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 RESPONSE IN OPPOSITION TO DATA MARKETING PARTNERSHIP, LP AND LP MANAGEMENT SERVICES, LLC'S MOTION TO INTERVENE

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Plaintiff Lori Chavez-DeRemer, Secretary of Labor ("Secretary") respectfully submits this response in opposition to the Motion to Intervene filed by Data Marketing Partnership, LP ("DMP") and LP Management Services, LLC ("LPMS") (collectively, "Intervenors"). The Secretary's Complaint asserts that Defendants in this action—Suffolk Administrative Services, LLC ("SAS"), Providence Insurance Company, I.I. ("PIC"), and their officers and indirect owners Alexander Renfro, William Bryan, and Arjan Zieger—violated the Employee Retirement Income Security Act ("ERISA") and breached their fiduciary duties as service providers to ERISA-covered plans by charging excessive fees.

Intervenors seek to redirect the focus of the Secretary's lawsuit to themselves, specifically certain health benefit plans that they sponsor and administer (and that Defendants service) whose ERISA coverage is in dispute ("Partnership Plans"). But Intervenors already filed suit against the Secretary on this issue in the U.S. District Court for the Northern District of Texas in *Data Marketing Partnership, LP v. U.S. Department of Labor*, No. 4:19-CV-0800-O (N.D. Tex.) ("*Data Marketing* case").

Intervenors' proposed complaint in intervention asserts that the Secretary's suit against Defendants is retaliation for the *Data Marketing* case. But as this Court has recognized, the two lawsuits involve different claims and, except for the Secretary, different parties. Order at 4–5, ECF No. 55. The *Data Marketing* case brings claims against the Secretary in connection with a now-vacated advisory opinion about whether the Partnership Plans are covered under ERISA, whereas this case concerns the Secretary's claims that Defendants have violated ERISA by engaging in self-dealing and charging excessive fees to their ERISA plan clients.

Intervenors and Defendants have each previously attempted to connect this action to the *Data Marketing* case, but this Court denied Defendants' motion to transfer to the U.S. District

Court for the Northern District of Texas, and that district court denied Intervenors' motion to file a supplemental complaint containing claims and allegations similar to the proposed complaint in intervention here. These decisions reflect the reality that the ERISA violations alleged against Defendants have absolutely no bearing on whether Intervenors' Partnership Plans are covered by ERISA. For this same reason, the Court should deny the Motion to Intervene.

BACKGROUND

Defendants SAS and 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.

Intervenors DMP and LPMS (DMP's general partner) are plaintiffs in the *Data Marketing* case. The *Data Marketing* case relates to LPMS's request for an advisory opinion about Partnership Plans, which are health benefit plans sponsored by a type of "limited partnership," where limited partners install software on their personal phones and the "primary business purpose and main source of revenue" of the limited partnership is the "sale to third-party marketing firms of electronic data generated by [limited partners]." *See* Compl. Intervention Ex. A at 2, ECF No. 54-2 (advisory opinion request).

The Department of Labor issued an advisory opinion concluding that the Partnership Plans described in the request are not covered by ERISA due to the lack of an "genuine employment relationship" between the partnership and the limited partners. *See* Compl. Intervention Ex. B at 4, ECF No. 54-3 ("Advisory Opinion"). That Advisory Opinion was subsequently vacated in the *Data Marketing* case. *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. The Fifth Circuit affirmed the district court's vacatur of the advisory opinion, but it also found that the district court erred in its analysis concluding that the limited partners were "working owners" or, alternatively, "bona fide partners." *Data Mktg. P'ship, LP v. U.S. Dep't of Labor*, 45 F.4th 846, 858–59 (5th Cir. 2022). These terms relate to whether an individual constitutes an "employee" of a limited partnership and thus a "participant" under ERISA. *Id.* The Fifth Circuit vacated the district court's injunction prohibiting the Department "'from refusing to acknowledge the ERISA-status of the Plan or refusing to recognize the Limited Partners as working owners of' Data Marketing," *id.* at 860, and remanded the case with "interpretive questions for the district court's consideration," *id.* at 855.

