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

VINCENT N. MICONE, III, ACTING 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 No.: 3:24-cv-01512 (CVR)

ORIGINAL COUNTERCLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE COURT:

COME NOW Defendants and Counterclaim Plaintiffs Suffolk Administrative Services, LLC ("SAS"), Providence Insurance Company, I.I. ("PIC"), William Bryan ("Bryan"), Arjan Zieger (Zieger"), and Alexander Renfro ("Renfro") (collectively "Defendants"), for their counterclaims for declaratory and injunctive relief against Plaintiff Acting Secretary of Labor Vincent N. Micone, III ("Micone" or "the SOL")[1] state as follows:

INTRODUCTION

1. The real targets by the SOL in this suit are not Defendants, but rather single employer employee welfare plans, and in particular those that have as the single employer a limited partnership ("Partnership Plans") sponsored by Data Marketing Partnership, LP ("DMP"), whose

[1] Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Acting Secretary of Labor Vincent N. Micone, III is automatically substituted as Plaintiff in this action.

general partner is LP Management Services, LLC ("LPMS"), and serviced by SAS and PIC. These Partnership Plans (a) are based on a unique combination of limited partners and common law employees; (b) collectively provide health benefits to more than 30,000 participants nationwide; and (c) are the subject of litigation pending since 2019 in the U.S. District Court for the Northern Texas, styled as *Data Marketing Partnership, LP, et al. v. U.S. Department of Labor, et al*., Civil Action No. 4:19-CV-00800-O ("Texas Suit"). By law, the Partnership Plans are protected from regulation by states and territories by the Employee Retirement Income Security Act ("ERISA"). *See Raymond B. Yates, M.D., P.C. Profit Sharing Plans v. Hendon*, 541 U.S. 1 (2004). *See also* DOL Advisory Opinion No.99-04A n. 3 (Feb. 4, 1999).

2. Inexplicably, and contrary to its own 1999 Advisory Opinion, however, the U.S. Department of Labor ("DOL") has undertaken a concerted effort to discredit or dismantle the Partnership Plans, ostensibly because they compete with Affordable Care Act insurance. This effort began in 2019 shortly after LPMS requested an advisory opinion from the DOL ("AO Request") that the Partnership Plans are protected by ERISA. The DOL responded to the AO Request with (a) an unwarranted and retaliatory investigation of the vendors providing essential services to the Partnership Plans, including SAS and PIC ("Anjo Investigation"); (b) a Feb. 3, 2020 Advisory Opinion that the Partnership Plans are not protected by ERISA, which Advisory Opinion was found to be arbitrary and capricious in the Texas Suit by the District Court in *Data Marketing Partnership, LP v. United States Department of Labor*, 490 F.Supp.3d 1048 (N.D.Tex. 2020); and the U.S. Court of Appeals for the Fifth Circuit in *Data Marketing Partnership, L.P. v. U.S. Dept. or Labor*, 45 F.4th 846 (5th Cir. 2022); and (c) extortive settlement demands in the Anjo Investigation tied to (i) the dismissal by LPMS and DMP of the Texas Suit, which seeks injunctive relief as to the ERISA status of the Partnership Plans, and (ii) the withdrawal of the AO Request.

3. This suit continues the DOL's extortive efforts with frivolous and scathing claims against SAS and PIC disproven by the Anjo Investigation, which entailed vendor services provided by SAS and PIC not only as to the Partnership Plans, but also other single employer employee welfare plans established by over 1900 other employers, according to the Complaint ("Employer Plans"). These efforts were undertaken by the DOL in order to (a) pressure DMP and LPMS to dismiss the Texas Suit and withdraw the AO Request, and/or (b) moot the Texas Suit and AO Request by threatening or causing such economic and reputational damage to SAS and PIC they can no longer provide the vendor services necessary to the continued operation of the Partnership Plans. It is not enough, therefore, for Defendants to simply defend this suit, which the DOL disingenuously argues is limited to the Employer Plans; they must and do now seek declaratory and injunctive relief to prevent the DOL from achieving its improper aims to dismantle the Partnership Plans by extorting with intent to incapacitate the Defendant vendors to the Partnership Plans.

4. A *Motion for Leave to File Supplemental Complaint* (Doc. 69), along with a proposed *Supplemental Complaint for Declaratory/Injunctive Relief* (Doc. 69-2) detailing and documenting the DOL's extortive tactics as described above, have already been filed by DMP and LPMS in the Texas Suit. This Counterclaim complaining of the DOL's extortive tactics as described above is now being filed by Defendants here, as they are not parties to the Texas Suit.

I. MEWA ALLEGATIONS ARE FRIVOLOUS AND ABUSE OF AUTHORITY

5. Among the frivolous claims asserted against Defendants in this suit is that they operate as a multiple employer welfare arrangement ("MEWA"). This allegation is made in support of an alleged penalty assessment of up to $1,644 per day over a period of eight (8) years (or nearly $5 million) for failing to file a Form M-1. *See* 29 U.S.C. § 1132(c), 29 CFR §2560.502c-5 and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal

Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). Pub. L. No. 114-74; 129 Stat. 599. T.

6. ERISA defines a MEWA as "an employee welfare plan or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing [welfare benefits] to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries." 29 U.S.C. § 1002(40)(A). A MEWA is generally considered to be one plan under ERISA.

7. Defendants, however, are not employee welfare plans, nor are they sponsors of employee welfare plans. Defendants are not otherwise themselves arrangements established or maintained for the purpose of providing welfare benefits. Instead, Defendants are vendors who provide services to employee welfare plans and the sponsors of such employee welfare plans, including the Employer Plans and Partnership Plans.

8. SAS provides the intellectual property, benefits expertise, ministerial administrative services, such as a call center to handle incoming queries from participants or their assignees, and the compliance support necessary to third parties who operate employee welfare benefit plans.

9. PIC is an insurer licensed and operating exclusively in Puerto Rico, and it provides reinsurance to the sponsors of self-insured employee welfare benefit plans.

10. Footnote 1 of the *Complaint* otherwise acknowledges the pleading relates to over 1,900 "ERISA-governed health plans" and not a single ERISA plan.

11. Under the definition set forth in ERISA and the plain language of the *Complaint*, therefore, Defendants are not and cannot be a MEWA. To allege otherwise is, in and of itself,

frivolous. To allege otherwise as a part of concerted effort to discredit or dismantle the Partnership Plans is an abuse of authority.

II. DOL'S CLAIMS AS TO DEFENDANTS' CONDUCT ARE SALACIOUS AND AN ABUSE OF AUTHORITY

12. Among the salacious claims asserted in this suit against Defendants are that they engaged in self-dealing, charged excessive fees, and never paid claims. These allegations are made in support of a monetary demand of $40 million (in the Civil Cover Sheet) which is sufficient to bankrupt Defendants.

13. Contrary to the DOL's allegations of self-dealing, however, Defendants provided documents to DOL in the Anjo Investigation showing that, as to the plans encompassed by this suit during the period between 2016-2022, SAS had net income of approximately $2.3 million, and PIC had a net loss of approximately $2.4 million. The DOL simply ignored the rebuttal evidence provided to them, posing no questions to Defendants about the discrepancy, nor providing any facts to support the DOL's allegations.

14. Contrary to the DOL's allegations that Defendants commingled plan funds, Defendants provided documents to the DOL in the Anjo Investigation showing Defendants never touched plan funds. Rather, all plan funds were and are handled by third-party administrators other than Defendants. SAS simply invoiced and was paid for its vendor services by the third-party administrators, and PIC invoiced and was paid premiums and other charges for insurance policies it issued to the plan sponsors.

15. Contrary to the DOL's allegations that Defendants charge excessive fees, Defendants provided documents to the DOL in the Anjo Investigation showing their average fees are well below industry standards. A fee below industry standards cannot, by definition, be excessive. Again, the DOL ignored this evidence and offered none of its own.

16. Perhaps the most incendiary and absurd allegation made by the DOL is that Defendants "never paid claims." Defendants provided documents to the DOL in the Anjo Investigation showing PIC paid out more than $300 million in claims to its insureds, the plan sponsors.

17. The DOL thus is in possession of documents disproving the very allegations now made in this suit. To make allegations which ignore this proof is salacious and calculated to harm Defendants' business and personal reputations. To make such allegations as part of a concerted effort to discredit or dismantle the Partnership Plans is an abuse of authority.

III. THIS SUIT IS AIMED AT THE PARTNERSHIP PLANS, NOT DEFENDANTS

18. This suit and the Texas Suit, while involving different parties, are inextricably intertwined. Both suits began with the AO Request. (See Exhibit A, attached hereto).

A. Texas Suit

19. As to LMPS, the AO Request ultimately led to an unfavorable Advisory Opinion dated Feb. 3, 2020, that the Partnership Plans are not protected by ERISA. (See Exhibit B, attached hereto). Contrary to Supreme Court precedent and the DOL's own previous advisory opinions, the Advisory Opinion found the Partnership Plans were not subject to ERISA because of the nature of the "work" being performed by the limited partners.

20. This Advisory Opinion was the subject of the Texas Suit brought by LPMS and DMP against the DOL. In a *Memorandum Opinion and Order* dated Sept. 28, 2020, the District Court (1) found the DMP Plan to be a single employer ERISA plan; (2) vacated the Advisory Opinion as arbitrary and capricious, and in material conflict with previous DOL advisory opinions, in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2); and (3) enjoined DOL "from refusing to recognize the ERISA-status of the [DMP Partnership] Plan." (See Exhibit C, attached hereto). On appeal, the Fifth Circuit affirmed the vacatur of the Advisory Opinion and

remanded to the District Court for further findings to support its injunction. (See Exhibit D, attached hereto).

21. The DOL continues to fight the Texas Suit. The DOL filed a *Motion for Remand to Agency* (Doc. 48) with the District Court asking for a chance at a do-over with respect to the Advisory Opinion. This Motion was denied by the District Court in an *Opinion and Order*, dated Aug. 11, 2023 (Doc. 51). LPMS and DMP have now filed a *Motion for Summary Judgment* (Doc. 56) to reinstate the injunction enjoining the DOL from refusing to recognize the ERISA-status of the DMP Partnership Plan.

B. Anjo Investigation

22. As to Defendants, the AO Request quickly led to the Anjo Investigation. Within one month of a March 2019 meeting between LPMS and the DOL as to the AO Request, DOL began requesting information and issuing subpoenas not only as to SAS and PIC, but also as to key entities doing business with SAS and PIC, including the Employer Plans. The DOL only learned of SAS and PIC through the AO Request.

23. The Anjo Investigation ultimately led to a letter by the DOL to Defendants dated June 8, 2023, demanding payment of $60 million.

C. DOL Ties Fate of Anjo Investigation to Texas Suit

24. The DOL began a new strategy in early 2024 after DMP and LPMS extended a good faith offer to explore settlement of the Texas Suit. The DOL responded with a proposal to instead pursue "global settlement" of the Texas Suit and the Anjo Investigation. After reminding the DOL that although DMP, LPMS, SAS, and PIC shared some common interests and counsel, there was no common ownership or control between DMP and LPMS on the one hand, and SAS and PIC on the other, however, all of the entities and individual Defendants agreed to authorize global settlement discussions with the DOL.

25. Unbeknownst to DMP, LPMS, SAS, PIC, and the individual Defendants at the time, the DOL never had any intention of settling the Texas Suit. All of the subsequent "settlement" discussions and correspondence made clear that the Anjo Investigation could be settled only if the Texas Suit was dismissed, and the AO Request was withdrawn by DMP and LPMS. In other words, DOL would only settle if DMP and LPMS abandoned every advantage gained in their hard-fought legal battles in the Texas Suit. The fate of SAS, PIC, and the individual Defendants in the Anjo Investigation thus hinged on dismissing a lawsuit to which none was a party.

D. This Suit

26. The DOL's efforts have now culminated with this suit, which arises from the Anjo Investigation. When DMP and LPMS did not agree to dismiss the Texas Suit and withdraw the AO Request, the DOL's response was to revert to a monetary demand that it knew Defendants could not meet, and then sue Defendants in this Court for $40 million, which is eight (8) times what the DOL was willing to settle for had DMP and LPMS agreed to dismiss the Texas Suit and withdraw the AO Request.

27. Although Footnote 1 of the Complaint claims the Partnership Plans "are not among the …Plans at issue in this" suit, the allegations of the pleading show the contrary. First, the pleading alleges SAS and PIC constitute a single MEWA which includes the Employer Plans and the Partnership Plans. [*Complaint* ¶ 2] The allegations of the pleading thus unavoidably relate to the operations of the alleged MEWA as a whole, and not to specific plans administered by the alleged MEWA. Second, the Complaint alleges the commingling of funds by third-party administrators ("TPAs"). [*Complaint* ¶¶ 40-41]. This alleged commingling includes the Employer Plans and the Partnership Plans.

28. Two realities have now come to pass because of the DOL's concerted efforts to dismantle or discredit the Partnership Plans. First, SAS and PIC face a threat of financial ruin with the monetary demands being made in this suit and the attorney's fees necessary to defend this lawsuit.

29. Second, the financial ruin of SAS and PIC will inevitably result in the end of the Partnership Plans. Upon information and belief, the Anjo Investigation has thinned the marketplace for vendor services necessary to the operations of the Partnership Plans to SAS and PIC. There are thus no other vendors which provide the services currently provided by SAS and PIC, without which the Partnership Plans could not operate.

30. Therefore, lest this Court intervene with declaratory and injunctive relief in this suit, the DOL will likely succeed in its efforts to dismantle and discredit the Partnership Plans. The result of such an outcome would be the loss of access to affordable health plan benefits by approximately 30,000 individuals, and similar actions in the future by the DOL to dismantle and discredit employee welfare plans which comply with ERISA.

PARTIES

31. The DOL is an agency of the United States government and has responsibility for implementing and enforcing portions of ERISA. It is an "agency" under 5 U.S.C. § 551(1).

32. Micone is the Acting Secretary of Labor and is sued solely in his official capacity.

33. SAS is a Puerto Rican limited liability company with a principal place of business located at Metro Office Park, 2 Calle 1, Suite 400, Guaynabo, PR 00968.

34. PIC is a Puerto Rican international insurer with a principal place of business located at Calle Reverendo Domingo Marrero #5, Suite 4, San Juan, Puerto Rico 00925.

35. Bryan is an individual residing in Los Angeles, California.

36. Zieger is an individual residing in San Juan, Puerto Rico.

37. Renfro is an individual residing in Nashville, Tennessee.

JURISDICTION AND VENUE

38. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 2201 (Declaratory Judgment Act), 29 U.S.C. § 1132(k), and 5 U.S.C. § 702 (Administrative Procedure Act).

39. The United States has waived its sovereign immunity in this action pursuant to 5 U.S.C. § 702, 28 U.S.C. § 2201, and 29 U.S.C. § 1132(k).

40. Venue as to this Counterclaim is proper in this district under Rule 13 of the Federal Rules of Civil Procedure.

41. Venue as to this Counterclaim is also proper in the U.S. District Court for the Northern District of Texas where the earlier Texas suit was filed and where (a) one or more of the Partnership Plans serviced by SAS and PIC, and one or more of the employer-sponsored plans also serviced by SAS and PIC, have their principal office, 29 U.S.C. §§ 1132(k); and (b) where a substantial part of the events or omissions giving rise to the claims occurred. 28 U.S.C. § 1391(b)(2). As set forth further in the Motion to Transfer Venue, which is being contemporaneously filed herewith, the Northern District of Texas is the clearly more proper venue.

HISTORY OF APA VIOLATIONS BY THE DOL

42. As emphasized in *Texas v. DOL*, Civil Action No. 4:24-CV-499 (E.D.Tex. Nov. 15, 2024), "an agency cannot 'exercise its authority in a manner that is inconsistent with the administrative structure that Congress has enacted into law' no matter how difficult the issue it seeks to address" *See FDA v. Brown & Williamson*, 529 U.S. 120, 125 (2000). In addition to the findings of the District Court and Fifth Circuit in the Texas Suit, however, federal jurisprudence has found DOL to have violated the APA in other decisions.

43. In *New York v. United States Department of Labor*, 363 F.Supp.3d 109 (D.D.C. 2019), the U.S. District Court for the District of Columbia vacated, in part, a DOL rule regarding association health plans under ERISA.

44. In *Chamber of Commerce of United States of America v. United States Department of Labor*, 885 F.3d 360 (5th Cir. 2018), the Fifth Circuit vacated DOL's 2016 "fiduciary rule" under ERISA, which purported to expand fiduciaries to include broker-dealers and insurance agents in conflict with the plain text of ERISA.

45. In *Federation of Americans for Consumer Choice, Inc. v. United States Department of Labor*, Case No. 6:24-cv-163, 2024 WL 3554879 (E.D.Tex. July 25, 2024), the U.S. District Court for the Eastern District of Texas stayed DOL's 2024 "fiduciary rule" under ERISA, which purported to impose ERISA-fiduciary status on "any insurance agent who merely complies with state insurance laws when dealing with an ERISA plan member or owner of an [IRA]."

46. In *American Council of Life Insurers v. United States Department of Labor*, Case No. 4:24-cv-00482 (N.D.Tex. July 26, 2024), the Court stayed DOL's 2024 "fiduciary rule" under ERISA as conflicting with ERISA.

47. In *American Securities Association v. United States Department of Labor*, Case No. 8:22-cv-330-VMC-CPT, 2023 WL 1967573 (M.D.Fla. Feb. 13, 2023), the U.S. District Court for the Middle District of Florida vacated, in part, guidance promulgated by DOL interpreting its ERISA Prohibited Transaction Exemption 2020-02, 85 Fed.Reg. 82798 (Dec. 18, 2020).

48. In *Nevada v. United States Department of Labor*, 275 S.Supp.3d 795 (E.D.Tex. 2017), the U.S. District Court for the Eastern District of Texas invalidated a 2016 DOL rule purporting to interpret the executive, administrative and professional employee exemptions of the Fair Labor Standards Act ("FLSA").

49. In *Texas v. United States Department of Labor*, Case No. 4:24-cv-00499, 2024 WL 3240618 (E.D.Tex. June 28, 2024), the U.S. District Court for the Eastern District of Texas issued a preliminary injunction as to a 2024 DOL rule purporting to interpret the executive, administrative and professional employee exemptions of the FLSA.

50. In *Restaurant Law Center v. DOL*, 115 F.4th 396 (5th Cir. 2024), the Fifth Circuit vacated DOL's so-called 80/20/30 Rule that governed how tipped employees must be paid under the FLSA.

51. In *New York v. United States Department of Labor*, 477 F.Supp.3d 1 (S.D.N.Y. 2020), the U.S. District Court for the Southern District of New York vacated, in part, a DOL rule interpreting the Families First Coronavirus Response Act.

52. In *New York v. Scalia*, 490 F.Supp.3d 758 (S.D.N.Y. 2020), the U.S. District Court for the Southern District of New York vacated, in part, a DOL rule narrowing the definition of "joint employer" under the FLSA.

53. In *State of Kansas v. DOL*, 2024 WL 3938839 (S.D.Ga. Aug. 26, 2024) the U.S. District Court for the Southern District of Georgia issued a preliminary injunction halting the effective date of DOL's farmworker protection rule.

54. In *Texas v. DOL*, Civil Action No. 4:24-CV-499 (E.D.Tex. Nov. 15, 2024), the U.S. District Court for the Eastern District of Texas vacated a 2024 DOL rule again purporting to interpret the executive, administrative and professional employee exemptions of the FLSA.

55. In *Manhattan Life Insurance and Annuity Co. et al. v. U.S. Department of Health and Human Services et al.*, No. 6:24-cv-00178-JCB, Doc. 36 (E.D.Tex. Dec. 4, 2024), the U.S. District Court for the Eastern District of Texas revoked DOL's March 28, 2024 regulations on group indemnity disclosures.

ERISA

56. A primary purpose of ERISA is "to promote and facilitate employee benefit plans." *Raymond B. Yates*. 541 U.S.at 17.

57. A goal of ERISA is to avoid regulation of employee benefit plans by individual states and territories through "uniform national treatment of … benefits." *Raymond B. Yates*. 541 U.S.at 17.

58. In an Aug. 1, 2023, publication, the U.S. Chamber of Commerce recognized:

> "For nearly 50 years, the Employee Retirement Income Security Act (ERISA) has provided the framework needed to provide a stable employer-sponsored insurance (ESI) system. As the single largest source of health benefits in the United States, ESI provides health coverage for nearly 160 million American workers and their families. ERISA underpins the success of system, playing an important role to keep employer-sponsored health coverage accessible and affordable… ERISA works for ESI. This foundation is critical to keeping our health care system efficient and cost-effective for tens of millions of American workers. For nearly five decades, ERISA has successfully strengthened the ESI system and contributed to the growing number of Americans covered by ESI plans."

59. The legal protections afforded these 160 million Americans by ERISA are uniform and strict. As noted by the U.S. Supreme Court: "ERISA's primary aim is to protect individuals who participate in employee benefit plans" and "[t]o effectuate this goal, Congress established 'strict standards' of conduct for those with discretionary authority over employee benefit plans." *See Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985)).

FACTS

I. BACKGROUND

60. SAS and PIC provide vendors services not only to the Partnership Plans sponsored by DMP and other LPMS managed limited partnerships, but also to the Employer Plans.

A. The DMP Plan

61. The primary business purpose of DMP is the production, capture, segregation, aggregation, anonymization, organization, and sale to third parties of electronic data generated by its partners.

62. The generation and aggregation of electronic data transmitted by each limited partner of DMP represents the most significant, income-generating commodity which DMP seeks to sell to third parties.

63. As a business seeking to profit from the electronic data generation, aggregation, and sales market, DMP must collect and aggregate data generated by tens of thousands of active users of its proprietary software.

64. The limited partners of DMP are compensated for, control and manage the production, capture, segregation, aggregation, and sale of, - data that they individually produce, empowering Limited Partners in a manner not otherwise available to them.

65. To attract and retain limited partners willing to contribute the data they generate for aggregation and sale, DMP established the DMP Plan, which implements the Partnership Plan structure set forth in the AO Request.

66. Without the DMP Plan as a recruiting and retention tool, DMP would be less able to attract and retain limited partners willing to generate and contribute their data as working owners for the business purpose of the limited partnership.

B. LPMS

67. LPMS is a general partner for DMP and other similar limited liability partnerships which rely upon the participation of limited partners to contribute their electronic data for aggregation and sale. The Partnership Plans were established in part to attract and retain limited partners and common law employees for these businesses.

68. Without the Partnership Plans as recruiting and retention tools, these businesses would be less able to attract and retain limited partners willing to participate as working owners for the business purposes of the limited partnerships.

C. Employer Plans

69. Unlike the sponsors of the Partnership Plans, the sponsors of the Employer Plans have vendor options in the marketplace other than SAS and PIC but have nevertheless opted to retain the plan services provided by SAS and PIC.

D. SAS

70. SAS provides consultative and ministerial vendor services throughout the country to the Partnership Plans and the Employer Plans.

71. The Partnership Plans, including the DMP Plan, were established with the irreplaceable assistance of SAS. SAS expended resources, time, and expertise to develop lawful and compliant work product tailored to assist LPMS in implementing the novel Partnership Plan structure through limited partnerships such as DMP.

72. LPMS and DMP do not have the expertise or resources to ensure proper compliance with applicable ERISA provisions and regulations of the self-insured group health plans without the expertise of SAS.

73. In contrast to the Employer Plans, there are no companies other than SAS willing and able to provide the intellectual property and compliance services to plans that utilize the structure of the Partnership Plans.

D. PIC

74. As a Puerto Rico domiciled and regulated insurer, PIC provides reinsurance to the sponsors of Partnership Plans and Employer Plans. In accordance with PIC's direct procurement

procedures, all reinsurance policies are issued in Puerto Rico even though the insureds (plan sponsors) are domiciled elsewhere.

75. The plan sponsors for the Partnership Plans, including the DMP Plan, obtain reinsurance, or stop loss insurance, from PIC to cover the potential financial exposure inherent in sponsoring self-funded group health plans.

76. PIC expended resources, time, and expertise to develop products tailored to assist LPMS and others in implementing the novel Partnership Plan structure.

77. LPMS and DMP do not have the financial resources nor the expertise to properly manage the risk of covered claims exceeding contributions without the stop loss insurance provided by PIC.

78. In contrast to the Employer Plans, there are no insurance carriers other than PIC willing to underwrite the risk of covered claims exceeding contributions to the Partnership Plans.

E. What End of Services of SAS and PIC Would Mean to the Partnership Plans and the Employer Plans

79. Without the services provided by SAS and the stop loss insurance provided by PIC, the Partnership Plans would not be able to continue their respective plans. The administration of the Employer Plans would also face interruptions and hardships as those plans sought replacement vendors.

80. If the DMP Plan and the Partnership Plans are discontinued, DMP and the other LPMS managed limited partnerships would experience significant financial hardship and probable dissolution.

II. DOL Eventually Responds to Request For Advisory Opinion

A. AO Request and Meetings with DOL

81. In 2018, Renfro was retained as legal counsel for LPMS to assist it in pursuing an advisory opinion from DOL concerning a novel application of the "working owner" theory to the

proposed Partnership Plans. At the time, Renfro was a principal of SAS, and provided services to LPMS with the consent and participation of SAS, facts which are known to DOL.

82. On Nov. 8, 2018 (revised on Jan. 15, 2019, and Feb. 27, 2019), Renfro submitted the formal AO Request with DOL on behalf of LPMS, for the Partnership Plans. (See Exhibit A, attached hereto).

83. The AO Request detailed the legal and factual basis for application of ERISA to the Partnership Plans building upon the previously recognized concept under ERISA of "working owners," including those recognized by the U.S. Supreme Court in *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1 (2004), and DOL in Advisory Opinion 99-04A.

84. As noted in the AO Request, LPMS sought to implement this Plan structure through limited partnerships for which LPMS would act as general partner.

85. Given the novel nature of the structure applicable to limited partnerships, LPMS retained Renfro, with SAS's approval, to seek guidance from DOL that the proposed application was consistent with ERISA statutes and regulations.

86. In October 2018, prior to submitting the AO Request, Renfro attended a meeting in Washington D.C. with various DOL representatives to discuss the applicability of ERISA to the Partnership Plans. At this meeting, Renfro was representing the interests of LPMS. In attendance at the October Meeting and representing the interests of the DOL were Preston Rutledge, then Assistant Secretary of Labor for the Employee Benefits Security Administration ("EBSA"), the division of the DOL responsible for ERISA compliance and interpretations, and others.

87. At the meeting, Renfro explained the Partnership Plan structure to the DOL representatives and provided high level detail of the goals of the plan and the business structure sought to be implemented by LPMS. At this meeting, Assistant Secretary Rutledge told

representatives from Plaintiffs that an Advisory Opinion Request was the best route to ensure approval of the Partnership Plans by the DOL. Rutledge further advised that it was standard practice of the DOL to engage in collaborative revisions of AO Requests prior to granting them. Renfro drafted and submitted the AO Request eight days after this meeting.

88. The initial meeting ended with an explicit agreement to continue discussions so that the DOL could be comfortable approving the Plan as ERISA compliant.

89. In the weeks and months that followed, occasional informal conversations continued between representatives of Defendants, LPMS, and representatives of the DOL in anticipation that a more formal meeting or exchange would soon follow.

90. Assistant Secretary Rutledge verbally expressed to Christopher Condeluci, an advisor to SAS, that he didn't see why DOL needed to issue an Advisory Opinion, because ERISA already allows partners to be treated as employees for purposes of plan eligibility.

91. During this conversation, Assistant Secretary Rutledge told Mr. Condeluci that LPMS should "just do it," meaning implement the Partnership Plans.

92. The 2018 request was slightly revised and resubmitted to the DOL in early 2019, culminating in the final Revised Request submitted on or about Feb. 26, 2019.

93. Simultaneously, and in reliance on Assistant Secretary Rutledge's statements, LPMS began accepting limited partners into DMP and formed the Partnership Plans for the same.

94. At or around this time, seven sitting state Attorneys General sent a letter to then DOL Secretary Acosta, stressing the urgency of the public health problem that the LPMS structure addressed, and requesting expedited consideration of the Revised Request. The DOL made no formal response to any of these submissions.

95. On March 6, 2019, Renfro attended another meeting with various DOL officials in Washington D.C. Also attending this meeting was then Louisiana Attorney General (current Governor) Jeff Landry, who was the lead signatory among seven sitting state Attorneys General of a letter sent to the DOL stressing the urgency of the public health problem that the LPMS structure addressed and requesting expedited consideration of the AO Request. (See Exhibit E, attached hereto)

96. During the March 6 meeting, then DOL Chief of Staff Nicholas Geale told a group of representatives from the Defendants that although the Partnership Plan structure was "ingenious" and that he "wished he'd thought of it," the DOL could not respond to the AO Request due to perceived conflict with litigation around DOL's new Association Health Plan ("AHP") rule.

97. Mr. Geale proposed that if LPMS would withdraw its AO request (and/or cease pressing for an answer to it), Mr. Geale would "look [LPMS representatives] in the eye" and promise that the DOL would not investigate or otherwise interfere with any LPMS-managed partnership plans.

98. Representatives for Defendants attempted to explain to Mr. Geale that even assuming DOL refrained from investigating or hampering DMP, the fifty separate state insurance regulatory agencies could pose significant and indefinite burdens on DMP through investigations and rulings of their own. It simply was not practical or advisable to rely on handshake promises with the looming threat of regulatory actions by individual states in the absence of DOL guidance on their interpretation of ERISA.

99. Several staff members of the DOL were present at this meeting, including, upon information and belief, members of the enforcement division of the DOL and Joseph Canary, who

is the Director of the Office of Regulations and Interpretations and the signatory of the adverse response to the AO Request.

B. Arbitrary and Capricious Advisory Opinion

100. The sole written response of the DOL to the AO Request was to issue a negative advisory opinion on Feb. 3, 2020. (See Exhibit B, attached hereto)

101. This Advisory Opinion was the subject of the Texas Suit, and the subsequent orders by the District Court and the Fifth Circuit referenced earlier in this Counterclaim.

102. Still pending in the District Court in the Texas Suit is (a) *Motion for Summary Judgment* filed by DMP and LPMS to reinstate the injunction enjoining DOL from refusing to recognize the ERISA-status of the DMP Partnership Plan; and (b) the *Motion for Leave to File Supplemental Complaint*, detailing and documenting the DOL's extortive tactics.

C. DOL Launches Retaliatory "Anjo Investigation"

103. Another response of the DOL to the AO Request and March 2019 meeting was to initiate an investigation into SAS, PIC, and others, known as the Anjo Investigation, on April 19, 2019, the month after the March 6, 2019, meeting with the DOL.

104. Defendants' reticence to accept handshake deals with the DOL was prescient, because once Defendants and LPMS declined the DOL's offer extended by Mr. Geale, the DOL embarked on a fishing expedition through what can only be described as the vindictive and retaliatory Anjo Investigation.

105. Shortly after opening the Anjo Investigation, DOL issued numerous requests for information and subpoenas not only to SAS and PIC, but to numerous key entities doing business with SAS or PIC, including some that have nothing whatsoever to do with any of the Partnership Plans or the Employer Plans. (See Exhibit F, attached hereto). These subpoenas were issued despite DOL having never posed a single written question or other formal response to the AO Request.

(The negative AO letter, which was the only written response to the AO Request, from the DOL followed later, after issuance of the subpoenas and the filing of the Texas suit by DMP and LPMS).

106. This lack of interaction on the AO Request is highly unusual for the DOL's advisory opinion process, as questions from DOL to the requestor routinely occur following submission of an advisory opinion request.

107. ERISA Procedure 76-1 requires certain procedures related to information requests that the DOL failed to follow.

108. After submission of the AO Request, the DOL never requested any information from LPMS to confirm its understanding of the facts presented in the AO Request. This failure led to the DOL's flawed understanding of the relevant facts.

109. Crucially, the DOL applied little, if any, of the relevant law discussed in the AO Request to the facts presented. The failure led to the DOL's legally defective Response and, ultimately, the District Court's rejection of DOL's position.

110. Further, the DOL relied on speculative facts even though ERISA Procedure 76-1 bars such reliance. Specifically, Section 10 of Procedure 76-1 states "The [advisory] opinion assumes that all material facts and representations set forth in the request are accurate, and applies only to the situation described therein."

111. In its Response, the DOL did not accept as true even the most basic facts presented in the AO Request.

112. For these violations of ERISA Procedure 76-1, among other reasons, the District Court and the Fifth Circuit in the Texas Suit found the DOL's conduct to be arbitrary and capricious. (See Exhibits C & D, attached hereto).

113. Instead, rather than seek clarification, submit follow up questions to the AO Request, or follow its own ERISA Procedure 76-1, the DOL initiated the retaliatory Anjo Investigation, which is not a permitted form of follow-up listed in the Procedure.

114. Crucially, the Procedure "is designed to promote efficient handling of inquiries and to facilitate prompt responses." Nothing about the DOL's actions resembles efficient or prompt responses and are instead attempts to unnecessarily prolong through harassment what was a valid good faith attempt to seek guidance from agency authority by DMP and LPMS.

115. The very existence of the Anjo Investigation both frightened potential Partnership Plan vendors and dissuaded them from providing services to the Partnership Plans and from conducting business with SAS and PIC, both generally and with respect to Partnership Plans.

116. Additionally, existing vendors of SAS and PIC reduced or terminated relations with SAS and PIC as a result of the Anjo Investigation. Further, enrollment in Partnership Plans and Employer Plans dropped as a result of the Anjo Investigation.

117. Immediately before the initiation of the Anjo Investigation and since that time, the DOL rapidly changed course in its dealings with the Defendants and LPMS regarding the propriety of the Partnership Plans as well.

118. As the investigation got under way, a long-scheduled June 2019 meeting between LPMS, Defendants' representatives, and the DOL was abruptly pushed back to July.

119. When the scheduled meeting finally occurred, it lasted only ten minutes and the representatives from the DOL demonstrated little interest in continuing discussions with LPMS and Defendants' representatives about the Partnership Plans, or the AO Request.

120. On Nov. 6, 2020, counsel for SAS and PIC sent a letter to all known DOL officials involved in the investigation in an effort to seek clarity on the purpose, scope, and need for the Anjo Investigation. (See Exhibit G, attached hereto).

121. On Dec. 14, 2020, twenty months after the commencement of the Anjo Investigation, Katrina Liu, Trial Attorney, Office of the Solicitor of DOL (also an attorney representing the DOL in the instant litigation, as well as in the Texas Suit), responded on behalf of DOL with a letter essentially noting the DOL's "ample authority to conduct its investigation in order to determine whether ERISA violations have or are about to occur" noting that the DOL was "not in a position to provide the specific information you seek regarding the timing and scope" of the Anjo Investigation. (See Exhibit H, attached hereto)

122. On Dec. 30, 2020, SAS, and PIC responded to Attorney Liu with citations to authority showing that, while broad, the DOL's investigatory authority is not as limitless as portrayed in her letter of December 14. (See Exhibit I, attached hereto)

123. SAS and PIC closed their reply letter with yet another request that the DOL reconsider its inexplicable approach to the Anjo Investigation. SAS and PIC noted "In the midst of the harsh economic impacts of this pandemic on all small businesses in America, I would hope DOL would reconsider the position taken in your letter."

124. The Anjo Investigation ultimately prompted a civil action in this Court filed by SAS and PIC on Jan. 19, 2021, against the DOL and SOL, styled as *Suffolk Administrative Services, LLC, et al. v. U.S. Department of Labor, et al*, Cause No. 3:21-CV-01031. This civil action was dismissed without prejudice on March 28, 2022, on the ground of lack of ripeness, without addressing its merits.

125. The DOL continued to engage in intentional conduct for the purpose of confusing and prejudicing state regulatory entities and illegally thwarting the legitimate economic activity of SAS and PIC whether that activity involves providing services to Partnership Plans or the Employer Plans referenced by the DOL in this suit.

126. On July 20, 2021, the DOL initiated an unprompted direct interview of one of SAS and PIC's Employer Plan clients. A DOL investigator named Zinnia Adams ("Ms. Adams") engaged in a telephone interview of the client's controller then sent an email to the client's controller listing several questions regarding the details of SAS and PIC's business with the client. Ms. Adams asked the controller to provide "All information and materials received before enrolling in the benefit arrangement" including presentations, brochures, and application forms. Ms. Adams also asked for "[a]nything breaking down the fees/premium" and other information about the client's arrangement with SAS or PIC. (See Exhibit J, attached hereto).

127. On July 23, 2021, SAS and PIC learned that a potential business partner had a telephone conversation "with the deputy commissioner at the DOI [Department of Insurance] for Delaware" during which he was "advised to stay away from this program." (See Exhibit K, attached hereto). He was informed there were "major concerns" with SAS' plan – even though the contemplated plans were not Partnership Plans – and that "the plan" was "under investigation in several jurisdictions."

128. Upon learning of this disturbing contact by the Delaware Department of Insurance ("DE DOI") to a prospective business partner, Renfro, on behalf of SAS and PIC, contacted DE DOI to organize a conference call with the appropriate DE DOI personnel, SAS, and its business partners. On July 26, 2021, Renfro received a call from Mr. Frank Pyle, Special Deputy Commissioner of DE DOI. During this extensive conversation, Renfro learned from Mr. Pyle that

DE DOI had, in fact, advised potential business partners of SAS and PIC to "hold off" on any relationship due to "concerns" of DE DOI arising from direct discussions with the DOL as to the Texas Suit and other state Departments of Insurance who were passing on misinformation provided by DOL to those states. Mr. Pyle insisted that DE DOI must engage in a "review" of any program involving SAS and PIC because of the DOL guidance, regardless of whether the client of SAS and/or PIC was implementing Partnership Plans or traditional employer self-insured health plans.

129. On Aug. 6, 2021, a business partner of SAS and PIC spoke with a leader in the Pennsylvania Chamber of Commerce who had been informed by Mr. Mike Fissel, a special investigator with the Pennsylvania Department of Insurance ("PA DOI") that one of SAS' structured plans in the State of Washington "was under investigation and shut down" following entanglement with the DOL and that SAS structured plans were likely not "ACA compliant". (See Exhibit L, attached hereto). Additionally, this business partner also noted that the PA DOI special investigator admitted his information came from the DE DOI. This business partner of SAS and PIC also indicated that when he contacted the DE DOI he was informed by a "Delaware DOI regulator" that the "program is not authorized" and that the DE DOI would also be contacting the Maryland Insurance Administration ("MIA") just as it had done with PA DOI.

130. Also on Aug. 6, 2021, SAS and PIC learned that the President of one of their potential business partners had spoken with the "Special Deputy Commissioner of DE". (See Exhibit M, attached hereto). Following that conversation that potential business partner decided "to not refer the [SAS affiliated] program at this time" and to wait for "full approval from the Delaware State Dept of Insurance." (See Exhibit M).

131. On Aug. 9, 2021, the same potential distribution partner affirmed the decision communicated on August 6 that it is now "not representing the [SAS affiliated] program pending

the DE Insurance Commission investigation." (See Exhibit N, attached hereto). Upon information and belief, each of these facts relates directly to the improper actions of the DOL at least, and perhaps are a result of a larger effort (orchestrated by the DOL) to prejudice select states departments of insurance and subsequently enlist the support of these and other state departments of insurance to inflict harm on SAS and PIC by "poisoning the well" with the potential business partners, customers, and vendors that might work with them.

132. On Aug. 10, 2021, Renfro and SAS' counsel participated in a lengthy conference call with DE DOI's Director of Consumer Protection and Enforcement Division, Susan Jennette, Deputy Attorney General for DE DOI, Kathleen Makowski, and Mr. Pyle. While that conversation was seemingly productive, these high-level representatives of DE DOI made it abundantly clear that much of their skepticism and concerns about SAS and PIC arose from communications with unnamed DOL officials and multiple assumptions by those DOL officials as to Employer Plans designed, administered, and/or insured by SAS or PIC.

133. As previously indicated, SAS and PIC provided documents to the DOL during the Anjo Investigation showing that: a) neither handled plan funds; b) PIC and SAS suffered a net loss with respect to the plans that, per the DOL, were the subject of the investigation; c) the fees/premium charged by SAS and PIC were below market; and d) that all valid stop loss claims were paid by PIC.

134. On July 21, 2022, after over three years of seemingly endless subpoenas and "investigation," the DOL gave notice to counsel for SAS and PIC as to the substance of its Anjo Investigation and alleged violations of ERISA. (See Exhibit O, attached hereto)

135. After July 21, 2022, all of the targets of the Anjo Investigation, including Defendants, were in active settlement negotiations with DOL.

136. Nearly one year later, on June 8, 2023, the DOL submitted its first express demand for injunctive and monetary relief. (See Exhibit P, attached hereto).

137. Progress towards settlement between DOL, SAS, PIC, and the individual Defendants was very slow between June 2023 and February 2024. During this time, the DOL, SAS, PIC, and the individual Defendants entered into several tolling agreements which (1) extended the statute limitations for legal action, and (2) precluded the DOL, SAS, PIC, and the individual Defendants from initiating any legal proceedings with respect to the Anjo Investigation. The litigation standstill expired on Oct. 23, 2024, and the tolling agreements on Nov. 6, 2024.

D. DOL Ties Anjo Investigation to AO Request and this Litigation

138. During the pendency of the tolling agreements, DOL subpoenaed more than ten entities related to LPMS and DMP as part of the Anjo Investigation.

139. On Jan. 11, 2024, counsel for DMP and LPMS sent a letter to counsel for DOL offering to engage in settlement discussions in the Texas Suit. (See Exhibit Q, attached hereto).

140. In response, DOL sent an e-mail on Feb. 8, 2024, to DMP, LPMS, SAS, PIC, and the individual Defendants proposing "global" settlement discussions regarding both the Texas Suit and the Anjo Investigation. (See Exhibit R, attached hereto).

141. Settlement discussions as to the Anjo Investigation accelerated substantially once DMP, LPMS, SAS, PIC, and the individual Defendants agreed to participate in "global settlement discussions." DOL's monetary demands for settling the Anjo Investigation lowered considerably over the next two months. However, as the demands for settling the Anjo Investigation were lowered, DOL's position on the Texas Suit began with a wholly unreasonable position and remained constant thereafter – dismiss the Texas Suit entirely and withdraw the 2018 AO Request.

142. That any settlement of the Anjo Investigation (including with the Defendants) was entirely dependent upon the dismissal of the Texas Suit was made plain in DOL's April 24, 2024,

demand. The settlement demand was $5.5 million as to the Defendants but was contingent upon the withdrawal of the AO Request and the dismissal of the Texas suits by DMP and LPMS. (See Exhibit S, attached hereto).[2]

143. On Friday, May 10, 2024, counsel for the DOL directly stated to counsel for DMP, LPMS, SAS, PIC, and the individual Defendants that if the Texas Suit was not dismissed, the monetary demands for settling the Anjo Investigation would increase.

144. On Thursday, May 23, 2024, counsel for the DOL repeated that the Texas Suit needed to be dismissed as part of a settlement of the Anjo Investigation. Counsel for the DOL stated that either both matters would be settled together, or neither matter would be settled.

145. In an e-mail dated Monday, May 27, 2024, counsel for the DOL again tied the settlement of the Anjo Investigation to the dismissal of the Texas Suit. (See Exhibit T, attached hereto).

146. On Tuesday, May 28, 2024, counsel for the DOL stated that if the Texas Suit were not dismissed, DOL's monetary settlement demand would increase from $5,500,000 inclusive of penalties back up to $15,000,000 inclusive of penalties, the latter amount being the last demand before the DOL tied the Texas Suit to the settlement of the Anjo Investigation.

[2] Although Federal Rule of Evidence 408 says that evidence of a statement made during compromise negotiations is "inadmissible … either to prove or disprove the validity or amount of a disputed claim or to impeach a prior inconsistent statement or a contradiction …", the Rule also states that a "court may admit this evidence for another purpose…" Purposes for which a statement has been found to be admissible include, as here, the improper use of settlement statements to harass or extort another person or entity. *See Block v. Washington State Bar Ass'n*, 860 F.App'x 508, 510 (9th Cir. 2021) ("Because the emails were offered to prove [Plaintiff's] pattern of harassment, they were not offered "to prove or disprove the validity or amount of a disputed claim or to impeach," as is required under the rule. Fed. R. Evid. 408(a)"); *Collier v. Town of Harvard*, No. Civ. A.95-11652, 1997 WL 33781338 at *3 n. 10 (D. Mass. March 28, 1997) ("The other purpose here, of course, is to show an extortionate scheme"). Since the statements made by DOL are themselves the basis of this Counterclaim, the grounds for their admissibility are even more compelling. *See Service Employees Int'l Union v. Local 1199*, 70 F.3d 647, 654, n. 7 (1st Cir.1995) (citing *Overseas Motors, Inc. v. Import Motors Ltd., Inc.*, 375 F.Supp. 499, 537 (E.D.Mich.1974) ("it would also seem reasonable to admit such evidence where the settlement negotiations are themselves ... operative facts"), *aff'd* 519 F.2d 119 (6th Cir.), *cert. denied*, 423 U.S. 987 (1975)).

147. On Monday, June 10, 2024, counsel for the DOL made startling revelations. First, when counsel for DMP and LPMS informed DOL counsel that the Texas Suit would not be dismissed without some written acknowledgement of the single employer status of the DMP Plan, the DOL counsel stated that no such written acknowledgement of any form would be provided by the DOL, and its counsel was not sure if DOL would settle the Anjo Investigation at all without DMP dismissing the Texas Suit.

148. Second, other counsel for the DOL explicitly stated that the DOL believed that DMP cannot function without PIC and SAS providing services to the DMP Plan. This admission demonstrates that the DOL acted with malicious intent in its request to link the Anjo Investigation settlement discussions with the Texas Suit settlement discussions.

149. On June 11, 2024, DOL counsel confirmed in writing that without a dismissal of the Texas Suit, it would not settle the Anjo Investigation for less than $15,000,000 inclusive of penalties, the amount of the last demand before the DOL tied the Texas Suit to the settlement of the Anjo Investigation. (See Exhibit U, attached hereto). This confirmation came after a statement by DOL counsel that the Defendants could not bear the financial exposure of such a settlement.

150. Counsel for the Defendants advised the DOL that even if, in order to avoid litigation and reputational damage, their clients were willing to accept such a large and disproportionate penalty, they would be unable to pay it immediately. The DOL refused to entertain a payment schedule that the Defendants were capable of meeting.

151. DMP and LPMS did not agree to the dismissal of the Texas Suit or the withdrawal of the AO Request. As a result, the DOL demanded payment of $15 million from PIC and SAS in a time frame which would likely bankrupt SAS and PIC, to avoid a costly federal complaint against

them in this Court. When informed SAS and PIC could not agree to such a settlement, the DOL filed this suit.

152. From these admissions by DOL, it is clear that the purpose and function of the Anjo Investigation and this suit has never been to ensure compliance with ERISA, but instead to coerce PIC and SAS to disassociate with LPMS and DMP (thereby ending any ability for the continuing of the Partnership Plans and indirectly ending the Texas Suit) or risk enforcement action by DOL. The DOL refused to settle the Anjo Investigation because they could not achieve a settlement which included (a) a withdrawal of the AO Request; and (b) a dismissal of the Texas Suit. The motivation for bringing this suit was not based upon its merits, but rather on the continued goal of achieving a settlement on its terms, which, despite the allegations of the Complaint to the contrary, necessarily entailed the dismantling and/or discrediting of the Partnership Plans.

E. DOL Disregards Executive Order 13924

153. On Jan. 20, 2025, President Trump rescinded the revocation (under the Biden Administration) of Trump's Executive Order 13924, *Executive Order on Regulatory Relief to Support Economic Recovery* ("EO") signed May 19, 2020. Therefore, Executive Order 13924 is now once again in effect, and the following arguments and authorities are now enforceable against the DOL.

154. Because the President is the head of the Executive Branch, the executive agency leaders, including the Secretary of the Department of Labor, are bound by the terms of the EO.

155. Paul J. Ray, Administrator for the Office of Information and Regulatory Affairs, instituted a Memo implementing Section 6 of the EO, at the direction of the Director of the Office of Management and Budget, Russel T. Vaught ("Memo"). (See Exhibit V, attached hereto).

156. Section 6 of the EO directs heads of all agencies to "consider principles of fairness in administrative enforcement and adjudication." To effect this policy, the Office of Information

and Regulatory Affairs suggested implementation of a number of practices and procedures, many of which DOL violate by continuing their retaliatory investigation into Defendants.

157. For example, the Memo reiterates many of the directives contained in the EO, stating, "[a]dministrative enforcement should be prompt and fair."

158. It further instructs agencies that, "[a]dministrative enforcement should be free of improper Government coercion." Importantly, it emphasizes, ***"[r]etaliatory or punitive motives, or the desire to compel capitulation***, should not form the basis for an agency's selection of targets or investigations ..." (emphasis added).

159. Plaintiff has not, and still does not, comply with these basic tenets of due process, fairness, and justice highlighted by the Memo and commanded by the EO.

160. Moreover, the Memo suggests certain practices for the conduct of otherwise appropriate investigations. Specifically, the Memo instructs agencies to "ensure that members of the regulated public are not required to prove a negative to prevent liability," and to "consider applying the rule of lenity in administrative investigations…"

161. The Memo further instructs that "regulations should require investigating staff to either recommend or bring an enforcement action, or instead cease the investigation…"[3]

162. Finally, the Memo provides that "[a]dministrative adjudicators should operate independently of enforcement staff on matters within their areas of adjudication."

163. The content of this Memo and the EO that inspired its creation, coupled with the aforementioned facts, show not only that the Plaintiff's investigation is nothing more than a thinly veiled attempt to silence the speech and association rights of Defendants, but that DOL continuing

[3] This is, in fact, the very thing that Defendants sought in its late 2020 correspondence with DOL. Despite these pleas for clarity and conclusion to the lengthy Anjo Investigation, DOL simply responded that it would conduct the investigation as it saw fit and for as long as it saw fit.

to do so is now also a blatant violation of the direction of the President expressed in the reinstated EO. DOL cannot continue this practice any longer.

F. Allegations in This Suit

164. To advance its extortive scheme which first began with the Anjo Investigation, this suit by the DOL contains multiple misrepresentations and mischaracterizations of facts disproven by the Anjo Investigation including the (a) profits realized by Defendants; (b) commingling of funds by Defendants; (c) charge of excessive fees by Defendants; and (d) nonpayment of claims by PIC.

165. In advance of its extortive scheme, and in anticipation of the allegations in this Counterclaim, the *Complaint* disingenuously alleges in Footnote 1 that the Partnership Plans are not "at issue" in this suit.

COUNT I: DECLARATORY JUDGMENT AS TO MEWA

166. Defendants hereby incorporate and re-allege the allegations in paragraphs 1 to 165 as if fully set forth herein.

167. An actual controversy exists between Plaintiff and Defendants under the Declaratory Judgment Act as to whether PIC and SAS constitute a MEWA under ERISA thereby subjecting them to reporting obligations under ERISA. *See* 29 U.S.C. § 1132(c).

168. The claims asserted by Plaintiff against Defendants in the *Complaint* [Doc 1] are not adequate to resolve this actual controversy. Even while making the frivolous allegation that the Defendants constitute a MEWA, the *Complaint* makes the seemingly inconsistent allegation in footnote 1 that the Partnership Plans "are not amongst the … Plans at issue in this Complaint." A MEWA is either a single plan or arrangement or not; a MEWA cannot be composed of separate employee welfare plans which can be separated by plan type, as DOL seemingly alleges. To the

extent the DOL alleges otherwise, these allegations avoid the question of whether the Partnership Plans are part of a MEWA with PIC and SAS or not.

169. It is clear under ERISA that PIC and SAS are not a MEWA. Accordingly, PIC and SAS seek a declaratory judgment to this effect as to the Employer Plans and the Partnership Plans.

COUNT II: VIOLATION OF APA (5 U.S.C. § 706)

170. Defendants hereby incorporate and re-allege the allegations in paragraphs 1 to 1659 as if fully set forth herein.

171. The role of the DOL is to enforce ERISA. In this regard, DOL is not the final arbiter of which employee benefit plans are subject to ERISA and which employee benefit plans are not subject to ERISA; that responsibility falls on Congress and the courts.

172. The DOL's actions herein negatively and wrongfully impact, and retaliate against not only the Partnership Plans in the Texas Suit, but also the Employer Plans which have opted to use the services of SAS and PIC over other vendors. At least four authorities show that the Partnership Plans are single employer employee welfare plans (like the Employer Plans referenced in the Complaint) subject to ERISA – (a) ERISA itself; (b) the U.S. Supreme Court decision in *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1 (20024); (c) the U.S. District Court decision in the Texas Suit; and (d) the DOL in Advisory Opinion 99-04A.

173. Despite this abundance of authority, the DOL has not only declined to recognize the Partnership Plans as single employer employee welfare plans subject to ERISA, in defiance of its responsibility to enforce ERISA, the agency has actively sought through its efforts in the Texas Suit and this suit to dismantle or discredit the Partnership Plans, all to the detriment of Defendants and the thousands of participants in the Employer Plans and the Partnership Plans.

174. APA provides a cause of action for persons suffering a legal wrong from – or adversely aggrieved by – actions or inactions of an agency of the United States or officers thereof acting in an official capacity. 5 U.S.C. § 702.

175. Under 5 U.S.C. § 706(2)(A) this Court has jurisdiction "[t]o the extent necessary to decision and when presented to … hold unlawful and set aside agency action, findings and conclusions to be (A) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law."

176. Under 5 U.S.C. § 706(2)(B) this Court has jurisdiction "[t]o the extent necessary to decision and when presented to … hold unlawful and set aside agency action, findings and conclusions to be (B) contrary to constitutional right, power, privilege, or immunity."

177. Under 5 U.S.C. § 706(2)(C) this Court has jurisdiction "[t]o the extent necessary to decision and when presented to … hold unlawful and set aside agency action, findings and conclusions to be (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."

178. Under 5 U.S.C. § 706(2)(D) this Court has jurisdiction "[t]o the extent necessary to decision and when presented to … hold unlawful and set aside agency action, findings and conclusions to be (D) without observance of procedure required by law."

179. A counterclaim under the APA is necessary in this lawsuit because the *Original Complaint* makes no mention of the undeniable connections to the Texas Suit, or the inextricable link which has been created by the DOL between this lawsuit and the Texas Suit as part of its efforts to discredit or dismantle the Partnership Plans as well as SAS and PIC. By shedding light on this connection, Defendants/Counter Plaintiffs intend to provide the necessary context for this Court to grant declaratory and injunctive relief under Section 706 of the APA.

180. It is a clear abuse of discretion for the DOL, in violation of 5 U.S.C. § 706(2)(A), to sue or threaten suit against Defendants, as they undisputedly did before this suit, not on the basis of their own actions or inactions, or any losses to the plans which they service, but rather on (a) unsupported monetary demands; and (b) the identity of the plans with which they lawfully do business.

181. It is likewise a clear abuse of power, in violation of 5 U.S.C. § 706(2)(B), for the DOL to sue or threaten suit against Defendants, as they undisputedly did before this suit, not on the basis of their own actions or inactions, or any losses to the plans which they service, but rather on (a) unsupported monetary demands; and (b) the identity of plans with which they lawfully do business.

