IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

LORI CHAVEZ-DEREMER,
SECRETARY OF LABOR,
U.S. DEPARTMENT OF LABOR,

Plaintiff-Counterclaim Defendant,

v.

SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER,

Defendants-Counterclaim Plaintiffs.

Civil Action No. 3:24-CV-01512 (CVR)

SECRETARY'S OPPOSITION TO DATA MARKETING PARTNERSHIP, LP AND LP MANAGEMENT SERVICES, LLC'S MOTION TO STAY PENDING APPEAL

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Plaintiff Lori Chavez-DeRemer, Secretary of Labor ("Secretary") respectfully submits this response in opposition to the Motion to Stay Pending Appeal (ECF No. 67) filed by Data Marketing Partnership, LP ("DMP") and LP Management Services, LLC ("LPMS") (collectively, "Movants"). No stay is warranted while Movants' appeal is pending.

The Secretary's Complaint asserts that Defendants in this action—Suffolk Administrative Services, LLC ("SAS"), Providence Insurance Company, I.I. ("PIC"), and their officers and indirect owners Alexander Renfro, William Bryan, and Arjan Zieger (collectively, "Defendants")—violated the Employee Retirement Income Security Act ("ERISA") and are liable for damages and other relief for breaching their fiduciary duties, engaging in self-dealing, and charging excessive fees as service providers to ERISA-covered plans. Asserting wholly distinct claims, Movants' proposed complaint seeks to bring claims of retaliation against the Secretary in connection with Movants' separate lawsuit against the Secretary relating to whether health benefit plans sponsored by Movants ("Partnership Plans") are covered under ERISA, *Data Marketing Partnership, LP v. U.S. Department of Labor*, No. 4:19-CV-0800-O (N.D. Tex.) ("*Data Marketing* case"). *See, e.g.*, Proposed Compl. Intervention ¶¶ 27, 30, 121–23, ECF No. 54-1.

As a threshold matter, Movants lack standing to request a stay because they are not parties to this action. But even assuming that Movants could demonstrate standing, they fail to meet the factors required to grant a stay of proceedings. Their likelihood of success on the merits of their interlocutory appeal is low because Movants are unlikely to demonstrate that the Court has abused its discretion in denying their motion to intervene. As this Court has recognized, this lawsuit and the *Data Marketing* case involve different claims and, except for the Secretary, different parties. Order Denying Mot. Intervene, ECF No. 63; *see also* Order Denying Transfer at

4–5, ECF No. 55. With respect to intervention as of right, Movants fail to establish that their asserted financial interest in Defendants' continued operation is a direct and protectable interest warranting intervention. *See* Sec'y's Opp'n Mot. Intervene at 8–10, ECF No. 62. As to permissive intervention, Movants' proposed claims "involv[e] different questions of law, different parties, different facts, and different evidentiary considerations[.]" *See Santiago-Sepúlveda v. Esso Standard Oil Co. (P.R.), Inc.*, 256 F.R.D. 39, 49 (D.P.R. 2009). Movants are thus unlikely to demonstrate that the Court abused its "very broad discretion" in denying their motion for permissive intervention. *T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 40–41 (1st Cir. 2020).

Because Movants' proposed claims bear no direct relationship to the Secretary's claims against Defendants, Movants' proposed claims would suffer no prejudice if litigation continued while their appeal is pending. For the participants and beneficiaries of the ERISA-covered plans in this case, on the other hand, a stay would delay relief from the excessive fees charged by Defendants. This action should progress so that the Secretary may fulfill her statutory duties of enforcing ERISA's standards of fiduciary conduct and protecting the interests of participants in employee benefit plans and their beneficiaries. *See* 29 U.S.C. §§ 1001 & 1134. For these reasons, the Court should deny the Motion to Stay Pending Appeal.

