

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

_____)	
AUTOCAM CORPORATION, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:12-cv-01096-RJJ
)	
KATHLEEN SEBELIUS, <i>et al.</i>)	
)	
Defendants.)	
_____)	

**JOINT MOTION TO STAY DISTRICT COURT
PROCEEDINGS PENDING APPEAL**

The parties, by and through their undersigned counsel, hereby jointly move this Court to enter an order staying further proceedings in this Court pending resolution of plaintiffs’ appeal to the United States Court of Appeals for the Sixth Circuit of this Court’s denial of plaintiffs’ motion for a preliminary injunction. In support of this motion, the parties state as follows:

1. On December 24, 2012, this Court entered an opinion and order denying plaintiffs’ motion for a preliminary injunction. *See* Opinion and Order, ECF No. 42. The Court determined, among other things, that plaintiffs had not demonstrated a likelihood of success on their Religious Freedom Restoration Act (“RFRA”), Free Exercise Clause, and Free Speech Clause claims.

2. On December 26, 2012, plaintiffs filed a Notice of Appeal in which plaintiffs appealed this Court’s order denying plaintiffs’ motion for a preliminary injunction to the United States Court of Appeals for the Sixth Circuit. *See* Notice of Appeal, ECF No. 43. Plaintiffs also moved the Sixth Circuit for an injunction pending appeal and to expedite the appeal. The Sixth Circuit denied plaintiffs’ motion for an injunction pending appeal, but granted their motion to

expedite the appeal. *See Autocam Corp. v. Sebelius*, No. 12-2673, Order (6th Cir. Dec. 28, 2012), *motion for recons. denied*, No. 12-2673, Order (6th Cir. Dec. 31, 2012).¹

3. Defendants' response to plaintiffs' complaint is currently due on January 7, 2013. *See* Order, ECF No. 32. Absent a stay of district court proceedings, defendants intend to move to dismiss the complaint in its entirety under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted.

4. "Although the filing of an interlocutory appeal does not automatically stay proceedings in the district court, the district court has broad discretion to decide whether a stay is appropriate to promote economy of time and effort for itself, for counsel, and for litigants." *Ass'n of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008).

5. Defendants' intended motion to dismiss will raise legal issues regarding plaintiffs' RFRA and Free Exercise Clause claims that are likely to be addressed by the Sixth Circuit in adjudicating plaintiffs' appeal of this Court's denial of a preliminary injunction. The parties believe it would be inefficient to concurrently litigate these issues in both courts.

6. Two district courts recently stayed district court proceedings under similar circumstances in *Newland v. Sebelius* and *Hobby Lobby Stores, Inc. v. Sebelius*. *See* Order, *Newland v. Sebelius*, No. 1:12-cv-01123 (D. Colo. Oct. 26, 2012), ECF No. 57; Order, *Hobby Lobby Stores, Inc. v. Sebelius*, CIV-12-1000-HE (W.D. Okla. Dec. 12, 2012), ECF No. 55. In *Newland*, the district court granted plaintiffs' motion for a preliminary injunction, and the government appealed. *Newland*, Order at 1. The court stayed all district court proceedings "until the Tenth Circuit issues its ruling or until further order of this Court." *Id.* at 2. In *Hobby Lobby*, the district court denied plaintiffs' motion for a preliminary injunction, and plaintiffs appealed. The court stayed all district court proceedings "pending the resolution of plaintiff's appeal to the Tenth Circuit Court of Appeals or further order of the court." *Hobby Lobby*, Order at 1. The parties respectfully request that this Court do the same.

¹ Under the current briefing schedule set by the Sixth Circuit, the plaintiffs'/appellants' brief is due February 11, 2013; the defendants'/appellees' brief is due March 14, 2013; and the plaintiffs'/appellants' reply brief is due within 17 days of defendants'/appellees' brief.

7. Further, if the Court denies this joint motion to stay proceedings pending appeal, the parties jointly request that the Court extend the deadline for defendants to respond to plaintiffs' complaint to seven days from the date of the Court's denial of this joint motion.

Accordingly, the parties respectfully request that this Court enter an order staying all district court proceedings until the Sixth Circuit issues a ruling resolving plaintiffs' appeal of this Court's denial of preliminary injunctive relief or until further order of this Court.

Respectfully submitted this 3rd day of January, 2013,

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Jacek Pruski
JACEK PRUSKI

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**[PROPOSED] ORDER
STAYING PROCEEDINGS PENDING APPEAL**

This matter having come before the Court upon the parties’ Joint Motion To Stay District Court Proceedings Pending Appeal,

IT IS HEREBY ORDERED that the parties’ motion is granted.

IT IS FURTHER ORDERED that all district court proceedings are stayed until the Sixth Circuit issues a ruling resolving plaintiffs’ appeal of this Court’s denial of preliminary injunctive relief or until further order of this Court.

Date: _____

ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE