IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JACQUELINE HALBIG, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:13-cv-00623-RWR
	)	
KATHLEEN SEBELIUS, in her official capacity as U.S. Secretary of Health and Human Services, *et al.*,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' OPPOSITION TO MOTION FOR DEFAULT JUDGMENT

In their motion to dismiss, the defendants have explained that the complaint suffers from a host of threshold defects — the plaintiffs lack Article III and prudential standing; the case is not ripe; the Administrative Procedure Act does not afford the plaintiffs a cause of action; the employer plaintiffs' claims are barred by the Anti-Injunction Act; and those claims also fail for the absence of indispensable parties. (ECF 23.) The defendants have also moved to defer briefing with respect to the plaintiffs' motion for summary judgment, pending the resolution of the motion to dismiss. (ECF 18.) In the motion to defer briefing, the defendants have explained that this action is likely to be dismissed at the threshold stage, and that in the interest of judicial efficiency, this Court should follow its standard practice of deferring summary judgment briefing until such time as the Court has had the opportunity to rule with respect to the threshold defects in the complaint. (*Id.*; *see also* ECF 20, ECF 21.)

Despite the foregoing, the plaintiffs have filed a "motion for default judgment" that asserts that judgment should be entered in favor of the plaintiffs, and that the defendants should be enjoined from implementing a lawfully-promulgated Department of the Treasury regulation,

because the defendants have not filed a brief on summary judgment before this Court has ruled on the pending motion to defer briefing. (ECF 25.) The plaintiffs' motion is baseless.

First, the defendants have reasonably relied on their pending motion to defer briefing. The defendants timely filed their motion to defer briefing on June 13, 2013, well before any response to the plaintiffs' summary judgment motion would have been due. The defendants, accordingly, acted promptly and reasonably to preserve their position that threshold issues in the case should be briefed and decided first, so that the Court may avoid being presented with unnecessary briefing and argument on the merits. *See Tereshchuk v. Bureau of Prisons*, 2007 WL 474179, at *1 (D.D.C. 2007) (noting the defendant's timely filing of a motion for extension, and rejecting the plaintiff's tactic of moving for a default before the court could rule on the extension motion). Indeed, it is a common practice in this district for the court to grant scheduling motions *nunc pro tunc*, where the court has not had the opportunity to rule on the motion in advance of a deadline. *See, e.g.*, *Jefferson v. Collins*, 905 F. Supp. 2d 269, 282 (D.D.C. 2012) (granting extension *nunc pro tunc* so that the court could "in the interests of judicial economy and efficiency, consider the merits of their motion to dismiss and not deem it untimely"). *See also* Fed. R. Civ. P. 6(b)(1)(A) (authorizing grant of extension motions for good cause "if the court acts, *or if a request is made*, before the original time or its extension expires") (emphasis added).

It could hardly be otherwise. The efficient functioning of the judicial system depends on the court's ability to retroactively grant scheduling motions. If (as the plaintiffs here would have it), courts lacked this ability, counsel would frequently be required to file emergency

motions requesting a ruling on a prior scheduling motion, creating an unnecessary complication for the courts in this district in the management of their dockets.

Second, even if the defendants had erred in relying on their motion to defer briefing — and, to be clear, they have not so erred — the plaintiffs' claim for a default judgment would still be entirely baseless. The plaintiffs' motion fails even to discuss the standards for a default judgment, let alone attempt to apply those standards to this case. "Default judgments are generally disfavored by courts 'perhaps because it seems inherently unfair to use the court's power to enter and enforce judgments as a penalty for delays in filing.'" *Strong-Fisher v. LaHood*, 611 F. Supp. 2d 49, 51 (D.D.C. 2009) (quoting *Jackson v. Beech*, 636 F.2d 831, 835 (D.C. Cir. 1980)). Even in a case (unlike this one) where a plaintiff had sought and received the entry of a default under Fed. R. Civ. P. 55(a), the plaintiff would need to show, among other factors, that the "default was willful" in order to obtain a default judgment. *Id.* The defendants obviously have not "willful[ly]" defaulted in this litigation, where they have filed a motion to dismiss the complaint, and have promptly filed a motion to defer summary judgment briefing. Further, for the reasons that the defendants have already explained (ECF 18, ECF 20, ECF 21), the plaintiffs suffer no prejudice from the deferral of summary judgment briefing, and the defendants have certainly offered meritorious defenses to the plaintiffs' claims. *See Strong-Fisher*, 611 F. Supp. 2d at 51.

Moreover, a default judgment may be entered against the federal government "only if the claimant establishes a claim or right to relief by evidence that satisfies the court." Fed. R. Civ. P. 55(d); *see Chung v. Chao*, 518 F. Supp. 2d 270, 273 (D.D.C. 2007). The plaintiffs have not even attempted to demonstrate their entitlement to relief in their motion for default judgment.

Nor could they do so (even if their case could somehow survive past the numerous threshold defects described in the motion to dismiss), given that their theory rests on a simple misinterpretation of the Affordable Care Act. Congress made clear in passing the Act that an Exchange established by the federal government stands in the shoes of the Exchange that a state chooses not to establish, *see* 42 U.S.C. § 18041(c)(1), and the Treasury Department has reasonably interpreted the Act to provide for eligibility for the premium tax credits for individuals in every state, regardless of which entity operates the Exchange.

In sum, the defendants acted entirely reasonably by relying on their pending motion to defer briefing, and even if the defendants had somehow erred, the plaintiffs still have not even remotely established that such an error would warrant a default judgment. Their motion for a default judgment should be denied.

Dated: August 16, 2013

Respectfully submitted,

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