BACKGROUND

The background to this matter is fully set forth in the Secretary's previous filings. *See, e.g.*, Sec'y's Consol. Opp'n to Defs.' Mot. Transfer Venue & Mot. Stay at 1–4, ECF No. 49; Sec'y's Mem. Supp. Mot. Dismiss Defs.' First Am. Countercl. at 2–7, ECF No. 60-1; Sec'y's Resp. Opp'n to Data Mktg. P'ship, LP & LP Mgmt. Servs., LLC's Mot. Intervene at 2–5, ECF No. 62. Certain points relevant to the motion at hand are repeated here.

While Movants portray the Secretary's suit against Defendants as "a collateral attack on their business relationship with Movants," Mem. Supp. Mot. Stay at 2, ECF No. 68, the Secretary's suit actually concerns the distinct relationships between Defendants and the more than 1,900 employer-sponsored health benefit plans governed by ERISA ("Employer Plans") that Defendants service. Compl. ¶¶ 1–7, ECF No. 1. The Secretary's Complaint alleges that Defendants have violated ERISA and engaged in self-dealing by unilaterally causing these Employer Plans to pay excessive fees to Defendants. The Employer Plans are distinct from the Partnership Plans sponsored by Movants. Specifically, the Employer Plans are employer-sponsored health benefit plans, where the sponsoring employer is not a limited partnership of the type described in the *Data Marketing* case and LPMS's associated advisory opinion request. While Defendants do provide services to the Partnership Plans sponsored by Movants, *see* Mem. Supp. Mot. Stay at 2, the Secretary's suit does not allege that Defendants are engaged in ERISA violations with respect to the Partnership Plans, *see* Compl. ¶ 2 n.1.

The Secretary's suit follows an investigation into Defendants' conduct.[1] Contrary to Movants' assertions that "[t]his investigation revealed no unlawful behavior," Mem. Supp. Mot. Stay at 3, the investigation provided the basis for the allegations in the Secretary's Complaint. Through this action, the Secretary intends to prove that Defendants exercise "control over ERISA-plan assets" and "use the [Employer Plans] as vehicles to collect and divert to themselves massive fees through self-dealing in violation of ERISA." Compl. ¶¶ 1–2.

Prior to filing this action, the Secretary attempted to settle her disputes with Defendants both independently and as part of settlement discussions involving Movants, as Defendants also

[1] As alleged by the Secretary in other litigation initiated by Defendants, the investigation was initiated after numerous participant complaints and state referrals. *See Suffolk Admin. Servs. v. Walsh*, No. 3:21-cv-01031-DRD (D.P.R.), Answer ¶ 52.

service the Partnership Plans sponsored by Movants. *See* Mem. Supp. Mot. Stay at 2. Negotiations with Movants fell through, and subsequently, negotiations with Defendants also fell through. *See* Proposed Compl. Intervention Ex. Q, ECF No. 54-18; Ex. U, ECF No. 54-21. Though Movants assert that the Secretary "conditioned settlement" with Defendants "only if Movants dismissed the [*Data Marketing* case] and withdrew [Movants' advisory opinion request]," Mem. Supp. Mot. Stay at 4, this statement is contradicted by Defendants' filings. Defendants filed email correspondence showing that while the Secretary was willing to accept a lower monetary amount from Defendants if the *Data Marketing* case was also settled, the Secretary also engaged in settlement discussions with Defendants alone that did not depend on dismissal of the *Data Marketing* case. Proposed Compl. Intervention Ex. U, ECF No. 54-21.

Movants and Defendants have each previously attempted to connect this action to the *Data Marketing* case. On April 8, 2025, the U.S. District Court for the Northern District of Texas denied Movants' motion to file a supplemental complaint containing claims and allegations similar to the proposed complaint in intervention here.[2] *See generally Data Marketing* Order, ECF No. 75; Proposed Compl. Intervention. On June 10, 2025, this Court denied Defendants' motion to transfer this action to the U.S. District Court for the Northern District of Texas, noting that "the Data Marketing case involves wholly different claims, parties, and defenses than the ones raised in the case at bar." Order Denying Transfer at 5. Two months later, this Court denied

