

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

**STATE DEFENDANTS'  
MOTION FOR LEAVE TO  
FILE REPLY BRIEF IN  
SUPPORT OF STATE  
DEFENDANTS' EMERGENCY  
MOTION FOR STAY, OR IN  
THE ALTERNATIVE, TO  
AMEND THE PRELIMINARY  
INJUNCTION (R.72)**

**\* EXPEDITED CONSIDERATION REQUESTED \***

**STATE DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY BRIEF IN  
SUPPORT OF STATE DEFENDANTS' EMERGENCY MOTION FOR STAY  
OR, IN THE ALTERNATIVE, TO AMEND THE PRELIMINARY  
INJUNCTION (R.72)**

Defendants Michigan Department of Health and Human Services (DHHS)

Director Robert Gordon, DHHS Children's Services Agency Executive Director

JooYeun Chang,<sup>1</sup> and Michigan Attorney General Dana Nessel (collectively, “State Defendants”) respectfully move this Court, pursuant to Local Civil Rule 7.3(c), for leave to file a reply to Plaintiff St. Vincent Catholic Charities’ (SVCC) Response (R.80) to the State Defendants’ Emergency Motion to Stay, Or in the Alternative, to Amend the Preliminary Injunction. (R.72, 73.)

As explained in more detail in the accompanying brief, in addition to failing to refute the bases for granting State Defendants’ Motion, Plaintiff SVCC asserts glaring misstatements regarding its duties under the publicly funded adoption contracts, which are refuted by MDHHS policy and the contracts themselves. The State Defendants respectfully request leave to file a Reply to correct Plaintiff’s misstatements, to be filed no later than Wednesday, October 23, 2019 to provide State Defendants’ counsel time to confer with MDHHS.

Expedited consideration is requested because the Court’s decision on State Defendants’ motion to stay or amend the preliminary injunction (R. 72, 73) should be fully informed by relevant MDHHS policy, in effect since June 1, 2015, on SVCC’s obligations for placing State-supervised children in its care with families approved for adoption through other agencies. *Silver v. Giles*, No. 07-cv-103, 2007 WL 2219355, at \*1 (W.D. Mich. July 27, 2007) (granting motion for leave to file reply brief in support of non-dispositive motion in view of the court’s need for a

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<sup>1</sup> Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, this motion reflects the substitution of Children’s Services Agency Executive Director JooYeun Chang for former Children’s Services Agency Executive Director Herman McCall, who was named in his official capacity.

complete briefing of [a party's] argument.”); see also *Magna Elecs., Inc. v. TRW Auto. Holdings Corp.*, No. 1:12-CV-654, 2015 WL 11395506, at \*1 (W.D. Mich. June 11, 2015 (permitting motion for leave to file reply brief that “contain[s] additional information that is helpful to the Court’s consideration of the merits[.]”).

As set forth in the accompanying Certificate of Compliance, SVCC filed its response brief at or around 4:35pm on October 18, 2019. At 7:30pm that same day, State Defendants sought concurrence in this motion for leave to file a reply brief, requesting a response by 8:30pm.<sup>2</sup> At the time of filing on October 19, 2019, State Defendants’ counsel had received no response from Plaintiffs and Federal Defendants. Proposed Intervenors, the Dumonts, concurred in the relief sought.

Respectfully submitted,

Dana Nessel  
Attorney General

*/s/ Toni L. Harris*

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October 19, 2019

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<sup>2</sup> State Defendants’ counsel made several attempts to electronically file this motion, the brief, and accompanying documents on the evening of October 18, 2019 and throughout the day on October 19, 2019. In each instance, ECF/CM returned an “An Internal Error has occurred the error code is 48” and the filings could not be completed.