

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

KEITH E. SONDERLING,
ACTING SECRETARY OF LABOR,
U.S. DEPARTMENT OF LABOR,

Plaintiff,

v.

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

Defendants.

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

**SECRETARY’S MOTION TO STRIKE DEFENDANTS’ AFFIRMATIVE DEFENSES
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(f)**

Plaintiff Keith E. Sonderling, Acting Secretary of Labor (“Secretary”)¹ respectfully submits this Motion to Strike Defendants’ Affirmative Defenses Pursuant to Federal Rule of Civil Procedure 12(f). Defendants’ improper attempt to raise legally insufficient “affirmative defenses” (including repackaging counterclaims that were already dismissed by this Court) in their Amended Answers serves only to confuse the issues and protract this litigation. This is the quintessential scenario for relief contemplated by Rule 12(f), which allows immaterial issues to be struck from a pleading. Accordingly, the Secretary requests that this Court grant his motion and strike Defendants’ First Amendment, APA, and ERISA defenses from the Amended Answers of Suffolk Administrative Services, LLC (“SAS”), Providence Insurance Company, I.I. (“PIC”),

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Acting Secretary of Labor Keith E. Sonderling is automatically substituted as Plaintiff in this action.

Alexander Renfro, William Bryan, and Arjan Zieger (ECF Nos. 102–04) (collectively, “Defendants”).

BACKGROUND

The Secretary filed a complaint on November 5, 2024, alleging five counts of ERISA violations against the Defendants (“Complaint”). Defendants responded on February 18, 2025, by answering the Complaint, ECF Nos. 20, 21, 24, and by asserting several counterclaims against the Secretary in a counterclaim complaint (“Counterclaim”), ECF No. 25. Defendants’ Counterclaim alleged that the Secretary’s investigation of Defendants and refusal to recognize ERISA coverage for the Partnership Plans at issue in the *Data Marketing* litigation violated ERISA and the Administrative Procedure Act (“APA”). *Id.* Defendants sought a declaratory judgment that their network of health benefit plans did not constitute a multiple employer welfare arrangement (“MEWA”) and an injunction to stop the Department from “acting contrary to the purpose of ERISA in its concerted efforts to discredit or dismantle the Partnership Plans.” *Id.* ¶¶ 169, 188. The Secretary moved to dismiss the Counterclaim for failure to state a claim. *See* ECF No. 48. Before the Court ruled on the motion to dismiss, Defendants amended their pleading in an amended counterclaim complaint (“Amended Counterclaim”). ECF No. 52. The Amended Counterclaim withdrew the request for declaratory relief as to the MEWA and injunctive relief as to ERISA and instead asserted new counterclaims, namely, that the Secretary’s investigation of Defendants violated their First Amendment rights and the APA. *See id.* The Secretary again moved to dismiss for failure to state a claim. *See* ECF No. 60.

On January 14, 2026, the Court issued an order granting the Secretary’s motion to dismiss the Amended Counterclaim. *See* ECF No. 83. With respect to Defendants’ First Amendment claim, the Court found that (i) Defendants failed to allege any protected activity under the First

Amendment because associating for business reasons was not protected activity; and (ii) Defendants failed to allege any adverse action taken by the Secretary because a government investigation was not adverse action for purposes of the First Amendment. *Id.* Accordingly, the Court dismissed the First Amendment claim as legally insufficient. The Court further found that Defendants' claim for violation of the APA failed, because the Secretary's investigation, the Secretary's enforcement action, and the *Data Marketing* decision did not constitute final agency action subject to APA review. *Id.* The Court dismissed the Amended Counterclaim in its entirety, without prejudice, and entered partial judgment for the Secretary. *Id.*; ECF No. 84.

