CSA director or designee to provide the contractor with the opportunity to provide documented information on why the moratorium or cancellation of the contract should not occur.
- e. If a moratorium on new placements is put into place, it shall be for a minimum of 90 days to allow the contractor to remedy cited violations and comply with any agreed on CAP. If the cited violations are not corrected during the period of the moratorium or additional serious violations are cited, consideration shall be given to cancellation of the agency's contract. Final decisions regarding the cancellation of a contract shall be made by the CSA director.

2.22 Corrective Action Requirements

If a program review by MDHHS reveals a lack of compliance with the requirements of this Agreement, the Contractor shall:

- a. Meet with MDHHS to discuss the noncompliance.
- b. Prepare a corrective action plan within 30 days of receiving MDHHS' written findings.
- c. Achieve compliance within 60 days of receipt of MDHHS' approval of the corrective action plan (unless other time frames are agreed to in writing by MDHHS) or MDHHS may terminate this Agreement, subject to the standard contract terms.

3. MDHHS RESPONSIBILITIES

3.1. Payments

MDHHS shall open and process payment within 30 days of placement, with payment authorization effective the date of the child's placement with the Contractor.

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- a. The entire rate paid to the Contractor for board and care, clothing and allowance shall be paid by the Contractor to the foster families providing the family foster care.
- b. The Contractor's administrative rate(s) for services provided under this Agreement shall be:

Bridges Provider Number 6356725
 MISACWIS Provider Number 10400303

<u>Service Code</u>	<u>Per Diem Rate</u>	<u>Effective Date</u>
780	\$40.00	06/01/15
782	\$28.00	10/01/13
TR	\$37.00	10/01/13
0838	*\$2.50	10/01/13

*The above rate is only to be used for American Indian Children

If the Contractor has an adoption agreement with MDHHS and fails to register a child on the Michigan Adoption Resource Exchange (MARE) as required in that agreement, the Contractor's Foster Care administrative rate for that child shall be reduced by 20% until the child is registered.

The contractor will receive reimbursement subject to appropriations for relative licensure as outlined in that years State fiscal appropriation.

If a Contractor does not submit the financial cost reports as described in Section 2., CONTRACTOR RESPONSIBILITIES, the per diem administrative rate shall be reduced by \$3.00 until contractor becomes compliant with the reporting requirements.

- c. The Contractor shall be paid for family foster care services specified in this Agreement at a board and care rate established by MDHHS. A determination of care rate may be established by MDHHS in accordance with the FOM when extraordinary care or expense is required of the foster parent. Special rates must have the approval of the Director of MDHHS' local office responsible for the supervision of the child for whom foster care is provided.
- d. Payment for additional service costs not included in the per diem rate may be authorized in accordance with the FOM.

When the Contractor's financial records reveal that a payment for a child has not been provided by MDHHS within 90 days of their acceptance of the child for case management services, the Contractor will contact the MDHHS County Director in writing seeking payment resolution. The Contractor shall

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advise MDHHS of any concerns over a payment amount that cannot be reconciled at the staff level within 90 days.

- e. Upon placement, MDHHS shall ensure that the child(ren) has adequate clothing as defined by the Clothing Inventory Checklist (DHS-3377) or shall reimburse the Contractor up to the approved limit allowed for clothing.
- f. Inability of MDHHS to comply with the federal reporting requirements of AFCARS due to failure of the Contractor to fulfill AFCARS related reporting requirements shall result in a three percent reduction in the Contractor's administrative rate for the six month period subsequent to the due date of the AFCARS report to the Federal government.
- g. Foster Care Training Payments

Payments will be made for eligible training which commenced after January 1, 2012.

A payment will be made to the Contractor for each staff that completes training and passes competency tests as required in the Implementation, Sustainability and Exit Plan according to the following schedule:

1) Completion of the Child Welfare Caseworker Training

Payment will be \$6,000.00 total, calculated on a per diem basis, for completion of CWTI-PSI that includes a minimum of 9 weeks of competency-based classroom and field training if the caseworker passes the competency evaluation within 16 weeks of hire.

2) Completion of the Child Welfare Certificate (CWC) Training

Payment will be \$3,000.00 total, calculated on a per diem basis, for completion of the CWTI-CWC that includes a minimum of five weeks of competency-based classroom and field training if the caseworker certified certificate holder passes the competency evaluation.

3) Completion of the Child Welfare Supervisor Training

Payment will be \$1,500.00 total, calculated on a per diem basis, for completion of the Supervisor Training that includes a minimum of one week within 90 days of hire/promotion, if the supervisor passes the competency evaluation.

4) Completion of the Child Welfare Transfer Training

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The two week foster care PSTT shall be completed within six months of hire.

Payment will be \$2,800.00 for the completion of the foster care PSTT training. The training is the same as the Foster Care Core Training for Foster Care caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated.

- h. For all Contractor staff hired on or after May 1, 1998 attending required CWTI-PSI, PSTT, and supervisor training, MDHHS-CWTI shall reimburse the Contractor at the Contractor's normal rate of reimbursement or State rates, whichever is less for staff trainee expenditures incurred as part of CWTI attendance. MDHHS-CWTI does not cover travel reimbursement for in-service training. Travel reimbursement shall be limited to lodging, mileage and parking with the following conditions:
- 1) For each trainee who attends the training session, MDHHS shall reimburse the Contractor up to five nights lodging per week if lodging expense is incurred. If training continues for two consecutive weeks or longer and the cost of lodging is less than the mileage cost to travel to and from the Contractor's facility over the intervening weekend, the Contractor may request the director of Office of Workforce Development and Training in advance for a travel exception for weekend lodging.
 - 2) For each mile of travel to a CWTI training session closest to the Contractor's site, MDHHS shall reimburse the Contractor for mileage to and from the training and the trainee's assigned work location or home, whichever is closer. The applicable State rate for mileage shall be the lesser of the Contractor's prevailing rate or the State's standard rate.
 - 3) Parking shall be reimbursed at actual cost, documented with a receipt.
 - 4) MDHHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from DCWL. Refer to the CWTI web site for current reimbursement information for CWTI training at <http://www.michiganchildwelfaretraining.com/Training/Travel.aspx>

Classroom Training Payment

- 1) The Contractor must submit a signed and dated agency letterhead memo attached to the DHS-1582 Payment Voucher that includes the following information:

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- a) Worker name
 - b) Training, type, i.e. PSST, PSI etc.
 - c) Training dates (time span in training)
 - d) Amount of reimbursement requested.
 - e) A copy of the transcript reflecting the completion of the training for each foster care worker and supervisor covered by the payment voucher. This is required before accounting will issue payment.
 - f) Memo signed by senior management; not the individual who attended training.
- 2) The information must be submitted electronically to: MDHHS-FederalComplianceDivision@michigan.gov. The subject line shall read: Training Payment.

Training Travel Reimbursement

- 1) The Contractor must submit:
 - a) Certification letter on agency letterhead signed and dated by senior management to include:
 - Agency Federal ID Number
 - Exact trainee name as registered in OmniTrack Plus (formerly JJOLT)
 - Exact class name
 - Beginning and ending travel dates
 - Amount of reimbursement requested
 - b) DHS-1582 Payment Voucher.
 - c) DHS-1582 TV-NSE for each trainee.
 - d) MapQuest (or equivalent) printouts for each travel route.
 - e) All original receipts.
 - f) Transcripts showing the training completed.
 - 2) Please submit the above information to:

Ingham County MDHHS/OWDT
Attention: Travel Reimbursement
PO Box 30088
5303 S. Cedar Street
Lansing, MI 48911
 - i. The Contractor shall be paid for Trial Reunifications services specified in the agreement not to exceed 180 days from the child's placement in the parental home.
- 1) The Contractor must submit the following on a monthly basis:
 - a) A completed DHS-1582 CS Payment Voucher

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- b) A case listing that contains the following child identifying information:
- Placing Agency Provider ID
 - Agency Name
 - MISACWIS log ID if known
 - Child last name
 - Child first name
 - Recipient ID
 - Foster Care case number
 - Billing start date
 - Billing end date
 - Number of days to pay
 - American Indian Y/N
 - Date of court order commencing the Trial Reunification
 - Date the foster care case was dismissed by the court and/or
 - Date the child reentered a foster care placement

2) The information must be submitted electronically to: MDHHS-trialreunificationpayments@michigan.gov.

- j. The costs of all services provided under this Agreement are included in the above rate(s) unless otherwise noted in this Agreement.

3.2. Performance Evaluation and Monitoring

The services provided by the Contractor under this Agreement shall be evaluated and assessed at least annually by MDHHS on the basis of the criteria outlined in Section 2.11.

MDHHS shall perform contract monitoring through activities such as:

- a. Auditing expenditure reports.
- b. Conducting on-site monitoring.
- c. Reviewing and analyzing reports.

Article VI

In Section III GENERAL PROVISIONS – PRIVATE, NON-PROFIT AND PRIVATE PROPRIETARY, shall be renamed Section 4 and C., Subcontracts and W., Indemnification, shall be deleted and replaced with:

C. Subcontracts

Contractor may not delegate any of its obligations or subcontract under this Agreement without the prior written approval of MDHHS. Contractor must

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notify MDHHS prior to the proposed delegation, and provide MDHHS any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must:

- a. Be the sole point of contact regarding all contractual matters, including payment and charges for all Agreement Activities;
- b. Make all payments to the subcontractor; and
- c. Incorporate the terms and conditions contained in this Agreement in any subcontract with a subcontractor.

Contractor remains responsible for the completion of the Agreement Activities, compliance with the terms of this Agreement, and the acts and omissions of the subcontractor. MDHHS, in its sole discretion, may require the replacement of any subcontractor.

W. General Indemnification

Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to:

- a. Any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Agreement;
- b. Any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party;
- c. Any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and
- d. Any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

MDHHS will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of MDHHS, demonstrate its financial ability to carry out these obligations.

MDHHS is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if MDHHS deems necessary. Contractor will not, without

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MDHHS's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, MDHHS may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent MDHHS may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

EXHIBIT 7

3. My job duties include oversight of the development of child welfare policies, protocols, and programs, approval of contract development, implementation of applicable state and federal laws and approval of federally required child welfare program and funding plans.

