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 CONSOLIDATED RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER VENUE AND MOTION TO STAY

Plaintiff Lori Chavez-DeRemer, Secretary of Labor ("Secretary") respectfully submits this consolidated response in opposition to Defendants' motions to transfer and stay this action. Defendants seek to transfer this action to the U.S. District Court for the Northern District of Texas, where a separate lawsuit is pending against the Secretary, *Data Marketing Partnership, LP v. U.S. Department of Labor*, No. 4:19-cv-0800-O (N.D. Tex.) ("*DMP* Litigation"). Defendants also seek to stay this action until (1) a final ruling on the motion to transfer, or (2) a final ruling on a motion for leave to file a supplemental complaint in the *DMP* Litigation, which the Northern District of Texas recently denied. While Defendants attempt to connect this action to the *DMP* Litigation, no claims or parties other than the Secretary overlap. The *DMP* Litigation brings claims against the Secretary in connection with a now vacated advisory opinion relating to whether certain plans are covered under the Employee Retirement Income Security Act ("ERISA"), whereas this action is about the Secretary's claims that Defendants have violated ERISA by engaging in self-dealing and charging excessive fees to their ERISA plan clients. Defendants assert that the two cases are linked in their Counterclaim, which substantially mirrors allegations in the *DMP* plaintiffs' motion for leave to file a supplemental complaint. But the Northern District of Texas has held that it does not have the power to hear the claims in the *DMP* plaintiffs' proposed supplemental complaint, obviating the basis for transfer to that district. Defendants thus have not met their burden of demonstrating that a transfer or stay is warranted.

I. BACKGROUND

Defendants Suffolk Administrative Services, LLC ("SAS") and Providence Insurance Company, I.I. ("PIC") are companies headquartered in Puerto Rico, and Defendants Alexander Renfro, William Bryan, and Arjan Zieger are officers and indirect owners of SAS and PIC. Compl. ¶¶ 10–19, ECF No. 1. On November 5, 2024, the Secretary filed a complaint alleging that Defendants have violated ERISA and engaged in self-dealing by unilaterally causing more

than 1,900 employer-sponsored health benefit plans governed by ERISA ("Employer Plans") to pay them excessive fees. *Id.* ¶¶ 1–7.

Defendants seek to tie this action to the *DMP* Litigation, but the two matters are entirely distinct. The *DMP* Litigation was brought in 2019 by Data Marketing Partnership, LP ("DMP"). Its general partner, LP Management Services, LLC ("LPMS"), later joined as a plaintiff. Their claims relate to a request for an advisory opinion about a type of "limited partnership" described by LPMS, where limited partners install software on their personal phones to track their use of data and the "primary business purpose and main source of revenue" of the limited partnership is the "sale to third-party marketing firms" of this electronic data. *See* Countercl. Ex. A at 1–3, ECF No. 25-1 (Nov. 8, 2018 request for advisory opinion).

The Department of Labor issued an advisory opinion concluding that plans sponsored by limited partnerships like those described in the request ("Partnership Plans") are not covered by ERISA, but the district court subsequently vacated that opinion in the *DMP* Litigation. *See* Countercl. Ex. B, ECF No. 25-2 (advisory opinion); *Data Mktg. P'ship, LP v. U.S. Dep't of Labor*, 490 F. Supp. 3d 1048 (N.D. Tex. 2020). The Secretary appealed to the U.S. Court of Appeals for the Fifth Circuit, which remanded the case with "interpretive questions for the district court's consideration." *Data Mktg. P'ship, LP v. U.S. Dep't of Labor*, 45 F.4th 846, 855 (5th Cir. 2022). Specifically, the Fifth Circuit asked the district court to address interpretive questions about the terms "working owner" and "bona fide partners," which relate to whether an individual constitutes an "employee" of a limited partnership and thus a "participant" under ERISA. *Id.* at 858.

