

**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; *et al.*,

Defendants-Counterclaim Plaintiffs.

Civil No.: 24-01512 (CVR)

MOTION TO INTERVENE

TO THE HONORABLE COURT:

COME NOW Intervening Defendants Data Marketing Partnership, LP (“DMP”) and LP Management Services, LLC (“LPMS”) (collectively “Intervenors”) and respectfully file this Motion to Intervene, pursuant to Rule 24 of the Federal Rule of Civil Procedure, and attach their Memorandum in Support of Motion to Intervene and Complaint.

As explained more fully in the accompanying memorandum, Defendants must be allowed to intervene in this current suit. Intervenors bring this Motion to Intervene in a timely manner, have direct financial interests in the outcome of this litigation, and the disposal of the matter could impair or impede Intervenors’ ability to protect this interest, and the current Defendants-Counterclaim Plaintiffs are unable to adequately represent that interest. Alternatively, if this Court finds it is not required to grant Intervenors’ intervention as of right, it should use its broad discretion in permitting Intervenors to intervene because Intervenors are pursuing a claim with common questions of law and fact with the main action, and their intervention will not unduly

delay or prejudice the adjudication of the original parties' rights. As more fully explained in the memorandum accompanying this Motion, the facts show that Intervenors are inextricably intertwined with this current litigation such that they will face significant detrimental consequences should they not be allowed to intervene in this case.

WHEREFORE, Intervenors 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 9th day of June 2025.

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DMP AND LPMS' MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

TO THE HONORABLE COURT:

COME Now Data Marketing Partnership, LP (“DMP”) and LP Management Services, LLC (“LPMS”) (collectively “Intervenors”) and respectfully file this Memorandum in Support of their Motion to Intervene, pursuant to Rule 24 of the Federal Rule of Civil Procedure.

BACKGROUND

As set forth in greater detail in the attached proposed *Complaint in Intervention*, this suit is a continuation of a collateral attack against Suffolk Administrative Services, Providence Insurance Company, I.I., Alex Renfro, William Bryan and Arjan Zieger (“Defendants”) based on their vendor relationships with single employer employee welfare plans (“Partnership Plans”) sponsored by Intervenors. As a result of a request to the DOL by Intervenors seeking an advisory opinion (“AO Request”) confirming the protection of the Partnership Plans under the Employee Retirement Income Security Act (“ERISA”), the DOL was alerted to the vendor services provided by Defendants to the Partnership Plans. Almost immediately after the AO Request, the DOL launched an investigation of Defendants (“Anjo Investigation”).

As a result of an unfavorable Advisory Opinion by the DOL in response to the AO Request, Intervenors sought to overturn the Advisory Opinion 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 No. 4:19-cv-00900-O (“Texas Suit”). Both the District Court and the Fifth Circuit, on appeal, vacated the Advisory Opinion as “arbitrary and capricious”; Intervenors now seek in the Texas Suit to enjoin the DOL from denying the ERISA-status of the Partnership Plans. In response to the Texas Suit, the DOL sought through “global settlement negotiations” to leverage the Anjo Investigation to obtain (a) withdrawal by Intervenors of the AO Request by Intervenors, and (b) dismissal of the Texas Suit by Intervenors. Even though Defendants were not parties to the Texas Suit, the DOL knew from the Texas Suit that the Partnership Plans cannot operate without Defendants’ services due, in part, to the Anjo Investigation.

Only when Intervenors refused to withdraw the AO Request and dismiss the Texas Suit did the DOL sue Defendants in this Court based not only upon allegations of misconduct disproven by the Anjo Investigation, but also upon alleged relief directly affecting Intervenors, such as an injunction “[enjoin] Defendants ... from ever acting as a fiduciary, service provider or trustee” to any ERISA plans, including the Partnership Plans. *Complaint* ¶ 97. In doing so, the DOL seeks to (a) punish Defendants for continuing to provide services to the Partnership Plans; (b) pressure Defendants to sever their vendor relationships with the Partnership Plans; (c) punish Intervenors for making and later not withdrawing the AO Request; (d) punish Intervenors for filing and later not dismissing the Texas Suit; and (e) eventually render the Texas Suit moot by depriving the Partnership Plans of the vendor services provided by Defendants necessary to continue operations. As alleged in the *Complaint in Intervention*, Intervenors thus have viable claims of retaliation against the DOL under the First Amendment, for exercising their rights of petition in the AO Request and Texas Suit, and under the Administrative Procedure Act (“APA”).

GROUND FOR INTERVENTION AS OF RIGHT

Courts must allow a party to intervene if the party has an unconditional right to intervene by federal statute or “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a).

“To intervene as of right under Rule 24(a)(2), a movant must demonstrate 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 WL 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).