4. The Department was not aware that St. Vincent may have violated the non-discrimination provision in its foster care and adoption contracts with the Department until the filing of the Dumont lawsuit, which alleged that St. Vincent discriminated against Kristy and Dana Dumont on the basis of their sexual preference and same-sex marital status.

5. The Dumont lawsuit contained allegations that St. Vincent, Bethany Christian Services Madison Heights and Bethany Christian Services East Lansing had violated the non-discrimination clause of their contracts by refusing to consider same-sex married couples for foster care or adoption. After the Dumont suit was filed, the Department initiated investigation of the allegations in the same manner it responds to other complaints and opened investigations of St. Vincent, Bethany Christian Services Madison Heights and Bethany Christian Services East Lansing.

6. I did not initiate these investigations based on the religious beliefs of St. Vincent, Bethany Christian Services Madison Heights and Bethany Christian Services East Lansing. I referred the September 2017 complaint allegations to the Division of Child Welfare Licensing (DCWL) for licensing and contractual investigation. Upon receipt of the complaints and determination that they met the

criteria for special investigation, the Department opened each of these investigations. This same process and response applies to any complaint received.

7. Earlier, the Department opened an investigation of Catholic Charities of West Michigan Investigation #2017C0208001. Subsequently, in March 2018, the department opened, Investigation # 2018C0223029. In the first case, the department established violations of rule based on the agency's refusal to complete a child's adoption in the placement that the agency determined met the child's best interest. In the second case, the agency failed to place siblings together because the siblings resided with a same sex couple.

8. The Dumont settlement did not announce a new policy. It reaffirmed the Department's practice of enforcing provisions of the contract, including the non-discrimination clause, which has been in place for several years. St. Vincent signed an amended adoption contract on September 8, 2015, which included the non-discrimination clause and the contract took effect on October 1, 2015. St. Vincent signed it's foster care contract on July 8, 2016; it took effect the same day. The Dumont settlement is consistent with the Department's investigation of Catholic Charities West Michigan back in 2017 and subsequent findings in response to the 2018 complaint. It is also consistent with the Department's investigations of St. Vincent, Bethany Christian Services of Madison Heights and Bethany Christian Services of East Lansing.

9. Due to the then-pending Dumont lawsuit, the Department did not finalize its investigations of St. Vincent, Bethany Christian Services Madison

Heights and Bethany Christian Services East Lansing. Since the Dumont case has ended, Bethany Christian Services has agreed that it will comply with its legal contract requirements, including the non-discrimination clause. Because of the present lawsuit, the Department has not been able to finalize its investigation of St. Vincent and has taken no adverse action against St. Vincent.

10. The Department does not seek to end its relationship with St. Vincent in so far as the agency is willing and able to fulfill the contractual obligations it has voluntarily agreed to, including following the non-discrimination clause, which has been included in St. Vincent's adoption contract since September 8, 2015 and its foster contracts since July 8, 2016.

11. In 2015, Steve Yager, former executive director of the Children's Services Agency, stated "...I would emphasize that we work with agencies based on a contract, not on their belief system, stated or otherwise. We do not compel agencies to accept referrals—never have; rather, we create through contracts a vast array of providers to meet the very diverse needs of the children and families we serve." Mr. Yager's statement pertained to an agency's decision to accept a referral to provide FC case management or adoption services to a child. In this context, when the Department uses the term "make a referral" this means the referral of a child's foster care or adoption case to the agency for the provision of foster care case management or adoption services. Mr. Yager's statement that we "create through contract a vast array of providers" pertains to agency's development of foster homes to meet diverse needs of youth.

12. The public/private partnership between the state and private CPAs is not the result of the state's inability to meet an acute need on its own. Rather, the number of appropriated FTEs would not allow for current caseload restrictions by the ISEP to be met with caseload populations across the state without private agency assistance. For example, the Department was only provided ten FTEs for Adoption.

13. It benefits the Department and Michigan's children who require temporary foster care or adoption services to have as many qualified foster and adoptive parents as possible that can meet the diverse needs of children. It also benefits the Department to work with CPAs that comply with statute, rule, and contract when performing responsibilities as a CPA.

14. The Department can revoke a CPA's license and can terminate its contract(s) with the state. However, it cannot force a non-profit organization to close. Prior to taking adverse action against an agency's license or contract, the Department must investigate complaints that it receives and determine whether a CPA has violated its contract with the Department or has violated a statute, administrative rule or Department policy.

15. The Department rarely encounters circumstances in which an agency would refer a prospective foster or adoptive parent to another child placing agency and there are no typical circumstances in which this occurs. Agencies are rarely inclined to turn away a prospective or adoptive parent because they need those homes in order to take cases and serve children and collect the administrative rate.

The Department does not allow CPAs to refuse to evaluate, license or otherwise work with prospective foster or adoptive parents based on a characteristic like race, religion, sexual orientation or marital status.

16. CPAs may have a specialized focus, however, all have the same contractual and licensing requirements and all must comply with terms of the contract and license. CPAs performing such work under contract with the department are prohibited from refusing to serve, assess, recommend licensure, or otherwise work with prospective foster or adoptive parents based on a characteristic like race, religion, sexual orientation or marital status.

17. CPAs cannot refuse to serve a prospective foster or adoptive parents by referring them to other CPAs based on race, religion, sexual orientation or marital status.

18. Plaintiffs list several institutions, some of which are not CPAs:

- a. The Sault Tribe Binogii Placement Agency is a CPA and it has the same contract as any other CPA and is bound by same licensing rules, contract, and policies, including the non-discrimination provision.
- b. Homes for Black Children is a CPA and it has the same contract as any other CPA and is bound by same licensing rules, contract, and policies, including the non-discrimination provision.
- c. Wayne Center is a CPA and it has the same contract as any other CPA and is bound by same licensing rules, contract, and policies, including the non-discrimination provision.
- d. Guiding Harbor is a CPA and it has the same contract as any other CPA and is bound by same licensing rules, contract, and policies, including the non-discrimination provision.

- e. Boys to Men Group Home is a child caring institution, not a CPA.
- f. Ruth Ellis Center is a child caring institution, not a CPA.
- g. AdoptUsKids is not a CPA.
- h. MARE is not a CPA.

19. Although an agency may focus on providing foster care case management or adoption services to children with certain needs, like those with disabilities, agencies do not exclusively serve those children, nor do they exclude prospective foster and adoptive parents based on race, religion, sexual orientation or marital status.

20. Plaintiffs incorrectly claim that the Department disregards the non-discrimination clause in its foster care and adoption contracts by “contract[ing] with private organizations that specialize in serving” certain children. Plaintiffs incorrectly assert that Homes for Black Children only serves African American children, that the Sault Ste. Marie Tribe of Chippewa Indians only serves Native American children, that Wayne Center only serves children with disabilities.

21. Regardless of any specialization to provide foster care case management or adoption services to children with certain needs, CPAs are required to follow the non-discrimination clause of their contract with the Department. When providing foster care case management and adoption services to any child, including a child with special needs, a CPA may not discriminate against prospective resource parents who identify as members of the LGBTQ community, same-sex couples, or unmarried cohabitating individuals. For instance, St. Vincent

could plausibly specialize in placing children whose parents identify as Catholic, but that specialization would not allow the agency to discriminate against prospective foster and adoptive parents who are members of other faiths. In another scenario, an agency could specialize in serving children from minority populations, but the agency could not discriminate against prospective foster and adoptive parents who are not within the minority population.

22. The non-discrimination clause in St. Vincent's foster care and adoption contracts prohibit discrimination.

23. The Private Agency Foster Care (PAFC) Contract, at § 2.9(b), states:

"The Contractor shall comply with the MDHHS non-discrimination statement:

The Michigan Department of Health and Human Services (MDHHS) shall not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all MDHHS supervised children, and to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency."

24. The Adoption Contract Section, at § 2.9(c), states:

"The Contractor shall comply with the MDHHS non-discrimination statement:

The Michigan Department of Health and Human Services (MDHHS) shall not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all MDHHS supervised children, and to all licensed and unlicensed caregivers and families and/or

relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.”

25. The Department enforces its non-discrimination clause uniformly.

After accepting a referral to provide foster care case management or adoption services, CPAs cannot transfer the child’s case to another agency. This is prohibited. And, the agency may not transfer the child’s case to the department except in exceptional circumstances and with high level department approval. The Department does not consider or track the religious affiliation of CPAs – an agency’s religious affiliation is immaterial to their contract responsibilities.

26. Although CPAs may decline to accept a referral to provide foster care case management or adoption services to a child, once they accept the referral and sign the 3600 Agreement, the CPA must fulfill all of the terms of its contract and cannot discriminate in the provision of services. This means that a CPA cannot refuse to evaluate, recommend for licensure or otherwise work with prospective foster or adoptive parents based on a characteristic like race, religion, sexual orientation or opposite sex or marital status.

27. Plaintiffs’ claim that the Department grants individualized exceptions to its policy with the following language: “upon the written approval of the County Director, the Children’s Services Agency Director, or the Deputy Director.” This out-of-context claim does not provide the full passage, which states:

28. The full passage quoted by Plaintiffs states:

1.1. Client Eligibility Criteria

a. Eligible Clients

Children for whom the family court has issued an order which makes the Michigan Department of Health and Human Services responsible for the child's placement, care and supervision.

OR

Children for whom the family court has authorized a placement in the parental home in a Trial Reunification living arrangement.

The period of time eligible for a Trial Reunification shall not exceed 180 days from the date of the child(ren)'s placement in a parental home. Child(ren) must enter Trial Reunification directly from foster care and the family court must retain jurisdiction with care and custody continuing with MDHHS.

b. Determination of Eligibility

If MDHHS makes a referral to a child placing agency for foster care case management services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral within one hour of receipt of the referral. If a need for placement is imminent, MDHHS may make referrals for placement concurrently to other contracted providers. Contractor may not transfer a foster care case to another child placing agency. After acceptance of a foster care referral, the Contractor may not refer the case back to the Department except for the reasons outlined in the Children's Foster Care Manual (FOM) or upon the written approval of the County Director, the Children's Services Agency Director, or the Deputy Director.