After the case was remanded, the Secretary unsuccessfully sought settlement of all pending disputes with the *DMP* plaintiffs and their affiliates and vendors. These negotiations

included SAS, PIC, and their principals. SAS and PIC are service providers to the Partnership Plans at issue in the *DMP* Litigation, just as they are service providers to the Employer Plans at issue in this action.[1] Compl. ¶¶ 1–2; Mot. Transfer ¶ 2, ECF No. 26. And Defendant Alexander Renfro, an officer and indirect owner of SAS and PIC, authored LPMS's request for an advisory opinion in his capacity as counsel for LPMS at the time. *See* Countercl. Ex. A at 1–2; Compl. ¶ 15. Though Defendants participated in these voluntary (and ultimately unsuccessful) settlement negotiations that also included the *DMP* plaintiffs, the Secretary's claims against Defendants here are materially different from the Secretary's dispute with the *DMP* plaintiffs. The *DMP* Litigation is about whether Partnership Plans are ERISA-covered; it has no bearing on whether service providers to both the Partnership Plans and the Employer Plans have violated ERISA with respect to the services they provide to the Employer Plans.

More than five years after the *DMP* complaint was filed, while their post-remand motion for summary judgment was pending, the *DMP* plaintiffs moved for leave to file a supplemental complaint. Mot. Stay Ex. B, ECF No. 27-2 (*DMP* docket at 66, 69). The motion and proposed supplemental complaint contained allegations of "extort[ion]" based on the settlement negotiations involving the Secretary, the *DMP* plaintiffs, and Defendants. *See* Mot. Stay ¶ 2, ECF No. 27; Mot. Transfer Ex. A, ECF No. 26-1 (motion for leave to file a supplemental complaint). Within four months, Defendants filed the Counterclaim in this action containing similar allegations. *See* Countercl. ¶¶ 18–29, ECF No. 25.

On April 8, 2025, the U.S. District Court for the Northern District of Texas denied both the *DMP* plaintiffs' motion for summary judgment and their motion for leave to file a

[1] As the Secretary's Complaint makes clear, Partnership Plans are not at issue in this action. *See* Compl. ¶ 2 n.1.

supplemental complaint. *DMP* Litigation, Order 1, ECF No. 75 ("*DMP* Order"). Denying the summary judgment motion, the court noted that it was "limited to the two interpretive questions on remand from the Fifth Circuit" and found that it had "insufficient facts to decide the interpretive questions." *Id.* at 4–5. Denying the motion for leave to file a supplemental complaint, the court concluded that it was "beyond this Court's power on remand." *Id.* at 6. The court made clear that "the scope of this case is limited to the issues on remand from the Fifth Circuit." *Id.* at 1.

II. ARGUMENT

Defendants argue that this action is "inextricably connected" to the *DMP* Litigation due to the settlement negotiations described in Defendants' Counterclaim and the *DMP* plaintiffs' motion for leave to file a supplemental complaint. Mot. Stay ¶ 2; Mot. Transfer ¶¶ 1–6. But the Northern District of Texas has now ruled that the *DMP* plaintiffs' supplemental claims are beyond its scope: "'The mandate rule requires a district court on remand to effect [the circuit court's] mandate and to do nothing else.'" *DMP* Order at 4 (quoting *Gen. Univ. Sys., Inc. v. HAL, Inc.*, 500 F.3d 444, 453 (5th Cir. 2007)). The court's denial of the *DMP* plaintiffs' motion for leave to file a supplemental complaint confirms that there is no overlap between this action and the *DMP* Litigation. These lawsuits involve different parties, different claims, and different assertions of harm. Defendants have not met their burden of demonstrating that a transfer or stay is warranted, and they have not overcome the presumption in favor of the Secretary's choice of forum. Accordingly, their motions should be denied.