I. INTERVENORS' MOTION IS TIMELY FILED

Timeliness of filing an intervention of right depends on the “length of time that the putative intervenor knew or reasonably should have known that his interest was imperiled before he deigned to seek intervention.” *In re Efron*, 746 F.3d 30, 35 (1st Cir. 2014) (finding no timeliness existed where an intervening party waited years until asserting his claim). Further, “As a case progresses toward its ultimate conclusion, the scrutiny attached to a request for intervention necessarily intensifies.” *Id.* (quoting *R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009)). “In the end, [t]imeliness is to be gauged from all the circumstances, including the stage to which the proceedings have progressed before intervention is sought.” *Id.* (quoting *Chase Manhattan Bank v. Corporacion Hotelera de P.R.*, 516 F.2d 1047, 1049 (1st Cir.1975) (per curiam)); *R & G Mortg. Corp.*, 584 F.3d at 9 (finding two-month delay unreasonable

where parties were well into settlement negotiations and intervention was clearly an attempt to thwart them).

Intervenors seek to intervene in the very early stages of this suit - no discovery has been exchanged; no court orders or substantive rulings have yet been issued. Prior to this motion, a Motion for Leave to File Supplemental Complaint was on file and pending in the Texas Suit, which alleged similar factual allegations. It was only due to the pendency of the Motion for Leave in the Texas Suit that Intervenors did not previously seek to intervene in this suit. However, the District Court in the Texas Suit denied this Motion on April 8, 2025, on grounds that it was restricted to the inquiry it was to address on remand from the Fifth Circuit Court of Appeals. Thus, only due to their Motion for Leave being denied in the Texas Suit do Intervenors now seek to intervene in this case, as their interests are now in peril and unprotected. Intervenors have not waited a significant time before seeking to intervene and thus file this Motion in a timely manner.

II. INTERVENORS HAVE AN INTEREST IN THE OUTCOME OF THIS SUIT

A showing of interest relating to the property or transaction that is subject of the action merely requires showing there is not a remote and indirect, but rather significantly protectable, interest in the resolution or disposition of which would impair the movant's ability to protect its interest. *Aspen Am. Ins. Co. v. Luquis-Guadalupe*, No. CV 24-01277 (MAJ), 2024 WL 4456954, at *2 (D.P.R. Oct. 10, 2024); *see also Ungar v. Arafat*, 634 F.3d 46, 50 (1st Cir. 2011). For example, in *Aspen Am. Ins. Co.*, the intervening party brought forth evidence to show that they had a stake in a contested insurance policy in the main action, and if the main action was disposed of or the policy was held void, "they would be precluded from recovering under the policy in any subsequent litigation." 2024 WL 4456954 at *2. In *Conservation Law Foundation of New England v. Mosbacher*, the court noted that the intervening parties "are the real targets of the suit and are

the subject of the regulatory plan” as part of its finding that an adverse effect of a party prevailing in the main action would harm the intervenors. *See* 966 F.2d 39, 43 (1992).

Intervenors have a direct and significant interest in this suit—their data marketing business and their Partnership Plans largely depend on the outcome of this case. First, Intervenors are directly connected to Defendants. Like in *Aspen*, Intervenors operate the Partnership Plans that the DOL has vigorously—and unsuccessfully—fought to block for over six years. Defendants are the only vendors willing and capable to service these plans, as alternative vendors are understandably frightened by the DOL’s actions in the Anjo Investigation. The Partnership Plans impact coverage of tens of thousands of participants, and the finances correspond to a large volume of real people with real healthcare needs. The Partnership Plans also impact Intervenors’ profitability, as more workers attracted or retained by a benefits plan produces more data, which produces greater monetization capabilities.

Second, the financial interests of Intervenors are directly threatened by this suit. Similar to *Mosbacher*, the real targets of this suit are Intervenors. Though the DOL has disingenuously attempted to omit them and the Partnership Plans from its *Complaint*, it admits through its actions preceding and contemporaneous with this suit, that it is directly targeting them and their business by targeting their vendors. After all, the DOL previously tied Intervenors into its investigation of Defendants through its “global settlement” negotiations when it demanded Intervenors drop their Texas Suit and AO Request. The DOL also now seeks to “enjoin[] Defendants...from ever acting as a fiduciary, service provider or trustee,” which would mean the existence of Intervenors would necessarily be destroyed or diminished significantly if this court makes such a finding. *See* DOL Complaint, pg. 23. Knowing that Intervenors’ key vendors are Defendants, it proceeded to target Defendants with the baseless accusations made in this current suit to hit where Intervenors would hurt most.

Further, Intervenor have no alternative vendors to turn to, as the DOL's actions in relentlessly targeting Defendants have understandably made all other vendors who may have been inclined to provide services to Intervenor unwilling to do so. No other vendor to date has been willing to provide the services for the unique employee benefit plan structures managed and sponsored by Intervenor. As the Partnership Plans serve as vital methods to retain talent, promote more data sales, and increase profitability, Intervenor suffer significant consequences in their inability to protect their interests currently threatened by this suit.