After the case was remanded, the Secretary unsuccessfully sought settlement of all pending disputes with Intervenors and their affiliates and vendors. These negotiations included the Defendants here—SAS, PIC, and their principals. SAS and PIC are service providers to the Partnership Plans at issue in the *Data Marketing* case, 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 LPMS's counsel at the time. *See* Compl. Intervention Ex. A at 10, ECF No. 54-1. Negotiations with Intervenors fell through, and subsequently, negotiations with SAS, PIC, and their principals also fell through. *See* Compl. Intervention Ex. Q, ECF No. 54-18; Ex. U, ECF No. 54-21.

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

Days before the Secretary filed this action (and more than five years after the *Data Marketing* complaint was filed), Intervenors moved for leave to file a supplemental complaint in the *Data Marketing* case. Mot. Stay Ex. B, ECF No. 27-2 (*Data Marketing* ECF Nos. 66, 69). The motion and proposed supplemental complaint contained allegations of "extort[ion]" based on the settlement negotiations involving the Secretary, Intervenors, and Defendants. *See* Mot. Transfer Ex. A at 3, ECF No. 26-1 (*Data Marketing* amended motion for leave to file a supplemental complaint). Within four months, Defendants filed a Counterclaim in this action also containing allegations of "extort[ion]," along with a motion to transfer this action to the Northern District of Texas. *See* Countercl. ¶¶ 2–4, ECF No. 25; Mot. Transfer.

Meanwhile, the Secretary's action here asserts that SAS, PIC, and their principals—completely different parties from Intervenors—violated ERISA with respect to their Employer Plan clients. The Employer Plans are a different subset of Defendants' clients than the Partnership Plans at issue in the *Data Marketing* case. 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 LPMS's advisory opinion request. *See* Compl. ¶ 2 n.1.

On April 8, 2025, the U.S. District Court for the Northern District of Texas denied Intervenors' motion for leave to file a supplemental complaint and their motion for summary judgment. *Data Marketing* Order at 1, ECF No. 75. The court held that "the scope of [the *Data Marketing* case] is limited to the issues on remand from the Fifth Circuit." *Id.* at 1. It further held that "the factual record is insufficiently developed to consider whether summary judgment is appropriate" and ordered the parties to "determine the best way to develop facts for the Court to

conduct the relevant analysis on remand." *Id.* at 6–7. Discovery relevant to the terms "working owner" and "bona fide partners" is underway.

On June 9, 2025, Intervenors filed their motion to intervene, which (like Defendants' motion to transfer) asserts that the two actions are "inextricably intertwined" due to settlement negotiations involving both Defendants and Intervenors. *See* Mot. Intervene at 2, ECF No. 53; Mot. Transfer at 1–4. Intervenors propose to bring "claims of retaliation against the DOL under the First Amendment . . . and under the Administrative Procedure Act." Mem. Supp. Mot. Intervene at 2, ECF No. 54. Intervenors' proposed complaint in intervention is substantially similar to Defendants' Amended Counterclaim in content and wording. *See* Am. Countercl., ECF No. 52; Compl. Intervention.

On June 10, 2025, this Court denied Defendants' motion to transfer, noting that "the Data Marketing case involves wholly different claims, parties, and defenses than the ones raised in the case at bar." Order at 5.

ARGUMENT

Intervenors seek to shift the focus of this action away from the fiduciary breaches alleged against Defendants and toward the issues of the ongoing *Data Marketing* case. Intervenors do not identify an interest in the subject of this action, which is about whether Defendants have violated ERISA by charging excessive fees to ERISA-covered plans. Instead, Intervenors argue that they have an interest in Defendants' continued operation because "Defendants are the only vendors willing and capable to service [the Partnership Plans]" on which Intervenors' data marketing business relies. Mem. Supp. Mot. Intervene at 5. This interest is not direct or protectable, but in any event, any interest that Intervenors have in Defendants' continued operation is shared and adequately represented by Defendants themselves. Intervenors do not establish that they are entitled to intervention as of right, and permissive intervention is not

warranted as Intervenors seek to raise new and different claims that would delay adjudication of the Secretary's claims.