A. Defendants Fail to Establish That Transfer Is Warranted

Transfer of a civil action is a solely discretionary decision by a district court. "Under 28 U.S.C. section 1404(a), a district court may transfer any civil action to any other district where it

may have been brought '[f]or the convenience of parties and witnesses, in the interest of justice.'" *Canatelo, LLC v. Bosch Sec. Sys., Inc.*, 959 F. Supp. 2d 220, 222 (D.P.R. 2013). "This provision is intended to place discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." *Id.*

The First Circuit has identified the following factors for district courts to consider when evaluating a motion for transfer: "(1) the convenience of the parties and the witnesses, (2) the availability of documents, (3) the possibility of consolidation, and (4) the order in which the district court obtained jurisdiction."[2] *Id.* at 223 (citing *Coady v. Ashcraft & Gerel*, 223 F.3d 1, 11 (1st Cir. 2000); *Cianbro Corp. v. Curran–Lavoie, Inc.*, 814 F.2d 7, 11 (1st Cir. 1987)). Under section 1404(a), "there is a presumption in favor of plaintiff's choice of forum. Thus, [the] party seeking transfer has the burden of proof." *Id.* (citing *Coady*, 223 F.3d at 11).

1. Defendants Do Not Establish That Venue Is Proper in Texas

As a threshold matter, Defendants do not establish that the Northern District of Texas is a proper venue for this action. Unless all parties consent, a civil action may only be transferred to a district "where it might have been brought," 28 U.S.C. § 1404(a), *i.e.*, "where venue is also proper," *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 59 (2013). Defendants argue that venue in the Northern District of Texas is proper under 28 U.S.C. § 1391(b)(2) because "a substantial part of the events or omissions giving rise to the claim" occurred in Texas. Mot. Transfer ¶ 13. Defendants cite a single "substantial event"—settlement

[2] Defendants' reliance on *Mercier v. Sheraton International, Inc.*, 935 F.2d 419 (1st Cir. 1991), to describe the factors that inform a motion to transfer based on 28 U.S.C. § 1404(a) is misplaced. That decision concerns a "motion to dismiss on grounds of *forum non conveniens*," which is typically used "where it is alleged that another country is a more convenient forum." *Id.* at 423–24 & n.4, 430.

negotiations involving the *DMP* plaintiffs as well as Defendants as "vendors of LPMS and DMP." *Id.* ¶¶ 14–16.

In so arguing, Defendants misconstrue 28 U.S.C. § 1391(b)(2), which provides that a civil action may be brought in "a judicial district in which a substantial part of the events or omissions *giving rise to the claim* occurred." 28 U.S.C. § 1391(b)(2) (emphasis added). Despite Defendants' repeated insistence, it was not the parties' settlement negotiations that gave rise to the Secretary's suit, but Defendants' actions as service providers to their Employer Plan clients. *See* Compl. ¶¶ 1–7 (alleging Defendants engaged in self-dealing and violated ERISA with respect to their Employer Plan clients).

Nor did these settlement negotiations even occur in the Northern District of Texas. The settlement negotiations that Defendants reference consisted of emails, a few video calls, and, occasionally, letters sent via U.S. mail. *See* Mot. Transfer Ex. A at 248–303, ECF No. 26-1. Defendants' claim that the settlement negotiations "took place and continue[] in Texas," Mot. Transfer ¶ 5, is completely without support. One of the attorneys who participated in the settlement negotiations was based in the Northern District of Texas. However, such a tangential connection cannot support venue under ERISA. *See* 29 U.S.C. §1132(e)(2). Defendants thus fail to establish that the Northern District of Texas is a proper venue for this action.