182. It is also in clear excess of the authority of the DOL, in violation of 5 U.S.C. § 706(2)(C), for the agency to sue or threaten suit against Defendants, as they undisputedly did before this suit, not on the basis of their own actions or inactions, or any losses to the plans which they service, but rather on (a) unsupported monetary demands; and (b) the identity of plans with which they lawfully do business.

183. It is also without observation of procedure required by law, in violation of 5 U.S.C. § 706(2)(B), for the DOL to sue or threaten suit against Defendants, as they undisputedly did before this suit, not on the basis of their own actions or inactions, or any losses to the plans which they service, but rather on (a) unsupported monetary demands; and (b) the identity of the plans with which they lawfully do business.

184. As a direct and proximate cause of the DOL's violations of the APA, Defendants are suffering and will likely continue to suffer irreparable harm in the absence of an injunction preventing DOL from continuing to violate the APA.

185. An injunction preventing the DOL from continuing to violate the APA would be in the public interest since it would protect the health benefits of more than 30,000 participants in the Partnership Plans and the Employer Plans.

COUNT III: VIOLATION OF ERISA (29 U.S.C. § 1001, et seq.)

186. Defendants hereby incorporate and re-allege the allegations in paragraphs 1 to 185 as if fully set forth herein.

187. ERISA's purpose is to promote and facilitate employee benefit plans. *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon,* 541 U.S. 1, 3 (20024),

188. The DOL is acting contrary to the purpose of ERISA in its concerted efforts to discredit or dismantle the Partnership Plans.

189. As a direct and proximate cause of the DOL's violations of ERISA, Defendants are suffering and will likely continue to suffer irreparable harm in the absence of an injunction preventing the DOL from continuing to violate ERISA.

190. An injunction preventing the DOL from continuing to violate ERISA would be in the public interest, since it would protect the health benefits of more than 30,000 participants in the Partnership Plans and the Employer Plans.

PRAYER FOR RELIEF

WHEREFORE, Defendants demand judgment against the DOL and in favor of Defendants as follows:

A. That this Court declare the Employer Plans and the Partnership Plans are not part of a MEWA;

B. That this Court declare the conduct of DOL violated and continues to violate the APA;

C. That this Court declare the conduct of DOL violated and continues to violate ERISA;

D. That this Court issue a permanent injunction prohibiting any further enforcement action by the DOL against Defendants based upon the Anjo Investigation and the Texas Suit;

E. Award Defendants their reasonable attorneys' fees, costs, and expenses associated with this action pursuant to 29 U.S.C. § 1132(g)(1) and 28 U.S.C. § 2412; and

F. Award Defendants such other and further relief as this Court deems necessary and proper.

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 18th day of February 2025.

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EXHIBIT A

November 8, 2018

Submitted Electronically via email

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Washington, DC 20210

RE: Request for Advisory Opinion Concerning a Limited Partnership and Its Sponsorship of a Single-Employer Self-Insured Group Health Plan

Dear Director Canary:

The Law Office of Alexander Renfro ("Renfro") makes this request for consideration and possible issuance of an Advisory Opinion on behalf of our client, LP Management Services, LLC, a Georgia Limited Liability Company ("LPMS"). The primary business purpose of LPMS is to serve as General Partner of various Limited Partnerships and manage the day-to-day affairs of these Partnerships. At least one of these Limited Partnerships (the "LP") desires to sponsor an "employee welfare benefit plan" as defined under section 3(1) of the Employee Retirement Income Security Act ("ERISA"). The plan will be organized as a single-employer self-insured group health plan that will provide major medical health benefits to LP's eligible employees, along with LP's limited partners. On behalf of LP, Renfro hereby seeks confirmation from the Department of Labor, Employee Benefits Security Administration (the "Department") that:

(1) The single-employer self-insured group health plan sponsored by LP is an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

(2) The limited partners participating in LP's single-employer self-insured group health plan are "participants" within the meaning of ERISA section 3(7).

(3) The single-employer self-insured group health plan sponsored by LP is governed by Title I of ERISA.

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I. Background

A. Statement of Facts Concerning Corporate Structure of LP

LP is a Limited Partnership duly registered and formed in the State of Georgia. LP's Partnership Agreement appoints LPMS as General Partner and delegates day-to-day business management decisions to LPMS, including but not limited to the execution of rental agreements, employment contracts, distribution of revenue producing agreements, and grantor decisions to form a group health plan. LP's Limited Partners ("LPartners") are individuals who have obtained a Limited Partnership Interest ("LPI") through the execution of a joinder agreement with LP. LPMS, as General Partner, correspondingly counter-executes such agreements, files a resolution on the addition of a new LPartner, and updates LP's partnership information to include the addition of a new LPartner. LPartners participate in global management issues through periodic votes of all Partners, as well as contribute time and service to revenue-generating activities of LP. Together, LPMS, as General Partner, and LPartners wholly control and operate LP.

LP's primary business purpose and main source of revenue is the capture, segregation, aggregation, and sale to third-party marketing firms of electronic data generated by LPartners who share such data with LP. Participating LPartners install specific software which, among other things, tracks the capture of such data by other companies, such as Google or Facebook, and provides access of such data to LP. LP then decides how such data is used and sold to third-party marketing firms, generating revenue. LPartners control and manage the capture, segregation, aggregation, and sale of their own data, empowering LPartners in a manner not otherwise available to them when they utilize services over the Internet through their computers, phones, televisions, and other devices.

As discussed above, LPartners all gain status as a limited partner in LP by executing a joinder agreement, establishing each LPartner's rights. These rights are subsequently exercised on a regular basis through votes on how aggregated data will be sold or used by LP as well as votes on other partnership matters. Finally, through the sharing of data, LPartners are committing time and service to revenue-generating activity on behalf of LP.

LP also employs at least one common law employee to assist the partnership with administrative and/or revenue generating services.

B. Statement of Facts Concerning LP's Single-Employer Self-Insured Group Health Plan

In an effort to attract, retain, and motivate talent in service of LP's primary business purpose, LP will establish a single-employer self-insured group health plan (the "Plan"). Since this Plan is formed and sponsored only by LP – and not in concert with any other employer – the Plan is a single-employer self-insured group health plan. LPMS, as the Named Fiduciary and Plan Administrator of the Plan.

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The Plan has a number of third-party vendors which LPMS engages on behalf of LP to administer the Plan. First, LPMS hires a consulting and benefits design firm for guidance and assistance with fulfilling plan requirements pursuant to the ERISA and related statutes. Second, LPMS appoints a licensed and bonded Third Party Administrator ("TPA") to collect funds and allocate funds, adjudicate claims, manage claims' appeals, execute the payment of claims for benefits under the Plan, and perform other traditional services performed by a TPA. Third, LPMS appoints a benefits administrator to assist its staff in managing eligibility data and plan participant customer service issues on an ongoing basis. Fourth, LPMS creates a Trust to hold any plan assets related to the Plan. Finally, LPMS obtains a reinsurance policy for the Plan. This reinsurance policy is of a comprehensive and specific nature, as described more fully below.

The terms of the Plan are outlined in a Plan Document. This Plan Document contains information on the benefits provided by the Plan to Plan participants, eligibility information, instructions on claims for benefits, claims appeals information, coordination of benefits provisions, disclaimers concerning certain federal statutes, and other information. With respect to eligibility, the Plan Document notes that both employees and partners are eligible to participate in the Plan. As discussed above, at least one common law employee participates in the Plan, as well as a number of LPartners, although not all LPartners participate in the Plan. LP will pay 100% of the premiums for coverage under the Plan for LP's employees. LPartners will be 100% responsible for paying their own premiums for coverage under the Plan. According to the enrollment procedures as outlined in the Plan Document, annual Open Enrollment periods, as well as Special Enrollment periods as required by law, are utilized to permit eligible plan participants to join the Plan.

The aforementioned third-party vendors service the Plan as their delegated duties require. For example, the TPA collects monthly premium payments from the Plan's participants. The TPA allocates these funds appropriately, routing plan assets to the Trust (which is solely controlled by a Directed Trustee), paying vendors their fees, and ensuring premium payments are timely made to the reinsurance carrier underwriting the Plan's reinsurance policy. The TPA withholds a certain amount of premium due to the reinsurance carrier covering the Plan in order to expedite payment of claims for benefits. With respect to paying claims for benefits, in cases where the TPA has received and approved a claim, the TPA will access the plan assets held in Trust to pay said claim. Should a claim require a payment in excess of the funds available to the TPA on an immediate basis, the TPA coordinates with the reinsurance carrier covering the Plan for transmission of additional funds to the TPA's claims-paying account. Once received, the TPA will continue paying claims.

C. Additional Plan Features

LP is sensitive to prospective concerns with respect to the solvency of its Plan as well as the need for credibility of its Named Fiduciary. To that end, LP has obtained comprehensive and extremely well-funded layers of reinsurance policies, and LPMS – as General Partner and Named Fiduciary – has obtained a fiduciary liability policy.

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With respect to the primary reinsurance policy covering the Plan, coverage is obtained from first-dollar and to an unlimited degree per the terms of the reinsurance policy. This policy is supported by multiple layers of retrocessionary coverage without a risk corridor by retrocessionaires with an excess of $7,000,000,000 in assets to cover risk with respect to the Plan. LPMS requires the following features of any policy it obtains to cover the Plan now or in the future:

> Any group health plan sponsored by LP, or by any other entity managed by LPMS and which offers ERISA plan participation to its eligible plan participants, including certain employees and partners, must first obtain Qualifying Reinsurance Coverage. "Qualifying Reinsurance Coverage" means excess/stop loss insurance, indemnity insurance for a self-insured plan or employee benefit trust, insurance for a self-insured plan or trust, or reinsurance coverage purchased from an excess/stop loss, indemnity, insurance, or reinsurance carrier that meets the following requirements:
>
> - The carrier providing Qualifying Reinsurance Coverage must provide the following information to LPMS:
>
> - The name, address, and phone number of the carrier;
> - Statement(s) certifying compliance with all requirements described in below;
> - A statement of compliance with the reserve requirements described below;
> - A notification of any material changes to the Qualifying Reinsurance Coverage.
>
> - The Qualifying Reinsurance Coverage:
>
> - May only be issued by a carrier which establishes and maintains retrocessionary coverage from one or more (re)insurer(s) with at least $100,000,000 in aggregate equity for any claims which the plan is unable to satisfy by reason of a solvency event affecting said carrier's ability to pay claims, to an unlimited degree;
> - Must note on any contract for coverage a definite starting or attachment point of such coverage which is conspicuous and clear to the plan member(s) prior to purchase of such coverage, and qualifying (re)insurance coverage issued on a non-stop loss (re)insurance basis must have a first-dollar starting point;
> - Must note on any contract for coverage an unlimited liability of the carrier issuing such coverage for benefits covered by such coverage which is conspicuous and clear to the plan member(s) prior to purchase of such coverage;
> - Must have been approved by one or more regulatory body or bodies duly authorized to license and regulate the business of insurance within the

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United States and/or a member of the National Association of Insurance Commissioners, for a minimum of twenty-four months, and been issued to at least one insured party for the direct and/or indirect coverage of health and/or medical benefits, and in force throughout said period;

- May only be issued by a carrier which establishes and maintains reserves with respect to covered benefits, in an amount recommended (or the mid-point of multiple recommendations) by an actuary certified by the American Academy of Actuaries, consisting of reserves sufficient for:
    - Unearned contributions;
    - Benefit liabilities which have been incurred, which have not been satisfied, and for which risk of loss has not yet been transferred, and for expected administrative costs with respect to such benefit liabilities;
    - Any other obligations of the plan; and
    - A margin of error and other fluctuations, taking into account the specific circumstances of the plan.
- May only be issued by a carrier which establishes and maintains additional reserves of at least $500,000 above the reserves noted above.

- Carriers issuing Qualifying Reinsurance Coverage may demonstrate compliance with the reserve requirements described above with alternative reserves in the form of a contract of indemnification, lien, bonding, (re)insurance, letter of credit, or security.

- Any business of insurance, including but not limited to the obtaining of Qualified Reinsurance Coverage, conducted in any State must comply with the insurance laws of said State, and obtain all required State approvals.

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II. Law and Analysis

A. Treatment of a Partner Under ERISA

ERISA provides specific rules and regulations applicable to (1) an "employee welfare benefit plan," (2) "employees," and (3) "participants" that may participate an "employee welfare benefit plan."

An "employee welfare benefit plan" is defined as:[1]

> "any plan, fund, or program…established or maintained by an employer…for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits…"

An "employee" is defined as:[2]

> "an individual employed by an employer."

A "participant" is defined as:[3]

> "any employee or former employee of an employer…who is or may become eligible to receive a benefit…from an employee benefit plan which covers employees of such employer."

On its face and without further context provided elsewhere in ERISA, it appears that a partner in a partnership is not an "employee" within the meaning of ERISA section 3(6). Relying on the common law definition of an "employee," a partner also would not be considered an employee.[4] If a partner is not considered an "employee" for ERISA purposes, a partner cannot be considered a "participant" in an ERISA-covered "employee welfare benefit plan."

DOL Reg. section 2510.3-3(b) confirms that, for limited purposes, a partner is not considered an "employee" for purposes of determining the existence of an "employee benefit plan," which includes an "employee welfare benefit plan." DOL Reg. section 2510.3-3(b) further explains that a "plan without employees" is excluded from the requirements under Title I of ERISA (i.e., a plan covering partners is not considered an ERISA-covered plan).

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[1] Section 3(1) of the Employee Income Retirement Security Act ("ERISA").

[2] ERISA section 3(6).

[3] ERISA section 3(7).

[4] In accordance with the Supreme Court's ruling in *Nationwide Mutual Insurance Company v. Darden*, the Department has found that the common law standard for determining employee status is whether someone is hired by an employer, with the employer having the "right to control and direct" the individual's work. [*See* DOL Information Letter (May 8, 2006); DOL Advisory Opinion 95-29A (Dec. 7, 1995); DOL Advisory Opinion 95-22A (Aug. 25, 1995)].

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B. A Partner May Be a "Participant" In an ERISA-Covered Single-Employer Plan Alongside At Least One Common Law Employee

The Department, however, has concluded that if a partner participates in an employee benefit plan along with at least one common law employee, DOL Reg. section 2510.3-3 does *not* exclude this plan from being covered by Title I of ERISA.[5] Specifically, the Department has found that a plan covering partners (who are considered "working owners") as well as their non-owner employees clearly falls within ERISA's scope.[6] The Department explained that "[t]he definition of 'plans without employees' in DOL Reg. section 2510.3-3(b) simply defines a limited circumstance in which the only parties participating in a benefit arrangement are an individual owner/partner…and declines to deem the individual[], in that limited circumstance, as [an] employee[]…for purpose of the regulation."[7] The Department explains further that DOL Reg. section 2510.3-3(b) "does not apply, however, outside that limited context and, accordingly, does not prevent sole proprietors or other working owners – [including partners] – from being participants in broader benefit plan arrangements…"[8]

The conclusion that partners can participate in an ERISA-covered plan so long as the plan also covers at least one common law employee is consistent with the finding of the courts. For example, the Supreme Court in *Yates v. Hendon*[9] found that a plan covering both a "working owner" – including a partner in a partnership – and at least one common law employee is governed by ERISA.[10] In other words, in cases where a benefit plan covers both partners and common law employees, the plan will be covered by Title I of ERISA.[11]

The Fifth Circuit Court of Appeals, in *House v. American United Life Insurance Company*, also concluded that ERISA applies to a benefit arrangement that provided coverage to a firm's partners that also covered the firm's common law employees without reliance on whether said partner was a "working owner."[12] In *House*, a partnership established a plan that provided disability benefits to both employees of the partnership, as well as the partners. The partnership – as the employer of the employees – paid 100% of the premiums for the disability coverage for its employees and automatically enrolled them in the plan. The partners, on the other hand, were responsible for 100% of their own premium payments. The Circuit Court found that despite the differences in the manner in

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[5] 83 Fed. Reg. 614, 621 (Jan. 5, 2018).

[6] *Id.*

[7] *Id.*; *see also*, 83 Fed. Reg. 28912, 28930 (June 21, 2018).

[8] *Id.*

[9] 41 U.S. 1 (2004).

[10] *Id.* at 9.

[11] *Id.*

[12] 499 F.3d 443 (5th Cir. 2007).

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which premiums were paid, the partnership established a comprehensive employee welfare benefit plan covering both partners and employees, thus creating a single-employer ERISA-covered plan.[13]

In our opinion, *House* is instructive because of its similarities to our facts described in Section I.B. above, where LPartners will be required to pay their own premiums for the self-insured group health plan coverage sponsored by LP, while LP will pay 100% of the premiums for eligible employees, who are automatically enrolled in the plan. Based on the conclusion in *House*, the Supreme Court in *Yates*, and the Department's interpretations as set forth in proposed and final regulations, it is clear that LPartners may permissibly be considered "participants" in an ERISA-covered plan so long as at least one common law employee participates in the plan.

It is also clear that the single-employer self-insured group health plan sponsored by LP – acting in the capacity of an employer – to provide medical health benefits to LP's common law employees and limited partners is an "employee welfare benefit plan" within the meaning of ERISA section 3(1). As a result, because both LP's employees and LPartners may permissibly participate in this single-employer ERISA-covered "employee welfare benefit plan," the plan would be governed by Title I of ERISA.

C. A Partner Has Dual Status as an "Employer" and "Employee" and Thus May Be Considered a "Participant" In an ERISA-Covered Plan

In line with the reasoning discussed above, the Department has concluded that a partner may have dual status as an "employer" and an "employee," and thus, permissibly be considered a "participant" in an ERISA-covered plan.[14] Specifically, the Department opined that ERISA section 401(a)(2), ERISA section 403(b)(3)(A), ERISA section 408, ERISA section 4001(b)(1), ERISA section 4021(b)(9), and ERISA section 4022(b)(5)(A) all serve as indications that "working owners" – including partners – may be considered "participants" for purposes of ERISA coverage.[15] The Department has found that there is a clear Congressional design to include "working owners" – including partners – within the definition of "participant" for purposes of Title I of ERISA.[16]

Based on the foregoing, it is clear that LPartners may permissibly be considered "participants" in LP's single-employer self-insured group plan. In addition, because the Plan is considered an "employee welfare benefit plan" within ERISA section 3(1), the Plan would be governed by Title I of ERISA.

D. For Purposes of ERISA, a Partner Should Be Defined as an Individual Who Commits Time to and Performs Services on Behalf of the Partnership

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[13] *Id.* at 451-452.

[14] DOL Adv. Op. 99-04A (Feb. 4, 1999).

[15] *Id.*; *see also*, 83 Fed. Reg. at 621 (Jan. 5, 2018) and 83 Fed. Reg. at 28930 (June 21, 2018).

[16] *Id.*

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The fact that a partner is considered a "working owner" must not be confused with the definition of a "working owner" under the Department's final association health plan (AHP) regulations.[17] Under the final AHP regulations, a "working owner" – which in the case of the final AHP regulations is a self-employed individual with no employees – means an individual who (1) has an ownership right in a "trade or business," regardless of whether the "trade or business" is incorporated or unincorporated, (2) earns wages or self-employment income from the "trade or business," and (3) works at least 20 hours a week (or 80 hours per month) providing personal services to the "trade or business" *or* earns income from the "trade or business" that at least equals the "working owner's" cost of the health coverage.[18]

As discussed above, the Department and the Supreme Court have concluded that a "working owner" may also include a partner in a partnership. Although the term "partner" is not specifically defined in ERISA, ERISA section 732(d) contemplates a partner participating in a group health plan. Section 732(d) is relevant in cases where partners are the *only* participants in a group health plan, which would cause the plan to fall outside of Title I of ERISA (as required under DOL Reg. section 2510.3-3(b)). However, ERISA section 732(d) is also guiding on how a partner should be defined for purposes of participating in a group health plan, regardless of whether the plan is governed by Title I of ERISA or not. Stated differently, ERISA section 732(d)'s reference to and description of a partner serves to define a partner participating in a "plan without employees," as well as a partner who may permissibly participate in an ERISA-covered plan alongside at least one common law employee.

The regulations implementing ERISA 732(d) provide that for purposes of treating a partner as an "employee" – and thus a "participant" in a group health plan subject to the requirements under Part 7 of ERISA – the "the term employee includes any bona fide partner."[19] The implementing regulations go on to state that "whether or not an individual is a bona fide partner is determined based on all the relevant facts and circumstances, including whether the individual *performs services on behalf of the partnership*."[20]

Although a "bona fide partner" is not further defined in ERISA or its implementing regulations, the term "bona fide partner" can be found elsewhere in federal law, specifically in guidance from the Internal Revenue Service ("IRS").[21] According to the IRS, a bona fide partner is an individual with rights in a partnership, who exercises said rights, and who *commits time and service to the partnership*.[22] The consistency between the IRS's definition of a bona fide partner and the manner in

[17] *See* 83 Fed. Reg. 28912 et. seq. (June 21, 2018).

[18] DOL Reg. section 2510.3-5(e)(2).

[19] DOL Reg. section 2590.732(d)(2).

[20] *Id.*

[21] *See* Rev. Rul. 69-184.

[22] *Id.*

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which the Department described a bona fide partner in ERISA section 732(d) implementing regulations supports the interpretation that for purposes of ERISA, a partner should be defined as "an individual who commits time to and performs services on behalf of the partnership."

In our opinion, LPartners satisfy the definition of a "bona fide partner." LPartners have actual rights in LP as dictated in both LP's Partnership Agreement and the joinder to said agreement signed by each LPartner. LPartners regularly exercise these rights in periodic votes on partnership business. Finally, LPartners contribute time and energy to LP by sharing data and assisting in LP's primary business purpose and revenue generation activity. The time and services contributed by LPartners comprise the sole means of revenue generation of LP. In other words, without this activity, LP would not earn revenue or survive as an entity. By these acts, LPartners meet both the IRS's and the Department's standards to qualify as bona fide partners.

III. Request for Determination

Based on the foregoing, Renfro respectfully asks that the Department to confirm that:

(1) The single-employer self-insured group health plan sponsored by LP is an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

(2) LPartners participating in LP's single-employer self-insured group health plan are "participants" within the meaning of ERISA section 3(7).

(3) The single-employer self-insured group health plan sponsored by LP is governed by Title I of ERISA.

Thank you in advance for considering this request. Please do not hesitate to contact me with any questions, or with any request for additional information.

Respectfully submitted,

Alexander Renfro

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EXHIBIT B

U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

January 24, 2020

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2020-01A
ERISA SEC.
3(1)
29 CFR 2510.3-3

Dear Mr. Renfro:

This is in response to your request on behalf of LP Management Services, LLC (LP Management), for the Department's views on the regulatory status under the Employee Retirement Income Security Act of 1974 (ERISA) of health benefit programs that the LP Management limited partnerships may choose to offer to their "limited partners." In particular, you ask whether the Department would consider LP Management's limited partnership programs to be employee welfare benefit plans within the meaning of section 3(1) of ERISA, and, if so, whether the arrangements constitute single-employer group health plans sponsored by the limited partnerships as an "employer."

After submitting your request, you filed a complaint for declaratory and injunctive relief against the Department in *Data Marketing Partnership, LP v. United States Department of Labor,* Civil Case No.4:19-cv-00800-O United States District Court for Northern District of Texas (filed October 4, 2019). The complaint included allegations regarding a currently operating limited partnership program. The summary of facts and representations in this letter is based on the materials you submitted in support of your request as well as the information alleged in the complaint.[1]

As discussed in more detail below, ERISA does not sweep so broadly as to regulate the commercial sale of insurance in the manner proposed by LP Management. ERISA regulates the provision of *employee* benefits by employers and employee organizations, not the commercial sale of insurance outside the context of employment-based relationships. Based on your representations, in the Department's view, the limited partners as described in your request are not employees or bona fide partners of the limited partnerships; they do not work for or through the partnership; and they do not receive income for performing services for or as partners of the partnership. In sum, you have provided no facts that would support a conclusion that the limited

[1] The summary does not include representations you provided about the financial and reinsurance safeguards adopted by the limited partnership, *e.g.*, use of a licensed and bonded third party administrator, reinsurance supported by retrocessionary coverage, and a trust to hold plan assets, because those representations and allegations were not relevant to the Department's decision on the foundational question you posed about the status of the limited partnership health coverage program under the definition of "employee welfare benefit plan" in section 3(1) of ERISA.

partners are meaningfully employed by the partnership or perform any services on its behalf. The purported and sole "service" that the limited partners would appear to perform for or through the partnership would be to install specific software on their personal electronic devices that capture data as they browse the Internet or use those devices for their own purposes. If LP Management's arguments were accepted, marketers could sell any health insurance package as a single ERISA-covered plan, as long as their buyers had smartphones, the contract papers included "limited partnership" provisions, and the customers assented to the installation of tracking software (much as numerous firms, such as internet browsers and social media companies, already track consumers' activities on the Internet without claiming that the tracked consumers work for them). Accordingly, in the Department's view the limited partners are not participants in a single-employer group health plan or in an ERISA plan at all.[2]

According to the information you submitted and the representations you made in support of your request, LP Management proposes to serve as general partner of various limited partnerships and manage the day-to-day affairs of these partnerships. The limited partnerships' business would be to capture, segregate, aggregate, and sell to third-party marketing firms, electronic data generated by individuals who become limited partners and install on their personal electronic devices specific software which, among other things, captures the data tracking of other companies as the individual partners use their devices and surf the Internet. LP Management represents that individuals would obtain a limited partnership interest by executing a joinder agreement with LP Management, which would serve as the general partner. You assert that limited partners would participate in global management issues through periodic votes of all partners, but you provided no information on such votes. You assert that each limited partner agrees to contribute more than five hundred (500) hours of "work" per year through the generation, transmission, and sharing of their data, but you provide no information on how that "work" differs in any meaningful way from the personal activities individual limited partners would otherwise engage in while using their personal devices. Neither you nor LP Management representatives have suggested that individual limited partners will have any meaningful equity interest in the limited partnership or that they can expect any appreciable financial benefit for their participation in the partnership, except for the health coverage for which the limited partners pay separate premiums.

Apart from permitting LP Management to track the use of their personal electronic devices, it does not appear that the limited partners perform any work for or through the partnership. According to the representations you have provided in support of your request, limited partners do not appear to report to any assigned "work" location or otherwise notify the partnership that they are commencing their work; and they are not required to possess any particular work-related skills. In fact, the limited partnership agreement does not appear to require that a limited partner perform any service for or through the partnership apart from permitting tracking of the limited partner's use of the Internet on a personal device, as the limited partner sees fit. It appears that the limited partners would generate economic value for the partnership in much the same way that visitors to websites generate value for the entities that track consumer traffic every day for marketing and advertising purposes. In our view, there is no employer-employee relationship between the partnership and the limited partners, and as a matter of economic reality, it does not

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[2] Requestors of advisory opinions may withdraw requests only "prior to receipt of notice that the Department intends to issue an adverse opinion[.]" ERISA Procedure 76-1, §9, 41 Fed. Reg. 36281, 36283 (Aug. 27, 1976). Because you received such notice, the request may not be withdrawn.

appear that the limited partners depend on the limited partnership as a source of business revenue. Indeed, it appears from your representations that the revenue that a limited partner could reasonably expect from the limited partnership will typically be approximately zero. Based on the representations and materials that you have provided, in operation, the primary reason for an individual or employer to participate as a "limited partner" in the arrangement appears to be to acquire health coverage.

Notwithstanding the absence of factual representations supporting an actual employment or working owner relationship between the individuals participating in the arrangement as limited partners and the limited partnerships, you argue that the limited partnership health benefit programs should be deemed to be single-employer plans because the partnership itself would have a small number of common law employees (possibly only one, as compared to thousands or tens of thousands of non-employee limited partners who could potentially acquire coverage through the arrangement). You argue that the presence of a single employee participant is sufficient to extend ERISA coverage to all the limited partners, without any stated limit.

This position cannot be squared with ERISA's text. The term "employee welfare benefit plan" is defined in section 3(1) of ERISA, in relevant part, as "any plan, fund, or program … established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise … medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment …." In addition to providing the types of benefits described in section 3(1) of ERISA, a benefit program must, among other criteria, be established or maintained by an employer, an employee organization, or both, to provide the specified benefits to participants or their beneficiaries to be treated as an "employee welfare benefit plan" within the meaning of ERISA.[3] Section 3(7) of Title I of ERISA, in turn, provides, in relevant part, that a "participant" is any employee or former employee of an employer who is or may become eligible to receive a benefit of any type from an employee benefit plan that covers employees of such employer.

These provisions, like the title of the law itself — the *Employee* Retirement Income Security Act (emphasis added) — are replete with references to the employment relationship, and ERISA's coverage expressly turns on the provision of benefits in the employment context. As the above quoted language demonstrates, ERISA covers *employee* welfare benefit plans sponsored by an *employer* or *employee* organization for the benefit of plan participants who are themselves *employees* or former *employees*. The arrangements proposed by LP Management meet none of these criteria, inasmuch as the partnership is not the limited partners' employer, and the partners are neither employees nor employers with respect to the partnership.

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[3] There is no indication that an employee organization within the meaning of section 3(4) of ERISA is involved in the limited partnerships or their health benefit programs. Section 3(4) of ERISA defines "employee organization" as "any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan."

Nevertheless, LP Management points to ERISA regulation at 29 CFR § 2510.3-3(b), which, in relevant part, states:

> **(b) Plans without employees.** For purposes of title I of the Act and this chapter, the term "employee benefit plan" shall not include any plan, fund or program, other than an apprenticeship or other training program, under which no employees are participants covered under the plan, as defined in paragraph (d) of this section. For example, a so-called "Keogh" or "H.R. 10" plan under which only partners or only a sole proprietor are participants covered under the plan will not be covered under title I. However, a Keogh plan under which one or more common law employees, in addition to the self-employed individuals, are participants covered under the plan, will be covered under title I.

You argue, by implication, that the limited partnership benefit program can be treated as a single ERISA-covered plan because it would cover at least one common law employee of the partnership itself, and therefore, fall outside the exclusion for "plans without employees," even if its predominant purpose is to provide health benefits to individuals who are not employees of the partnership, do not look to the partnership for work-based earnings, and are classified by the sponsor as "limited partners"—and even if the single common law employee is outnumbered by thousands or tens of thousands of "limited partners" who obtain health coverage through the arrangement.

The text of the regulation will not support your expansive claim of ERISA coverage. As discussed above, ERISA regulates employment-based benefit programs and 29 CFR 2510.3-3(b) must be read in that context. The fact that one common law employee participates in a purported partnership program does not mean that everyone covered by the arrangement is participating in an ERISA plan. Rather, the regulation must be read in light of the Department's authority under ERISA to regulate the provision of employee benefits offered in the context of a genuine employment relationship. *See*, for example, ERISA sections 3(1) and 3(4) (limiting coverage to plans maintained by employers or employee organizations), section 3(7) (defining participant in terms of an employment relationship), and section 2 (declaring ERISA's purpose as "in the interests of employees and their beneficiaries"). Consistent with these statutory limitations, limited partners must participate in the plan as "working owners" to be covered as plan participants within the meaning of Title I of ERISA. The limited partners here are neither employed nor self-employed with respect to the partnership, but rather are merely consumers purchasing health coverage in exchange for premiums and an agreement that the partnership can track their personal activities on their electronic devices.

You additionally argue that ERISA section 732(d) supports LP Management's position, but this argument too is unpersuasive. Section 732(d) provides "for purposes of this part," [*i.e.*, Part 7 of ERISA] that "[a]ny plan, fund, or program which would not be (but for this subsection) an employee welfare benefit plan and which is established or maintained by a partnership, to the extent that such plan, fund, or program provides medical care (including items and services paid for as medical care) to present or former partners in the partnership or to their dependents (as defined under the terms of the plan, fund, or program), directly or through insurance, reimbursement, or otherwise, shall be treated (subject to paragraph (2)) as an employee welfare

benefit plan which is a group health plan."[4] Paragraphs (2) and (3) provide that, in the case of a group health plan, the term "employer" also includes the partnership in relation to any partner and the term "participant" also includes, in connection with a group health plan maintained by a partnership, an individual who is a partner in relation to the partnership.

The regulations emphasize the need for an employment or self-employment services-based relationship with respect to the partners participating in a group health plan maintained by a partnership. Specifically, the regulations clarify that, for purposes of Part 7 of ERISA, a partner must be a "bona fide partner" in order to be considered an employee, and the partnership is considered the employer of a partner only if the partner is a "bona fide partner." 29 CFR 2590.732(d)(2), (d)(3). The regulation also states that whether an individual is a bona fide partner is determined based on all the relevant facts and circumstances, including whether the individual performs services on behalf of the partnership. *Id.*

The limited partners here are not "bona fide partners" within the meaning of ERISA section 732 because they do not work or perform services for the partnership; they have only a nominal (at best) ownership interest in the partnership; and they do not earn income based on work performed for or through the partnership that is a material income-producing factor for the partnership. If the limited partners worked for or through the partnership, had a material ownership interest in the partnership, and earned income for work that generated material income for the partnership, it would be plausible to treat them as employed by the partnership in the relevant sense. In such circumstances, the partners could have dual status, like self-employed individuals who earn income from their self-employment with respect to a group health plan (*i.e.*, the partner could be both an "employer" for purposes of the partnership's sponsoring the group health plan and an "employee" for purposes of participating in the partnership's group health plan).

As discussed above, however, the limited partners in the arrangement merely obtain health benefits through the partnership and permit it to capture data based on their personal use of their personal devices. Their nominal ownership interests do not appear to have economic or operational substance; they do not appear to perform labor for the partnership in any meaningful sense; there is no basis to conclude the limited partners will derive any income from the partnership for the performance of services; and the limited partners neither give nor take directions in a work context from the partnership. They are simply purchasers of health coverage who, like other purchasers of individual health insurance, are responsible for paying all of the health care premiums for their coverage under the limited partnership arrangement. To treat them as employee participants in an ERISA-covered plan would effectively read the employment-based limitations on ERISA coverage out of the statute. As noted at the beginning of this letter, any marketer could claim coverage of any arrangement as a single ERISA-covered plan, as long as the buyer had a smartphone, signed a "limited partnership" agreement, and was willing to permit the marketer to track the buyer's activities on the phone (just as numerous firms already track a buyer's activities on the Internet, without claiming any employment relationship).

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[4] The Department's regulation at 29 CFR 2590.732 expressly states that its provisions on the treatment of partnerships are "[f]or purposes of this part." The parallel Department of Health and Human Services regulation at 45 CFR 146.145(c) and the Department of the Treasury regulation at 26 CFR 54.9831–1 similarly limit the application of those provisions for purposes of certain requirements applicable to group health plans.

Such a reading and result is insupportable under the clear employment-based language of the statute.

For the foregoing reasons, and based on your representations, information in the complaint you filed against the Department, and the materials we reviewed, it is the Department's view that the proposed LP Management health benefit programs would not be single-employer group health plans or ERISA plans at all.[5] To the contrary, treating the limited partnership program as a single ERISA plan would effectively eliminate ERISA's important statutory distinction between offering and maintaining employment-based ERISA covered plans, on the one hand, and the mere marketing of insurance and benefits to individuals outside the employment context, on the other.[6] We have consulted with the Departments of Health and Human Services and the Treasury. They have advised the Department that other than to the extent that the LP Management has established a separate welfare plan for the partnership's common law employees, the limited partnership programs described by LP Management would not be a group health plan within the meaning of 45 CFR 146.145(a) or 26 CFR 54.9831–1, and thus, the limited partnership programs would generally be subject to regulations applicable to the individual market, and not the small or large group markets.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of that procedure, including section 10 thereof, relating to the effect of advisory opinions. This opinion relates solely to the application of the provisions of Title I of ERISA addressed in this letter. Further, this letter is not determinative of any particular tax treatment under the Internal Revenue Code and does not address any issues arising under any other federal or state laws.

Sincerely,

John J. Canary
Director, Office of Regulations and Interpretations

[5] To the extent the limited partnership program covers common law employees of the partnership, the Department would consider the limited partnership to have established a separate welfare benefit plan for those employees. That plan would be subject to ERISA, and the persons responsible for operating the plan would be subject to the reporting, disclosure, fiduciary, group health, and enforcement provisions in Parts 1, 4, 5, 6, and 7 of ERISA.

[6] You did not ask and this letter does not address the status of the limited partnership programs as multiple employer welfare arrangements (MEWAs) within the meaning of ERISA section 3(40). In light of our conclusion that the programs are not ERISA-covered plans, the programs would be subject to broad state insurance regulation regardless of whether they were multiple employer welfare arrangements (MEWAs) within the meaning of ERISA section 3(40) and ERISA section 514(b)(6).

EXHIBIT C

Conclusion

Because plaintiffs are not employees in fire protection activities, their motion for summary judgment (Doc. 67) is **GRANTED** to the extent that they are not subject to the increased overtime threshold of section 207(k). Plaintiffs' motion for summary judgment is **DENIED** in all other respects.

DFW's summary judgment motion (Doc. 63) on the statute of limitations for plaintiffs' claims is **GRANTED**; the motion is **DENIED** in all other respects.

SO ORDERED; signed September 28, 2020.

DATA MARKETING PARTNERSHIP, LP et al., Plaintiffs,

v.

UNITED STATES DEPARTMENT OF LABOR et al., Defendants.

Civil Action No. 4:19-cv-00800-O

United States District Court, N.D. Texas, Fort Worth Division.

Signed 09/28/2020

Background: Limited partnership, which specialized in production and sale of its limited partners' electronic data to third party purchasers, and its general partner, brought action against Department of Labor, challenging advisory opinion Department issued finding that proposed group health plan was not governed by the Employee Retirement Income Security Act (ERISA), limited partners were not "participants" under ERISA, and one common-law employee was not sufficient basis for plan to cover any number of limited partners. Plaintiffs moved for temporary restraining order, preliminary injunction, and summary judgment, and Department cross-moved for summary judgment.

Holdings: The District Court, Reed O'Connor, J., held that:

(1) advisory opinion marked consummation of Department's decision making process, as necessary for opinion to constitute final agency action;

(2) legal consequences would flow from advisory opinion, as necessary for opinion to constitute final agency action;

(3) advisory opinion was not entitled to deference;

(4) limited partners were "working owners" of partnership, as necessary to be participants under ERISA; and

(5) limited partners were bona-fide partners of partnership, as necessary to be participants under ERISA.

Plaintiffs' summary judgment motion granted; other motions denied.

1. Federal Civil Procedure ⚷2461

Summary judgment is not a disfavored procedural shortcut, but rather an integral part of the federal rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action. Fed. R. Civ. P. 56.

summary judgment on this issue because "such pay is omitted from Plaintiff's Motion for Conditional Certification and Notice to Putative Class Members" (Doc. 64, p. 27). Both the motion and notice, however, broadly apply to EMTs or paramedics who were paid hourly but were not paid time-and-a-half their regular rate for all hours worked over forty (40) in each workweek" (Doc. 23; Doc. 23-1). The Court finds plaintiffs' claim that incentive pay was not included in their regular rates for purposes of calculating their overtime rate falls within that language and, thus, DFW is not entitled to summary judgment on this issue.

2. Federal Civil Procedure ⚿2470.1

The substantive law identifies which facts are material for purposes of summary judgment. Fed. R. Civ. P. 56(a).

3. Federal Civil Procedure ⚿2465.1

On motion for summary judgment, if there appears to be some support for disputed allegations, such that reasonable minds could differ as to the import of the evidence, the court must deny the motion. Fed. R. Civ. P. 56.

4. Administrative Law and Procedure ⚿1661(4)

For an agency action to be final under the Administrative Procedure Act (APA), as would permit judicial review, the action must mark the consummation of the agency's decision-making process; it must not be of a merely tentative or interlocutory nature. 5 U.S.C.A. § 704.

5. Administrative Law and Procedure ⚿1661(4)

For an agency action to be final under the Administrative Procedure Act (APA), as would permit judicial review, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow. 5 U.S.C.A. § 704.

6. Administrative Law and Procedure ⚿1935

On judicial review of an agency action, courts must disregard any post hoc rationalizations of the agency action and evaluate it solely on the basis of the agency's stated rationale at the time of its decision.

7. Administrative Law and Procedure ⚿1743

Review of agency action under the "arbitrary or capricious" standard of the Administrative Procedure Act (APA) is limited to the record before the agency at the time of its decision. 5 U.S.C.A. § 706(2).

8. Administrative Law and Procedure ⚿1661(4)

In evaluating whether a challenged agency action marks the consummation of its decision-making process and is one by which rights or obligations have been determined, as necessary for the action to constitute a final agency action, courts apply a flexible and pragmatic interpretation of the finality requirement of the Administrative Procedure Act (APA). 5 U.S.C.A. § 704.

9. Labor and Employment ⚿642

Advisory opinion issued by Department of Labor, finding that limited partnership's proposed benefit plan was not governed by ERISA, and that limited partners were not participants in ERISA plan, marked consummation of Department's decision making process, as necessary for opinion to constitute final agency action, subject to judicial review; opinion was issued in response to request by limited partnership's general partner, and no further action was needed or available from Department following issuance of opinion. 5 U.S.C.A. § 704; Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

10. Labor and Employment ⚿642

Legal consequences would flow from advisory opinion issued by Department of Labor, finding that limited partnership's proposed benefit plan was not governed by ERISA, and that limited partners were not participants in ERISA plan, as necessary for opinion to constitute final agency action, subject to judicial review; opinion included jurisdictional determination that plan lay outside ERISA, which had effect of subjecting general partner to enforcement under state regulatory scheme. 5 U.S.C.A. § 704; Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

11. Administrative Law and Procedure ⚿1661(8)

The fact that an advisory opinion procedure is complete, and deprives a plaintiff of a legal right which it would enjoy if it had obtained a favorable resolution in the advisory opinion process, denies a right with consequences sufficient to warrant review as a final agency action. 5 U.S.C.A. § 704.

12. Administrative Law and Procedure ⚿1661(4)

Agency action has legal consequences, as necessary to constitute a final agency action for purposes of judicial review, when it has the effect of committing the agency itself to a view of the law that, in turn, forces the plaintiff either to alter its conduct or to expose itself to potential liability. 5 U.S.C.A. § 704.

13. Administrative Law and Procedure ⚿1661(3)

The possibility of submitting new facts to an agency following its action is a common characteristic of agency action and does not make an otherwise definitive decision nonfinal, for purposes of determining whether the action is subject to judicial review. 5 U.S.C.A. § 704.

14. Administrative Law and Procedure ⚿1661(8)

Not every advisory opinion issued by an agency constitutes final agency action, for purposes of determining whether the opinion is subject to judicial review. 5 U.S.C.A. § 704.

15. Administrative Law and Procedure ⚿1661(8)

In determining whether an advisory opinion constitutes a final agency action, subject to judicial review, it is paramount to consider the agency that issued the advisory opinion, the internal procedures, and the substance of the opinion given. 5 U.S.C.A. § 704.

16. Labor and Employment ⚿642

Advisory opinion issued by Department of Labor, finding that limited partnership's proposed benefit plan was not governed by ERISA, and that limited partners were not participants in ERISA plan, lacked support and was contrary to Department's prior pronouncements, and thus was not entitled to deference; Department provided no factual basis for conclusion that revenue limited partners could reasonably expect from limited partnership would typically be zero, and Department's prior pronouncements did not use common-law analysis to determine whether working owners were participants under ERISA and did not analyze degree of control limited partnerships had over limited partners. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

17. Labor and Employment ⚿408

An advisory opinion regarding ERISA, issued by the Department of Labor, is generally entitled to deference as the persuasive view of the agency tasked with interpreting and enforcing ERISA's complex regulatory scheme. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

18. Administrative Law and Procedure ⚿2205

Whether an advisory opinion regarding a statute is entitled to judicial deference will depend on the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors that give it power to persuade, if lacking power to control.

19. Administrative Law and Procedure ⚿2205

On judicial review, courts should defer to an agency interpretation of the statute that it administers if the agency has con-

ducted a careful analysis of the statutory issue, if the agency's position has been consistent and reflects agency-wide policy, and if the agency's position constitutes a reasonable conclusion as to the proper construction of the statute, even if the court might not have adopted that construction without the benefit of the agency's analysis.

20. Administrative Law and Procedure ⚿2208(4)

In the context of an agency's interpretation of a statute, judicial deference to what appears to be nothing more than an agency's convenient litigating position is entirely inappropriate.

21. Administrative Law and Procedure ⚿2411

Agency action expanding the scope of a regulation in vast and novel ways is valid only if it is authorized by the statute.

22. Administrative Law and Procedure ⚿2408(1)

When an agency waits decades to discover a new interpretation of a rule, it highlights the rule's unreasonableness and gives reviewing courts reason to withhold approval or at least deference for the rule.

23. Labor and Employment ⚿403, 534

ERISA is designed to protect participants, who are employees that participate in employee benefit plans which are subject to its regulatory scope. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

24. Labor and Employment ⚿537

For ERISA purposes, an equity owner of a company may be an "employer" in one sense and an "employee" in another. Employee Retirement Income Security Act of 1974 § 3, 29 U.S.C.A. § 1002.

25. Labor and Employment ⚿537

Limited partners of limited partnership that specialized in production and sale of its limited partners' electronic data to third party purchasers were "working owners" of partnership, as necessary to be participants, under ERISA, in single-employer welfare benefit plan set up by partnership; limited partners obtained ownership interest in partnership through execution of joinder agreement, periodically vote on how to organize and market partnership's data bank, exercised management responsibilities, and were actively engaged in providing services to partnership by downloading software that collected their personal data, providing that data through personal activities, and collectively deciding what to do with resulting data bank. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

26. Labor and Employment ⚿537

Limited partners of limited partnership that specialized in production and sale of its limited partners' electronic data to third party purchasers were "bona-fide partners" of partnership, as necessary to be participants, under ERISA, in single-employer welfare benefit plan set up by partnership; limited partners provided personal services for partnership by contributing electronic data that individually and collectively was material, income-producing factor for partnership. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.; 29 C.F.R. § 2590.732(d)(2)-(3).

See publication Words and Phrases for other judicial constructions and definitions.

27. Labor and Employment ⚿537

The presence of a single common-law employee at a company covered by a health plan under ERISA may extend ERISA coverage to any number of work-

ing owners. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.; 29 C.F.R. § 2510.3-3(b).

Reginald L. Snyder, Allen W. Nelson, Pro Hac Vice, Bryan Jacoutot, Pro Hac Vice, Jonathan D. Crumly, Sr., Pro Hac Vice, Taylor English Duma LLP, Atlanta, GA, Michael L. Jones, Henry & Jones LLP, Addison, TX, for Plaintiffs.

Galen N. Thorp, U.S. Department of Justice, Washington, DC, for Defendants.

MEMORANDUM OPINION AND ORDER

REED O'CONNOR, UNITED STATES DISTRICT JUDGE

Before the Court are Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction ("TRO Motion") and Brief in Support (ECF Nos. 10–11), filed February 3, 2020; Plaintiffs' Motion for Summary Judgment and Brief in Support (ECF Nos. 23–24), filed February 19, 2020; Defendants' Cross Motion for Summary Judgment, Responses to Plaintiffs' TRO Motion and Motion for Summary Judgment, and Combined Brief in Opposition (ECF Nos. 25–28), filed March 9, 2020; Plaintiffs' Consolidated Reply Brief in Support of Summary Judgment and Injunction as well as Opposition to Defendants' Cross Motion for Summary Judgment (ECF No. 29), filed April 6, 2020; Plaintiffs' Reply (ECF No. 30), filed April 7, 2020; and Defendants' Reply (ECF No. 36), filed April 24, 2020. After reviewing the briefing, factual record, and relevant law, and for the following reasons, the Court **GRANTS** Plaintiffs' Motion for Summary Judgment and **DENIES** Defendants' Cross Motion for Summary Judgment. Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction is **DENIED as moot.**

I. BACKGROUND

Data Marketing Partnership ("DMP") is a Texas limited partnership that specializes in the production and sale of its limited partners' ("Limited Partners") electronic data to third party purchasers. LP Management Services, LLC ("LPMS") is the general partner of DMP. This case arises out of an adverse advisory opinion (the "Department's Opinion") issued by the Department of Labor (the "Department") in response to a request (the "Request") by LPMS. LPMS requested confirmation from the Department that the proposed plan (the "Plan") is governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1) (West 2019) ("ERISA") as a single-employer welfare benefit plan and that DMP's Limited Partners are "participants" as defined by ERISA. In response, the Department's Opinion concluded that the Plan is not governed by any title of ERISA, the limited partners are not "participants," and that one common-law employee is not a sufficient basis for the Plan to cover any number of Limited Partners.

Plaintiffs, DMP and LPMS (sometimes collectively, "Plaintiffs"), filed this lawsuit to challenge the Department's Opinion. The facts are largely undisputed.[1] The key issues are (1) whether the Plan is a single-employer welfare benefit plan, (2) whether the Limited Partners are "working owners" and bona-fide partners such that they are "participants" under ERISA, and (3) whether any number of Limited Partners may participate in an ERISA plan alongside at least one common-law employee.

1. The parties state that this "case rests on issues of law, with no need for discovery to be conducted by either party." *See* Joint Statement 1, ECF No. 18.

The Court finds the Limited Partners are working owners and bona-fide partners. As such, the Limited Partners may participate in the Plan if at least one common-law employee is covered by the Plan. The Department's Opinion is arbitrary and capricious under the APA and contrary to law under ERISA. Accordingly, Defendants are enjoined from refusing to acknowledge the ERISA-status of the Plan and refusing to recognize the Limited Partners as working owners of DMP.

A. Facts

DMP is a limited partnership with thousands of limited partners and one general partner. Compl. 1, ECF No. 1. The primary business purpose of DMP is data marketing. *Id.* Specifically, the Request stated that:

> [Limited Partners] install specific software which, among other things, tracks the capture of such data by other companies, such as Google or Facebook, and provides access of such data to [DMP]. [DMP] then decides how such data is used and sold to third-party marketing firms, generating revenue. [Limited Partners] control and manage the capture, segregation, aggregation, and sale of their own data, empowering [Limited Partners] in a manner not otherwise available to them when they utilize services over the Internet through their computers, phones, televisions, and other devices.

Request 4, ECF No. 1-3. The Request also provided that although "[t]he primary business purpose of [DMP] is the aggregation and profitable sale of electronic user data from its partners . . . [i]n addition to other inducements, including guaranteed payments, [DMP] wishes to offer access to its group health plan as an inducement to attract, retain, and motivate partners." *Id.* LPMS is the general partner, plan administrator, and named fiduciary for the Plan maintained for DMP's common-law employees and Limited Partners. *Id.*

1. *The Request*

On November 8, 2018, LPMS requested an advisory opinion from the Department. Request, ECF No. 1-3. The Request stated that "[t]he plan will be organized as a single-employer self-insured group health plan that will provide major medical health benefits to [DMP]'s eligible employees, along with [DMP]'s limited partners." *Id.* at 1. To provide assurances to DMP's Limited Partners that the Plan would be governed by ERISA, LPMS sought the following opinions:

(1) The single-employer self-insured group health plan sponsored by LP is an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

(2) The limited partners participating in LP's single-employer self-insured group health plan are "participants" within the meaning of ERISA section 3(7).

(3) The single-employer self-insured group health plan sponsored by LP is governed by Title I of ERISA.

Id.

The Request continued with a detailed factual explanation concerning LPMS, the related limited partnership(s), and the proposed structure of the employee benefit plan. *Id.* at 2-6. DMP, at the time the Request was submitted [2], sought to establish a single-employer self-insured group health plan. The Request asserted that both "employees and partners are eligible to participate in the Plan." *Id.* at 4. Addi-

2. Since this request was written in 2018, the language speaks to the fact that DMP "will seek" or "seeks" to establish the Plan. The Plan has since been established by DMP. Am. Compl. at 1, ECF No. 9.

tionally, the Request stated that the Limited Partners regularly vote on how their aggregated data will be sold or otherwise used by DMP, commit time and service to revenue-generating activity on behalf of the limited partnership, and receive guaranteed payments in the form of income distributions. *Id.* The Request stated that limited partners "may permissibly be considered 'participants' in an ERISA-covered plan where at least one common-law employee is a participant." *Id.* To be eligible participants in the Plan, the Limited Partners must each contribute at least five-hundred hours of work per year through the generation, transmission, and sharing of their electronic data. *Id.* at 7-12. The Request went unanswered for almost a year, so Plaintiffs filed suit on October 4, 2019. Compl., ECF No. 1. As of January 30, 2020, nearly 50,000 Americans have elected to be automatically enrolled as eligible common-law employees or elected to join the Plan after signing a joinder agreement as a Limited Partner of DMP. Am. Compl. 3, ECF No. 9. A few months after suit was filed, the Department issued an advisory opinion.

2. *The Department's Advisory Opinion*

On February 3, 2020, Defendants issued the Department's Opinion. Advisory Op. 1, ECF No. 9-2. The Department's Opinion concluded that "ERISA does not sweep so broadly as to regulate the commercial sale of insurance in the manner proposed by [LPMS]." *Id.* The Department's Opinion articulated three reasons why the Plan was not governed by ERISA—(1) the employment relationship, (2) the ownership interest, and (3) the employee-to-partner ratio. First, according to the Department's Opinion the purported and sole "service" that the Limited Partners appear to perform for or through the partnership ("the Service") is not sufficient to establish an employment relationship. *Id.* at 2. Second, the Limited Partners do not have a "meaningful ownership interest." *Id.* at 3. Third, even if the Limited Partners could be participants in an ERISA Plan, the presence of one common-law employee is "not sufficient to extend ERISA coverage to all the limited partners, without any stated limit." *Id.* at 4.

a. Employment Relationship

The Department's Opinion stated that the employment relationship between the Limited Partners and DMP was insufficient to satisfy ERISA because the traditional hallmarks of an employment relationship were not present. Advisory Op. 1, ECF No. 9-2. The Department concluded the following:

> You assert that limited partners would participate in global management issues through periodic votes of all partners, but you provided no information on such votes. You assert that each limited partner agrees to contribute more than five-hundred (500) hours of "work" per year through the generation, transmission, and sharing of their data, but you provide no information on how that 'work' differs in any meaningful way from the personal activities individual limited partners would otherwise engage in while using their personal devices.

