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

LORI CHAVEZ-DEREMER, ACTING SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO, I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER, Defendants-Counterclaim Plaintiffs.	Civil No.: 3:24-cv-01512 (CVR)

DMP AND LPMS' MEMORANDUM IN SUPPORT OF MOTION TO STAY

TO THE HONORABLE COURT:

Movants Data Marketing Partnership, LP ("DMP") and LP Management Services, LLC ("LPMS") respectfully file this Memorandum in Support of their Motion to Stay.

I. INTRODUCTION

On Aug. 14, 2025, this Court entered a docket Order denying Movants' *Motion to Intervene* [Doc. 53] without (1) allowing Movants time to seek leave to file a reply to rebut misleading statements in the DOL's *Response* [Doc. 62][1], (2) analyzing Movants' argument that their First Amendment rights of petition are threatened by this suit that the DOL filed against their vendors only after Movants refused to (a) withdraw a Request for Advisory Opinion to the DOL, and (b) dismiss Movants' suit against the DOL in the U.S. District Court for the Northern District of Texas, styled as *Data Marketing Partnership, LP, et. al v. U.S. Dept. of Labor, et. al*., Civil Action

[1] The Court's Order was entered six days after the filing of the DOL's *Response* [Doc. 62], and one day before the deadline for Movants to seek the Court's permission to reply, which Movants fully intended to do.

No.4:19-cv-00900-O ("Texas Suit"), or (3) considering federal jurisprudence holding that "[o]therwise lawful government action may nonetheless be unlawful if motivated by retaliation for having engaged in activity protected by the First Amendment." *O'Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016).

This Court's Order left DMP and LPMS with three options to protect their First Amendment rights: (1) a motion for reconsideration; (2) a new suit against the DOL thereby adding yet a third suit to two suits – this suit and the Texas Suit - which are already inextricably intertwined; or (3) a notice of appeal to the First Circuit Court of Appeals. A fourth option, filing a supplemental complaint in the Texas Suit, was foreclosed by an April 8, 2025 Order [Doc. 75] denying leave to file such a pleading. A fifth option – doing nothing – would reward the DOL for unconstitutional behavior. DMP and LMPS opted for the third option and timely filed a notice of appeal to the First Circuit. For the below reasons, a stay is warranted pending a final decision on appeal.

II. BACKGROUND

The DOL has brought this suit against Defendants as a collateral attack on their business relationship with Movants. Defendants provide consulting and administrative services essential to single-employer welfare plans ("Partnership Plans") sponsored by Movants. To correct the DOL's misleading statements, Movants are not "seek[ing] to redirect the focus of the Secretary's lawsuit to themselves" nor is their claim in Texas the same as the claims they bring through intervention in this case. [Doc. 61], pg. 5. The DOL again misled this Court by stating that the alleged ERISA violation allegations it makes against Defendants have nothing to do with whether the Partnership Plans are ERISA Plans—it simply disregards the fact that Movants bring First Amendment claims in this Court, not ERISA interpretation claims. These Partnership Plans, much as the DOL

disingenuously attempts to disconnect them from this suit, are part and parcel of the Defendants' business operations the DOL accuses are violative of ERISA.

The history of this collateral attack began in 2019 with the Movants' request for an Advisory Opinion ("AO Request") from the DOL confirming the Partnership Plans were protected under ERISA. The DOL responded to this request with an Advisory Opinion that was later vacated by the Fifth Circuit as arbitrary and capricious, and remanded to the district court to resolve the issue of eligibility of limited partners to participate in the plans as bona fide partners and working owners in the Texas Suit.

The current suit arises from Movants' 2019 AO Request that prompted the DOL to investigate Movants' vendors, the Defendants ("the Anjo Investigation."). This investigation revealed no unlawful behavior, but as admitted by the DOL, when Movants attempted to settle the Texas Suit, the DOL proposed tying this settlement to a settlement of the Anjo Investigation. [Doc. 60], pg. 24.[2] The DOL admitted that it suggested this "due to the connection among the parties," yet it simultaneously argues that this connection is not sufficient to justify intervention into this suit. *Id.* This should raise the question of what exactly is "the connections among the parties". As the DOL correctly assessed in requesting to join both the Texas Suit and Anjo Investigation settlement discussions, both the parties and the issues are significantly intertwined such that settling both could potentially be achieved together. Clearly, settling the Anjo Investigation would

