

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PRIESTS FOR LIFE,

Plaintiff,

v.

KATHLEEN SEBELIUS, in her official
capacity as Secretary, United States
Department of Health and Human Services;

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;

HILDA SOLIS, in her official capacity as
Secretary, United States Department of
Labor;

UNITED STATES DEPARTMENT OF
LABOR;

TIMOTHY GEITHNER, in his official
capacity as Secretary, United States
Department of the Treasury; and

UNITED STATES DEPARTMENT OF
THE TREASURY,

Defendants.

Case No. 1:12-cv-00753-FB-RER

STIPULATION OF THE PARTIES

Hon. Frederic Block

Plaintiff Priests for Life (“Plaintiff”), by and through its undersigned counsel, and Defendants Kathleen Sebelius, in her official capacity as Secretary of Health and Human Services; the United States Department of Health and Human Services; Hilda Solis, in her official capacity as Secretary of Labor; the United States Department of Labor; Timothy Geithner, in his official capacity as Secretary of the Treasury; and the United States Department of the Treasury (“Defendants”), by and through their undersigned counsel, hereby stipulate to and agree as follows:

1. The material facts are set forth in the Declaration of Danielle Jones (Doc. No. 20-1) and in the Supplemental Declaration of Danielle Jones (Doc. No. 38-1) (collectively

referred to as the “Jones Declarations”). Based on these facts, Plaintiff believes that it does not satisfy the second criterion for the temporary enforcement safe harbor, as clarified by Defendants on August 15, 2012. *See* HHS, Guidance on the Temporary Enforcement Safe Harbor (“Guidance”) (Aug. 15, 2012), *available at* <http://cciio.cms.gov/resources/files/prev-services-guidance-08152012.pdf>. Accordingly, Plaintiff believes that it cannot execute the certification attendant to such safe harbor.

2. Based on the facts set forth in the Jones Declarations, Defendants believe that Plaintiff does satisfy the second criterion for the temporary enforcement safe harbor for the reasons explained in the Declaration of Gary M. Cohen (Doc. No. 41-1). Defendants, moreover, will view Plaintiff’s submission of the Jones Declarations in this action as satisfying the fourth criterion for the temporary enforcement safe harbor.

3. Based on the information and agreements set forth in paragraphs 1 and 2, and contingent on Plaintiff providing the notice discussed in paragraph 4 within a reasonable period of time, Defendants believe Plaintiff would qualify for the temporary enforcement safe harbor. Accordingly, as set forth in the safe harbor guidance, Defendants agree they will not take any enforcement action against Plaintiff, its group health plans, or the group health insurance coverage provided in connection with such plans, for not covering in the health plans any contraceptive services required to be covered by Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code, as added by the Patient Protection and Affordable Care Act, during the period of time in which the temporary enforcement safe harbor is in effect as to Plaintiff, its group health plans, and the group health insurance coverage provided in connection with such plans (*i.e.*, from January 1, 2013, to December 31, 2013).

4. Based on Defendants' agreement set forth in paragraph 3 above, Plaintiff will provide the following notice to its plan participants:

NOTICE TO PLAN PARTICIPANTS

The organization that sponsors your group health plan qualifies for a temporary enforcement safe harbor with respect to the Federal requirement to cover contraceptive services without cost sharing. During this one-year period, coverage under your group health plan will not include coverage of contraceptive services.

It is so stipulated.

For Plaintiff:

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq.* (MI Bar No. P62849)

P.O. Box 131098

Ann Arbor, MI 48113

rmuise@americanfreedomlawcenter.org

(734) 635-3756

*Admitted *pro hac vice*

/s/ David Yerushalmi

David Yerushalmi, Esq. (AZ. Bar No. 009616;

DC Bar No. 978179; CA Bar No. 132011;

NY Bar No. 4632568)

640 Eastern Parkway, Suite 4C

Brooklyn, NY 11213

dyerushalmi@americanfreedomlawcenter.org

(646) 262-0500

LAW OFFICES OF CHARLES S. LIMANDRI, APC

/s/ Charles S. Limandri

Charles S. LiMandri, Esq. (NY Bar No. 830162)

Teresa Mendoza, Esq.* (CA Bar No. 185820)

Box 9120

Rancho Santa Fe, CA 92067

climandri@limandri.com

(858) 759-9930

*Admitted *pro hac vice*

Counsel for Plaintiff

For Defendants:

STUART F. DELERY

Acting Assistant Attorney General

IAN HEATH GERSHENGORN

Deputy Assistant Attorney General

LORETTA E. LYNCH

United States Attorney

JENNIFER RICKETTS

Director

SHEILA M. LIEBER

Deputy Director

/s/ Michelle R. Bennett

Michelle R. Bennett (CO Bar No. 37050)

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

20 Massachusetts Avenue N.W. Room

7310

Washington, D.C. 20530

Tel: (202) 305-8902

Fax: (202) 616-8470

michelle.bennett@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2012, I electronically filed the foregoing paper with the Clerk of Court using the ECF system that will send notification of such filing to all counsel of record in this matter.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise
Robert J. Muise, Esq.