Id.[3] Additionally, the Department concluded that the Limited Partners "do not appear to report to any assigned 'work' location or otherwise notify the partnership that they are commencing their work; and they are not required to possess any work-related skills." *Id.* ERISA plans require an

3. The Department contends that the *Darden* factors must be applied to determine who is an "employee" because the statute does not define the term in a helpful manner. *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 321, 112 S.Ct. 1344, 117 L.Ed.2d 581 (1992) (employing a common-law analysis to determine whether somebody is an employee for purposes of an ERISA plan).

employer-employee relationship, but the Department's Opinion stated that "there is no employer-employee relationship between the partnership and the limited partners, and as a matter of economic reality, it does not appear that the limited partners depend on the limited partnership as a source of business revenue."[4] *Id.* Because the work the Limited Partners perform for the partnership is not distinguishable from the partner's ordinary use of their electronic devices and "numerous firms already track ... activities on the Internet, without claiming any employment relationship[,]" the Department concluded that the Limited Partners do not have a cognizable employment relationship with the limited partnership and could therefore not be participants in an ERISA plan. *Id.*

b. Ownership Interest

The Department's Opinion stated that "if the limited partners work[ ] for or through the partnership, [have] a *material ownership interest* in the partnership, and earn[ ] income for work that generated material income for the partnership, it would be plausible to treat them as employed in the relevant sense." *Id.* at 3 (emphasis added). Additionally, the Department stated that "in such circumstances, the partners could have dual status, like self-employed individuals who earn their income from their self-employment with respect to a group health plan." *Id.* The Department agreed that the Limited Partners *could* be an "employer" for purposes of the maintaining the partnership's Plan and an "employee" for purposes of participating in the Plan, but only if the Limited Partners have a material ownership interest in the partnership and "meaningfully" worked and generated material income for the partnership. *Id.* The Department believed that the Limited Partners' "nominal interests do not appear to have economic or operational substance" and the Limited Partners "do not appear to perform labor for the partnership in any meaningful sense." *Id.* Additionally, the Department said there is no basis to conclude the limited partners will derive any income from the partnership for the performance of services[ ] and the limited partners neither take nor give directions in a work context from the partnership. *Id.* Therefore, the Department concluded that the Limited Partners cannot be participants in an ERISA plan. *Id.*

c. Ratio of Common-Law Employee(s) to Limited Partner(s)

The Department's Opinion also concluded that "the presence of a single employee participant is [not] sufficient to extend ERISA coverage to all the limited partners, without any stated limit" because "that position cannot be squared with ERISA's text." *Id.* at 3. Although the text of the governing ERISA provision states a "plan under which *one or more common law employees*, in addition to the self-employed individuals, are participants under the plan, will be covered under title I" of ERISA, the Department claimed that "the text of the regulation" will not support LPMS's position. Advisory Op. 3, ECF No. 9-2 (citing 29 C.F.R. § 2510.3-3(b)).

B. Procedural History

Plaintiffs filed suit on October 4, 2019. Compl., ECF No. 1. After the Department's Opinion was issued, Plaintiffs filed their Amended Complaint and a Motion for Temporary Restraining Order and Preliminary Injunction. Am. Compl., ECF No. 9; TRO Motion, ECF Nos. 10–11. In the Amended Complaint, Plaintiffs asserted the following claims for relief: 1) declarato-

4. The Department opines that the "revenue that a limited partner could reasonably expect from the limited partnership will typically be approximately zero." Advisory Op. 3, ECF No. 9-2. The Department does not state how it reaches this conclusion.

ry judgment under 29 U.S.C. §§ 1132(a)(3), (k); 2) injunctive relief under 29 U.S.C. §§ 1132(a)(3), (k), and Federal Rule of Civil Procedure 65; and 3) violations of the Administrative Procedure Act ("APA"), codified at 5 U.S.C. § 702. The Court ordered the parties to meet, confer, and file a proposed schedule. Order, ECF No. 15. A week later, the parties submitted another Joint Status Report with alternative scheduling proposals for this case. Joint Report, ECF No. 18. After consideration, the Court directed Defendants to file a Cross Motion for Summary Judgment, consolidated with its responses to Plaintiffs' motions. Order, ECF No. 19. The pending motions are ripe for review.

II. LEGAL STANDARDS

A. Summary Judgment

[1] The Court may grant summary judgment where the pleadings and evidence show "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment is not "a disfavored procedural shortcut," but rather an "integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

[2] "[T]he substantive law will identify which facts are material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine dispute as to any material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The movant must inform the court of the basis of its motion and demonstrate from the record that no genuine dispute as to any material fact exists. *See Celotex*, 477 U.S. at 323, 106 S.Ct. 2548. "The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his or her claim." *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998).

[3] When reviewing the evidence on a motion for summary judgment, courts must resolve all reasonable doubts and draw all reasonable inferences in the light most favorable to the non-movant. *See Walker v. Sears, Roebuck & Co.*, 853 F.2d 355, 358 (5th Cir. 1988). If there appears to be some support for disputed allegations, such that "reasonable minds could differ as to the import of the evidence," the court must deny the motion. *Anderson*, 477 U.S. at 250, 106 S.Ct. 2505.

B. Administrative Procedure Act

[4, 5] Where the APA provides the cause of action, judicial review is limited to "final agency action." 5 U.S.C. § 704 (West 2019). "Two conditions . . . generally must be satisfied for agency action to be 'final' under the APA." *U.S. Army Corps of Eng'rs v. Hawkes Co.*, —— U.S. ——, 136 S. Ct. 1807, 1813, 195 L.Ed.2d 77 (2016) (citing *Bennett v. Spear*, 520 U.S. 154, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997)). "First, the action must mark the consummation of the agency's decision-making process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Id.* (quoting *Bennett*, 520 U.S. at 177–78, 117 S.Ct. 1154) (internal quotations omitted).

Under the APA, courts must hold unlawful and set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A) (West 2019). Courts must also set aside agency action that is "in excess of statutory . . . authority." *Id.* § 706(2)(C). Agency action is arbitrary and capricious:

> if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Tex. Oil & Gas Ass'n v. EPA, 161 F.3d 923, 933 (5th Cir. 1998) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983)).

[6, 7] Courts must disregard any *post hoc* rationalizations of the agency action and evaluate it solely on the basis of the agency's stated rationale at the time of its decision. *See Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168–69, 83 S.Ct. 239, 9 L.Ed.2d 207 (1962) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196, 67 S.Ct. 1760, 91 L.Ed. 1995 (1947)) ("The courts may not accept appellate counsel's *post hoc* rationalizations for agency action; *Chenery* requires that an agency's discretionary order be upheld, if at all, on the same basis articulated in the order by the agency itself.") "Review of agency action under § 706(2)'s 'arbitrary or capricious' standard is limited to the record before the agency at the time of its decision." *Geyen v. Marsh*, 775 F.2d 1303, 1309 (5th Cir. 1985); *see also Camp v. Pitts*, 411 U.S. 138, 142, 93 S.Ct. 1241, 36 L.Ed.2d 106 (1973) ("[T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.").

C. ERISA Procedure

ERISA provides for judicial review in "[s]uits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan" to (1) review a final order of the Secretary [of Labor], (2) to restrain the Secretary [of Labor] from taking any action contrary to the provisions of this Act, or to (3) compel him to take action. 29 U.S.C. § 1132(k). Such suits "may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia." *Id.*

III. ANALYSIS

A. This Court has Jurisdiction to Review the Final Agency Action Taken by the Department

[8] The Court has jurisdiction to review this action if the Department's Opinion marks the consummation of its decision-making process and if legal consequences or obligations will flow from the decision. *Hawkes*, 136 S. Ct. at 1834, 136 S.Ct. 1807. In evaluating whether a challenged agency action meets these two conditions under *Hawkes*, courts apply a "flexible" and "pragmatic" interpretation of the APA's finality requirement. *Qureshi v. Holder*, 663 F.3d 778, 781 (5th Cir. 2011).

1. *The Department's Opinion Marks the Consummation of the Department's Decision-making Process*

[9] Under ERISA Procedure 76-1, the Department may issue an "advisory opinion that interprets or applies the Act to a specific factual situation." ERISA Procedure 76-1 § 3. The Department has discretionary authority to render advisory opinions. *Id.* § 5. Generally, "an advisory opinion will not be issued on alternative courses of proposed transactions, or on hypothetical situations, or where all parties involved are not sufficiently identified and described, or where material facts or details of the transaction are omitted." *Id.* "An advisory opinion is an opinion of the [D]epartment as to the application of one or more sections of the Act, regulations

promulgated under the Act, interpretive bulletins, or exemptions." *Id.* § 10. "The opinion assumes that all material facts and representations set forth in the request are accurate and applies only to the situation described therein." *Id.* "Only the parties described in the request for opinion may rely on the opinion, and they may rely on the opinion only to the extent that the request fully and accurately contains all the material facts and representations necessary to issuance of the opinion and the situation conforms to the situation described in the request for opinion." *Id.* Information letters are "informational only and [ ] not binding on the [D]epartment with respect to any particular factual situation," as compared to advisory opinions upon which the "parties described in the request are *entitled to rely.*" *Id.* §§ 10, 11 (emphasis added). The Department's own procedure, therefore, entitles Plaintiff LPMS to rely on the Department's Opinion, which Plaintiffs seek to do.

Based on the facts Plaintiff LPMS provided in the Request, the Department concluded that "the limited partners are not participants in a single-employer group health plan or in an ERISA plan at all." Advisory Op. 2, ECF No. 9-2. Under Section 9 of ERISA Procedure, requestors of advisory opinions may withdraw requests only "prior to receipt of notice that the Department intends to issue an adverse opinion." *Id.* at 2 n.2 (citing ERISA Procedure 76-1 § 9, 41 Fed. Reg. 36281, 36283 (Aug. 27, 1976)). Since the Department's Opinion was adverse, LPMS is now unable to withdraw its Request.

The Department relies on *American Airlines, Inc. v. Herman* to support its position that the Department's Opinion constituted "tentative" or "interim" action, and thus is non-final and non-reviewable. 176 F.3d 283 (5th Cir. 1999); Combined Br. 10–11, ECF No. 28. In that case, the Fifth Circuit held the Assistant Secretary's denial of summary judgment was not final agency action because it did not impact the rights of Herman beyond prolonging the administrative process. *Id.* at 288. Courts have analogized the requirement of "final agency action" to the final judgment requirement of 28 U.S.C. § 1291, which generally prohibits appeal of an interlocutory order. *See DRG Funding Corp. v. Sec'y of Hous. & Urban Dev.*, 76 F.3d 1212, 1220 (D.C. Cir. 1996) (Ginsburg, J., concurring). The Department's Opinion in this case is distinguishable from a denial of summary judgment because the Department has no further action to take.

Lastly, the Department's Opinion states that Title I of ERISA does not govern the Plan because the Plan is not an ERISA-covered plan of any type. Advisory Op. 6 n.6, ECF No. 9-2. ("In light of our conclusion that the programs are not ERISA-covered plans . . ."). Based on its determination that the Plan is not governed by ERISA, the Department then argues that LPMS does not have standing to bring suit.[5] The Department's Opinion cannot be used as both a sword and shield. The Department cannot state that its advisory opinions are non-final in one instance and then next argue that its determination of who is "an administrator, fiduciary, participant, or beneficiary of an employee benefit plan" should be binding for the purpose of standing. *See* Combined Br. 15 n.7, ECF No. 28. Given the lack of any further action needed (or available)[6] from the De-

5. Because ERISA only permits such suits by "an administrator, fiduciary, participant, or beneficiary of an employee benefit plan," the Department argues that Plaintiffs do not have standing. 29 U.S.C § 1132(k).

6. ERISA Procedure 76-1 has no further administrative appeal process available to LPMS.

partment, the Department's Opinion marked the consummation of its decision by opining that the Plan is not governed by ERISA.

2. *Legal Consequences Will Flow from the Department's Opinion*

[10–12] The Department argues that even if this marked the consummation of the decision-making process, Plaintiffs are not subject to any new obligations or legal consequences. Advisory Op. 6 n.6, ECF No. 9-2. Plaintiffs argue to the contrary that the lack of federal preemption under ERISA subjects the Plan to costly state regulatory enforcement. Pl.'s Mot. Summ. J. 1, ECF No 24. "The fact that the advisory opinion procedure is complete and deprives the plaintiff of a legal right ... which it would enjoy if it had obtained a favorable resolution in the advisory opinion process denies a right with consequences sufficient to warrant review." *Envtl. Def. Fund, Inc. v. Ruckelshaus*, 439 F.2d 584, 589 n.8 (D.C. Cir. 1971) (internal quotations omitted); *see also Texas v. United States*, 201 F. Supp. 3d 810, 825 (N.D. Tex. 2016) (holding that final agency action existed in light of agency guidelines that have immediate effect on rights and regulations of the regulated parties). Agency action has legal consequences when it "has the effect of committing the agency itself to a view of the law that, in turn, forces the plaintiff either to alter its conduct or to expose itself to potential liability." *Texas v. EEOC*, 933 F.3d 433, 446 (5th Cir. 2019).

The Supreme Court's decision in *Hawkes* is instructive here because it addressed the impact of an agency's jurisdictional determination on a federal court's subject matter jurisdiction. 136 S. Ct. at 1812. In *Hawkes*, the Supreme Court addressed the legal effect of the Army Corps of Engineers issuing a jurisdictional determination of whether particular property contained "waters of the United States." *Id.* The Supreme Court held that *both* a Corps determination that property does not contain jurisdictional waters (a negative determination) and an Army Corps determination that property does contain jurisdictional waters (an affirmative determination) give rise to a legal consequence. *Id.* at 1814; *see also EEOC*, 933 F.3d at 442 (discussing *Hawkes* in that "the issuance of JDs produced 'legal consequences,' giving plaintiffs a safe harbor or not."). Similarly, in *Frozen Food Express v. United States*, 351 U.S. 40, 44–45, 76 S.Ct. 569, 100 L.Ed. 910 (1956), the Supreme Court considered the effect of an agency order specifying which commodities the Interstate Commerce Commission believed were and were not exempt from regulation. The order was immediately reviewable because it warned every carrier of the risk of transporting those commodities without authority from the Commission. *Id.* Similarly, in this case, the Department made a jurisdictional determination that the Plan lies outside ERISA. *See Hawkes*, 136 S. Ct. at 1812. Additionally, the Department warned that LPMS would be subject to the state regulatory scheme, which the parties agree subjects LPMS to enforcement. *See Frozen Food Express*, 351 U.S. at 44–45, 76 S.Ct. 569.

In *Texas v. EEOC*, the Fifth Circuit addressed whether EEOC guidance steering employers away from considering arrest records for hiring purposes was final agency action and thus subject to review in the district court. 933 F.3d at 445. It held that the Guidance was final agency action because the Guidance created a safe harbor for employers to, in the agency's view, comply with anti-discrimination hiring policies under federal law. *Id.* Thus, employers were entitled to rely on the agency's interpretation when creating internal hiring practices regardless of whether the EEOC could, at some time in the future, change its position. Here, the Department's Opinion *removes* the safe harbor. If the Depart-

ment opined that the Plan was covered by ERISA, the Plan would have the safe harbor of federal preemption, removing the Plan determinatively from the state regulatory scheme. LPMS sought the "safe harbor" determination that ERISA applies which would have subjected the Plan to *only* the federal regulatory scheme. Advisory Op. 6 n.6, ECF No. 9-2 ("In light of our conclusion that the programs are not ERISA-covered plans, the programs would be subject to broad state insurance regulation.") The Department removed the safe harbor of federal preemption, which has legal consequences for LPMS by creating new obligations for LPMS to conform to complex state regulatory schemes.

[13] The Department argues that if the facts change, its opinion *could* change.[7] It cites dicta from *Texas v. EEOC* to support its proposition that, under [*Luminant Generation Co. v. U.S. E.P.A.*, 757 F.3d 439, 442 (5th Cir. 2014)] if an agency can change its policy position, then the advisory opinion is not a final determination. *See EEOC*, 933 F.3d at 445 (5th Cir. 2019). Combined Brief 12, ECF No. 28. *Luminant*'s conclusion and the EPA's agency review in that case are distinguishable for two reasons. 757 F.3d at 442. First, the governing agency procedure is different. Under EPA-specific procedure, the EPA issues notices of violation and then must wait thirty days before exercising its discretion to "issue an order or administrative penalty" after a formal hearing or to "bring a civil action." 42 U.S.C. § 7413(a)(1). Second, the EPA had further decisions to make because the notice only marks the beginning of a process designed to test the agency's conclusion. *Luminant*, 757 F.3d at 442. In contrast, the Department here has informed LPMS that it has nothing to do with the regulation of the Plan, effectively determining its status as a non-ERISA plan. The Department now claims this decision was interlocutory. Combined Br. 10–11, ECF No. 28. However, agencies cannot continuously evade review under the guise of "interlocutory" decisions.[8]

[14, 15] The Department argues that there is no "need for immediate judicial review of the Department's statement of its view of the law" because "any party that disagrees with the Department's informal opinion is under no obligation to follow it" and that if "any authority sought to implement that view of the law, it could be litigated at that point." *Id.* at 21. However, "contrary to the [Department]'s notion, parties are commonly not required to violate an agency's legal position and risk an enforcement proceeding before they may seek judicial review." *See Alaska Dep't of Envt'l Conservation v. EPA*, 540 U.S. 461, 483, 124 S.Ct. 983, 157 L.Ed.2d 967 (2004) (holding that the finality requirement in a statute governing the EPA was satisfied in a pre-enforcement challenge where EPA had spoken its "last

7. Plaintiffs have not indicated any intention to change the business structure and request a new opinion on new facts. It is not required to do so. Here, the parties filed cross-motions for summary judgment and do not dispute the relevant facts. Additionally, the Court of Appeals for the D.C. Circuit has rejected the reasoning that an agency's refusal to issue a favorable advisory opinion to plaintiffs was unripe where "[t]he issue presented is a relatively pure legal one that subsequent enforcement proceedings will not elucidate") *Chamber of Commerce of U.S. v. FEC*, 69 F.3d 600, 604 (D.C. Cir. 1995). The Court finds the D.C. Circuit's reasoning persuasive.

8. The Supreme Court rejected this same argument in *Hawkes*. Although the Corps could revise its jurisdictional determination within five years based on new information, "that possibility [to submit new facts to the agency] . . . is a common characteristic of agency action and does not make an otherwise definitive decision nonfinal." *Hawkes*, 136 S. Ct. at 1814.

word" on the legal issue in dispute and the regulated party "would risk civil and criminal penalties if it defied" the EPA's directive). On the cross-motions for summary judgment, the facts are static. ECF Nos. 23–28. The Department has spoken its last words on the legal issue in dispute, now asking LPMS to risk violating state laws if it ignores the Department's Opinion. The Court recognizes that not every advisory opinion issued by an agency will constitute final agency action. *Unity08 v. FEC*, 596 F.3d 861, 866 (D.C. Cir. 2010) (discussing the overlapping doctrines of finality, ripeness and exhaustion of administrative remedies). But it is paramount to consider the agency that issued the advisory opinion, the internal procedures, and the substance of the opinion given. *Id.* Here, the Department's Opinion satisfies the first and second prongs of *Hawkes*. Therefore, subject matter jurisdiction exists to review the Department's Opinion.

B. The Department's Opinion is Not Entitled to Deference

[16–20] Defendants contend that the Court should defer to its reasonable conclusion made in the Department's Opinion. Combined Brief at 21, ECF No. 28 Plaintiffs counter that the Court should set aside the Department's Opinion as arbitrary and capricious under the APA and contrary to law under ERISA. Pls.' Mot. Summ. J. 1, ECF No 24. Generally, an advisory opinion is entitled to deference as the persuasive view of the agency tasked with interpreting and enforcing ERISA's complex regulatory scheme. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944). The Supreme Court has characterized advisory opinions issued under ERISA Procedure 76-1 as "agency view[s] . . . reflect[ing] a 'body of experience and informed judgment to which courts and litigants may properly resort for guidance.' " *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1, 18, 124 S.Ct. 1330, 158 L.Ed.2d 40 (2004) (quoting *Skidmore*, 323 U.S. at 140, 65 S.Ct. 161). Whether an advisory opinion is entitled to deference will depend on "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Id.* Courts should:

> defer to an agency interpretation of the statute that it administers if the agency has conducted a careful analysis of the statutory issue, if the agency's position has been consistent and reflects agency-wide policy, and if the agency's position constitutes a reasonable conclusion as to the proper construction of the statute, even if we might not have adopted that construction without the benefit of the agency's analysis."

Cathedral Candle Co. v. U.S. Int'l Trade Comm'n, 400 F.3d 1352, 1366 (Fed. Cir. 2005). Further, "[d]eference to what appears to be nothing more than an agency's convenient litigating position would be entirely inappropriate." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 213, 109 S.Ct. 468, 102 L.Ed.2d 493 (1988).

1. *The Department's Opinion Lacks Legal and Factual Support*

[21, 22] Defendants argue that the Department's Opinion is legally and factually supported. Advisory Op. 1, ECF No. 9-2. However, the Department fails to point to a single statute, regulation, or any governing case law that supports its imposition of newfound "materiality" standards and its "ratio" requirement on the employment and ownership qualifications for ERISA-plan participants. The Court is not persuaded that such requirements are supported by current law, as discussed below in Section III(C). Since the Department has never used these materiality or ratio standard before in its regulations or inter-

pretations, there is no statutory interpretation to which a court must defer. *See United States v. Mead Corp.*, 533 U.S. 218, 226–27, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001) (setting forth the framework for when and to what degree courts must defer to agency interpretation "of a particular statutory provision"). "Expanding the scope" of a regulation "in vast and novel ways is valid only if it is authorized" by the statute. *Chamber of Commerce v. Dep't of Labor*, 885 F.3d 360, 369 (5th Cir. 2018). When an agency waits decades to discover a new interpretation of a rule it "highlights the Rule's unreasonableness," and "gives us reason to withhold approval or at least deference for the Rule." *Id.* at 380.

The Department's Opinion lacks factual support. Plaintiffs argue that the Department manipulated facts in a "conclusion-driven" analysis in the Department's Opinion. Pl.'s Mot. Summ. J. 38, ECF No 24. For example, the Request stated that "[i]ncome distributions by [DMP] to the [Limited Partners] resulting from such revenue-generating activities will be reported as guaranteed payments and will be subject to employment taxes." Request 8, ECF No. 1-3. However, the Department's Opinion stated that "the revenue the limited partner could reasonably expect from the limited partnership will typically be zero." Advisory Op. 3, ECF No. 9-2. The Department has provided no factual basis for such a conclusion. The Department's Opinion also paints in broad, conclusory strokes in asserting that the partnership does not qualify as an employer, the Limited Partners do not qualify as employees, and the work the Limited Partners do to generate income for the partnership is not "work" at all, contrary to the Request's factual representations, because in the Department's view, the work is not "meaningful" and the Limited Partners' ownership interest is "nominal." *Id.*

2. *The Department's Opinion is Contrary to the Department's Prior Pronouncements*

Further, the Department's Opinion contradicts its own advocacy and its prior advisory opinions by resorting to common-law principles to determine whether the Limited Partners are "participants" under ERISA. The Department's Opinion strayed from its previous pronouncements in two key ways: (1) by imposing a common-law analysis to determine whether a working owner is an "employee" and therefore a "participant" under ERISA and (2) by analyzing the degree of control the limited partnership has over the Limited Partners. The Department previously advocated that ERISA's text resolves this question that it now seeks to answer differently. Specifically, the Department previously urged that:

> resort[ing] to common-law principles (even for guidance) is not appropriate in resolving whether working owners may be participants in ERISA plans because the *text of ERISA itself resolves that question.* Even if the Court were to consult the common law, however, it should also consider the purposes of ERISA . . . [b]ecause the purposes of ERISA differ from those underlying the ADA and other anti-discrimination statutes, *a test that focuses on the extent of the business's control over the working owner is not appropriate* to resolve the ERISA coverage question.

Reply 35, ECF No. 30 (citing DOL Amicus, p. 4, n. 6 (emphasis added)).[9] Plaintiffs

9. The Department filed this amicus brief in *New York v. U.S. Dep't of Labor,* 363 F. Supp.3d 109 (D.D.C. 2019). The Department's position in the amicus brief that the "text of ERISA itself" resolves the question of whether working owners may be participants in an ERISA plan is directly from the Supreme Court's opinion in *Yates*. 541 U.S. at 12, 124 S.Ct. 1330.

now take the position for which the Department advocated in its *amicus* brief a year ago at the same time Plaintiff LPMS submitted the Request, while the Department abandoned this position in favor of the common-law factors.[10]

The Department coined the term "working owner" as a term of art in a prior opinion (the "Prior Opinion"), DOL Op. No. 99-04A, the only other advisory opinion that addresses this concept. In the Prior Opinion, the Department defined "working owner" to "include '***any owner*** that earns wages or self-employment income from a company,' including sole proprietors of unincorporated businesses." DOL Op. No. 99-04A (emphasis added). The Department further stated that "working owner" means:

> any individual who has ***an equity ownership right of any nature*** in a business enterprise and who is ***actively engaged*** in providing services to that business, as distinguished from a passive owner, who may own shares in a corporation, for example, but is not otherwise involved in the activities in which the business engages for profit.

DOL Op. No. 99-04A (emphasis added). The Prior Opinion found *clear intent* from Congress, within the text of the statute, to treat working owners as participants under ERISA—forgoing the common law analysis it now claims must be used for Plaintiffs.

The Department's failure to adhere to its own articulated definition of working owner in the Prior Opinion is suspect and unsupported by present law. Nothing in the record indicates why the Department decided to impose new standards on the Plaintiffs and stray from governing law in its analysis of the Plan. The Department's Opinion serves as the sole authority contrary to Plaintiffs' legal position. As a result, the Department's Opinion is not entitled to *Skidmore* deference. Accordingly, the Court will address the merits without deferring to the Department's Opinion.

C. The Plan is a Single Employer Employee Welfare Benefit Plan Under Title I of ERISA

As previously explained, the Department found that ERISA did not govern the Plan. The main issues to resolve, therefore, are whether (1) the Plan is a single-employer welfare benefit plan, (2) the Limited Partners are "working owners" and bona-fide partners such that they are "participants" under ERISA, and (3) if any number of Limited Partners may participate in an ERISA plan alongside at least one common-law employee. The APA permits courts to "set aside an agency action that is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.' " *Sierra Club v. EPA*, 939 F.3d 649, 663 (5th Cir. 2019) (quoting 5 U.S.C. § 706(2)(A)). An action is arbitrary and capricious if:

> the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

10. The Department contends that the Limited Partners must meet the test articulated in *Darden* to be an "employee" under ERISA. Combined Br. 38, ECF No. 28. The factors include skill required, the source of the instrumentalities and the tools, the location of the work, whether the hiring party has the right to assign additional projects to the third party, the extent of the hired party's discretion over when and how long to work, the method of payment, and the provision of employee benefits. *Darden*, 503 U.S. at 324, 112 S.Ct. 1344.

Id. at 663–64 (quoting *State Farm*, 463 U.S. at 43, 103 S.Ct. 2856). Additionally, the Court may set aside agency action under ERISA that is contrary to law.[11] *See* 29 U.S.C. § 1132(k). Because the Court finds the Department's Opinion arbitrary and capricious under the APA and contrary to law under ERISA, the Court sets aside the Department's Opinion and finds the Plan is governed by Title I of ERISA. Because the Limited Partners are working owners and bona-fide partners, they may participate in the single-employer welfare benefit plan set up by DMP, so long as DMP covers at least one common-law employee under the Plan.

[23] ERISA is designed to protect "participants" who are "employees" that participate in employee benefit plans which are subject to its regulatory scope. *Schwartz v. Gordon*, 761 F.2d 864, 868 (2d Cir. 1985). Accordingly, ERISA has specific rules and regulations that apply to defining (1) an "employee welfare benefit plan," (2) "employees," and (3) "participants" that may participate in an "employee welfare benefit plan". 29 U.S.C.A. § 1002 (West 2019). Under ERISA, an "employee welfare benefit plan" means:

> any plan, fund, or program which was heretofore or is hereafter established or *maintained by an employer* or by an employee organization, or by both, to the extent that such plan, fund, or program was established or *is maintained for the purpose of providing for its participants* or their beneficiaries, through the purchase of insurance or otherwise . . . .

29 U.S.C.A. § 1002 (emphasis added). The term "participant" means "any employee . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer . . . ." *Id.* The term "employee," at the center of this dispute, is defined as "any individual employed by an employer." *Id.* Because an employee-employer relationship is necessary to establish an ERISA plan, defining who is an "employee" is vital.

[24] In some instances, the *Darden* factors must be applied to determine who is an "employee" because the statute does not define the term in a helpful manner. *Darden*, 503 U.S. at 321, 112 S.Ct. 1344 (employing a common-law analysis to determine whether an independent contractor is an employee for purposes of an ERISA plan). Additionally, for ERISA purposes, an equity owner may be an "employer" in one sense and an "employee" in another. *See Yates*, 541 U.S. at 12, 124 S.Ct. 1330 (holding that an individual can wear two hats at the same time for the purpose of maintaining a plan as an employer but participating in the plan as an employee).

Here, the Department incorrectly concluded that the Plaintiffs' Plan did not meet the criteria for ERISA coverage. Combined Br. 38, ECF No. 28. For the following reasons, the Court determines that Plaintiff DMP's Plan is a single employer [12] employee benefit plan under Title

11. The Court notes that these distinct standards have substantial overlap. Therefore, since the Department's analysis fails under both standards the Court will address the standards simultaneously.

12. Plaintiffs additionally seek a declaration that the Plan is not a multiple-employer welfare arrangement ("MEWA") under ERISA. Since DMP is a singular entity that maintains the Plan, with LPMS as the fiduciary and DMP's Limited Partners as equity owners and participants for ERISA purposes, it is clear that there is only one employer, DMP. Pls.' Mot. Summ. J. at 7, ECF No. 24; *see* 29 U.S.C. § 1002(40) (defining a MEWA as "an employee welfare benefit plan, or any other arrangement" that provides benefits to "the employees of two or more employers" or their beneficiaries).

I of ERISA, and the Limited Partners may participate in the Plan if DMP covers at least one common-law employee under the Plan.

1. *The Limited Partners May Participate in the Plan as "Working Owners"*

[25] The central issue in this case is whether the Limited Partners are "working owners." Plaintiffs argue that the Limited Partners are working owners because although they do not have many of the "hallmarks" of work in a traditional sense, in a "gig economy and the economic reality of today, the Limited Partners' work should be recognized, and the employment relationship satisfies the statutory and regulatory requirements. Pls.' Mot. Summ. J. 37, ECF No. 24. ("While that [Service] differs from being a plumber, teacher, security guard, or career bureaucrat, it is no less a form of work in the modern 'gig economy'."). The Department argues that because the Limited Partners do not fit squarely into the working owner analysis, the common-law analysis is necessary. Combined Br. 38, ECF No. 28. ("Plaintiffs' claims here do not present a clear-cut case of working owners like medical doctors who own their own practice or the law firm partners addressed by the Fifth Circuit in *House*"); *see also House v. Am. United Life Ins. Co.*, 499 F.3d 443, 450 (5th Cir. 2007) (holding that law partners may be participants in an ERISA plan). The Department urges the Court to apply the *Darden* factors. Combined Br. 41, ECF No. 28 (arguing that the statutory and regulatory provisions are ambiguous and require a common-law employment analysis under *Darden*).

The reliance on *Darden* is misplaced here because whether an equity owner qualifies as a participant in an ERISA plan is analyzed solely under *Yates*. 541 U.S. at 1, 124 S.Ct. 1330. There, the Supreme Court held that a working owner can wear two hats, as an employer and employee.[13] *Id.* at 16, 124 S.Ct. 1330. "ERISA's text contains multiple indications that Congress intended working owners to qualify as plan participants. Because these indications combine to provide 'specific guidance,' there is no cause in this case to resort to common law." *Id.* at 12, 124 S.Ct. 1330. Moreover, the *Yates* majority explicitly held that the *Darden* common-law test concerning employee qualifications to participate in an ERISA-covered plan simply did not apply because Yates was clearly a working owner of his own medical practice. *Yates*, 541 U.S. at 12, n.3, 124 S.Ct. 1330 (distinguishing *Darden*). Notably, Justice Thomas noted in his concurrence in *Yates* that "members of this class [working owners] are now considered categorically to fall under ERISA's definition of 'employee'." *Yates*, 541 U.S. at 25, n.*, 124 S.Ct. 1330 (Thomas, J., concurring). The common-law employment analysis under *Darden* is not necessary here if the Limited Partners are working owners because working owners categorically may participate in an ERISA plan as an "employee".

Finding the *Darden* factors unnecessary for equity owners, the Court will turn to the analysis articulated by the Department in the Prior Opinion. The Department defined "working owner" as:

> any individual who has *an equity ownership right of any nature* in a business enterprise and who is *actively engaged* in providing services to that business, as distinguished from a passive owner, who

13. The Supreme Court cited 26 U.S.C. § 401(c)(4) to support this proposition. *Yates*, 541 U.S. at 16, 124 S.Ct. 1330 ("An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of [§ 401(c)(1)].").

> may own shares in a corporation, for example, but is not otherwise involved in the activities in which the business engages for profit.

DOL Op. No. 99-04A (Feb. 4, 1999) (emphasis added) (internal citations omitted). Therefore, for the Limited Partners to be "working owners," they must (1) have an equity ownership right of any nature in a business enterprise and (2) be actively engaged in providing services to that business.

a. The Limited Partners are Owners

Defendants required for the first time in the Department's Opinion that the Limited Partners have a "material" ownership interest to be a participant under ERISA. Advisory Op. 5, ECF No. 9-2. The Department's Opinion stated that the Limited Partners' "*nominal* ownership interests do not appear to have economic or operational substance." *Id.* The Department's definition of working owner requires "an equity ownership right of any nature." DOL Op. No. 99-04A.

Here, the Limited Partners obtained an ownership interest through the execution of a joinder agreement, periodically vote on how to organize and market the aggregated "data bank," and exercise management responsibilities over the sale of this data bank to third parties. Reply 47, ECF No. 30. Because the Limited Partners have an ownership interest "of any nature," and the imposition of a "materiality" standard is arbitrary and capricious, the Limited Partners are owners. *See Luminant Generation Co. v. U.S. E.P.A.*, 675 F.3d 917, 930 (5th Cir. 2012) (holding it was arbitrary and capricious for the agency to impose a new requirement that is neither necessary nor warranted by any applicable provision of the Act, and thus agency reliance on the requirement was unjustified).

b. The Limited Partners are Actively Engaged in Providing Services to the Partnership

Next, the Limited Partners must be "actively engaged" in providing services to that business. DOL Op. No. 99-04A. The Department's Opinion states that Limited Partners are not sufficiently "active" because "allowing one's electronic data to be tracked, collected, and marketed is not 'work' or 'performing any services' " and it does "not appear to differ in any meaningful way from the personal activities . . . [the Limited Partners] would otherwise engage in while using their personal devices." Advisory Op. 3, ECF No. 9-2. The Department's Opinion qualifies the nature of the service the Limited Partners provide to the partnership—aggregating the data generated from the ordinary use of their personal devices—as "too passive" to qualify as "work." *Id.*

Plaintiffs argue that the business venture is a form of employment innovated to take control and market their own aggregated data, rather than leave the commercial benefit to third parties. Pls.' Mot. Summ. J. 37, ECF No. 24 ("The partners are taking control of at least some portion of the data reflecting their internet usage and attempting to aggregate that data with others to create a product for which there is undeniably already a market."). Plaintiffs also argue that the business of data mining is a twenty billion-dollar industry that is gaining significant ground in the United States. *Id.* at 37 n.45.[14] Additionally, Plaintiffs argue that DMP's business enterprise is innovative because the Limited Partners' personal activities can double as a stream of income in the same

14. *See* Dylan Curran, "Are you ready? Here is all the data Facebook and Google have on you," The Guardian, March 30, 2018. https://www.theguardian.com/commentisfree/2018/mar/28/all-the-data-facebook-google-has-on-you-privacy.

way that drivers for Uber and Lift can generate income by aggregating hours driven using different ride assignment technologies even if the driver would have been driving the same routes in his personal time. Reply 44, ECF No. 30.

Defendants argue that the Department's Opinion is not arbitrary because consumers regularly and unwittingly allow third parties to aggregate their data without claiming any employment relationship, so the Plaintiffs cannot claim an employment relationship exists here. Advisory Op. 2, ECF No. 9-2. ("Allowing the partnership to track consumers' activities on the Internet is instead similar to what consumers already permit numerous firms, such as internet browsers and social media companies, to do without claiming that the tracked consumers work for them."). The Department views the business enterprise as a "sham" created as a means to provide health insurance coverage to the Limited Partners. *Id.* (stating that the only purpose of the limited partners joining the partnership is to acquire health insurance).

Plaintiffs are correct that the Limited Partners are "involved in the activities in which the business engages for profit." Reply at 51, ECF No. 30 (The Limited Partners "provide personal services for the partnership by contributing electronic data that individually and collectively is a material, income-producing factor for the partnership."). The Limited Partners download specific software on their device, the software collects data, and the data is then aggregated with the other partners' data to form a data bank owned by the partnership. *Id.* at 4. The Limited Partners then collectively decide what to do with that data bank on behalf of the partnership. *Id.* The only distinction between the Limited Partners here and the law partners in *House* is the *type* of work performed. *Id.* ERISA does not demand such a distinction.

The Limited Partners are not passive owners in the way that a passive owner in a publicly traded corporation will receive distributions without having any say in business operations. Therefore, whether the Department considers the Plaintiffs' business enterprise "legitimate" or "meaningful" is irrelevant because the Limited Partners are not merely passive owners under the Department's own test. *See State Farm*, 463 U.S. at 43, 103 S.Ct. 2856 (holding that agency action is "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider"). The Department simply does not agree that the services are a legitimate business enterprise, which is not a consideration required by law. The Court will not impose an extra-textual view of what services or industry in which business enterprises must engage to qualify for ERISA coverage. The Limited Partners are actively engaged in the partnership's business. Accordingly, the Court finds that the Limited Partners are working owners because the Limited Partners have an equity ownership interest of any kind and are actively engaged in partnership's business.

2. *The Limited Partners are Bona-Fide Partners*

[26] The Department's Opinion states that the requisite employment relationship between the Limited Partners and DMP does not exist. Advisory Op. 3, ECF No. 9-2. ("The regulations emphasize the need for an employment or self-employment services-based relationship with respect to the partners participating in a group health plan maintained by a partnership."). Under ERISA regulations, a partner must be a "bona-fide partner" to establish an employment relationship between the partner(s) and the partnership. 29 C.F.R. 2590.732(d)(2)-(3). Whether an individual is a bona-fide partner is determined based on "all the relevant facts and circumstances,

including whether the individual performs services on behalf of the partnership." *Id.*

The Department's Opinion categorizes the Limited Partners as "merely consumers purchasing health coverage in exchange for premiums and an agreement that the partnership can track their personal activities on their personal devices." Advisory Op. 4, ECF No. 9-2 ("You have provided no facts that would support a conclusion that the limited partners are meaningfully employed by the partnership or perform any services on its behalf."). Plaintiffs argue that the Limited Partners "provide personal services for the partnership by contributing electronic data that individually and collectively is a material, income-producing factor for the partnership." Reply 51, ECF No. 30. The bona-fide partner analysis simply requires a more-than-pretextual relationship between the employer and employee. The Court already concluded that the Limited Partners are working owners who are actively engaged in the business. Given that the bona-fide partner standard is a lower threshold, the Limited Partners are bona-fide partners of DMP.

3. *ERISA States no Limit to the Number of Working Owners That May Participate in a Plan Alongside at Least One Common-Law Employee*

Lastly, the Department's Opinion concluded that "the presence of a single employee participant is [not] sufficient to extend ERISA coverage to all the limited partners, without any stated limit" because "that position cannot be squared with ERISA's text." Advisory Op. 3, ECF No. 9-2. Because in its view "the text of the regulation" does not allow the Plan to be arranged as proposed in the Request, the Department seeks to impose some imprecise employee-employer ratio requirement on Plaintiffs. *See id.* In response, Plaintiffs argue that one common-law employee is sufficient because ERISA regulations state that a "plan under which *one or more common law employees*, in addition to the self-employed individuals, are participants under the plan, will be covered under Title I" of ERISA. 29 C.F.R. § 2510.3-3(b) (emphasis added); Reply at 33, ECF No. 30.

[27] ERISA's "one or more common-law employees" regulation unambiguously means that so long as one common-law employee is covered by the plan, it is an ERISA plan in which an unlimited number of working owners may participate. *Id.*; *see Robertson v. Alexander Grant & Co.*, 798 F.2d 868, 869 (5th Cir. 1986) (finding a benefit plan for only partners is not covered by ERISA without the presence of a *single* common-law employee). But once the Plan covers a single common-law employee, ERISA imposes no ratio requirement on the number of working owners that may participate. Therefore, the Department's Opinion is incorrect to specify the number of working owners eligible for the Plan beyond that set out by regulation. The Court concludes that the presence of a single common-law employee may extend ERISA coverage to any number of working owners.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion for Summary Judgment (ECF No. 23), **DENIES** Defendants' Cross Motion for Summary Judgment (ECF No. 25), and **DENIES as moot** Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 10). Because the Limited Partners are working owners and bona-fide partners, they may participate in the single employer welfare benefit plan set up by DMP, so long as DMP employs at least one common-law employee. Accordingly, the Department's Opinion is set aside as arbitrary and capricious under the APA and contrary to law under ERISA and

Defendants are **ENJOINED** from refusing to acknowledge the ERISA-status of the Plan or refusing to recognize the Limited Partners as working owners of DMP.

SO ORDERED on this 28th day of September, 2020.

Camron SNEED, Plaintiff,

v.

AUSTIN INDEPENDENT SCHOOL DISTRICT, Defendant.

CAUSE NO. 1:19-CV-608-LY

United States District Court,
W.D. Texas, Austin Division.

Signed 09/29/2020

Background: African American high school student brought action against school district for discrimination under Title VI of Civil Rights Act, alleging that student was repeatedly and routinely victim of student-on-student racial harassment and bullying. District filed motion for summary judgment.

Holdings: The District Court, Lee Yeakel, J., adopted report and recommendation of Mark Lane, United States Magistrate Judge, which held that:

(1) issue of whether student was in racially hostile environment precluded summary judgment;

(2) band teacher's response to other students' use of word "nigger" was not deliberate indifference;

(3) issue of whether school district was deliberately indifferent to use of racial slurs by "FFA" students precluded summary judgment;

(4) school district's response to harassment against student during band trip incident was not deliberate indifference;

(5) school district's response to Halloween feedbag incident was not deliberate indifference;

(6) school district's response to tractor incident, during which adults were spreading racially motivated rumors about African American student's father, was not deliberate indifference; and

(7) school district's alleged failure to train its employees on discrimination and harassment was not deliberate indifference.

Motion granted in part and denied in part.

1. United States Magistrate Judges ⚷230(4)

A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C.A. § 636(b).

2. Federal Civil Procedure ⚷2554

Supplemental response filed by African American high school student, in response to school district's motion for summary judgment, would be allowed, in student's action under Title VI of Civil Rights Act alleging racial discrimination; although there was no justification for why supplement was necessary other than mistake by student's counsel, district did not file response and, thus, supplemental material did not sway magistrate judge's recommendation one way or other, and there was no harm in allowing supplement, since it did not require further briefing or delay proceedings in case. Civil Rights Act of 1964, § 601 et seq., 42 U.S.C.A. § 2000d et seq.

EXHIBIT D

titled, "Is there a Pause?" did not state whether the Pause was unwritten.

[4–6] To comply with Rule 65(d) a district court's order should state its terms specifically and describe in reasonable detail the conduct restrained or required.[17] This drafting standard means "that an ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed."[18] "The rule embodies the elementary due process requirement of notice."[19] The Supreme Court has repeatedly emphasized that "the specificity provisions of Rule 65(d) are no mere technical requirements."[20] "The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood."[21]

[7] The present injunction fails to meet Rule 65(d) requirements. We cannot reach the merits of the Government's challenge when we cannot ascertain from the record what conduct—an unwritten agency policy, a written policy outside of the Executive Order, or the Executive Order itself—is enjoined. Our review of APA claims must begin by determining if there was final agency action.[22] Where, as here, it is unclear what final agency action the district court predicated its order upon, we are unable to reach the merits of the appeal.

V.

The order below does not satisfy the requirements of Rule 65(d). Accordingly, we VACATE the judgment of the district court and REMAND the case to that court for further proceedings consistent with this opinion.

DATA MARKETING PARTNERSHIP, LP; LP Management Services, LLC, Plaintiffs—Appellees,

v.

UNITED STATES DEPARTMENT OF LABOR; Martin Walsh, Secretary, U.S. Department of Labor; United States of America, Defendants—Appellants.

No. 20-11179

United States Court of Appeals, Fifth Circuit.

FILED August 17, 2022

Background: Limited partnership which specialized in production and sale of its limited partners' electronic data to third-party purchasers, and its general partner, brought action against Department of Labor, challenging advisory opinion Department issued finding that proposed group health plan did not qualify as an employee welfare benefit plan governed by Employee Retirement Income Security Act

17. *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 586 (5th Cir. 2013) (quoting FED. R. CIV. P. 65(d)).

18. *U. S. Steel Corp. v. United Mine Workers of Am.*, 519 F.2d 1236, 1246 n.20 (5th Cir. 1975) (quoting WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 2955 at 536–37 (1973)).

19. *Id.* at 1246.

20. *Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974).

21. *Id.*

22. *Bennett v. Spear*, 520 U.S. 154, 177–78, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997).

(ERISA), limited partners were not "participants" under ERISA, and one common-law employee was not sufficient basis for plan to cover any number of limited partners. The United States District Court for the Northern District of Texas, Reed O'Connor, J., 490 F.Supp.3d 1048, granted plaintiffs' summary judgment motion, denied Department's cross-motion for summary judgment, vacated agency action, and permanently enjoined Department from refusing to acknowledge ERISA-status of plan or refusing to recognize limited partners as working owners of limited partnership. Department appealed.

Holdings: The Court of Appeals, Oldham, Circuit Judge, held that:

(1) advisory opinion consummated Department's decisionmaking process;

(2) advisory opinion determined rights, produced obligations, or caused legal consequences, and thus was final agency action;

(3) advisory opinion was arbitrary and capricious in violation of Administrative Procedure Act (APA); and

(4) district court was required to apply a totality-of-the-circumstances inquiry when determining whether limited partners were bona fide partners that qualified as ERISA plan participants.

Affirmed in part, vacated in part, and remanded.

1. Labor and Employment ⚿403

ERISA was enacted to protect the interests of participants in employee benefit plans and their beneficiaries. Employee Retirement Income Security Act of 1974 § 514, 29 U.S.C.A. § 1144(a).

2. Labor and Employment ⚿414

If ERISA does not regulate a plan, then state law does. Employee Retirement Income Security Act of 1974 § 514, 29 U.S.C.A. § 1144(a).

3. Federal Courts ⚿3604(4)

Court of Appeals reviews the grant of summary judgment de novo.

4. Administrative Law and Procedure ⚿1974

Federal Courts ⚿3616(1)

Court of Appeals reviews district court's permanent injunction and vacatur of agency action for abuse of discretion.

5. Administrative Law and Procedure ⚿1661(3)

Finality of agency action is a jurisdictional prerequisite of judicial review under the Administrative Procedure Act (APA). 5 U.S.C.A. § 704.

6. Administrative Law and Procedure ⚿1661(4)

There are two requirements for finality of agency action, as a jurisdictional prerequisite of judicial review under the Administrative Procedure Act (APA): (1) the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature—and (2) the action must be one by which rights or obligations have been determined, or from which legal consequences will flow. 5 U.S.C.A. § 704.

7. Labor and Employment ⚿642

Advisory opinion by Department of Labor finding that proposed group health plan did not qualify as an employee welfare benefit plan governed by ERISA consummated Department's decisionmaking process, as would support finding that advisory opinion was final agency action subject to Administrative Procedure Act (APA) review, even though Department could change its position or its reasons for decision after more factfinding, since advisory opinion was not subject to further

agency review. 5 U.S.C.A. § 704; Employee Retirement Income Security Act of 1974 § 3, 29 U.S.C.A. § 1002(1).

8. Administrative Law and Procedure ⚿1661(4)

Possibility that an agency can change its position or its reasons for the decision after more factfinding is a common characteristic of agency action and does not make an otherwise definitive decision nonfinal for purposes of Administrative Procedure Act's (APA) finality requirement for judicial review. 5 U.S.C.A. § 704.

9. Administrative Law and Procedure ⚿1661(3, 8)

For purposes of the Administrative Procedure Act's (APA) finality requirement for judicial review, agency action is either final or not, and mere fact that agency could, or actually does, reverse course in future does not change that fact. 5 U.S.C.A. § 704.

10. Labor and Employment ⚿642

Advisory opinion by Department of Labor finding that proposed group health plan did not qualify as an employee welfare benefit plan governed by ERISA determined rights, produced obligations, or caused legal consequences, and thus advisory opinion was final agency action subject to Administrative Procedure Act (APA) review, even if there were preconditions to requestor's reliance, and even though a future event must occur to satisfy those preconditions; advisory opinion bound Department to some degree, withdrew its previously held discretion, and was binding as a practical matter as failure to obtain advisory opinion could have caused unusual hardship, and Department had choice to provide non-final agency action in the form of an information letter but instead chose to provide an advisory opinion. 5 U.S.C.A. § 704; Employee Retirement Income Security Act of 1974 § 3, 29 U.S.C.A. § 1002(1).

11. Administrative Law and Procedure ⚿1661(4)

Where agency action withdraws an entity's previously held discretion, that action alters the legal regime and binds the entity and thus qualifies as final agency action, as a jurisdictional prerequisite of judicial review under the Administrative Procedure Act (APA). 5 U.S.C.A. § 704.

12. Administrative Law and Procedure ⚿1661(8)

Fact that advisory opinion procedure is complete and deprives plaintiff of legal right that it would enjoy if it had obtained favorable resolution in advisory opinion process denies right with consequences sufficient to warrant review as final agency action under Administrative Procedure Act (APA). 5 U.S.C.A. § 704.

13. Administrative Law and Procedure ⚿1743

Administrative Procedure Act's (APA) arbitrary and capricious standard of review requires that agency action be reasonable and reasonably explained. 5 U.S.C.A. § 706(2).

14. Administrative Law and Procedure ⚿1882

Under the Administrative Procedure Act's (APA) arbitrary and capricious standard of review, courts must not substitute its own policy judgment for that of the agency. 5 U.S.C.A. § 706(2).

15. Administrative Law and Procedure ⚿1743

Under the Administrative Procedure Act's (APA) arbitrary and capricious standard of review, courts must ensure that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and

reasonably explained the decision. 5 U.S.C.A. § 706(2).

16. Administrative Law and Procedure ⚿1743, 1748

Under the Administrative Procedure Act's (APA) arbitrary and capricious standard of review, courts must set aside any action premised on reasoning that fails to account for relevant factors or evinces a clear error of judgment. 5 U.S.C.A. § 706(2).

17. Administrative Law and Procedure ⚿1932, 1935

In reviewing agency's action under the Administrative Procedure Act (APA), court may consider only reasoning articulated by agency itself; court cannot consider post hoc rationalizations. 5 U.S.C.A. § 706(2).

18. Administrative Law and Procedure ⚿1743

Fact that agency provided post hoc rationalization is relevant evidence that action is arbitrary and capricious in violation of Administrative Procedure Act (APA). 5 U.S.C.A. § 706(2).

19. Labor and Employment ⚿640

Department of Labor's advisory opinion finding that limited partners did not qualify as working owners of limited partnership, and thus did not qualify as ERISA plan participants, contained an unexplained inconsistency in that it failed to reasonably explain adoption of definition of "working owner" that was materially different from definitions in previous advisory opinions, and thus advisory opinion was arbitrary and capricious in violation of Administrative Procedure Act (APA); Department ignored prior advisory opinions and its regulation adopting a definition of term in a related context, even though Department had justified at length its prior definition of "working owner" in promulgating regulation, which limited partnership had cited in its advisory opinion request, and Department's arguments explaining away prior advisory opinions and regulation were not made in advisory opinion itself and thus were impermissible post hoc rationalizations. 5 U.S.C.A. § 706(2); Employee Retirement Income Security Act of 1974 § 3, 29 U.S.C.A. § 1002(1); 29 C.F.R. § 2510.3-5(e).

20. Administrative Law and Procedure ⚿1474

An unexplained inconsistency is the hallmark of an arbitrary and capricious change from agency practice.

21. Labor and Employment ⚿640

If courts must give the Department of Labor's advisory opinions *Skidmore* deference, then the Department itself must meaningfully consider relevant advisory opinions as well to issue a reasonable and reasonably explained action under the Administrative Procedure Act's (APA) arbitrary and capricious standard. 5 U.S.C.A. § 706(2).

22. Labor and Employment ⚿537

When assessing questions related to whether working owners qualify as ERISA plan participants, courts are required to determine whether ERISA's text provides specific guidance on the precise question before the court, such that resort to the common law is unnecessary; to determine whether ERISA provides adequate information, courts must consider, among other things, all four titles of ERISA and the Internal Revenue Code. 26 U.S.C.A. § 1 et seq.; Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

23. Labor and Employment ⚿642

Remand from Court of Appeals was warranted for district court to determine whether all factors, including various pro-

visions of ERISA and Internal Revenue Code, combined to make particular working owners of limited partnership qualify as ERISA plan participants. 26 U.S.C.A. § 1 et seq.; Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

24. Labor and Employment ⚿537

District court was required to apply a totality-of-the-circumstances inquiry when determining whether limited partners were bona fide partners that qualified as ERISA plan participants. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.; 29 C.F.R. § 2590.732(d)(2).

25. Labor and Employment ⚿642

Remand from Court of Appeals was warranted for district court to apply totality-of-the-circumstances inquiry when determining whether limited partners were bona fide partners that qualified as ERISA plan participants, and to consider whether Department of Labor's interpretation of regulation concerning bona fide partners warranted *Auer* deference or whether Department forfeited the argument for such deference. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.; 29 C.F.R. § 2590.732(d)(2).

26. Administrative Law and Procedure ⚿2015

The default rule is that vacatur of arbitrary and capricious agency action is the appropriate remedy under the Administrative Procedure Act (APA). 5 U.S.C.A. § 706(2).

27. Labor and Employment ⚿642

The Department of Labor forfeited for appellate review argument that the district court abused its discretion in following the default rule that vacatur of arbitrary and capricious agency action is the appropriate remedy under the Administrative Procedure Act (APA) by not developing argument. 5 U.S.C.A. § 706(2).

Appeal from the United States District Court for the Northern District of Texas, USDC No. 4:19-cv-800, Robert B. O'Connor, U.S. Magistrate Judge

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Caroline Van Zile, Esq., Office of the Attorney General for the District of Columbia, Office of the Solicitor General, Washington, DC, for Amici Curiae District of Columbia, State of California, State of Colorado, State of Connecticut, State of Delaware, State of Illinois, State of Maine, State of Maryland, State of Massachusetts, State of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of North Carolina, State of Pennsylvania, State of Rhode Island, State of Vermont, State of Virginia, State of Washington, State of Wisconsin.

Before SMITH, ELROD, and OLDHAM, Circuit Judges.

ANDREW S. OLDHAM, Circuit Judge:

There are three questions presented. The first is whether the Department of Labor's self-labeled "advisory opinion" is reviewable "final agency action" under the Administrative Procedure Act. It is. The second is whether the Department's action is arbitrary, capricious, or otherwise contrary to law. Again, it is. The third is whether the district court issued the appropriate relief. Here, we affirm the district court's vacatur of the agency action. But we vacate and remand the district court's injunction for further consideration in light of this opinion.

I.

We first (A) detail the relevant statutory and regulatory background. Then we (B) describe the factual and procedural background.

A.

[1, 2] First, some legal background. This appeal involves the Employee Retirement Income Security Act of 1974 ("ERISA"). ERISA was "[e]nacted to protect the interests of participants in employee benefit plans and their beneficiaries." *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1, 6, 124 S.Ct. 1330, 158 L.Ed.2d 40 (2004) (quotation omitted). It "pre-empts 'any and all State laws insofar as they may now or hereafter relate to any employee benefit plan' covered by ERISA." *Rutledge v. Pharm. Care Mgmt. Ass'n*, —— U.S. ——, 141 S. Ct. 474, 479, 208 L.Ed.2d 327 (2020) (quoting 29 U.S.C. § 1144(a)). If ERISA doesn't regulate the plan, then state law does.