Shortly afterwards, the parties held a Rule 26(f) conference and the Court entered case management deadlines based on the parties' proposed schedule. *See* ECF Nos. 85–87. The deadline to join parties and amend pleadings was April 10, 2026. ECF No. 87. On that date, Defendants filed motions requesting leave to file amended answers (“Amended Answers”). *See* ECF Nos. 95–97. The content of Defendants' Amended Answers has not substantively changed from the originals; Defendants' Amended Answers included their previous affirmative defenses, asserting that the Secretary's investigation violated the APA and ERISA, as well as a new “affirmative defense” that the Secretary's investigation violated Defendants' First Amendment rights.² *Compare* ECF Nos. 20, 21, 24 with ECF Nos. 102, 103, 104. Each of these affirmative

² In their motions for leave to file the Amended Answers, Defendants represented that the Secretary did not oppose the motions. ECF Nos. 95–97. To clarify, the Secretary did not oppose the filing of Amended Answers, given their timeliness pursuant to the Court's Case Management Order, ECF No. 87, but made it clear to Defendants that he understood that filing new answers would reset the Secretary's ability to file a motion to strike pursuant to Rule 12(f). *See, e.g., Cooper v. Omni Ins. Co.*, No. 4:14-cv-00706-BHH, 2014 WL 12768163, at *2 (D.S.C. Aug. 29, 2014) (“Plaintiff's Motion to Strike is timely because she filed it within 21 days after being served with the [Amended Answer].”); *Green v. Kubota Tractor Corp.*, No. 09-CV-7290, 2012 WL 1416465, at *2 (N.D. Ill. Apr. 24, 2012) (finding a Motion to Strike an amended answer timely, because “[t]he Amended Answer, not the original Answer, is the pleading which the

defenses incorporates arguments “set forth in Defendants’ First Amended Counterclaim.” ECF No. 102; *see also* ECF Nos. 103–04. The Court granted Defendants leave to file the Amended Answers. *See* ECF Nos. 98–100. Defendants filed the Amended Answers on the docket on April 13, 2026. *See* ECF Nos. 102 (SAS and PIC; Affirmative Defenses at 11–12), 103 (Renfro; Affirmative Defenses at 11–12), 104 (Bryan and Zieger; Affirmative Defenses at 11–12).³

ARGUMENT

Federal Rule of Civil Procedure 12(f) permits a party to move to strike “an insufficient defense or any redundant, immaterial, impertinent or scandalous matter” from a pleading. Fed. R. Civ. P. 12(f); *Alvarado-Morales v. Digital Equip. Corp.*, 843 F.2d 613, 618 (1st Cir. 1988). A motion to strike may also be granted where “the allegations confuse the issues and do not amount to a valid defense[.]” *Asphaltos Trade, S.A. v. Bituven P.R., LLC*, No. 18-1876 (BJM), 2021 WL 965645, at *1 (D.P.R. Mar. 15, 2021) (citation omitted). The movant seeking to strike any portion

motion attacks.”) (quoting *United States v. B.R. MacKay & Sons, Inc.*, No. 85 CV 6925, 1986 WL 13717, at *1 (N.D. Ill. 1986)).

³ Defendants’ affirmative defenses are numbered as follows:

- (1) APA Affirmative Defense: SAS and PIC Affirmative Defenses Numbers 3–6 (ECF No. 102); Renfro Affirmative Defenses Numbers 7–10 (ECF No. 103); Bryan and Zieger Affirmative Defenses Numbers 3–6 (ECF No. 104).
- (2) ERISA Affirmative Defense: SAS and PIC Affirmative Defense Number 2 (ECF No. 102); Renfro Affirmative Defense Number 11 (ECF No. 103); Bryan and Zieger Affirmative Defense Number 2 (ECF No. 104).
- (3) First Amendment Affirmative Defense: SAS and PIC Affirmative Defense Number 7 (ECF No. 102); Renfro Affirmative Defense Number 12 (ECF No. 103); Bryan and Zieger Affirmative Defense Number 7 (ECF No. 104).

Like their original answers, Defendants’ Amended Answers also assert various combinations of the following affirmative defenses: (i) failure to state a claim; (ii) lack of personal and subject matter jurisdiction; (iii) improper venue; (iv) statute of limitations; and (v) waiver, estoppel, laches, and/or unclean hands. *See* ECF Nos. 102–04.

of a pleading must demonstrate “the allegations being challenged are so unrelated to [the party’s] claim as to be unworthy of any consideration as a defense and that their presence in the pleading throughout the proceeding will be prejudicial to the moving party.” *Morell v. United States*, 185 F.R.D. 116, 117–18 (D.P.R. 1999) (quotation omitted).

