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SEE ENDORSED ORDER LAST PAGE

July 24, 2013

BY ECF

The Honorable Brian M. Cogan
United States District Judge
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Roman Catholic Archdiocese of New York et al v. Sebelius, No. 1:12-cv-02542-BMC (E.D.N.Y.)

Dear Judge Cogan:

Further to the Court’s Order of July 12, 2013, plaintiffs and defendants have conferred and jointly submit the following letter to advise the Court of the parties’ agreement as to how they propose to proceed with this action.

First, defendants do not oppose plaintiffs amending their Complaint. Accordingly, pursuant to Fed. R. Civ. P. 15(a)(2) and the parties’ agreement, plaintiffs will file an Amended Complaint on or before August 14, 2013.

Second, the parties have agreed to a briefing schedule pursuant to which a motion by plaintiffs for a preliminary injunction will be fully briefed and submitted to the Court by September 25, 2013, and dispositive motions by both parties will be fully briefed and submitted to the Court by October 30, 2013. The parties propose for the Court’s approval the following schedule for submission of the papers in support of these motions:

August 14	Plaintiffs file a motion for a preliminary injunction and supporting papers (together with their Amended Complaint).
August 30	Defendants produce the administrative record in connection with the Final Rules.
September 11	Defendants file, with one memorandum of law in support, their (i) opposition to plaintiffs’ motion for a preliminary injunction; and (ii) motion to dismiss and/or for summary judgment.

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	(The parties agree that the time for defendants to serve a pleading in response to the Amended Complaint is deferred, pursuant to Fed. R. Civ. P. 12(a)(4)(A), until after the Court renders a decision on defendants' motion to dismiss and then an Answer would be filed only if necessary.)
September 25	Plaintiffs file, with one memorandum of law in support, their (i) reply brief in support of their motion for a preliminary injunction; (ii) opposition to defendants' motion to dismiss and/or for summary judgment; and (iii) cross motion for summary judgment.
October 16	Defendants file, with one memorandum of law in support, their (i) opposition to plaintiffs' cross motion for summary judgment; and (ii) reply in support of their motion to dismiss and/or for summary judgment.
October 30	Plaintiffs file their reply brief in further support of their cross motion for summary judgment.

This proposed schedule accommodates defendants' request that the administrative record be available in connection with their briefing. The schedule further reflects plaintiffs' intent, in light of the impending January 1, 2014 date by which the challenged regulations will apply to their insurance plans, that the Court have sufficient time to consider the preliminary injunction motion and to render a decision on it by early November 2013—to allow plaintiffs necessary lead time to prepare for implementation of their insurance plans prior to January 1, 2014.¹ If the Court does not believe that timing will work, the parties will confer and propose an alternative briefing schedule for the preliminary injunction motion.

Finally, the parties respectfully request that the Court waive the pre-motion conference requirement for all of the above-mentioned motions.

We are available to discuss these and any other issues in this action at the Court's convenience.

¹ Defendants also would welcome a single decision by the Court to dispose of all these proposed motions, if that is consistent with the Court's schedule.

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Respectfully submitted,

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The schedule above is approved, with the understanding that the Court cannot commit to meet the parties' preferred schedule for a decision, although it will attempt to. In addition, the Court assumes that neither party is requesting an evidentiary hearing or discovery on the preliminary injunction motion and both parties consent to the determination of that motion on the papers that will be submitted. Finally, it seems that defendants' pending motion for reconsideration should be denied as moot, without prejudice to challenging standing (or raising any other available defenses) under the amended complaint in their motion to dismiss or for summary judgment. If that is not the case, defendants should advise the Court now.

SO ORDERED: 7/25/13

Digitally signed by Brian M. Cogan

U.S.D.J.