I. Intervenors Do Not Meet the Standard for Intervention as of Right.

Federal Rule of Civil Procedure 24(a)(2) provides that "[o]n timely motion, the court must permit anyone to intervene who . . . 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)(2). "To succeed on a motion to intervene as of right, a putative intervenor must establish (i) the timeliness of its motion to intervene; (ii) the existence of an interest relating to the property or transaction that forms the basis of the pending action; (iii) a realistic threat that the disposition of the action will impede its ability to protect that interest; and (iv) the lack of adequate representation of its position by any existing party." *R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009). "[F]ailure to satisfy any one of these four requirements sounds the death knell for a motion to intervene as of right." *T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 39 (1st Cir. 2020). "The inherent imprecision of Rule 24(a)(2)'s individual elements dictates that they be read not discretely, but together, and always in keeping with a commonsense view of the overall litigation." *Pub. Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 204 (1st Cir. 1998) (internal quotation omitted). Here, the subject of the Secretary's action is alleged ERISA violations by Defendants. Intervenors do not assert a related or protectable interest, and their asserted interest in Defendants' continued operation is adequately represented by Defendants themselves.

A. Timing Shows That Intervenors' Claims Bear No Relation to This Suit.

Intervenors' explanation of when they knew their interests were at risk demonstrates why intervention as of right is not warranted. In the First Circuit, four factors inform the timeliness inquiry:

> (i) the length of time that the putative intervenor knew or reasonably should have known that his interests were at risk before he moved to intervene; (ii) the prejudice to existing parties should intervention be allowed; (iii) the prejudice to the putative intervenor should intervention be denied; and (iv) any special circumstances militating for or against intervention.

R & G Mortg. Corp., 584 F.3d at 7. Addressing the first factor, Intervenors state that "only due to their Motion for Leave [to file a supplemental complaint] being denied in the Texas Suit do Intervenors now seek to intervene in this case, as their interests are now in peril and unprotected." Mem. Supp. Mot. Intervene at 4. Intervenors saw no need to intervene until the district court denied their motion to file supplemental claims in the *Data Marketing* case, demonstrating that there is nothing fundamental to *this* action that warrants Intervenors' participation as of right.

Indeed, Intervenors' proposed claims center on the *Data Marketing* case. In the *Data Marketing* case, Intervenors "seek to enjoin the DOL from denying the ERISA-status of the DMP Partnership Plan." Compl. Intervention ¶ 1. Then each of their proposed claims in this action seeks "a permanent injunction enjoining the DOL from engaging in any conduct against Intervenors or third parties which is intended to circumvent, moot or otherwise thwart the injunction or its issuance in the Texas Suit." Compl. Intervention ¶¶ 108, 114. *See id.* ¶ 124. This demand ignores that the *Data Marketing* case is ongoing, there is no current injunction as to the ERISA status of the Partnership Plans (the Fifth Circuit vacated the district court's earlier injunction, *Data Mktg. P'ship, LP*, 45 F.4th at 860), and the Secretary's claims in this action have no bearing on the ERISA status of the Partnership Plans.

Given Intervenors' explanation of when they knew their interests were at risk, that their motion precedes the start of discovery is beside the point. Mem. Supp. Mot. Intervene at 4. Intervenors' proposed claims are distinct from the action at hand, as also demonstrated by the other timing factors. There is no "prejudice to the putative intervenor" if intervention is denied, as whether Defendants violated ERISA has no bearing on whether Intervenors' Partnership Plans are covered by ERISA. *R & G Mortg. Corp*, 584 F.3d at 7. But there is "prejudice to the existing parties should intervention be allowed," as Intervenors seek to expand the scope of this suit into unrelated issues that are already the subject of other pending litigation. *Id.* These circumstances "militat[e] . . . against intervention." *Id.; see also Los Cangris v. UMG Recordings, Inc.*, Civil No. 10-1349 (JAG), 2012 WL 1952824, at *5 (D.P.R. May 30, 2012) ("[T]he amount of complexity and time that applicants' claims would add to this action would in fact compromise efficiency and due process for the present parties. Accordingly, Rule 24(a)'s goal would not be served by their intervention.").

B. Intervenors Do Not Assert a Direct, Protectable Interest.

Intervenors do not assert a direct or protectable interest in the outcome of this suit about whether Defendants have violated ERISA. "[A]n aspiring intervenor's claim 'must bear a sufficiently close relationship to the dispute between the original litigants.'" *Ungar v. Arafat*, 634 F.3d 46, 51 (1st Cir. 2011) (quoting *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 638 (1st Cir. 1989)). The interest must be "direct, not contingent," *Travelers Indem. Co.*, 884 F.2d at 638, and "'significantly protectable,'" *Ungar*, 634 F.3d at 51 (quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971)).