Defendants’ affirmative defenses alleging violations of the First Amendment, the APA, and ERISA by the Secretary meet the criteria of pleadings that should be struck under Rule 12(f). Initially, Defendants’ affirmative defenses are not true affirmative defenses because they do not defeat the Secretary’s claims, and the Court should strike them on this basis alone. Furthermore, these defenses are meritless (as the Court has already determined for the First Amendment and APA defenses), redundant, and impertinent, and do not warrant further consideration. Finally, allowing Defendants to continue their attempts to inject their superfluous claims in this litigation would be prejudicial to the Secretary.

I. The Defenses Should be Struck Because They are Insufficient

Defendants’ affirmative defenses fail at the outset because they do not constitute true affirmative defenses. An affirmative defense is an “assertion of facts and argument that, if true, will defeat the plaintiff’s or prosecution’s claim, even if all the allegations in the complaint are true.” *EEOC v. AZ Metro Distributors, LLC*, 272 F. Supp. 3d 336, 340–41 (E.D.N.Y. 2017) (quoting *Affirmative Defense*, Black’s Law Dictionary (10th ed. 2014)); *see also* *Bautista Cayman Asset Co. v. Centro Cardiovascular de Manati III, C.S.P.*, No. 16-3129CCC, 2019 WL 13472998, at *1 (D.P.R. June 3, 2019), *rev’d on other grounds*, 731 F. Supp. 3d 264 (D.P.R. 2024) (“[A]n affirmative defense defeats the plaintiff’s cause of action by denial or confession and avoidance.”) (quotation omitted). In other words, an affirmative defense “preclude[s] a

defendant's liability[.]” *Barrilleaux v. Mendocino Cnty.*, No. 14-cv-01373-TEH, 2016 WL 1298860, at *3 (N.D. Cal. Apr. 4, 2016).

Defendants’ First Amendment, APA, and ERISA affirmative defenses are not proper affirmative defenses against the Secretary’s claims. Defendants do not explain how their “affirmative defenses” negate the ERISA violations alleged by the Secretary or otherwise protect them from penalty. *See Bautista Cayman Asset Co.*, 2019 WL 13472998, at *1 (noting that an affirmative defense “defeats the plaintiff’s cause of action”). If the Secretary proves all elements of his ERISA claims against Defendants, a defense that the preceding investigation violated the First Amendment or APA or somehow did not comport with ERISA’s purpose does not negate Defendants’ liability under ERISA—even if Defendants marshalled enough evidence supporting those affirmative defenses. *Asphaltos Trade, S.A.*, 2021 WL 965645, at *8 (citing *Long v. Welch & Rushe, Inc.*, 28 F. Supp. 3d 446, 465 (D. Md. 2014)) (finding no affirmative defense where, even if defendant “proves all elements of its claims, this ‘defense’ would not negate [] liability”); *see also S.E.C. v. Gold Standard Mining Corp.*, No. CV 12-5662 PA (CWX), 2012 WL 12904080, at *2 (C.D. Cal. Dec. 10, 2012) (“Improper conduct during a[] [government] investigation is not an affirmative defense.”). Because Defendants’ First Amendment, APA, and ERISA affirmative defenses are legally insufficient defenses to the Secretary’s claims, they should be struck under Rule 12(f). *Asphaltos Trade, S.A.*, 2021 WL 965645, at *8; *see also Rodríguez Ríos v. P.R. Ports Auth.*, CIV 04-1506 (JA), 2005 WL 1669565, at *3 (D.P.R. July 18, 2005) (striking an insufficient affirmative defense, which, if true, would not defeat plaintiff’s claim).

II. The Defenses Should be Struck Because They are Meritless

In addition to not constituting true affirmative defenses, Defendants' arguments under the First Amendment, APA, and ERISA are implausible, and thus meritless. They should be further struck on this basis. *See In re Gabapentin Patent Litig.*, 648 F. Supp. 2d 641, 648 (D.N.J. 2009) (motions to strike are granted "when a defense is legally insufficient under any set of facts") (quoting *Glenside West Corp. v. Exxon Co.*, 761 F. Supp. 1100, 1115 (D.N.J. 1991)).