2. Defendants' Proffered Reasons Do Not Support Transfer

Even assuming Defendants could establish that venue is proper in the Northern District of Texas, Defendants fail to demonstrate that transfer is warranted under the factors enumerated by the First Circuit. Because Defendants' arguments for transfer are based on purported ties between this action and the *DMP* Litigation, the primary factors at issue in this case are the "possibility of

consolidation" and "the order in which the district court obtained jurisdiction."[3] *See Coady*, 223 F.3d at 11. Courts consider the "overlap in issues" and the "overlap in parties" in evaluating these factors. *See Mercado-Salinas v. Bart Enters. Int'l, Ltd.*, 669 F. Supp. 2d 176, 187–88 (D.P.R. 2009). "Where the overlap between the two suits is nearly complete, the usual practice is for the court that first had jurisdiction to resolve the issues and the other court to defer." *TPM Holdings, Inc. v. Intra-Gold Indus., Inc.*, 91 F.3d 1, 4 (1st Cir. 1996) (per curiam); *see also Coady*, 223 F.3d at 11. "But where the overlap between two suits is less than complete, the judgment is made case by case, based on such factors as the extent of overlap, the likelihood of conflict, the comparative advantage and the interest of each forum in resolving the dispute." *Id.* (internal citation omitted).

Here, these factors strongly counsel against transfer. There is no possibility of consolidation or any other reason to defer to the Northern District of Texas. The *DMP* court has held that its "analysis is limited to the two interpretative questions on remand from the Fifth Circuit" and that it "cannot grant [plaintiffs' motion for leave to file a supplemental complaint] because it is beyond the Court's mandate." *DMP* Order at 4, 6. Thus, even assuming Defendants' Counterclaim states judicially cognizable claims—which the Secretary disputes—the *DMP* court will not consider the similar claims in the *DMP* plaintiffs' proposed supplemental complaint. *Id.* at 6; *see* Sec'y Mot. Dismiss Countercl. at 1–3 (filed contemporaneously). Moreover, the settlement negotiations that Defendants repeatedly reference do not serve as a valid basis for connecting these two actions. They are separate matters lacking any overlap that would support consolidation.

[3] The remaining factors also counsel against transfer. As to the parties' convenience, Defendants acknowledge that that they "have their principal place of business in Puerto Rico." Mot. Transfer ¶ 13. And Defendants do not argue for transfer based on the availability of documents, which in any event is afforded "little weight" given technological advances. *See Canatelo, LLC*, 959 F. Supp. 2d at 224 (quotation omitted).

First, there is no "overlap in parties" other than the Secretary. *See Mercado-Salinas*, 669 F. Supp. 2d at 187–88 (permitting transfer given "substantial overlap of parties" with only "the addition of one new defendant"). Defendants emphasize that SAS and PIC are service providers to the *DMP* plaintiffs and Defendant Renfro at times has served as counsel to LPMS. Mot. Transfer ¶¶ 2–3. But none of the five Defendants are parties to the *DMP* Litigation.

Second, there is no "overlap in issues." *Mercado-Salinas*, 669 F. Supp. 2d at 187–88. The *DMP* Litigation, originally filed in 2019, concerns the Department's advisory opinion and whether Partnership Plans are covered by ERISA. *See* Countercl. Ex. B at 1–2. This action, filed by the Secretary more than five years later, asserts that completely different parties—SAS, PIC, and their principals—violated ERISA with respect to their Employer Plan clients. *See* Compl. ¶¶ 1–7. *Cf. Mercado-Salinas*, 669 F. Supp. 2d at 187–88 (permitting transfer where "same Agreement is at issue"); *Aguakem Caribe, Inc. v. Kemiron Atl., Inc.*, 218 F. Supp. 2d 199, 203 (D.P.R. 2002) (permitting transfer where "the same contract . . . is at issue"). The Employer Plans are a different subset of Defendants' clients than the Partnership Plans at issue in the *DMP* Litigation. Specifically, the Employer Plans are more than 1,900 ERISA-covered, employer-sponsored health benefit plans, where the sponsoring employer is not a limited partnership of the type described in the vacated advisory opinion. *See* Compl. ¶ 2 n.1.