Emphasis added.

29. This exception does not allow CPAs to discriminate for any reason and does not permit an agency to assert a religious objection to continue serving a child, whose case it already accepted. Rather, this provision allows for unexpected

circumstances, whether it be a natural disaster that disallows an agency from providing services, a mass exodus of child placing agency staff, or some other rare and unforeseen circumstance. The language was inserted to enable the Department to assure that all children under its care and supervision receive services they are entitled to and must be provided without harm, delay, or interruption.

30. It is in a child's best interest to maintain stability in care and receive continuity of foster care case management and adoption services. Unnecessary interruption or change of case management responsibility impacts outcomes for the child and the child's family.

31. The quoted language does not enable an agency to return a child's case to the department so that it may discriminate or refuse to serve the child in accordance with applicable policies. Rather, the language assures that in rare unforeseen circumstances, such as a natural disaster or a mass exodus of staff, the Department has a mechanism to prevent harm to the children involved.

32. The Department and its staff are responsible for enforcing the Child Care Organizations Act, Act 116 of 1973, Mich. Comp. Laws § 722.111 et seq., administrative rules, Department policy and its contracts. The Department's uniform enforcement of the provision of statute, rule, and contract preceded the election of the current AG and were in place after her election and assumption of office. Although Attorney General Nessel and the Michigan Department of Attorney General serve as the Department's legal counsel, they do not have decision-making

33. I have reviewed discovery responses obtained during the Dumont lawsuit and there is evidence that St. Vincent discriminated against Kristy and Dana Dumont on the basis of their sexual preference and same-sex marriage. (Pl. Resp. & Obj. to St. Vincent Interrogatories, No. 12.) St. Vincent appears to rely on PA 53, PA 54 and PA 55 in justifying its discrimination against same-sex couples.


Stacie Bladen

Subscribed and sworn to by Stacie Bladen before me on the 28th day of May, 2019.

Signature Katherine L. McClain

Printed name Katherine L. McClain
Notary public, State of Michigan, County of Eaton
My commission expires 12/31/19
Acting in the County of: Ingham

Katherine L. McClain
Notary Public - Michigan
Eaton County
My Commission Expires Dec. 31, 2019
Acting in the County of Ingham

EXHIBIT 8

SETTLEMENT AGREEMENT

Dumont et al. v. Gordon et al.

USDC EDMI Case No. 2:17-cv-13080-PDB-EAS

This Settlement Agreement (the “Agreement”) between Kristy Dumont, Dana Dumont, Erin Busk-Sutton and Rebecca Busk-Sutton (collectively, the “Plaintiffs”), and Robert Gordon, in his official capacity as the Director of the Michigan Department of Health and Human Services (“MDHHS”), and Jennifer Wrayno, in her official capacity as the Acting Executive Director of the Michigan Children’s Services Agency (“MCSA”) (Gordon, Wrayno, MDHHS and MCSA collectively referred to herein as the “Department”), resolves Plaintiffs’ claims against the Department in the case captioned *Dumont et al. v. Gordon et al.*, Case No. 2:17-cv-13080-PDB-EAS, pending in the United States District Court for the Eastern District of Michigan (the “Litigation”), as stated herein. Throughout this Agreement, Plaintiffs and the Department may be referred to as a “Party” or collectively referred to as “Parties.”

WHEREAS, the Department contracts with licensed child placing agencies (“CPAs”) to provide adoption-related services for permanent wards placed with the Department for care, supervision, and adoption (“Adoption Services Contracts”).

WHEREAS, the Department contracts with licensed CPAs to provide foster care case management related services for children placed with the Department for care, supervision, and foster care placement (“PAFC Services Contracts”). Throughout this Agreement, the Adoption Services Contracts and the PAFC Services Contracts are collectively referred to as “Contracts.”

WHEREAS, the Department may contract with one or more licensed CPAs (“Contractors”) to subcontract with other licensed CPAs to provide adoption related services, in substantial compliance with the terms of the Adoption Services Contract, for permanent wards placed with the Department for care, supervision, and adoption (“Adoption Services Subcontracts”).

WHEREAS, the Department may contract with one or more Contractors to subcontract with other licensed CPAs to provide foster care case management related services, in substantial compliance with the terms of the PAFC Services Contracts, for children placed with the Department for care, supervision, and foster care placement (“PAFC Services Subcontracts”). Throughout this Agreement, Adoption Services Subcontracts and PAFC Services Subcontracts are collectively referred to as “Subcontracts.”

WHEREAS, the Contracts and the Subcontracts include a non-discrimination provision mandating that contracted CPAs comply with the Department’s non-discrimination statement prohibiting discrimination “against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability” in the provision of services under contract with the Department (the “Non-Discrimination Provision”).

WHEREAS, on September 20, 2017, Plaintiffs filed a complaint asserting claims against the Department in the Litigation. Thereafter, St. Vincent Catholic Charities, Melissa Buck, Chad Buck, and Shamber Flore intervened as defendants (collectively, “Intervening Defendants”) in the Litigation. Plaintiffs have asserted no claims, and have no current intention to assert any claims,

against Intervening Defendants in the Litigation. Likewise, the named Defendants have asserted no claims, and have no current intention to assert any claims, against Intervening Defendants in the Litigation. Intervening Defendants have not asserted any claims, counter-claims or cross-claims against Plaintiffs, Defendants, or any third party in the Litigation.

WHEREAS, Plaintiffs and the Department wish to resolve the Litigation; the Parties agree that they are entering into this Agreement for that purpose only and it is not to be construed as an admission of any liability or wrongdoing.

THEREFORE, in addition to the foregoing, and in the interest of resolving the Litigation, the Parties agree as follows:

Section 1. Unless prohibited by law or court order:

- a. The Department shall continue including in Contracts, and shall continue requiring all Contractors to include in Subcontracts, the Non-Discrimination Provision, or a materially and substantially similar provision (“Similar Provision”).
- b. For the avoidance of doubt, policies and practices prohibited under the Non-Discrimination Provision include, without limitation,
 - i. turning away or referring to another contracted CPA an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a Contract or a Subcontract;
 - ii. refusing to provide orientation or training to an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a Contract or a Subcontract;
 - iii. refusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a Contract or a Subcontract; and
 - iv. refusing to place a child accepted by the CPA for services under a Contract or a Subcontract with an otherwise qualified LGBTQ individual or same-sex couple suitable as a foster or adoptive family for the child;

in each case, without regard to whether such individual or couple has identified any particular child for foster placement or adoption.

- c. The Department shall enforce the Non-Discrimination Provision or Similar Provision against a CPA that the Department determines is in violation of, or is unwilling to comply with, such provisions (collectively, a “Contract”).

Violation”), up to and including termination of the Contracts in accordance with the termination provisions therein, including without limitation:

- i. In the event a CPA refuses to comply with the Non-Discrimination Provision or Similar Provision within a reasonable time after notification by the Department of a Contract Violation, the Department will terminate the CPA’s Contracts.
 - ii. The Department will initiate an investigation when made aware of an alleged Contract Violation. In the event the Department determines that a CPA has committed a Contract Violation, the Department will provide the CPA with notice and a reasonable opportunity to implement a Department-approved corrective action plan mandating immediate, regular, and continuous provision of foster care case management services or adoption services, as applicable, in compliance with the Non-Discrimination Provision or Similar Provision; where the CPA fails to demonstrate compliance after a reasonable opportunity to implement the approved corrective action plan, the Department will terminate the CPA’s Contracts.
- d. The Department shall require all Contractors to enforce the Non-Discrimination Provision or Similar Provision against a CPA that the Contractor or the Department determines is in violation of, or is unwilling to comply with, such provisions (collectively, a “Subcontract Violation”), up to and including termination of the Subcontracts in accordance with the termination provisions therein, including without limitation:
- i. In the event a CPA refuses to comply with the Non-Discrimination Provision or Similar Provision within a reasonable time after notification by the Contractor or the Department of a Subcontract Violation, the Department will require the Contractor to terminate the CPA’s Subcontracts.
 - ii. The Department will require a Contractor to initiate an investigation when made aware of an alleged Subcontract Violation. In the event the Contractor or the Department determines that a CPA has committed a Subcontract Violation, the Department will require the Contractor to provide the CPA with notice and a reasonable opportunity to implement a Contractor-approved corrective action plan mandating immediate, regular, and continuous provision of foster care case management services or adoption services, as applicable, in compliance with the Non-Discrimination Provision or Similar Provision; where the CPA fails to demonstrate compliance after a reasonable opportunity to implement the approved corrective action plan, the Department will require the Contractor to terminate the CPA’s Subcontracts.

- e. The Department shall provide ongoing training as part of the Department's existing training programs to Department employees, Contractors, and contracted CPAs with respect to:
 - i. the Litigation and the obligations under this Agreement;
 - ii. the obligations of, and reporting channels available to, the Department's employees and Contractors to report any Contract or Subcontract Violation or suspected Contract or Subcontract Violation by contracted CPAs, including, without limitation, to the Department's Division of Child Welfare Licensing via the "Online Complaint Form" accessible on the Department's website;
 - iii. the Department's obligations to investigate any Contract Violation or suspected Contract Violation reported verbally or in writing to the Department and to enforce the Non-Discrimination Provision or Similar Provision; and
 - iv. a Contractor's obligations to investigate any Subcontract Violation or suspected Subcontract Violation by contracted CPAs reported verbally or in writing to the Contractor, and to enforce the Subcontracts.
- f. The Department shall publish and maintain a hyperlink to the Department's Division of Child Welfare Licensing "Online Complaint Form" in a prominent place on the landing page of the Department's website; and
- g. The Department shall make a public announcement in substantially the following form:

The Department's contracts with child placing agencies prohibit discrimination against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, sex, sexual orientation, gender identity or expression, political beliefs or disability.

Examples of prohibited discriminatory conduct include:

- turning away or referring to another contracted CPA an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for contracted services;
- refusing to provide orientation or training to an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for contracted services;

- refusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for contracted services; and
- refusing to place a child accepted by the CPA for contracted services with an otherwise qualified LGBTQ individual or same-sex couple suitable as a foster or adoptive family for the child.