[2] Movants' proposed complaint in intervention is also substantially similar in content and wording to Defendants' First Amended Counterclaim in this case. Both bring claims of retaliation against the Secretary under the First Amendment and the Administrative Procedure Act. *See generally* Am. Countercl., ECF No. 52; Proposed Compl. Intervention. The Secretary has moved to dismiss Defendants' First Amended Counterclaim on numerous grounds, including that Defendants' First Amendment claims fail to identify any protected activity or adverse action by the Department of Labor and that Defendants' Administrative Procedure Act claim fails to identify a final agency action subject to judicial review. *See generally* Mot. Dismiss, ECF No. 60; Mem. Supp. Mot. Dismiss, ECF No. 60-1. That motion is pending.

Movants' Motion to Intervene, reasoning, "[t]he claims they want to bring before this Court are directly related to the Texas case and not to the ones before this Court, where the Secretary alleges violations to fiduciary duties of ERISA plans by different plaintiffs." Order Denying Mot. Intervene.

On September 12, 2025, Movants appealed the Order denying their Motion to Intervene to the U.S. Court of Appeals for the First Circuit. Notice of Appeal, ECF No. 66. Three days later, Movants filed a motion in this case to stay the litigation between the Secretary and Defendants. Mot. Stay Pending Appeal, ECF No. 67.

ARGUMENT

"'A stay is an intrusion into the ordinary process of administration and judicial review,' and is therefore, 'not a matter of right,' but an exercise of discretion." *Torres v. Furiel Auto Corp.*, No. 21-cv-01593(GMM), 2023 WL 3058487, at *1 (D.P.R. Apr. 24, 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)). "[T]he party seeking a stay . . . bears the burden of proving that the circumstances justify one." *New Jersey v. Trump*, 131 F.4th 27, 34 (1st Cir. 2025).

To meet its burden of proof, the party seeking to stay a proceeding for the pendency of an appeal must:

> (1) [M]ake a "strong showing that [it] is likely to succeed on the merits" in its appeal; (2) show that it "will be irreparably injured absent a stay"; (3) show that "issuance of the stay will [not] substantially injure the other parties interested in the proceeding"; and (4) show that the stay would be in "the public interest."

Id. at 34–35 (quoting *Nken*, 556 U.S. at 427); *see also Montalvo-Febus v. De Jésus*, No. 16-2302 (GAG), 2018 WL 5879777, at *2 (D.P.R. Nov. 8, 2018).

At the outset, Movants are not parties in this case and do not have standing to request a stay. But even assuming they have standing, Movants have not demonstrated that they meet even one of the factors that justify the imposition of a stay.

I. Movants Lack Standing to Request a Stay.

Because this Court denied their motion to intervene, Movants are not parties to this action. As non-parties, Movants lack standing to request a stay of these proceedings; district courts may deny non-parties' motion to stay on this basis. *See Chance v. Bd. of Examiners*, No. 70-cv-414-HRT, 1974 WL 238, at *1 (S.D.N.Y. Aug. 28, 1974) ("Generally, one whose application for permissive intervention is denied may not obtain a stay of an action pending his appeal from the denial of intervention."); *Cribb v. BR Mountain Homes, LLC*, No. 2:17-cv-00061-RWS, 2017 WL 10574071, at *2 (N.D. Ga. Aug. 3, 2017) ("Legal authority suggests that non-party litigants do not have standing to file a motion to stay."); *Snap Advances v. Caring Hands & Supplementary Enrichment Educ.*, No. 2:18-cv-00347, 2020 WL 1031797, at *1 (D. Utah Jan. 28, 2020) (expressing doubt that a non-party whose motion to intervene was denied could move the court to stay proceedings pending appeal of the denial). Movants fail to make any showing that they, as non-parties, are entitled to move to stay these proceedings—this motion should be summarily denied on that basis.