[2] The DOL also made a blatantly misleading suggestion in its Motion to Dismiss, namely that it was ultimately Movants' idea to join the two cases for settlement discussions when it stated "DMP and LPMS suggested settling the *Data Marketing* case, not the Secretary. Only after DMP and LPMS suggested settlement did the Secretary propose a resolution of both the SAS/PIC Investigation and the *Data Marketing* case." [Doc. 60-1], pg. 24. To be clear – Movants sought settlement of the Texas Suit without any reference to the Anjo Investigation. As admitted here by the DOL, it was their request to join the two cases for purposes of settlement, thus admitting that the DOL understood the two cases were significantly related.

allow Defendants to continue their business operations with their clients (Movants here) providing affordable health care plans to thousands of individuals nationwide. But the DOL's proposal to settle them both together was unexpected by Movants, and its terms ultimately outlandish, as the DOL conditioned settlement of the Anjo Investigation only if Movants dismissed the Texas Suit and withdrew the AO Request.

This attempt at "global settlement" was concerning for two reasons: (1) Movants were not part of the Anjo Investigation, and (2) it made clear the DOL's priorities were to do away with the losses it faced in the Fifth Circuit. The DOL knew from the Texas Suit that the Partnership Plans could not operate without Defendants' services, as all other potential vendors had been scared off by the DOL's aggressive tactics in pursuing the Anjo Investigation. Clearly, the DOL understood that there was more than a slight connection between Movants, the Texas Suit, Defendants, and the Anjo Investigation.

In the DOL's calculus, those connections were so strong that they believed they could leverage the extraordinary financial pressure on Defendants from the Anjo Investigation to erase their litigation losses in the Texas Suit. These overly aggressive tactics and more interventionalist approach arose in July, 2022 at the conclusion of the Anjo Investigation and were consistent throughout the ensuing settlement discussions carrying into late 2024. But Movants had been successfully pursuing their claim against the DOL for years and could not accept such a one-sided demand. When Movants declined, the DOL proceeded with this suit alleging ERISA violations, seeking monetary remedies of $40 million and to enjoin Defendants from "ever acting as a fiduciary, service provider or trustee" to any employee benefits plans, which the DOL knows necessarily includes the Partnership Plans.

There is no doubt this suit is inextricably intertwined with the AO Request, the Advisory Opinion, and the Texas Suit. Now, the real-world impact of these events is that the Defendants are being prosecuted, in practice, for the improper purposes of (1) punishing them for providing services to the Partnership Plans; (2) pressuring them to sever their vendor relationships with Movants; (3) "enjoining Defendants…from ever acting as a fiduciary, service provider or trustee" to the Partnership Plans; (4) punishing Movants for making and later refusing to withdraw their AO Request; (5) punishing Movants for filing and later refusing to dismiss the Texas Suit, and (6) attempting to render the Texas Suit moot by eliminating the invaluable services provided to the Partnership Plans by Defendants. But the DOL misleads this Court by disregarding Movants' First Amendment claims entirely, and operating as if Movants bring the same ERISA interpretation claims here as it brought in the Texas suit. This is both inaccurate and a gross misrepresentation of Movants' petition for intervention.

The effect of the DOL's actions is three-fold. First, the DOL threatens group health insurance for roughly 30,000 individuals under the Partnership Plans. Second, the DOL violates the First Amendment rights of Movants right to petition, and theirs and Defendants' right to association by threatening "invoking legal sanctions and other means of coercion" against a vendor (Defendants) "to achieve the suppression" or punishment of disfavored speech by a customer (Movants). *See NRA v. Vullo*, 602 U.S. 175, 176 (2024); *Bantam Books v. Sullivan*, 372 U.S. 58, 67 (1963); *see also NRA v. Los Angeles*, 441 F.Supp.3d 915, 934-38 (C.D. Cal, 2019). The DOL also acts contrary to their responsibility under ERISA to "promote and facilitate employee benefit plans." *See Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1, 17 (2004). Third, the DOL has already acted contrary to these purposes, as noted in the Texas Suit, and is continuing to do so in this suit. Now, the DOL doubles down on its rejected position by seeking to

drive out the Partnership Plans completely. As it continues its litigation in the Texas suit, it attempts to shut down the Partnership Plans' vendors in this suit, all part of its ultimate plan to dismantle a lawful ERISA plan.