This Court has already directly considered the legal sufficiency of Defendants' First Amendment and APA arguments (via the Amended Counterclaim) and dismissed them as meritless. *See* ECF No. 83 (dismissing Defendants' Amended Counterclaim without prejudice). "Where a court has already considered and rejected an affirmative defense, striking that defense is proper so as to avoid confusion and eliminate defenses that are legally insufficient." *Asphaltos Trade, S.A.*, 2021 WL 965645, at *5 (collecting cases); *see also U.S. Commodity Futures Trading Comm'n v. U.S. Bank, N.A.*, No. 13-CV-2041-LRR, 2014 WL 294219, at *6 (N.D. Iowa Jan. 27, 2014) (striking the affirmative defense of failure to state a claim where the court had already ruled on the issue in a prior motion to dismiss); *In re Pujdak*, 462 B.R. 560, 567 (D.S.C. 2011) (striking affirmative defense from answer that was already decided in order on motion to dismiss). Accordingly, the First Amendment and APA defenses should be struck under Rule 12(f).

Defendants' ERISA affirmative defense is also meritless. Defendants' Amended Answers each assert that "Plaintiff's claims are barred to the extent that they frustrate rather than further the Congressional intent behind ERISA," citing their Counterclaim. ECF Nos. 102 & 104 at Affirmative Defense No. 2 and ECF No. 103 at Affirmative Defense No. 11. The Secretary previously moved to dismiss, arguing that it was meritless. *See* ECF No. 48-1 at 21–23. The

Court has not addressed the viability of this claim because Defendants' Amended Counterclaim removed this legally insufficient claim. However, for the reasons discussed in the Secretary's motion to dismiss, this claim is meritless.

First, Defendants' ERISA defense is so vague that it violates Rule 8's requirement to provide fair notice of the defense. *See* ECF No. 48-1 at 21–23. Defendants do not specify *how* the Secretary's claims purportedly frustrate Congress's intent in passing ERISA. Moreover, arguing that the Secretary violates ERISA by filing an enforcement action pursuant to his statutory role in enforcing ERISA (*see* 29 U.S.C. § 1132) is illogical.⁴ Defendants further fail to explain how the Secretary's alleged violation of ERISA absolves them of liability for any of their violations of ERISA. *See Bautista Cayman Asset Co.*, 2019 WL 13472998, at *1 (explaining an affirmative defense defeats a cause of action by either denial or confession or avoidance). Thus, Defendants' ERISA defense fails to satisfy the requirements of Rule 8 and is otherwise improper and should be struck under Rule 12(f).

III. The Defenses Should be Struck Because They are Redundant and Impertinent

Rule 12(f) empowers the Court to strike claims and defenses that are “redundant, immaterial, [or] impertinent.” Fed. R. Civ. P. 12(f). Defenses are redundant when they have

⁴ To the extent this defense is premised on supposed harm to the Partnership Plans (*i.e.*, certain health plans that are serviced by Defendants but not the subject of the Secretary's claims, *see* ECF No. 1 ¶ 2 n.1) based on the requested injunction prohibiting SAS and PIC from serving as fiduciaries to ERISA plans (*see* ECF No. 25 ¶¶ 186–90), this argument fares no better. The ERISA status of the Partnership Plans is currently disputed. *See Data Mktg. P'ship v. U.S. Dep't of Labor*, 45 F.4th 846 (5th Cir. 2022). Thus, even assuming the Court ultimately grants the Secretary's requested relief and enjoins SAS and PIC from servicing ERISA plans, the Partnership Plans may not necessarily be affected. The remainder of the purported harm is similarly speculative—Defendants cannot show that no other vendors will be able to provide the same services to the Partnership Plans as they can; nor can they show that the individuals that receive health insurance through the Partnership Plans would be unable to procure insurance through other plans or the health insurance marketplace. *See, e.g.*, ECF No. 48-1 at 21–23 (discussing the speculative nature of the harm asserted in Defendants' ERISA counterclaim).