III. RESOLUTION OF THIS SUIT COULD IMPAIR OR IMPEDE INTERVENORS' ABILITY TO PROTECT ITS INTERESTS

The resolution of this suit will likely significantly impair Intervenor because they will be left without an opportunity to protect their interests. Intervenor tried seeking relief in the Texas Suit alleging similar facts but were denied due to the court's narrow scope of review upon remand. Now, the DOL tells a baseless, muddled, and incomplete story that can only be accurately addressed with factual explanations pertaining directly to Intervenor—namely, how the Partnership Plans work, and how Defendants service them in a lawful way. Additionally, there is a real possibility that Defendants may settle with the DOL on terms which are enough to keep Defendants financially afloat but leave Intervenor without their vital services. Ultimately, Defendants can survive without the existence of Intervenor, but the stability and maintenance of the data monetization business of Intervenor, as well as the Partnership Plans, they sponsor, largely depend on the existence of Defendants. Thus, this Court is the only available forum to hear Intervenor's part of the controversy. Without this Court, Intervenor are thus impaired from protecting the interests of their benefits plans and greater business insofar as the present action affects both.

IV. ADEQUATE REPRESENTATION OF INTERVENORS' INTERESTS DOES NOT CURRENTLY EXIST

A party may demonstrate that no adequate representation currently exists by merely “a minimal showing that the representation by an existing party *may* prove inadequate.” *Aspen Am. Ins. Co. v. Luquis-Guadalupe*, No. CV 24-01277 (MAJ), 2024 WL 4456954, at *2 (D.P.R. Oct. 10, 2024); *see also Conservation Law Foundation of New England, Inc.*, 966 F.2d at 44 (“An intervenor need only show that representation may be inadequate, not that it is inadequate.”). This may include demonstrating with specificity that it is probable that the intervening party will add a missing element to the defense in the main action and that an existing party is unlikely to advance a particular argument, or that an existing party’s interests are sufficiently different in kind or degree from those of the named party. *See T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 40 (1st Cir. 2020); *B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 546 (1st Cir. 2006). The First Circuit has discouraged in the past “from identifying only a limited number of ‘cubbyholes’ for inadequate representation claims.” *B. Fernandez & Hnos., Inc.*, 440 F.3d at 546. This court has held in the past that even considerations such as a party’s attempt to minimize exposure and attorney’s fees are sufficient to show insufficient representation. *Alvarado-Rivera v. Oriental Bank & Tr.*, No. CV 11-1458 (JAG), 2012 WL 13170191 at *3 (D.P.R. June 12, 2012). Ultimately, whether adequate representation exists is a heavily fact-sensitive inquiry. *See Sec. & Exch. Comm’n v. LBRY, Inc.*, 26 F.4th 96, 99 (1st Cir. 2022).

It is well within this court’s discretion to find that Defendants may not be able to adequately represent the interests of Intervenors because they have different priorities from Intervenors. Defendants have interests in sustaining their own business and attacking the incorrect factual allegations related to their conduct. Further, most importantly, Defendants are currently advocating for the protection of their First Amendment rights to freedom of association, whereas Intervenors

would be seeking to protect their First Amendment right to freedom of speech, as more fully explained in Intervenor's attached *Complaint in Intervention*.

Further, Defendants may not feel it necessary or prudent to defend aspects of the DOL's allegations that pertain chiefly to Intervenor, such as the 2019 Advisory Opinion and facts regarding to the Anjo Investigation settlement negotiations that pertained to Intervenor. As discussed, Defendants can survive without the existence of Intervenor, but the stability and maintenance of the data monetization business of Intervenor, as well as the Partnership Plans they sponsor, largely depend on the existence of Defendants. Settlement negotiations may prove more favorable to both DOL and Defendants, but may not serve the interests of Intervenor needed to preserve the ability to continue their business relationships with PIC and SAS, and the continuation of the administration of the Partnership Plans.

Further, without Intervenor involved, a narrow scope of discovery may be involved that limits the ability to bring forth facts related to Intervenor. As mentioned, the DOL attempts to differentiate the Partnership Plans from the Employer Plans, arguing that they focus only on the "Employer Plans" and "*not* [] the Partnership Plans"—though the DOL ultimately targets both. If this court limits all discovery and allegations to just the Employer Plans, Intervenor would not be able to clarify facts about Defendants' valid conduct as it relates to the Partnership Plans. The Partnership Plans are necessarily included in the overall damages the DOL seeks, thus, clarification as to their involvement with Defendants is warranted and necessary. Further, due solely to the specific scope of the case on remand, Intervenor have been unable to tell their full story in the Texas Suit. Thus, due to the potential differences in priorities in defending this suit and the potential for fact investigation to be limited to allegations other than those pertaining to Intervenor. Intervenor face significant risks in relying on Defendants to represent their interests in sustaining themselves. Ultimately, as Defendants have other clients, Defendants would be able

to proceed and do business without Intervenors, but Intervenors would not be able to continue operating their group benefit plans without Defendants.