One relevant plan regulated by ERISA is an "employee welfare benefit plan," which can be used by employers to provide health insurance to "participants." 29 U.S.C. § 1002(1). ERISA defines a "participant" as "any employee or former employee of an employer, . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer . . ., or whose beneficiaries may be eligible to receive any such benefit." *Id.* § 1002(7). It in turn defines an "[e]mployee" as "any individual employed by an employer" and an "employer" as "any person acting directly as an employer, or indirectly in the inter-

est of an employer, in relation to an employee benefit plan." *Id.* § 1002(5), (6). As relevant here, a "working owner" or a "bona fide partner" may be an "employee." *See Yates*, 541 U.S. at 6, 124 S.Ct. 1330 (working owner); 29 C.F.R. § 2590.732(d)(2) (bona fide partner).

The Department of Labor set up a procedure to formally provide guidance to entities. *See* Advisory Opinion Procedure, 41 Fed. Reg. 36,281 (Aug. 27, 1976). It provides two options: (1) "advisory opinions" and (2) "information letters." An "advisory opinion" is "a written statement issued to an individual or organization, or to the authorized representative . . ., that interprets and applies the Act to a specific factual situation." *Id.* at 36,282. In certain circumstances, the requester "may rely on the opinion." *Id.* at 36,283. By contrast, an "information letter" is "a written statement . . . that does no more than call attention to a well-established interpretation or principles . . . without applying it to a specific factual situation." *Id.* at 36, 282.

B.

Next, the factual and procedural background. LP Management Services, LLC ("Management Services") serves as the general partner of several limited partnerships, including Data Marketing Partnership ("Data Marketing").

In November 2018, Management Services requested an advisory opinion from the Department to confirm that a proposed health insurance plan for its limited partnerships would qualify as an employee welfare benefit plan under ERISA. In the request, it described Data Marketing's business model. Its business is "the capture, segregation, aggregation, and sale to third-party marketing firms of electronic data generated by [limited partners] who share such data with" Data Marketing. The limited partners share that data by "install[ing] specific software [that] tracks the capture of such data by other companies . . . and provides access of such data to" Data Marketing. Data Marketing then processes, aggregates, and sells that data to marketers.

The request also described the limited partners' relationship with Data Marketing. Individuals become limited partners by executing a joinder agreement subject to the approval of Management Services. They then receive a "Limited Partnership Interest" that permits them to "participate in global management issues through periodic votes of all Partners." That partnership interest also lets them receive income distributions from Data Marketing that "will be reported as guaranteed payments and subject to employment taxes."

By October 2019, the Department still had not issued an advisory opinion. So plaintiffs sued, sought a declaration that their plan was covered by ERISA, and moved for an injunction ordering the Department not to release a contrary advisory opinion.

A few months later, the Department issued a six-page advisory opinion. Based on the facts in the request and the complaint, the Department concluded that plaintiffs' plan was not covered by ERISA. According to the Department, the limited partners were neither working owners nor bona fide partners because their work lacked hallmarks of a traditional employment relationship and their financial stake and participation in the management of the business was not serious enough. The Department also emphasized that plaintiffs' structure was a sham, intended only to sell insurance to consumers under ERISA rather than state law.

Plaintiffs then amended their complaint to challenge the lawfulness of the advisory opinion. Thereafter, plaintiffs and the De-

partment cross-moved for summary judgment. The district court granted plaintiffs' motion, denied the Department's cross-motion, vacated the agency action, and permanently enjoined 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.

The district court reached two relevant conclusions. First, the district court concluded that the advisory opinion was final agency action. That's because no further agency review was available and because the opinion denied plaintiffs the safe harbor of federal preemption, which exposed them to state insurance regulation. Second, the district court concluded that the advisory opinion was arbitrary, capricious, and contrary to law. The court determined that the limited partners were "working owners" under a definition that the Department had previously used in another advisory opinion. In the alternative, the district court determined that the limited partners were "bona fide partners" because they had a "more-than-pretextual relationship" with Data Marketing and because the "bona fide partner" standard was easier to meet than the "working owner" standard.

[3, 4] The Department timely appealed. We have appellate jurisdiction under 28 U.S.C. § 1291. We review the grant of summary judgment *de novo*. *Playa Vista Conroe v. Ins. Co. of the W.*, 989 F.3d 411, 414 (5th Cir. 2021). And we review the district court's permanent injunction and vacatur of the agency action for abuse of discretion. *Whole Woman's Health v. Paxton*, 10 F.4th 430, 438 (5th Cir. 2021) (en banc); *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 985 F.3d 1032, 1051 (D.C. Cir. 2021).

We (II) determine whether the advisory opinion is final agency action. We next (III) address whether the advisory opinion is (A) arbitrary and capricious and (B) contrary to law because it unreasonably interpreted the applicable statutory and regulatory provisions. Finally, we (IV) tackle the proper remedy.

II.

[5, 6] Start with finality. The Administrative Procedure Act ("APA") provides judicial review of "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Our circuit considers finality "a jurisdictional prerequisite of judicial review." *Louisiana v. U.S. Army Corps of Eng'rs*, 834 F.3d 574, 584 (5th Cir. 2016). There are two requirements: (A) "the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature." *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 597, 136 S.Ct. 1807, 195 L.Ed.2d 77 (2016) (quotation omitted). And (B) "the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Ibid.* (quotation omitted). This is generally a "pragmatic" inquiry. *Id.* at 599, 136 S.Ct. 1807 (quotation omitted); *but see Biden v. Texas*, —— U.S. ——, 142 S. Ct. 2528, 2559 n.7, 213 L.Ed.2d 956 (2022) (Alito, J., dissenting) (explaining that the Court sometimes uses an "expansive, formalist approach to the second *Bennett* factor . . . at odds with the usual pragmatic approach" (quotation omitted)). We consider each requirement in turn and find both satisfied.

A.

[7] The advisory opinion consummated the Department's decisionmaking process. That's because it is "not subject to further Agency review." *Sackett v. EPA*, 566 U.S.

120, 127, 132 S.Ct. 1367, 182 L.Ed.2d 367 (2012). The Department effectively concedes that the advisory opinion is not subject to additional agency review.

[8, 9] Instead, the Department recycles an argument that the Supreme Court has repeatedly rejected: The action isn't final because the agency can change its position or its reasons for the decision after more factfinding. This argument is squarely foreclosed by numerous Supreme Court decisions. *See, e.g., ibid.* ("The mere possibility that an agency might reconsider in light of 'informal discussion' and invited contentions of inaccuracy does not suffice to make an otherwise final agency action nonfinal."); *Hawkes*, 578 U.S. at 598, 136 S.Ct. 1807 ("The Corps may revise an [action] within the five-year period based on new information. That possibility, however, is a common characteristic of agency action, and does not make an otherwise definitive decision nonfinal." (quotation omitted)). An action is either final or not, and the mere fact that the agency could—or actually does—reverse course in the future does not change that fact. *See Biden v. Texas*, 142 S. Ct. at 2545 ("[B]oth the June 1 Memorandum and the October 29 Memoranda, *when they were issued*, marked the consummation of the agency's decisionmaking process and resulted in rights and obligations being determined." (emphasis added) (quotation omitted)). Were it otherwise, no agency action would be final because an agency could always revisit it. And that can't be right.[1]

Prong one is thus satisfied.

B.

[10] The advisory opinion also determined rights, produced obligations, or caused legal consequences. That's for three reasons.

[11] First, it's well-established that "where agency action withdraws an entity's previously held discretion, that action alters the legal regime, binds the entity, and thus qualifies as final agency action." *Texas v. EEOC*, 933 F.3d 433, 442 (5th Cir. 2019) (quotation omitted). The advisory opinion did that here. The applicable regulation provides requestors the right to "rely" in certain circumstances on the opinion. 41 Fed. Reg. at 36,283. So the advisory opinion bound the Department to some degree and withdrew its previously held discretion. That's textbook final agency action.

Contrary to the Department's suggestion, it doesn't matter that there are preconditions to the requestor's reliance. *See* 41 Fed. Reg. at 36,283 (allowing reliance where the request is accurate). Nor does it matter that a future event must occur to satisfy those preconditions. *See Biden v. Texas*, 142 S. Ct. at 2545 n.7 ("The fact that the agency could not cease implementing MPP, as directed by the October 29 Memoranda, until it obtained vacatur of the District Court's injunction, did not make the October 29 Memoranda any less the agency's final determination of its employees' obligation to do so once such judicial authorization had been obtained."). All that matters is that, when those preconditions are met, the Department loses discretion.

[12] The Department insists that it hasn't lost any discretion because plaintiffs can't prevent state regulation with the par-

1. The Department also points to *Taylor-Callahan-Coleman Counties District Adult Probation Department v. Dole*, 948 F.2d 953 (5th Cir. 1991), for the idea that actions that are "subject to change" are not final. *See id.* at 957. This opinion was contradicted by the Supreme Court's subsequent decisions in *Sackett* and *Hawkes*, so we aren't bound by it. *See, e.g., Gahagan v. USCIS*, 911 F.3d 298, 302 (5th Cir. 2018).

ticular advisory opinion they received. In other words, the Department focuses on how plaintiffs would use the *current* advisory opinion rather than the advisory opinion *plaintiffs wanted*. That focus is wrong. "The fact that the advisory opinion procedure is complete and deprives the plaintiff of a legal right . . . [that] it would enjoy if it had obtained a favorable resolution in the advisory opinion process . . . denies a right with consequences sufficient to warrant review." *Unity08 v. FEC*, 596 F.3d 861, 865 (D.C. Cir. 2010) (quotation omitted); *see also Env't Def. Fund, Inc. v. Ruckelshaus*, 439 F.2d 584, 589 n.8 (D.C. Cir. 1971). The Department can't escape finality just by ruling against the requester.

Second, the applicable regulation contemplates that the "failure to obtain an advisory opinion" can cause "unusual hardship." 41 Fed. Reg. at 36,282. This further confirms that an advisory opinion is "binding as a practical matter" and thus final. *Texas v. EEOC*, 933 F.3d at 442 (quotation omitted). After all, how can an advisory opinion alleviate "unusual hardship" without determining any rights, producing any obligations, or causing any legal consequences?

Third, comparing the Department's advisory opinions to its information letters reinforces that its advisory opinions are final agency action. Information letters are "informational only" and are "not binding on the Department with respect to any particular factual situation." 41 Fed. Reg. at 36,282. Advisory opinions, by contrast, are the "opinion of the Department as to the application[s] of" ERISA and may be relied on in certain circumstances. *Id.* at 36,283. The Department thus had the choice to provide final agency action (advisory opinion) instead of non-final agency action (information letter). *See id.* at 36,282 ("[T]he Department may, when it is deemed appropriate and in the best interest of sound administration of the Act, issue information letters calling attention to established principles under the Act, even though the request that was submitted was for an advisory opinion."). It chose final agency action. And that choice has consequences.

Prong two is thus satisfied. The agency's action is final.

III.

Next, the action's lawfulness. We (A) conclude that the advisory opinion is arbitrary and capricious. We then (B) frame the relevant interpretive questions for the district court's consideration on remand.

A.

[13–16] The APA directs courts to "hold unlawful and set aside agency action[s]" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2). "The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, —— U.S. ——, 141 S. Ct. 1150, 1158, 209 L.Ed.2d 287 (2021). We must not "substitute" our "own policy judgment for that of the agency." *Ibid.* Still, we must ensure that "the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." *Ibid.*; *see also Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983). "Put simply, we must set aside any action premised on reasoning that fails to account for 'relevant factors' or evinces 'a clear error of judgment.' " *Univ. of Tex. M.D. Anderson Cancer Ctr. v. HHS*, 985 F.3d 472, 475 (5th Cir. 2021) (quoting *Marsh v. Or. Nat. Res. Council*, 490 U.S.

360, 378, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989)).

[17, 18] In reviewing an agency's action, we may consider only the reasoning "articulated by the agency itself"; we cannot consider *post hoc* rationalizations. *State Farm*, 463 U.S. at 50, 103 S.Ct. 2856; *see also DHS v. Regents of the Univ. of Cal.*, —— U.S. ——, 140 S. Ct. 1891, 1909, 207 L.Ed.2d 353 (2020) ("An agency must defend its actions based on the reasons it gave when it acted."). At the same time, the fact that an agency provided a *post hoc* rationalization is relevant evidence that the action is arbitrary and capricious. *See, e.g., Wages & White Lion Invs., LLC v. FDA*, 16 F.4th 1130, 1140 (5th Cir. 2021) ("The very fact that the FDA perceived the need to rehabilitate its Order with new and different arguments before our court underscores that the Order itself omitted a reasoned justification for the agency's action."); *Texas v. Biden*, 20 F.4th 928, 993 (5th Cir. 2021).[2]

Our review is "not toothless." *Sw. Elec. Power Co. v. EPA*, 920 F.3d 999, 1013 (5th Cir. 2019). In fact, it's well-established that "after *Regents*, it has serious bite." *See, e.g., Wages*, 16 F.4th at 1136; *Texas v. United States*, 40 F.4th 205, 226 (5th Cir. 2022) (per curiam).

[19] The Department failed to "reasonably consider[ ] the relevant issues and reasonably explain[ ]" the advisory opinion. *Prometheus*, 141 S. Ct. at 1158; *see also Michigan v. EPA*, 576 U.S. 743, 750, 752, 135 S.Ct. 2699, 192 L.Ed.2d 674 (2015) ("[A]gency action is lawful only if it rests on a consideration of the relevant factors" and "important aspect[s] of the problem." (quotation omitted)). The key factors the Department ignored were its prior advisory opinions discussing the term "working owner" and its regulation adopting a definition of the term in a related context. *See* Dep't of Labor, Advisory Op. No. 99-04A, 1999 WL 64920, at *2 n.3 (Feb. 4, 1999) [hereinafter 1999 opinion]; Dep't of Labor, Advisory Op. No. 2006-04A, 2006 WL 1401678, at *3 (Apr. 27, 2006) [hereinafter 2006 opinion]; Definition of "Employer" Under Section 3(5) of ERISA—Association Health Plans, 83 Fed. Reg. 28,912, 28,931 (June 21, 2018); 29 C.F.R. § 2510.3-5(e). These omissions doom the Department's action.

Start with the omitted advisory opinions. In 1999, the Department issued an advisory opinion that characterized the term "working owner":

> By the term "working owner," [the requester] apparently mean[s] any individual who has an equity ownership right of any nature in a business enterprise and who is actively engaged in providing services to that business, as distinguished

2. The Supreme Court recently reversed our judgment in *Texas v. Biden*. *See Biden v. Texas*, 142 S. Ct. at 2548 (reversing the court of appeals). It's thus important to determine the extent to which the panel's opinion is still binding under this circuit's rule of orderliness. Our rule of orderliness requires us to follow the panel opinion except for the portions of it on statutory interpretation and final agency action. *See Cent. Pines Land Co. v. United States*, 274 F.3d 881, 893 n.57 (5th Cir. 2001) (concluding that circuit opinions in which the judgment was reversed on some but not all grounds are still precedential with respect to the portions not reversed); *United States v. Kirk*, 528 F.2d 1057, 1063–64 (5th Cir. 1976); *see also Texas v. United States*, 40 F.4th 205, 222 n.9 (5th Cir. 2022) (per curiam) (understanding *Texas v. Biden*, 20 F.4th 928 (5th Cir. 2021), to be binding on all grounds not reversed). So the panel's understanding of arbitrary-and-capricious review, reviewability under *Heckler v. Chaney*, 470 U.S. 821, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985), Article III standing, mootness, &c. remains binding. *Cf. Stokes v. Sw. Airlines*, 887 F.3d 199, 205 (5th Cir. 2018) ("[T]he determination whether a given precedent has been abrogated is itself a determination subject to the rule of orderliness.").

> from a "passive" owner, who may own shares in a corporation, for example, but is not otherwise involved in the activities in which the business engages for profit.

1999 opinion, *supra*, at *2 n.3. In 2006, the Department issued another advisory opinion reiterating this prior characterization. *See* 2006 opinion, *supra*, at *3. Yet the Department never even mentioned this prior characterization in the advisory opinion at issue here.

[20, 21] The Department's failure is hardly "reasoned decisionmaking." *Michigan*, 576 U.S. at 750, 135 S.Ct. 2699 (quotation omitted). The opinion at issue adopts a definition of "working owner" materially different from the definitions in the 1999 and 2006 opinions. The opinion thus has "an unexplained inconsistency"—the hallmark of "an arbitrary and capricious change from agency practice." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222, 136 S.Ct. 2117, 195 L.Ed.2d 382 (2016) (quotation omitted). Plus, if courts must give the Department's advisory opinions *Skidmore* deference, then the Department itself must meaningfully consider relevant advisory opinions as well to issue a "reasonable and reasonably explained" action. *Prometheus*, 141 S. Ct. at 1158. "That omission alone renders [the Department's opinion] arbitrary and capricious, but it was not the only defect." *Regents*, 140 S. Ct. at 1896.

The Department justifies ignoring its prior characterization of the term "working owner" because the characterization originated in an advisory opinion predating the Supreme Court's 2004 decision in *Yates*. But *Yates* is no justification. For one thing, the Department referred to the 1999 opinion's definition of "working owner" after *Yates* in the 2006 advisory opinion. *See* 2006 opinion, *supra*, at *3. For another, the Supreme Court in *Yates* relied on that very same 1999 opinion, though not specifically for defining the term "working owner." *See* 541 U.S. at 17–18, 20, 124 S.Ct. 1330. Still, *Yates* shows that the Department was on notice of the 1999 opinion's significance and potential continued significance. And in all events, Data Marketing cited the 1999 opinion in its submission, putting the Department on notice of the relevant authority.

The Department also failed to address a regulation that adopted a definition of "working owner." *See* 29 C.F.R. § 2510.3-5(e) (definition). The Department in promulgating the regulation justified at length its definition of "working owner." *See* 83 Fed. Reg. at 28,929–33; *see also id.* at 28,964 (providing the definition). Yet the Department adopted a contrary definition in the opinion here and never acknowledged the regulation. It did so even though Data Marketing cited the regulation in its request. One would think that a reasonable agency's "natural response" to seeing a regulation with a definition of the exact same term at issue in the request would be to consider the definition—perhaps explaining why the Department is adopting a different one. *Regents*, 140 S. Ct. at 1916.[3]

More fundamentally, the Department spills much ink in its response brief either explaining away the prior advisory opinions and the regulation or arguing that the definitions they adopted are consistent with the ones adopted elsewhere. But all those arguments were not made in the

3. It's true that a district court in March 2019 held the regulation's definition unreasonable because it included working owners without employees. *See New York v. DOL*, 363 F. Supp. 3d 109, 136–39 (D.D.C. 2019). But this makes the Department's failure to discuss the regulation all the more perplexing. The Department appealed the decision to defend the definition. If the definition is worth defending in court, it's worth meaningfully addressing in an advisory opinion when the request cites the regulation.

final agency action itself and thus aren't "contemporaneous explanations." *Regents*, 140 S. Ct. at 1909. They are instead "impermissible *post hoc* rationalizations." *Ibid.* And these *post hoc* rationalizations confirm that the action here is arbitrary and capricious. *See Wages*, 16 F.4th at 1140; *Texas v. Biden*, 20 F.4th at 993.

B.

Next we consider whether the district court interpreted the relevant provisions correctly. The court interpreted two relevant terms: (1) "working owner" and (2) "bona fide partners." We remand as to both terms, so that the district court may address certain interpretive questions in the first instance.

1.

First, "working owner." In *Yates*, the Supreme Court concluded that a "working owner" may qualify as an "employee" and a "participant" under ERISA. 541 U.S. at 6, 124 S.Ct. 1330. In reaching this conclusion, the Court did not "resort to common law." *Id.* at 12, 124 S.Ct. 1330. Instead, the Court determined that "ERISA's text contains multiple indications that Congress intended working owners to qualify as plan participants" and that "these indications combine to provide specific guidance." *Ibid.* (quotation omitted). The Court, however, did not "clearly define who exactly makes up this class of 'working owners.' " *Id.* at 25 n.*, 124 S.Ct. 1330 (Thomas, J., concurring in the judgment). All it said was that "a working owner may have dual status, *i.e.*, he can be an employee entitled to participate in a plan and, at the same time, the employer (or owner or member of the employer) who established the plan." *Id.* at 16, 124 S.Ct. 1330 (majority op.); *see also ibid.* (stating that "a working owner can wear two hats, as an employer and employee"). Lower courts were thus left to determine the scope of the term.

[22] *Yates* nevertheless provided courts a framework for assessing working-owner questions. *Yates* requires courts to determine whether ERISA's text provides "specific guidance" on the precise question before the court, such that resort to the common law is unnecessary. To determine whether ERISA provides "adequate[ ] informati[on]," courts must consider, among other things, all four titles of ERISA and the Internal Revenue Code. *Ibid.*; *see also id.* at 12–13, 124 S.Ct. 1330 ("Congress enacted ERISA against a backdrop of IRC provisions that permitted corporate shareholders, partners, and sole proprietors to participate in tax-qualified pension plans. . . . Congress' objective was to harmonize ERISA with longstanding tax provisions.").

[23] The district court did not perform this analysis. It appears to have understood *Yates* to say that ERISA *always* provides specific guidance for *all* working-owner questions. In our estimation, however, *Yates* only concluded there was sufficient guidance for the particular threshold question before the Court—*i.e.*, whether working owners may qualify as participants at all. That, however, does not mean the same guidance is relevant, let alone specific enough, to resolve all working-owner questions. Rather, the question on remand is whether all of the *Yates* factors, including the various provisions of ERISA and the IRC, combine to make these particular working owners qualify as plan participants.

2.

[24] Now, bona fide partners. The applicable regulation says:

> *Employment relationship.* In the case of a group health plan, the term *employer*

> also includes the partnership in relation to any bona fide partner. In addition, the term *employee* also includes any bona fide partner. Whether or not an individual is a bona fide partner is determined based on all the relevant facts and circumstances, including whether the individual performs services on behalf of the partnership.

29 C.F.R. § 2590.732(d)(2). The regulation requires the determination to be "based on all the relevant facts and circumstances" and then provides one example consideration ("whether the individual performs services on behalf of the partnership"). In essence, the regulation commands a totality-of-the-circumstances analysis.

The district court did not appear to apply a totality-of-the-circumstances inquiry. It instead understood the regulatory definition to "simply require[ ] a more-than-pretextual relationship between the employer and employee." And it determined that the limited partners were bona fide partners because the "standard is a lower threshold" than for working owners. Insofar as these standards differ from a totality-of-the-circumstances inquiry, the district court erred.

[25] As with the working-owner inquiry, we believe it best to remand for the district court to apply the totality-of-the-circumstances inquiry in the first instance. On remand, the district court should also consider whether the Department's interpretation of the regulation warrants *Auer* deference or whether the Department forfeited the argument for such deference. *See Ortiz v. McDonough*, 6 F.4th 1267, 1275–76 (Fed. Cir. 2021) (*Auer* deference forfeitable); *cf. HollyFrontier Cheyenne Refin., LLC v. Renewable Fuels Ass'n*, —— U.S. ——, 141 S. Ct. 2172, 2180, 210 L.Ed.2d 547 (2021) ("[T]he government is not invoking *Chevron*. We therefore decline to consider whether any deference might be due its regulation." (quotation omitted)); *Texas v. Biden*, 20 F.4th at 961 ("The Government thus forfeited the *Chevron* issue by failing to mention it in its brief.").

IV.

[26, 27] Next, the proper remedy. The APA gives courts the power to "hold unlawful and set aside agency action[s]." 5 U.S.C. § 706(2). Under prevailing precedent, § 706 "extends beyond the mere nonenforcement remedies available to courts that review the constitutionality of legislation, as it empowers courts to 'set aside'—*i.e.*, formally nullify and revoke—an unlawful agency action." Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 950 (2018); *see also id.* at 1012–16; *Texas v. Biden*, 20 F.4th at 957 ("That statutory empowerment means that, unlike a court's decision to hold a statute unconstitutional, the district court's vacatur rendered the June 1 Termination Decision *void*." (emphasis added)); *Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 522 (7th Cir. 2021) ("Vacatur [of an agency action] retroactively undoes or expunges a past [agency] action . . . . Unlike an injunction, which merely blocks enforcement, vacatur unwinds the challenged agency action."); *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165, 130 S.Ct. 2743, 177 L.Ed.2d 461 (2010) (describing vacatur as "a less drastic remedy" than an injunction); *but see* John Harrison, *Section 706 of the Administrative Procedure Act Does Not Call for Universal Injunctions or Other Universal Remedies*, 37 YALE J. ON REG. BULL. 37 (2020). The default rule is that vacatur is the appropriate remedy. *See, e.g., Texas v. Biden*, 20 F.4th at 1000 ("[B]y default, remand *with* vacatur is the appropriate remedy."); *United Steel v. Mine Safety & Health Admin.*, 925 F.3d 1279, 1287 (D.C. Cir. 2019) ("The ordinary

practice is to vacate unlawful agency action."). The Department makes no developed argument that the district court abused its discretion in following the default rule, so the Department forfeited the argument. *See, e.g., DeVoss v. Sw. Airlines Co.*, 903 F.3d 487, 489 n.1 (5th Cir. 2018) (concluding that an argument was "forfeited" because it wasn't "structured"); *United States v. Maes*, 961 F.3d 366, 377 (5th Cir. 2020); *United States v. Avants*, 367 F.3d 433, 442 (5th Cir. 2004); *Trevino v. Johnson*, 168 F.3d 173, 181 n.3 (5th Cir. 1999). We therefore uphold the court's vacatur.

The district court also permanently "enjoined" 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. This injunction, however, turned on the interpretative questions that the district court must further address on remand. So we vacate this injunction without opining on whether such relief might be appropriate.

* * *

The Supreme Court has made clear that when it comes to arbitrary-and-capricious review, "the Government should turn square corners in dealing with the people." *Regents*, 140 S. Ct. at 1909 (quotation omitted). The Department failed to do that. For the foregoing reasons, the district court's judgment is AFFIRMED in part, VACATED in part, and REMANDED.

Olecia JAMES, Plaintiff—Appellant,

v.

The CLEVELAND SCHOOL DISTRICT; Dr. Lisa Bramuchi, in her individual and official capacity; Dr. Randy Grierson, in his individual and official capacity; Dr. Jacqueline Thigpen, in her individual and official capacity; Richard Boggs, in his individual and official capacity; Todd Fuller, in his individual and official capacity; Dr. Chresteen Seals, in her individual and official capacity; Tonya Short, in her individual and official capacity; George Evans, in his individual and official capacity, Defendants—Appellees.

No. 21-60688

United States Court of Appeals,
Fifth Circuit.

FILED August 17, 2022

Background: Following consolidation of two public high schools and adjustment of course quality points, graduating student whose class rank dropped brought § 1983 action against defendants including principal, school district, its superintendents, and school board members, alleging a conspiracy to strip her of salutatorian honors in violation of Mississippi law, as well as violations of her Fourteenth Amendment due process and equal protection rights. Asserting qualified immunity, defendants moved for summary judgment. The United States District Court for the Northern District of Mississippi, Debra M. Brown, Chief Judge, 2021 WL 3277239, granted summary judgment motion. Student appealed as to due process claims.

Holdings: The Court of Appeals, Duncan, Circuit Judge, held that:

(1) student did not state procedural due process claim, and

EXHIBIT E

State of Louisiana
DEPARTMENT OF JUSTICE
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Jeff Landry
Attorney General

February 21, 2019

The Honorable Alexander Acosta
Secretary of Labor
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executivesecretariat@dol.gov

Dear Mr. Secretary:

We, the undersigned Attorneys General of Louisiana, Arkansas, Georgia, Indiana, Nebraska, S. Carolina, and Texas, have recently become aware of a request for an Advisory Opinion ("AO") made to the Department of Labor ("DOL") on behalf of LP Management Services, L.L.C.

We are interested in this request and encourage the DOL to respond as soon as possible. The AO sought by LP Management Services provides an alternative for expanded access to ERISA plans. We support the intent behind the request and find its legal arguments well-reasoned and thorough, but interpretation and enforcement of ERISA falls under the exclusive authority of the DOL Guidance from DOL would, nevertheless, provide much needed direction to states assessing applicability of their own insurance regulations in similar circumstances. States would retain meaningful regulatory oversight, because so long as the McCarran Ferguson Act of 1945 remains law, states will have primary authority over insurance business conducted within their borders. We do not seek or support repeal of McCarran Ferguson, inasmuch as ERISA-subject plans have worked well alongside it for more than forty years.

We have a strong interest in the DOL's response to the AO request for three principal reasons:

- More than fifteen million Americans who are self-employed or work for small businesses and earn too much to qualify for Patient Protection and Affordable Care Act ("ACA," or "Obamacare") subsidies are currently uninsured or under-insured due to the unavailability of affordable coverage. The considerable efforts by the Administration to bring relief to these people have thus far been of limited effect, primarily due to the actions of obstructionist states.

- An AO confirming the validity of the structure described in the request would add much-needed health coverage options for these hard-working Americans, and would not negatively impact anyone. No plan offered in reliance on the proposed AO could discriminate against people with pre-existing conditions or fail to offer dependent coverage through age 26. Although some (likely including the plaintiffs in the anti-AHP suit) will claim that anything which provides an alternative to ACA is a threat to those people who have benefitted from it, we strongly disagree. Younger, healthier people who pay for their own health coverage cannot be "lured away" from ACA because they have already left -- by the millions. And people whose combination of health and economic status make them ACA "winners" will continue to enjoy its protections and subsidies, unless and until Congress passes an alternative.

- Because the demand for affordable health coverage is so acute, many non-ACA "solutions" have already appeared in the nationwide marketplace. We put "solutions" in quotes, because we believe many of these alternatives are ill-conceived, underfunded, and in some cases constitute outright consumer fraud. The bulk of LP Management's AO request is not spent asking the DOL to relax its regulatory authority. To the contrary, asks the DOL to establish solvency and fiduciary requirements where none currently exist for ERISA-subject plans and makes specific recommendations for these protections. With such specific requirements in place, the DOL and state Departments of Insurance could focus their resources on needed enforcement actions against ill-funded plans and bad actors. Safe harbor guidelines for solvency and fiduciary requirements will also encourage more reputable and financially-stable companies to enter the expanded ERISA market - which will in turn increase competition and choice, and drive down costs.

We believe a timely and favorable response to the AO request could provide a valuable and much-needed alternative for those citizens adversely impacted by the ACA. While providing government-paid health care to certain citizens, Obamacare stripped away coverage from many millions of working Americans who formerly paid for their own health insurance but can no longer afford it due to ACA-driven premium increases in excess of 200%. We attach for your reference a recent opinion column written by former New York Lieutenant Governor Betsy McCaughey, which concisely articulates this dilemma as well as the hurdles faced by those of us who are trying to do something about it.

In the absence of legislative solutions to this crisis, various other measures have become necessary. Ours are among the twenty states that joined as plaintiffs in *Texas, et al. v. United States, et al.*, and we were very gratified by the recent ruling by District Judge Reed O'Connor in the Northern District of Texas finding that ACA is unconstitutional. It is our hope and expectation that this decision will be upheld. Congress will thus be compelled to find a solution which, while preserving some of the positive aspects of ACA (including protections for people with pre-existing

medical conditions), will once again allow self-employed middle-class Americans to access quality, affordable health coverage.

But Judge O'Connor's ruling has been appealed, and appeals take time. It could take years for the case to run its course. For this reasons and others, we find it unlikely that a constructive and successful ACA replacement process can take place in Congress sooner than 2021. We must therefore continue to search for interim solutions.

We strongly supported the October 2017 Presidential Executive Order Promoting Healthcare Choice and Competition Across the United States and the regulatory actions that followed. We were particularly encouraged by the DOL's Rule expanding access to Association Health Plans (AHPs) because ERISA-subject plans are proven solutions that have largely spared more than 160 million Americans from the negative impacts of ACA. But we were disappointed when twelve of our fellow Attorneys General sued the DOL seeking to block the AHP Rule, despite the great deference shown in it to the individual states as to how - and whether - they may allow AHP expansion in each of their jurisdictions. It is apparently not enough for these states to block AHP expansion within their own borders; they seek to prevent all other states, including ours, from accessing solutions to a problem that no one can deny exists.

Based upon the questions and comments from Judge Bates at the January 24 hearing, along with the determination of the plaintiffs to accept nothing less than complete rescission of AHP expansion, it appears likely that the DOL will be forced to continue defending the Rule for some time. Our states include those that filed an *amicus* brief in support of the DOL, and we will encourage additional Attorneys General to join us in subsequent actions.

Thank you for your consideration.

Respectfully yours,

Jeff Landry
Louisiana Attorney General

Chris Carr
Georgia Attorney General

Leslie Rutledge
Arkansas Attorney General

Curtis T. Hill, Jr.
Indiana Attorney General

Doug Peterson
Nebraska Attorney General

Ken Paxton
Texas Attorney General

Alan Wilson
South Carolina Attorney General

Attachments:

- LP Management Services LLC Advisory Opinion Request, 1/15/2019
- Betsy McCaughey, "Democrats Are Waging War Against Affordable Health Insurance," 12/18/2018 New York Post

November 8, 2018
Revised as of January 15, 2019

Submitted Electronically via email

Joseph Canary
Director, Office of Regulations and Interpretations
U.S. Department of Labor
Employee Benefits Security Administration
Office of Regulations and Interpretations
200 Constitution Avenue, NW
Suite N-5655
Washington, DC 20210

RE: Request for Advisory Opinion Concerning a Limited Partnership and Its Sponsorship of a Single-Employer Self-Insured Group Health Plan

Dear Director Canary:

The Law Office of Alexander Renfro ("Renfro") makes this request for consideration and possible issuance of an Advisory Opinion on behalf of our client, LP Management Services, LLC, a Georgia Limited Liability Company ("LPMS"). The primary business purpose of LPMS is to serve as General Partner of various Limited Partnerships and manage the day-to-day affairs of these Partnerships. At least one of these Limited Partnerships (the "LP") desires to sponsor an "employee welfare benefit plan" as defined under section 3(1) of the Employee Retirement Income Security Act ("ERISA"). The plan will be organized as a single-employer self-insured group health plan that will provide major medical health benefits to LP's eligible employees, along with LP's limited partners. On behalf of LP, Renfro hereby seeks confirmation from the Department of Labor, Employee Benefits Security Administration (the "Department") that:

(1) The single-employer self-insured group health plan sponsored by LP is an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

(2) The limited partners participating in LP's single-employer self-insured group health plan are "participants" within the meaning of ERISA section 3(7).

(3) The single-employer self-insured group health plan sponsored by LP is governed by Title I of ERISA.

Renfro and LP recognize that any contemplated expansion of the traditional scope of ERISA, even if permissible under the existing statutes, may raise concerns at the Department as to the potential for plan failure(s), whether due to ill-conceived structure, inadequate (re)insurance reserves,

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fraud, or some combination of these and other factors. We share these concerns, and LP has strong safeguards - which are described in detail below - in place to address each partnership plan vulnerability. LP anticipates that if the Department provides the confirmations requested above, it will do so in explicit consideration of all the specific facts and circumstances provided herein, and that neither LP nor any other ERISA plan sponsor will be able to rely upon a favorable Advisory Opinion unless all such safeguard standards are met or exceeded.

Further, while Renfro and LP have gone to considerable effort to foresee and guard against all possible causes of plan failure, we welcome input from the Department as to any additional areas of concern and solutions thereto. Such solutions could be incorporated into LP's manual of Standard Operating Procedures, as well into a further revision of this request (and any subsequent Advisory Opinion). Finally, we believe that while an Advisory Opinion is the appropriate first step toward defining allowable uses of partnerships as ERISA plan sponsors, it should perhaps be followed by informal Department guidance, and/or rulemaking in accordance with the Administrative Procedures Act, primarily in order to strengthen the enforceability of the safeguard requirements.

I. Background

A. Statement of Facts Concerning Corporate Structure of LP

LP is a Limited Partnership duly registered and formed in the State of Georgia. LP's Partnership Agreement appoints LPMS as General Partner and delegates day-to-day business management decisions to LPMS, including but not limited to the execution of rental agreements, employment contracts, distribution of revenue producing agreements, and grantor decisions to form a group health plan. LP's Limited Partners ("LPartners") are individuals who have obtained a Limited Partnership Interest ("LPI") through the execution of a joinder agreement with LP. LPMS, as General Partner, correspondingly counter-executes such agreements, files a resolution on the addition of a new LPartner, and updates LP's partnership information to include the addition of a new LPartner. LPartners participate in global management issues through periodic votes of all Partners, as well as contribute time and service to revenue-generating activities of LP. Together, LPMS, as General Partner, and LPartners wholly control and operate LP.

LP's primary business purpose and main source of revenue is the capture, segregation, aggregation, and sale to third-party marketing firms of electronic data generated by LPartners who share such data with LP. Participating LPartners install specific software which, among other things, tracks the capture of such data by other companies, such as Google or Facebook, and provides access of such data to LP. LP then decides how such data is used and sold to third-party marketing firms, generating revenue. LPartners control and manage the capture, segregation, aggregation, and sale of

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their own data, empowering LPartners in a manner not otherwise available to them when they utilize services over the Internet through their computers, phones, televisions, and other devices.

As discussed above, LPartners all gain status as a limited partner in LP by executing a joinder agreement, establishing each LPartner's rights. These rights are subsequently exercised on a regular basis through votes on how aggregated data will be sold or used by LP as well as votes on other partnership matters. Finally, through the sharing of data, LPartners are committing time and service to revenue-generating activity on behalf of LP.

LP also employs at least one common law employee to assist the partnership with administrative and/or revenue generating services.

B. Statement of Facts Concerning LP's Single-Employer Self-Insured Group Health Plan

In an effort to attract, retain, and motivate talent in service of LP's primary business purpose, LP will establish a single-employer self-insured group health plan (the "Plan"). Since this Plan is formed and sponsored only by LP – and not in concert with any other employer – the Plan is a single-employer self-insured group health plan. LPMS, as the General Partner, serves as the Named Fiduciary and Plan Administrator of the Plan.

The Plan has a number of third-party vendors which LPMS engages on behalf of LP to administer the Plan. First, LPMS hires a consulting and benefits design firm for guidance and assistance with fulfilling plan requirements pursuant to the ERISA and related statutes. Second, LPMS appoints a licensed and bonded Third Party Administrator ("TPA") to collect funds and allocate funds, adjudicate claims, manage claims' appeals, execute the payment of claims for benefits under the Plan, and perform other traditional services performed by a TPA. Third, LPMS appoints a benefits administrator to assist its staff in managing eligibility data and plan participant customer service issues on an ongoing basis. Fourth, LPMS creates a Trust to hold any plan assets related to the Plan. Finally, LPMS obtains a reinsurance policy for the Plan. This reinsurance policy is of a comprehensive and specific nature, as described more fully below.

The terms of the Plan are outlined in a Plan Document. This Plan Document contains information on the benefits provided by the Plan to Plan participants, eligibility information, instructions on claims for benefits, claims appeals information, coordination of benefits provisions, disclaimers concerning certain federal statutes, and other information. With respect to eligibility, the Plan Document notes that both employees and partners are eligible to participate in the Plan. As discussed above, at least one common law employee participates in the Plan, as well as a number of LPartners, although not all LPartners participate in the Plan. LP will pay 100% of the premiums for coverage under the Plan for LP's employees. LPartners will be 100% responsible for paying their own premiums for coverage under the Plan. According to the enrollment procedures as outlined in the Plan

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Document, annual Open Enrollment periods, as well as Special Enrollment periods as required by law, are utilized to permit eligible plan participants to join the Plan.

The aforementioned third-party vendors service the Plan as their delegated duties require. For example, the TPA collects monthly premium payments from the Plan's participants. The TPA allocates these funds appropriately, routing plan assets to the Trust (which is solely controlled by a Directed Trustee), paying vendors their fees, and ensuring premium payments are timely made to the reinsurance carrier underwriting the Plan's reinsurance policy. The TPA withholds a certain amount of premium due to the reinsurance carrier covering the Plan in order to expedite payment of claims for benefits. With respect to paying claims for benefits, in cases where the TPA has received and approved a claim, the TPA will access the plan assets held in Trust to pay said claim. Should a claim require a payment in excess of the funds available to the TPA on an immediate basis, the TPA coordinates with the reinsurance carrier covering the Plan for transmission of additional funds to the TPA's claims-paying account. Once received, the TPA will continue paying claims.

C. Additional Plan Features

LP is sensitive to prospective concerns with respect to the solvency of its Plan as well as the need for credibility of its Named Fiduciary. To that end, LP has obtained comprehensive and extremely well-funded layers of reinsurance policies, and LPMS – as General Partner and Named Fiduciary – has obtained a fiduciary liability policy.

With respect to the primary reinsurance policy covering the Plan, coverage is obtained from first-dollar and to an unlimited degree per the terms of the reinsurance policy. This policy is supported by multiple layers of retrocessionary coverage without a risk corridor by retrocessionaires with an excess of $7,000,000,000 in assets to cover risk with respect to the Plan. LPMS requires the following features of any policy it obtains to cover the Plan now or in the future:

> Any group health plan sponsored by LP, or by any other entity managed by LPMS and which offers ERISA plan participation to its eligible plan participants, including certain employees and partners, must first obtain Qualifying Reinsurance Coverage. "Qualifying Reinsurance Coverage" means excess/stop loss insurance, indemnity insurance for a self-insured plan or employee benefit trust, insurance for a self-insured plan or trust, or reinsurance coverage purchased from an excess/stop loss, indemnity, insurance, or reinsurance carrier that meets the following requirements:
>
> - The carrier providing Qualifying Reinsurance Coverage must provide the following information to LPMS:
>
> - The name, address, and phone number of the carrier;

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- Statement(s) certifying compliance with all requirements described in below;
- A statement of compliance with the reserve requirements described below;
- A notification of any material changes to the Qualifying Reinsurance Coverage.

- The Qualifying Reinsurance Coverage:

  - Must (re)insure, without limitation, all benefits covered by the Group Health Plan which it (re)insures. Plan and Reinsurance coverage must be identical as to benefits and limitations.
  - May only be issued by a carrier which establishes and maintains retrocessionary coverage from one or more (re)insurer(s) with at least $100,000,000 in aggregate equity for any claims which the plan is unable to satisfy by reason of a solvency event affecting said carrier's ability to pay claims, to an unlimited degree;
  - Must note on any contract for coverage a definite starting or attachment point of such coverage which is conspicuous and clear to the plan member(s) prior to purchase of such coverage, and qualifying (re)insurance coverage issued on a non-stop loss (re)insurance basis must have a first-dollar starting point;
  - Must note on any contract for coverage an unlimited liability of the carrier issuing such coverage for benefits covered by such coverage which is conspicuous and clear to the plan member(s) prior to purchase of such coverage;
  - Must have been approved by one or more regulatory body or bodies duly authorized to license and regulate the business of insurance within the United States and/or a member of the National Association of Insurance Commissioners, for a minimum of twenty-four months, and been issued to at least one insured party for the direct and/or indirect coverage of health and/or medical benefits, and in force throughout said period;
  - May only be issued by a carrier which establishes and maintains reserves with respect to covered benefits, in an amount recommended (or the mid-point of multiple recommendations) by an actuary certified by the American Academy of Actuaries, consisting of reserves sufficient for:

    - Unearned contributions;
    - Benefit liabilities which have been incurred, which have not been satisfied, and for which risk of loss has not yet been transferred, and

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for expected administrative costs with respect to such benefit liabilities;
- Any other obligations of the plan; and
- A margin of error and other fluctuations, taking into account the specific circumstances of the plan.

- May only be issued by a carrier which establishes and maintains additional reserves of at least $500,000 above the reserves noted above.

- Carriers issuing Qualifying Reinsurance Coverage may demonstrate compliance with the reserve requirements described above with alternative reserves in the form of a contract of indemnification, lien, bonding, (re)insurance, letter of credit, or security.

- Any business of insurance, including but not limited to the obtaining of Qualified Reinsurance Coverage, conducted in any State must comply with the insurance laws of said State, and obtain all required State approvals.

II. Law and Analysis

A. Treatment of a Partner Under ERISA

ERISA provides specific rules and regulations applicable to (1) an "employee welfare benefit plan," (2) "employees," and (3) "participants" that may participate an "employee welfare benefit plan."

An "employee welfare benefit plan" is defined as:[1]

"any plan, fund, or program…established or maintained by an employer…for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits…"

An "employee" is defined as:[2]

"an individual employed by an employer."

[1] Section 3(1) of the Employee Income Retirement Security Act ("ERISA").
[2] ERISA section 3(6).

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A "participant" is defined as:[3]

> "any employee or former employee of an employer…who is or may become eligible to receive a benefit…from an employee benefit plan which covers employees of such employer."

On its face and without further context provided elsewhere in ERISA, it appears that a partner in a partnership is not an "employee" within the meaning of ERISA section 3(6). Relying on the common law definition of an "employee," a partner also would not be considered an employee.[4] If a partner is not considered an "employee" for ERISA purposes, a partner cannot be considered a "participant" in an ERISA-covered "employee welfare benefit plan."

DOL Reg. section 2510.3-3(b) confirms that, for limited purposes, a partner is not considered an "employee" for purposes of determining the existence of an "employee benefit plan," which includes an "employee welfare benefit plan." DOL Reg. section 2510.3-3(b) further explains that a "plan without employees" is excluded from the requirements under Title I of ERISA (i.e., a plan covering partners is not considered an ERISA-covered plan).

B. A Partner May Be a "Participant" In an ERISA-Covered Single-Employer Plan Alongside At Least One Common Law Employee

The Department, however, has concluded that if a partner participates in an employee benefit plan along with at least one common law employee, DOL Reg. section 2510.3-3 does *not* exclude this plan from being covered by Title I of ERISA.[5] Specifically, the Department has found that a plan covering partners (who are considered "working owners") as well as their non-owner employees clearly falls within ERISA's scope.[6] The Department explained that "[t]he definition of 'plans without employees' in DOL Reg. section 2510.3-3(b) simply defines a limited circumstance in which the only parties participating in a benefit arrangement are an individual owner/partner…and declines to deem the individual[], in that limited circumstance, as [an] employee[]…for purpose of the regulation."[7] The Department explains further that DOL Reg. section 2510.3-3(b) "does not apply, however, outside

[3] ERISA section 3(7).

[4] In accordance with the Supreme Court's ruling in *Nationwide Mutual Insurance Company v. Darden*, the Department has found that the common law standard for determining employee status is whether someone is hired by an employer, with the employer having the "right to control and direct" the individual's work. [*See* DOL Information Letter (May 8, 2006); DOL Advisory Opinion 95-29A (Dec. 7, 1995); DOL Advisory Opinion 95-22A (Aug. 25, 1995)].

[5] 83 Fed. Reg. 614, 621 (Jan. 5, 2018).

[6] *Id*.

[7] *Id*.; *see also*, 83 Fed. Reg. 28912, 28930 (June 21, 2018).

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that limited context and, accordingly, does not prevent sole proprietors or other working owners – [including partners] – from being participants in broader benefit plan arrangements…"[8]

The conclusion that partners can participate in an ERISA-covered plan so long as the plan also covers at least one common law employee is consistent with the finding of the courts. For example, the Supreme Court in *Yates v. Hendon*[9] found that a plan covering both a "working owner" – including a partner in a partnership – and at least one common law employee is governed by ERISA.[10] In other words, in cases where a benefit plan covers both partners and common law employees, the plan will be covered by Title I of ERISA.[11]

The Fifth Circuit Court of Appeals, in *House v. American United Life Insurance Company*, also concluded that ERISA applies to a benefit arrangement that provided coverage to a firm's partners that also covered the firm's common law employees without reliance on whether said partner was a "working owner."[12] In *House*, a partnership established a plan that provided disability benefits to both employees of the partnership, as well as the partners. The partnership – as the employer of the employees – paid 100% of the premiums for the disability coverage for its employees and automatically enrolled them in the plan. The partners, on the other hand, were responsible for 100% of their own premium payments. The Circuit Court found that despite the differences in the manner in which premiums were paid, the partnership established a comprehensive employee welfare benefit plan covering both partners and employees, thus creating a single-employer ERISA-covered plan.[13]

In our opinion, *House* is instructive because of its similarities to our facts described in Section I.B. above, where LPartners will be required to pay their own premiums for the self-insured group health plan coverage sponsored by LP, while LP will pay 100% of the premiums for eligible employees, who are automatically enrolled in the plan. Based on the conclusion in *House*, the Supreme Court in *Yates*, and the Department's interpretations as set forth in proposed and final regulations, it is clear that LPartners may permissibly be considered "participants" in an ERISA-covered plan so long as at least one common law employee participates in the plan.

It is also clear that the single-employer self-insured group health plan sponsored by LP – acting in the capacity of an employer – to provide medical health benefits to LP's common law employees and limited partners is an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

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[8] *Id*.
[9] 41 U.S. 1 (2004).
[10] *Id.* at 9.
[11] *Id.*
[12] 499 F.3d 443 (5th Cir. 2007).
[13] *Id.* at 451-452.

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As a result, because both LP's employees and LPartners may permissibly participate in this single-employer ERISA-covered "employee welfare benefit plan," the plan would be governed by Title I of ERISA.

C. A Partner Has Dual Status as an "Employer" and "Employee" and Thus May Be Considered a "Participant" In an ERISA-Covered Plan

In line with the reasoning discussed above, the Department has concluded that a partner may have dual status as an "employer" and an "employee," and thus, permissibly be considered a "participant" in an ERISA-covered plan.[14] Specifically, the Department opined that ERISA section 401(a)(2), ERISA section 403(b)(3)(A), ERISA section 408, ERISA section 4001(b)(1), ERISA section 4021(b)(9), and ERISA section 4022(b)(5)(A) all serve as indications that "working owners" – including partners – may be considered "participants" for purposes of ERISA coverage.[15] The Department has found that there is a clear Congressional design to include "working owners" – including partners – within the definition of "participant" for purposes of Title I of ERISA.[16]

Based on the foregoing, it is clear that LPartners may permissibly be considered "participants" in LP's single-employer self-insured group plan. In addition, because the Plan is considered an "employee welfare benefit plan" within ERISA section 3(1), the Plan would be governed by Title I of ERISA.

D. For Purposes of ERISA, a Partner Should Be Defined as an Individual Who Commits Time to and Performs Services on Behalf of the Partnership

The fact that a partner is considered a "working owner" must not be confused with the definition of a "working owner" under the Department's final association health plan (AHP) regulations.[17] Under the final AHP regulations, a "working owner" – which in the case of the final AHP regulations is a self-employed individual with no employees – means an individual who (1) has an ownership right in a "trade or business," regardless of whether the "trade or business" is incorporated or unincorporated, (2) earns wages or self-employment income from the "trade or business," and (3) works at least 20 hours a week (or 80 hours per month) providing personal services to the "trade or business" *or* earns income from the "trade or business" that at least equals the "working owner's" cost of the health coverage.[18]

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[14] DOL Adv. Op. 99-04A (Feb. 4, 1999).

[15] *Id*.; *see also*, 83 Fed. Reg. at 621 (Jan. 5, 2018) and 83 Fed. Reg. at 28930 (June 21, 2018).

[16] *Id*.

[17] *See* 83 Fed. Reg. 28912 et. seq. (June 21, 2018).

[18] DOL Reg. section 2510.3-5(e)(2).

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As discussed above, the Department and the Supreme Court have concluded that a "working owner" may also include a partner in a partnership. Although the term "partner" is not specifically defined in ERISA, ERISA section 732(d) contemplates a partner participating in a group health plan. Section 732(d) is relevant in cases where partners are the *only* participants in a group health plan, which would cause the plan to fall outside of Title I of ERISA (as required under DOL Reg. section 2510.3-3(b)). However, ERISA section 732(d) is also guiding on how a partner should be defined for purposes of participating in a group health plan, regardless of whether the plan is governed by Title I of ERISA or not. Stated differently, ERISA section 732(d)'s reference to and description of a partner serves to define a partner participating in a "plan without employees," as well as a partner who may permissibly participate in an ERISA-covered plan alongside at least one common law employee.

The regulations implementing ERISA 732(d) provide that for purposes of treating a partner as an "employee" – and thus a "participant" in a group health plan subject to the requirements under Part 7 of ERISA – the "the term employee includes any bona fide partner."[19] The implementing regulations go on to state that "whether or not an individual is a bona fide partner is determined based on all the relevant facts and circumstances, including whether the individual *performs services on behalf of the partnership*."[20]

Although a "bona fide partner" is not further defined in ERISA or its implementing regulations, the term "bona fide partner" can be found elsewhere in federal law, specifically in guidance from the Internal Revenue Service ("IRS").[21] According to the IRS, a bona fide partner is an individual with rights in a partnership, who exercises said rights, and who *commits time and service to the partnership*.[22] The consistency between the IRS's definition of a bona fide partner and the manner in which the Department described a bona fide partner in ERISA section 732(d) implementing regulations supports the interpretation that for purposes of ERISA, a partner should be defined as "an individual who commits time to and performs services on behalf of the partnership."

In our opinion, LPartners satisfy the definition of a "bona fide partner." LPartners have actual rights in LP as dictated in both LP's Partnership Agreement and the joinder to said agreement signed by each LPartner. LPartners regularly exercise these rights in periodic votes on partnership business. Finally, LPartners contribute time and energy to LP by sharing data and assisting in LP's primary business purpose and revenue generation activity. The time and services contributed by LPartners comprise the sole means of revenue generation of LP. In other words, without this activity, LP would

[19] DOL Reg. section 2590.732(d)(2).
[20] *Id*.
[21] *See* Rev. Rul. 69-184.
[22] *Id*.

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not earn revenue or survive as an entity. By these acts, LPartners meet both the IRS's and the Department's standards to qualify as bona fide partners.

E. Tax Considerations

The IRS has for decades maintained and enforced a clear set of regulations regarding tax treatment of partners in all health and welfare benefit plans, including group health plans. The Internal Revenue Code (the "Code") does not comment on the ability of a partner to participate in a group health plan. However, once a partner becomes a participant, the IRS treats that participant differently than common law employee participants. For the purpose of tax treatment, said partners are treated as independent contractors by the IRS.

Wage withholding for the payment of premiums for a group health plan on a pre-tax basis is not possible for partners.[23] In other words, partners are not allowed to join a §125 cafeteria plan in order to pay premiums in a group health plan on a pre-tax basis. This prohibition likely exists because of the difficulty in distinguishing a partner's wages from a partner's distributable income (which might be considered earned income) from a partnership. As a result, such funds cannot be used for the payment of premiums for a group health plan on a pre-tax basis through a cafeteria plan. A further consequence of this rule is that Health Savings Accounts ("HSAs"), which are typically offered through cafeteria plans, are also not available (with a meaningful tax benefit) to partners participating in a plan sponsored by their partnership. LPMS acknowledges these standards, does not seek special or separate tax treatment for its partners. Inasmuch as LP does not pay wages to its partners, no pre-tax payment of premium could be available to partners participating in LP's plan. Finally, LP does not sponsor and does not plan to sponsor either a cafeteria plan or an HSA.