II. Movants Are Unlikely to Succeed on Appeal.

Even assuming Movants could demonstrate standing, they fail to meet even one of the *Nken* factors that justify the imposition of a stay. First, the party seeking a stay bears the burden of making a "strong showing" that their substantive legal argument "is likely to succeed." *New Jersey*, 131 F.4th at 37. Movants' motion to stay does not make any compelling arguments showing that they were entitled to intervene as of right or permissively, and this Court's decision is very likely to be upheld on appeal.

A. The District Court Correctly Ruled on Movants' Motion to Intervene as of Right.

Federal Rule of Civil Procedure 24(a)(2) permits a party to intervene as of right in certain circumstances; in the First Circuit, a party seeking to intervene as of right "must establish (i) the

timeliness of its motion to intervene; (ii) the existence of an interest relating to the property or transaction that forms the basis of the pending action; (iii) a realistic threat that the disposition of the action will impede its ability to protect that interest; and (iv) the lack of adequate representation of its position by any existing party." *R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009). "Each of these requirements must be fulfilled; failure to satisfy any one of them defeats intervention as of right." *Ungar v. Arafat*, 634 F.3d 46, 51 (1st Cir. 2011) (citation omitted).

This Court correctly concluded that Movants did not meet their burden of proving that they are entitled to intervention as of right. Most notably, Movants failed to assert a direct or protectable interest in the outcome of this action: they did not show that their claim "bear[s] a sufficiently close relationship to the dispute between the original litigants." *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 638 (1st Cir. 1989) (quotation omitted). Movants argue that this prong was satisfied because they have a "significant and direct financial interest" in preserving "the Partnership Plans and their data marketing business," which they allege are "being threatened by the DOL's pursuit of [the Partnership Plans'] essential vendors[.]" Mem. Supp. Mot. Stay at 7. But Movants' interest in ensuring Defendants' continued operation has absolutely no bearing on the core question in the Secretary's suit: whether Defendants violated ERISA by charging excessive fees to ERISA plan clients. *See* Compl. ¶ 4; *Ungar*, 634 F.3d at 51–52 ("An interest that is too contingent or speculative—let alone an interest that is wholly nonexistent—cannot furnish a basis for intervention as of right."). Moreover, Movants themselves acknowledge that they "*bring different claims and have some factual differences*" from the parties in this suit. Mem. Supp. Mot. Stay at 7. In short, this Court correctly found that Movants' claims are

"directly related to the Texas case and not to the ones before this Court" and is dispositive of Defendants' attempt to intervene as of right. Order Denying Mot. Intervene.

Movants also failed to satisfy the first, third and fourth prongs of the standard for intervention as of right. As to timeliness, Movants admitted that they saw no need to intervene in this suit until the district court denied their motion to file supplemental claims in the *Data Marketing* case. *See* Mem. Supp. Mot. Intervene at 4, ECF No. 54. This demonstrates that there is nothing fundamental or time-sensitive to *this* action that warrants their participation as of right. *See R & G Mortg. Corp.*, 584 F.3d at 7 (assessing timeliness by when a putative intervenor "knew . . . his interests were at risk"). As to prejudice, Movants argue that they will be unable to protect their interests if they are not permitted to intervene, but the interests they cite—for example, explaining "how the Partnership Plans work" or proving that the Secretary violated the Administrative Procedures Act or Movants' First Amendment rights—are simply not relevant to the ERISA violations alleged in this case. With respect to the final prong, which requires that a putative intervenor demonstrate a lack of adequate representation of its position by any existing party, Movants have not explained why Defendants would not be able to adequately represent their position. Defendants themselves have the greatest interest in their ability to continue operating and have even asserted nearly identical First Amendment claims, which are the subject of the Secretary's motion to dismiss. *Compare* First Am. Countercl., ECF No. 52 ¶¶ 156–65 *with* Proposed Compl. Intervention ¶¶ 103–14.