Ultimately, the facts show the DOL's suit here attacks both Defendants and Movants. The DOL disingenuously tried to disconnect Movants from this suit which this Court found persuasive in denying intervention (while the DOL simultaneously *acknowledged* the connection in its filings within a buried footnote). The effects are now two-fold: (1) this Court continues to be misled by a government entity violating the Constitution, and (2) Movants once again are denied the opportunity to tell the story of the DOL's egregious and illegal conduct.

GROUNDS FOR MOTION FOR STAY

Courts can stay a suit pending appeal once a party (1) makes a strong showing that it is likely to succeed on the merits on appeal, (2) irreparable injury will occur absent a stay, (3) issuing a stay will not substantially injure the other interested parties in the proceeding, and (4) a stay would be for the public interest (with the first two factors being the most critical). Fed. R. Civ. P. R. 8; *Nken v. Holder*, 556 U.S. 418, 434 (2009); *Courtemanche v. Motorola Sols., Inc.*, No. 4:24-CV-40030-MRG, 2025 WL 1372318, at *2 (D. Mass. May 12, 2025).

i. Movants Have a Strong Likelihood of Prevailing on the Merits on Appeal

Movants will likely prevail on the merits of their Motion to Intervene on appeal. A Motion to Intervene denial is reviewed under an abuse of discretion standard, deferring to the trial court unless it "fails to consider a significant factor in the decisional calculus, if it relies on an improper factor in working that calculus, or if it considers all the appropriate factors but makes a serious error in judgment as to their relative weight. Within this framework, an error of law is always tantamount to an abuse of discretion." *Torres–Rivera v. O'Neill–Cancel,* 524 F.3d 331, 336 (1st Cir.2008) (internal citation omitted).

Here, as Movants moved to intervene as of right and permissively, this Court was required to consider various factors as part of its analysis. For intervention as of right, the Movants needed to show and the Court needed to consider that "(i) the motion is timely; (ii) the movant has an interest relating to the property or transaction that is the subject of the action; (iii) the action's resolution may impair or impede the movant's ability to protect its interest; and (iv) no existing party adequately represents the movant's interest." *Aspen Am. Ins. Co. v. Luquis-Guadalupe*, No. CV 24-01277 (MAJ), 2024 4456954 (D.P.R. Oct. 10, 2024); *see also T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 39 (1st Cir. 2020). Alternatively, courts have discretion to grant permissive interventions based on any rationally relevant factor if the intervening party has a claim or defense that shares a common question of law or fact with the main action and intervention will not "unduly delay or prejudice the adjudication of the original parties' rights." *See* Fed. R. Civ. P. 24(b); *Melone v. Coit*, 100 F.4th 21, 28-29 (1st Cir. 2024).

Movants demonstrated all four factors of intervention as of right. In sum, (i) Movants moved before any substantive litigation took place (and immediately after their attempt to bring the same claims in the Texas Suit were denied); (ii) Movants had a significant and direct financial interest in the preservation of the Partnership Plans and their data marketing business being threatened by the DOL's pursuit of its essential vendors for providing them services; (iii) Movants may be unable to protect these significant interests should this suit settle or end largely in the DOL's favor; and (iv) Movants bring different claims and have some factual differences the current parties may be limited or unwilling to attempt to prove in defending the suit. Additionally, Movants at the very least demonstrated they may permissively intervene, as they have a claim with common questions of law or fact—the DOL itself brought Movants into its negotiations with Defendants by demanding it drop the Texas Suit and its Advisory Opinion.

But the Court did not consider or rule on any of these facts. Instead, it focused on the ongoing Texas Suit, and how the Movants' claims "are directly related to the Texas case and not to the ones before this Court" and that "the cases involve different parties, wholly different claims, and harms. Thus, they are not the type of actions that would merit a finding in favor of intervention." Of note, the language of this analysis is exactly the same as this Court's analysis of the Motion to Transfer earlier filed in this suit, where this Court stated "As candidly argued by the Secretary, the cases involve different parties, different claims, and harms, and are not the types of 'identical actions' that militate a finding in favor of a transfer for purposes of judicial economy." *See Order*, [Doc. 55], pg. 4. Unlike in its Order Denying Intervention, the Court considered each of the parties' factors in detail before denying the Motion to Transfer.