While the benefit of pre-tax payments of premium is not available to partners, such payments could under certain limited circumstances be deductible as an ordinary and necessary business expense.[24] The Code provides that if a partner qualifies as a working owner with earned income, said partner may deduct the cost of premiums for a group health plan against their earned income <u>from the same source that sponsors said group health plan</u>[25]. This regime both acknowledges that a plan sponsor of a group health plan may have participants that are equity partners and that a limited scope deduction should be available in said circumstances. With respect to LP's plan, as with any other partnership, this deduction would only be available if LP distributed funds to partners participating in LP's plan which was then used to pay for premiums from LP's plan. (In the event that LP distributed funds to a partner insufficient to pay said partner's premium, any deduction would be limited to the

[23] See IRC § 125(d)(1)(A).
[24] See IRC § 162(l).
[25] Id.

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alexander.renfro@gmail.com

amount distributed.) LPMS is not seeking special or separate treatment with respect to this deduction. Other rules and limitations also apply and are acknowledged.[26]

The IRS has comprehensive, existing rules in place with respect to partners participating in a group health plan, within which LP's plan is regulated in similar fashion to any other partnership. No special treatment or extralegal tax benefit is sought by or available to partners participating in LP's plan.

III. Request for Determination

Based on the foregoing, Renfro respectfully asks that the Department to confirm that:

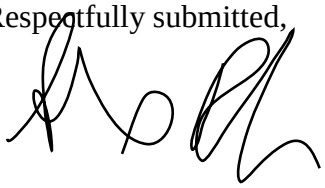
(1) The single-employer self-insured group health plan sponsored by LP is an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

(2) LPartners participating in LP's single-employer self-insured group health plan are "participants" within the meaning of ERISA section 3(7).

(3) The single-employer self-insured group health plan sponsored by LP is governed by Title I of ERISA.

Thank you in advance for considering this request. Please do not hesitate to contact me with any questions, or with any request for additional information.

Respectfully submitted,



ALEXANDER T. RENFRO, JD, LLM

[26] See IRC § 162(l)(2-5).

3200 West End Avenue, Suite 500
Nashville, TN 37204
214-734-3330
alexander.renfro@gmail.com

Democrats are waging war against affordable health insurance

By Betsy McCaughey, *New York Post*

December 18, 2018 | 10:26pm | Updated

A federal district judge in Texas struck down the Affordable Care Act as unconstitutional Friday. The lawsuit was brought by Republican officials from 20 states, who want their residents to have more insurance choices and lower premiums.

Though the suing states won in Texas v. Azar, their victory won't help consumers reeling from ObamaCare sticker-shock anytime soon. ObamaCare will stay on the books while the decision is appealed, which could take more than a year. The outcome is uncertain.

Fortunately, President Trump is using his regulatory power to accomplish precisely what these states want: relief from ObamaCare's rigid regulations.

One of Trump's most helpful moves is to allow the sale of "short-term plans," renewable for up to three years, in any state that permits them. These plans cost 80 percent less than ObamaCare plans, on average, according to ehealthinsurance.com.

Short-term plans omit maternity coverage and don't cover pre-existing conditions. They're not for everyone, but for many middle-class buyers, they're a good deal.

In Tampa, Fla., a short-term plan for a family of three costs $1,169 a year, less than one-tenth the $12,071 sticker price of an ObamaCare plan.

The outrage is that people who live in New York, New Jersey, California and other states dominated by Democrats can't take advantage of these deals. Blue states are doubling down on ObamaCare, refusing to allow consumers other choices.

Welcome to the Democrats' health care prison.

Gov. Andrew Cuomo even wants the New York Legislature to copy all of ObamaCare's federal regulations into state law. Yikes — those regulations have caused premiums to more than double in five years.

In Congress, Democrats are pushing a bill to outlaw short-term plans everywhere. They've titled it the "Undo Sabotage" bill. As if allowing an exit ramp off ObamaCare is sabotage. Dems would rather prop up the Affordable Care Act than ease the pain of middle-class consumers.

Last week, former President Barack Obama made a video to coax people to buy his signature health plans, promising that for most of them, the plans wouldn't cost more than a cellphone bill.

But that's only true for low-income buyers getting taxpayer-funded subsidies. Single adults earning more than $48,560 are considered middle class, and they're on their own.

Obama wasn't talking to them. Some 4 million ObamaCare customers who paid full freight have dropped their coverage. They can't afford the soaring premiums. The middle class are becoming the new uninsured in this country.

What's to blame for the huge premiums? According to McKinsey consultants, it's because ObamaCare forces healthy buyers in the individual market to pay the same as people with serious illnesses.

But 5 percent of the population uses nearly 50 percent of the health care. To make everyone pay the same is sheer extortion.

Democrats and Republicans agree that people with pre-existing conditions must be protected. But the lie perpetuated by the Democrats is that ObamaCare is the only way to do it. In truth, it's just the least fair way.

The Trump administration is encouraging states to do it in a fairer way, by departing from ObamaCare rules and allowing insurers to charge healthy buyers less than sick ones.

That doesn't mean people with pre-existing conditions are abandoned. The cost of their care is paid for out of general state revenues, spreading the burden widely instead of skewering buyers in the individual insurance market. Alaska, one of the first states to try it, was able to lower ObamaCare premiums by double digits in 2018.

When the Texas v. Azar decision was announced on Friday, Obama called it “scary,” warning that it “puts people’s pre-existing-conditions coverage at risk.” That’s the same demagoguery Democrats used in the midterm elections.

Don’t fall for it.

With help from the Trump administration, some states are forging better ways to make health insurance fair to the sick and affordable for the middle class. Regardless of the fate of ObamaCare.

Betsy McCaughey is a former lieutenant governor of New York.

EXHIBIT F

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

OCT 21 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Suffolk Administrative Services, LLC
Custodian of Records
361 San Francisco St., PH
San Juan, PR 00901

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced,

including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917 or Investigator Devon King at (415) 625-2491.

Sincerely,

Jeffrey A. Monhart

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA 99-002107

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *Suffolk Administrative Services, LLC*
Custodian of Records
361 San Francisco St., PH
San Juan, PR 00901

You are hereby required to appear before

Senior Investigator Thomas C. Gewin
of the Employee Benefits Security Administration,
U.S. Department of Labor, at
61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 8th day of November 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 21st *day of October 2019.*

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
Suffolk Administrative Services, LLC

DEFINITIONS

A. "Suffolk," "Company," "You," and "Your" shall mean Suffolk Administrative Services, LLC, including any predecessors, successors, affiliates parent companies, or subdivisions or units (including Affordable Benefit Choices, Incela HR, and others), its officers and directors, employees or anyone acting on behalf of Suffolk Administrative Services, LLC.

B. "Claim(s)" means an itemized statement of Services and costs made by Health Providers to any Employee Welfare Benefit Plan clients for any health care Services, including Pre-Service Claims, Post-Service Claims, Concurrent Care Decisions and Urgent Care Claims as defined by 29 C.F.R. § 2560.503-1.

C. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memos, reports, electronic mail, electronic documents, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

D. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

E. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

F. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, Emails, voicemail messages, electronic instant messages (IM), spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or within the possession, custody or control of any agent, employee, representative or other persons acting or purporting to act for or on behalf of You, including but not limited to notes; memoranda; records; reports; correspondence; communications; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all nonidentical copies; all drafts even if not published, disseminated, or used for any purpose; all notes,

schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

G. "EIN" means the employer identification number issued by the Internal Revenue Service for an Employer or Employee Welfare Benefit Plan.

H. "Email" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form may be produced in electronic form.

I. "Employee" means any individual employed by an Employer, as defined in Section 3(6) of ERISA, 29 U.S.C. § 1002(6).

J. "Employee Welfare Benefit Plan(s)" means any plan, fund, or program which was established or maintained by an Employer by an Employee Organization or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability or death, as defined in Section 3(1) of ERISA, 29 U.S.C. § 1002(1).

K. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

L. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

M. "Fee(s)" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Health Provider Fees.

N. "Health Care Professional(s)" or "Health Provider(s)" means a physician, healthcare professional, laboratory, laboratory testing Service, or health care facility licensed, certified or accredited as required by law.

O. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

P. "Plan Document" shall mean a document or instrument governing any term of the Plan, including any document or instrument that describes plan operations and administration, eligibility rules, the provision of health care Services, and Claims and appeals procedures.

Q. "Plan Sponsor" means (i) the employer in the case of an Employee Welfare Benefit Plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) for a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organization, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, as defined in Section 3(16)(B) of ERISA, 29 U.S.C. § 1002(16).

R. "Service(s)" means any kind of product or Service offered by Suffolk, whether directly or

indirectly, to any Employee Welfare Benefit Plan, and however the expenses for such Service or product is paid for or reimbursed, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, customer or call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

S. "Service Agreement" means a document setting forth specific Services to be rendered by Suffolk and the compensation to be paid for those Services by the person retaining Suffolk, as provided herein.

T. "Service Provider" shall mean any person or entity that performed, or continues to perform, any Services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, Claims administrator, broker, consultant, adviser, custodian, subadviser, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. §1002(38)).

U. "Report(s)" means any information produced or generated by Suffolk relating to Services provided to any Employee Welfare Benefit Plan, including electronic reports.

INSTRUCTIONS

A. Scope of search. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, but not in Your immediate possession. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the present. Documents created prior to January 1, 2016 which have been used or relied on since January 1, 2016 or which describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

C. Privileges and Protections. If You do not produce documents because You object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests.

If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the

subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

D. Proprietary and Confidential. If You contend documents responsive to this Subpoena are proprietary or confidential, You should mark those documents as such and produce the documents. The Department of Labor follows procedures in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Executive Order 12600, which allows for the withholding of certain proprietary and confidential documents pursuant to the requirements of Exemption 4 of FOIA.

E. Electronically stored information. If any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, then You are directed to produce the document in the format in which the document was created and maintained, provided it is one of the following formats: Microsoft Word (doc), WordPerfect (wpd), Rich Text (rtf), Microsoft Outlook (pst), Microsoft Outlook Express (msg), Microsoft Excel (xls), Microsoft Access (mdb), Adobe Acrobat (PDF), TIFF, comma separated values (CSV), ASCII, TXT, Concordance, or Quickbooks. Files of the preceding types can be submitted in a ZIP compressed format. Sufficient information including sufficient identification of the applicable software program and passwords, if any, should be provided to permit access to and use of the documents. Images created through a scanning process should have a minimum resolution of 300 dots per inch (dpi).

Where available, Claims data should be provided in Microsoft Excel (xls) or delimited flat file (e.g. text, comma-separated values (CSV), etc.), which allows for the sorting and filtering of data. A sample format of the Claims data to be provided may be made available upon request.

To the extent that any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, and it is not in one of the previously identified formats, please identify the document and the corresponding format. Regardless of the format in which a document may exist, You are requested to preserve the integrity of the original electronic document and its contents, including the original formatting of the document, its metadata and, where applicable, its revision history.

F. Tenses. Verbs used in the past tense should be read also to include the present tense, and verbs used in the present tense should be read also to include the past tense.

G. Singular/Plural. The singular number of a noun, pronoun, or verb should be read also to include the plural, and the plural number of a noun, pronoun, or verb should be read also to include the singular.

H. Word Neutrality. All words and phrases shall be construed as masculine, feminine or gender neutral as necessary to bring within the scope of this Subpoena documents that might otherwise be construed to be outside its scope.

I. Sufficient to Show. Where a request seeks documents "sufficient" to show specified information, in lieu of producing documents, You may submit a sworn affidavit attested

to by an authorized representative that provides the requested information.

J. All/Any. "All" and "any" shall be construed as necessary to make the request inclusive rather than exclusive.

K. Manner of Production. All documents produced in response to this Subpoena shall comply with the following instructions:

1. You should conduct Your searches for responsive documents in a manner sufficient to identify the source and location where each responsive document is found.
2. All documents produced in response to this Subpoena shall be segregated and labeled to show the document request to which the documents are responsive and the source and location where the documents were found.
3. To the extent that documents are found in file folders and other similar containers that have labels or other identifying information, the documents shall be produced with such file folder and label information intact.
4. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.
5. All documents provided in response to this Subpoena are to include the notes written in a margin and post-its, as well as any attachment referred to or incorporated by the documents.
6. In the event that there are no documents responsive to a particular request, please specify that You have no responsive documents.
7. If documents relied upon or required to respond to any of this Subpoena, or requested documents, are no longer in Your possession, custody, or control, You are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.
8. If no Claims/requests/appeals are identified pursuant to any part of this Subpoena, please provide copies of the identifiable source documents evidencing Your determination yielding the existence of no results, to include an explanation of how the search was conducted in Your databases, the search parameters, and any screen shots or other dated documents utilized to arrive at Your finding of no results.

L. Electronic media. To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents sufficient to show Your ownership, legal identity, and organizational structure, including:

    a. State registrations, articles of incorporation, by-laws, and partnership agreements;
    b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
    c. Documents sufficient to show the names and addresses of all divisions, affiliates, or subsidiaries and their principal lines of business;
    d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
    e. Documents sufficient to identify the members of Suffolk's Board of Directors, including their titles, tenures, and addresses.

2. Documents sufficient to identify Suffolk's officers and employees, including their employment agreements, titles, tenures, and addresses.

3. Documents sufficient to show all entities owned, either in whole or in part, by Suffolk; for those entities that Suffolk holds a partial interest, the names and percentages of ownership for all other owners.

4. For all entities identified in response to item 3 above, please provide:

    a. An organizational chart;
    b. Articles of Incorporation or Partnership Agreements;
    c. Most recent state filings (such as anything filed with state insurance agencies); and
    d. List of Board of Directors and entity officers.

5. All of Suffolk's licenses and certifications with any government entity, including all local, State or Federal entities located in the United States.

6. Documents sufficient to show all Employee Welfare Benefit Plans for which Suffolk provides Services, including:

    a. The name and address of the Plan Sponsor, including the number of employees and the EIN;
    b. The name and address of the Employee Welfare Benefit Plan, including the number of participants in the plan and the EIN;

c. Whether the Employee Welfare Benefit plan is self-funded or fully-insured;
d. Name of associated broker(s), including firm name, person name, and contact information;
e. Name and address of the Plan's custodian;
f. The Services Suffolk provides;
g. Date Suffolk was hired; and
h. Date Suffolk was terminated, if applicable.

7. All contracts and agreements relating to Services Suffolk provides to Employee Welfare Benefit Plans.

8. Documents sufficient to show all clients to which Suffolk provides and/or licenses products, including:

   a. The name and address of the client;
   b. Product(s) Suffolk provides;
   c. Services Suffolk provides; and
   d. The states and geographic areas in which such products are sold.

9. All template and prototype documents and forms used to solicit, enroll, administer, maintain, and terminate clients, including all template versions of contract and service agreements, fee schedules, amendments and riders, enrollment packages, disclosures, disclaimers, and waiver and releases of liability.

10. Documents showing the name, address, and phone number of each entity and person that marketed Services or products provided by Suffolk to potential Clients, including all brokers, promoters, producers, agents, or aggregators.

11. For all products and/or Services that Suffolk markets through the entities and people identified in item 10 above, please provide all marketing materials they use, including:

    a. Brochures;
    b. Product eligibility sheets; and
    c. All other marketing materials.

12. Prototype documents prepared on behalf of Employee Welfare Benefit Plans to whom Suffolk provides Services, including:

    a. Benefit booklets or brochures;
    b. Summaries of benefits and coverage (SBC);
    c. Plan documents;
    d. Summary plan descriptions (SPD);
    e. Evidence(s) of coverage (EOC); and
    f. Any other document relating to the Employee Welfare Benefit Plan's benefits or Claims procedures.

13. Documents showing compensation or monies charged to and collected from each Plan on a quarterly (or other periodic) basis for Suffolk's Services, including fees, expenses, premiums, funding contributions, premium equivalents, and who is responsible for paying such fees.

14. Documents relating to all bank accounts maintained by You for the benefit of any Employee Welfare Benefit plan for which you hold the assets, including checking accounts, savings accounts, certificates of deposit, money market accounts, etc. For each account identified, include documents sufficient to show:

    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account; and
    e. Authorized persons with deposit and/or withdrawal authority.

15. Documents sufficient to show the procedures used by You with respect to the billing of all Employee Welfare Benefit Plans to whom You provide Services, to include invoices, evidence of payment, and any reconciliations.

16. All Fee schedules and all other documents provided to clients regarding the clients' payment of Fees to Suffolk.

17. Documents sufficient to show internal policies and procedures, manuals, policy changes or performance measurements used by You relating to Services You provide to Employee Welfare Benefit Plans.

18. Documents sufficient to show all of the network providers used by the Employee Welfare Benefit Plans to whom You provide Services, including:

    a. Your ownership interest in any network provider(s);
    b. The manner in which the network(s) was selected;
    c. The identity of the person who was responsible for selecting the network(s);
    d. The manner in which the fees for the network(s) are determined;
    e. Whether You earn additional compensation directly or indirectly through Your ownership interest in the network(s); and
    f. The procedures used by You to furnish network(s) services.

19. Documents and communications reflecting complaints made to Suffolk with respect to the Services You provide to clients, including letters and documents memorializing telephone calls received from Participants, Health Care Professionals, Employers, or state or federal regulatory agencies.

20. Fidelity bond(s) currently in effect for any Employee Welfare Benefit Plans to whom You provide Services.

21. Documents relating to Fiduciary liability insurance, stop loss insurance, reinsurance, excess loss insurance, and captive insurance purchased, established, or negotiated for or on behalf of any Client, including contracts and documents demonstrating the establishment of rates, claims underwriting, history of premiums and recoverables, and attachment points and deductibles.

22. Suffolk's audited financial statements for 2016, 2017, and 2018, and any quarterly and/or monthly statements for 2019.

23. Suffolk's General Ledger and chart of accounts.

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

July 7, 2020

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Providence Insurance Company, I.I.
Custodian of Records
954 Ave Ponce de Leon
Suite 802
San Juan, PR 00907

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

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If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced,

including the production of ESI and the appropriate format and media, please call or email Senior Investigator Thomas C. Gewin ((404-302-3917) or gewin.thomas@dol.gov) or Senior Investigator Alanna Evans ((415-625-2447 or evans.alanna@dol.gov).

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA

99-002151

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *Providence Insurance Company, I.I.*
Custodian of Records
954 Ave Ponce de Leon
Suite 802
San Juan, PR 00907

You are hereby required to appear before

Senior Investigator Thomas C. Gewin
of the Employee Benefits Security Administration,
U.S. Department of Labor, at
61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 31st day of July 2020, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this 7th day of July 2020.*

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
Providence Insurance Company, I.I.

DEFINITIONS

A. "PIC," "Company," "You," and "Your" shall mean Providence Insurance Company, I.I., a Puerto Rico Domestic Insurance Company, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of Providence Insurance Company, I.I.

B. "Claim(s)" means an itemized statement of Services and costs made by Health Providers to any Employee Welfare Benefit Plan clients for any health care Services, including Pre-Service Claims, Post-Service Claims, Concurrent Care Decisions and Urgent Care Claims as defined by 29 C.F.R. § 2560.503-1.

C. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memos, reports, electronic mail, electronic documents, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

D. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

E. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

F. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, Emails, voicemail messages, electronic instant messages (IM), spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or within the possession, custody or control of any agent, employee, representative or other persons acting or purporting to act for or on behalf of You, including but not limited to notes; memoranda; records; reports; correspondence; communications; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all nonidentical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in

any document to be produced pursuant to this Subpoena.

G. "EIN" means the employer identification number issued by the Internal Revenue Service for an Employer or Employee Welfare Benefit Plan.

H. "Email" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form may be produced in electronic form.

I. "Employee" means any individual employed by an Employer, as defined in Section 3(6) of ERISA, 29 U.S.C. § 1002(6).

J. "Employee Welfare Benefit Plan(s)" means any plan, fund, or program which was established or maintained by an Employer by an Employee Organization or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability or death, as defined in Section 3(1) of ERISA, 29 U.S.C. § 1002(1).

K. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

L. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

M. "Fee(s)" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Health Provider Fees.

N. "Health Care Professional(s)" or "Health Provider(s)" means a physician, healthcare professional, laboratory, laboratory testing Service, or health care facility licensed, certified or accredited as required by law.

O. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

P. "Plan Document" shall mean a document or instrument governing any term of the Plan, including any document or instrument that describes plan operations and administration, eligibility rules, the provision of health care Services, and Claims and appeals procedures.

Q. "Plan Sponsor" means (i) the employer in the case of an Employee Welfare Benefit Plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) for a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organization, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, as defined in Section 3(16)(B) of ERISA, 29 U.S.C. § 1002(16).

R. "Service(s)" means any kind of product or Service offered by PIC, whether directly or indirectly, to any Employee Welfare Benefit Plan, and however the expenses for such

Service or product is paid for or reimbursed, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, customer or call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

S. "Service Agreement" means a document setting forth specific Services to be rendered by PIC and the compensation to be paid for those Services by the person retaining PIC, as provided herein.

T. "Service Provider" shall mean any person or entity that performed, or continues to perform, any Services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, Claims administrator, broker, consultant, adviser, custodian, subadviser, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. §1002(38)).

U. "Report(s)" means any information produced or generated by PIC relating to Services provided to any Employee Welfare Benefit Plan, including electronic reports.

INSTRUCTIONS

A. Scope of search. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, but not in Your immediate possession. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the present. Documents created prior to January 1, 2016 which have been used or relied on since January 1, 2016 or which describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

C. Privileges and Protections. If You do not produce documents because You object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests.

If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the

author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

D. Proprietary and Confidential. If You contend documents responsive to this Subpoena are proprietary or confidential, You should mark those documents as such and produce the documents. The Department of Labor follows procedures in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Executive Order 12600, which allows for the withholding of certain proprietary and confidential documents pursuant to the requirements of Exemption 4 of FOIA.

E. Electronically stored information. If any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, then You are directed to produce the document in the format in which the document was created and maintained, provided it is one of the following formats: Microsoft Word (doc), WordPerfect (wpd), Rich Text (rtf), Microsoft Outlook (pst), Microsoft Outlook Express (msg), Microsoft Excel (xls), Microsoft Access (mdb), Adobe Acrobat (PDF), TIFF, comma separated values (CSV), ASCII, TXT, Concordance, or Quickbooks. Files of the preceding types can be submitted in a ZIP compressed format. Sufficient information including sufficient identification of the applicable software program and passwords, if any, should be provided to permit access to and use of the documents. Images created through a scanning process should have a minimum resolution of 300 dots per inch (dpi).

Where available, Claims data should be provided in Microsoft Excel (xls) or delimited flat file (e.g., text, comma-separated values (CSV), etc.), which allows for the sorting and filtering of data. A sample format of the Claims data to be provided may be made available upon request.

To the extent that any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, and it is not in one of the previously identified formats, please identify the document and the corresponding format. Regardless of the format in which a document may exist, You are requested to preserve the integrity of the original electronic document and its contents, including the original formatting of the document, its metadata and, where applicable, its revision history.

F. Tenses. Verbs used in the past tense should be read also to include the present tense, and verbs used in the present tense should be read also to include the past tense.

G. Singular/Plural. The singular number of a noun, pronoun, or verb should be read also to include the plural, and the plural number of a noun, pronoun, or verb should be read also to include the singular.

H. Word Neutrality. All words and phrases shall be construed as masculine, feminine or gender neutral as necessary to bring within the scope of this Subpoena documents that might otherwise be construed to be outside its scope.

I. Sufficient to Show. Where a request seeks documents “sufficient” to show specified information, in lieu of producing documents, You may submit a sworn affidavit attested to by an authorized representative that provides the requested information.

J. All/Any. "All" and "any" shall be construed as necessary to make the request inclusive rather than exclusive.

K. Manner of Production. All documents produced in response to this Subpoena shall comply with the following instructions:

1. You should conduct Your searches for responsive documents in a manner sufficient to identify the source and location where each responsive document is found.

2. **All documents produced in response to this Subpoena shall be segregated and labeled to show the document request to which the documents are responsive and the source and location where the documents were found.**

3. To the extent that documents are found in file folders and other similar containers that have labels or other identifying information, the documents shall be produced with such file folder and label information intact.

4. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.

5. All documents provided in response to this Subpoena are to include the notes written in a margin and post-its, as well as any attachment referred to or incorporated by the documents.

6. In the event that there are no documents responsive to a particular request, please specify that You have no responsive documents.

7. If documents relied upon or required to respond to any of this Subpoena, or requested documents, are no longer in Your possession, custody, or control, You are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.

8. If no Claims/requests/appeals are identified pursuant to any part of this Subpoena, please provide copies of the identifiable source documents evidencing Your determination yielding the existence of no results, to include an explanation of how the search was conducted in Your databases, the search parameters, and any screen shots or other dated documents utilized to arrive at Your finding of no results.

L. Electronic media. To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media or via secure file system: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents sufficient to show Your ownership, legal identity, and organizational structure, including:
    a. State, territory, commonwealth, or other relevant jurisdictional registrations, articles of incorporation, by-laws, and partnership agreements;
    b. Organizational charts and descriptions of Your organizational and supervisory structure, including changes to Your organizational structure during the relevant time period, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
    c. Documents sufficient to show the names and addresses of all divisions, affiliates, or subsidiaries and their principal lines of business;
    d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; Documents sufficient to show any change in ownership during the relevant time period, along with the identities and percentage of ownership before and after the change of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
    e. Documents sufficient to identify the members of PIC's Board of Directors, including their titles, tenures, and addresses.

2. Documents sufficient to identify PIC's officers and employees, including their employment agreements, titles, tenures, and addresses.

3. Documents sufficient to show all entities owned, either in whole or in part, by PIC; for those entities that PIC holds a partial interest, the names and percentages of ownership for all other owners.

4. For all entities identified in response to item 3 above, please provide:
    a. An organizational chart;
    b. Articles of Incorporation, Partnership Agreements, or Membership Agreements;
    c. Most recent state, territory, commonwealth, or other regulatory filings (such as anything filed with state insurance agencies); and
    d. List of Board of Directors and entity officers.

5. All of PIC's licenses, registrations and certifications with any government entity.

6. Documents or lists sufficient to show all Employee Welfare Benefit Plans for which PIC provides Services, including:
    a. The name and address of the Plan Sponsor, including the number of employees and the EIN;

b. The name and address of the Employee Welfare Benefit Plan, including the number of participants in the plan and the EIN;
c. Whether the Employee Welfare Benefit plan is self-funded or fully-insured;
d. Name of associated broker(s), including firm name, person name, and contact information;
e. Name and address of the Plan's custodian;
f. The Services PIC provides;
g. Type of product PIC provides;
h. Date PIC was hired; and
i. Date PIC was terminated, if applicable.

7. All contracts and agreements relating to Services PIC provides to Employee Welfare Benefit Plans, including all contracts for PIC's provision of reinsurance.

8. Documents or lists sufficient to show all clients to which PIC provides and/or licenses products, including:
   a. The name and address of the client;
   b. Product(s) PIC provides;
   c. Services PIC provides; and
   d. The states and geographic areas in which such products are sold.

9. PIC's audited or unaudited financial statements for 2016-2019, and any quarterly and/or monthly statements for 2020.

10. PIC's Income Statements.

11. PIC's Balance Sheets.

12. PIC's General Ledger and chart of accounts.

13. Documents sufficient to determine the following amounts on a monthly basis for all Employee Welfare Benefit Plans to whom You provide Services:
   a. Total premiums or contributions received;
   b. Total reinsurance paid;
   c. Total paid claims;
   d. Total incurred claims;
   e. Loss ratio;
   f. Surplus;
   g. Estimates and/or actual measures of incurred but not paid (IBNR or IBNP).

14. Documents relating to all bank accounts maintained by You which receive premiums, funding contributions, or premium equivalents directly or indirectly for the benefit of any Employee Welfare Benefit plan for which You provide Services, including checking accounts, savings accounts, certificates of deposit, money market accounts, etc. For each account identified, include documents sufficient to show:
   a. Name of the custodian;

b. Account number;
c. Contact information for account representatives;
d. Purpose of the account;
e. Authorized persons with deposit and/or withdrawal authority; and
f. Name of Account holder/owner.

15. To the extent they differ from Documents described in Request #14, Documents relating to all bank accounts maintained by You which pays or funds claims directly or indirectly for the benefit of any Employee Welfare Benefit plan for which You provide Services, including checking accounts, savings accounts, certificates of deposit, money market accounts, etc. For each account identified, include documents sufficient to show:
    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account;
    e. Authorized persons with deposit and/or withdrawal authority; and
    f. Name of Account holder/owner.

16. Documents showing compensation or monies charged to and collected from each Plan for PIC's Services, including fees, expenses, premiums, funding contributions, and premium equivalents.

17. The name(s) and title(s) of all individuals responsible for paying on behalf of the Plans and of all individuals responsible for collecting on behalf of PIC such fees, expenses, premiums, funding contributions, and premium equivalents as described in Request #16.

18. Documents relied on to set fees and expenses charged to Employee Welfare Benefit Plans to whom You provide services.

19. All Fee schedules and all other documents provided to Employee Welfare Benefit Plans regarding the Plans' payment of Fees to PIC.

20. Documents and communications relating to how the amount of funding contributions or premium equivalents is determined for each client Employee Welfare Benefit Plan, including:
    a. Actuarial analysis and actuarial reports, along with any underlying drafts and workpapers;
    b. Information about employee health status and demographics;
    c. Employer enrollment applications;
    d. Rate sheets;
    e. Underwriting and rating guidelines; and
    f. Claims history.

21. Documents sufficient to show internal policies and procedures, manuals, policy changes or performance measurements used by You relating to Services You provide to Employee Welfare Benefit Plans.

22. Names and addresses of all agents and brokers who are licensed to sell PIC products and Services.

23. All commission schedules, marketing materials, and all other Documents provided to agents and brokers licensed to sell Your products and Services.

24. Insurance department or other federal, state, territorial, commonwealth, or other regulatory agency examination reports.

25. Documents and communications reflecting complaints made to PIC with respect to the Services You provide to clients, including letters and documents memorializing telephone calls received from Participants, Health Care Professionals, Employers, or federal, state, territorial, or other regulatory agencies.

26. All documents and communications relating to investigations, findings, fines, or penalties by any federal, state, commonwealth, territorial, or other regulatory agencies.

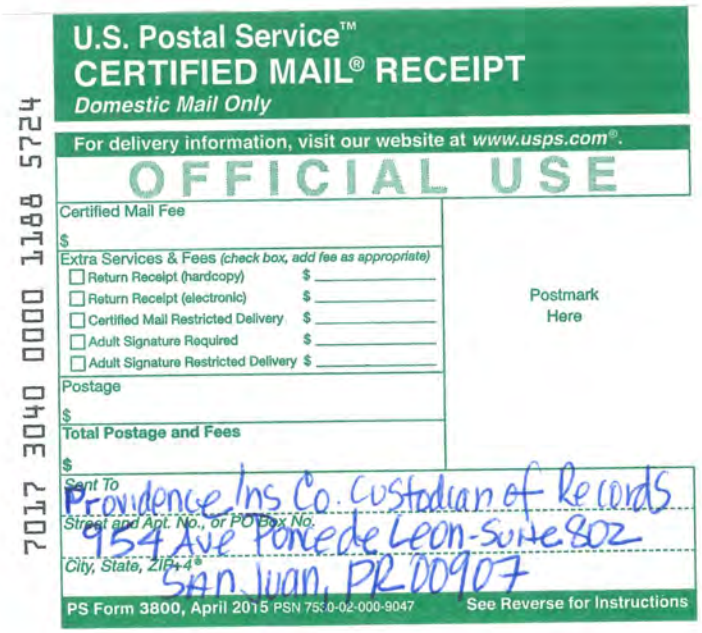
27. Fidelity bond(s) currently in effect for any Employee Welfare Benefit Plans to whom You provide Services.

28. Documents relating to Fiduciary liability insurance, stop loss insurance, reinsurance, excess loss insurance, and captive insurance purchased, established, negotiated for or for the benefit of any Client, including (but not limited to) contracts and documents demonstrating the rates, claims underwriting, history of premiums, funding contributions, or premium equivalents and receivables, attachment points and deductibles.

29. Communications related to any Employee Welfare Benefit Plan either from or to (including as carbon copies) the following individuals and entities:
    a. Alexander Renfro;
    b. William Bryan;
    c. Arjen Zieger;
    d. Tom Santi;
    e. Roland Brewer;
    f. Randall Johnson;
    g. David Appel;
    h. Hawaii Mainland Administrators (aka HMA);
    i. Patrick Hagan;
    j. The Boon Group;
    k. Jaime Gulli;
    l. David Lindsey
    m. Agentra;
    n. Affordable Benefit Choices, LLC;
    o. Robert Fey;
    p. BeneServ;
    q. Jesseka Fusco;

r. Crystal Bay Insurance Services;
s. Hazen Mirts;
t. and Enrollment First, Inc.

30. Communications with any of the following words or phrases and related to any Employee Welfare Benefit Plan for whom You provide, provided, or bid to provide Services:
    a. “Funding”;
    b. “Transfer”;
    c. “Authority”, “discretion”, or “fiduciary”;
    d. “Premium” or “rate”;
    e. “Actuary” or “actuarial”
    f. “Insufficient funds”, “insufficient money”, “insufficient assets”, or “insufficient cash”;
    g. “Solvent”, “insolvent”, “solvency”, “insolvency”, or “bankruptcy”;
    h. “Complain” or “complaint”;
    i. “Claim lag”;
    j. “Adverse”, “claim denial”, “pend claim”, “pended claim” or “denied claim”;
    k. “Loss Ratio”;
    l. “Reserves”, or “Surplus”;
    m. “ERISA,”; and
    n. “Market” or “marketing”.



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- ☐ Certified Mail Restricted Delivery $
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- ☐ Adult Signature Restricted Delivery $

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Sent To
Providence Ins Co. Custodian of Records
Street and Apt. No., or PO Box No.
954 Ave Ponce de Leon-Suite 802
City, State, ZIP+4®
San Juan, PR 00907

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 3040 0000 1188 5724

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

OCT 21 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Providence Insurance Partners, LLC
Custodian of Records
3200 West End Ave.
Suite 500
Nashville, TN 37203

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced,

including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917 or Investigator Devon King at (415) 625-2491.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA **99-002108**

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *Providence Insurance Partners, LLC*
Custodian of Records
2500 West End Ave.
Suite 500
Nashville, TN 37203

You are hereby required to appear before

Senior Investigator Thomas C. Gewin

of the Employee Benefits Security Administration,

U.S. Department of Labor, at

61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 8th day of November 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

DEPARTMENT OF LABOR · UNITED STATES OF AMERICA

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 21st *day of October 2019.*

Jeffrey A Monhart

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
Providence Insurance Partners, LLC

DEFINITIONS

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D. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

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J. "Employee Welfare Benefit Plan(s)" means any plan, fund, or program which was established or maintained by an Employer by an Employee Organization or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability or death, as defined in Section 3(1) of ERISA, 29 U.S.C. § 1002(1).

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Q. "Plan Sponsor" means (i) the employer in the case of an Employee Welfare Benefit Plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) for a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organization, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, as defined in Section 3(16)(B) of ERISA, 29 U.S.C. § 1002(16).

R. "Service(s)" means any kind of product or Service offered by Providence, whether directly or indirectly, to any Employee Welfare Benefit Plan, and however the expenses

for such Service or product is paid for or reimbursed, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, customer or call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

S. "Service Agreement" means a document setting forth specific Services to be rendered by Providence and the compensation to be paid for those Services by the person retaining Providence, as provided herein.

T. "Service Provider" shall mean any person or entity that performed, or continues to perform, any Services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, Claims administrator, broker, consultant, adviser, custodian, subadviser, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. §1002(38)).

U. "Report(s)" means any information produced or generated by Providence relating to Services provided to any Employee Welfare Benefit Plan, including electronic reports.

INSTRUCTIONS

A. Scope of search. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, but not in Your immediate possession. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the present. Documents created prior to January 1, 2016 which have been used or relied on since January 1, 2016 or which describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

C. Privileges and Protections. If You do not produce documents because You object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests.

If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the

author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

D. Proprietary and Confidential. If You contend documents responsive to this Subpoena are proprietary or confidential, You should mark those documents as such and produce the documents. The Department of Labor follows procedures in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Executive Order 12600, which allows for the withholding of certain proprietary and confidential documents pursuant to the requirements of Exemption 4 of FOIA.

E. Electronically stored information. If any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, then You are directed to produce the document in the format in which the document was created and maintained, provided it is one of the following formats: Microsoft Word (doc), WordPerfect (wpd), Rich Text (rtf), Microsoft Outlook (pst), Microsoft Outlook Express (msg), Microsoft Excel (xls), Microsoft Access (mdb), Adobe Acrobat (PDF), TIFF, comma separated values (CSV), ASCII, TXT, Concordance, or Quickbooks. Files of the preceding types can be submitted in a ZIP compressed format. Sufficient information including sufficient identification of the applicable software program and passwords, if any, should be provided to permit access to and use of the documents. Images created through a scanning process should have a minimum resolution of 300 dots per inch (dpi).

Where available, Claims data should be provided in Microsoft Excel (xls) or delimited flat file (e.g. text, comma-separated values (CSV), etc.), which allows for the sorting and filtering of data. A sample format of the Claims data to be provided may be made available upon request.

To the extent that any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, and it is not in one of the previously identified formats, please identify the document and the corresponding format. Regardless of the format in which a document may exist, You are requested to preserve the integrity of the original electronic document and its contents, including the original formatting of the document, its metadata and, where applicable, its revision history.

F. Tenses. Verbs used in the past tense should be read also to include the present tense, and verbs used in the present tense should be read also to include the past tense.

G. Singular/Plural. The singular number of a noun, pronoun, or verb should be read also to include the plural, and the plural number of a noun, pronoun, or verb should be read also to include the singular.

H. Word Neutrality. All words and phrases shall be construed as masculine, feminine or gender neutral as necessary to bring within the scope of this Subpoena documents that might otherwise be construed to be outside its scope.

I. Sufficient to Show. Where a request seeks documents "sufficient" to show specified information, in lieu of producing documents, You may submit a sworn affidavit attested to by an authorized representative that provides the requested information.

J. All/Any. "All" and "any" shall be construed as necessary to make the request inclusive rather than exclusive.

K. Manner of Production. All documents produced in response to this Subpoena shall comply with the following instructions:

1. You should conduct Your searches for responsive documents in a manner sufficient to identify the source and location where each responsive document is found.

2. All documents produced in response to this Subpoena shall be segregated and labeled to show the document request to which the documents are responsive and the source and location where the documents were found.

3. To the extent that documents are found in file folders and other similar containers that have labels or other identifying information, the documents shall be produced with such file folder and label information intact.

4. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.

5. All documents provided in response to this Subpoena are to include the notes written in a margin and post-its, as well as any attachment referred to or incorporated by the documents.

6. In the event that there are no documents responsive to a particular request, please specify that You have no responsive documents.

7. If documents relied upon or required to respond to any of this Subpoena, or requested documents, are no longer in Your possession, custody, or control, You are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.

8. If no Claims/requests/appeals are identified pursuant to any part of this Subpoena, please provide copies of the identifiable source documents evidencing Your determination yielding the existence of no results, to include an explanation of how the search was conducted in Your databases, the search parameters, and any screen shots or other dated documents utilized to arrive at Your finding of no results.

L. Electronic media. To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents sufficient to show Your ownership, legal identity, and organizational structure, including:

    a. State registrations, articles of incorporation, by-laws, and partnership agreements;
    b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
    c. Documents sufficient to show the names and addresses of all divisions, affiliates, or subsidiaries and their principal lines of business;
    d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
    e. Documents sufficient to identify the members of Providence's Board of Directors, including their titles, tenures, and addresses.

2. Documents sufficient to identify Providence's officers and employees, including their employment agreements, titles, tenures, and addresses.

3. Documents sufficient to show all entities owned, either in whole or in part, by Providence; for those entities that Providence holds a partial interest, the names and percentages of ownership for all other owners.

4. For all entities identified in response to item 3 above, please provide:

    a. An organizational chart;
    b. Articles of Incorporation or Partnership Agreements;
    c. Most recent state filings (such as anything filed with state insurance agencies); and
    d. List of Board of Directors and entity officers.

5. All of Providence's licenses and certifications with any government entity, including all local, State or Federal entities located in the United States.

6. Documents sufficient to show all Employee Welfare Benefit Plans for which Providence provides Services, including:

    a. The name and address of the Plan Sponsor, including the number of employees and the EIN;
    b. The name and address of the Employee Welfare Benefit Plan, including the number of participants in the plan and the EIN;
    c. Whether the Employee Welfare Benefit plan is self-funded or fully-insured;

d. Name of associated broker(s), including firm name, person name, and contact information;
e. Name and address of the Plan's custodian;
f. The Services Providence provides;
g. Date Providence was hired; and
h. Date Providence was terminated, if applicable.

7. All contracts and agreements relating to Services Providence provides to Employee Welfare Benefit Plans.

8. Documents sufficient to show all clients to which Providence provides and/or licenses products, including:

a. The name and address of the client;
b. Product(s) Providence provides;
c. Services Providence provides; and
d. The states and geographic areas in which such products are sold.

9. All template and prototype documents and forms used to solicit, enroll, administer, maintain, and terminate clients, including all template versions of contract and service agreements, fee schedules, amendments and riders, enrollment packages, disclosures, disclaimers, and waiver and releases of liability.

10. Documents showing the name, address, and phone number of each entity and person that marketed Services or products provided by Providence to potential Clients, including all brokers, promoters, producers, agents, or aggregators.

11. For all products and/or Services that Providence markets through the entities and people identified in item 10 above, please provide all marketing materials they use, including:

a. Brochures;
b. Product eligibility sheets; and
c. All other marketing materials.

12. Prototype documents prepared on behalf of Employee Welfare Benefit Plans to whom Providence provides Services, including:

a. Benefit booklets or brochures;
b. Summaries of benefits and coverage (SBC);
c. Plan documents;
d. Summary plan descriptions (SPD);
e. Evidence(s) of coverage (EOC); and
f. Any other document relating to the Employee Welfare Benefit Plan's benefits or Claims procedures.

13. Documents showing compensation or monies charged to and collected from each Plan on a quarterly (or other periodic) basis for Providence's Services, including fees, expenses, premiums, funding contributions, premium equivalents, and who is responsible for paying such fees.

14. Documents relating to all bank accounts maintained by You for the benefit of any Employee Welfare Benefit plan for which you hold the assets, including checking accounts, savings accounts, certificates of deposit, money market accounts, etc. For each account identified, include documents sufficient to show:

    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account; and
    e. Authorized persons with deposit and/or withdrawal authority.

15. Documents sufficient to show the procedures used by You with respect to the billing of all Employee Welfare Benefit Plans to whom You provide Services, to include invoices, evidence of payment, and any reconciliations.

16. All Fee schedules and all other documents provided to clients regarding the clients' payment of Fees to Providence.

17. Documents sufficient to show internal policies and procedures, manuals, policy changes or performance measurements used by You relating to Services You provide to Employee Welfare Benefit Plans.

18. Documents sufficient to show all of the network providers used by the Employee Welfare Benefit Plans to whom You provide Services, including:

    a. Your ownership interest in any network provider(s);
    b. The manner in which the network(s) was selected;
    c. The identity of the person who was responsible for selecting the network(s);
    d. The manner in which the fees for the network(s) are determined;
    e. Whether You earn additional compensation directly or indirectly through Your ownership interest in the network(s); and
    f. The procedures used by You to furnish network(s) services.

19. Documents and communications reflecting complaints made to Providence with respect to the Services You provide to clients, including letters and documents memorializing telephone calls received from Participants, Health Care Professionals, Employers, or state or federal regulatory agencies.

20. Fidelity bond(s) currently in effect for any Employee Welfare Benefit Plans to whom You provide Services.

21. Documents relating to Fiduciary liability insurance, stop loss insurance, reinsurance, excess loss insurance, and captive insurance purchased, established, or negotiated for or on behalf of any Client, including contracts and documents demonstrating the establishment of rates, claims underwriting, history of premiums and recoverables, and attachment points and deductibles.

22. Providence's audited financial statements for 2016, 2017, and 2018, and any quarterly and/or monthly statements for 2019.

23. Providence's General Ledger and chart of accounts.

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

OCT 2 1 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

My Home Group Data Partnership, LP
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced, including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917 or Investigator Devon King at (415) 625-2491.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA **99-002116**

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *My Home Group Data Partnership, LP*
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

You are hereby required to appear before

Senior Investigator Thomas C. Gewin

of the Employee Benefits Security Administration,

U.S. Department of Labor, at

61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 8th day of November 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 21st *day of October 2019.*

Jeffrey A Monhart

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
My Home Group Data Partnership, LP

DEFINITIONS

A. "MHGDP," "You," or "Your" shall mean My Home Group Data Partnership, LP, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of My Home Group Data Partnership, LP.

B. "Plan" shall mean any welfare benefit plan sponsored by MHGDP.

C. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. "Beneficiary" means a person as defined by ERISA Section 3(8), 29 U.S.C., § 1002(8).

E. "Claim(s)" means an itemized statement of Services and costs made by Health Providers (as defined herein) to any Employee Welfare Benefit Plan clients for any health care Services, including pre-Service Claims, post-Service Claims, concurrent care Claims and urgent care Claims as defined by 29 C.F.R. § 2560.503-1.

F. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memorandum, reports, electronic mail, electronic documents, facsimiles, communications sent or received by computer systems or applications, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

G. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

H. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

I. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM) messages of any type disseminated through a computer network, spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or the possession, custody or control of any agent,

employee, representative or other persons acting or purporting to act for or on behalf of You or the Plan, including but not limited to notes; memoranda; records; reports; correspondence; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

J. "Email" or "electronic mail" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form must be produced in electronic form.

K. "Employee Benefit Plan" means an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C., § 1002(3).

L. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

M. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

N. "Fee" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Provider Fees.

O. "Fiduciary" shall have the same meaning as such term has under Section 3(21) of ERISA, 29 U.S.C., § 1002(21), and sections and regulations related thereto.

P. "Health Coverage" shall include any medical, surgical, mental health and substance use disorder benefits or Services, and all the variations within these Services under each option available to Plan Participants and Beneficiaries, including but not limited to, high, mid and low options offered under Fee for Service or indemnity arrangements, health maintenance organizations, preferred provider organizations and point of service plans.

Q. "Including" shall be construed to mean "without limitation."

R. "Issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of Section 514(b)(2) of ERISA, 29 U.S.C. § 1144(b)(2)).

S. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

T. "Party in Interest" means a person or entity defined in Section 3(14) of ERISA, 29 U.S.C. § 1002(14).

U. "Plan Document" means a document or instrument governing any term of the Plan, including any document or instrument that describes plan operations and administration, eligibility rules, the provision of Health Coverage, and Claims and appeals procedures.

V. "Relating to" or "reflecting" means constituting, referring to, pertaining to, responding to, regarding, evidencing, explaining, discussing, depicting, analyzing, or containing any information which in any way concerns, affects, or describes the terms or conditions, or identifies facts, with respect to the subject of the inquiry.

W. "Service Agreement" means a document setting forth specific Services to be rendered by the person providing the Services and the compensation to be paid for those Services in connection to the Plan.

X. "Service Provider" shall mean any person or entity that performed, or continues to perform, any services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, claims administrator, broker, consultant, adviser, custodian, subadviser, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. §1002(38)).

Y. "Service(s)" means any kind of product or Service offered to the Plan, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

Z. "Summary Plan Description" shall mean a summary document or documents as defined in ERISA Section 102, 29 USC §1022, and related sections.

INSTRUCTIONS

A. Scope of search. This Subpoena calls for all documents in Your possession, custody, control, to the extent not already produced by You. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, even if not in Your immediate possession, for every level of Health Coverage available under the Plan. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the date of production. Documents created prior to January 1, 2016, which have been used or relied on since January 1, 2016, or which

describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

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If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

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F. Tenses. Verbs used in the past tense should be read also to include the present tense, and verbs used in the present tense should be read also to include the past tense.

G. Singular/Plural. The singular number of a noun, pronoun, or verb should be read also to include the plural, and the plural number of a noun, pronoun, or verb should be read also to include the singular.

H. Word Neutrality. All words and phrases shall be construed as masculine, feminine or gender neutral as necessary to bring within the scope of this Subpoena documents that might otherwise be construed to be outside its scope.

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are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.

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K. Electronic media:

To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents relating to MHGDP's organizational and management structure and ownership, including, but not limited to:

   a. Articles of incorporation, corporate bylaws, and partnership agreements;
   b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
   c. Documents sufficient to show the names and address of all divisions, affiliates, or subsidiaries and their principal lines of business;
   d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
   e. Documents sufficient to show the name and contact information for each of Your managerial employees and corporate officers.

2. Plan document(s), including the following:

   a. Amendments and resolutions, with signatures;
   b. Summary Plan Description (SPD);
   c. Wrap document;
   d. Trust Agreement;
   e. Benefits booklets;
   f. Employee handbooks which discuss employee benefits;
   g. Evidences of Coverage (EOCs) and Certificates of Coverage for each medical option;
   h. Enrollment package provided to Participants at open enrollment and new hire, including front and back of all enrollment forms;
   i. Documents describing plan coverages, rules, costs, or changes to any of the above documents, including any Notices of Material Modifications; and
   j. Documents describing and governing any supplemental benefits offered in connection to the Plan.

3. Summary of Benefits and Coverage (SBC) and Uniform Glossary for the Plan.

4. Documents describing the cost of coverage for each option under the Plan, including premiums by type of coverage (e.g. single, family), employee vs. employer share of cost of coverage, and the cost of COBRA coverage.

5. Contracts, including amendments thereto, between MHGDP or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, issuers, and agents. Contracts should include any performance agreements and Fee schedules reflecting compensation as well as engagement and other letters defining the scope of work.

6. Communications between MHGDP or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, and agents.

7. Current fidelity bond policy, including all endorsements and riders, if applicable.

8. Current fiduciary insurance policy, including all endorsements and riders, if applicable.

9. The Plan's latest Form 5500 Annual Report filing and any associated financial statements/schedules and accountant's opinion, if applicable.

10. Form M-1 filings.

11. Documents sufficient to identify all individuals (name, position, contact information) directly or indirectly responsible for the operation, administration, and/or oversight of the Plan. This includes trustees, administrative or oversight committee members, and accounting or human resources personnel who process plan paperwork, such as enrollment, Claims, Participant inquiries, and premium payments.

12. Meeting minutes related to the Plan, including meetings by the Board of Trustees, as well as minutes of Trustee committees, subcommittees, or other administrative groups.

13. Communications between MHGDP or the Plan and Employers, Plan Participants, or potential Plan Participants in connection to:

    a. The benefits provided by the Plan;
    b. The transfer of Participants from any other plan or arrangement to the Plan;
    c. The adjudication of specific Claims; and
    d. The appeal of denied Claims.

14. Marketing materials related to the Plan, including Power Point slides, brochures, emails, and other communications provided by MHGDP or the Plan or in consultation with MHGDP or the Plan, including communications and materials provided to Participants and to brokers, agents, or promoters.

15. Documents sufficient to identify the following with respect to all current and former Plan Participants:

    a. Name;
    b. Contact information;
    c. Basis for eligibility to participate in the Plan, including employment contracts, payroll reports, W-2s, 1099s, or other records sufficient to demonstrate the nature of any employment relationship;
    d. Enrollment date;
    e. Coverage option(s) and type of coverage (e.g. single, family);
    f. Termination date and reason for termination; and
    g. Total premiums or contributions paid through the date of production.

16. All summary pages of payroll registers showing the total amount of employee health plan contributions withheld for each pay date within the applicable time frame.

17. Documents sufficient to identify all bank accounts maintained by MHGDP relating to the Plan, including:

    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account; and
    e. Authorized persons with deposit and/or withdrawal authority.

18. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
    b. Bank or investment account statements;
    c. Canceled checks, deposit slips, and electronic transfer records;
    d. Internal and external ledgers and journals; and
    e. Audited and unaudited financial statements.

19. For all rebates, including medical loss ratio rebates, experience-rated contract rebates, and any other rebate from an insurer, received by the Plan, plan sponsor, or any affiliated or related entity, in relation to the Plan:

    a. Documents detailing the amount, receipt date, source, and handling of each rebate;
    b. Sample of notice to Participants about rebates, if applicable;
    c. Documents demonstrating the allocation of rebated amounts to employer and/or employees; and
    d. Correspondence regarding how rebates are to be used or allocated.

20. Claims lag reports or other reports detailing the amount of time from Claim filing to Claim payments.

21. All Claims aging or experience reports.

22. List of all unpaid and pended claims detailing date of claim, service type, billed amount, and reason for pending.

23. External or internal auditor's reports related to the Plan's operations, including Claims audits completed by a Service Provider or consulting firm.

24. Documents utilized or relied upon to determine contribution amounts, including:

    a. External or internal actuarial reports;

b. Rate sheets;
c. Communications;
d. Underwriting and rating guidelines, methodologies, and assumptions;
e. Source data; and
f. Contracts for reinsurance, stop loss, or other form of excess loss insurance.

25. Documents sufficient to show any Fees, commissions, or other compensation received directly or indirectly by MHGDP or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

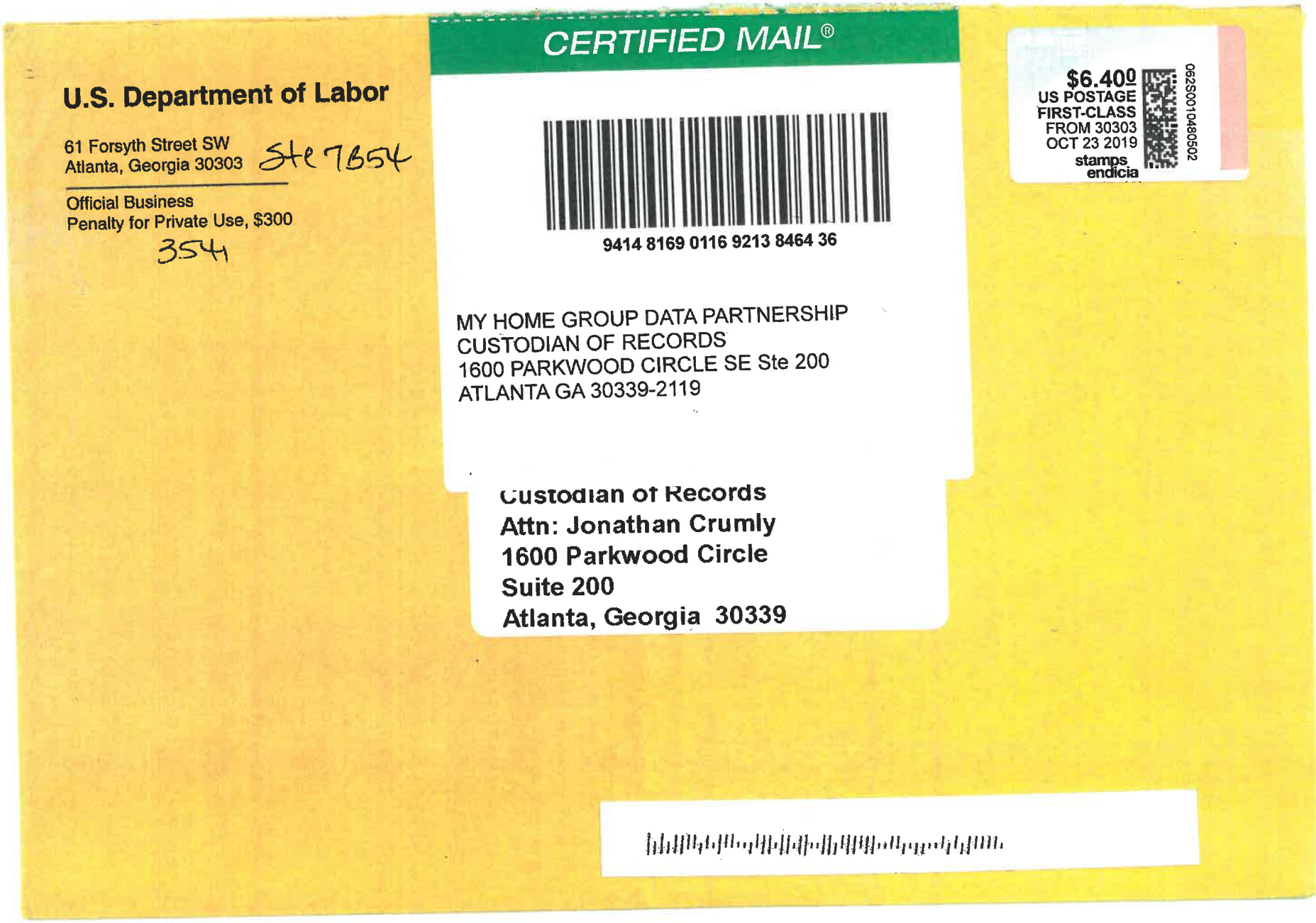
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and MHGDP or its General Partner, principals, officers, directors, managers, employees, or representatives.