If you are aware of a violation or suspected violation of these nondiscrimination provisions, a complaint may be made via the Online Complaint Form accessible on the Department's website.

- Section 2. For the avoidance of doubt, nothing in this Agreement shall require the Department to take adverse action against any CPA on the basis that such CPA has decided to accept or not accept a referral from the Department of a particular child for services under a contract with the Department.
- Section 3. Subject to Section 1, nothing in this Agreement shall affect the Department's obligations, authority, or discretion to audit, train, diligently investigate, or vigorously enforce the terms of the Contracts or Subcontracts in accordance with applicable laws, rules, regulations, policies, court orders, and contract terms.
- Section 4. Subject to Section 1, the Department retains sole authority and sole discretion on all matters pertaining to all Contracts and Subcontracts, including without limitation all training, all aspects of investigating an alleged Contract or Subcontract Violation, determining whether a Contract or Subcontract Violation occurred, and all enforcement measures.
- Section 5. Subject to Section 1, nothing in this Agreement expands the Department's obligation to monitor CPA compliance with Contracts and Subcontracts beyond that which is required under applicable law, rules, regulations, and policies.
- Section 6. This Agreement is intended for the direct benefit of the following individuals injured by a breach of this Agreement: (i) the Parties hereto, (ii) any LGBTQ individual or same-sex couple that seeks to foster a child accepted by a CPA for foster care case management services or adoption services under a Contract or Subcontract and the CPA is alleged to have committed a Contract Violation or Subcontract Violation directly involving the individual or couple, (iii) any LGBTQ individual or married same-sex couple that seeks to adopt a child accepted by a CPA for foster care case management services or adoption services under a Contract or Subcontract and the CPA is alleged to have committed a Contract Violation or Subcontract Violation directly involving the individual or couple, and (iv) any child accepted by a CPA for foster care case management services or adoption services under a Contract or Subcontract and the CPA is alleged to have committed a Contract Violation or Subcontract Violation directly involving the

child. Each person described in subclauses (ii), (iii) and (iv) of the immediately preceding sentence shall be a direct third-party beneficiary of, and may, to the extent of their injury and ability to satisfy standing requirements, independently enforce the terms of this Agreement as if it were a party hereto.

Section 7. In the event any Party or a third-party beneficiary asserts that another Party is not in compliance with one or more of its obligations in this Agreement, the Parties and any third-party beneficiaries shall address such alleged breach in good faith and act promptly in an attempt to resolve it. The asserting Party or third-party beneficiary shall provide the other Party with written notice of such assertion and a ninety (90) day opportunity to cure such noncompliance prior to taking legal action. Notice shall be made via certified mail, return receipt requested as follows:

**Michigan Department of Health
and Human Services
State of Michigan**

Director, Bureau of Legal Affairs
333 South Grand Avenue
Lansing, MI 48909
517.241.0048

**American Civil Liberties Union
Fund of Michigan**

Jay D. Kaplan / Michael J. Steinberg
2966 Woodward Avenue
Detroit, MI 48201
(313) 578-6823
jkaplan@aclumich.org
msteinberg@aclumich.org

Section 8. Specific performance shall be the sole and exclusive remedy available to each Party and each third-party beneficiary asserting any claim relating to the Department's failure to meet its obligations under this Agreement. Each Party and each third-party beneficiary asserting any claim relating to the Department's obligations under this Agreement waives all rights to recover any damage, loss, attorney fees, costs, or any other expense arising out of asserting such claims. The Parties also agree that, regardless of the failure of the sole and exclusive remedy, the Department will not be liable to any Party or third-party beneficiary asserting any claim relating to the Department's obligations under this Agreement for any incidental or consequential damages of whatsoever kind or nature. The Parties intend the exclusion of incidental and consequential damages as an independent agreement apart from the sole and exclusive remedy herein. The limitations of this Section 8 apply only to claims relating to the Department's obligations under this Agreement.

Section 9. Upon signing this Agreement, Plaintiffs shall file a Stipulation of Voluntary Dismissal with Prejudice substantially in the form attached to as Annex A and submit a Proposed Order on Stipulation of Dismissal substantially in the form attached hereto as Annex B. This Agreement becomes effective upon entry of the Proposed Order on Stipulation of Dismissal by the district court.

Section 10. The Parties shall bear their own attorneys' fees and costs associated with the Litigation.

- Section 11. The Parties understand that this Agreement is a public record that may be disclosed in response to a proper request under Michigan’s Freedom of Information Act.
- Section 12. The Parties acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without giving effect to conflict of laws, rules or statutes.
- Section 13. The Parties acknowledge, understand, and agree that they are entering into this Agreement knowingly, voluntarily, and of their own free will and volition, without coercion or undue influence.
- Section 14. Each Party has been represented by counsel and cooperated in the drafting and preparation of this Agreement. Hence, this Agreement shall not be construed against any Party on the basis that the Party was the drafter.
- Section 15. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts shall constitute one Agreement.
- Section 16. The undersigned represent that they are authorized to sign this Agreement.
- Section 17. Each Party represents that they believe there is no state or federal law, rule, regulation, policy, contract term, or other obligation that prevents it from complying with its obligations under this Agreement; *provided*, that solely for purposes of this Section 17, the obligations in Section 1 shall be read without the introductory phrase “Unless prohibited by law or court order.”
- Section 18. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of each other Party hereto.
- Section 19. No modification or waivers of any provision of this Agreement shall be valid or binding unless made in writing and signed by each Party or by a person authorized to sign on behalf of such Party.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement is executed as of March 22, 2019.

PLAINTIFFS



Kristy Dumont



Dana Dumont

Erin Busk-Sutton

Rebecca Busk-Sutton

DEFENDANTS

Robert Gordon, in his official capacity as
Director, Michigan Department
of Health and Human Services

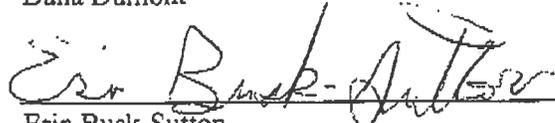
Jennifer Wrayno, in her official capacity
as Acting Executive Director, Michigan
Children's Services Agency

IN WITNESS WHEREOF, this Agreement is executed as of March 22, 2019.

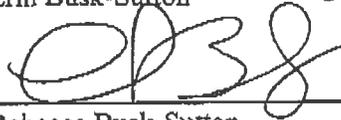
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of Health and Human Services

Jennifer Wrayno, in her official capacity
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Children's Services Agency

{Signature Page to Settlement Agreement}

IN WITNESS WHEREOF, this Agreement is executed as of March 22, 2019.

PLAINTIFFS

Kristy Dumont

Dana Dumont

Erin Busk-Sutton

Rebecca Busk-Sutton

DEFENDANTS



Robert Gordon, in his official capacity as
Director, Michigan Department
of Health and Human Services



Jennifer Wrayno, in her official capacity as
Acting Executive Director, Michigan
Children's Services Agency

EXHIBIT 9

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

Plaintiffs,

v

No. 1:19-cv-00286

HON. ROBERT J. JONKER

MAG. PHILLIP J. GREEN

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.

AFFIDAVIT OF PATRICIA NEITMAN

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Patricia Neitman, first being duly sworn, deposes and says:

1. I am employed by the Michigan Department of Health and Human Services (DHHS) as a Director, Division of Child Welfare Licensing (DCWL).
2. I have served the Department in this capacity for two months and make this affidavit based on my experience and knowledge of the Child Care

Organizations Act, Act 116 of 1973, Mich. Comp. Laws § 722.111 *et seq.*, Licensing Rules, and foster care and adoption contract requirements.

3. Prior to my current position I worked in child welfare as a licensing worker, licensing supervisor, clinical therapist, and program manager in private child placing agencies for 12 years; worked as a licensing consultant in the DCWL for 13 years, and as the DCWL program manager for over 2½ years, before assuming the position of DCWL director.

4. My job duties include oversight of the Division of Child Welfare Licensing (DCWL). DCWL staff are responsible for regulation of child placing agencies and child caring institutions licensed in Michigan, including responsibility for monitoring compliance with licensing rules and MDHHS contract requirements.

5. The Department of Health and Human Services administers Michigan's foster and adoption system.

6. This system provides temporary care and custody to children when a court finds that children have no legal guardian or have been neglected or abused. There are approximately 13,000 children in foster care, about 2,000 of whom have a permanency goal of adoption. That care is provided in foster family homes, child-care institutions, and relative homes. Mich. Comp. Laws § 712A.13a(1)(e).

7. The Department contracts with CPAs provide foster and adoption services. In addition, the Department itself is a CPA and may provide foster care services, including licensing foster parents. The Department does not provide adoption services; all adoption services are private in Michigan.

8. Child Placing Agencies, or CPAs, including St. Vincent Catholic Charities, must be licensed by the Department in order to provide foster care and adoption services.

9. CPAs are required by contract and administrative licensing rules to perform a home study on prospective foster or adoptive families. Child Care Organizations Act, Act 116 of 1973, Mich. Comp. Laws § 722.111 et seq., requires that an on-site inspection be completed by the CPA for prospective foster homes. (See DHS-3130 Home Study, Attachment 1.)

10. The Department mandates the criteria for home studies, which include a review of several factors, including the "[s]trengths and weaknesses" of the parents and the "[s]trengths of the relationship" between the couple, including "level of satisfaction" and stability of the relationship and their relationship history. Other factors that must be assessed include marital and family status and history, including current and past level of family functioning and relationships, parenting skills and childrearing techniques, values and the role of religion in the family. The Department requires assessment of these criteria for all CPAs, including the Department itself.

11. These criteria are used to determine whether and to what extent foster applicants or adoptive families are able to meet the needs of children served by the agency or Department. These criteria are also used to determine whether a child may be a good fit for a particular family.

12. A CPA's assessment of these factors does not constitute an endorsement, recommendation or approval of a specific relationship or a type of relationship. Nor does a CPA's assessment of these factors constitute an endorsement of any particular religious faith or the absence of a religious faith. Nor can these factors be used as a means of discriminating against prospective foster parents or adoptive families on the basis of their sexual preference or same-sex marital status. Instead, a CPA must assess on these factors and make a determination of compliance or noncompliance with administrative licensing rules and statute.