previously been raised, whether in the same or restated form. *See Greco v. Quetglas-Jordan*, No. 24-01035 (MAJ), 2025 WL 2209611, at *2–3 (D.P.R. Aug. 4, 2025) (striking a counterclaim for declaratory judgment that was redundant of defendant’s affirmative defenses); *Ortiz-Ildefonso v. SNC Tech. Servs., LLC*, No. 15-1197 (JAG/SCC), 2018 WL 8898616, at *1 (D.P.R. Feb. 28, 2018) (striking motions for judgment as redundant pursuant to Rule 12(f) because they “primarily restate arguments made in [] earlier motions[.]”); *U.S. Commodity Futures Trading Comm’n*, 2014 WL 294219, at *6 (“Since the court has already addressed U.S. Bank’s claim on the merits, U.S. Bank’s identical claim in its Answer is an insufficient defense as a matter of law and is now redundant and impertinent.”). Defendants’ First Amendment and APA defenses squarely fall in this category—not only have they been already raised, they have already been rejected by this Court.

The Secretary has already litigated Defendants’ First Amendment and APA claims before this Court, and multiple other times in this district. Defendants previously raised their First Amendment and APA claims in an action filed in this district in 2021, *Suffolk Administrative Services v. U.S. Department of Labor*, No. 3:21-cv-1031-DRD (D.P.R.) (ECF No. 1). The *Suffolk* court dismissed those claims at the pleadings stage. *Id.* at ECF No. 43. Defendants next raised the same claims against the Secretary in 2021 in counterclaims filed in a subpoena enforcement proceeding related to the Secretary’s investigation that preceded this action, *Walsh v. Providence Insurance Co., I.I.*, No. 3:21-mc-00413 (ADC) (D.P.R.) (ECF No. 4). The subpoena enforcement proceeding was concluded and dismissed before the court considered the counterclaims. Finally, Defendants raised the APA and ERISA claims again in their Counterclaim, which they withdrew, and raised their APA and First Amendment claims in their Amended Counterclaim, which this

Court dismissed for failure to state a claim.⁵ ECF Nos. 25, 52, and 83. Defendants' Amended Answers do not make any effort to remediate the legal deficiencies identified in the Court's Motion to Dismiss ruling.

In addition to being redundant, the First Amendment defense should also be struck for being impertinent. Under Rule 12(f), a matter is impertinent when it "consists of statements that do not pertain, and are not necessary, to the issues in question." *Autila v. Mass. Bay Transp. Auth.*, 342 F.R.D. 23, 31 (D. Mass. 2022) (quoting *U.S. Bank Tr., N.A. as Trustee for LSF9 Master Participation Tr. v. King*, No. 1:19-cv-00119-JDL, 2020 WL 3064423, at *1 (D. Me. June 9, 2020)). Defendants' First Amendment defense pertains to a *different claim by different parties in different litigation, i.e., the Data Marketing case.*

In sum, the Secretary has already successfully moved multiple times to dismiss Defendants' claims asserted in all manner of pleadings over many years, and Defendants should not be permitted yet another bite at the apple. Defendants' First Amendment and APA claims remain meritless and should be struck.

IV. The Secretary Will be Prejudiced if These Defenses Remain

Finally, allowing Defendants' repackaged counterclaims to stand would prejudice the Secretary and waste the Court's resources. *See Morell*, 185 F.R.D. at 118 (requiring a showing of

⁵ Additionally, although not parties to this litigation or the prefatory investigation, Data Marketing Partnership ("DMP") and L.P. Management Services ("LPMS") attempted to bring First Amendment and APA claims against the Secretary based on the same allegations in a proposed supplemental complaint in *Data Marketing Partnership v. U.S. Department of Labor*, No. 4:19-cv-0800 (N.D. Tex.) (ECF No. 66-1). The court rejected the supplemental complaint by order on April 8, 2025. *Id.* at ECF No. 75. The same entities also moved to intervene in this matter in June 2025, filing a proposed complaint in intervention with two counts of First Amendment violations and one count of violation of the APA against the Secretary. ECF Nos. 53 & 54-1. This Court denied the motion to intervene, noting that the claims were unrelated to this matter. ECF No. 63. Movants appealed that ruling to the First Circuit. ECF No. 66.

