

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JACQUELINE HALBIG, et al.,)
)
 Plaintiffs,)
)
 v.)
)
KATHLEEN SEBELIUS, in her official capacity)
 as U.S. Secretary of Health and Human Services,)
et al.,)
)
 Defendants.)
 _____)

Case No. 1:13-cv-00623-RWR

**DEFENDANTS’ MOTION FOR AN EXTENSION OF TIME TO FILE
THEIR REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS**

The defendants, Kathleen Sebelius, in her official capacity as Secretary of Health and Human Services; Jacob J. Lew, in his official capacity as Secretary of the Treasury; Daniel I. Werfel, in his official capacity as Acting Commissioner of Internal Revenue; the United States Department of Health and Human Services; the United States Department of the Treasury; and the Internal Revenue Service, respectfully move this Court for an extension of fifteen days, to and including September 3, 2013, in which to file their reply brief in support of their motion to dismiss the complaint. In support of this motion, counsel for the defendants state as follows:

1. The defendants filed their motion to dismiss the complaint on July 29, 2013. (ECF 23.) The motion to dismiss notes six threshold defects in the complaint: (1) the plaintiffs lack Article III standing; (2) the plaintiffs lack prudential standing; (3) the case is not ripe; (4) the Administrative Procedure Act does not afford the plaintiffs a cause of action; (5) the employer plaintiffs’ claims are barred by the Anti-Injunction Act; and (6) those claims also fail for the absence of indispensable parties.

2. The plaintiffs filed their opposition to the motion to dismiss on August 9, 2013. Absent an extension, the defendants' reply would be due to be filed on or before August 19, 2013.

3. A brief extension of fifteen days, to and including September 3, 2013, will be necessary to afford the defendants adequate time to prepare a reply brief for filing with the Court. The undersigned counsel for the defendant faces multiple conflicting obligations in the coming weeks. First (among other responsibilities), the undersigned counsel is lead counsel for the defendant, the Department of the Treasury, in a series of cases challenging an amendment to the preferred stock purchase agreements between Treasury and the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.¹ Although these cases are at early stages, the preparation of the Department of Treasury's defense in these cases nonetheless already requires the undersigned counsel to devote significant time and attention to these cases during the time in which he otherwise would be preparing briefing in this action. Second, on August 12, 2013, the court partially denied the government's motion to dismiss in *Oklahoma v. Sebelius*, No. 6:11-cv-00030-RAW (E.D. Okla.). The undersigned counsel is also required to devote significant time and attention to the preparation of the government's further defense of that litigation. Third, the undersigned counsel is responsible for the preparation and filing of the government's motion for summary judgment (on extension) on or before September 4, 2013, in *Judicial Watch, Inc. v. Dep't of Treasury*, No. 1:13-cv-00199-KBJ (D.D.C.). Fourth, the undersigned counsel is responsible for the preparation and filing of the federal defendant's

¹ These cases are *Perry Capital LLC v. Lew*, No. 1:13-cv-1025-RLW (D.D.C.); *Fairholme Funds, Inc. v. FHFA, et al.*, No. 1:13-cv-1053-RLW (D.D.C.); *Liao v. Lew*, No. 1:13-cv-01094-RLW (D.D.C.); *Cane v. FHFA, et al.*, No. 1:13-cv-01184-RLW (D.D.C.); and *Dennis v. FHFA, et al.*, No. 1:13-cv-01208-RLW (D.D.C.).

opposition to a motion for attorney's fees in *Wood v. Betlach*, No. 3:12-cv-08098-DGC (D. Ariz.). That brief is due to be filed on or before August 27, 2013, but the federal defendant intends to seek an extension of time in that case, so as to avoid the need for a further extension of time in this case. In addition, the undersigned counsel is scheduled to be on annual leave from August 19, 2013, until August 26, 2013.

4. To accommodate these conflicting obligations, the defendants respectfully request that they be afforded until September 3, 2013 in which to file their reply brief in support of their motion to dismiss. No other pending deadlines in this action would be affected by the granting of this requested extension.

5. Pursuant to Local Civil Rule 7(m), the undersigned counsel contacted counsel for the plaintiffs, Michael Carvin, Esquire, and Yaakov Roth, Esquire, to ask for their consent to this motion. Mr. Roth replied that the plaintiffs oppose this motion.

WHEREFORE, for the foregoing reasons, the defendants respectfully request that the Court grant them an extension of time in which to file their reply brief in support of their motion to dismiss, to and including September 3, 2013.

Dated: August 14, 2013

Respectfully submitted,

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SHEILA LIEBER
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 /s/ Joel McElvain
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[PROPOSED] ORDER

Upon consideration of the defendants’ motion for an extension of time to file their reply brief in support of their motion to dismiss, and finding good cause therefor, it is hereby ORDERED that the motion is granted, and it is further ORDERED that the defendants shall file their reply brief in support of their motion to dismiss on or before September 3, 2013.

IT IS SO ORDERED.

Dated: _____

RICHARD W. ROBERTS
Chief Judge, United States District Court