

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PAMELA S. McKINLEY, as Parent and
Guardian of G.M., a minor child;
MARGUERITE GARNER; VALERIE
GEORGE; EVAN D. ROBERTS; SAUNDRA
THOMPSON d/b/a Q SHOES; KRISTINE M.
BLACKMAN and PHILLIP BLACKMAN
d/b/a BLACKMAN TAEKWONDO
ACADEMY, LLC; MESA DE PLATA LLC
d/b/a JALISCO CAFÉ; SUSANA VASQUEZ
d/b/a PET FOOD GONE WILD, INC.;
TRISHA D. KEEFE; JILL M. INANNA;
DAVID G. STEPUTIS, and JOHN OR
JANE DOES 1-100,

Plaintiffs,

v.

CV 20-01331 JHR/JFR

GOVERNOR MICHELLE LUJAN GRISHAM,
In Her Official Capacity as well as Individually;
PUBLIC HEALTH DIRECTOR KATHYLEEN
KUNKEL; INTERIM DIRECTOR BILLY
JIMENEZ, TRACE COLLINS, M.D.,
Secretary-Designate of NMDOH, and JANE and
JOHN DOES 1-20,

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING MOTION TO DISMISS
AMENDED COMPLAINT IN INTERVENTION [Doc. 42]

THIS MATTER comes before the Court on Defendants Governor Michelle Lujan Grisham and Secretary-Designate Tracie Collins' Motion to Dismiss Amended Complaint in Intervention [Doc. 42], filed October 21, 2021. U.S. District Judge Martha Vazquez referred this case to me "to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73" upon the joined parties' consent. [Docs. 21, 32]. Having reviewed the Motion and the relevant law, the Court grants the Motion.

Twelve Plaintiffs on behalf of themselves and John or Jane Does 1-100 filed a complaint on December 21, 2020 [Doc. 1], and an amended complaint on December 31, 2020 [Doc. 4]. Defendants Governor Michelle Lujan Grisham and Secretary-Designate Tracie Collins filed a motion to dismiss Plaintiffs' amended complaint [Doc. 4] on January 26, 2021. [Doc. 8].

Proposed Intervenor Arthur Firstenberg filed a Motion to Intervene as of Right [Doc. 11] on February 3, 2021, and the Court found that “[he] has a right to intervene to the extent he seeks the same forms of relief as Plaintiffs.” [See Doc. 31, p. 17]. At the Court’s request, Firstenberg filed an amended complaint in intervention on October 1, 2021. [Doc. 34].

Defendants filed this motion to dismiss Firstenberg’s amended complaint in intervention [Doc. 42] on October 21, 2021. Defendants present one argument: if the Court grants Defendants’ motion to dismiss Plaintiffs’ amended complaint [Doc. 8], “all parties with standing in this matter [would be dismissed], thus depriving the Court of jurisdiction over [Firstenberg’s] complaint in intervention.” [Doc. 42, p. 3]. No one responded and the time to do so has passed. *See* D.N.M.LR-Civ. 7.4(a).

As noted in my Memorandum Opinion and Order filed concurrently, the Court grants partial relief on Defendants’ motion to dismiss [Doc. 8]. [See Doc. 45]. Only Count 6, the unenumerated claim in Count 8, and Count 10 in Plaintiffs’ amended complaint survived. [Doc. 45, p. 23]. Firstenberg’s claims do not overlap with the survived claims. [See Doc. 34, pp. 13-16]. Therefore, no Plaintiff seeking the same forms of relief as Firstenberg remains. For this reason, the Court grants the Motion.

SO ORDERED.

A handwritten signature in blue ink, appearing to read "JHR", is written over a horizontal line.

JERRY H. RITTER
U.S. MAGISTRATE JUDGE
Presiding by Consent