28. Documents and communications relating to pending or past litigation between the Plan or MHGDP and any current or former Participants or members.

29. Documents and communications relating to complaints, investigations, findings, fines, or penalties by state and federal agencies.

30. MHGDP's Federal Income Tax Returns.



U.S. Department of Labor

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Atlanta, Georgia 30303 Ste 7B54

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MY HOME GROUP DATA PARTNERSHIP
CUSTODIAN OF RECORDS
1600 PARKWOOD CIRCLE SE Ste 200
ATLANTA GA 30339-2119

Custodian of Records
Attn: Jonathan Crumly
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

December 13, 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

LP Management Services, LLC.
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parwood Circle, Suite 200
Atlanta, GA 30339

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced, including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917 or Investigator Tim Blas at (312) 789-3637.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA **99-002132**

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *LP Management Services, LLC.*
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parwood Circle, Suite 200
Atlanta, GA 30339

You are hereby required to appear before

Senior Investigator Thomas C. Gewin

of the Employee Benefits Security Administration,

U.S. Department of Labor, at

61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 2nd day of January 2020, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 12th *day of December 2019.*

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
LP Management Services, LLC

DEFINITIONS

A. "LPMS," "You," or "Your" shall mean LP Management Services LLC, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of LP Management Services, LLC.

B. "Plan" shall mean any welfare benefit plan.

C. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. "Beneficiary" means a person as defined by ERISA Section 3(8), 29 U.S.C., § 1002(8).

E. "Claim(s)" means an itemized statement of Services and costs made by Health Providers (as defined herein) to any Employee Welfare Benefit Plan clients for any health care Services, including pre-Service Claims, post-Service Claims, concurrent care Claims and urgent care Claims as defined by 29 C.F.R. § 2560.503-1.

F. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memorandum, reports, electronic mail, electronic documents, facsimiles, communications sent or received by computer systems or applications, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

G. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

H. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

I. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM) messages of any type disseminated through a computer network, spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or the possession, custody or control of any agent, employee, representative or other persons acting or purporting to act for or on behalf of

You or the Plan, including but not limited to notes; memoranda; records; reports; correspondence; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

J. "Email" or "electronic mail" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form must be produced in electronic form.

K. "Employee Benefit Plan" means an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C., § 1002(3).

L. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

M. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

N. "Fee" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Provider Fees.

O. "Fiduciary" shall have the same meaning as such term has under Section 3(21) of ERISA, 29 U.S.C., § 1002(21), and sections and regulations related thereto.

P. "Health Coverage" shall include any medical, surgical, mental health and substance use disorder benefits or Services, and all the variations within these Services under each option available to Plan Participants and Beneficiaries, including but not limited to, high, mid and low options offered under Fee for Service or indemnity arrangements, health maintenance organizations, preferred provider organizations and point of service plans.

Q. "Including" shall be construed to mean "without limitation."

R. "Issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of Section 514(b)(2) of ERISA, 29 U.S.C. § 1144(b)(2)).

S. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

T. "Party in Interest" means a person or entity defined in Section 3(14) of ERISA, 29 U.S.C. § 1002(14).

U. "Plan Document" means a document or instrument governing any term of the Plan, including any document or instrument that describes plan operations and administration, eligibility rules, the provision of Health Coverage, and Claims and appeals procedures.

V. "Relating to" or "reflecting" means constituting, referring to, pertaining to, responding to, regarding, evidencing, explaining, discussing, depicting, analyzing, or containing any information which in any way concerns, affects, or describes the terms or conditions, or identifies facts, with respect to the subject of the inquiry.

W. "Service Agreement" means a document setting forth specific Services to be rendered by the person providing the Services and the compensation to be paid for those Services in connection to the Plan.

X. "Service Provider" shall mean any person or entity that performed, or continues to perform, any services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, claims administrator, broker, consultant, advisor, custodian, subadvisor, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. § 1002(38)).

Y. "Service(s)" means any kind of product or Service offered to the Plan, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

Z. "Summary Plan Description" shall mean a summary document or documents as defined in ERISA Section 102, 29 U.S.C. § 1022, and related sections.

INSTRUCTIONS

A. Scope of search. This Subpoena calls for all documents in Your possession, custody, or control, to the extent not already produced by You. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, even if not in Your immediate possession, for every level of Health Coverage available under the Plan. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the date of production. Documents created prior to January 1, 2016, which have been used or relied on since January 1, 2016, or which

describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

C. Privileges and Protections. If You do not produce documents because You object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests.

If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

D. Proprietary and Confidential. If you contend documents responsive to this Subpoena are proprietary or confidential, you should mark those documents as such and produce the documents. The Department of Labor follows procedures in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Executive Order 12600, which allows for the withholding of certain proprietary and confidential documents pursuant to the requirements of Exemption 4 of FOIA.

E. Electronically stored information. If any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, then You are directed to produce the document in computerized form in one of the following formats: Microsoft Word (doc), WordPerfect (wpd), Rich Text (rtf), Microsoft Outlook (pst), Microsoft Outlook Express (msg), Microsoft Excel (xls), Microsoft Access (mdb), Adobe Acrobat (PDF), TIFF, comma separated values (CSV), ASCII, TXT, Concordance, or Quickbooks. It is preferable to receive electronic information stored in databased or tabular format (e.g. CSV or other delimited, XLS, XLSX, etc.). Files of the preceding types can be submitted in a ZIP compressed format. Sufficient information including sufficient identification of the applicable software program and passwords, if any, and data structure (if applicable) should be provided to permit access to and use of the documents. Images created through a scanning process should have a minimum resolution of 300 dots per inch (dpi).

Where available, Claims data should be provided in Microsoft Excel (xls) or delimited flat file (e.g., text, comma-separated values (CSV), etc.), which allows for the sorting and filtering of data. A sample format of the Claims data to be provided may be made available upon request.

To the extent that any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, and it is not in one of the previously identified formats, please identify the document and the corresponding format.

Regardless of the format in which a document may exist, You are requested to preserve the integrity of the original electronic document and its contents, including the original formatting of the document, its metadata and, where applicable, its revision history.

F. Tenses. Verbs used in the past tense should be read also to include the present tense, and verbs used in the present tense should be read also to include the past tense.

G. Singular/Plural. The singular number of a noun, pronoun, or verb should be read also to include the plural, and the plural number of a noun, pronoun, or verb should be read also to include the singular.

H. Word Neutrality. All words and phrases shall be construed as masculine, feminine or gender neutral as necessary to bring within the scope of this Subpoena documents that might otherwise be construed to be outside its scope.

I. Sufficient to Show. Where a request seeks documents "sufficient" to show specified information, in lieu of producing documents, you may submit a sworn affidavit attested to by an authorized representative that provides the requested information.

J. Manner of production. All documents produced in response to this Subpoena shall comply with the following instructions:

a. You should conduct Your searches for responsive documents in a manner sufficient to identify the source and location where each responsive document is found.

b. All documents produced in response to this Subpoena shall be segregated and labeled to show the document request to which the documents are responsive and the source and location where the documents were found.

c. To the extent that documents are found in file folders and other similar containers that have labels or other identifying information, the documents shall be produced with such file folder and label information intact.

d. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.

e. All documents provided in response to this Subpoena are to include the notes written in a margin and post-its, as well as any attachment referred to or incorporated by the documents.

f. In the event that there are no documents responsive to a particular request, please specify that You have no responsive documents.

g. If documents relied upon or required to respond to any of this Subpoena, or requested documents, are no longer in Your possession, custody, or control, You

are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents, the date or dates on which such disposition was made, and the reason for such disposition.

h. If no Claims/requests/appeals are identified pursuant to any part of this Subpoena, please provide copies of the identifiable source documents evidencing Your determination yielding the existence of no results, to include an explanation of how the search was conducted in Your databases, the search parameters, and any screen shots or other dated documents utilized to arrive at Your finding of no results.

K. Electronic media:

To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents relating to LPMS's organizational and management structure and ownership, including, but not limited to:

   a. Articles of incorporation, corporate bylaws, and partnership agreements;
   b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
   c. Documents sufficient to show the names and address of all divisions, affiliates, or subsidiaries and their principal lines of business;
   d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
   e. Documents sufficient to show the name and contact information for each of Your managerial employees and corporate officers.

2. Documents sufficient to identify all partnerships or other entities for which LPMS is a General Partner.

3. Contracts, including amendments thereto, between LPMS and any other entity or individual in connection with the management of any partnership or entity identified in response to Paragraph 2 above.

4. Documents sufficient to identify all entities or individuals that recruit, solicit, market, advertise, or offer membership in any partnership identified in paragraph 2.

5. Meeting minutes related to any partnerships or entities identified in response to Paragraph 2 above.

6. Documents sufficient to identify all Plans for which You or any of the partnerships or other entities identified in response to Paragraph 2 above are the Plan Sponsor, Plan Administrator, or Named Fiduciary.

7. Current fiduciary liability, errors and omissions, or other professional liability insurance policies, including all endorsements and riders, if applicable, held by LPMS.

8. Current fidelity bond policies, including all endorsements and riders, if applicable, held by LPMS for all Plans identified in Paragraph 7 above.

9. Documents sufficient to identify all bank accounts maintained by LPMS, including:

   a. Name of the custodian;
   b. Account number;
   c. Contact information for account representatives;
   d. Purpose of the account; and
   e. Authorized persons with deposit and/or withdrawal authority.

10. Documents sufficient to show LPMS's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
    b. Bank or investment account statements;
    c. Canceled checks, deposit slips, and electronic transfer records;
    d. Monetary distributions to members of any partnership identified in paragraph 2;
    e. Payroll or compensation information to any employees of LPMS;
    f. Internal and external ledgers and journals; and
    g. Audited and unaudited financial statements.

11. Documents and communications related to the collection, aggregation, or sale of data; the direct sale of goods; or affiliate referrals in connection with any of the partnerships or entities listed in Paragraph 2 above, including:

    a. Contracts;
    b. Invoices generated for third parties;
    c. Payment records;
    d. Instructions provided to any members of any partnership;
    e. Computer files, including executable, html, and other files;
    f. Uniform Resource Locators (URL) used in any of these efforts;
    g. Software code or scripts developed for or used by LPMS or any of the partnerships;
    h. Logs of data collection, sales, or affiliate referral efforts made by any members of any partnership;
    i. Records of any data collected, sales, or affiliate referrals made by LPMS or any partnership or the members or any partnership.

12. Documents sufficient to show any Fees, commissions, or other compensation received directly or indirectly by LPMS or its principals, officers, directors, managers, employees, or representatives in connection with any Plan.

13. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between any Plan, Plan Service Provider, and LPMS or any of its owners, principals, officers, directors, managers, employees, or representatives.

14. Documents and communications relating to pending or past litigation between LPMS and any current or former Plan Participants or members of any partnership or entity identified in Paragraph 2 above.

15. All filings submitted to the Internal Revenue Service for LPMS, including tax returns and information returns.

For any Plan for which LPMS itself is the Plan Sponsor, Plan Administrator, or Named Fiduciary, provide the following:

16. Plan document(s), including the following:

    a. Amendments and resolutions, with signatures;
    b. Summary Plan Description (SPD);
    c. Wrap document;
    d. Trust Agreement, with signatures;
    e. Benefits booklets;
    f. Employee handbooks which discuss employee benefits;
    g. Evidences of Coverage (EOCs) and Certificates of Coverage for each medical option;
    h. Enrollment package provided to Participants at open enrollment and new hire, including front and back of all enrollment forms;
    i. Documents describing plan coverages, rules, costs, or changes to any of the above documents, including any Notices of Material Modifications; and
    j. Documents describing and governing any supplemental benefits offered in connection to the Plan.

17. Summary of Benefits and Coverage (SBC) and Uniform Glossary for the Plan.

18. Documents describing the cost of coverage for each option under the Plan, including premiums by type of coverage (e.g., single, family), employee vs. employer share of cost of coverage, and the cost of COBRA coverage.

19. Contracts, including amendments thereto, between LPMS or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, issuers, and agents. Contracts should include any performance agreements and Fee schedules reflecting compensation as well as engagement and other letters defining the scope of work.

20. Communications between LPMS or the Plan and Service Providers, including brokers, consultants, third party administrators, recordkeepers, actuaries, Claim processors, and agents.

21. Current fidelity bond policy, including all endorsements and riders, if applicable.

22. The Plan's latest Form 5500 Annual Report filing and any associated financial statements/schedules and accountant's opinion, if applicable.

23. Form M-1 filings.

24. Documents sufficient to identify all individuals (name, position, contact information) directly or indirectly responsible for the operation, administration, and/or oversight of the Plan. This includes trustees, administrative or oversight committee members, and accounting or human resources personnel who process plan paperwork, such as enrollment, Claims, Participant inquiries, and premium payments.

25. Meeting minutes related to the Plan, including meetings by the Board of Trustees, as well as minutes of Trustee committees, subcommittees, or other administrative groups.

26. Communications between LPMS or the Plan and Employers, partnerships identified in paragraph 2, Plan Participants, or potential Plan Participants in connection to:

    a. The benefits provided by the Plan;
    b. The transfer of Participants from any other plan or arrangement to the Plan;
    c. The adjudication of specific Claims; and
    d. The appeal of denied Claims.

27. Marketing materials related to the Plan, including Power Point slides, brochures, emails, and other communications provided by LPMS or the Plan or in consultation with LPMS or the Plan, including communications and materials provided to Participants and to brokers, agents, or promoters.

28. Documents sufficient to identify the following with respect to all current and former Plan Participants:

    a. Name;
    b. Contact information;
    c. Basis for eligibility to participate in the Plan, including employment contracts, payroll reports, W-2s, 1099s, or other records sufficient to demonstrate the nature of any employment relationship;
    d. Enrollment date;
    e. Coverage option(s) and type of coverage (e.g., single, family);
    f. Termination date and reason for termination; and
    g. Total premiums or contributions paid through the date of production.

29. All summary pages of payroll registers showing the total amount of employee health plan contributions withheld for each pay date within the applicable time frame.

30. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
    b. Bank or investment account statements;
    c. Canceled checks, deposit slips, and electronic transfer records;
    d. Internal and external ledgers and journals;
    e. Charts of accounts; and
    f. Audited and unaudited financial statements.

31. For all rebates, including medical loss ratio rebates, experience-rated contract rebates, and any other rebate from an insurer, received by the Plan, Plan Sponsor, or any affiliated or related entity, in relation to the Plan:

    a. Documents detailing the amount, receipt date, source, and handling of each rebate;
    b. Sample of notice to Participants about rebates, if applicable;

c. Documents demonstrating the allocation of rebated amounts to employer and/or employees; and
d. Correspondence regarding how rebates are to be used or allocated.

32. Claims lag reports or other reports detailing the amount of time from Claim filing to Claim payments.

33. All Claims aging or experience reports.

34. List of all unpaid and pended claims detailing date of claim, service type, billed amount, and reason for pending.

35. External or internal auditor's reports related to the Plan's operations, including Claims audits completed by a Service Provider or consulting firm.

36. Documents utilized or relied upon to determine contribution amounts, including:

a. External or internal actuarial reports;
b. Rate sheets;
c. Communications;
d. Underwriting and rating guidelines, methodologies, and assumptions;
e. Source data; and
f. Contracts for reinsurance, stop loss, or other form of excess loss insurance.

37. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

38. Documents sufficient to show instructions to the Plans' service providers related to payments for claims, service providers, or other entities or persons.

39. Documents and communications relating to pending or past litigation between the Plan or LPMS, in its capacity as Plan Sponsor, Plan Administrator, or Named Fiduciary, and any current or former Participants or members.

40. Documents and communications related to software programs that Plan participants use in connection with the Plan or as a requirement of their eligibility to participate in the Plan.

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

OCT 2 1 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Global Data Group, LP
Custodian of Records
ATTN: Ryan Owens, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced, including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917 or Investigator Devon King at (415) 625-2491.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA **99-002110**

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *Global Data Group, LP*
Custodian of Records
ATTN: Ryan Owens, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

You are hereby required to appear before

Senior Investigator Thomas C. Gewin

of the Employee Benefits Security Administration,

U.S. Department of Labor, at

61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 8th day of November 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 21st *day of October 2019.*

Jeffrey Monhart

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
Global Data Group, LP

DEFINITIONS

A. "Global Data Group," "You," or "Your" shall mean Global Data Group, LP, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of Global Data Group, LP. This entity may also have used the name Global Data Partnership LP.

B. "Plan" shall mean any welfare benefit plan sponsored by Global Data Group.

C. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. "Beneficiary" means a person as defined by ERISA Section 3(8), 29 U.S.C., § 1002(8).

E. "Claim(s)" means an itemized statement of Services and costs made by Health Providers (as defined herein) to any Employee Welfare Benefit Plan clients for any health care Services, including pre-Service Claims, post-Service Claims, concurrent care Claims and urgent care Claims as defined by 29 C.F.R. § 2560.503-1.

F. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memorandum, reports, electronic mail, electronic documents, facsimiles, communications sent or received by computer systems or applications, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

G. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

H. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

I. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM) messages of any type disseminated through a computer network, spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or the possession, custody or control of any agent,

employee, representative or other persons acting or purporting to act for or on behalf of You or the Plan, including but not limited to notes; memoranda; records; reports; correspondence; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

J. "Email" or "electronic mail" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form must be produced in electronic form.

K. "Employee Benefit Plan" means an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C., § 1002(3).

L. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

M. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

N. "Fee" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Provider Fees.

O. "Fiduciary" shall have the same meaning as such term has under Section 3(21) of ERISA, 29 U.S.C., § 1002(21), and sections and regulations related thereto.

P. "Health Coverage" shall include any medical, surgical, mental health and substance use disorder benefits or Services, and all the variations within these Services under each option available to Plan Participants and Beneficiaries, including but not limited to, high, mid and low options offered under Fee for Service or indemnity arrangements, health maintenance organizations, preferred provider organizations and point of service plans.

Q. "Including" shall be construed to mean "without limitation."

R. "Issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of Section 514(b)(2) of ERISA, 29 U.S.C. § 1144(b)(2)).

S. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

T. "Party in Interest" means a person or entity defined in Section 3(14) of ERISA, 29 U.S.C. § 1002(14).

U. "Plan Document" means a document or instrument governing any term of the Plan, including any document or instrument that describes plan operations and administration, eligibility rules, the provision of Health Coverage, and Claims and appeals procedures.

V. "Relating to" or "reflecting" means constituting, referring to, pertaining to, responding to, regarding, evidencing, explaining, discussing, depicting, analyzing, or containing any information which in any way concerns, affects, or describes the terms or conditions, or identifies facts, with respect to the subject of the inquiry.

W. "Service Agreement" means a document setting forth specific Services to be rendered by the person providing the Services and the compensation to be paid for those Services in connection to the Plan.

X. "Service Provider" shall mean any person or entity that performed, or continues to perform, any services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, claims administrator, broker, consultant, adviser, custodian, subadviser, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. §1002(38)).

Y. "Service(s)" means any kind of product or Service offered to the Plan, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

Z. "Summary Plan Description" shall mean a summary document or documents as defined in ERISA Section 102, 29 USC §1022, and related sections.

INSTRUCTIONS

A. Scope of search. This Subpoena calls for all documents in Your possession, custody, control, to the extent not already produced by You. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, even if not in Your immediate possession, for every level of Health Coverage available under the Plan. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the date of production. Documents created prior to January 1, 2016, which have been used or relied on since January 1, 2016, or which

describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

C. Privileges and Protections. If You do not produce documents because You object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests.

If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

D. Proprietary and Confidential. If you contend documents responsive to this Subpoena are proprietary or confidential, you should mark those documents as such and produce the documents. The Department of Labor follows procedures in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Executive Order 12600, which allows for the withholding of certain proprietary and confidential documents pursuant to the requirements of Exemption 4 of FOIA.

E. Electronically stored information. If any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, then You are directed to produce the document in computerized form in one of the following formats: Microsoft Word (doc), WordPerfect (wpd), Rich Text (rtf), Microsoft Outlook (pst), Microsoft Outlook Express (msg), Microsoft Excel (xls), Microsoft Access (mdb), Adobe Acrobat (PDF), TIFF, comma separated values (CSV), ASCII, TXT, Concordance, or Quickbooks. It is preferable to receive electronic information stored in databased or tabular format (e.g. CSV or other delimited, XLS, XLSX, etc.). Files of the preceding types can be submitted in a ZIP compressed format. Sufficient information including sufficient identification of the applicable software program and passwords, if any, and data structure (if applicable) should be provided to permit access to and use of the documents. Images created through a scanning process should have a minimum resolution of 300 dots per inch (dpi).

Where available, Claims data should be provided in Microsoft Excel (xls) or delimited flat file (e.g. text, comma-separated values (CSV), etc.), which allows for the sorting and filtering of data. A sample format of the Claims data to be provided may be made available upon request.

To the extent that any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, and it is not in one of the previously identified formats, please identify the document and the corresponding format.

Regardless of the format in which a document may exist, You are requested to preserve the integrity of the original electronic document and its contents, including the original formatting of the document, its metadata and, where applicable, its revision history.

F. Tenses. Verbs used in the past tense should be read also to include the present tense, and verbs used in the present tense should be read also to include the past tense.

G. Singular/Plural. The singular number of a noun, pronoun, or verb should be read also to include the plural, and the plural number of a noun, pronoun, or verb should be read also to include the singular.

H. Word Neutrality. All words and phrases shall be construed as masculine, feminine or gender neutral as necessary to bring within the scope of this Subpoena documents that might otherwise be construed to be outside its scope.

I. Sufficient to Show. Where a request seeks documents "sufficient" to show specified information, in lieu of producing documents, you may submit a sworn affidavit attested to by an authorized representative that provides the requested information.

J. Manner of production. All documents produced in response to this Subpoena shall comply with the following instructions:

a. You should conduct Your searches for responsive documents in a manner sufficient to identify the source and location where each responsive document is found.

b. All documents produced in response to this Subpoena shall be segregated and labeled to show the document request to which the documents are responsive and the source and location where the documents were found.

c. To the extent that documents are found in file folders and other similar containers that have labels or other identifying information, the documents shall be produced with such file folder and label information intact.

d. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.

e. All documents provided in response to this Subpoena are to include the notes written in a margin and post-its, as well as any attachment referred to or incorporated by the documents.

f. In the event that there are no documents responsive to a particular request, please specify that You have no responsive documents.

g. If documents relied upon or required to respond to any of this Subpoena, or requested documents, are no longer in Your possession, custody, or control, You

are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.

h. If no Claims/requests/appeals are identified pursuant to any part of this Subpoena, please provide copies of the identifiable source documents evidencing Your determination yielding the existence of no results, to include an explanation of how the search was conducted in Your databases, the search parameters, and any screen shots or other dated documents utilized to arrive at Your finding of no results.

K. Electronic media:

To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents relating to Global Data Group's organizational and management structure and ownership, including, but not limited to:

   a. Articles of incorporation, corporate bylaws, and partnership agreements;
   b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
   c. Documents sufficient to show the names and address of all divisions, affiliates, or subsidiaries and their principal lines of business;
   d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
   e. Documents sufficient to show the name and contact information for each of Your managerial employees and corporate officers.

2. Plan document(s), including the following:

   a. Amendments and resolutions, with signatures;
   b. Summary Plan Description (SPD);
   c. Wrap document;
   d. Trust Agreement;
   e. Benefits booklets;
   f. Employee handbooks which discuss employee benefits;
   g. Evidences of Coverage (EOCs) and Certificates of Coverage for each medical option;
   h. Enrollment package provided to Participants at open enrollment and new hire, including front and back of all enrollment forms;
   i. Documents describing plan coverages, rules, costs, or changes to any of the above documents, including any Notices of Material Modifications; and
   j. Documents describing and governing any supplemental benefits offered in connection to the Plan.

3. Summary of Benefits and Coverage (SBC) and Uniform Glossary for the Plan.

4. Documents describing the cost of coverage for each option under the Plan, including premiums by type of coverage (e.g. single, family), employee vs. employer share of cost of coverage, and the cost of COBRA coverage.

5. Contracts, including amendments thereto, between Global Data Group or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, issuers, and agents. Contracts should include any performance agreements and Fee schedules reflecting compensation as well as engagement and other letters defining the scope of work.

6. Communications between Global Data Group or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, and agents.

7. Current fidelity bond policy, including all endorsements and riders, if applicable.

8. Current fiduciary insurance policy, including all endorsements and riders, if applicable.

9. The Plan's latest Form 5500 Annual Report filing and any associated financial statements/schedules and accountant's opinion, if applicable.

10. Form M-1 filings.

11. Documents sufficient to identify all individuals (name, position, contact information) directly or indirectly responsible for the operation, administration, and/or oversight of the Plan. This includes trustees, administrative or oversight committee members, and accounting or human resources personnel who process plan paperwork, such as enrollment, Claims, Participant inquiries, and premium payments.

12. Meeting minutes related to the Plan, including meetings by the Board of Trustees, as well as minutes of Trustee committees, subcommittees, or other administrative groups.

13. Communications between Global Data Group or the Plan and Employers, Plan Participants, or potential Plan Participants in connection to:

    a. The benefits provided by the Plan;
    b. The transfer of Participants from any other plan or arrangement to the Plan;
    c. The adjudication of specific Claims; and
    d. The appeal of denied Claims.

14. Marketing materials related to the Plan, including Power Point slides, brochures, emails, and other communications provided by Global Data Group or the Plan or in consultation with Global Data Group or the Plan, including communications and materials provided to Participants and to brokers, agents, or promoters.

15. Documents sufficient to identify the following with respect to all current and former Plan Participants:

    a. Name;
    b. Contact information;
    c. Basis for eligibility to participate in the Plan, including employment contracts, payroll reports, W-2s, 1099s, or other records sufficient to demonstrate the nature of any employment relationship;
    d. Enrollment date;
    e. Coverage option(s) and type of coverage (e.g. single, family);
    f. Termination date and reason for termination; and
    g. Total premiums or contributions paid through the date of production.

16. All summary pages of payroll registers showing the total amount of employee health plan contributions withheld for each pay date within the applicable time frame.

17. Documents sufficient to identify all bank accounts maintained by Global Data Group relating to the Plan, including:

    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account; and
    e. Authorized persons with deposit and/or withdrawal authority.

18. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
    b. Bank or investment account statements;
    c. Canceled checks, deposit slips, and electronic transfer records;
    d. Internal and external ledgers and journals; and
    e. Audited and unaudited financial statements.

19. For all rebates, including medical loss ratio rebates, experience-rated contract rebates, and any other rebate from an insurer, received by the Plan, plan sponsor, or any affiliated or related entity, in relation to the Plan:

    a. Documents detailing the amount, receipt date, source, and handling of each rebate;
    b. Sample of notice to Participants about rebates, if applicable;
    c. Documents demonstrating the allocation of rebated amounts to employer and/or employees; and
    d. Correspondence regarding how rebates are to be used or allocated.

20. Claims lag reports or other reports detailing the amount of time from Claim filing to Claim payments.

21. All Claims aging or experience reports.

22. List of all unpaid and pended claims detailing date of claim, service type, billed amount, and reason for pending.

23. External or internal auditor's reports related to the Plan's operations, including Claims audits completed by a Service Provider or consulting firm.

24. Documents utilized or relied upon to determine contribution amounts, including:

    a. External or internal actuarial reports;

b. Rate sheets;
c. Communications;
d. Underwriting and rating guidelines, methodologies, and assumptions;
e. Source data; and
f. Contracts for reinsurance, stop loss, or other form of excess loss insurance.

25. Documents sufficient to show any Fees, commissions, or other compensation received directly or indirectly by Global Data Group or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and Global Data Group or its General Partner, principals, officers, directors, managers, employees, or representatives.

28. Documents and communications relating to pending or past litigation between the Plan or Global Data Group and any current or former Participants or members.

29. Documents and communications relating to complaints, investigations, findings, fines, or penalties by state and federal agencies.

30. Global Data Group's Federal Income Tax Returns.

U.S. Department of Labor

61 Forsyth Street SW
Atlanta, Georgia 30303 Ste 7B54

Official Business
Penalty for Private Use, $300

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GLOBAL DATA GROUP, LP
CUSTODIAN OF RECORDS SUITE 200
1600 PARKWOOD CIRCLE SE
ATLANTA GA 30339-2119

Global Data Group, LP
Custodian of Records
Attn: Ryan Owens
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

OCT 2 1 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Elite Data Group, LP
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced, including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917 or Investigator Devon King at (415) 625-2491.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA **99-002109**

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *Elite Data Group, LP*
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

You are hereby required to appear before

Senior Investigator Thomas C. Gewin
of the Employee Benefits Security Administration,
U.S. Department of Labor, at
61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 8th day of November 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 21st *day of October 2019.*

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
Elite Data Group, LP

DEFINITIONS

A. "Elite Data Group," "You," or "Your" shall mean Elite Data Group, LP, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of Elite Data Group, LP.

B. "Plan" shall mean any welfare benefit plan sponsored by Elite Data Group.

C. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. "Beneficiary" means a person as defined by ERISA Section 3(8), 29 U.S.C., § 1002(8).

E. "Claim(s)" means an itemized statement of Services and costs made by Health Providers (as defined herein) to any Employee Welfare Benefit Plan clients for any health care Services, including pre-Service Claims, post-Service Claims, concurrent care Claims and urgent care Claims as defined by 29 C.F.R. § 2560.503-1.

F. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memorandum, reports, electronic mail, electronic documents, facsimiles, communications sent or received by computer systems or applications, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

G. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

H. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

I. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM) messages of any type disseminated through a computer network, spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or the possession, custody or control of any agent, employee, representative or other persons acting or purporting to act for or on behalf of

You or the Plan, including but not limited to notes; memoranda; records; reports; correspondence; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

J. "Email" or "electronic mail" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form must be produced in electronic form.

K. "Employee Benefit Plan" means an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C., § 1002(3).

L. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

M. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

N. "Fee" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Provider Fees.

O. "Fiduciary" shall have the same meaning as such term has under Section 3(21) of ERISA, 29 U.S.C., § 1002(21), and sections and regulations related thereto.

P. "Health Coverage" shall include any medical, surgical, mental health and substance use disorder benefits or Services, and all the variations within these Services under each option available to Plan Participants and Beneficiaries, including but not limited to, high, mid and low options offered under Fee for Service or indemnity arrangements, health maintenance organizations, preferred provider organizations and point of service plans.

Q. "Including" shall be construed to mean "without limitation."

R. "Issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of Section 514(b)(2) of ERISA, 29 U.S.C. § 1144(b)(2)).

S. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

T. "Party in Interest" means a person or entity defined in Section 3(14) of ERISA, 29 U.S.C. § 1002(14).

U. "Plan Document" means a document or instrument governing any term of the Plan, including any document or instrument that describes plan operations and administration, eligibility rules, the provision of Health Coverage, and Claims and appeals procedures.

V. "Relating to" or "reflecting" means constituting, referring to, pertaining to, responding to, regarding, evidencing, explaining, discussing, depicting, analyzing, or containing any information which in any way concerns, affects, or describes the terms or conditions, or identifies facts, with respect to the subject of the inquiry.

W. "Service Agreement" means a document setting forth specific Services to be rendered by the person providing the Services and the compensation to be paid for those Services in connection to the Plan.

X. "Service Provider" shall mean any person or entity that performed, or continues to perform, any services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, claims administrator, broker, consultant, adviser, custodian, subadviser, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. §1002(38)).

Y. "Service(s)" means any kind of product or Service offered to the Plan, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

Z. "Summary Plan Description" shall mean a summary document or documents as defined in ERISA Section 102, 29 USC §1022, and related sections.

INSTRUCTIONS

A. Scope of search. This Subpoena calls for all documents in Your possession, custody, control, to the extent not already produced by You. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, even if not in Your immediate possession, for every level of Health Coverage available under the Plan. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the date of production. Documents created prior to January 1, 2016, which have been used or relied on since January 1, 2016, or which

describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

C. Privileges and Protections. If You do not produce documents because You object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests.

If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

D. Proprietary and Confidential. If you contend documents responsive to this Subpoena are proprietary or confidential, you should mark those documents as such and produce the documents. The Department of Labor follows procedures in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Executive Order 12600, which allows for the withholding of certain proprietary and confidential documents pursuant to the requirements of Exemption 4 of FOIA.

E. Electronically stored information. If any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, then You are directed to produce the document in computerized form in one of the following formats: Microsoft Word (doc), WordPerfect (wpd), Rich Text (rtf), Microsoft Outlook (pst), Microsoft Outlook Express (msg), Microsoft Excel (xls), Microsoft Access (mdb), Adobe Acrobat (PDF), TIFF, comma separated values (CSV), ASCII, TXT, Concordance, or Quickbooks. It is preferable to receive electronic information stored in databased or tabular format (e.g. CSV or other delimited, XLS, XLSX, etc.). Files of the preceding types can be submitted in a ZIP compressed format. Sufficient information including sufficient identification of the applicable software program and passwords, if any, and data structure (if applicable) should be provided to permit access to and use of the documents. Images created through a scanning process should have a minimum resolution of 300 dots per inch (dpi).

Where available, Claims data should be provided in Microsoft Excel (xls) or delimited flat file (e.g. text, comma-separated values (CSV), etc.), which allows for the sorting and filtering of data. A sample format of the Claims data to be provided may be made available upon request.

To the extent that any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, and it is not in one of the previously identified formats, please identify the document and the corresponding format.

Regardless of the format in which a document may exist, You are requested to preserve the integrity of the original electronic document and its contents, including the original formatting of the document, its metadata and, where applicable, its revision history.

F. Tenses. Verbs used in the past tense should be read also to include the present tense, and verbs used in the present tense should be read also to include the past tense.

G. Singular/Plural. The singular number of a noun, pronoun, or verb should be read also to include the plural, and the plural number of a noun, pronoun, or verb should be read also to include the singular.

H. Word Neutrality. All words and phrases shall be construed as masculine, feminine or gender neutral as necessary to bring within the scope of this Subpoena documents that might otherwise be construed to be outside its scope.

I. Sufficient to Show. Where a request seeks documents "sufficient" to show specified information, in lieu of producing documents, you may submit a sworn affidavit attested to by an authorized representative that provides the requested information.

J. Manner of production. All documents produced in response to this Subpoena shall comply with the following instructions:

a. You should conduct Your searches for responsive documents in a manner sufficient to identify the source and location where each responsive document is found.

b. All documents produced in response to this Subpoena shall be segregated and labeled to show the document request to which the documents are responsive and the source and location where the documents were found.

c. To the extent that documents are found in file folders and other similar containers that have labels or other identifying information, the documents shall be produced with such file folder and label information intact.

d. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.

e. All documents provided in response to this Subpoena are to include the notes written in a margin and post-its, as well as any attachment referred to or incorporated by the documents.

f. In the event that there are no documents responsive to a particular request, please specify that You have no responsive documents.

g. If documents relied upon or required to respond to any of this Subpoena, or requested documents, are no longer in Your possession, custody, or control, You

are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.

h. If no Claims/requests/appeals are identified pursuant to any part of this Subpoena, please provide copies of the identifiable source documents evidencing Your determination yielding the existence of no results, to include an explanation of how the search was conducted in Your databases, the search parameters, and any screen shots or other dated documents utilized to arrive at Your finding of no results.

K. Electronic media:

To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents relating to Elite Data Group's organizational and management structure and ownership, including, but not limited to:

   a. Articles of incorporation, corporate bylaws, and partnership agreements;
   b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
   c. Documents sufficient to show the names and address of all divisions, affiliates, or subsidiaries and their principal lines of business;
   d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
   e. Documents sufficient to show the name and contact information for each of Your managerial employees and corporate officers.

2. Plan document(s), including the following:

   a. Amendments and resolutions, with signatures;
   b. Summary Plan Description (SPD);
   c. Wrap document;
   d. Trust Agreement;
   e. Benefits booklets;
   f. Employee handbooks which discuss employee benefits;
   g. Evidences of Coverage (EOCs) and Certificates of Coverage for each medical option;
   h. Enrollment package provided to Participants at open enrollment and new hire, including front and back of all enrollment forms;
   i. Documents describing plan coverages, rules, costs, or changes to any of the above documents, including any Notices of Material Modifications; and
   j. Documents describing and governing any supplemental benefits offered in connection to the Plan.

3. Summary of Benefits and Coverage (SBC) and Uniform Glossary for the Plan.

4. Documents describing the cost of coverage for each option under the Plan, including premiums by type of coverage (e.g. single, family), employee vs. employer share of cost of coverage, and the cost of COBRA coverage.

5. Contracts, including amendments thereto, between Elite Data Group or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, issuers, and agents. Contracts should include any performance agreements and Fee schedules reflecting compensation as well as engagement and other letters defining the scope of work.

6. Communications between Elite Data Group or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, and agents.

7. Current fidelity bond policy, including all endorsements and riders, if applicable.

8. Current fiduciary insurance policy, including all endorsements and riders, if applicable.

9. The Plan's latest Form 5500 Annual Report filing and any associated financial statements/schedules and accountant's opinion, if applicable.

10. Form M-1 filings.

11. Documents sufficient to identify all individuals (name, position, contact information) directly or indirectly responsible for the operation, administration, and/or oversight of the Plan. This includes trustees, administrative or oversight committee members, and accounting or human resources personnel who process plan paperwork, such as enrollment, Claims, Participant inquiries, and premium payments.

12. Meeting minutes related to the Plan, including meetings by the Board of Trustees, as well as minutes of Trustee committees, subcommittees, or other administrative groups.

13. Communications between Elite Data Group or the Plan and Employers, Plan Participants, or potential Plan Participants in connection to:

    a. The benefits provided by the Plan;
    b. The transfer of Participants from any other plan or arrangement to the Plan;
    c. The adjudication of specific Claims; and
    d. The appeal of denied Claims.

14. Marketing materials related to the Plan, including Power Point slides, brochures, emails, and other communications provided by Elite Data Group or the Plan or in consultation with Elite Data Group or the Plan, including communications and materials provided to Participants and to brokers, agents, or promoters.

15. Documents sufficient to identify the following with respect to all current and former Plan Participants:

    a. Name;
    b. Contact information;
    c. Basis for eligibility to participate in the Plan, including employment contracts, payroll reports, W-2s, 1099s, or other records sufficient to demonstrate the nature of any employment relationship;
    d. Enrollment date;
    e. Coverage option(s) and type of coverage (e.g. single, family);
    f. Termination date and reason for termination; and
    g. Total premiums or contributions paid through the date of production.

16. All summary pages of payroll registers showing the total amount of employee health plan contributions withheld for each pay date within the applicable time frame.

17. Documents sufficient to identify all bank accounts maintained by Elite Data Group relating to the Plan, including:

    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account; and
    e. Authorized persons with deposit and/or withdrawal authority.

18. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
    b. Bank or investment account statements;
    c. Canceled checks, deposit slips, and electronic transfer records;
    d. Internal and external ledgers and journals; and
    e. Audited and unaudited financial statements.

19. For all rebates, including medical loss ratio rebates, experience-rated contract rebates, and any other rebate from an insurer, received by the Plan, plan sponsor, or any affiliated or related entity, in relation to the Plan:

    a. Documents detailing the amount, receipt date, source, and handling of each rebate;
    b. Sample of notice to Participants about rebates, if applicable;
    c. Documents demonstrating the allocation of rebated amounts to employer and/or employees; and
    d. Correspondence regarding how rebates are to be used or allocated.

20. Claims lag reports or other reports detailing the amount of time from Claim filing to Claim payments.

21. All Claims aging or experience reports.

22. List of all unpaid and pended claims detailing date of claim, service type, billed amount, and reason for pending.

23. External or internal auditor's reports related to the Plan's operations, including Claims audits completed by a Service Provider or consulting firm.

24. Documents utilized or relied upon to determine contribution amounts, including:

    a. External or internal actuarial reports;

b. Rate sheets;
c. Communications;
d. Underwriting and rating guidelines, methodologies, and assumptions;
e. Source data; and
f. Contracts for reinsurance, stop loss, or other form of excess loss insurance.

25. Documents sufficient to show any Fees, commissions, or other compensation received directly or indirectly by Elite Data Group or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and Elite Data Group or its General Partner, principals, officers, directors, managers, employees, or representatives.

28. Documents and communications relating to pending or past litigation between the Plan or Elite Data Group and any current or former Participants or members.

29. Documents and communications relating to complaints, investigations, findings, fines, or penalties by state and federal agencies.

30. Elite Data Group's Federal Income Tax Returns.

U.S. Department of Labor

61 Forsyth Street SW
Atlanta, Georgia 30303 Ste 7B54

Official Business
Penalty for Private Use, $300
3541

CERTIFIED MAIL®

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ELITE DATA GROUP, LP
CUSTODIAN OF RECORDS SUITE 200
ATTN: JONATHAN CRUMLY
1600 PARKWOOD CIRCLE SE
ATLANTA GA 30339-2119

Attn: Jonathan Crumly
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

OCT 2 1 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

America's Independent Workers DG, LP
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced, including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917 or Investigator Devon King at (415) 625-2491.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA **99-002113**

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *America's Independent Workers DG, LP*
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

You are hereby required to appear before

Senior Investigator Thomas C. Gewin

of the Employee Benefits Security Administration,

U.S. Department of Labor, at

61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 8th day of November 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 21 st *day of October 2019.*

Jeff for A Monhart

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
America's Independent Workers DG, LP

DEFINITIONS

A. "AIW," "You," or "Your" shall mean America's Independent Workers DG, LP, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of America's Independent Workers DG, LP.

B. "Plan" shall mean any welfare benefit plan sponsored by AIW.

C. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. "Beneficiary" means a person as defined by ERISA Section 3(8), 29 U.S.C., § 1002(8).

E. "Claim(s)" means an itemized statement of Services and costs made by Health Providers (as defined herein) to any Employee Welfare Benefit Plan clients for any health care Services, including pre-Service Claims, post-Service Claims, concurrent care Claims and urgent care Claims as defined by 29 C.F.R. § 2560.503-1.

F. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memorandum, reports, electronic mail, electronic documents, facsimiles, communications sent or received by computer systems or applications, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

G. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

H. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

I. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM) messages of any type disseminated through a computer network, spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or the possession, custody or control of any agent,

employee, representative or other persons acting or purporting to act for or on behalf of You or the Plan, including but not limited to notes; memoranda; records; reports; correspondence; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

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If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

D. Proprietary and Confidential. If you contend documents responsive to this Subpoena are proprietary or confidential, you should mark those documents as such and produce the documents. The Department of Labor follows procedures in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Executive Order 12600, which allows for the withholding of certain proprietary and confidential documents pursuant to the requirements of Exemption 4 of FOIA.

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DOCUMENTS TO BE PRODUCED

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   a. Articles of incorporation, corporate bylaws, and partnership agreements;
   b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
   c. Documents sufficient to show the names and address of all divisions, affiliates, or subsidiaries and their principal lines of business;
   d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
   e. Documents sufficient to show the name and contact information for each of Your managerial employees and corporate officers.

2. Plan document(s), including the following:

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4. Documents describing the cost of coverage for each option under the Plan, including premiums by type of coverage (e.g. single, family), employee vs. employer share of cost of coverage, and the cost of COBRA coverage.

5. Contracts, including amendments thereto, between AIW or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, issuers, and agents. Contracts should include any performance agreements and Fee schedules reflecting compensation as well as engagement and other letters defining the scope of work.

6. Communications between AIW or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, and agents.

7. Current fidelity bond policy, including all endorsements and riders, if applicable.

8. Current fiduciary insurance policy, including all endorsements and riders, if applicable.

9. The Plan's latest Form 5500 Annual Report filing and any associated financial statements/schedules and accountant's opinion, if applicable.

10. Form M-1 filings.

11. Documents sufficient to identify all individuals (name, position, contact information) directly or indirectly responsible for the operation, administration, and/or oversight of the Plan. This includes trustees, administrative or oversight committee members, and accounting or human resources personnel who process plan paperwork, such as enrollment, Claims, Participant inquiries, and premium payments.

12. Meeting minutes related to the Plan, including meetings by the Board of Trustees, as well as minutes of Trustee committees, subcommittees, or other administrative groups.

13. Communications between AIW or the Plan and Employers, Plan Participants, or potential Plan Participants in connection to:

    a. The benefits provided by the Plan;
    b. The transfer of Participants from any other plan or arrangement to the Plan;
    c. The adjudication of specific Claims; and
    d. The appeal of denied Claims.

14. Marketing materials related to the Plan, including Power Point slides, brochures, emails, and other communications provided by AIW or the Plan or in consultation with AIW or the Plan, including communications and materials provided to Participants and to brokers, agents, or promoters.

15. Documents sufficient to identify the following with respect to all current and former Plan Participants:

    a. Name;
    b. Contact information;
    c. Basis for eligibility to participate in the Plan, including employment contracts, payroll reports, W-2s, 1099s, or other records sufficient to demonstrate the nature of any employment relationship;
    d. Enrollment date;
    e. Coverage option(s) and type of coverage (e.g. single, family);
    f. Termination date and reason for termination; and
    g. Total premiums or contributions paid through the date of production.

16. All summary pages of payroll registers showing the total amount of employee health plan contributions withheld for each pay date within the applicable time frame.

17. Documents sufficient to identify all bank accounts maintained by AIW relating to the Plan, including:

    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account; and
    e. Authorized persons with deposit and/or withdrawal authority.

18. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
    b. Bank or investment account statements;
    c. Canceled checks, deposit slips, and electronic transfer records;
    d. Internal and external ledgers and journals; and
    e. Audited and unaudited financial statements.

19. For all rebates, including medical loss ratio rebates, experience-rated contract rebates, and any other rebate from an insurer, received by the Plan, plan sponsor, or any affiliated or related entity, in relation to the Plan:

    a. Documents detailing the amount, receipt date, source, and handling of each rebate;
    b. Sample of notice to Participants about rebates, if applicable;
    c. Documents demonstrating the allocation of rebated amounts to employer and/or employees; and
    d. Correspondence regarding how rebates are to be used or allocated.

20. Claims lag reports or other reports detailing the amount of time from Claim filing to Claim payments.

21. All Claims aging or experience reports.

22. List of all unpaid and pended claims detailing date of claim, service type, billed amount, and reason for pending.

23. External or internal auditor's reports related to the Plan's operations, including Claims audits completed by a Service Provider or consulting firm.

24. Documents utilized or relied upon to determine contribution amounts, including:

    a. External or internal actuarial reports;

b. Rate sheets;
c. Communications;
d. Underwriting and rating guidelines, methodologies, and assumptions;
e. Source data; and
f. Contracts for reinsurance, stop loss, or other form of excess loss insurance.

25. Documents sufficient to show any Fees, commissions, or other compensation received directly or indirectly by AIW or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

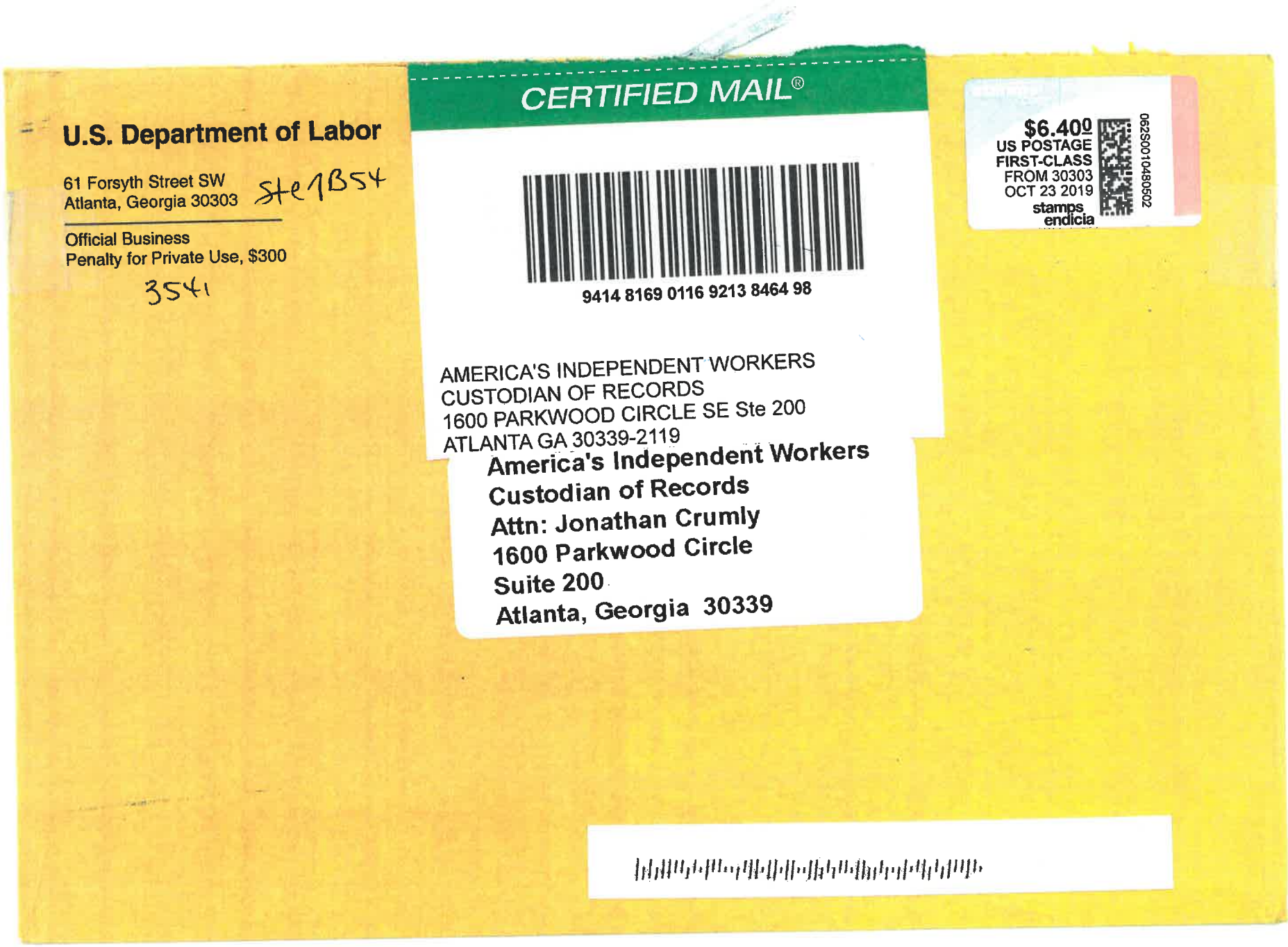
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and AIW or its General Partner, principals, officers, directors, managers, employees, or representatives.

28. Documents and communications relating to pending or past litigation between the Plan or AIW and any current or former Participants or members.

29. Documents and communications relating to complaints, investigations, findings, fines, or penalties by state and federal agencies.

30. AIW's Federal Income Tax Returns.



U.S. Department of Labor

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Atlanta, Georgia 30303 Ste 1B54

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AMERICA'S INDEPENDENT WORKERS
CUSTODIAN OF RECORDS
1600 PARKWOOD CIRCLE SE Ste 200
ATLANTA GA 30339-2119

America's Independent Workers
Custodian of Records
Attn: Jonathan Crumly
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

OCT 21 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

America's Consumers & Affiliates LP
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced, including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917 or Investigator Devon King at (415) 625-2491.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA 99-002112

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *America's Consumers & Affiliates LP*
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

You are hereby required to appear before

Senior Investigator Thomas C. Gewin

of the Employee Benefits Security Administration,

U.S. Department of Labor, at

61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 8th day of November 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 21st *day of October 2019.*

Jeffrey A. Monhart

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
America's Consumers & Affiliates LP

DEFINITIONS

A. "AC&A," "You," or "Your" shall mean America's Consumers & Affiliates LP, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of America's Consumers & Affiliates LP.

B. "Plan" shall mean any welfare benefit plan sponsored by AC&A.

C. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. "Beneficiary" means a person as defined by ERISA Section 3(8), 29 U.S.C., § 1002(8).

E. "Claim(s)" means an itemized statement of Services and costs made by Health Providers (as defined herein) to any Employee Welfare Benefit Plan clients for any health care Services, including pre-Service Claims, post-Service Claims, concurrent care Claims and urgent care Claims as defined by 29 C.F.R. § 2560.503-1.

F. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memorandum, reports, electronic mail, electronic documents, facsimiles, communications sent or received by computer systems or applications, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

G. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

H. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

I. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM) messages of any type disseminated through a computer network, spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or the possession, custody or control of any agent, employee, representative or other persons acting or purporting to act for or on behalf of

You or the Plan, including but not limited to notes; memoranda; records; reports; correspondence; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

J. "Email" or "electronic mail" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form must be produced in electronic form.

K. "Employee Benefit Plan" means an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C., § 1002(3).

L. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

M. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

N. "Fee" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Provider Fees.

O. "Fiduciary" shall have the same meaning as such term has under Section 3(21) of ERISA, 29 U.S.C., § 1002(21), and sections and regulations related thereto.

P. "Health Coverage" shall include any medical, surgical, mental health and substance use disorder benefits or Services, and all the variations within these Services under each option available to Plan Participants and Beneficiaries, including but not limited to, high, mid and low options offered under Fee for Service or indemnity arrangements, health maintenance organizations, preferred provider organizations and point of service plans.

Q. "Including" shall be construed to mean "without limitation."

R. "Issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of Section 514(b)(2) of ERISA, 29 U.S.C. § 1144(b)(2)).

S. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

T. "Party in Interest" means a person or entity defined in Section 3(14) of ERISA, 29 U.S.C. § 1002(14).

U. "Plan Document" means a document or instrument governing any term of the Plan, including any document or instrument that describes plan operations and administration, eligibility rules, the provision of Health Coverage, and Claims and appeals procedures.

V. "Relating to" or "reflecting" means constituting, referring to, pertaining to, responding to, regarding, evidencing, explaining, discussing, depicting, analyzing, or containing any information which in any way concerns, affects, or describes the terms or conditions, or identifies facts, with respect to the subject of the inquiry.

W. "Service Agreement" means a document setting forth specific Services to be rendered by the person providing the Services and the compensation to be paid for those Services in connection to the Plan.