Defendants claim that the "real targets" of this action are "Partnership Plans" which are also "serviced by SAS and PIC." Mot. Transfer ¶ 2. To the contrary, this action plainly concerns the named Defendants, who the Secretary alleges violated ERISA by self-dealing and charging excessive fees to the Employer Plans. The Secretary's Complaint makes clear that this action is about ERISA compliance—specifically whether SAS, PIC, and their principals breached fiduciary duties owed to the Employer Plans or knowingly participated in such a breach. And

though the Secretary's claims only concern a subset of Defendants' clients, it is well within the Secretary's discretion to decide which harms to address. 29 U.S.C. § 1132(a)(2) & (a)(5); *Mass. v. E.P.A.*, 549 U.S. 497, 527 (2007) ("[A]n agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities."); *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.").

Defendants argue that although "the parties are not identical," "they are closely and directly related solely through the DOL's actions in connecting them to the Texas litigation," *i.e.*, the settlement negotiations. Mot. Transfer ¶ 20. Specifically, Defendants argue that the Secretary made "extortive settlement demands" by "tying settlement" with Defendants to "dismissal of the Texas Suit and withdrawal of the [Advisory Opinion] Request." *Id.* ¶¶ 3–5. The Secretary disputes these characterizations of the settlement negotiations, which are contradicted by Defendants' own filings.[4] In any event, the Secretary's efforts to settle pending disputes with the *DMP* plaintiffs and their affiliates and vendors (including SAS, PIC, and their principals) does not change the fact that the parties and claims in these two lawsuits are materially different.

Because there is no overlap in issues, there is absolutely no merit to Defendants' claim of competing decisions by two federal courts. *See id.* ¶¶ 6, 10, 21. The "first-to-file" principle has

[4] Voluntary settlement negotiations are not extortive. *Cf.* 18 U.S.C. § 1951(b)(2) (defining extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right"). Moreover, Defendants' claim that "DOL . . . expressly t[ied] the threat of suit in this Court with the dismissal of a separate suit in another court," Mot. Transfer ¶ 25, is misleading at best. Defendants' own filings show that while the Secretary was willing to accept a lower monetary amount from Defendants if the *DMP* Litigation was also settled, the Secretary also engaged in settlement discussions with Defendants alone that did not depend on dismissal of the *DMP* Litigation. Mot. Transfer Ex. A at 300–03; *see also* Sec'y Mot. Dismiss Countercl. 7–8.

no application here. This principle is designed to address "duplication of effort and incompatible rulings" when "identical actions are proceeding concurrently in two federal courts," *Coady*, 223 F.3d at 11 (quotation omitted), or "the overlap between the two suits is nearly complete," *TPM Holdings, Inc.*, 91 F.3d at 4. Here, there is no overlap in parties (beyond the Secretary) or legal issues. The only purported similarity is between Defendants' Counterclaim and the *DMP* plaintiffs' proposed supplemental complaint—and this is no longer an issue because the Northern District of Texas has declined to consider the proposed supplemental complaint. *DMP* Order at 6. Any ruling in the *DMP* Litigation, whether for or against the *DMP* plaintiffs, would have absolutely no impact on whether the completely unique Defendants in this action have violated ERISA with respect to their Employer Plan clients. *Cf. TPM Holdings, Inc.*, 91 F.3d at 4 (holding a New Hampshire court properly heard a claim with connections to a Texas breach-of-contract action where the New Hampshire action "could not realistically be said to interfere with the Texas court's authority or conduct of its case").

Defendants' remaining arguments for transfer likewise lack merit. Defendants argue that this action could jeopardize their businesses, which would make their client, DMP, "unable to function in providing continued healthcare plans through its Partnership Plans." Mot. Transfer ¶ 21. But collateral consequences to clients, such as Defendants' clients having to find new service providers, do not constitute conflicting judgments. This kind of attenuated effect is a far cry from the kind of identical or substantially similar case discussed in the "first-to-file" cases cited by Defendants. *See, e.g.*, *Ridenti v. Google LLC*, 530 F. Supp. 3d 164, 168 (D. Mass. 2021) (finding transfer warranted where "the issues raised in this lawsuit fall substantially within the scope of . . . the first-filed action"); *Waithaka v. Amazon.com, Inc.*, 404 F. Supp. 3d 335, 351 (D. Mass. 2019) (finding "substantially similar" parties where defendants were "subsumed within the

nationwide FLSA action" and "substantially similar" issues where both cases "allege[d] that Amazon failed to pay minimum wages and reimburse business expenses"). Defendants' claim of potential harm to clients is not a valid basis for transfer.