Intervenors assert that "their data marketing business and their Partnership Plans largely depend on the outcome of the case," because "Defendants are the only vendors willing and

capable to service these plans." Mem. Supp. Mot. Intervene at 5. This asserted interest is not direct or protectable. Intervenors establish no legal claim to Defendants' continued operation. "[A] mere economic interest in the outcome of the pending litigation generally is not sufficient in itself, unless the substantive law recognizes that interest as one belonging to or being owned by the movant." *Intervention as of right—Applicant must have sufficient interest*, 3 Bus. & Com. Litig. Fed. Cts. § 24:52 (5th ed.) (collecting cases); *see also Patch*, 136 F.3d at 205 (holding that "an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right" where intervenors asserted a general interest in lower electric rates). Intervenors' asserted interest is also contingent and speculative, as it assumes no other service vendors can or will service the Partnership Plans.

Intervenors rely on *Aspen American Insurance Co. v. Luquis-Guadalupe*, Civ. No. 24-01277 (MAJ), 2024 WL 4456954, at *2 (D.P.R. Oct. 10, 2024), but that case is distinguishable because the intervenors in that case raised a "claim to indemnification under [a] contested insurance policy." *Id.* The court found that this constituted a "direct and concrete interest, as the outcome of the primary action may directly affect their ability to recover under the policy." *Id.* Thus, the intervenors' "stake in the contested insurance policy" was an economic interest directly affected by the litigation. *Id.; see also B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 545 (1st Cir. 2006) (finding intervenor's contractual rights would be affected where "[a]ppellees seek an injunction requiring specific performance that could bind [intervenor]"). In contrast, Intervenors only assert a general interest in Defendants' continued operation.

Intervenors next argue that their financial interests are "directly threatened" because "[s]imilar to *Mosbacher*, the real targets of this suit are Intervenors." Mem. Supp. Mot. Intervene at 5. But *Conservation Law Foundation of New England, Inc. v. Mosbacher*, 966 F.2d 39 (1st Cir.

1992), concerned a fishing group that sought to "intervene as of right in a suit filed by public interest organizations seeking more extensive regulation by a federal agency." *Id.* at 40. The suit was brought by "public interest entities seeking to force an agency to alter its regulations" that applied to the fishing groups. *Id.* at 43–44 (noting that if a consent decree took effect, the fishing groups would "be subjected to even more stringent rules than those presently in effect"). In contrast, the Secretary's suit does not seek to regulate Intervenors. The Secretary seeks to enforce ERISA's fiduciary duty and prohibited transaction provisions as to Defendants—not Intervenors.

Moreover, Intervenors' asserted interests are not "related to the subject matter of the action." *Travelers Indem. Co.*, 884 F.2d at 640 ("[W]e will not allow the insurers to bootstrap their coverage defenses into this lawsuit."). If the Court rules that Defendants violated ERISA by charging excessive fees to their ERISA plan clients, that ruling would in no way bind Intervenors. *See Flynn v. Hubbard*, 782 F.2d 1084, 1093–94 (1st Cir. 1986) (Coffin, J., concurring) (finding no protectable economic interest where putative intervenors would not be bound by any judgment and would have a subsequent opportunity to litigate their obligations). In contrast, the Secretary has a direct interest in recouping fees on behalf of ERISA plans if this Court finds that Defendants violated ERISA by charging excessive fees to more than 1,900 Employer Plans.

C. Intervenors Do Not Demonstrate Impairment.

Intervenors claim that the resolution of this suit will leave them "without an opportunity to protect their interests" because they "tried seeking relief in the Texas Suit alleging similar facts but were denied due to the court's narrow scope of review upon remand." Mem. Supp. Mot. Intervene at 6. The *Data Marketing* court's ruling does not entitle Intervenors to bring unrelated claims in this case, particularly where Intervenors propose to provide information that is

irrelevant to the subject of the action. Intervenors argue that they need to explain "how the Partnership Plans work, and how Defendants service them in a lawful way." *Id.* Those topics have no bearing on whether Defendants charged excessive fees to more than 1,900 Employer Plans. If Defendants violated ERISA with respect to the Employer Plans, it does not matter whether the services they provided to the Partnership Plans were "lawful." Moreover, Intervenors' proposed claims are that the Department violated Intervenors' First Amendment rights and the Administrative Procedure Act, not anything related to the subject matter of the Secretary's Complaint or the operation of the Partnership Plans. Compl. Intervention ¶¶ 103–24. The proper and adequate forum for Intervenors to make their arguments regarding ERISA coverage of the Partnership Plans is in the *Data Marketing* case that Intervenors brought against the Secretary, and the rejection of their supplemental complaint in that matter does not entitle them to a second bite at the apple here.[2]