Here, the Court failed to consider the factors of intervention as of right or permissive intervention or applied completely different standards. This Court considered that Movants "already have a case that has been ongoing for 5 years" in Texas, while failing to acknowledge its previous statement in its Order Denying Motion to Transfer where it stated "the District of Texas has already rejected Defendants' attempt to amend the pleadings before that court." This Court knew Movants could not pursue their claims in the Texas Suit but operated on the assumption the ongoing litigation in Texas meant Movants could pursue their claims there. Movants were denied this opportunity in the Texas Suit because, as the court noted there, the scope on the remand issued in 2022 is very narrow and these claims arose in 2024, after the 2022 remand. In other words, these claims could not have been brought in the Texas Suit before appeal (in 2022) because they did not yet exist (prior to 2024) and could not be brought upon remand because of the narrow scope of what is now before the Texas court.

The Court seems to consider the factors of permissive intervention in noting the claims brought by Movants and the current suit but does not provide any reasoning for how these facts bar intervention, whether of right or permissive. Instead, the facts point towards commonalities between Movants and the parties. Indeed, the fact that Movants have a case in Texas challenging the DOL's Advisory Opinion as to the same plans to which PIC and SAS provide vital services only justifies intervention—at the very least, a common question of law or fact is involved between all parties, which is the DOL's scrutiny of Movants and its vendors as it relates to ERISA. The Court further failed to acknowledge the connection the *DOL itself created* between the parties and Movants through settlement negotiations. At bottom, the DOL has put forth a groundless, muddled, and incomplete story regarding parties and facts that require clarification, and this Court has failed to acknowledge Movants' potential integral role in that clarification.

Relying on the DOL's inaccurate factual assertions, this Court issued its ruling before the deadline for Movants' to even petition for permission to file a reply. Had Movants been afforded the opportunity to file a reply, all the above disingenuous and incomplete assertions of the DOL would have been highlighted, providing this Court the opportunity to consider accurate facts relevant to intervention.

Ultimately, this Court was required to consider and reach a decision based on facts relevant to intervention, not facts considered in deciding whether to transfer venue. This Court's focus on other factors is an abuse of discretion, and Movants are likely to prevail on appeal.

ii. Irreparable Injury Will Occur Absent a Stay

Should this Court not stay this suit until a decision is made on appeal, there is a significant risk Movants will suffer irreparable injury. Irreparable injury does not require a demonstration of "the raw amount of irreparable harm [a] party might conceivably suffer," but instead "the risk of such harm in light of the party's chance of success on the merits." *Puerto Rico Hosp. Supply, Inc.*

v. Boston Scientific Corp., 426 F.3d 503, 507 n. 1 (1st Cir. 2005); *see also In re Puerto Rico Traction Tires Manuf.*, No. 09-09849 BKT, 2010 WL 3087553 (Bankr. D.P.R. Aug. 5, 2010).

This risk of harm is significant if a stay does not occur because the First Circuit will likely rule much later than this Court. Prior to this Motion to Stay, Movants timely filed a Notice of Appeal to the First Circuit. As with all appellate courts, the First Circuit has a crowded docket even if just reviewing the appeals docketed from 2020 to 2025. A single appeal can take over a year to reach resolution. In contrast, this Court is known for speedier resolutions, as evidenced by the fact that this Motion to Intervene was ruled upon on Aug. 14, 2025, a mere three days after the DOL filed its Response. Noting this, Movants' Notice of Appeal without a stay may potentially result in their story remaining untold for a long time while the DOL's baseless allegations—with which the DOL itself inextricably intertwined Movants—will likely be litigated and considered much more quickly. As this matter may very likely move faster in this Court, coupled with the potential for the DOL prevailing, the risks of irreparable injury to Movants as a result is too great to not stay the current proceedings.

Further, this irreparable injury is not imagined or speculative. Since the Texas Suit, Movants have had to restrict the growth of DMP's data marketing business and use of the health plans as a recruiting tool pending its resolution, and it is currently in the discovery phase with summary judgment motion deadlines occurring well into 2026. At this time, the Texas suit's remaining questions on remand are narrow. The only question in the Texas suit is whether the working owner theory applies to the Movants' plans, which this Court acknowledged that the court in the Texas suit "did not have the power to hear the additional claims [Movants] wanted to present." *See Order*, [Doc. 55], pg. 7. Now, Movants have irreparably lost the opportunity in the

Texas Suit to tell the story of the DOL's aggressive and groundless pursuit against vendors of Movants, which ultimately culminated in the current suit.