Defendants also assert that "Texas federal courts have dealt with a significantly larger variety of cases interpreting or involving ERISA" and have "more extensive experience in interpreting ERISA." Mot. Transfer ¶ 23. But this Court is fully capable of interpreting ERISA, as it is any other federal law. *See Paulson v. Guardian Life Ins. Co. of Am.*, 614 F. Supp. 3d 1, 10 (S.D.N.Y. 2022) ("Paulson has only alleged claims under ERISA, a federal statute. As such, all federal courts are presumed to be equally familiar with federal law." (cleaned up)). Moreover, the District of Puerto Rico has a significant nexus to this action, since at least two Defendants reside in Puerto Rico and the activities at the heart of the Secretary's claims took place here. In sum, Defendants fail to demonstrate that any of the transfer factors weigh in their favor, so the motion to transfer should be summarily denied.

B. Defendants Fail to Establish That a Stay Is Warranted

Defendants tied their motion for a stay to a decision on the *DMP* plaintiffs' motion for leave to file a supplemental complaint, which the court in the Northern District of Texas recently denied as "beyond [its] power on remand." Mot. Stay ¶ 2; *DMP* Order at 6. That basis for a stay is thus foreclosed. Defendants' alternative argument—that the case should be stayed until this Court decides the motion to transfer—is also meritless, for the same reasons that a transfer is not warranted. The *DMP* Litigation is separate and distinct, involving different parties and issues that are not dispositive of the claims here.

Whether to grant a stay is in a district court's discretion. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936); *Marquis v. F.D.I.C.*, 965 F.2d 1148, 1154–55 (1st Cir. 1992). The party

seeking a stay bears the burden of establishing its need. *Landis*, 299 U.S. at 256 ("the burden of making out the justice and wisdom of a departure from the beaten track lay heavily on the petitioners, suppliants for relief"). That party "must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else." *Id.* at 255.

Here, none of the common reasons for a stay apply. There is no "pendency of a related proceeding in another tribunal." *Blue Cross & Blue Shield of Mass., Inc. v. Regeneron Pharms., Inc.*, 633 F. Supp. 3d 385, 392 (D. Mass. 2022) (*Blue Cross*) (quoting *Hewlett-Packard Co., Inc., v. Berg*, 61 F.3d 101, 105 (1st Cir. 1995)). "When a common issue exists across two 'overlapping' suits, courts may stay one case to avoid 'duplication of effort and potentially inconsistent judgments.'" *Id.* (quoting *Acton Corp. v. Borden*, 670 F.2d 377, 382 (1st Cir. 1982)). But the only issues pending in the Northern District of Texas are interpretative questions relevant to the ERISA coverage of the Partnership Plans. *See DMP* Order at 1–3. These issues have nothing to do with the Secretary's claims in this action, which concern whether Defendants violated ERISA as service providers to the ERISA-covered Employer Plans.

As discussed above, the fact that parties to both actions participated in voluntary (and ultimately unsuccessful) settlement negotiations with the Secretary does nothing to change the underlying nature of each suit.[5] The two actions are not "based on the same basic set of facts" and there is no risk that continuing this action could "lead to inconsistent outcomes," especially given the limited scope of the *DMP* Litigation on remand. *Blue Cross*, 633 F. Supp. 3d at 392. A ruling by the Northern District of Texas as to whether a subset of Defendants' clients are subject

[5] The Secretary again disputes Defendants' claim that the settlement negotiations were extortive. Defendants' own Counterclaim allegations and exhibits show the negotiations were made in good faith. *See* Sec'y Mot. to Dismiss Countercl. at 19–21.

to ERISA's requirements has no bearing on this Court's ruling as to whether Defendants violated ERISA with respect to other clients.