D. Intervenors' Asserted Interests Are Adequately Represented By Defendants.

Even assuming Intervenors assert valid interests, Intervenors do not demonstrate that Defendants will not adequately protect those interests. "Generally, a presumption of adequate representation exists when the interests of the intervenor and an existing party are aligned." *Aspen*, 2024 WL 4456954, at *3 (citing *Mass. Food Ass'n v. Mass. Alcoholic Beverages Control Comm'n*, 197 F.3d 560, 567 (1st Cir. 1999)). To overcome the presumption, the intervenor must offer "'an adequate explanation as to why' it is not sufficiently represented by the named party."

[2] Intervenors also argue that "there is a real possibility that Defendants may settle with the DOL on terms which are enough to keep Defendants financially afloat but leave Intervenors without their vital services." Mem. Supp. Mot. Intervene at 6. "[W]hen a party cites a fear of settlement as a reason to intervene, it is not an abuse of discretion to find that reason insufficient if the intervention will not reduce the likelihood of settlement." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 807 F.3d 472, 477 (1st Cir. 2015).

Id. (quoting *B. Fernández & Hnos., Inc.*, 440 F.3d at 546). The explanation must "consist of 'something more than speculation as to the purported inadequacy' of representation." *T-Mobile*, 969 F.3d at 40 (quoting *Students for Fair Admissions*, 807 F.3d at 475); *see also SEC v. LBRY, Inc.*, 26 F.4th 96, 99 (1st Cir. 2022) ("Where the presumption of adequate representation applies, the applicants' burden is a heavy one, since adequacy is primarily a fact-sensitive judgment call and the standard of review is deferential." (internal quotation omitted)).

Intervenors repeatedly assert that they "would not be able to continue operating their group benefit plans without Defendants." Mem. Supp. Mot. Intervene at 8–9. To the extent that Intervenors assert an interest in Defendants' continued operation, Defendants have "the singularly greatest interest in preserving [their] economic survival and can adequately represent that interest in this case." *Patch*, 136 F.3d at 209. Intervenors assert that Defendants "have different priorities" and argue that Defendants and Intervenors would bring different First Amendment claims, but Intervenors do not explain how this nuance means their interests are not aligned with Defendants' interests. Mem. Supp. Mot. Intervene at 7–8. Between Intervenors and Defendants, it is unquestionably the Defendants who have the greatest interest in their own ability to continue operating.

Intervenors' arguments as to why Defendants will not protect their interests are unavailing. Intervenors claim that "Defendants may not feel it necessary or prudent to defend aspects of the DOL's allegations that pertain chiefly to Intervenors, such as the [2020] Advisory Opinion." *Id.* at 8. This argument completely misrepresents the nature of the Secretary's action, as the Secretary's Complaint contains no allegations about the Intervenors or the Advisory Opinion and does not seek any relief against Defendants or Intervenors related to the Advisory Opinion. Similarly, Intervenors argue that they need to "clarify facts about Defendants' valid

conduct as it relates to the Partnership Plans." *Id.* But again, the Secretary's claims are not premised on Defendants' conduct relating to the Partnership Plans. Even if Defendants engaged in "valid conduct" with respect to the Partnership Plans, that would not obviate fiduciary breaches made with respect to Employer Plan clients.

Finally, Intervenors argue that "due solely to the specific scope of the case on remand, Intervenors have been unable to tell their full story in the Texas Suit." *Id.* at 8. But the *Data Marketing* case is ongoing, and any dissatisfaction that Intervenors have with the court's rulings in that case does not entitle them to piggyback unrelated arguments onto an unrelated suit.