On appeal, the First Circuit will "review the denial of a motion to intervene as of right for abuse of discretion," recognizing that "[d]etermining whether the necessary showings have been made requires a series of judgment calls—a balancing of factors that arise in highly idiosyncratic factual settings." *In re Efron*, 746 F.3d 30, 35 (1st Cir. 2014); *Ungar*, 634 F.3d at 51. Because

Movants failed to satisfy *any* of the four factors to intervene as of right, it is extremely likely that the First Circuit will affirm this Court's decision.[3] Therefore, Movants have not met their burden to show that they are likely to succeed on the merits of their interlocutory appeal with respect to their motion for intervention as of right.

B. The District Court Correctly Ruled on Movants' Motion for Permissive Intervention.

Movants also argue that, in the alternative, their appeal is likely to succeed because they demonstrated a right to permissive intervention. *See* Mem. Supp. Mot. Stay at 9. But again, they have failed to demonstrate that this Court's decision otherwise will be overturned on appeal.

Rule 24(b) gives the district court discretion to allow the intervention of any party with "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "[T]he court may 'consider almost any factor rationally relevant' to the intervention determination'" and "'enjoys very broad discretion in granting or denying [such a] motion.'" *T-Mobile*, 969 F.3d at 40–41 (quoting *Daggett v. Comm'n on Gov. Ethics & Election Practices*, 172 F.3d 104, 113 (1st Cir. 1999)) (alterations in *T-Mobile*). Importantly, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3); *see also ManaSota-88, Inc. v. Tidwell*, 896 F.2d 1318, 1323 (11th Cir. 1990) (finding that district court did not abuse its discretion when it denied

[3] Movants make much of the fact that the Court wasted no time in denying their motion to intervene and relied on the record in this case to imply that the Court's decision was an abuse of discretion. Mem. Supp. Mot. Stay at 9. But the Court's speed and brevity do not undermine the strength and logic of its decision, as the First Circuit has been apt to point out in other cases. *See T-Mobile*, 969 F.3d at 38 (finding that "brevity in denying a motion for intervention" does not constitute an "abuse of discretion"); *see also Ungar*, 634 F.3d at 51 (finding that the district court correctly "denied the motion to intervene in a bench decision" and that the court's "findings and reasoning" could "easily be inferred from the record").

permissive intervention, particularly where the intervenor sought "to inject numerous issues into the case" that "would severely protract the litigation.").

As with intervention as of right, the First Circuit reviews the denial of a motion for permissive intervention for an abuse of discretion. *Int'l Paper Co. v. Inhabitants of Town of Jay, Me.*, 887 F.2d 338, 343 (1st Cir. 1989). Here, the Court did not abuse its discretion in denying Movants' motion for permissive intervention. This Court found that "[t]he claims" Movants "want to bring" are not related "to the [claims] before this Court." Order Denying Mot. Intervene. This is a perfectly acceptable reason to deny Movants' Motion.

Movants allege that their claims are related simply because "the DOL itself brought Movants into its negotiations with Defendants[.]" Mem. Supp. Mot. Stay. at 7. But this is a *non sequitur*: disparate topics do not become legally related simply because the Department engaged with multiple parties, involved in multiple matters, in the context of settlement negotiations. And in fact, the claims Movants seek to allege would inject entirely new facts and issues into the instant case, causing significant delays. This Court properly denied the motion.

In sum, Movants have failed to make a strong showing that they are likely to succeed on the merits of their appeal both as to their permissive intervention and intervention as of right, and this first factor weighs heavily against the issuance of a stay. Further, Movants' failure to make a strong showing with respect to the likelihood of success on the merits "adversely impacts" their arguments about the remaining factors that are considered in connection with a motion to stay pending appeal. *See New Jersey*, 131 F.4th at 40.