X. "Service Provider" shall mean any person or entity that performed, or continues to perform, any services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, claims administrator, broker, consultant, adviser, custodian, subadviser, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. §1002(38)).

Y. "Service(s)" means any kind of product or Service offered to the Plan, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

Z. "Summary Plan Description" shall mean a summary document or documents as defined in ERISA Section 102, 29 USC §1022, and related sections.

INSTRUCTIONS

A. Scope of search. This Subpoena calls for all documents in Your possession, custody, control, to the extent not already produced by You. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, even if not in Your immediate possession, for every level of Health Coverage available under the Plan. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the date of production. Documents created prior to January 1, 2016, which have been used or relied on since January 1, 2016, or which

describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

C. Privileges and Protections. If You do not produce documents because You object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests.

If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

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DOCUMENTS TO BE PRODUCED

1. Documents relating to AC&A's organizational and management structure and ownership, including, but not limited to:

   a. Articles of incorporation, corporate bylaws, and partnership agreements;
   b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
   c. Documents sufficient to show the names and address of all divisions, affiliates, or subsidiaries and their principal lines of business;
   d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
   e. Documents sufficient to show the name and contact information for each of Your managerial employees and corporate officers.

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   a. Amendments and resolutions, with signatures;
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   h. Enrollment package provided to Participants at open enrollment and new hire, including front and back of all enrollment forms;
   i. Documents describing plan coverages, rules, costs, or changes to any of the above documents, including any Notices of Material Modifications; and
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3. Summary of Benefits and Coverage (SBC) and Uniform Glossary for the Plan.

4. Documents describing the cost of coverage for each option under the Plan, including premiums by type of coverage (e.g. single, family), employee vs. employer share of cost of coverage, and the cost of COBRA coverage.

5. Contracts, including amendments thereto, between AC&A or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, issuers, and agents. Contracts should include any performance agreements and Fee schedules reflecting compensation as well as engagement and other letters defining the scope of work.

6. Communications between AC&A or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, and agents.

7. Current fidelity bond policy, including all endorsements and riders, if applicable.

8. Current fiduciary insurance policy, including all endorsements and riders, if applicable.

9. The Plan's latest Form 5500 Annual Report filing and any associated financial statements/schedules and accountant's opinion, if applicable.

10. Form M-1 filings.

11. Documents sufficient to identify all individuals (name, position, contact information) directly or indirectly responsible for the operation, administration, and/or oversight of the Plan. This includes trustees, administrative or oversight committee members, and accounting or human resources personnel who process plan paperwork, such as enrollment, Claims, Participant inquiries, and premium payments.

12. Meeting minutes related to the Plan, including meetings by the Board of Trustees, as well as minutes of Trustee committees, subcommittees, or other administrative groups.

13. Communications between AC&A or the Plan and Employers, Plan Participants, or potential Plan Participants in connection to:

    a. The benefits provided by the Plan;
    b. The transfer of Participants from any other plan or arrangement to the Plan;
    c. The adjudication of specific Claims; and
    d. The appeal of denied Claims.

14. Marketing materials related to the Plan, including Power Point slides, brochures, emails, and other communications provided by AC&A or the Plan or in consultation with AC&A or the Plan, including communications and materials provided to Participants and to brokers, agents, or promoters.

15. Documents sufficient to identify the following with respect to all current and former Plan Participants:

    a. Name;
    b. Contact information;
    c. Basis for eligibility to participate in the Plan, including employment contracts, payroll reports, W-2s, 1099s, or other records sufficient to demonstrate the nature of any employment relationship;
    d. Enrollment date;
    e. Coverage option(s) and type of coverage (e.g. single, family);
    f. Termination date and reason for termination; and
    g. Total premiums or contributions paid through the date of production.

16. All summary pages of payroll registers showing the total amount of employee health plan contributions withheld for each pay date within the applicable time frame.

17. Documents sufficient to identify all bank accounts maintained by AC&A relating to the Plan, including:

    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account; and
    e. Authorized persons with deposit and/or withdrawal authority.

18. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
    b. Bank or investment account statements;
    c. Canceled checks, deposit slips, and electronic transfer records;
    d. Internal and external ledgers and journals; and
    e. Audited and unaudited financial statements.

19. For all rebates, including medical loss ratio rebates, experience-rated contract rebates, and any other rebate from an insurer, received by the Plan, plan sponsor, or any affiliated or related entity, in relation to the Plan:

    a. Documents detailing the amount, receipt date, source, and handling of each rebate;
    b. Sample of notice to Participants about rebates, if applicable;
    c. Documents demonstrating the allocation of rebated amounts to employer and/or employees; and
    d. Correspondence regarding how rebates are to be used or allocated.

20. Claims lag reports or other reports detailing the amount of time from Claim filing to Claim payments.

21. All Claims aging or experience reports.

22. List of all unpaid and pended claims detailing date of claim, service type, billed amount, and reason for pending.

23. External or internal auditor's reports related to the Plan's operations, including Claims audits completed by a Service Provider or consulting firm.

24. Documents utilized or relied upon to determine contribution amounts, including:

    a. External or internal actuarial reports;

b. Rate sheets;
c. Communications;
d. Underwriting and rating guidelines, methodologies, and assumptions;
e. Source data; and
f. Contracts for reinsurance, stop loss, or other form of excess loss insurance.

25. Documents sufficient to show any Fees, commissions, or other compensation received directly or indirectly by AC&A or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and AC&A or its General Partner, principals, officers, directors, managers, employees, or representatives.

28. Documents and communications relating to pending or past litigation between the Plan or AC&A and any current or former Participants or members.

29. Documents and communications relating to complaints, investigations, findings, fines, or penalties by state and federal agencies.

30. AC&A's Federal Income Tax Returns.

U.S. Department of Labor

61 Forsyth Street SW
Atlanta, Georgia 30303 Ste 7B54

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3541

CERTIFIED MAIL®

9414 8169 0116 9213 8461 84

AMERICA'S CONSUMERS AND AFFILIATES, LP
CUSTODIAN OF RECORDS, SUITE 200
ATTN: JONATHAN CRUMLY
1600 PARKWOOD CIRCLE SE
ATLANTA GA 30339-2119

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At
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339

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U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

OCT 21 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Agridata Partnership Group, LP
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), be produced in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced, including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917 or Investigator Devon King at (415) 625-2491.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA **99-002114**

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *Agridata Partnership Group, LP*
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

You are hereby required to appear before

Senior Investigator Thomas C. Gewin
of the Employee Benefits Security Administration,
U.S. Department of Labor, at
61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 8th day of November 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 21st *day of October 2019.*

Jeffrey A Monhart

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
Agridata Partnership Group, LP

DEFINITIONS

A. "Agridata," "You," or "Your" shall mean Agridata Partnership Group, LP, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of Agridata Partnership Group, LP.

B. "Plan" shall mean any welfare benefit plan sponsored by Agridata.

C. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. "Beneficiary" means a person as defined by ERISA Section 3(8), 29 U.S.C., § 1002(8).

E. "Claim(s)" means an itemized statement of Services and costs made by Health Providers (as defined herein) to any Employee Welfare Benefit Plan clients for any health care Services, including pre-Service Claims, post-Service Claims, concurrent care Claims and urgent care Claims as defined by 29 C.F.R. § 2560.503-1.

F. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memorandum, reports, electronic mail, electronic documents, facsimiles, communications sent or received by computer systems or applications, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

G. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

H. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

I. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM) messages of any type disseminated through a computer network, spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or the possession, custody or control of any agent, employee, representative or other persons acting or purporting to act for or on behalf of

You or the Plan, including but not limited to notes; memoranda; records; reports; correspondence; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

J. "Email" or "electronic mail" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form must be produced in electronic form.

K. "Employee Benefit Plan" means an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C., § 1002(3).

L. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

M. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

N. "Fee" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Provider Fees.

O. "Fiduciary" shall have the same meaning as such term has under Section 3(21) of ERISA, 29 U.S.C., § 1002(21), and sections and regulations related thereto.

P. "Health Coverage" shall include any medical, surgical, mental health and substance use disorder benefits or Services, and all the variations within these Services under each option available to Plan Participants and Beneficiaries, including but not limited to, high, mid and low options offered under Fee for Service or indemnity arrangements, health maintenance organizations, preferred provider organizations and point of service plans.

Q. "Including" shall be construed to mean "without limitation."

R. "Issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of Section 514(b)(2) of ERISA, 29 U.S.C. § 1144(b)(2)).

S. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

T. "Party in Interest" means a person or entity defined in Section 3(14) of ERISA, 29 U.S.C. § 1002(14).

U. "Plan Document" means a document or instrument governing any term of the Plan, including any document or instrument that describes plan operations and administration, eligibility rules, the provision of Health Coverage, and Claims and appeals procedures.

V. "Relating to" or "reflecting" means constituting, referring to, pertaining to, responding to, regarding, evidencing, explaining, discussing, depicting, analyzing, or containing any information which in any way concerns, affects, or describes the terms or conditions, or identifies facts, with respect to the subject of the inquiry.

W. "Service Agreement" means a document setting forth specific Services to be rendered by the person providing the Services and the compensation to be paid for those Services in connection to the Plan.

X. "Service Provider" shall mean any person or entity that performed, or continues to perform, any services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, claims administrator, broker, consultant, adviser, custodian, subadviser, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. §1002(38)).

Y. "Service(s)" means any kind of product or Service offered to the Plan, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

Z. "Summary Plan Description" shall mean a summary document or documents as defined in ERISA Section 102, 29 USC §1022, and related sections.

INSTRUCTIONS

A. Scope of search. This Subpoena calls for all documents in Your possession, custody, control, to the extent not already produced by You. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, even if not in Your immediate possession, for every level of Health Coverage available under the Plan. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the date of production. Documents created prior to January 1, 2016, which have been used or relied on since January 1, 2016, or which

describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

C. Privileges and Protections. If You do not produce documents because You object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests.

If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

D. Proprietary and Confidential. If you contend documents responsive to this Subpoena are proprietary or confidential, you should mark those documents as such and produce the documents. The Department of Labor follows procedures in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Executive Order 12600, which allows for the withholding of certain proprietary and confidential documents pursuant to the requirements of Exemption 4 of FOIA.

E. Electronically stored information. If any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, then You are directed to produce the document in computerized form in one of the following formats: Microsoft Word (doc), WordPerfect (wpd), Rich Text (rtf), Microsoft Outlook (pst), Microsoft Outlook Express (msg), Microsoft Excel (xls), Microsoft Access (mdb), Adobe Acrobat (PDF), TIFF, comma separated values (CSV), ASCII, TXT, Concordance, or Quickbooks. It is preferable to receive electronic information stored in databased or tabular format (e.g. CSV or other delimited, XLS, XLSX, etc.). Files of the preceding types can be submitted in a ZIP compressed format. Sufficient information including sufficient identification of the applicable software program and passwords, if any, and data structure (if applicable) should be provided to permit access to and use of the documents. Images created through a scanning process should have a minimum resolution of 300 dots per inch (dpi).

Where available, Claims data should be provided in Microsoft Excel (xls) or delimited flat file (e.g. text, comma-separated values (CSV), etc.), which allows for the sorting and filtering of data. A sample format of the Claims data to be provided may be made available upon request.

To the extent that any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, and it is not in one of the previously identified formats, please identify the document and the corresponding format.

Regardless of the format in which a document may exist, You are requested to preserve the integrity of the original electronic document and its contents, including the original formatting of the document, its metadata and, where applicable, its revision history.

F. Tenses. Verbs used in the past tense should be read also to include the present tense, and verbs used in the present tense should be read also to include the past tense.

G. Singular/Plural. The singular number of a noun, pronoun, or verb should be read also to include the plural, and the plural number of a noun, pronoun, or verb should be read also to include the singular.

H. Word Neutrality. All words and phrases shall be construed as masculine, feminine or gender neutral as necessary to bring within the scope of this Subpoena documents that might otherwise be construed to be outside its scope.

I. Sufficient to Show. Where a request seeks documents "sufficient" to show specified information, in lieu of producing documents, you may submit a sworn affidavit attested to by an authorized representative that provides the requested information.

J. Manner of production. All documents produced in response to this Subpoena shall comply with the following instructions:

a. You should conduct Your searches for responsive documents in a manner sufficient to identify the source and location where each responsive document is found.

b. All documents produced in response to this Subpoena shall be segregated and labeled to show the document request to which the documents are responsive and the source and location where the documents were found.

c. To the extent that documents are found in file folders and other similar containers that have labels or other identifying information, the documents shall be produced with such file folder and label information intact.

d. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.

e. All documents provided in response to this Subpoena are to include the notes written in a margin and post-its, as well as any attachment referred to or incorporated by the documents.

f. In the event that there are no documents responsive to a particular request, please specify that You have no responsive documents.

g. If documents relied upon or required to respond to any of this Subpoena, or requested documents, are no longer in Your possession, custody, or control, You

are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.

h. If no Claims/requests/appeals are identified pursuant to any part of this Subpoena, please provide copies of the identifiable source documents evidencing Your determination yielding the existence of no results, to include an explanation of how the search was conducted in Your databases, the search parameters, and any screen shots or other dated documents utilized to arrive at Your finding of no results.

K. Electronic media:

To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents relating to Agridata's organizational and management structure and ownership, including, but not limited to:

   a. Articles of incorporation, corporate bylaws, and partnership agreements;
   b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
   c. Documents sufficient to show the names and address of all divisions, affiliates, or subsidiaries and their principal lines of business;
   d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
   e. Documents sufficient to show the name and contact information for each of Your managerial employees and corporate officers.

2. Plan document(s), including the following:

   a. Amendments and resolutions, with signatures;
   b. Summary Plan Description (SPD);
   c. Wrap document;
   d. Trust Agreement;
   e. Benefits booklets;
   f. Employee handbooks which discuss employee benefits;
   g. Evidences of Coverage (EOCs) and Certificates of Coverage for each medical option;
   h. Enrollment package provided to Participants at open enrollment and new hire, including front and back of all enrollment forms;
   i. Documents describing plan coverages, rules, costs, or changes to any of the above documents, including any Notices of Material Modifications; and
   j. Documents describing and governing any supplemental benefits offered in connection to the Plan.

3. Summary of Benefits and Coverage (SBC) and Uniform Glossary for the Plan.

4. Documents describing the cost of coverage for each option under the Plan, including premiums by type of coverage (e.g. single, family), employee vs. employer share of cost of coverage, and the cost of COBRA coverage.

5. Contracts, including amendments thereto, between Agridata or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, issuers, and agents. Contracts should include any performance agreements and Fee schedules reflecting compensation as well as engagement and other letters defining the scope of work.

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7. Current fidelity bond policy, including all endorsements and riders, if applicable.

8. Current fiduciary insurance policy, including all endorsements and riders, if applicable.

9. The Plan's latest Form 5500 Annual Report filing and any associated financial statements/schedules and accountant's opinion, if applicable.

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11. Documents sufficient to identify all individuals (name, position, contact information) directly or indirectly responsible for the operation, administration, and/or oversight of the Plan. This includes trustees, administrative or oversight committee members, and accounting or human resources personnel who process plan paperwork, such as enrollment, Claims, Participant inquiries, and premium payments.

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    a. The benefits provided by the Plan;
    b. The transfer of Participants from any other plan or arrangement to the Plan;
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15. Documents sufficient to identify the following with respect to all current and former Plan Participants:

    a. Name;
    b. Contact information;
    c. Basis for eligibility to participate in the Plan, including employment contracts, payroll reports, W-2s, 1099s, or other records sufficient to demonstrate the nature of any employment relationship;
    d. Enrollment date;
    e. Coverage option(s) and type of coverage (e.g. single, family);
    f. Termination date and reason for termination; and
    g. Total premiums or contributions paid through the date of production.

16. All summary pages of payroll registers showing the total amount of employee health plan contributions withheld for each pay date within the applicable time frame.

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    a. Name of the custodian;
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    d. Purpose of the account; and
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18. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
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    a. Documents detailing the amount, receipt date, source, and handling of each rebate;
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27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and Agridata or its General Partner, principals, officers, directors, managers, employees, or representatives.

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30. Agridata's Federal Income Tax Returns.

U.S. Department of Labor

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Atlanta, Georgia 30303 ste7854

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AGRIDATE PARTNERSHIP GROUP, LP
CUSTODIAN OF RECORDS SUITE 200
ATTN: JONATHAN CRUMLY
1600 PARKWOOD CIRCLE SE
ATLANTA GA 30339-2119

Attn: Jonathan Crumly
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

OCT 21 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

United Data Group, LP
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced, including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917 or Investigator Devon King at (415) 625-2491.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA **99-002106**

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *United Data Group, LP*
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

You are hereby required to appear before

Senior Investigator Thomas C. Gewin

of the Employee Benefits Security Administration,

U.S. Department of Labor, at

61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 8th day of November 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 21st *day of October 2019.*

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
United Data Group, LP

DEFINITIONS

A. "United Data Group," "You," or "Your" shall mean United Data Group, LP, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of United Data Group, LP.

B. "Plan" shall mean any welfare benefit plan sponsored by United Data Group.

C. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. "Beneficiary" means a person as defined by ERISA Section 3(8), 29 U.S.C., § 1002(8).

E. "Claim(s)" means an itemized statement of Services and costs made by Health Providers (as defined herein) to any Employee Welfare Benefit Plan clients for any health care Services, including pre-Service Claims, post-Service Claims, concurrent care Claims and urgent care Claims as defined by 29 C.F.R. § 2560.503-1.

F. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memorandum, reports, electronic mail, electronic documents, facsimiles, communications sent or received by computer systems or applications, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

G. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

H. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

I. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM) messages of any type disseminated through a computer network, spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or the possession, custody or control of any agent, employee, representative or other persons acting or purporting to act for or on behalf of

You or the Plan, including but not limited to notes; memoranda; records; reports; correspondence; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

J. "Email" or "electronic mail" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form must be produced in electronic form.

K. "Employee Benefit Plan" means an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C., § 1002(3).

L. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

M. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

N. "Fee" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Provider Fees.

O. "Fiduciary" shall have the same meaning as such term has under Section 3(21) of ERISA, 29 U.S.C., § 1002(21), and sections and regulations related thereto.

P. "Health Coverage" shall include any medical, surgical, mental health and substance use disorder benefits or Services, and all the variations within these Services under each option available to Plan Participants and Beneficiaries, including but not limited to, high, mid and low options offered under Fee for Service or indemnity arrangements, health maintenance organizations, preferred provider organizations and point of service plans.

Q. "Including" shall be construed to mean "without limitation."

R. "Issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of Section 514(b)(2) of ERISA, 29 U.S.C. § 1144(b)(2)).

S. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

T. "Party in Interest" means a person or entity defined in Section 3(14) of ERISA, 29 U.S.C. § 1002(14).

U. "Plan Document" means a document or instrument governing any term of the Plan, including any document or instrument that describes plan operations and administration, eligibility rules, the provision of Health Coverage, and Claims and appeals procedures.

V. "Relating to" or "reflecting" means constituting, referring to, pertaining to, responding to, regarding, evidencing, explaining, discussing, depicting, analyzing, or containing any information which in any way concerns, affects, or describes the terms or conditions, or identifies facts, with respect to the subject of the inquiry.

W. "Service Agreement" means a document setting forth specific Services to be rendered by the person providing the Services and the compensation to be paid for those Services in connection to the Plan.

X. "Service Provider" shall mean any person or entity that performed, or continues to perform, any services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, claims administrator, broker, consultant, adviser, custodian, subadviser, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. §1002(38)).

Y. "Service(s)" means any kind of product or Service offered to the Plan, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

Z. "Summary Plan Description" shall mean a summary document or documents as defined in ERISA Section 102, 29 USC §1022, and related sections.

INSTRUCTIONS

A. Scope of search. This Subpoena calls for all documents in Your possession, custody, control, to the extent not already produced by You. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, even if not in Your immediate possession, for every level of Health Coverage available under the Plan. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the date of production. Documents created prior to January 1, 2016, which have been used or relied on since January 1, 2016, or which

describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

C. Privileges and Protections. If You do not produce documents because You object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests.

If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

D. Proprietary and Confidential. If you contend documents responsive to this Subpoena are proprietary or confidential, you should mark those documents as such and produce the documents. The Department of Labor follows procedures in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Executive Order 12600, which allows for the withholding of certain proprietary and confidential documents pursuant to the requirements of Exemption 4 of FOIA.

E. Electronically stored information. If any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, then You are directed to produce the document in computerized form in one of the following formats: Microsoft Word (doc), WordPerfect (wpd), Rich Text (rtf), Microsoft Outlook (pst), Microsoft Outlook Express (msg), Microsoft Excel (xls), Microsoft Access (mdb), Adobe Acrobat (PDF), TIFF, comma separated values (CSV), ASCII, TXT, Concordance, or Quickbooks. It is preferable to receive electronic information stored in databased or tabular format (e.g. CSV or other delimited, XLS, XLSX, etc.). Files of the preceding types can be submitted in a ZIP compressed format. Sufficient information including sufficient identification of the applicable software program and passwords, if any, and data structure (if applicable) should be provided to permit access to and use of the documents. Images created through a scanning process should have a minimum resolution of 300 dots per inch (dpi).

Where available, Claims data should be provided in Microsoft Excel (xls) or delimited flat file (e.g. text, comma-separated values (CSV), etc.), which allows for the sorting and filtering of data. A sample format of the Claims data to be provided may be made available upon request.

To the extent that any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, and it is not in one of the previously identified formats, please identify the document and the corresponding format.

Regardless of the format in which a document may exist, You are requested to preserve the integrity of the original electronic document and its contents, including the original formatting of the document, its metadata and, where applicable, its revision history.

F. Tenses. Verbs used in the past tense should be read also to include the present tense, and verbs used in the present tense should be read also to include the past tense.

G. Singular/Plural. The singular number of a noun, pronoun, or verb should be read also to include the plural, and the plural number of a noun, pronoun, or verb should be read also to include the singular.

H. Word Neutrality. All words and phrases shall be construed as masculine, feminine or gender neutral as necessary to bring within the scope of this Subpoena documents that might otherwise be construed to be outside its scope.

I. Sufficient to Show. Where a request seeks documents "sufficient" to show specified information, in lieu of producing documents, you may submit a sworn affidavit attested to by an authorized representative that provides the requested information.

J. Manner of production. All documents produced in response to this Subpoena shall comply with the following instructions:

a. You should conduct Your searches for responsive documents in a manner sufficient to identify the source and location where each responsive document is found.

b. All documents produced in response to this Subpoena shall be segregated and labeled to show the document request to which the documents are responsive and the source and location where the documents were found.

c. To the extent that documents are found in file folders and other similar containers that have labels or other identifying information, the documents shall be produced with such file folder and label information intact.

d. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.

e. All documents provided in response to this Subpoena are to include the notes written in a margin and post-its, as well as any attachment referred to or incorporated by the documents.

f. In the event that there are no documents responsive to a particular request, please specify that You have no responsive documents.

g. If documents relied upon or required to respond to any of this Subpoena, or requested documents, are no longer in Your possession, custody, or control, You

are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.

h. If no Claims/requests/appeals are identified pursuant to any part of this Subpoena, please provide copies of the identifiable source documents evidencing Your determination yielding the existence of no results, to include an explanation of how the search was conducted in Your databases, the search parameters, and any screen shots or other dated documents utilized to arrive at Your finding of no results.

K. Electronic media:

To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents relating to United Data Group's organizational and management structure and ownership, including, but not limited to:

   a. Articles of incorporation, corporate bylaws, and partnership agreements;
   b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
   c. Documents sufficient to show the names and address of all divisions, affiliates, or subsidiaries and their principal lines of business;
   d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
   e. Documents sufficient to show the name and contact information for each of Your managerial employees and corporate officers.

2. Plan document(s), including the following:

   a. Amendments and resolutions, with signatures;
   b. Summary Plan Description (SPD);
   c. Wrap document;
   d. Trust Agreement;
   e. Benefits booklets;
   f. Employee handbooks which discuss employee benefits;
   g. Evidences of Coverage (EOCs) and Certificates of Coverage for each medical option;
   h. Enrollment package provided to Participants at open enrollment and new hire, including front and back of all enrollment forms;
   i. Documents describing plan coverages, rules, costs, or changes to any of the above documents, including any Notices of Material Modifications; and
   j. Documents describing and governing any supplemental benefits offered in connection to the Plan.

3. Summary of Benefits and Coverage (SBC) and Uniform Glossary for the Plan.

4. Documents describing the cost of coverage for each option under the Plan, including premiums by type of coverage (e.g. single, family), employee vs. employer share of cost of coverage, and the cost of COBRA coverage.

5. Contracts, including amendments thereto, between United Data Group or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, issuers, and agents. Contracts should include any performance agreements and Fee schedules reflecting compensation as well as engagement and other letters defining the scope of work.

6. Communications between United Data Group or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, and agents.

7. Current fidelity bond policy, including all endorsements and riders, if applicable.

8. Current fiduciary insurance policy, including all endorsements and riders, if applicable.

9. The Plan's latest Form 5500 Annual Report filing and any associated financial statements/schedules and accountant's opinion, if applicable.

10. Form M-1 filings.

11. Documents sufficient to identify all individuals (name, position, contact information) directly or indirectly responsible for the operation, administration, and/or oversight of the Plan. This includes trustees, administrative or oversight committee members, and accounting or human resources personnel who process plan paperwork, such as enrollment, Claims, Participant inquiries, and premium payments.

12. Meeting minutes related to the Plan, including meetings by the Board of Trustees, as well as minutes of Trustee committees, subcommittees, or other administrative groups.

13. Communications between United Data Group or the Plan and Employers, Plan Participants, or potential Plan Participants in connection to:

    a. The benefits provided by the Plan;
    b. The transfer of Participants from any other plan or arrangement to the Plan;
    c. The adjudication of specific Claims; and
    d. The appeal of denied Claims.

14. Marketing materials related to the Plan, including Power Point slides, brochures, emails, and other communications provided by United Data Group or the Plan or in consultation with United Data Group or the Plan, including communications and materials provided to Participants and to brokers, agents, or promoters.

15. Documents sufficient to identify the following with respect to all current and former Plan Participants:

    a. Name;
    b. Contact information;
    c. Basis for eligibility to participate in the Plan, including employment contracts, payroll reports, W-2s, 1099s, or other records sufficient to demonstrate the nature of any employment relationship;
    d. Enrollment date;
    e. Coverage option(s) and type of coverage (e.g. single, family);
    f. Termination date and reason for termination; and
    g. Total premiums or contributions paid through the date of production.

16. All summary pages of payroll registers showing the total amount of employee health plan contributions withheld for each pay date within the applicable time frame.

17. Documents sufficient to identify all bank accounts maintained by United Data Group relating to the Plan, including:

    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account; and
    e. Authorized persons with deposit and/or withdrawal authority.

18. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
    b. Bank or investment account statements;
    c. Canceled checks, deposit slips, and electronic transfer records;
    d. Internal and external ledgers and journals; and
    e. Audited and unaudited financial statements.

19. For all rebates, including medical loss ratio rebates, experience-rated contract rebates, and any other rebate from an insurer, received by the Plan, plan sponsor, or any affiliated or related entity, in relation to the Plan:

    a. Documents detailing the amount, receipt date, source, and handling of each rebate;
    b. Sample of notice to Participants about rebates, if applicable;
    c. Documents demonstrating the allocation of rebated amounts to employer and/or employees; and
    d. Correspondence regarding how rebates are to be used or allocated.

20. Claims lag reports or other reports detailing the amount of time from Claim filing to Claim payments.

21. All Claims aging or experience reports.

22. List of all unpaid and pended claims detailing date of claim, service type, billed amount, and reason for pending.

23. External or internal auditor's reports related to the Plan's operations, including Claims audits completed by a Service Provider or consulting firm.

24. Documents utilized or relied upon to determine contribution amounts, including:

    a. External or internal actuarial reports;

b. Rate sheets;
c. Communications;
d. Underwriting and rating guidelines, methodologies, and assumptions;
e. Source data; and
f. Contracts for reinsurance, stop loss, or other form of excess loss insurance.

25. Documents sufficient to show any Fees, commissions, or other compensation received directly or indirectly by United Data Group or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and United Data Group or its General Partner, principals, officers, directors, managers, employees, or representatives.

28. Documents and communications relating to pending or past litigation between the Plan or United Data Group and any current or former Participants or members.

29. Documents and communications relating to complaints, investigations, findings, fines, or penalties by state and federal agencies.

30. United Data Group's Federal Income Tax Returns.

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

JUL 19 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

American Partnership Group, LP
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information ("ESI"), be produced in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced, including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA 99-002083

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *American Partnership Group, LP*
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

You are hereby required to appear before

Senior Investigator Thomas C. Gewin

of the Employee Benefits Security Administration,

U.S. Department of Labor, at

61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 2nd day of August 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 18th *day of July 2019.*

Jeffrey A. Monhart

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
American Partnership Group, LP

DEFINITIONS

A. "APG," "You," or "Your" shall mean American Partnership Group, LP, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of American Partnership Group, LP.

B. "Plan" shall mean any welfare benefit plan sponsored by APG.

C. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. "Beneficiary" means a person as defined by ERISA Section 3(8), 29 U.S.C., § 1002(8).

E. "Claim(s)" means an itemized statement of Services and costs made by Health Providers (as defined herein) to any Employee Welfare Benefit Plan clients for any health care Services, including pre-Service Claims, post-Service Claims, concurrent care Claims and urgent care Claims as defined by 29 C.F.R. § 2560.503-1.

F. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memorandum, reports, electronic mail, electronic documents, facsimiles, communications sent or received by computer systems or applications, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

G. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

H. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

I. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM) of any type disseminated through a computer network, spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or the possession, custody or control of any agent, employee, representative or other persons acting or purporting to act for or on behalf of You or the

Plan, including but not limited to notes; memoranda; records; reports; correspondence; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

J. "Email" or "electronic mail" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form must be produced in electronic form.

K. "Employee Benefit Plan" means an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C., § 1002(3).

L. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

M. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

N. "Fee" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Provider Fees.

O. "Fiduciary" shall have the same meaning as such term has under Section 3(21) of ERISA, 29 U.S.C., § 1002(21), and sections and regulations related thereto.

P. "Health Coverage" shall include any medical, surgical, mental health and substance use disorder benefits or Services, and all the variations within these Services under each option available to Plan Participants and Beneficiaries, including but not limited to, high, mid and low options offered under Fee for Service or indemnity arrangements, health maintenance organizations, preferred provider organizations and point of service plans.

Q. "Including" shall be construed to mean "without limitation."

R. "Issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of Section 514(b)(2) of ERISA, 29 U.S.C. § 1144(b)(2)).

S. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

T. "Party in Interest" means a person or entity defined in Section 3(14) of ERISA, 29 U.S.C. § 1002(14).

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V. "Relating to" or "reflecting" means constituting, referring to, pertaining to, responding to, regarding, evidencing, explaining, discussing, depicting, analyzing, or containing any information which in any way concerns, affects, or describes the terms or conditions, or identifies facts, with respect to the subject of the inquiry.

W. "Service Agreement" means a document setting forth specific Services to be rendered by the person providing the Services and the compensation to be paid for those Services in connection to the Plan.

X. "Service Provider" shall mean any person or entity that performed, or continues to perform, any services to or for the Plan, including any billing agent, marketing agent, recordkeeper, plan administrator, third party administrator, call center service, insurer, underwriter, claims administrator, broker, consultant, adviser, custodian, subadviser, transition manager, or investment manager (as defined by ERISA Section 3(38), 29 U.S.C. §1002(38)).

Y. "Service(s)" means any kind of product or Service offered to the Plan, including but not limited to medical or health Services, insurance coverage, Claims processing, recordkeeping, call center Services, enrollee education, group insurance products, and third-party administration products or Services. Medical and health Services shall be broadly construed to include dental, vision, physical therapy, speech therapy, occupational therapy, psychotherapy, therapy for drug and alcohol addiction, treatment for eating disorders, and drugs or devices.

Z. "Summary Plan Description" shall mean a summary document or documents as defined in ERISA Section 102, 29 USC §1022, and related sections.

INSTRUCTIONS

A. Scope of search. This Subpoena calls for all documents in Your possession, custody, control, to the extent not already produced by You. You are required to search for, obtain and produce all responsive documents, including without limitation documents that are in Your custody or control, even if not in Your immediate possession, for every level of Health Coverage available under the Plan. This includes any responsive documents in the possession, custody or control of any person acting on Your behalf or under Your direction or control, such as Your employees, accountants, agents, representatives, attorneys or advisors.

B. Relevant time period. Unless otherwise specified, the time period covered by this Subpoena is from January 1, 2016 to the date of production. Documents created prior to January 1, 2016, which have been used or relied on since January 1, 2016, or which

describe legal duties which remain in effect after January 1, 2016 (such as contracts and trust agreements), shall be considered as included within the time period covered by this Subpoena.

C. Privileges and Protections. If You do not produce documents because You object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests.

If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents You claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; 6) the identity of each person to whom the document was directed or distributed; and 7) the nature of the document, e.g., letter, memorandum.

D. Proprietary and Confidential. If you contend documents responsive to this Subpoena are proprietary or confidential, you should mark those documents as such and produce the documents. The Department of Labor follows procedures in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Executive Order 12600, which allows for the withholding of certain proprietary and confidential documents pursuant to the requirements of Exemption 4 of FOIA.

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d. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.

e. All documents provided in response to this Subpoena are to include the notes written in a margin and post-its, as well as any attachment referred to or incorporated by the documents.

f. In the event that there are no documents responsive to a particular request, please specify that You have no responsive documents.

g. If documents relied upon or required to respond to any of this Subpoena, or requested documents, are no longer in Your possession, custody, or control, You

are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.

h. If no Claims/requests/appeals are identified pursuant to any part of this Subpoena, please provide copies of the identifiable source documents evidencing Your determination yielding the existence of no results, to include an explanation of how the search was conducted in Your databases, the search parameters, and any screen shots or other dated documents utilized to arrive at Your finding of no results.

K. Electronic media:

To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents relating to APG's organizational and management structure and ownership, including, but not limited to:

   a. Articles of incorporation, corporate bylaws, and partnership agreements;
   b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
   c. Documents sufficient to show the names and address of all divisions, affiliates, or subsidiaries and their principal lines of business;
   d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
   e. Documents sufficient to show the name and contact information for each of Your managerial employees and corporate officers.

2. Plan document(s), including the following:

   a. Amendments and resolutions, with signatures;
   b. Summary Plan Description (SPD);
   c. Wrap document;
   d. Trust Agreement;
   e. Benefits booklets;
   f. Employee handbooks which discuss employee benefits;
   g. Evidences of Coverage (EOCs) and Certificates of Coverage for each medical option;
   h. Enrollment package provided to Participants at open enrollment and new hire, including front and back of all enrollment forms;
   i. Documents describing plan coverages, rules, costs, or changes to any of the above documents, including any Notices of Material Modifications; and
   j. Documents describing and governing any supplemental benefits offered in connection to the Plan.

3. Summary of Benefits and Coverage (SBC) and Uniform Glossary for the Plan.

4. Documents describing the cost of coverage for each option under the Plan, including premiums by type of coverage (e.g., single, family), employee vs. employer share of cost of coverage, and the cost of COBRA coverage.

5. Contracts, including amendments thereto, between APG or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, issuers, and agents. Contracts should include any performance agreements and Fee schedules reflecting compensation as well as engagement and other letters defining the scope of work.

6. Communications between APG or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, and agents.

7. Current fidelity bond policy, including all endorsements and riders, if applicable.

8. Current fiduciary insurance policy, including all endorsements and riders, if applicable.

9. The Plan's latest Form 5500 Annual Report filing and any associated financial statements/schedules and accountant's opinion, if applicable.

10. Form M-1 filings.

11. Documents sufficient to identify all individuals (name, position, contact information) directly or indirectly responsible for the operation, administration, and/or oversight of the Plan. This includes trustees, administrative or oversight committee members, and accounting or human resources personnel who process plan paperwork, such as enrollment, Claims, Participant inquiries, and premium payments.

12. Meeting minutes related to the Plan, including meetings by the Board of Trustees, as well as minutes of Trustee committees, subcommittees, or other administrative groups.

13. Communications between APG or the Plan and Employers, Plan Participants, or potential Plan Participants in connection to:

    a. The benefits provided by the Plan;
    b. The transfer of Participants from any other plan or arrangement to the Plan;
    c. The adjudication of specific Claims; and
    d. The appeal of denied Claims.

14. Marketing materials related to the Plan, including Power Point slides, brochures, emails, and other communications provided by APG or the Plan or in consultation with APG or the Plan, including communications and materials provided to Participants and to brokers, agents, or promoters.

15. Documents sufficient to identify the following with respect to all current and former Plan Participants:

    a. Name;
    b. Contact information;
    c. Basis for eligibility to participate in the Plan, including employment contracts, payroll reports, W-2s, 1099s, or other records sufficient to demonstrate the nature of any employment relationship;
    d. Enrollment date;
    e. Coverage option(s) and type of coverage (e.g., single, family);
    f. Termination date and reason for termination; and
    g. Total premiums or contributions paid through the date of production.

16. All summary pages of payroll registers showing the total amount of employee health plan contributions withheld for each pay date within the applicable time frame.

17. Documents sufficient to identify all bank accounts maintained by APG relating to the Plan, including:

    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account; and
    e. Authorized persons with deposit and/or withdrawal authority.

18. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
    b. Bank or investment account statements;
    c. Canceled checks, deposit slips, and electronic transfer records;
    d. Internal and external ledgers and journals; and
    e. Audited and unaudited financial statements.

19. For all rebates, including medical loss ratio rebates, experience-rated contract rebates, and any other rebate from an insurer, received by the Plan, plan sponsor, or any affiliated or related entity, in relation to the Plan:

    a. Documents detailing the amount, receipt date, source, and handling of each rebate;
    b. Sample of notice to Participants about rebates, if applicable;
    c. Documents demonstrating the allocation of rebated amounts to employer and/or employees; and
    d. Correspondence regarding how rebates are to be used or allocated.

20. Claims lag reports or other reports detailing the amount of time from Claim filing to Claim payments.

21. All Claims aging or experience reports.

22. List of all unpaid and pended claims detailing date of claim, service type, billed amount, and reason for pending.

23. External or internal auditor's reports related to the Plan's operations, including Claims audits completed by a Service Provider or consulting firm.

24. Documents utilized or relied upon to determine contribution amounts, including:

    a. External or internal actuarial reports;

b. Rate sheets;
c. Communications;
d. Underwriting and rating guidelines, methodologies, and assumptions;
e. Source data; and
f. Contracts for reinsurance, stop loss, or other form of excess loss insurance.

25. Documents sufficient to show any Fees, commissions, or other compensation received directly or indirectly by APG or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and APG or its General Partner, principals, officers, directors, managers, employees, or representatives.

28. Documents and communications relating to pending or past litigation between the Plan or APG and any current or former Participants or members.

29. Documents and communications relating to complaints, investigations, findings, fines, or penalties by state and federal agencies.

30. APG's Federal Income Tax Returns.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

American Partnership Group
Custodian of Records
Attn: Jonathan Crumly
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

9590 9402 3270 7196 1744 74

2. Article Number (Transfer from service label)
7017 0530 0000 2055 8449

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Registered Agent

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

U.S. Department of Labor

Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, Illinois 60604
Phone: (312) 353-0900

JUL 19 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Data Partnership Group, Limited Partnership
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

Re: Anjo, LLC
Case Number: 99-000016(50)

Dear Custodian of Records:

This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(1), to determine whether any person has violated or is about to violate any provision of Title I of ERISA. Enclosed is a subpoena which requires you to produce certain documents and records in connection with that investigation.

Your personal appearance pursuant to this subpoena will not be required at this time provided the documents are produced on or before the date noted in the subpoena. You will be informed at a later date if your personal appearance to testify is required. Even though your appearance is not now being required, please provide a cover letter with your response which identifies the documents being produced. Your cover letter should also state whether a diligent search has been made for the subpoenaed documents and that the documents transmitted constitute all documents called for by the subpoena.

The subpoena requests that you produce documents maintained in electronic form, Electronically Stored Information (ESI), be produced in electronic form. The formats in which EBSA can accept ESI are listed in the subpoena. When producing ESI, you should produce the materials as maintained on your computer system, i.e., you should produce ESI with all files, folders and sub-folders intact, and you should produce emails with all attachments intact.

If any documents called for are not produced, please list such documents and indicate their location and the reason for their non-production.

If you have any questions concerning your rights and duties, you may wish to consult counsel. If you have any questions concerning the subpoena or the documents required to be produced, including the production of ESI and the appropriate format and media, please call Senior Investigator Thomas C. Gewin at (404) 302-3917.

Sincerely,

Jeffrey A. Monhart
Regional Director
Chicago Regional Office
Employee Benefits Security Administration

Enclosure

SUBPOENA 99-002085

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To: *Data Partnership Group, Limited Partnership*
Custodian of Records
ATTN: Jonathan Crumly, Registered Agent
1600 Parkwood Circle
Suite 200
Atlanta, GA 30339

You are hereby required to appear before

Senior Investigator Thomas C. Gewin

of the Employee Benefits Security Administration,

U.S. Department of Labor, at

61 Forsyth Street SW, Suite 7B54,

in the City of Atlanta, Georgia, 30303, on the 2nd day of August 2019, at 10:00 a.m. of that day, to testify in the matter of an investigation of

Anjo, LLC

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

SEE ATTACHMENT

Fail not at your peril.

In testimony whereof *I have hereunto affixed my signature and the seal of the* **United States Department of Labor** *at Chicago, Illinois on this* 18th *day of July 2019.*

Jeffrey A. Monhart

Jeffrey A. Monhart, Regional Director

ATTACHMENT TO SUBPOENA
Data Partnership Group, Limited Partnership

DEFINITIONS

A. "DPG," "You," or "Your" shall mean Data Partnership Group, Limited Partnership, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of Data Partnership Group, Limited Partnership.

B. "Plan" shall mean the Data Partnership Group, LP Employee Benefit Plan.

C. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

D. "Beneficiary" means a person as defined by ERISA Section 3(8), 29 U.S.C., § 1002(8).

E. "Claim(s)" means an itemized statement of Services and costs made by Health Providers (as defined herein) to any Employee Welfare Benefit Plan clients for any health care Services, including pre-Service Claims, post-Service Claims, concurrent care Claims and urgent care Claims as defined by 29 C.F.R. § 2560.503-1.

F. "Communication" means any oral, written, electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memorandum, reports, electronic mail, electronic documents, facsimiles, communications sent or received by computer systems or applications, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions.

G. "Describe" including its various forms such as "describing," means to fully identify, narrate, present, recite, recount, or otherwise set forth in detail.

H. "Discuss" including its various forms such as "discussing," means to review, report, summarize, evaluate, examine, explain, or consider, as well as discuss.

I. "Document(s)" means, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM) of any type disseminated through a computer network, spreadsheets, databases, electronic calendars and contact managers, back-up data, and/or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical storage device), however produced, reproduced or stored, of every kind of description within Your possession, custody or control, or the possession, custody or control of any agent, employee,

representative or other persons acting or purporting to act for or on behalf of You or the Plan, including but not limited to notes; memoranda; records; reports; correspondence; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this Subpoena.

J. "Email" or "electronic mail" means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form must be produced in electronic form.

K. "Employee Benefit Plan" means an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C., § 1002(3).

L. "Employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an Employee Welfare Benefit Plan; includes a group or association of employers acting for an employer in such capacity, as defined in Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

M. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq., as amended.

N. "Fee" means any charge, including administration Fees, Service Fees, per capita Fees, management Fees, and participating Provider Fees.

O. "Fiduciary" shall have the same meaning as such term has under Section 3(21) of ERISA, 29 U.S.C., § 1002(21), and sections and regulations related thereto.

P. "Health Coverage" shall include any medical, surgical, mental health and substance use disorder benefits or Services, and all the variations within these Services under each option available to Plan Participants and Beneficiaries, including but not limited to, high, mid and low options offered under Fee for Service or indemnity arrangements, health maintenance organizations, preferred provider organizations and point of service plans.

Q. "Including" shall be construed to mean "without limitation."

R. "Issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of Section 514(b)(2) of ERISA, 29 U.S.C. § 1144(b)(2)).

S. "Participant" means a person as defined by ERISA Section 3(7), 29 U.S.C. § 1002(7).

T. "Party in Interest" means a person or entity defined in Section 3(14) of ERISA, 29 U.S.C. § 1002(14).

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d. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.

e. All documents provided in response to this Subpoena are to include the notes written in a margin and post-its, as well as any attachment referred to or incorporated by the documents.

f. In the event that there are no documents responsive to a particular request, please specify that You have no responsive documents.

g. If documents relied upon or required to respond to any of this Subpoena, or requested documents, are no longer in Your possession, custody, or control, You

are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.

h. If no Claims/requests/appeals are identified pursuant to any part of this Subpoena, please provide copies of the identifiable source documents evidencing Your determination yielding the existence of no results, to include an explanation of how the search was conducted in Your databases, the search parameters, and any screen shots or other dated documents utilized to arrive at Your finding of no results.

K. Electronic media:

To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD) or USB hard drive.

DOCUMENTS TO BE PRODUCED

1. Documents relating to DPG's organizational and management structure and ownership, including, but not limited to:

   a. Articles of incorporation, corporate bylaws, and partnership agreements;
   b. Organizational charts, descriptions of Your organizational and supervisory structure, and any documents describing the responsibilities of principals, officers, directors, managers, employees, representatives, and independent contractors;
   c. Documents sufficient to show the names and address of all divisions, affiliates, or subsidiaries and their principal lines of business;
   d. Documents sufficient to show the identities and percentage of ownership of all of Your shareholders, limited partners, and/or members, excluding those persons holding only publicly traded shares of a parent organization; and
   e. Documents sufficient to show the name and contact information for each of Your managerial employees and corporate officers.

2. Plan document(s), including the following:

   a. Amendments and resolutions, with signatures;
   b. Summary Plan Description (SPD);
   c. Wrap document;
   d. Trust Agreement;
   e. Benefits booklets;
   f. Employee handbooks which discuss employee benefits;
   g. Evidences of Coverage (EOCs) and Certificates of Coverage for each medical option;
   h. Enrollment package provided to Participants at open enrollment and new hire, including front and back of all enrollment forms;
   i. Documents describing plan coverages, rules, costs, or changes to any of the above documents, including any Notices of Material Modifications; and
   j. Documents describing and governing any supplemental benefits offered in connection to the Plan.

3. Summary of Benefits and Coverage (SBC) and Uniform Glossary for the Plan.

4. Documents describing the cost of coverage for each option under the Plan, including premiums by type of coverage (e.g., single, family), employee vs. employer share of cost of coverage, and the cost of COBRA coverage.

5. Contracts, including amendments thereto, between DPG or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, issuers, and agents. Contracts should include any performance agreements and Fee schedules reflecting compensation as well as engagement and other letters defining the scope of work.

6. Communications between DPG or the Plan and Service Providers, including brokers, consultants, third party administrators, record-keepers, actuaries, Claim processors, and agents.

7. Current fidelity bond policy, including all endorsements and riders, if applicable.

8. Current fiduciary insurance policy, including all endorsements and riders, if applicable.

9. The Plan's latest Form 5500 Annual Report filing and any associated financial statements/schedules and accountant's opinion, if applicable.

10. Form M-1 filings.

11. Documents sufficient to identify all individuals (name, position, contact information) directly or indirectly responsible for the operation, administration, and/or oversight of the Plan. This includes trustees, administrative or oversight committee members, and accounting or human resources personnel who process plan paperwork, such as enrollment, Claims, Participant inquiries, and premium payments.

12. Meeting minutes related to the Plan, including meetings by the Board of Trustees, as well as minutes of Trustee committees, subcommittees, or other administrative groups.

13. Communications between DPG or the Plan and Employers, Plan Participants, or potential Plan Participants in connection to:

    a. The benefits provided by the Plan;
    b. The transfer of Participants from any other plan or arrangement to the Plan;
    c. The adjudication of specific Claims; and
    d. The appeal of denied Claims.

14. Marketing materials related to the Plan, including Power Point slides, brochures, emails, and other communications provided by DPG or the Plan or in consultation with DPG or the Plan, including communications and materials provided to Participants, Employers, and to brokers, agents, or promoters.

15. Documents sufficient to identify the following with respect to all current and former Plan Participants:

    a. Name;
    b. Contact information;
    c. Basis for eligibility to participate in the Plan, including employment contracts, payroll reports, W-2s, 1099s, or other records sufficient to demonstrate the nature of any employment relationship;
    d. Enrollment date;
    e. Coverage option(s) and type of coverage (e.g., single, family);
    f. Termination date and reason for termination; and
    g. Total premiums or contributions paid through the date of production.

16. All summary pages of payroll registers showing the total amount of employee health plan contributions withheld for each pay date within the applicable time frame.

17. Documents sufficient to identify all bank accounts maintained by DPG relating to the Plan, including:

    a. Name of the custodian;
    b. Account number;
    c. Contact information for account representatives;
    d. Purpose of the account; and
    e. Authorized persons with deposit and/or withdrawal authority.

18. Documents sufficient to show the Plan's income, expenses, assets, and liabilities on a monthly basis for the period under review, including:

    a. Invoices;
    b. Bank or investment account statements;
    c. Canceled checks, deposit slips, and electronic transfer records;
    d. Internal and external ledgers and journals; and
    e. Audited and unaudited financial statements.

19. For all rebates, including medical loss ratio rebates, experience-rated contract rebates, and any other rebate from an insurer, received by the Plan, plan sponsor, or any affiliated or related entity, in relation to the Plan:

    a. Documents detailing the amount, receipt date, source, and handling of each rebate;
    b. Sample of notice to Participants about rebates, if applicable;
    c. Documents demonstrating the allocation of rebated amounts to employer and/or employees; and
    d. Correspondence regarding how rebates are to be used or allocated.

20. Claims lag reports or other reports detailing the amount of time from Claim filing to Claim payments.

21. All Claims aging or experience reports.

22. List of all unpaid and pended claims detailing date of claim, service type, billed amount, and reason for pending.

23. External or internal auditor's reports related to the Plan's operations, including Claims audits completed by a Service Provider or consulting firm.

24. Documents utilized or relied upon to determine contribution amounts, including:

    a. External or internal actuarial reports;

b. Rate sheets;
c. Communications;
d. Underwriting and rating guidelines, methodologies, and assumptions;
e. Source data; and
f. Contracts for reinsurance, stop loss, or other form of excess loss insurance.

25. Documents sufficient to show any Fees, commissions, or other compensation received directly or indirectly by DPG or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and DPG or its General Partner, principals, officers, directors, managers, employees, or representatives.

28. Documents and communications relating to pending or past litigation between the Plan or DPG and any current or former Participants or members.

29. Documents and communications relating to complaints, investigations, findings, fines, or penalties by state and federal agencies.

30. DPG's Federal Income Tax Returns.

EXHIBIT

taylor | english

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November 6, 2020

Via email and US Mail

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Re: Anjo, LLC; DOL Case Number: 99-000016(50) (the "Anjo Investigation")

Dear Sirs and Madams:

As you know, this law firm represents several entities that have been served subpoenas in the Anjo Investigation. These entities include Suffolk Administrative Services, LLC ("SAS"), Providence Insurance Partners, LLC ("PIP"), and Providence Insurance Company, I.I. ("PIC").

It is our understanding that in addition to the 3 subpoenas served on our clients noted above, DOL has served at least 11 subpoenas on entities implementing Partnership Plans (defined below), and at least 5 subpoenas on other businesses engaged in providing services to the self-insured group plans offered by various Limited Partnerships (each an "LP" and, collectively, "the LPs"). All of these nearly 20 subpoenas are expansive in scope, both as to subject matter and relevant time period. To our knowledge, every entity receiving subpoenas in the Anjo Investigation has cooperated to the best of their ability and resource levels.

At least as to the subpoenas served on our clients, each of them includes a cover letter indicating "This office is conducting an investigation of the above-referenced matter pursuant to § 504(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1134(a)(l), to determine whether any person has violated or is about to violate any provision of Title I of ERISA." Each subpoena itself repeats this extremely vague, broad description of the scope of the Anjo Investigation as being pursued "in order to determine whether any person has violated or is about to violate any

provision of Title I of ERISA or any regulation or order thereunder." In the fifteen months since DOL began issuing subpoenas, no further explanation has been provided as to the purpose, scope, or alleged violation of ERISA, its regulations or orders "thereunder" which have been committed by Anjo or any person or entity receiving any of the subpoenas.

Our clients have all cooperated with DOL in the Anjo Investigation at great cost in legal fees and lost productivity. As we have informed you several times, each of these entities is a small business with limited personnel resources available to respond to these various subpoenas. Despite these limited resources, our clients and associated entities implementing the Partnership Plans have produced nearly 20,000 documents comprising over 200,000 pages in response to the various DOL subpoenas issued in furtherance of the Anjo Investigation.

Our clients' constitutionally protected interactions with DOL officials provides a framework for understanding their current posture in seeking clarity and conclusion to the Anjo Investigation. We believe the history of these interactions is worthy of recapping in this letter.

In October 2018 (the "October 2018 Meeting"), representatives of LP Management Services LLC ("LPMS"), SAS, and PIP met with DOL in an effort to be transparent with the relevant regulatory agencies that would interact with the proposed plan, its participants, and its sponsors. In attendance at the October 2018 Meeting and representing the interests of LPMS, SAS, and PIP was attorney Alexander Renfro, among others. Attending and representing the interests of DOL were Preston Rutledge, Assistant Secretary of DOL and head of Employee Benefits Security Administration division of DOL, and others. By all accounts, the October 2018 Meeting was collegial and constructive. LPMS, SAS, and PIP representatives explained the partnership plan structure to DOL representatives, and provided high-level detail of the goals of the plans and the business structure. Assistant Secretary Rutledge told representatives from LPMS, SAS, and PIP that the best route to ensure approval of the partnership plan structure by DOL was to submit a formal Advisory Opinion Request. The parties agreed to continue discussions so that DOL could be comfortable evaluating the proposed health benefits plan to determine if it was ERISA compliant. Clearly, our clients walked through the front door of DOL in good faith seeking open, honest dialogue about the proposed novel structure.

On November 8, 2018, LPMS filed a formal Advisory Opinion Request (the "2018 Request") with DOL, seeking guidance on whether its proposed health insurance plans (the "Partnership Plans") were lawful single-employer health plans under ERISA. The structure was developed by Mr. Renfro, the Chief Legal Officer of PIP and a principal in SAS and PIC. Mr. Renfro, as attorney for LPMS, was the principal author and sole signatory of the 2018 Request. The 2018 Request detailed the legal and factual basis for application of ERISA to the Partnership Plans building upon the previously recognized concept under ERISA of "working owners."

Given the novel nature of the structure, LPMS sought guidance from DOL with respect to four issues: that (i) a single-employer self-insured group health plan sponsored by a limited partnership is an "employee welfare benefit plan" within the meaning of ERISA § 3(1); (ii) a single-employer self-insured group health plan sponsored by a limited partner is a "group health plan" within the meaning of Part 7 of Subtitle B of Title I of ERISA ("Part 7"); (iii) the limited partners participating in the limited Partnership's single-employer self-insured group health plan are "participants" within the meaning of ERISA Section 3(7); and, (iv) the single-employer self-insured group health plan sponsored by the limited partnership is governed by Title I of ERISA. In response to questions posed verbally by DOL officials, LPMS made two revisions to its initial request. On January 15, 2019, and on February 27, 2019, LPMS submitted revised versions of the 2018 Request, culminating in a final revised request ("Revised Request") to include additional factors and legal arguments for consideration by DOL. All

of these interactions were initiated by our clients in good faith, seeking collaborative interactions with DOL as the regulatory authority over ERISA.

