

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

JACQUELINE HALBIG, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	Civ. No. 13-623 (RWR)
	)	
v.	)	
	)	<b>MOTION FOR DEFAULT JUDGMENT</b>
KATHLEEN SEBELIUS, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	
	)	
	)	
	)	

**PLAINTIFFS’ MOTION FOR DEFAULT JUDGMENT**

Plaintiffs respectfully move this Court for entry of an Order granting default judgment in their favor, because Defendants have failed to respond to Plaintiffs’ motion for summary judgment within the time allowed by law.

On June 6, 2013, Plaintiffs filed and served by mail a motion for summary judgment on their claim that regulations promulgated by the IRS, extending premium assistance subsidies to individuals who buy health coverage through Exchanges established by the federal government pursuant to § 1321(c) of the Patient Protection and Affordable Care Act (“ACA”), exceed the agency’s statutory authority and are contrary to law. (*See* Dkt. No. 17.)

Under this Court’s Rules, Defendants were required to respond “[w]ithin 14 days of the date of service or at such other time as the Court may direct.” LCvR 7(b). This Court has not directed any other time for filing. Accordingly, any opposition to Plaintiffs’ motion for summary judgment was due by June 24, 2013. *See id.*; *see also* Fed. R. Civ. P. 6(d) (providing for three additional days to respond when motion served by mail). The opposition is now 7 weeks late.

Under this Court's Rules, if a memorandum in opposition to a motion "is not filed within the prescribed time, the Court may treat the motion as conceded." LCvR 7(b). The Court should do so here. There was no justification for Defendants' failure to file an opposing memorandum. While Defendants filed a motion to hold summary judgment briefing in abeyance (Dkt. No. 18), Plaintiffs opposed that motion (Dkt. No. 19), and the Court never granted it. Parties cannot "engage[e] in self-help by filing a motion to stay [and] then proceeding as if that motion had already been granted." *St. Clair Intellectual Prop. Consultants, Inc. v. Motorola Mobility, LLC*, Civ. No. 11-1305, 2013 BL 84598 (D. Del. Mar. 29, 2013). To the contrary, to do so constitutes "sanctionable conduct." *Id.*

Consequently, this Court should treat the summary judgment motion as conceded, and grant summary judgment to Plaintiffs. In the alternative, this Court should order that Defendants file their opposition to Plaintiffs' summary judgment motion within 3 days.

Dated: August 9, 2013

/s/ Michael A. Carvin  
Michael A. Carvin (D.C. Bar No. 366784)  
Jacob M. Roth (D.C. Bar No. 995090)  
Jonathan Berry (*application for admission pending*)  
JONES DAY  
51 Louisiana Avenue NW  
Washington, DC 20001  
Phone: (202) 879-3939  
Fax: (202) 626-1700

*Attorneys for Plaintiffs*