II. Movants Fail to Show Irreparable Injury.

The second factor that Movants must satisfy to justify the extraordinary remedy of a stay pending appeal is that they will suffer irreparable harm without a stay. This factor is closely tied

to the moving party's chance of success—"[i]n essence, the issuance of a stay depends on whether the harm caused [to movant] without the [stay], in light of the [movant's] likelihood of eventual success on the merits, outweighs the harm the [stay] will cause [the non-moving party]." *Acevedo-García v. Vera-Monroig*, 296 F.3d 13, 16–17 (1st Cir. 2002) (citation and internal quotation marks omitted). The purported irreparable harm must also be "neither remote or speculative, but actual or imminent." *Las Martas, Inc.*, No. CV 23-1074 (RAM), 2025 WL 2450988, at *3 (D.P.R. Aug. 26, 2025) (quoting *In re Betteroads Asphalt, LLC*, 610 B.R. 28, 48 (Bankr. D.P.R. 2019)). Furthermore, Movants must show that the purported irreparable harm is based in "fact and reality," *Common Cause Rhode Island v. Gorbea*, 970 F.3d 11, 15 (1st Cir. 2020), and on something "more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store," *Charlesbank Equity Fund II v. Blinds to Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004).

Movants do not come close to meeting their burden of showing the "irreparable harm" necessary to justify a stay. Their initial argument is that the First Circuit "will likely rule much later than this Court," which would "potentially result in their story remaining untold for a long time" while the Secretary's claims "will likely be litigated and considered much more quickly." Mem. Supp. Mot. Stay at 10. First, this argument is based on speculation, which by itself weighs against granting the stay. *See Las Martas, Inc.*, 2025 WL 2450988, at *3. But second, Movants waiting on the result of the appeal while these proceedings continue is not "irreparable harm."[4] Movants' claims of retaliation are entirely distinct from the claims of fiduciary breach and self-

[4] And in any event, Movants could easily remedy this harm by petitioning the First Circuit to expedite consideration of their appeal. *See*, *e.g.*, *Candelario-Del Moral v. UBS Fin. Servs. Inc. of P.R.*, 290 F.R.D. 336, 346 (D.P.R. 2013) (finding that party seeking stay could not show a "threat (imminent or otherwise) of irreparable injury" where they could simply petition First Circuit for an expedited appeal).

dealing that the Secretary asserts against Defendants. In the event the First Circuit permits Movants to intervene, Movants can initiate the unique discovery that would be necessary for their claims, regardless of how far other claims in this matter have progressed. *See, e.g.*, *Yeomans v. World Fin. Grp. Ins. Agency, Inc.*, No. 19-cv-00792-EMC, 2021 WL 1772808, at *4–5 (N.D. Cal. Mar. 19, 2021) (denying a stay and finding no irreparable harm because the parties would need to conduct the same discovery regardless of the success of the appeal); *In re Betteroads Asphalt*, 610 B.R. at 48 ("The possibility that adequate […] relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.") (quotation omitted).

Movants next argue that if the Secretary's ERISA claims against Defendants are successful, Defendants will be forced out of business and, in turn, Movants' business will be damaged. Mem. Supp. Mot. Stay at 10–11. But Movants' purported chain-of-events injury is a quintessential example of conjecture, speculation, and "unsubstantiated fears of what the future may have in store" that cannot support a stay. *See Charlesbank*, 370 F.3d at 162.

Moreover, even if Movants' appeal is successful and they are permitted to assert their claims in this action, Movants' First Amendment claims are not a defense to Defendants' purported violations of ERISA. In other words, Movants' intervention will not change whether Defendants have violated ERISA. Accordingly, Movants' purported "irreparable harm" that would be caused by Defendants shutting down if the Secretary's requested relief is granted has the same chance of occurring whether or not Movants are permitted to intervene. *See Acevedo-García*, 296 F.3d at 16–17. A stay does nothing to mitigate Movants' asserted irreparable injury, which combined with Movants' low chance of success on appeal, counsels strongly in favor of denying the stay. *See Candelario-Del Moral*, 290 F.R.D. at 345 ("What matters . . . is not the raw

amount of irreparable harm [a] party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits[.]" (quoting *In re Elias*, 182 F. App'x 3, 4 (1st Cir. 2006)).

In short, Movants cannot show irreparable harm absent a stay. In the event of a reversal on appeal, they can adequately litigate their claims at any time, and they do not assert harm beyond a speculative parade of horribles. The Court should deny their motion on this basis.

