

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

LEGATUS; WEINGARTZ SUPPLY CO.; and  
DANIEL WEINGARTZ, President of  
Weingartz Supply Co.,

Plaintiffs-Appellees/  
Cross-Appellants,

v.

KATHLEEN SEBELIUS, Secretary of Health  
and Human Services, et al.,

Defendants-Appellants/  
Cross-Appellees

Nos. 13-1092 & 13-1093

**RESPONSE TO PLAINTIFFS’  
MOTION TO DISMISS APPEAL NO. 13-1092**

Our abeyance motion explained that our appeal in this case (No. 13-1092) presents the same legal issue as the plaintiffs’ appeal in *Autocam Corp. v. Sebelius*, No. 12-2673 (6th Cir.). That legal issue is subject to de novo review in this Court. To conserve judicial resources and ensure consistent rulings, we moved to hold our appeal in abeyance pending this Court’s decision in *Autocam*, which we expect to control the resolution of our appeal in this case.

Although plaintiffs-appellees here have the benefit of the preliminary injunction entered by the district court, they have opposed our abeyance motion

and also argued that our appeal should be dismissed for failure to prosecute. Our opening brief is not due until March 21, 2013, however, and if the Court does not grant our abeyance motion, we intend to file our opening brief in accordance with the scheduling order entered by the Court.

Respectfully submitted,

MARK B. STERN  
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/s Alisa B. Klein

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March 7, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on March 7, 2013, I filed and served the foregoing response on counsel of record through this Court's CM/ECF system.

/s Alisa B. Klein

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Alisa B. Klein