UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISON

DATA MARKETING PARTNERSHIP, LP, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**Civil Action No. 4:19-cv-00800-O**
	§	
UNITED STATES DEPARTMENT OF LABOR, *et al.*,	§	
	§	
Defendants.	§	

ORDER

Before the Court are Plaintiffs' Motion for Summary Judgment and Brief in Support (ECF Nos. 56–57); Defendants' Response (ECF No. 64); and Plaintiffs' Reply (ECF No. 65). Also before the Court are Plaintiffs' Motion for Leave to File Supplemental Complaint (ECF No. 66); Plaintiffs' Amended Motion for Leave to file Supplemental Complaint (ECF No. 69); Defendants' Response (ECF No. 72); and Plaintiffs' Reply (ECF No. 74). After examining the relevant authorities and arguments, the Court concludes that the facts in the current record are insufficient. Accordingly, the Court **DENIES** Plaintiffs' Motion for Summary Judgment. And, because the scope of this case is limited to the issues on remand from the Fifth Circuit, the Court **DENIES** Plaintiffs' Motion for Leave to File Supplemental Complaint.

I. BACKGROUND

Data Marketing Partnership ("DMP") is a Texas limited partnership that specializes in the production and sale of its limited partners' ("Limited Partners") electronic data to third-party purchasers. LP Management Services, LLC ("LPMS") is the general partner of DMP. This case arose out of the Department of Labor's (the "Department") adverse advisory opinion

(the "Department's Opinion") issued in response to a request (the "Request") by LPMS.[1] LPMS requested confirmation from the Department that their proposed plan (the "Plan") is governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1) ("ERISA") as a single-employer welfare benefit plan and that DMP's Limited Partners are "participants" as defined by ERISA. Specifically, the Request stated that:

> [Limited Partners] install specific software which, among other things, tracks the capture of such data by other companies, such as Google or Facebook, and provides access of such data to [DMP]. [DMP] then decides how such data is used and sold to third-party marketing firms, generating revenue. [Limited Partners] control and manage the capture, segregation, aggregation, and sale of their own data, empowering [Limited Partners] in a manner not otherwise available to them when they utilize services over the Internet through their computers, phones, televisions, and other devices.[2]

The Request also provided that although "[t]he primary business purpose of [DMP] is the aggregation and profitable sale of electronic user data from its partners . . . [i]n addition to other inducements, including guaranteed payments, [DMP] wishes to offer access to its group health plan as an inducement to attract, retain, and motivate partners."[3] LPMS is the general partner, plan administrator, and named fiduciary for the Plan maintained for DMP's common-law employees and Limited Partners.[4]

In response to the Request, the Department's Opinion concluded that the Plan is not governed by any title of ERISA, the Limited Partners are not "participants," and that one common-law employee is not a sufficient basis for the Plan to cover any number of Limited Partners.[5]

DMP and LPMS (collectively, "Plaintiffs") filed suit to challenge the Department's Opinion. This Court concluded the Limited Partners are "working owners" and "bona-fide

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[1] *See* Pls.' Am. Compl., ECF No. 9.
[2] Pls.' Compl. Ex. A (Request) 4, ECF No. 1-3.
[3] *Id.*
[4] *Id.*
[5] *See* Pls.' Am. Compl. Ex. B (Department's Opinion.) 1–2, 6, ECF No. 9.

partners" and as such, the Limited Partners may participate in the Plan if at least one common-law employee is covered by the Plan. However, on appeal, the Fifth Circuit "remand[ed] as to both terms, so that the district court may address certain interpretive questions in the first instance." *Data Mktg. P'ship, LP v. U.S. Dep't of Lab.*, 45 F.4th 846, 858 (5th Cir. 2022).

II. LEGAL STANDARDS

A. Summary Judgment

The Court may grant summary judgment where the pleadings and evidence show "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment is not "a disfavored procedural shortcut," but rather an "integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

"[T]he substantive law will identify which facts are material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute as to any material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The movant must inform the court of the basis of its motion and demonstrate from the record that no genuine dispute as to any material fact exists. *See Celotex*, 477 U.S. at 323. "The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his or her claim." *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998).

When reviewing the evidence on a motion for summary judgment, courts must resolve all reasonable doubts and draw all reasonable inferences in the light most favorable to the non-movant. *See Walker v. Sears, Roebuck & Co.*, 853 F.2d 355, 358 (5th Cir. 1988). If there appears

to be some support for disputed allegations, such that "reasonable minds could differ as to the import of the evidence," the court must deny the motion. *Anderson*, 477 U.S. at 250.

B. Scope of Remand

When a case is remanded from a circuit court, "the district court must take into account the appellate court's opinion and the circumstances it embraces." *United States v. Lee*, 358 F.3d 315, 321 (5th Cir. 2004) (internal quotation marks and citations omitted). Further, on remand the district court "must implement both the letter and the spirit of the appellate court's mandate and may not disregard the explicit directives of that court." *United States v. Matthews*, 312 F.3d 652, 657 (5th Cir. 2002) (internal quotation marks and citation omitted). "The mandate rule requires a district court on remand to effect [the circuit court's] mandate and to do nothing else." *Gen. Univ. Sys., Inc. v. HAL, Inc.*, 500 F.3d 444, 453 (5th Cir. 2007) (citation omitted).