III. The Public Interest Weighs in Favor of Denying the Stay.

To justify a stay, the final factors that Movants must satisfy are that (1) the Secretary will not be substantially injured by a stay pending Movants' appeal, and (2) that a stay of proceedings benefits the public interest. *Common Cause R.I.*, 970 F.3d at 14. "These factors merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. These factors also favor denial of the stay, as participants of affected Employer Plans will be injured if the stay is granted, and swift protection of participants' benefits is in the public interest.

"[A]ny time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977)); *see also Somerville Public Schools v. McMahon*, 139 F.4th 63, 74 (1st Cir. 2025). The Secretary has alleged that Defendants are engaging in ongoing violations of ERISA, causing thousands of participants in Employer Plans to overpay for their benefits. If a stay is granted, the excessive fees that Defendants are charging to the Employer Plans will continue to amass during the pendency of the appeal. Thus, the balance of harms weighs in favor of denying the stay—Movants will not be injured by waiting to initiate discovery on their claims until after the result of the appeal, whereas harm to participants will continue while the appeal is pending.

In addition, the public interest favors allowing the Secretary to continue to litigate claims that participants are being harmed through violations of ERISA. Participants have an interest in prompt receipt of the Secretary's requested relief, which includes changes to the administration of the Employer Plans and return of overpayments for their healthcare premiums. *See* Compl., Prayer for Relief; *see also Stone v. Signode Indus. Grp., LLC*, No. 17 C 5360, 2019 WL 2308038, at *1–2 (N.D. Ill. May 29, 2019) (denying stay of a decision reinstating healthcare benefits to former union members, concluding that the balance of harms weighed in favor of allowing plaintiffs access to their benefits); *cf. Colorado v. U.S. Dep't of Health & Human Servs.*, 2025 WL 1426226, at *23 (D.R.I. May 16, 2025) (public interest weighed strongly in favor of effective operation of public health systems); *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (public interest favored reinstatement of disability benefits to litigants). Moreover, the public at large has an interest in timely enforcement of laws meant to protect it. *See, e.g.*, *U.S. Pub. Interest Research Grp. v. Atl. Salmon of Me., LLC*, 262 F. Supp. 2d 1, 3 (D. Me. 2003) (denying a stay pending appeal, finding that public interest supported enforcement of Clean Water Act); *Fargo Women's Health Org. v. Schafer*, 819 F. Supp. 865, 867 (D.N.D. 1993) (denying stay pending appeal, finding that public interest lies in enforcement of statutes enacted by legislature).

None of Movants' arguments demonstrate that staying these proceedings would serve the public. Movants argue that there is a public interest in ensuring the Secretary does not commit constitutional violations, *see* Mem. Supp. Mot. Stay at 12–13, but that argument must be balanced against Movants' low chances of success on appeal and the continuation of the harms alleged by the Secretary to thousands of participants if the case is stayed.

Finally, Movants' argument regarding the appointment of a Receiver is nonsensical. *See* Mem. Supp. Mot. Stay at 13. The Secretary cannot unilaterally seize control of the affected plans, particularly absent a court order that Defendants have violated the law. That is why appointment of an Independent Fiduciary is part of the relief that the Secretary seeks. *See* Compl., Prayer for Relief ¶ 90.

Movants fail to meet their burden to show that a stay would serve the public interest and would not injure affected participants of the Employer Plans; accordingly, their motion should be denied**.**

CONCLUSION

For the reasons above, the Secretary respectfully requests that the Court deny the Motion to Stay Pending Appeal (ECF No. 67).

Dated: September 29, 2025

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that I filed the Secretary's Opposition to Data Marketing Partnership, LP and LP Management Services, LLC's Motion to Stay Pending Appeal on the docket via CM/ECF. Notice of this filing will be sent to all counsel of record through the Court's Electronic Case Filing System.

/s/ Blair L. Byrum
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