prejudice when moving to strike under Rule 12(f)). Defendants' First Amendment, APA, and ERISA claims pertain to the initiation of the Secretary's investigation and the ongoing *Data Marketing* litigation, not the merits of the Secretary's ERISA claims. If these affirmative defenses are not struck from the Amended Answers, the parties will expend countless hours on additional discovery related to the basis of the investigation and a completely separate case notwithstanding the fact that the Secretary's lawsuit already involves five defendants and multiple third-party service providers. *See Cynergy Econ., Inc. v. Ergonomic Partners, Inc.*, No. 4:08-CV-243 (JCH), 2008 WL 2817106, at *2 (E.D. Mo. July 21, 2008) ("The prejudice requirement [under Rule 12(f)] is satisfied if striking the defense would, for example, prevent a party from engaging in burdensome discovery, or otherwise expending time and resources litigating irrelevant issues that will not affect the case's outcome."); *Willman v. Zelman & Assoc., LLC*, No. 11 Civ. 1216 (KBF), 2012 WL 13388813, at *1 (S.D.N.Y. Sept. 6, 2012) ("A litigant may demonstrate prejudice [for purposes of a Rule 12(f) motion] if the continued presence of an affirmative defense would increase the duration and expense of trial or increase discovery costs.") (internal quotations and citations omitted).

This is not speculation on the Secretary's part—Defendants indicate that they plan to pursue their First Amendment, APA, and ERISA defenses in the Joint Proposed Scheduling Memorandum and their Initial Disclosures. *See* ECF No. 86 at 17–18; Ex. A at 2 (Defendants' Initial Disclosures). Moreover, if the defenses remain in the Amended Answers, the Court will have to spend its resources reviewing evidence and arguments put forth by the parties for claims that it has already determined are not legally viable. And perhaps most importantly, nothing uncovered in discovery related to the genesis of the Secretary's investigation or the *Data*

Marketing case will change that Defendants cannot identify a protected activity under the First Amendment or final agency action under the APA.

Because the Secretary will be prejudiced by the extra time and costs that discovery on Defendants' insufficient First Amendment, APA, and ERISA claims would incur, the Court should strike these defenses from the Amended Answers pursuant to Rule 12(f).

CONCLUSION

For the reasons set forth above, the Secretary respectfully requests that the Court grant his Motion to Strike Defendants' Affirmative Defenses Pursuant to Federal Rule of Civil Procedure 12(f) and strike Defendants' First Amendment, APA, and ERISA affirmative defenses in their Amended Answers, ECF Nos. 102–04. Specifically, the Secretary requests that the Court strike SAS and PIC's Affirmative Defenses two through seven (ECF No. 102); Alexander Renfro's Affirmative Defenses seven through twelve (ECF No. 103); and Bryan and Zieger's Affirmative Defenses two through seven (ECF No. 104).

Dated: May 1, 2026

Respectfully Submitted:

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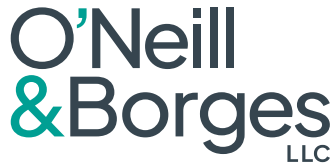
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CERTIFICATE OF SERVICE

I hereby certify that I filed the Secretary's Motion to Strike Defendants' Affirmative Defenses Pursuant to Federal Rule of Civil Procedure 12(f) 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/ Jamie L. Troutman
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EXHIBIT A



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Re: Lori Chavez-Deremer v. Suffolk Administrative Services, LLC, et al.
Civil No. 24-1512 (CVR)

Under Fed. R. Civ. P. 26(a)(1), Defendants hereby submit the following initial disclosures as set forth below. These initial disclosures are based on information reasonably available to Defendants at this time, and are made without waiving any objections as to relevance, materiality or admissibility of evidence. Defendants reserve the right to revise, correct, supplement or clarify the disclosures at any time, consistent with Fed. R. Civ. P. 26(e).

At the outset, Defendants deny that they or the plans at issue in this case constitute a multiple employer welfare arrangement (“MEWA”)—but in the alternative—Plaintiff has not identified with requisite specificity which employers are alleged to be part of the MEWA. As a result, Defendants must broadly categorize anticipated witnesses and documents which may be discoverable. Defendants reserve the right to amend and/or supplement these disclosures upon Plaintiff’s identification of the exact plans and employers alleged to be a MEWA.