13. CPAs must follow the requirements of Michigan law, including Act 116, administrative rules and Department policy. CPAs must also perform their duties under their contracts, including following the non-discrimination clause, which states:

The Contractor shall comply with the MDHHS non-discrimination statement:

The Michigan Department of Health and Human Services (MDHHS) shall not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability. The above statement applies to all MDHHS supervised children, and to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

(Private Agency Foster Care (PAFC) Master Contract Template, page 6, 2.9 Compliance Requirements, c)).

14. When allegations of noncompliance with licensing rules, statute, or contract requirements are made, DCWL will initiate an investigation. The investigation is assigned to a DCWL licensing consultant, who will conduct investigatory activities including interviews and review of documents, in order to make a determination of compliance or noncompliance with applicable rules, statute, or contract requirements.

15. At the conclusion of the investigation the licensing consultant will conduct an exit meeting with the agency's administrators to discuss preliminary findings of the investigation. The licensing consultant will complete an investigation report, which is reviewed and approved by the consultant's manager. The report will detail the allegations, investigative activities, findings of compliance or noncompliance, and a recommendation regarding the status of the license and contract.

16. If there are findings of noncompliance, a corrective action plan to address the noncompliance will be required and this will be indicated in the investigation report. The corrective action plan is due within 15 days from receipt of the report by the agency and must be approved by the consultant. Failure to submit an acceptable corrective action plan will result in a recommendation for disciplinary action, which may include revocation of the license and termination of the contract.

17. A recommendation for any disciplinary action on the license is reviewed by the DCWL director and the Child Services Agency (CSA) director. A recommendation for any disciplinary action on the contract is reviewed by the

DCWL director, the CSA director, and the contract administrator. If a recommendation for disciplinary action on the license is made, the licensee has the opportunity to appeal the recommendation, which includes a compliance conference and an administrative hearing. If a recommendation for disciplinary action on the contract is made, the licensee/contractor has the opportunity to appeal this recommendation during a meeting with the contract administrator.

18. Unless and until an investigation is complete, the Department does not know whether a statute, rule, policy or contract provision has been violated.

19. In the present case, the Department was unaware that St. Vincent did not follow the non-discrimination clause it agreed to until the *Dumont v. Lyon* lawsuit was filed. The *Dumont* plaintiffs alleged that they had been denied the opportunity to serve as foster or adoptive parents by St. Vincent, Bethany Christian Services of Madison Heights and Bethany Christian Services of East Lansing.

20. When that lawsuit was filed, the Department investigated the allegations in the same manner as it investigates other complaints. It opened investigations of St. Vincent, Bethany Madison Heights and Bethany Christian East Lansing.

21. The Department was required to open these investigations, as follows:

- a. Mich. Comp. Laws § 722.120 (1): The department may investigate, inspect, and examine conditions of a child care organization and may investigate and examine the books and records of the licensee.
- b. Mich. Comp. Laws § 722.113(1): The rules promulgated by the department under this act shall be used by the department, the

bureau of fire services, and local authorities in the inspection of and reporting on child care organizations covered by this act.

- c. PAFC Master Contract Template, page 21, § 2.21: The Division of Child Welfare Licensing: DCWL shall be responsible for review of the Contractor's compliance with the Contract and any court orders, via an Annual Compliance Review (ACR) and Special Investigations. DCWL may review, analyze, and comment on all activities covered within the terms of the Contract or court order.
- d. DCWL Policy and Procedure Manual, Chapter 6 Special Investigation, page 46: 6-5. Special Investigation: DCWL responds to complaints where it is alleged that the licensee has not complied with the terms of the statute, rules, the Implementation, Sustainability and Exit Plan (ISEP) from *Dwayne B. v. Whitmer*, E.D. Mich. No. 06-13548, Department policy, and contracts. DCWL encourages individuals who want to file a complaint to utilize the public website's online complaint form. DCWL will also accept complaints verbally or in other written formats.
- e. A. Upon receipt of an allegation, the DCWL field consultant will initiate a special investigation (SI). The DCWL field consultant will not dismiss allegations without consultation with the area manager. Intake allegations are logged into the database system by DCWL central office staff or the DCWL field consultant within 24 hours or the next business day.

22. Earlier, in January 2017 and May 2018, the Department opened two investigations of Catholic Charities of West Michigan in (CB610201023), Investigation # 2017C0208001, and Catholic Charities of West Michigan (CB410245705), Investigation # 2018C0223029.

23. The Department found noncompliances in Investigation 2017C0208001 as follows: Adoption Contract 2.9, Mich. Comp. Laws § 722.124e, and CPA Rule 400.12602 (1), for failure to comply with the non-discrimination statement, the agency's refusal to complete adoptions in three assigned contracted cases based on

the sexual orientation and marital status of the identified adoptive applicants, and failure by the agency to follow their own program statement. A corrective action plan was submitted by the agency and accepted by the Department.

24. The Department found noncompliances in Investigation 2018C0223029 as follows: ISEP 6.10, Mich. Comp. Laws § 722.124e, and FOM 722-03, for failure by the agency to place three siblings who were contracted cases assigned to the agency, together into one foster home due to the sexual orientation and marital status of the foster parents. A corrective action plan was submitted by the agency and accepted by the Department.

25. Due to the then-pending *Dumont* lawsuit, the Department did not finalize its investigations of St. Vincent, Bethany Madison Heights and Bethany Christian East Lansing.

26. Since the *Dumont* case has ended, Bethany Christian Services has agreed that it will comply with its legal contract requirements, including the non-discrimination clause.

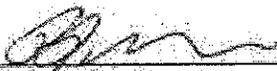
27. Because of the present lawsuit, the Department has not been able to finalize its investigation of St. Vincent.

28. Should that investigation be complete and a violation found, St. Vincent would have the opportunity to complete a corrective action plan demonstrating how it would achieve compliance.

29. If St. Vincent chooses not to comply with the provisions of its contracts with the Department, including the non-discrimination clauses, the Department could take licensing and/or contract action.

30. And if St. Vincent chooses to cease providing foster care and/or adoption services, the Department has a process for finding new placements for the children St. Vincent serves without any sacrifice in the quality of care received by those children.

31. Plaintiffs Chad and Melissa Buck have not had a foster home license since June 16, 2016.



Patricia Neitman

Subscribed and sworn to by Patricia Neitman before me on the
25th day of May, 2019.

Signature 

Printed name Elisabeth Paurazas

Notary public, State of Michigan, County of Oakland

My commission expires December 24, 2023

Acting in the County of Washtenaw

Elisabeth Paurazas
Notary Public - State of Michigan
County of Oakland
My Commission Expires December 24, 2023

ATTACHMENT 1

INITIAL FOSTER/ADOPTION HOME EVALUATION

Michigan Department of Health and Human Services
Division of Child Welfare Licensing

Applicant(s) interested in:

Relative Assessment.

If yes, please describe legal relationship: _____

Foster Care

Adoption

AGENCY NAME:

AGENCY LICENSE NUMBER:

Date of Report:

1. FOSTER/RELATIVE/ADOPTIVE HOME INFORMATION:

Home name:

Foster home license number, (CF # or CG#): _____

Address:

Home telephone number:

Other telephone number (s):

Email address:

Driver's license number/State ID number for all adult members of the household; verification of valid driver's license:

MEMBERS OF HOUSEHOLD:

Name	DOB	Relationship to Caregiver	Date of Placement (if applicable)
"Click Here and Type"			

DIRECTIONS TO THE HOME:

"Click Here and Type"

SOCIAL WORK CONTACTS:

Date	Persons	Type of Contact/Place
"Click Here and Type"		

2. CENTRAL REGISTRY:

Michigan Date of Central Registry Check: _____ Has applicant lived in any other states in the last 5 years? Yes No

If yes, identify what states the person lived in. There must be a central registry clearance from that state.

The confidentiality of information in this section of this document is protected by the Michigan Child Protection Law. Anyone who violates this protection is guilty of a misdemeanor and is civilly liable for damages (1975 PA 238, as amended, MCL 722.621 et seq.).

Central Registry Results:

N/A: Not found

Yes, there is a history of child abuse or neglect.

- a. Describe the length of time since the substantiation and any services that have been provided to rectify the concern.
- b. Address any risk factors that might impact the safety of the child and describe what protective interventions are in place currently.

***If there is any household member who is on Central Registry, THE HOME CANNOT BE LICENSED.**

Are there any rules that are in non-compliance? Yes No

If Yes, list all rules and headings:

Willful Substantial

Supporting documentation:

ART: Yes No

3. COMMUNITY:

Type of community (rural, urban, etc.):

Socio-economic makeup:

Racial/cultural makeup:

Availability of recreational facilities:

School system, including special education:

Hospitals and medical care, noting facility utilized by family:

Availability of churches, noting family's choice of church:

4. DESCRIPTION OF HOME: (R.400.9206, R.400.9301, R.400.9302, R.400.9303, R.400.9304, R.400.9305, R.400.9306, R.400.9307, R.400.9308, R.400.9309, R.400.9401, R.400.9410, R.400.9411, R.400.9414, R.400.9418, R.400.9419)

Description of home and all rooms, noting condition, layout, appearance: (Does the home meet the minimum level of cleanliness necessary to meet the needs of the child to be placed? If not, is the applicant taking action to address the home's deficiencies?)

Description of play space:

Safety considerations, including weapons or pets:

- Are there pets in the home? Yes No Does the pet have current vaccinations? Yes No
- Is the pet friendly or is the pet a safety concern? (Explain what makes the pet a friendly or a safety concern. Describe how does the pet interacts with others.)
- Is the pet well cared for? Yes No
- Are there any water hazards on or near the premises? Yes No If yes, describe how the caregiver plans to safeguard children around them. Any exterior door that leads directly to the area where there is a water hazard needs an alarm. Any pool, spa, hot tub or pond needs rescue equipment available.
- Are there working smoke detectors on each floor and between each sleeping area and the rest of the home?
 Yes No

- Is there a working carbon monoxide detector installed as recommended by the manufacturer? Yes No
- If there are weapons in the home, specify what they are, where they are stored and how they are secured. Document all weapons (rifles, handguns, bow and arrows, air/paint guns, etc.), registrations, trigger locks/inoperable and storage. Weapons must be inoperable and locked in a place separate from ammunition or stored in a locked gun safe.
- Where are medications stored?