Nor will Defendants be "significantly burdened if a stay is not granted." Mot. Stay ¶ 19. Defendants merely describe burdens that any defendant to a lawsuit would face. First, Defendants argue that they will "face significant financial obstacles" in defending this action while the *DMP* Litigation is ongoing. *Id.* ¶ 20. But a stay would not reduce Defendants' costs, as any discovery in the *DMP* Litigation would be irrelevant to the issues before this Court. *Cf. Blue Cross*, 633 F. Supp. 3d at 392 (noting that a stay might "reduce costs to the extent that the parties could make use of discovery exchanged in the DOJ matter").

Second, Defendants assert that an unfavorable ruling from this Court might jeopardize Defendants' business relationships with DMP and LPMS as "PIC and SAS will be unable to provide the services DMP and LPMS rely on." Mot. Stay ¶ 21. But if Defendants are found to have violated the law and charged their Employer Plan clients excessive fees, adverse business consequences would naturally follow.

Third, Defendants claim this action is a "threat to Defendants' customers." *Id.* ¶ 22; *see also id.* ¶ 7 ("The very existence of the Partnership Plans depends on the existence of its vendors, SAS and PIC."). But the potential collateral consequence of Defendants' clients having to find new service providers does not justify a stay, particularly when it comes at the expense of justice for the Employer Plans that the Secretary alleges were harmed by Defendants' alleged fiduciary breaches. *See Bd. of Trustees v. ILA Loc. 1740, AFL-CIO*, No. CV 18-1598, 2022 WL 3083709, at *1 (D.P.R. Aug. 3, 2022) (finding defendant "has shown no clear hardship" that would overcome "[t]he damage to the Board and the pension fund's beneficiaries [from] the financial

hardship of being forced to wait for an undefined but potentially lengthy period before receiving the money to which [they] may be entitled" (internal quotation omitted)).

Defendants also argue that staying this action is in the interest of justice and expediency because "if the Plans are determined by the Texas District Court to be ERISA compliant, the DOL's case in this Court is faced with collateral estoppel with respect to its claims." Mot. Stay ¶¶ 30–34. This is completely disingenuous. The doctrine of collateral estoppel, also known as issue preclusion, "prevents a party from relitigating an issue actually decided in a prior case and necessary to the judgment." *Foss v. Marvic, Inc.*, 103 F.4th 887, 891 n.2 (1st Cir. 2024)). For five years, the *DMP* Litigation has concerned an advisory opinion about the ERISA status of limited partnership plans—plans which were described in an advisory opinion request and which DMP claims as its business model. The *DMP* Litigation is not about the conduct of SAS and PIC—which is why they are not parties to the case. No legal or factual issue in the *DMP* Litigation will decide whether SAS and PIC have violated ERISA by engaging in self-dealing and charging excessive fees. Nor have the *DMP* claims been finally decided. Collateral estoppel has no application here, just as there is no risk of conflicting judgments.

Finally, Defendants fail to establish that their requested timeline for a stay is reasonable. The *DMP* court has already denied plaintiffs' motion to file a supplemental complaint, and Defendants do not establish any time-sensitive reason to stay the case while this Court evaluates the motion to transfer. "[S]tays cannot be cavalierly dispensed: there must be good cause for their issuance." *Marquis*, 965 F.2d at 1155. Particularly where the Northern District of Texas has clarified that there is no factual or legal overlap between this action and the *DMP* Litigation, there is no good reason to grant Defendants' requested stay.

III. CONCLUSION

For the reasons above, the Secretary respectfully requests that the Court deny Defendants' motion to transfer venue (ECF No. 26) and Defendants' motion to stay (ECF No. 27).

Dated: April 25, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I filed the Secretary's Consolidated Response in Opposition to Defendants' Motion to Transfer Venue and Motion to Stay 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 Troutman
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