I. NAME AND ADDRESS OF PERSONS LIKELY TO HAVE DISCOVERABLE INFORMATION

Defendants have not yet discovered all individuals who may have non-privileged and discoverable information that may support its defenses in this case. The following individuals are likely to have knowledge of or about at least some of the following topics: (1) Plaintiff's claims; (2) Defendants' defenses; (3) subject to final determination of the pending appeal, Intervenor Defendants' claims and defenses¹; (4) the entity Defendants' operation as independent vendors; (5) the individual Defendants' conduct, involvement, and/or non-involvement with operation of the entity Defendants; (6) the Department of Labor's advisory opinion and its Anjo Investigation; (7) the Defendants' defenses asserting the retaliatory nature of Plaintiff's claims as relates to the First Amendment and Administrative Procedure Act; and (8) any sister lawsuits in other jurisdictions relevant to the claims and defenses in the instant case:

1. Suffolk Administrative Services, LLC, corporate representative(s) and/or employees;
2. Providence Insurance Company, corporate representative(s) and/or employees;
3. Alexander Renfro;
4. William Bryan;
5. Arjan Zieger;
6. Any witnesses identified in the Parties' Joint 26(f) Report;
7. Any witnesses identified in Plaintiff's initial disclosures;
8. Other persons, not yet identified, who may be made known through the Parties' document production, interrogatory responses and/or depositions;
9. Any witness identified by any other party or non-party to this lawsuit;
10. Any individual needed for impeachment or rebuttal.
11. All of the individuals mentioned above may be contacted through the undersigned attorneys.

Defendants reserve the right to amend, modify and supplement the above list of individuals likely to have discoverable information that it may use to support their defenses, to the extent additional individuals are identified during discovery.

II. DOCUMENTS

At this early stage of the litigation process, defendants have not determined all the documentary evidence they shall need to support their contentions. Nevertheless, they may use some or all of the following:

1. Any documents in the custody or possession of all entities identified by Plaintiff as being a participant in the alleged MEWA;
2. Any documents in the custody or possession of all entities providing services to any Plan identified by Plaintiff as being a participant in the alleged MEWA;

¹ Intervenor Defendants Data Marketing Partnership, LP and LP Management Service's Motion to Intervene is currently on interlocutory appeal and therefore Defendants reserve the right to identify witnesses and documents of these entities to support its defenses in the instant matter.



3. Possibly documents in the possession, custody, and control of any Defendant pertaining to Plans identified by Plaintiff as being a participant in the alleged MEWA.;
4. All documents produced to Plaintiff by any of the Defendants over the course of the Plaintiff's "Anjo Investigation;"
5. All documents produced to Plaintiff by any person or entity over the course of the Plaintiff's "Anjo Investigation;"
6. Any documents identified by Plaintiff and/or Defendants and/or Intervenor Defendants identified in the Joint Rule 26(f) Report or initial disclosures;
7. Any other documents provided in discovery by any party or non-party;
8. Any and all documents needed for rebuttal or impeachment.

Defendants reserve the right to use any and all documents disclosed by Plaintiff in its initial disclosures.

III. COMPUTATION OF DAMAGES

Defendants do not seek monetary damages currently but reserve the right to do so.

IV. INSURANCE AGREEMENTS

Defendants are not aware of any insurance agreements which provide for indemnification of all or part of a possible judgment or reimburse payments made to satisfy any possible judgment.

V. OTHER MATTERS

Defendants have not yet retained an expert witness. In the event Defendants decide they are going to use one or more testifying experts, Defendants will provide notice to plaintiff in accordance with the Federal Rules of Civil Procedure and this Court's Scheduling Order.

The Parties anticipate the need for ESI protocol and confidentiality as specified in the Joint Rule 26(f) Report.

Defendants reserve the right to supplement or amend these Fed. R. Civ. P. 26(a)(1) initial mandatory disclosures if additional or different information and/or documentation is obtained throughout the course of discovery or otherwise and will notify the parties of any such supplementation as expeditiously as possible.

Cordially,

s/Antonio L. Roig Lorenzo

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