Explain the proposed sleeping arrangements for family members and foster/adoptive children.

Is there a CPSC compliant crib if there are children under the age of 2 or the home is to be licensed for children 0-2?

Do all bedrooms have a window and a door than can be used to get out of the house in an emergency? Yes No
If "NO", please explain:

Are there people sleeping in other rooms in the home? Please describe.

Water, sewer, refuse arrangements, health inspection results if applicable:

Water temperature tested 120° Fahrenheit or less? Yes No

Emergency procedures information completed and posted in view of the home telephone:

Adequacy of the house, property, neighborhood, schools and community for the purpose of fostering/adopting as determined by on-site visits:

Means of transportation; i.e. ages and makes of automobiles, reliability, proof of insurance on each vehicle, availability of required safety seats for young children, accessibility of public transportation if needed:

DESCRIBE PLANS FOR DAY CARE AND/OR SUBSTITUTE CARE. (R400.9403(d)(ix), R400.9412)

Routine Day Care:

After hours and emergency substitute care:

Are there any rules that are in non-compliance? Yes No
If Yes, list all rules and headings:

Willful Substantial
Supporting documentation:

Variance requested? Yes No

5. FINANCIAL: (R.400.9201, R.400.9206)

Date family provided with information of Ineligible Grantee Funds, Medicaid, Food Stamps, WIC in DHS-Pub-114 for children in relative care:

Source of income, how this was verified, stability of income, how expenses were verified. Does the family have a plan for any known financial changes that may occur in the future i.e., unemployment payments ending, cash assistance ending?

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If income is based on disability, i.e. SSI, Social Security Disability, long term disability payments from a job, workmen's compensation, etc., describe the verification of the physical or mental disability and an assessment of how that impacts the ability to provide foster/adoptive care or be a member of the household.

If child support payments are ordered, are the payments being made and are they current? If there are arrears, how much and what is the plan to bring the payments current? How was this verified?

Detail a financial statement that specifies the amount of net income for the household and identifies all ongoing and routine bills and expenses including, but not limited to, housing (mortgage or rent, insurance, property taxes), utilities, food, clothing, transportation (car payments, insurance, fuel), credit cards, student loans, contributions to religious organizations, savings contributions, etc.

Assess the family's money management skills and ability to meet their needs with their current income. Is the family current on their bills? Can the family meet the financial expenses of having a relative/foster child placed in their home prior to payment starting?

Are there any rules that are in non-compliance? Yes No

If Yes, list all rules and headings:

Willful Substantial

Supporting documentation:

Variance? Yes No

6. **SOCIAL HISTORY:** (for each adult member of the household, including adult children who live in the home) (R.400.9201, R.400.9202, R.400.9206)

Descriptive information: Age, height, weight, hair color, nationality, race or ethnicity, place of birth. American Indian heritage must be consistent with information on the BCAL-3889 and the BCAL-0120-A. Family of origin description. Include:

- Number of siblings, parents' roles, personalities, expectations, parenting involvement, styles, values.
- Relationship with each parent and siblings (if any) growing up and now.
- Parents'/primary caretakers' childrearing techniques, including discipline.
- How family dealt with losses. Describe family celebrations.
- Parents' substance use and how it affected the family, lasting impact on individual.
- How family dealt with any abuse or victimization issues, continuing impact on individual.
- Role of religion in the family.
- Other significant influences when a child, e.g. grandparents, step parents, aunts, uncles.

Any history of out of home care? This should include any history in non-court-ordered out of home care.

Educational history and any special skills and interests:

Employment history – If the person does not have an employment history or there are large gaps in the employment history, explain how they were supported during that period of time:

Relationship history – Significant relationships prior to current one; how they ended; if previously married, whether divorce has been obtained or considered and whether there is verification.

Any children from previous relationships. Yes No

Note any history of involvement in domestic violence, including as a victim, or absence of history:

Description of personality, personal goals, hobbies, interests

Strengths and weaknesses, worker's assessment in addition to what the applicant tells you:

Are there any rules that are in non-compliance? Yes No

If Yes, list all rules and headings:

Willful Substantial

Supporting documentation:

7. **FAMILY LIFE:** (R.400.9201, R.400.9202, R.400.9206, R.400.9405, R.400.9418)

Marital and family status and history, including current and past level of family functioning and relationships and any incidents of domestic violence:

Current relationship. Include:

- Brief history, including date and place of marriage, if applicable.
- Any history of infertility and how that has been dealt with.
- Any history of separations or domestic violence.
- Strengths of relationship, areas of work or attention.
- Common/shared interests or lack thereof.
- Roles, division of labor, decision-making process, handling stress or disagreements.
- Assess level of satisfaction, stability.
- Describe relationship w/parent of children if separated.

Family:

Activities, goals, values, role of religion, church involvement:

Challenges, stressors, any history of help-seeking:

Losses and how dealt with:

Expected impact of fostering/adopting on all members of the household:

Any individuals other than children of applicants currently living with the family, impact of those individuals on family functioning.

8. **CHILDREN:** (R.400.9201, R.400.9202, R.400.9206, R.400.9404, R.400.9407)

All children must be interviewed/observed apart from the parents, even adult children no longer living in the home, or the agency must note all attempts to contact them. If unsuccessful, the applicant's explanations as to why you were unable to contact them.

For each child living in the home including relatives/foster children:

- Identifiers: name, birth date, race (if different from parents') school and grade, and/or employment. Date of placement for children already placed in the home (relatives).
- Parents' description of child's personality, interests, activities.
- General adjustment, note if any involvement with law enforcement or the criminal justice system.
- Worker's assessment of child's adjustment, development, special needs, relationships with parents and their significant others, and other strengths and weaknesses.
- Child's ideas and attitudes about fostering/adopting based on interview with the child.
- Child's description of the discipline techniques used in the family.

For children who are grown and/or out of the home:

- Identifiers: name, age, where living, marital status.
- School and/or employment.
- General adjustment: note if any problems with law enforcement or the criminal justice system.
- Their opinion of their parents' parenting skills and of their desire to foster/adopt children.
- Description of the discipline techniques used when they were a child.
- The willingness of the adult child to provide substitute care, if appropriate, or be involved with the foster/adopted children who may be placed into the home.
- Any ongoing reliance by the adult child on the applicant for child care, monetary assistance, etc.

Are there any rules that are in non-compliance? Yes No
If Yes, list all rules and headings:

Willful Substantial
Supporting documentation:

Variance? Yes No

9. **HEALTH:** (For each member of the household, both adult and children): (R.400.9201, R.400.9202, R.400.9206)
Assessment of physical, mental and emotional health and substance use history.

Indicate current health status. (Is anyone in the household prescribed medication? If so, list the medications. How long has he/she been taking these medications/what are the medications prescribed to treat?)

Does anyone in the household have a physical or mental health diagnosis or condition that would make care of the child difficult? If so, describe how it may affect the care of a child.

Describe current substance use patterns, history if indicated. If there is a past substance use problem (including alcohol use) indicate how diagnosed, resolved, and when. What is the current treatment?

Does any member of the household smoke? Yes No If yes, do they smoke in the house? Yes No

Reference a medical statement, completed within the 12 month period before conclusion of the evaluation, for each member of the household that indicated that the member has no known condition which would affect the care of a foster/adoptive child or any other determination if different. Does anyone require special care? Please describe:

Are there any rules that are in non-compliance? Yes No
If Yes, list all rules and headings:

Willful Substantial
Supporting documentation:

Variance requested? Yes No

10. **PARENTING:** (R.400.9201, R.400.9206, R.400.9306, R.400.9401, R.400.9403, R.400.9404, R.400.9417)
Parenting skills and attitudes toward children:

Parenting values:

Most important things for parents to do, what they will do similarly to their parents, what they hope to improve upon.

Knowledge of child development, appropriateness of expectations of children.

Ability to provide infant care:

Equipment, safety measures in place (e.g. gates, monitor, car seat, play area, pets)

Safe Sleeping requirements have been trained and reviewed

Understanding of infant care:

Capacity and disposition to give a foster child guidance, love and affection and to deal with difficult children with unacceptable behavior, children who are rejecting and/or oppositional, or children with medical needs.

1. What kinds of behaviors require intervention?

2. How will caregiver intervene/handle that type of behavior? How will they be supportive and nurture children?

Methods of discipline. Flexibility and age appropriateness of approaches, willingness to follow the case plan for the child if it differs from their normal approach to discipline.

Awareness of variety of techniques, use of positive and negative methods.

Understanding of agency's discipline policy and willingness to abide by it. If the family has used spanking or other corporal punishment, or was raised with it, document their current attitudes.

Are there any rules that are in non-compliance? Yes No
If Yes, list all rules and headings:

Willful Substantial
Supporting documentation:

11. **MOTIVATION FOR FOSTER CARE/ADOPTION:** (R.400.9201, R.400.9202, R.400.9206, R.400.9403, R.400.9404, R.400.9405, R.400.9411)
Reasons for wanting to provide care for relative/foster/adoptive children, including infertility, if indicated.

Each member's attitude towards accepting a relative/foster/adoptive child.

Previous experience in providing child foster care, child day care, or adult foster care.

Previous adoptive evaluations or placements.

Previous licenses, including applications that did not result in a license. Reference communication with previous agency.

Level of understanding of foster/adoptive care and the potential impact of their family. For example, does the caregiver understand that a social worker will visit the child and relative at least monthly until reunification with parents occurs or permanent custody is achieved?

Evaluation of motivators, (if adoption/relative placement in particular).

