

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

INFRASTRUCTURE ALTERNATIVES, INC.,
et al.,

Plaintiffs,

Case No. 1:13cv31

v.

Hon. Robert J. Jonker

KATHLEEN SEBELIUS, et al.,

Defendants.

ORDER

This matter is before the Court on Defendants' Motion to Dismiss (docket # 13). The matter has been fully briefed. In addition, On September 17, 2013, the United States Court of Appeals issued its Opinion in *Autocam Corporation v. Sebelius*, ____ F.3d ____, Case No. 12-2673 (6th Cir.). The Opinion affirmed this Court's denial of Plaintiffs' Motion for a Preliminary Injunction in that case on grounds that would seem to require immediate dismissal of the claims of the individual Plaintiffs in this case for lack of standing, and to provide a basis for granting the Defendants' pending Motion to Dismiss all of the counts in this case asserted by the corporate plaintiff, other than the APA count (which had been voluntarily dismissed in *Autocam* and therefore not addressed by this Court or the Court of Appeals). The Court invited the parties to show cause (docket # 23) why the Court should not apply the reasoning of the Court of Appeals in *Autocam* by dismissing the claims of the individual Plaintiffs in this case for lack of standing, and by granting the Defendants' Motion to Dismiss all claims asserted by the corporate plaintiff, other than the APA Count. Defendants have not responded. Plaintiffs have responded (docket # 24) by seeking dismissal, without prejudice, of their APA claim, and by asserting no objection to dismissal of the other claims, acknowledging that the reasoning of the Sixth Circuit in *Autocam* makes it unlikely for Plaintiffs to prevail unless *Autocam* is overruled.

Accordingly, **IT IS ORDERED:**

1. Plaintiffs' APA claim (Count IV) is dismissed without prejudice under Rule 41(a).
2. The individual Plaintiffs' other claims (Counts I-III) are dismissed for lack of standing under the reasoning of the Court of Appeals in *Autocam*.

3. Defendants' Motion to Dismiss under Rule 12(b)(6) is **GRANTED** as to the Corporate Plaintiff's claims in Counts I-III based on the reasoning of the Court of Appeals in *Autocam*.

Ordinary principles regarding the finality of federal judgments will govern whether, when and under what circumstances one or more Plaintiffs may re-open any of the claims in this case.

Judgment will enter accordingly.

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

Dated: September 30, 2013