III. ANALYSIS

The Court's analysis is limited to the two interpretative questions on remand from the Fifth Circuit. Originally, "[t]he [C]ourt interpreted two relevant terms: (1) 'working owner' and (2) 'bona fide partners.' *Data Mktg.*, 45 F.4th at 858. On appeal, the Fifth Circuit "remand[ed] as to both terms, so that the [D]istrict [C]ourt may address certain interpretive questions in the first instance." *Id.* Plaintiffs now move for summary judgment as to these interpretations and requests restoration of the permanent injunction. The Court concludes that the posture of this case does not provide the Court with sufficient facts to address the interpretative questions. Thus, the Court **DENIES** Plaintiffs' Motion for Summary Judgment at this time and orders the parties to meet and confer and inform the Court how this case should proceed.

A. The Court has insufficient facts to decide the interpretive questions.

In Defendants' Response to Plaintiffs' Motion, Defendants argue that "[t]here has been no opportunity in litigation to test whether Plaintiffs' factual assertions are correct as to Data Marketing Partnership and the other unidentified partnerships serviced by LPMS."[6] Defendants point out the unusual procedural posture of this case, that is "both the Department's now-vacated advisory opinion and this litigation have been based on Plaintiffs' representations, not any discovery or adjudication of the facts regarding DMP and LPMS's actual structure."[7]

When the reviewing court "simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985). Nonetheless, the Court previously denied remand to the agency because this action is a "rare circumstance."[8] *Id.* Remand to the agency was beyond the Court's mandate for several reasons, most critically because the Fifth Circuit "frame[d] the relevant interpretive questions for the [D]istrict [C]ourt's consideration on remand." *Data Mktg.*, 45 F.4th at 855.

Nonetheless, the Court cannot properly "address certain interpretive questions" without facts relevant to this matter. *Id.* at 858. Initially, the Court did not open discovery because the parties jointly represented that "[t]he case rests on issues of law, with no need for discovery to be conducted by either party."[9] However, the Court cannot properly determine if "*these particular* working owners qualify" without the facts necessary to consider both the "*Yates* factors" and the "totality-of-the-circumstances." *Id.* at 858–59 (emphasis added). Plaintiffs' argument that the facts

[6] Defs.' Resp. to Pls.' Mot. Summ. J. 2, ECF No. 64.
[7] *Id.* at 16–17.
[8] *See* Order & Op. Den. Defs.' Mot. to Remand, Aug. 11, 2024, ECF No. 51.
[9] Joint Status Report 1, ECF No. 18.

are "specifically undisputed" is a mischaracterization.[10] Defendants cannot dispute the limited facts present because "the administrative record in this case contains nothing more" than Plaintiffs representations in its advisory opinion request.[11] In sum, the factual record is insufficiently developed to consider whether summary judgment is appropriate. On the limited facts presented to the Court, the Court cannot adequately decide the questions remanded by the Fifth Circuit. Accordingly, Plaintiffs' Motion for Summary Judgment is **DENIED** at this time.

B. Plaintiffs' motion for supplemental complaint exceeds this Court's scope on remand.

Additionally, Plaintiffs' Motion for Leave to File Supplemental Complaint is **DENIED** because it is beyond this Court's power on remand. The parties "confirm[ed] that (1) the sole remaining issue is whether the Court should enter a permanent injunction as additional relief beyond the vacatur of the [Department's] Advisory Opinion, and (2) the issues remanded by the Fifth Circuit must be addressed for that purpose."[12] Thus in "implement[ing] both the letter and the spirit of the appellate court's mandate" the Court cannot grant Plaintiffs' Motion because it is beyond the Court's mandate. *Matthews*, 312 F.3d at 657 (citation omitted).

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Plaintiffs' Motion for Summary Judgment (ECF No. 56) and **DENIES** Plaintiffs' Motion for Leave to File Supplemental

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[10] Pls.' Br. Supp. Mot. Summ. J. 17, 22, ECF No. 57.

[11] Defs.' Resp. to Pls.' Mot. Summ. J. 17, ECF No. 64 ("Therefore, the Department cannot admit or deny Plaintiffs' factual allegations about their own businesses. Nor may Plaintiffs evade the procedural posture of this case by inviting the Court to rely on a declaration prepared for and submitted with their preliminary injunction briefing more than four years ago.").

[12] Order, Sept. 20, 2023, ECF No. 55; *see also* Joint Status Report 2, ECF No. 54 ("[T]he sole remaining issue in this case is whether the Court should enter a permanent injunction as additional relief beyond the vacatur of the [Department's] Advisory Opinion, and that the issues remanded by the . . . Fifth Circuit must be addressed for that purpose.").

Complaint (ECF No. 69). The parties are **ORDERED** to meet and confer and determine the best way to develop facts for the Court to conduct the relevant analysis on remand. The parties **SHALL** file a joint status report by **no later than May 5, 2025.**

SO ORDERED on this **8th day** of **April, 2025.**

Reed O'Connor
UNITED STATES DISTRICT JUDGE