II. Permissive Intervention Is Not Warranted.

Nor is permissive intervention appropriate. Intervenors' proposed claims share no common question of law or fact with the Secretary's claims, and Intervenors' claims would significantly expand the scope of this litigation, resulting in delays for the existing parties.

A court may permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). "[T]he court may 'consider almost any factor rationally relevant' to the intervention determination" and "'enjoys very broad discretion in granting or denying [such a] motion.'" *T-Mobile*, 969 F.3d at 40–41 (quoting *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 172 F.3d 104, 113 (1st Cir. 1999)).

Intervenors' proposed complaint seeks to shift the Court's attention from the ERISA violations alleged against Defendants to the issues in the *Data Marketing* case—the "single employer employee welfare plans ('Partnership Plans'), sponsored by Intervenors" and whether

those plans are covered by ERISA.[3] Compl. Intervention ¶ 1; *see also id.* ¶¶ 108, 114, 124; Mem. Supp. Mot. Intervene at 10. Intervenors claim that this case and the *Data Marketing* case are "inextricably intertwined." Compl. Intervention ¶ 4. But as this Court has already opined, there is no overlap in issues between the two lawsuits, and no overlap in parties other than the Secretary. Order at 4.

Granting permissive intervention would delay and prejudice adjudication of the Secretary's action by significantly expanding the scope of the suit. *See T-Mobile*, 969 F.3d at 41–42 (affirming denial of intervention where purported intervenors "do not appear poised to add anything of meaningful value" and "would unduly hinder the efficient resolution" of the case). Indeed, even where "applicants' complaint [does] share a common question of law or fact with plaintiffs' claims," intervention may not be warranted where "the number of unrelated claims and parties that applicants wish to add to this case would expand the present action exponentially." *Los Cangris*, 2012 WL 1952824, at *5–6. Such expansions "inevitably delay the adjudication of the original parties' rights, contrary to Rule 24(b)'s mandate." *Id.* Moreover, "a district court considering requests for permissive intervention should ordinarily give weight to whether the original parties to the action adequately represent the interests of the putative intervenors." *T-Mobile*, 969 F.3d at 41. As discussed above, Intervenors have not shown that Defendants would fail to represent their asserted interests adequately. *See supra* pp. 11–12.

Intervenors argue that "there would be little, if any expansion of the issues in this case" because their claims are similar to those in Defendants' Amended Counterclaim. Mem. Supp.

[3] Intervenors argue that "an adverse ruling [in this action] 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." Mem. Supp. Mot. Intervene at 10. But a resolution in this action would have no bearing on the outcome or continuation of the *Data Marketing* case, which is ongoing and concerns the ERISA status of the Partnership Plans.

Mot. Intervene at 10. The Secretary asserts in a contemporaneously filed motion to dismiss that Defendants have failed to state any plausible claims, and Intervenors' proposed claims appear to suffer from the same deficiencies. *See Rhode Island Fed'n of Tchrs., AFL-CIO v. Norberg*, 630 F.2d 850, 854 (1st Cir. 1980) ("Whether of right or permissive, intervention under Rule 24 is conditioned by the Rule 24(c) requirement that the intervenor state a well-pleaded claim or defense to the action."). In any event, Intervenors do not assert an interest related to the ERISA claims at issue. Intervention is not warranted because Intervenors' proposed claims "involv[e] different questions of law, different parties, different facts, and different evidentiary considerations." *Santiago-Sepulveda v. Esso Standard Oil Co. (Puerto Rico)*, 256 F.R.D. 39, 49 (D.P.R. 2009). "Rule 24 does not contemplate intervention when an entirely new issue will be introduced." *Jefferson Cnty. Sav. Bank v. Caparra Gardens Highland Dev. Corp.*, 53 F.R.D. 178, 179 (D.P.R. 1971).

CONCLUSION

For the reasons above, the Secretary respectfully requests that the Court deny the Motion to Intervene (ECF No. 53).

Dated: August 8, 2025

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that I filed the **SECRETARY'S RESPONSE IN OPPOSITION TO DATA MARKETING PARTNERSHIP, LP AND LP MANAGEMENT SERVICES, LLC'S MOTION TO INTERVENE** on the docket via CM/ECF. Notice of this filing will be sent to all counsel of record through the Court's Electronic Case Filing System.

/s/Blair L. Byrum
BLAIR L. BYRUM