Applicant(s) agree to encourage visits and follow health care, religious and discipline policies of this agency

Are there any rules that are in non-compliance? Yes No
If Yes, list all rules and headings:

Willful Substantial
Supporting documentation:

12. **FAMILY'S ATTITUDES TOWARD THE CHILDREN'S PARENTS AND WORKING WITH THE AGENCY:** (R.400.9201, R.400.9202, R.400.9206, R.400.9403)
Understanding of permanency and concurrent planning.

Family's level of understanding of foster/adoption care.

Family's willingness to comply with the child's case plan. If child is in the home, assess current situation.

- The family is willing to cooperate with the supervising agency.

- The family is willing to cooperate with the school system.
- The family is willing to cooperate with the child's therapist.
- The family is willing to cooperate with the parenting time plan outlined in the treatment plan.
- The caregiver is willing and able to protect the child(ren) from further harm.

Attitudes toward the legal parents. How will foster parents discuss legal parents with and around foster/adoptive children?

How will foster parents discuss reasons children entered foster care and/or became available for adoption?

Family understands the goal of the agency in providing foster care and they are willing to support the agency in working toward reuniting a foster child with his or her family.

For Relative Placements:

- Does the family agree to not release the child to anyone, including birth parents, without the supervising agency's approval? Yes No
- Does the family agree they will not allow the foster child(ren)'s parents to live in their home without the supervising agency's approval? Yes No
- Does the family understand they cannot be licensed to care for foster children whose parents live in the home? Yes No

Ability to empathize and work with the parents and children.

Openness to maintaining significant relationships.

Openness to providing permanency to the relative/foster child if needed.

Ability to comply with agency policies and procedures.

Summarize experience of caseworkers for children who have been placed in the home. Assess current compliance.

Are there any rules that are in non-compliance? Yes No
If Yes, list all rules and headings:

Willful Substantial
Supporting documentation:

13. TRAINING NEEDS: A statement of the number of hours the person/couple need to comply with the training rules is not sufficient. (R.400.9415)

Orientation and training hours credited; include topics covered.

Types of training the family believes they could benefit from.

Worker's assessment of additional training needs and the agency's plan to provide the identified training.

Openness to learning.

Are there any rules that are in non-compliance? Yes No
If Yes, list all rules and headings:

Willful Substantial
Supporting documentation:

Variance requested? Yes No

14. TYPE OF CHILDREN DESIRED – INTEREST IN PERMANENCY/ADOPTION PLANNING: (R.400.9201, R.400.9202)

Gender, race, ethnic background and special characteristics of children preferred by applicants.
Types of children the family is willing to consider.

Ability and willingness to care for special needs children, and the problems of the children.

Interest in adoption.

If this evaluation is being completed for an adoption of a specific child, the DHS 612, Adoptive Family Assessment Addendum, must be completed.

15. CROSS CULTURAL PLACEMENT:

Willingness to parent cross-racially or cross culturally and to create an atmosphere that fosters racial identity and culture of a foster child.

Races or cultures requested or that the family does not believe they can effectively parent.

16. REFERENCES: (R.400.9206)

At least three references must be obtained from persons not related to the applicant(s).

Summarize the information received from each reference. If negative information was received, explain how the negative information was resolved.

An agency may choose to obtain additional references from related or unrelated persons, including adult children.

If this is an adoption assessment and there are circumstances that require additional review, include the information provided by the professional reference.

17. RECOMMENDATIONS: (Must be consistent with the information contained in the report.)

Placement with relative is recommended: Yes No

If the recommendation is that placement should not be made, the reason for this must be explained in detail.

Licensure is recommended:
(Licensing workers only) Yes No N/A

Licensure and preliminary approval for
adoption:
(Licensing workers only) Yes No

Approved for adoption:
(Adoption workers only) Yes No

- Summary of strengths and areas of growth, attention.
- Issues to be considered in making placements

- Recommended placement specifications to include characteristics, age, sex, and number of children best served by home and types of children who may not be placed in the home.

Recommendation for License Denial:

- List all rules found to be in non-compliance.
- Summarize facts to support rule non-compliance.
- Reference all supporting documentation.

Recommendation for Adoption Denial:

- Basis for recommendation:
- Supporting documentation.

18. CLOSING:

Licensing/Adoption Assessment Submitted by:

Name:

Signature:

Agency:

Title:

Date:

I certify that I have been trained and am qualified to make this recommendation:

Foster Care Adoption

19. SUPERVISOR'S REVIEW:

Application:

Clearances:

Medical Reports:

References:

Other documentation:

Is the report accurate, factually consistent, unbiased, support by adequate data/information? Yes No

Further Explanation:

Supervisor Name:

Signature:

Agency:

Title:

Date:

I certify that I have been trained and am qualified to make this recommendation.

The Michigan Department of Health and Human Services (MDHHS) does not discriminate against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, genetic information, sex, sexual orientation, gender identity or expression, political beliefs or disability.

EXHIBIT 10

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

AFFIDAVIT OF CATHERINE HOOVER

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Catherine Hoover, first being duly sworn, deposes and says:

1. I am employed by the Michigan Department of Health and Human Services (Department) as a State Administrative Manager, Adoption, Guardianship , Recruitment and Retention Program Manager, Office of Child Welfare Policy and Programs.

2. I have served the Department in this capacity for 8 years and make this affidavit based on my experience and knowledge of adoption policy, adoption contracts, recruitment and retention and state and federal laws related to adoption.

3. My job duties include development, modification and implementation of policies and programs regarding adoption, guardianship, recruitment and retention, analysis and development of state laws regarding adoption and guardianship, administration of adoption contracts with CPAs, and oversight of closed adoption records and the Central Adoption Registry.

4. CPAs provide foster and adoptive services, pursuant to contract, and within the parameters of Michigan law.

5. CPAs must evaluate all families that come to an orientation and complete an application.

6. Payments made by the Department to a CPA, including St. Vincent, for foster care services include the home study, recruitment and placement of foster children. The foster care administrative rate paid to St. Vincent supports the staff who conduct recruitment and licensing activities, including completion of home studies. See PAFC Contract 2.9 Additional Compliance Provisions: "The Contractor shall comply with the provisions of: e. 1973 Public Act 116, as amended, being MCL 722.111 et seq., Michigan Child Care Organization Act."

7. The Adoption Contract states, at § 2.10(b)(1), "The contractor shall develop and implement a plan for adoptive home recruitment, retention and support consistent with the MDHHS DCWL licensing standards specific to the contractors' license specified in section 2.4."

8. The completion of home studies by a CPA is one of the services that the CPA has agreed to complete under its contract with the Department and is an integral part of the foster care and adoption process for which the CPA is compensated. Rule 400.12308 requires an agency to act on a completed and signed foster home application. The completion of a home study by a CPA requires a CPA to evaluate prospective foster families and adoptive families based on criteria set forth under Act 116, administrative rules and Department policy at Rule 400.12310 (foster home), Rule 400.12605 (adoption), and Adoption Services Manual 510 (adoption).

9. Included in the services for which the Department contracts with CPAs is the evaluation of prospective foster families and adoptive families based on the criteria set forth under Act 116, administrative rules and Department policy at Rule 400.12310 (foster home), Rule 400.12605 (adoption), and Adoption Services Manual 510 (adoption). The Department requires CPAs to perform these services under its contract and the administrative rate paid to CPAs compensates them for these services.

10. Part of the adoption process includes the completion of a DHS-612 Adoptive Family Assessment Addendum. The completion of a family assessment by a CPA requires a CPA to evaluate prospective adoptive families based on the criteria set forth in Adoption Services Manual 510 (adoption). (DHS-612, Attachment 1.)

11. Also included in the services for which the Department contracts with CPAs is the recruitment of potential foster parents and adoptive families. Rule 400.12304 requires a CPA to have an ongoing foster home recruitment program to ensure an adequate number of suitable and qualified homes to meet the needs of children

served by the agency. Rule 400.12706 and Adoption Services Manual 400 require a CPA to have an ongoing recruitment program to ensure an adequate number of suitable adoptive parents for the timely placement of all children serviced by the agency who are legally free for adoption with a goal of adoption. The Department requires CPAs to perform these services under its contract and the administrative rate paid to CPAs compensates them for these services.

12. The Department values its relationships with all CPAs. At the same time, the Department is not aware of any information to support the assertion that faith-based or religiously affiliated CPAs are more effective than other CPAs at recruiting families who might otherwise not choose to foster or adopt.

13. The Department is aware of no evidence that St. Vincent recruits homes for children with disabilities at “nearly double the average rate across” Michigan. Nor is the Department aware of any evidence that St. Vincent “recruits more homes for sibling groups than the average agency, and recruits more homes overall than the average agency.”

14. The Department is unaware of any evidence to support the assertion that “[i]n the last eighteen months, St. Vincent has recruited more new foster families total than all of the other private agencies in its tri-county foster area.”

15. While St. Vincent met their overall licensing recruitment goal of 6 in FY 18, their performance does not support the claims being made. St. Vincent licensed 8 of the 63 unrelated foster homes licensed in Clinton, Eaton and Ingham counties in FY18, accounting for 13% of the unrelated foster homes licensed in this tri-county area. Similarly, St. Vincent licensed 16% of the total new homes for children with

disabilities and 11% of the total new homes for sibling groups. St. Vincent did not meet their recruitment and licensing goals for homes for teens, licensing none in FY18. Statewide, St. Vincent licensed only 0.6% of the 1,186 unrelated foster homes licensed in FY 18.

16. These trends are continuing in FY 19. St. Vincent has licensed 5 of the 30 unrelated homes licensed from October 1, 2018 to March 31, 2019 in the tri-county area. In the same time period, they have licensed 5 of the 24 homes that accept children with disabilities and 3 of the 38 homes that accept sibling groups.

17. Overall, St. Vincent has 49 foster homes licensed to accept placement of unrelated children. This accounts for only 0.9% of the statewide total of 4,989 unrelated foster homes and 17% of the tri-county total of 281 unrelated foster homes.

18. St. Vincent's claim, if true, that "in the last four fiscal years, St. Vincent has served an average of 74 children in its foster care program every year, and through its work over 100 adoptions for foster children were finalized" is unremarkable. St. Vincent finalized 18 out of 1,815 adoptions (0.9%) in FY15; 34 out of 2,109 adoptions (2%) in FY16; 30 out of 1,998 adoptions (1.5%) in FY17 and 11 out of 2,002 adoptions (0.5%) in FY18 for a total of 93 adoptions finalized out of 7,924 (1%).