ALTERNATIVELY, INTERVENORS SEEK PERMISSIVE INTERVENTION

In the alternative, Intervenors seek to intervene pursuant to Rule 24(b) of the Federal Rules of Civil Procedure. Courts may permit intervention for any party with a claim or defense that shares a common question of law or fact with the main action and where the 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). This inquiry is highly discretionary, and courts can consider “‘almost any factor rationally relevant’ in making that determination.” *Melone*, 100 F.4th at 28-29 (citing *Daggett v. Comm'n on Gov. Ethics and Election Pracs.*, 172 F.3d 104, 113 (1st Cir. 1999)).

In addition to considering whether granting intervention would unduly prejudice or delay the adjudication of the original parties’ rights, courts consider whether the original parties to the action adequately represent the intervenors’ interests and what the intervenor would contribute to the vitality of the original party’s defense. *See T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 41 (1st Cir. 2020); *United States v. Puerto Rico*, 227 F.R.D. 28, 32 (D.P.R. 2005); *Walgreen Co. v. de Melecio*, 194 F.R.D. 23, 27 (D.P.R. 2000), *aff'd sub nom. Walgreen Co. v. Feliciano de Melecio*, 6 Fed. Appx. 27 (1st Cir. 2001); *In re Thompson*, 965 F.2d 1136, 1142 (1st Cir. 1992), *as amended* (May 4, 1992). Ultimately, courts permit interventions where the intervening party has “‘has significant interests at stake in this litigation and that the outcome may impair its ability to protect those interests.’” *Melone v. Coit*, 100 F.4th 21, 28–29 (1st Cir. 2024).

As discussed more fully above, Intervenors have a significant financial stake in this litigation. A ruling in the DOL’s favor will likely lead to the total disintegration of the Partnership Plans, as they rely on the financial and administrative services Defendants provide to the

Partnership Plans. Without them, and with other vendors too frightened to do business with Intervenors, Intervenors are left without recourse. Further, a ruling in the DOL's favor makes the Texas Suit moot—with no willing service providers left, Intervenors' proposed employee welfare benefit plans are unable to be sustained.

The DOL knows this, which is why it seeks to “enjoin[] Defendants...from ever acting as a fiduciary, *service provider* or trustee,” which the DOL knew would inevitably affect Intervenors. It is also why the DOL brought Intervenors into its settlement negotiations with Defendants, demanding that Intervenors withdraw its AO Request and drop the Texas Suit which challenged the DOL's arbitrary and capricious conduct. When Intervenors did not relent, the DOL moved to its key vendors, and spun an elaborate and frivolous story.

Further, Defendants may be unable to adequately represent the interests of Intervenors because they may be motivated by maintaining their viability rather than the financial business of the Partnership Plans themselves. Ultimately, both parties have different priorities. Though Defendants would be able to prevail without the Partnership Plans, an adverse ruling in the DOL's favor would bring all efforts to recognize the Partnership Plans as fully compliant with ERISA to a screeching and wrongful stop. Further, Intervenors' addition to this suit would provide much-needed factual clarifications regarding the Partnership Plans that Defendants may be unable or unwilling to provide in great detail, because it does not directly pertain to them or their services if this matter is limited to Employer Plans. Finally, the DOL cannot argue that they are prejudiced by the intervention of Intervenors because litigation has only just begun. The DOL filed their complaint against Defendants in November 2024. The Defendants responded with a counterclaim on February 18, 2025. The DOL filed a motion to dismiss on April 25, 2025. The Defendants filed a First Amended Counterclaim with claims similar to those sought to be addressed by Intervenors. Thus, there would be little, if any expansion of the issues in this case. Further, no discovery has

yet been exchanged, no court orders have been issued, and no substantive rulings have been made. Thus, Intervenors' addition to the suit would provide much needed factual clarification at the expense and hardship of no one.

Ultimately, the DOL entwined the facts between Intervenors and Defendants through its settlement negotiations. Now, it attempts to sever the two by disingenuously telling a story without key facts pertaining to Intervenors. Intervenors must be able to tell their side of the story and preserve their financial interests in this litigation. Without the ability to do so, Intervenors risk their business falling apart entirely.

CONCLUSION

Therefore, this Court should exercise its broad discretionary powers and allow Intervenors to intervene in this current litigation.

WHEREFORE, Intervenors 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 9th day of June 2025.

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