

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

CATHOLIC CHARITIES WEST  
MICHIGAN,

Plaintiff,

v.

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

Defendants.

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

HON. DENISE PAGE HOOD

MAG. J. DAVID R. GRAND

**THE DUMONTS' RESPONSE**  
**TO PLAINTIFF'S MOTION TO**  
**STRIKE OR,**  
**ALTERNATIVELY, TO ALLOW**  
**A RESPONSE TO**  
**DEFENDANTS' AND**  
**PROPOSED INTERVENORS'**  
**NOTICES**

Plaintiff's Motion to Strike the Dumonts' two-paragraph letter responding to Plaintiff's Notice of Supplemental Authority (ECF No. 32) should be denied. The Dumonts' October 15, 2019 letter (ECF No. 31) was intended to assist the Court in considering the relevance of the order granting a preliminary injunction in *Buck v. Gordon*, No. 1:19-cv-00286-RJJ-PJG (W.D. Mich.) (the "*Buck Order*") filed by Plaintiff (ECF No. 29) and can hardly be considered "supplemental briefing," as suggested by Plaintiff (ECF No. 32, at PageID.1525).

Plaintiff raised the *Buck Order*, but now, without referencing the standard for a motion to strike or citing to any authority as to why the Dumonts' letter should be stricken, Plaintiff wishes to silence the Dumonts. Where there is no local rule governing a notice of supplemental authority, courts in this circuit have found it "instructive" to look to Federal Rule of Appellate Procedure 28(j), which provides that "[i]f pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter . . . setting forth the citations." *Young v. CACH, LLC*, No. 4:12CV0399, 2013 WL 999237, at \*5 (N.D. Ohio Mar. 13, 2013) (citing Fed. R. App. P. 28(j)). The Rule continues that "[t]he letter *must state the reasons for the supplemental citations*" and expressly permits a response. Fed. R. App. P. 28(j) (emphasis added).

Here, the Dumonts' letter, which was only two paragraphs, concisely sets out appropriate considerations for assessing the relevance of the *Buck* Order, which were not apparent from the Order itself. As the Eastern District of Michigan has previously recognized, “[t]he court is capable of reviewing [supplemental] authorities and assigning them the appropriate weight based on the facts of this case.” *Smith v. Stellar Recovery, Inc.*, No. 15-CV-11717, 2017 WL 1336075, at \*8 (E.D. Mich. Feb. 7, 2017) (denying plaintiff’s motion to strike supplemental authorities offered by defendant, where plaintiff argued that the authorities were distinguishable and relied on a “sham affidavit”). Plaintiff’s concern that the Dumonts’ addition would unfairly sway the court is therefore unfounded.

The Dumonts take no position as to Plaintiff’s motion to submit a brief response.

### CONCLUSION

Plaintiff’s Motion to Strike should be denied, but if supplemental briefing is permitted, the Dumonts respectfully request an opportunity to respond more fully to the relevance and applicability of the *Buck* Order.

Dated: November 8, 2019

Respectfully submitted,  
/s/ Garrard R. Beeney

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

This the 8th day of November, 2019.

/s/ Garrard R. Beeney