19. The Department values its relationship with St. Vincent, but would not characterize it as "one of the best foster care and adoption agencies in" Michigan.

20. The Department recognizes that CPAs will vary and that not every agency is a good fit for every prospective foster or adoptive family. And the Department encourages families to look for a foster or adoption agency that is a good fit for them.

Foster Care Navigators are experienced foster parents who help guide families through the licensing process.

21. But this does not mean that the Department allows CPAs to turn away otherwise qualified foster applicants and prospective adoptive families on the basis of sexual orientation or same-sex marital status. Although many factors can go into determining which agency works best for foster applicants and prospective adoptive families, that is a decision for the families, not CPAs. And it certainly does not mean that the Department condones or allows a CPA to discriminate against foster applicants and potential adoptive families on the basis of sexual orientation, same-sex marital status or other characteristics.

22. Although some third parties, including the Human Rights Campaign, may acknowledge CPAs based on how well they work with LGBTQ individuals and families, the Department plays no role in such certification. And any such third-party acknowledgment does not mean that a CPA lacking such acknowledgment may discriminate against members of the LGBTQ community, including same-sex couples. All CPAs remain bound by the non-discrimination clause of their foster care and adoption contracts with the Department.

23. If the Human Rights Campaign believes that CPAs should not place children with families that would not be LGBTQ affirming, including for religious reasons, does not mean that CPAs may discriminate against members of the LGBTQ community, including same-sex couples. All CPAs remain bound by the non-discrimination clause of their foster care and adoption contracts with the Department.

24. After a family is licensed to provide foster care, they are on the CPAs roster of eligible families with whom children in foster care may be placed. Before, during and after the licensing process, the CPA remains bound by the non-discrimination clause of its foster care and adoption contracts with the Department

25. The Department may need to place a child very quickly and a CPA may have only one hour to find an appropriate initial placement. If a particular CPA lacks the capacity for an appropriate placement, the Department must find another CPA that is able to make the placement. A child may be placed with a relative or with another unrelated foster family to reunite with a sibling following an initial placement. CPAs, including St. Vincent, must assist and cooperate with the Department in order to find the most appropriate placement for a child.

26. Accordingly, if St. Vincent were to voluntarily cease providing foster or adoptive services under its contract with the Department, a family like the Bucks would still be able to apply to adopt the sibling of one of the children they've adopted. And they would be able to work with any CPA that has an adoption contract.

27. Families, including the Bucks, may also use the Michigan Adoption Resource Exchange (MARE) website to find information about children who are legally free for adoption without an identified adoptive family.

28. Although MARE encourages potential adoptive families to choose a CPA with which they are comfortable and compatible, the Department does not allow a CPA to discriminate against prospective adoptive families based on race, religion, sexual orientation or same-sex marital status.

Catherine Hoover
Catherine Hoover

Subscribed and sworn to before me
this 23 day of May 2019

Katherine McClain
Notary Public, Eaton County.
My comm'n expires:

Katherine L. McClain
Notary Public - Michigan
Eaton County
My Commission Expires Dec. 31, 2019
Acting in the County of Taylor

ATTACHMENT 1

ADOPTIVE FAMILY ASSESSMENT ADDENDUM
 Michigan Department of Health and Human Services
 "Click here to enter agency name and address"

Prospective Adoptive Parent:	Cell Phone Number:
Prospective Adoptive Parent:	Cell Phone Number:
Address:	Home Phone Number:

Adoption Worker:	Agency:	Report Date:
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DATES OF CONTACT

Dates	With whom (include role/position)	Type and reason
"Click here and type"		
Current Household Members:		
Any Changes In Living Arrangements Or Financial Status:		
Current Health Report (include date of exam, any new physical or mental conditions):		
Current References (within 12 months or if family has adopted a child since last assessment):		
Current Record Clearances:		
Other Significant Factors:		
Type of Child Desired:		
1. What are the applicant's expectations of adoption? 2. What are the extended families' attitudes toward adoption? 3. What are the family's plans to discuss adoption with the adopted child(ren)? 4. How will the applicant(s) assist the child(ren) in maintaining relationships with siblings or other significant persons (if appropriate)? 5. For relative adoptions: How has the prospective adoptive family demonstrated the willingness and ability to keep the child safe from continuing physical or emotional harm from the birth parents? 6. If any of the following apply document the family's ability to care for a large sibling group (see ADM 510 for requirements): <ul style="list-style-type: none"> • The total number of children who will be placed in the home will result in more than four adopted children in the home. • Placement of a child will result in more than three children under the age of 3 in the home. • Placement of a child will result in a total of 6 or more children in the home. 		
7. What are the alternate care plans for the permanent care of the child(ren)? Include more extensive details if the applicant(s) age and/or health status are assessed to be a concern. (See ADM 510 for requirements.)		
8. If applicable, summarize the professional references (DHS-610) received for the adoptive family.		
9. If applicable, summarize any Adult Child References (DHS-611) received for the adoptive family.		

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10. The following special child(ren) are identified for adoption by the adoptive family:

11. The following training or support needs have been identified for the adoptive family:

Recommendation:

Adoption Worker Signature:

Date

Adoption Supervisor Signature:

Date

I have received a copy of the Adoptive Family Assessment Addendum.

Prospective Adoptive Parent Signature

Date

Prospective Adoptive Parent Signature

Date

The Michigan Department of Health and Human Services (MDHHS) does not discriminate against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, genetic information, sex, sexual orientation, gender identity or expression, political beliefs or disability.

EXHIBIT 11

2. I have served the Department in this capacity for three years and four months, and make this affidavit based on my experience and knowledge of foster care policy, contracts and state and federal laws related to foster care.

3. My job duties include overseeing development and implementation of the children's foster care policies, programs; including integration of federal and state laws into policy and providing bill analysis and leadership on child welfare bills. Additionally, my position oversees the Title IV-E State Plan and resulting Program Improvement Plan. My duties also include interpretation and administration of private provider contracts for foster care and residential placement.

4. The Department is the Title IV-E agency in Michigan responsible for administering Foster Care and Adoption Services programs.

5. The foster care program for children provides placement and supervision of children when a court finds they have been abused and/or neglected and cannot remain in their family homes safely. Services must be focused on resolving the problems which necessitated removal. There are approximately 13,500 children in foster care, about 2,000 of whom are available for adoption. That care is provided in foster-family homes, child-care institutions, and relative homes. Mich. Comp. Laws § 712A.13a(1)(e).

6. The department holds 137 contracts with 57 private child placing agencies, or CPAs, to provide foster care or adoption services throughout Michigan, including St. Vincent Catholic Charities located in Ingham County.

7. The Department contracts with CPAs to provide foster and adoption services. In addition, the Department itself is a CPA and may provide foster care services, including licensing foster parents. The Department does not generally provide direct adoption services; most adoption services in Michigan are privatized.

8. The Department does not require St. Vincent or any other CPA to endorse or approve of a specific relationship or type of relationship.

9. The Department contracts with CPAs, including St. Vincent, to provide foster care and adoption services pursuant to the Child Care Organizations Act, Act 116 of 1973, Mich. Comp. Laws § 722.111 et seq., administrative rules, Mich. Admin. Code R. 400.12101 et seq., contracts, and Department policy, as found in the Department's Children's Foster Care Policy Manual (<http://www.mfia.state.mi.us/OLMWeb/ex/FO/Public/FOM/000.pdf#pagemode=bookmarks>) and the Adoption Services Policy Manual (<http://www.mfia.state.mi.us/OLMWeb/ex/AD/Public/ADM/000.pdf#pagemode=bookmarks>).

10. Under the Department's contracts, CPAs recruit prospective foster and adoptive applicants, complete home studies and assess whether the person or family meets the Department's licensing requirements. Those licensing requirements are set forth in Act 116 and administrative rules.

11. The Department does not ask or require CPAs providing foster care or adoption services under a contract to endorse or approve of any relationship, including same-sex marriages. Nor does the Department ask or require CPAs

speak in favor of any relationship, including same-sex marriages. The Department's contracts only require the CPA to determine whether the foster applicant meets the minimum licensing requirements mandated by law. And only the Department can certify a foster home applicant by issuing a license.

12. Under the terms of the contracts, the Department pays CPAs for the services they render. One of the many tasks undertaken by government and non-government CPAs is to license foster families. Other services undertaken by CPAs include: placement and supervision of children who are or have experienced out of home care; reunification and other permanency planning efforts as appropriate; assessment of needs and progress for children and parents; service referral; and documentation of all case management services.

13. The administrative rate paid to CPA's for foster care and adoption services is for all services performed under the respective contracts.

14. The Department's foster care and adoption contracts with CPAs include non-discrimination clauses.

15. The Private Agency Foster Care (PAFC) Contract, at § 2.9(b), states:

"The Contractor shall comply with the MDHHS non-discrimination statement:

The Michigan Department of Health and Human Services (MDHHS) shall not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all MDHHS supervised children, and to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency."

16. Adoption Contract Section, at § 2.9(c), states:

The Contractor shall comply with the MDHHS non-discrimination statement:

The Michigan Department of Health and Human Services (MDHHS) shall not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all MDHHS supervised children, and to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

17. St. Vincent Catholic Charities is a licensed CPA and the Department holds contracts with St. Vincent Catholic Charities to provide foster care and adoption services.

18. Since September 8, 2015, the Department's adoption contract with St. Vincent has included the non-discrimination clause.

19. Since July 8, 2016, the Department's signed and executed foster care contract with St. Vincent has included the non-discrimination clause.

Sarah Goad
Sarah Goad

Subscribed and sworn to by Sarah Goad before me on the 24th day of May, 2019.

Signature Katherine L. McClain

Printed name Katherine L. McClain

Notary public, State of Michigan, County of Eaton

My commission expires 12/31/19

Acting in the County of: Franklin

Katherine L. McClain
Notary Public - Michigan
Eaton County
My Commission Expires Dec. 31, 2019
Acting in the County of Franklin