But even if Movants prevail in the Texas Suit, their victory means very little if the DOL prevails against the Defendants here. To be clear, the Partnership Plans are an entirely unique and new creation that is the result of considerable time and effort by multiple individuals to ensure its compliance with ERISA. This includes PIC and SAS, which are at this time the *only* vendors willing and able to provide their vital ERISA compliance and management services to support this unique structure. Without them, Movants' business and health plan structure that came to a screeching halt five years ago in the Texas Suit may very likely be their end. If the Movants are unable to defend their interests in clarifying the DOL's muddied story, the risks of irreparable harm they face are significant. They face the threat of their business being damaged in the public's eyes because of the DOL's baseless accusations regarding a plan structure for which Defendants-Counterclaim Plaintiffs legally and validly provide essential services. They face the threat of their essential vendors facing total financial obliteration and a complete shutdown of their operations since the DOL seeks to "enjoin Defendants…from ever acting as a fiduciary, *service provider*, or trustee," which the DOL knew would inevitably affect Movants. On the other hand, no ERISA violations of any kind have been alleged against the Partnership Plans in this matter; rather DOL has gone to great lengths in both the Anjo Investigation and this matter to state that none of the alleged violations stem from services provided by Defendants to Partnership Plans.

Ultimately, without a stay pending appeal, Movants remain in a financial and logistical quandary. With these threats looming over Movants, the only alternatives now are to either (1) await the verdict in this suit and risk the possibility of DOL prevailing without Movants, enjoining Movants' vendors from being a service provider, and putting an end to the DMP Plan, or (2) file a

new suit alleging the same common questions of law and fact (the DOL violating Movants and Defendants' First Amendment rights through this lawsuit), expending additional significant resources and time of Movants, the DOL, and the courts overall.

iii. A Stay is in the Public Interest, and the DOL Will Not Be Prejudiced by the Stay

Granting a stay pending Movants' appeal will not prejudice the DOL, and there is a public interest in preventing conduct that violates the First Amendment. "Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435, 129 S. Ct. 1749, 1762, 173 L. Ed. 2d 550 (2009). Also, "there is … no public interest in the perpetuation of unlawful agency action." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016); *see also Cal. v. U.S. Dep't of Educ.*, 132 F.4th 92, 100 (1st Cir. 2025) (citing the same). "To the contrary, there is a substantial public interest 'in having governmental agencies abide by the federal laws that govern their existence and operations.'" *See id.* (citing *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)).

Movants bring First Amendment claims against the DOL, a government agency, and there is a public interest in ensuring that the DOL does not commit such constitutional violations. As argued in its Complaint in Intervention, courts have held that First Amendment protections can extend to business partners based on their association with a person or organization exercising First Amendment rights. If a government action would chill a business partner of ordinary firmness from associating with a person who has exercised a right protected by the First Amendment, the business partner is also protected. *See NRA v. L.A.*, 441 F.Supp.3d 915, 934-38 (C.D. Cal, 2019).

Furthermore, the harm the DOL may suffer in being unable to pursue its claims against Defendants is not outweighed by the public interest in preventing its unlawful actions. The DOL only sued Defendants because it began an investigation of these entities shortly after Movants

made a request for an advisory opinion. Further, this lawsuit is the result of the DOL's extortive demand to join Movants with Defendants as part of "global settlement" negotiations. This took several months of back and forth negotiations before culminating in the current suit.

Clearly, the DOL was in no particular rush in this matter, as it began the Anjo Investigation in April 2019 and did not complete it until July 2022, over three years later. Then, after completing it, the DOL negotiated potential resolutions with Defendants for another two years, including taking the time to include Movants as part of those negotiations in 2024. The DOL then adopted highly aggressive negotiating positions, expressly leveraging the potential financial ruin of Defendants against Movants litigation success in the Texas Suit, once the DOL orchestrated combining settlement discussions of the Texas Suit and the Anjo Investigation in 2024.

But as the DOL was easily able to inextricably entwine Movants with Defendants as part of these negotiations, it should also be able to await a final determination on appeal as to whether their suggested entwinement will be able to continue. Further, the DOL has taken none of the steps it would ordinarily take when an investigation has revealed activity that is a current threat to ERISA plan participants – typically, the appointment of a Receiver to take over fiduciary duties from the Sponsor. There is no current, ongoing harm, or even allegation of harm in this matter or the Texas Suit, to plans or their participants. As the DOL's actions are actively violating the First Amendment rights of both Movants and Defendants, the significant public interest in preventing this unlawful action, and the lack of any prejudice to the DOL in continuing its groundless pursuit of Defendants, a stay is warranted.

WHEREFORE, DMP and LPMS respectfully request the Court to take notice of the above and grant the requested relief.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 15th day of September 2025.

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