In the weeks and months that followed, DOL gave several indications that it would not oppose the use of Partnership Plans. Assistant Secretary Rutledge verbally expressed to Christopher Condeluci, a paid advisor to SAS, that he did not see why DOL needed to issue an Advisory Opinion, because ERISA already allows partners to be treated as employees for purposes of plan eligibility. During this conversation, Mr. Rutledge told Mr. Condeluci that LPMS should "just do it," meaning implement the Partnership Plans. Acting in reliance on such statements, LPMS formed several Partnership Plans, and the sponsors of those plans began accepting limited partners as participants in their health plans. At or around this time, seven sitting state Attorneys General sent a letter to Secretary Acosta, stressing the urgency of the public health problem that the LPMS structure addressed, and requesting expedited consideration of the Revised Request (the "AG Letter"). DOL made no formal response whatsoever to any of these submissions.

Instead, during a meeting on March 6, 2019, then DOL Chief of Staff Nicholas Geale told a group of representatives from LPMS, SAS, PIP, and interested states, including Mr. Renfro, Mr. Condeluci, and Louisiana Attorney General Jeff Landry that although the Partnership Plan structure was "ingenious" and that he "wished he'd thought of it," DOL could not respond to the Revised Request due to a perceived conflict with litigation around DOL's new Association Health Plan (AHP) rule. At one point during the meeting, representatives from DOL became agitated and stated that if the LPMS group disagreed about DOL's priorities, they should "take it up with the White House."

In a subsequent meeting between Mr. Condeluci and Mr. Geale, DOL proposed that if LPMS would withdraw the Revised Request (and/or cease pressing for an answer to it), Geale would "look [LPMS representatives] in the eye" and promise that DOL would not investigate or otherwise interfere with any LPMS-managed Partnership Plans. Mr. Geale's offer may have been sincere, but it was of little value to our clients, because even assuming DOL refrained from investigating or hampering the partnerships implementing the Partnership Plans, the fifty separate state insurance regulators could pose significant and indefinite regulatory burdens on the partnerships through investigations and rulings of their own. It simply was not practical or advisable to rely on handshake promises with the threat of adverse actions by individual states in the absence of ERISA guidance from DOL. Several other members of DOL were present for portions of this meeting, including, upon information and belief, Secretary Acosta, Assistant Secretary Rutledge, members of the enforcement division of DOL, and Joseph Canary, who is the Director of the Office of Regulations of Interpretations and the author of the subsequent adverse Response (described below).

The first subpoenas known to our clients related to the Anjo Investigation were issued by DOL on July 19, 2019, shortly after the aforementioned meeting between Mr. Condeluci and numerous DOL officials, thus beginning the Anjo Investigation with DOL having never posed a single written question or other formal response to the Revised Request, or the AG letter. DOL issued subpoenas to every entity doing business with our clients, including some businesses that have nothing whatsoever to do with any Partnership Plans. Such actions leave our clients with little options other than to assume that the intent of the Anjo Investigation and the subpoenas is to intimidate our clients and their business partners, despite the Partnership Plans compliance with ERISA. Our clients have complied in good faith with all requests, and encouraged their business partners to do the same. Nevertheless, such compliance efforts come at a price, having collectively cost tens of thousands of dollars in legal fees plus costs and uncountable time and energy of limited staff required to date for compliance (which could have been much better spent serving clients and improving all aspects of their businesses).

Immediately before the initiation of the Anjo Investigation and since that time, DOL inexplicably and rapidly changed course in its dealings with our clients regarding the propriety of the Partnership Plans. As the Anjo Investigation got under way, a long-scheduled June 2019 meeting between LPMS, SAS, PIP, and DOL was abruptly pushed back to July. When it finally occurred, it lasted only ten minutes and the representatives from DOL demonstrated little interest in continuing discussions with LPMS, SAS, and PIP about the Partnership Plans or the Revised Request.

As you are also aware, DOL's failure to respond to the Revised Request or the AG Letter eventually led LPMS and Data Marketing Partnership LP (one of the LPMS-managed limited partnerships utilizing the Partnership Plan model) to file suit against DOL in the United States District Court for the Northern District of Texas. *See*, *Data Marketing Partnership LP and LP Management Services, LLC v. Department of Labor*, Civil Case 4:19–cv–00800–O (the "AO Case"). On January 24, 2020, less than one week before its answer was due in the AO Case, DOL finally issued an adverse action response to the Advisory Opinion request ("Response") to the AO Request. After amending the complaint and seeking a preliminary injunction within a week of receiving the Response, DOL contacted counsel for LPMS and DMP, in accordance with the District Court's directive to discuss the case. Shortly after this initial conference, DOL, LPMS and DMP agreed that no discovery would be required and that the parties would submit cross-motions for summary judgment on an expedited basis. While DOL agreed that the AO Case should be decided without discovery on an expedited summary judgment briefing basis, DOL continued to issue subpoenas to our clients and their business associates in the Anjo Investigation.

The AO Case culminated in a decisive ruling by the District Court granting summary judgment to LPMS and DMP, while denying summary judgment to DOL. That order determined as a matter of law that the Partnership Plans, as implemented by LPMS and DMP, were single-employer benefits plans subject to ERISA. The Court also enjoined DOL from acting on the Response.

Following receipt of the AO Case order on summary judgment, our office contacted Senior Investigator Gewin and made a good faith offer to organize an interview with Mr. Renfro concerning the Partnership Plans and the various components of the operation of those Partnership Plans. In response, Senior Investigator Gewin declined the offer. Presumably, this rejection was after consultation with all or most recipients of this letter.

Following commencement of the Anjo Investigation and its plodding progress, President Trump signed Executive Order 13924, Executive Order on Regulatory Relief to Support Economic Recovery on May 19, 2020 (the "EO"). Paul J. Ray, Administrator for the Office of Information and Regulatory Affairs, issued a Memo implementing Section 6 of the EO, at the direction of the Director of the Office of Management and Budget, Russel T. Vaught ("Memo"). Section 6 of the EO directs heads of all agencies to "consider principles of fairness in administrative enforcement and adjudication." To effect this policy, the Office of Information and Regulatory Affairs suggested implementation of a number of practices and procedures. The EO and Memo provide relevant instruction as to numerous problems with the Anjo Investigation.

For example, the Memo states, "[a]dministrative enforcement should be prompt and fair." It further instructs agencies that, "[a]dministrative enforcement should be free of improper Government coercion." Importantly, it emphasizes, ***"[r]etaliatory or punitive motives, or the desire to compel capitulation***, should not form the basis for an agency's selection of targets or investigations ..." (emphasis added). It is obvious from the timing, duration, scope, and other factors that DOL is not complying with these basic tenants of fairness, justice, and equal protection highlighted by the Memo.

Moreover, the Memo suggests certain practices in the actual conduct of otherwise appropriate investigations. The Memo instructs agencies to "ensure that members of the regulated public are not required to prove a negative to prevent liability," and to "consider applying the rule of lenity in administrative investigations…" Further, "regulations should require investigating staff to either recommend or bring an enforcement action, or instead cease the investigation…" Finally, the Memo provides that "[a]dministrative adjudicators should operate independently of enforcement staff on matters within their areas of adjudication." To date, DOL's Anjo Investigation has failed to implement all of these fundamental considerations of due process.

With the above history in mind, our clients seek clarification from DOL concerning the Anjo Investigation. Specifically, our clients would like DOL to inform them:

1. Based on the information provided to date in the Anjo Investigation, have any of our clients violated or, in your informed opinion, are they about to violate any provision of Title I of ERISA or any regulation or order thereunder?
   a. If so, which clients?
   b. If so, which specific provision of Title I of ERISA or any regulation or order thereunder are they suspected of violating or being "about to violate"?
2. Given that the Anjo Investigation has now continued for over fifteen months, what is the period within which DOL intends to either recommend or bring an enforcement action for any such alleged violation?
   a. If DOL cannot provide this period, why not?
   b. If DOL can provide this period, when will it provide this information to our clients?

Regardless of the responses to the above, our clients have authorized us to engage in constructive dialogue with DOL to resolve any issues it perceives with the Partnership Plans, their operation, and any open but undisclosed issues raised in the Anjo Investigation. This offer demonstrates our clients continuing good faith efforts to cooperate with DOL, dating back to the October 2018 Meeting. Despite the continuing strain on our clients' resources required by its responses to the Anjo Investigation, our clients continue to desire good faith dialogue with DOL. We understand from prior comments by some recipients of this letter that DOL is also facing strained resources in pursuing the Anjo Investigation. Considering the AO Case order and these burdens on the resources of both sides, we believe it is in the best interests of DOL, our clients, and the limited partners enrolled in Partnership Plans to develop a framework allowing for each side to be assured that our clients' Partnership Plans are operating in full compliance with all ERISA statutes, regulations, and orders.

With that in mind, our clients are willing to offer the following for DOL's consideration as a path to reach conclusion to the Anjo Investigation:

- The scope and concerns of the Anjo Investigation will be explicitly defined by DOL.
- The Anjo Investigation will hereafter be limited to SAS, PIP, PIC, other vendors to the Partnership Plans, and entities sponsoring the Partnership Plans, and all other entities will receive formal notice that they are not targets of the Anjo Investigation.[1]

[1]Please note that if DOL has lingering, separate issues with Agentra LLC and/or American Worker's Insurance Services, Inc. aka "AWIS", our clients do not object to DOL continuing to pursue those as matters outside the

- A target date for formal conclusion of the Anjo Investigation will be established and agreed to by the Parties.
- Our clients will voluntarily provide annual reporting on the claims history and average claims trust account balances for any Partnership Plans to DOL every March, beginning March 2021, for 3 years.
- If any of the Partnership Plans modify their plan documents, trust documents, or summaries of benefits and coverage, and SAS, PIP, or PIC are still servicing said organization(s), then copies of these modifications will be provided to the DOL within thirty (30) days of their effective date.
- Mr. Renfro will sit down with EBSA and DOL Solicitor's Office at their convenience to describe the model of the Partnership Plans and application of applicable ERISA treatment, including any consumer protection enhancements implemented by the LPs at the recommendation of SAS, PIP, and PIC.

We appreciate your attention in this regard. Our clients certainly hope you receive this letter and the above offer in good faith as that is the motivation for issuing it. Should you have any questions, please do not hesitate to contact us.

Sincerely,

Jonathan D. Crumly

cc: Clients (via email only)

Partnership Plans. As of the date of this letter, neither Agentra nor AWIS provide vendor services of any kind to any Partnership Plans sponsored by the LPs.

EXHIBIT H

U.S. Department of Labor

Office of the Solicitor
Washington, DC 20210

December 14, 2020

VIA ELECTRONIC MAIL

Jonathan D. Crumly
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Re: Anjo, LLC
EBSA Case Number: 99-000016(50)

Dear Mr. Crumly,

This letter responds to your letter dated November 6, 2020, concerning the above-captioned investigation being conducted by the Secretary of Labor, U.S. Department of Labor, Employee Benefits Security Administration (Secretary). Your firm represents Suffolk Administrative Services, LLC, Providence Insurance Partners, LLC, and Providence Insurance Company, I.I. (PIC), which have been subpoenaed for information in connection with the investigation. You described the scope of the Secretary's investigation as being "extremely vague," the subpoenas issued by EBSA as being "expansive in scope," and how responding to these subpoenas has caused your clients to incur legal costs and lost productivity. Your letter also provided a narrative of events related to the request for and issuance of EBSA's Advisory Opinion 2020-01A, including the district court case brought by your clients against the Secretary of Labor in *Data Marketing Partnership LP v. Department of Labor*, Case No. 4:19-cv-00800-O (N.D. Texas), which concluded with a judgment that Data Marketing Partnership's health plan is subject to ERISA. Your letter ends with a request for information on whether your clients have or are about to violate any provision of Title I of ERISA, and a request for EBSA to provide a time period in which it intends to either recommend or bring an enforcement action. You also propose, among other things, that EBSA explicitly define "the scope and concerns of the Anjo Investigation," that EBSA and your clients agree to a "target date for formal conclusion of the Anjo Investigation," and that the investigation be limited only to your clients, other vendors to the Partnership Plans, and entities sponsoring the Partnership Plans.

The Secretary of Labor has broad authority under Section 504 of ERISA, 29 U.S.C. § 1134, to conduct investigations to determine whether any violations of ERISA have occurred and in connection therewith, to require the submission of records relevant to those investigations. An administrative subpoena is proper if it is within the agency's statutory authority and it seeks information reasonably relevant to the investigation. *See United States v. Bisceglia*, 420 U.S.

141, 146-47 (1975); *United States v. Zadeh*, 820 F.3d 746, 755-56 (5th Cir. 2016); *Sandsend Fin. Consultants, Ltd. v. Fed. Home Loan Bank Bd.*, 878 F.2d 875, 878 (5th Cir. 1989). "For purposes of an administrative subpoena, the notion of relevancy is a broad one." *Sandsend Fin. Consultants, Ltd.*, 878 F.2d at 882. Indeed, the purpose of a statutory grant of investigative authority "is not to accuse, but to inquire." *Bisceglia*, 420 U.S. at 146.

Under ERISA and the relevant case law, the Secretary has ample authority to conduct its investigation in order to determine whether ERISA violations have or are about to occur. As your letter recognizes, the investigation involves review of tens of thousands of documents, which were obtained over the course of several months, including months of extensions granted by the Secretary for subpoena responses from your clients as well as other entities. For example, subpoena responses from PIC were due on July 31, 2020, but, as of the writing of this letter, several responses remain outstanding, including contracts and documents relating to clients that are employee benefit plans, but not "Partnership Plans" (defined in your letter as LPMS's "proposed health insurance plans"). Indeed, the Secretary's investigative authority applies to all employee benefit plans, and your client's attempt to limit the investigation only to "Partnership Plans" is unavailing. *See* 29 U.S.C. §§ 1003(a), 1134(a). While the Secretary understands that a party's compliance with subpoenas requires an expenditure of resources, this does not curb the Secretary's authority to conduct his investigation in full. *See Pennington v. Donovan*, 574 F. Supp. 708, 709-10 (S.D. Tex. 1983) (enforcing the Secretary's subpoena for records related to plan assets, over the plaintiff's arguments that compliance "interfered with his work and put him to great expense").

While we appreciate your clients' cooperation thus far, at this time we are not in a position to provide the specific information you seek regarding the timing and scope of the Secretary's investigation. Finally, we appreciate your offer to make Mr. Renfro available for an interview with the Department. However, as we indicated previously, we believe an interview with Mr. Renfro will be more productive and efficient after we have had an opportunity to review all of the documents required to be produced in response to the subpoenas issued.

Sincerely,
s/ Katrina Liu
Katrina Liu
Trial Attorney
Office of the Solicitor
U.S. Department of Labor

Cc: Thomas Gewin, EBSA
Jamidi Daiess, EBSA
Jeff Quinn, EBSA
Alanna Evans, EBSA

EXHIBIT I

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December 30, 2020

Via e-mail only to Liu.Katrina.Ti@dol.gov
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Washington, DC 20210

Re: Anjo, LLC; DOL Case Number: 99-000016(50) (the "Anjo Investigation")

Dear Ms. Liu:

Thank you for your letter of December 14, 2020. My clients are disappointed that DOL seems unwilling to cooperate with them in a process to allow faster resolution to whatever undisclosed concerns DOL may, or may not, have concerning ERISA compliance. Given the global pandemic and economic pressure that places on all small businesses, my clients and I had hoped DOL would prefer to have a structure in place allowing it to do a reasonable analysis of current ERISA compliance as well as parameters on self-reporting by my clients to keep DOL informed without unduly taxing the resources of these small businesses.

We understand that it is DOL's position that the scope of its investigatory authority is broad, perhaps even unlimited. We have never argued with the position that DOL's investigatory authority is broad. However, as the cases even you cited indicate, the scope of that authority is not unlimited. *US v. Bisceglia*, 420 U.S. 141, 146–147 (1975) (summons will be scrutinized "to determine whether it seeks information relevant to the legitimate investigative purpose" rather than any improper purpose); and *US v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) ("a governmental investigation . . . may not be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power" and "shall not be unreasonable"). The reasonable relevance standard will be met only where 1) the subpoena is within the statutory authority of the agency; 2) the information sought is "reasonably relevant" to the inquiry; 3) information sought is not already in the possession of the agency; and 4) the demand is not "unreasonably broad or burdensome." *US v. Zadeh*, 820 F.3d 746, 755 (5th Cir. 2016) (reasonably relevant standard met after subpoena was narrowed to those patients known to the DEA and was "specific and limited in scope").

When the conduct under investigation or what the "inquiry actually is" is not identified, courts, and those responding to DOL's subpoenas, cannot evaluate whether the inquiry is reasonably relevant or is "unreasonably broad or burdensome". *Consumer Fin. Prot. Bureau v. Source for Pub. Data, LP*, 903 F.3d 456, 460 (5th Cir. 2018) (an agency does not have "unfettered authority to cast about for potential wrongdoing"). The courts are simply not required to "rubber-

stamp actions of an administrative agency" and will not allow an agency "to bootstrap itself when justifying an investigation into every record and document a plaintiff possesses." *Sunshine Gas Co. v. United States Dep't of Energy*, 524 F. Supp. 834, 841 (N.D. Tex. 1981). "A legitimate, proper purpose and relevancy are required." *Id*.

> Straw men are easy to knock down; it is far more difficult to provide a purpose to the eminently sensible proposition that some refinement of purpose is needed if this Court is to have any role in considering the rights of all … parties who stand before it in a subpoena enforcement proceeding.

Id. (citation omitted). Our difference of opinion arises from your refusal to define, well over a year after DOL's exhaustive inquiry began, what said inquiry actually is. Consequently, we are left assuming DOL is simply asserting unfettered authority to cast about for potential wrongdoing without any indication of actual wrongdoing by any of my clients.

You assert that the Anjo Investigation is being conducted pursuant to DOL's investigative authority under Section 504 of ERISA to "determine whether [Anjo] has violated or is about to violate any provision" of ERISA. 29 U.S.C. § 1134. You then refuse to provide any additional details or parameters of any actually suspected wrongdoing by any of my clients. To the extent that the scope of the investigation may not necessarily be confined to Anjo, LLC, and arguably includes information pertaining to the business operations of PIC and its business partners and customers, namely, SAS, PIP and LPMS, these entities have produced thousands of documents responsive to DOL's subpoenas directed to them. Yet, despite the request that DOL specify some parameters for its investigation, you state that DOL "is not in a position to provide the specific information . . . regarding the timing and scope of [DOL's] investigation." This refusal to articulate any scope defies the mandate under the Regulatory Relief to Support Economic Recovery Executive Order 13924, (May 19, 2020) and the case law sited above.

My clients are confused and disturbed by DOL's refusal to simply inform them of what conduct of theirs is suspected to violate ERISA. At all times, they have sought to comply faithfully with all ERISA requirements, whether statutory or regulatory. My clients have always sought a positive, cooperative relationship with DOL in every interaction. As my colleague, Diane Festin LaRoss, communicated to you earlier this month, PIC continued in those efforts by agreeing to produce voluminous documents over the next few weeks despite those documents being entirely unrelated to the partnership plans addressed in the Fort Worth litigation.

In the midst of the harsh economic impacts of this pandemic on all small businesses in America, I would hope DOL would reconsider the position taken in your letter. If it does, I am available to discuss these issues at your convenience.

Sincerely,

Jonathan D. Crumly

cc: Clients

EXHIBIT

[redacted]

[redacted]

[redacted]

From: Adams, Zinnia - EBSA <adams.zinnia@dol.gov>
Sent: Tuesday, July 20, 2021 11:18 AM
To: [redacted]
Subject: Hawaii Mainland Administrators

Hi [redacted],

Thank you for taking my call today. Please provide any of the following if you have it available.

1. All contracts
    a. Providence/Suffolk/etc. ("WellMEC", Affordable Benefit Choices, etc.)
    b. Broker
    c. Reinsurance? (Providence Insurance Company?)
2. SPD
3. Anything breaking down the fees/premium?
4. All information and materials received before enrolling in the benefit arrangement.
    a. Presentations
    b. Brochures
    c. Application forms
5. Copy of plan card? (redacted name/PHI is fine).

Best Regards,

Zinnia Adams
Investigator
U.S. Department of Labor
Employee Benefits Security Administration
230 South Dearborn Street, Suite 2160
Chicago, IL 60604
Phone: 312.886.0492

Fax: 312.353.1023
Adams.Zinnia@dol.gov

EXHIBIT

[redacted]

From: [redacted]
Sent: Friday, July 23, 2021 10:41:40 AM
To: [redacted] smclean@providenceinsurancepartners com <smclean@providenceinsurancepartners com>; [redacted] A Renfro <arenfro@suffolkadmin com>; Ari Zieger <azieger@suffolkadmin com>
Cc: [redacted]
Subject: [EXT] RE: HBA

> External email sender [redacted] from United States <
> Be suspicious of external email and never provide your authentication details <
.
Can you advise what issues Mr Renfro has with other DOIs?

[redacted] I appreciate it but am not willing to risk my license

From: [redacted]
Sent: Friday, July 23, 2021 11:36 AM
To: [redacted] smclean@providenceinsurancepartners.com; [redacted] A Renfro <arenfro@suffolkadmin.com>; Ari Zieger <azieger@suffolkadmin.com>
Cc: [redacted]
Subject: Re: HBA

Good morning [redacted] ...As I have stated on our numerous phone calls, the insurance department people you are speaking with are not looking at the correct program All can be cleared up with a phone call between Alex Renfro and the insurance commissioners

[redacted]

From: [redacted]
Sent: Friday, July 23, 2021 10:21:04 AM
To: [redacted] smclean@providenceinsurancepartners.com <smclean@providenceinsurancepartners.com>; [redacted]
Cc: [redacted]
Subject: [EXT] HBA

> External email sender [redacted] from United States <
> Be suspicious of external email and never provide your authentication details <

Gentlemen, I just got off the phone with the deputy commissioner at the DOI for Delaware and have been advised to stay away from this program There are "major concerns" with the plan and apparently it is under investigation in several jurisdictions My bad for not properly vetting the plan Please advise me of any investigations you are currently involved with I originally thought this was driven by disgruntled agents but it appears to be much bigger Unless you can convince me otherwise, I will not risk my 32 year reputation or my license Thanks

[redacted] **VP/Director of Employee Benefits**
[redacted]
Wilmington, DE [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

[redacted]

--
Bill Bryan
Suffolk Administrative Services LLC
[redacted]

EXHIBIT

[redacted]

Begin forwarded message:

From: [redacted]
Subject: FW: Message from Unknown sender [redacted]
Date: August 6, 2021 at 11:58:55 AM PDT
To: A Renfro <arenfro@suffolkadmin.com>, Ari Zieger <azieger@suffolkadmin.com>, [redacted]
Cc: [redacted]

Good afternoon…I have spoken to some of you and left vm messages for the rest.

Apparently the regulator from the Delaware Department of Insurance has called to Pennsylvania DOI and stated to one of our Delaware Referral Partners that he will be calling the Maryland DOI to "alert them to this illegal program, HBA".

I spoke to [redacted] of the Pa Chamber of Commerce Insurance Agency a short while ago. His was actually a very encouraging call. He spoke to the Pa DOI investigator in the attached vm and identified in his email below. [redacted] told me that this investigator, Mike Fissel, was very reasonable in his call…he said the following (I wrote down and confirmed back to [redacted] the quote here): Mike said to [redacted] "90% of the time when they investigate a program claiming to be ACA compliant it is not." According to [redacted] Mike was specifically referencing the HBA MVP Bronze plan. He went on to say "there is no reason for anyone to get their blood pressure up, we are just hearing of this for the first time so we need to learn about it." [redacted] told me that he told Mike that "the program is very well vetted and even the Pa Chamber Insurance Agency Compliance Officer spoke to the Suffolk Administrative Services (SAS) Chief Compliance Officer and came away satisfied." [redacted] then said the investigator referenced "the Providence Insurance (yes he named PIC even though we do not name PIC in any of our collateral) plan in Washington State that was under investigation and shut down". We on this email have dealt with this a few times now…HBA being incorrectly linked to other SAS programs that have nothing to do with HBA.

[redacted] sent me the Pa DOI investigator's contact info below for me to pass along to Alex Renfro who I said would call the investigator.

[redacted] and his agency are staying actively involved selling HBA.

I also received a call from [redacted] East Coast Manager of our large PEO client, [redacted]…[redacted] is based in Maryland and up to speed on the Delaware situation…and being extremely supportive and wants to do whatever he can to help this situation so his brokers and clients can proceed unencumbered. The purpose of his call was to tell me one of his Delaware brokers, our Referral Partner, called the Delaware DOI regulator and was told the HBA program is not authorized AND that he would be calling the Maryland DOI to alert them (as he did with Pa).

I spoke to Ari Zieger, one of the principals of SAS and PIC, today. Ari and his team are all over this and are going to reach out on Monday to update me on their action plan to engage with the state regulators to correct their misunderstanding of the HBA and answer their questions.

FYI…I am attaching the actuarial certification letter from [redacted] certifying all MVP plans including Bronze, as fully ACA compliant. Furthermore, [redacted] and his team had calls with the [redacted] team and reviewed their calculations and were not only comfortable with the work but very complimentary. [redacted] also confirmed the high quality reputation enjoyed by [redacted].

Ari and Alex, I look forward to our speaking on Monday to learn how you will be addressing this.

Thanks,

[redacted]

[redacted]

EXHIBIT M

[redacted]

From: [redacted]
Sent: Friday, August 6, 2021 3:02 PM
To: A Renfro <arenfro@suffolkadmin.com>; Ari Zieger <azieger@suffolkadmin.com>; [redacted]
Subject: FW: Health Benefit Alliance

This is the broker Referral Partner who called the Delaware DOI.

[redacted]

[redacted]
GOD BLESS AMERICA

From: [redacted]
Sent: Friday, August 6, 2021 3:40 PM
To: [redacted]
Cc: [redacted]
Subject: [EXT] Health Benefit Alliance

> External email sender [redacted] from United States <
> Be suspicious of external email and never provide your authentication details <

.
Hi [redacted],

Lynn spoke with the Special Deputy Commissioner of DE. Based on this conversation, we have made the decision to not refer the CBIZ HBA program at this time.

Upon full approval from the Delaware State Dept of Insurance we would be happy to revisit the program.

Effectively, we have informed BBSI that we will not move forward with any contracts or appointments with their clients and prospects until further information and approval.

Please let me know if you have any questions.

Thanks,
[redacted]

[redacted]

[redacted]
President
[redacted]
[redacted] MD [redacted]

[redacted]

EXHIBIT

[redacted]

GOD BLESS AMERICA

From: [redacted]
Sent: Monday, August 9, 2021 2:14 PM
To: [redacted]
Cc: [redacted]
Subject: RE: [EXT] [redacted] - Need #s for the Text

Hi [redacted],

Unfortunately as of this past Friday, [redacted] is not representing the HBA program pending the DE Insurance Commission investigation. We communicated this to [redacted]. My understanding is this group will be direct with [redacted]

We hope to be working with you again soon!

Thanks,

[redacted]

[redacted]

[redacted]

[redacted] MD [redacted]

EXHIBIT

U.S. Department of Labor **Office of the Solicitor**
Washington, D.C. 20210

July 21, 2022

VIA ELECTRONIC MAIL
Jonathan D. Crumly
Taylor English Duma LLP
1600 Parkwood Circle, Suite 200
Atlanta, Georgia 30339
(678) 426-6959
jcrumly@taylorenglish.com

Inadmissible Settlement Communication pursuant to Fed. R. of Evid. 408

Re: Prospective DOL Litigation Against Suffolk Administrative Services et al.

Dear Counsel:

The investigation by the Employee Benefits Security Administration of the U.S. Department of Labor involving Anjo, LLC and its affiliates has been referred to our office for possible litigation. We have determined that Suffolk Administrative Services, LLC (SAS), Providence Insurance Company, I.I. (PIC), Providence Insurance Partners, LLC (PIP), Alexander Renfro, William Bryan, and Arjan Zieger, are operating a multiple employer welfare arrangement (the Providence MEWA) that includes employee welfare benefit plans (the Participating Plans) governed by the Employee Retirement Income Security Act (ERISA). *See* 29 U.S.C. §§ 1002(1) & (40)(A), 1003. We have further determined that SAS, PIP, Renfro, Bryan, and Zieger, have violated their ERISA fiduciary duties to the Participating Plans and engaged in prohibited transactions by (1) authorizing the payment of excessive and unreasonable fees to SAS from plan assets, (2) authorizing the payment of excessive and unreasonable premiums to PIC from plan assets, and (3) authorizing the payment of excessive and unreasonable fees to other service providers, including enrollers or "distribution partners," from plan assets. We have determined that PIC knowingly participated in the fiduciary breaches and prohibited transactions involving its receipt of payments from Participating Plans.

We have also determined that SAS breached its fiduciary duties by failing to monitor Hawaii Mainland Administrators (HMA), a third-party administrator for the Providence MEWA, that has improperly denied or imposed cost-sharing on benefit claims for preventive services in violation of the Patient Protection and Affordable Care Act (ACA), 42 U.S.C. § 300gg-13, as incorporated in ERISA section 715, 29 U.S.C. § 1185d. SAS has engaged in additional ERISA violations, including (i) designing plans that improperly impose pre-existing condition exclusions and annual dollar limits, in violation of 29 U.S.C. § 1185d; 42 U.S.C. § 300gg-3(a); (ii) providing deficient Summary Plan Documents to Participating Plans that lack certain information required by ERISA section 102 and its implementing regulations, 29 U.S.C. § 1022,

29 C.F.R. §§ 2520.102-2, 102-3; and (iii) failing to file a "Form M-1 Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)" (Form M-1) with the U.S. Department of Labor for the Providence MEWA as required under ERISA section 101(g), 29 U.S.C. § 1021(g).

The main (though non-exclusive) bases for our findings of violations are below. **We intend to file suit to remedy these violations on or about August 19, 2022.** Should your clients wish to explore settlement, we are amenable to entering an agreement to toll any applicable statute of limitations.

I. SAS, PIP, Renfro, Bryan, and Zieger Breached Their Fiduciary Duties and Engaged in Prohibited Transactions by Authorizing and Directing the Payment of Excessive Fees from Plan Contributions to Compensate MEWA Service Providers

We have determined that the Providence MEWA is a non-plan MEWA as defined in ERISA that maintains and administers ERISA-governed health benefit plans for at least 170 employer-sponsors and approximately 9,000 employee-participants. 29 U.S.C. § 1002(40(A).[1] At the center of the MEWA are SAS, PIP, PIC, Renfro, Bryan, and Zieger who make decisions about the MEWA's operations, including its marketing, enrollment services, selection and retention of service providers, and use of Plan contributions. Based on their involvement, SAS, PIP, PIC, Renfro, Bryan, and Zieger all serve as fiduciaries to the plans that subscribe to the MEWA. 29 U.S.C. § 1002(21)(A).

ERISA section 404 imposes on fiduciaries of employee benefit plans the duties of prudence and loyalty. 29 U.S.C. §§ 1104(a)(1)(A) & (B). Both duties mandate that a fiduciary take into account costs imposed on participants, such as fees charged to participants for administering the plan. "[C]ost-conscious management is fundamental to prudence[.]" *Tibble v. Edison Int'l*, 843 F.3d 1187, 1197-98 (9th Cir. 2016).

Separately, ERISA section 406, categorically bars certain transactions that Congress deemed "likely to injure the […] plan." *Harris Tr. & Saving Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 241-42 (2000) (quotation omitted); 29 U.S.C. § 1106. ERISA prohibits fiduciaries from causing a plan to enter into transactions for the "furnishing of goods, services, or facilities between the plan and a party in interest," or for the "transfer to, or use by or for the benefit of a party in interest, of any assets of the plan." 29 U.S.C. §§ 1106(a)(1)(C) and (D). A "party in interest" under ERISA includes service providers to ERISA plans. 29 U.S.C. § 1002(14)(B). A transaction between a plan and service provider is permissible only if the services are necessary to the plan's operation and the plan pays "reasonable compensation" for the services. 29 U.S.C. § 1108(b)(2). Fiduciaries also must not "deal with the assets of the plan in his own interest or for

[1] We do not include in our analysis health plans sponsored by limited partnerships such as the ones at issue in *Data Marketing Partnership, et al. v. Walsh*, No. 20-11179 (5th Cir.), which are part of the Providence MEWA alongside traditional employer-sponsored health plans.

his own account," nor "act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries." *Id.* § 1106(b)(1) and (2).

We have concluded that SAS, through its executives Renfro, Bryan, and Zieger, breached its fiduciary duties and engaged in prohibited transactions by authorizing the payment of exorbitant fees from contributions made by Participating Plans. First, the contributions made to SAS by the Participating Plans are plan assets, as the underlying plan documents unambiguously indicate that those contributions are to be used to pay claims and plan administrative expenses. SAS then unilaterally directs how Plan contributions earmarked as "Administrative Costs" are distributed among the MEWA's service providers. Specifically, SAS instructs third party administrators (TPAs) how to allocate contributions as compensation to the Plans' service providers (selected by SAS) using Confidential Payment Instructions (CPIs). As much as 84% of a Plan's total contribution is parceled out as administrative fees, with only 16% available to pay for the medical claims of participants and beneficiaries. The service providers for the MEWA include SAS itself, enrollers such as Crystal Bay, Enrollment First, and Enroll Prime, and TPAs such as HMA or Boon Administrative Services (Boon). The largest fee—larger even than the amount used to pay claims—is the fee that SAS takes for itself, which is split up as multiple fees to various business units within SAS (e.g., "Incela," "ABC," "ABC Legal," and "ouTPAce."). When aggregated, the fees that SAS directs to itself make up as much as 39% of total contributions, depending on the Plan. Such fees are excessive, unreasonable, and redundant.

We have also concluded that SAS and its executives engaged in fiduciary breaches and prohibited transactions by hiring PIC as the "reinsurer" for Participating Plans in the MEWA. Pursuant to Contractual Liability Insurance Policies (CLIPs) between PIC and the employer-sponsor, PIC insures benefits provided by the MEWA. SAS assigns PIC a portion of the Plan contributions earmarked as "Risk Assessment," which are used to replenish accounts held by the TPAs for paying claims. Once those accounts are replenished to a minimum balance as required by SAS, the TPA sends all remaining funds to PIC. The majority of the Participating Plans, however, cover only claims for preventive services (which is much less costly than major medical coverage), so the amounts in the TPA's claims accounts have always been sufficient to cover claims. The Participating Plans have not needed to use the insurance provided by PIC, yet SAS has nevertheless paid PIC millions of dollars to reinsure the Plans from 2018 to the present. Further, SAS's retention of PIC as a service provider to the MEWA is a prohibited transaction because SAS, Renfro, Bryan, and Zieger stand on both sides of the transaction. Through a series of holding companies and trusts, Renfro, Bryan, and Zieger own and manage both SAS and PIC, such that they were acting in their own interest when using SAS to grow PIC's business, which is impermissible self-dealing and a violation of their fiduciary duty to act exclusively for the benefit of the Plans' participants and beneficiaries.

II. The Providence MEWA Has Violated ACA Provisions Incorporated in ERISA By Denying or Imposing Cost-Sharing on Claims for Preventive Services, Imposing Pre-Existing Condition Exclusions, and Imposing Annual Dollar Limits in Certain Plans

Our investigative findings also support a determination that SAS failed to monitor HMA's claims administration for the Participating Plans, which enabled HMA's improper denial and imposition of cost-sharing on claims for preventive services. The ACA requires that preventive services be covered by a health plan at no cost to the participant. 42 U.S.C. § 300gg-13. A review of HMA's claims data from 2020 showed that HMA denied up to 10% of preventive services claims and applied participant cost-sharing to nearly 35% of preventive services claims. As the fiduciary who appointed HMA as the TPA for some of the Participating Plans, SAS was responsible for monitoring HMA's performance. SAS, however, has neither audited nor systematically reviewed the claims administration performed by HMA or any of the TPAs for the Providence MEWA.

We have also determined that certain products offered by SAS contain pre-existing condition exclusions and annual dollar limits that are prohibited by the ACA. 42 U.S.C. §§ 300gg-3(a), 300gg-11. Several of the plan designs include a supplemental hospital benefit (*e.g.,* EASE Essential Supplemental, EASE Premium Supplemental, MEC HP3, HSP3 Supplement, HSP6 Supplement, and HSP9 Supplement), and at least two "add-on" options are available that provide limited inpatient hospital benefits and can be purchased along with another plan (*e.g.,* CAT50, CAT100). These plans expressly exclude from coverage any claims resulting from a pre-existing condition existing within the 12 months preceding the day of the plan's purchase. The MEC HP3 Supplement has a similar pre-existing condition exclusion, except that it is for conditions in the 24 months preceding the coverage date. These plans also contain illegal annual dollar limits. For example, the supplemental hospital benefit is limited to $1,000 per day and a maximum number of days covered per plan year within 5-15 days (for a maximum yearly benefit between $5,000 to $15,000). The CAT50 and CAT100 options also have annual dollar limits of $50,000 and $100,000, respectively.

III. The Providence MEWA Failed to Meet Its Disclosure and Reporting Obligations

Finally, we have determined that SAS and PIP have failed to meet their disclosure and reporting obligations under ERISA. For example, SAS and PIP have failed to provide Summary Plan Documents (SPDs) to the Participating Plans that comply with all the requirements of ERISA and its implementing regulations. 29 U.S.C. § 1022; 29 C.F.R. §§ 2520.102-2, 102-3. The SPDs created by SAS and PIP, which contain similar language across the Participating Plans, exclude several categories of required information:

1. The agent for legal process including their name, address, and telephone number
2. The plan administrator, including their name, address and telephone number
3. The address of the Plan Sponsor

4. The trustees, including their name, address and telephone number
5. Information regarding participant ineligibility or disqualification
6. The plan administration type
7. The date of the end of the plan year
8. Information about plan premiums, deductibles, and copayment information

SAS, as administrator of the Providence MEWA, has also failed to file a Form M-1 with the U.S. Department of Labor on behalf of the MEWA. 29 C.F.R. § 2520.101-2(c)(1)(i).

The foregoing does not represent the full scope of the problems with the Providence MEWA that we intend to prove in litigation. We plan to file a lawsuit against SAS, PIP, PIC, Renfro, Bryan, and Zieger to restore all losses to the Participating Plans and to reverse all prohibited transactions with restitution by the fiduciaries for all losses (including lost opportunity costs) resulting from their fiduciary breaches. We also plan to seek equitable relief, including an injunction against your clients removing them from their roles with the Providence MEWA and Participating Plans as well as permanent fiduciary and service provider bars against Renfro, Bryan, and Zieger.

We are available to further discuss our concerns with you.

Regards,

s/ Katrina Liu

Katrina Liu
Jeff Hahn
Jamie Bowers

U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
liu.katrina.t@dol.gov
hahn.jeffrey.m@dol.gov
bowers.jamie.l@dol.gov

EXHIBIT

U.S. Department of Labor

Office of the Solicitor
Washington, D.C. 20210

June 8, 2023

VIA ELECTRONIC MAIL

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Inadmissible Settlement Communication pursuant to Fed. R. of Evid. 408

Re: Providence MEWA - Settlement Demand from the Department of Labor

Counsel:

As you know, EBSA's investigation of Anjo, LLC, its directors, and affiliates regarding their operation of a multiple employer welfare arrangement ("MEWA" or "Providence MEWA") in violation of ERISA has been referred to our office for possible litigation. To explore potential settlement, the Department has entered into multiple tolling agreements with your clients Suffolk Administrative Services, LLC ("SAS"), Providence Insurance Company, I.I. ("PIC"), Providence Insurance Partners, LLC ("PIP"), Alexander Renfro, William Bryan, and Arjan Zieger (together, the "Providence Parties"). In order to make a good-faith settlement proposal, we have also requested documents from your clients so that the Employee Benefit Security Administration ("EBSA") can calculate the monetary liability of the Providence Parties to the traditional employer plans participating in the MEWA ("Participating Plans").[1] Because your responses and production were incomplete at best, the loss amounts in this letter are approximations based on the limited information received, and we reserve the right to alter our proposal based on more complete information.

As described more fully in the Department's July 21, 2022 letter, the Providence Parties have violated ERISA in multiple ways, including by (i) paying fees to SAS from plan assets in

[1] The Participating Plans are ones sponsored by traditional employers, and do not include any limited partnership plans.

acts of self-dealing without review or approval by fiduciaries of the Participating Plans; (ii) paying fees to PIC from plan assets in acts of self-dealing without review or approval by fiduciaries of the Participating Plans; and (iii) paying fees to other service providers, including to enrollers or "distribution partners," for unnecessary services.[2] The aforementioned fees authorized by the Providence Parties were also excessive relative to the services provided to the MEWA. Through these actions, the Providence Parties violated ERISA's fiduciary standards and prohibited-transaction rules in sections 404 and 406, 29 U.S.C. §§ 1104, 1106.

The Providence Parties face significant monetary liability as a result of their violations. EBSA has determined that the Providence MEWA received, at a minimum, $93.2 million in fees between 2016 and 2022 from employer and employee contributions, the majority of which—$60.3 million—was paid to SAS and PIC. Specifically, EBSA calculated a total of $19 million paid to SAS, and a total of $41.3 million paid to PIC between 2016 and 2022. Because SAS and PIC received these amounts via self-dealing in violation of ERISA section 406(b), your clients would thus be liable for the entire $60.3 million in any litigation. In addition, EBSA has determined that between 2016 and 2022, the Providence Parties authorized roughly $16 million in payments to the enrollers out of the Plans' contributions despite the enrollers providing no discernible ongoing service to the Plans.

Nevertheless, EBSA is prepared to accept a total monetary settlement of **$40 million** from the Providence Parties.[3] This amount is not only a reasonable compromise of the Providence Parties' self-dealing liability (to say nothing of their liability for paying enrollers for unnecessary services), but serves as a rough approximation of the amount by which the Providence Parties caused the Plans to overpay for administrative expenses, based on a comparison of the Providence MEWA's loss ratio to a more reasonable loss ratio. The Providence MEWA targeted a loss ratio between 27% and 48% from 2016 to 2022, meaning that the MEWA aimed to devote only 27% to 48% of Plan contributions toward benefit claims and/or health care improvements, with the remaining 52% to 73% of contributions earmarked for administrative fees, marketing, and other overhead costs.[4] Had the MEWA used a more reasonable loss ratio of 80%, EBSA calculated that the Plans would have saved $42.9 million in administrative fees between 2016 to 2022.[5]

---

[2] This is not a full list of the Providence Parties' ERISA violations but it accounts for the majority of the monetary losses. The calculations of fees does not include any fees received from the various limited partnerships participating in the MEWA.

[3] The Department would also require the Providence Parties to pay an additional 20% of that amount as a penalty pursuant to ERISA § 502(l), along with reimbursement of any plan assets used by the Providence Parties to fund attorneys' fees in connection with this investigation.

[4] The Department lacks full sets of claims data and so cannot currently determine the actual loss ratio of the Providence MEWA. Based on the partial data EBSA received, it believes that the actual loss ratio is *even less* than the MEWA's target loss ratios that ranged from 27-48%.

[5] While not directly applicable to the Providence MEWA, we note that the Affordable Care Act established an 80% loss-ratio requirement for insurers in the small group market.

Along with monetary relief, EBSA would require the following injunctive relief from the Providence Parties: (i) the immediate and permanent removal of SAS, PIC, Alexander Renfro, William Bryan, and Arjan Zieger as fiduciaries, service providers, and administrators of the Participating Plans in the Providence MEWA; (ii) the appointment of an Independent Fiduciary to the Participating Plans and Providence MEWA, which would take control of all plan assets and would have authority to terminate the Providence MEWA and to dissolve the relationship between the Participating Plans and SAS, PIP, and PIC (if it determines that is in the best interest of the plan participants and beneficiaries); and (iii) if the Independent Fiduciary decides to terminate the Providence MEWA, the timely adjudication of any outstanding claims and return of any assets of the Providence MEWA to the Participating Plans, including settlement payments by the Providence Parties.

The Providence Parties must also sign a consent order (i) containing the terms of settlement, including the amount to be paid by the Providence Parties in settlement of the Secretary's prospective claims; (ii) barring the Providence Parties from serving as fiduciaries to the Providence MEWA, any of the Participating Plans, or any other employer plans governed by ERISA; and (iii) barring the Providence Parties from acting as a service provider to the Providence MEWA, any of the Participating Plans, or any other employer plans governed by ERISA.

As stated above, based on the limited information the Department has in its possession, this is EBSA's initial demand to resolve its claims related to the Anjo Investigation. EBSA reserves the right to change its demand upon receiving additional information.

Regards,

s/ Jamie Bowers

Jamie Bowers
Katrina Liu
Jeff Hahn

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hahn.jeffrey.m@dol.gov

EXHIBIT

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January 11, 2024

Via Email: ***galen.thorp@usdoj.gov***
Galen N. Thorp
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, D.C. 20530

INADMISSIBLE SETTLEMENT COMMUNICATION PURSUANT TO FED. R. OF EVID. 408

Re: *Data Marketing Partnership LP, et al. v. US Department of Labor, et al.*, USDC Northern District of Texas, Fort Worth Division, CAFN 4:19-cv-00800-O

Dear Galen:

I hope the holidays treated you well, and that your 2024 is off to a good start. The filing deadline for the Plaintiffs' Motion for Summary Judgment is approaching, and it will be filed timely, on or before January 15. While you likely disagree, we believe that our arguments are compelling, and that the facts as well as the history of the case make a permanent injunction against the Department of Labor – upheld by the Fifth Circuit, should the Department choose to appeal again – the most likely outcome.

With the permission of my clients, I am writing to explore the possibility of settlement discussions, prior to the Court's ruling as to imposition of an injunction. My clients' interest in a negotiated resolution is driven not by fears of an adverse decision – to the contrary, it stems from concerns about potential unintended consequences of prevailing. A broad, permanent, nationwide injunction against the Department was never their goal – nor was litigation itself.

This matter began with a very positive meeting at the Department in October 2018. A spirit of professional cooperation between our respective clients extended for several months thereafter, including submission of the Advisory Opinion (AO) request and constructive follow-up dialog that led to several revisions to the AO request. In another meeting in March 2019 (at which I was present), the then-Chief of Staff to the Secretary described the proposed structure as "ingenious" and "something we wish we'd thought of." The Department nonetheless indicated that a favorable AO would not be forthcoming, but that the Department would take no enforcement action against our clients, should they choose to implement the business model described in the AO request.

We thanked the Chief of Staff and others for their kind words, but explained that even if the Department took no adverse steps, that would not prevent state regulators – who properly look to the Department as the authority on all ERISA matters – from initiating their own investigations and enforcement proceedings, in the absence of Department guidance to the contrary. We therefore urged the Department to reconsider its position on the Advisory Opinion request. As you know, that did not happen. We were forced to file suit, which led to the issuing of the Department's negative AO and the court decisions which followed – as well as the one that is pending.

During the pre-litigation interactions that took place in late 2018 and early 2019, the Department expressed certain misgivings, which may be paraphrased as "We think you are well-intended, but we are concerned about possible abuse of your proposed structure by Bad Actors." Setting aside the question of whether the Department continues to believe that my clients are ethical people seeking to provide valuable services (if indeed it ever did so believe), my clients are themselves concerned about abuses of the partnership plan structure. We are aware of several entities entirely unrelated to my clients, selling what they claim are "data partnership health plans." Although the District Court's injunction, even before it was provisionally vacated by the 5th Circuit, applied only to the Plaintiffs, we assume that if and when they are challenged, the promoters of these "copycat" plans will make a facts-and-circumstances argument that they should receive the same protection from the court decisions.

Relying on verbal advice from the then-Assistant Secretary for EBSA, offered during the initial October 2018 meeting, my clients believed that they would have the opportunity to work with the Department to develop safeguards which would simultaneously provide broader access to ERISA-subject benefit plans, while also protecting participants from the fraud, abuse, and financial instability that occur all too frequently in the "ACA alternative" sector.[1] Ideally, this joint effort would have created standards to align the Department's interest and views, and invested the Department with proper oversight over all ERISA plan sponsors and parties in interest, including my clients. The fact that a great deal of ink and other resources have been spilled since has not lessened the Bad Actor concerns of my clients, nor would we expect that it would have assuaged those of the Department.

If imposed, a permanent injunction will act as a blunt instrument that will complicate–and ultimately hamper–the Department's ERISA regulatory and enforcement functions. The Department's autonomy to interpret certain regulations would be supplanted by the Courts, and more "data partnership copycats" with no interest in the aforementioned safeguards will seek to capitalize. While your clients and mine may differ on approaches and opinions on these issues, they share a strong belief in the rule of law, and the need for its consistent application. It may not be possible to arrive at a mutually satisfactory settlement, but we believe it would be a serious mistake by all concerned not to try.

[1]We realize that eliminating ACA alternatives altogether is a policy goal of many, but a debate as to the merits, practicality, and timing of such an initiative is beyond the scope of this case.

In order for settlement discussions to be fruitful, we believe that they should take place in person, and that they should include principals authorized to make decisions for each side. We are willing to travel to Washington D.C. at any date and time which is convenient to the Department, and to provide a list of proposed attendees in advance. We would ask that the Department also provide such a list. As to urgency, although we in theory have until March 18 – the deadline for filing of the Plaintiffs' Reply in Support of Motion for Summary Judgment – to reach settlement, if it is possible to make better use of the resources we will each otherwise expend, we respectfully suggest that we should meet sooner rather than later.

Please feel free to reach out by telephone, should you prefer to have an informal, off-the-record discussion. Thank you in advance for your consideration of this proposal.

Sincerely,

Jonathan D. Crumly, Sr.

cc: Clients (by email only)

EXHIBIT

From: Thorp, Galen (CIV) <Galen.Thorp@usdoj.gov>
Sent: Thursday, February 8, 2024 9:47 AM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Cc: Bob Chadwick <Bob.Chadwick@fmglaw.com>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Subject: RE: Data Marketing Partnership LP, et al. v. US Department of Labor, et al., CAFN 4:19-cv-00800-O - FRE 408 Settlement Communication

Mr. Crumly,

Thank you for your letter last month. We would like to schedule a phone call on Monday or Tuesday next week to informally explore the possibility of settlement. We understand that you have also put a settlement offer on the table for your other DOL matter, so it would make sense to have a broader conversation that includes Mr. Hahn. On Monday we are available between 10am and 4pm. On Tuesday, we are available from 10-12 or 1-4 EST.

In order to make room for this discussion, we would also ask for your consent to a 30 day extension of the briefing deadlines in this case. An additional reason for our extension request is that we are currently scheduled to submit our next brief on February 26, but Katrina Liu, agency counsel for this matter, is still in a trial that has been extended through at least February 21.

Sincerely,
Galen

Galen Thorp | Senior Trial Counsel
U.S. Department of Justice
Civil Division, Federal Programs Branch
(202) 514-4781 | Galen.Thorp@usdoj.gov

EXHIBIT

U.S. Department of Labor

Office of the Solicitor
Washington, D.C. 20210

April 26, 2024

VIA ELECTRONIC MAIL

Jonathan D. Crumly
Freeman Mathis & Gary LLP
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Suite 1600
Atlanta, Georgia 30339
(678) 996-9137
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Roberta C. Watson
The Wagner Law Group
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Inadmissible Settlement Communication pursuant to Fed. R. of Evid. 408

Re: Providence MEWA and Data Marketing Partnership Matters – Global Settlement Proposal

Jonathan and Roberta:

Thank you for your April 4, 2024, response to our March 11, 2024, letter proposing a global settlement that would resolve both Data Marketing Partnership's ("DMP") claims against the Department of Labor and the Department's prospective ERISA claims relating to the Providence MEWA. The Department's counterproposal is outlined below. We are available to schedule a call to discuss.

Global Settlement Proposal

A. Providence MEWA – Injunctive Relief

1. Reasonableness of Fees

- **Providence Proposal:** Providence parties agree to retain the services of mutually agreeable, well-respected benefits firms and legal counsel as prospective consultants to review and determine the reasonableness of all vendor fees (both Providence parties and other vendors), including the status of each agreement as an arm's length transaction.

- **Department's Response:** The Department is amenable to Providence retaining a third party, unbiased consultant to review fees and affiliation status. However, the law firms listed in your proposal are not acceptable to the Department. At this juncture, the Department seeks agreement that Providence will retain an independent entity qualified to evaluate the reasonableness of health plan fees. The identity of the consultant can be determined by the parties at a later date. The Department also seeks agreement that the Providence Parties: (a) will retain the consultant to conduct an initial review of fees as well as recurring reviews at regular intervals thereafter, (b) will follow the consultant's recommendations regarding fee arrangements, (c) will bear all costs of retaining the consultant and implementing its recommendations, and (d) will share the consultant's findings, recommendations, and/or any reports with the Participating Plans. The consultant must also share its preliminary findings and recommendations with the Department for review and feedback, prior to Providence implementing the recommendations.

2. Disclosure of Fees

- **Providence Proposal:** All the fees requested to be disclosed by the Department ((i) fees SAS receives by plan design and tier; (ii) fees other service providers receive for each plan design and tier; and (iii) affiliations between SAS and any service providers) are disclosed through SAS's corrective form of agreement. Alternatively, SAS is willing to include a paragraph in the agreement that list related companies as a form of disclosure.

    - **Department's Response:** The new SAS form agreement (including Appendix A to that agreement) does not appear to satisfy the Department's fee disclosure request. It is unclear if Appendix A's column for "Company Fees" is meant to capture the total contribution payment by the Participating Plans, or just the portion earmarked for SAS's fee. In either case, the disclosure is insufficient because it does not separately list fees received by each and every service provider to the Participating Plans, including PIC, nor does it list affiliations between SAS and other service providers to the Participating Plans. Meanwhile, the agreement elsewhere appears to treat vendor cost information as confidential. *See* Sec. 3(e). Please let us know what actions the Providence Parties would take to fully disclose *all* fees by Plan for SAS, PIC, and other service providers, along with any affiliations among those groups.

3. Segregation of Plan Funds

- **Providence Proposal:** Providence Parties will eliminate the imprest accounts funded with plan contributions; instead, PIC will fulfill TPA and/or Plan Sponsor claims on the applicable stop loss policy for the Plan. Plan contributions are collected by the TPA, and service provider fees are paid from those contributions. The remainder owed under the stop loss policy is then transferred to PIC. Any remaining funds are the responsibility of the TPA to segregate.

    - **Department's Response:** It is not clear from the Providence Parties' proposal that plan contributions will be segregated by Plan. Please confirm.

4. Trust Accounts

- **Providence Proposal:** Providence Parties are willing to coordinate with all Plan TPAs to ensure trust accounts are established by each Plan.

    - **Department's Response:** The Department takes this to mean that the Providence Parties agree to establish (through the TPAs) trust accounts for each of the Participating Plans. If this is the case, the Department is amenable to this term. Please clarify if that is not the case.

5. Fiduciary Bar

- **Providence Proposal:** Mr. Renfro would sign a bar against serving as a fiduciary or service provider to ERISA plans or to any of the Participating Plans, subject to the caveat that the bar would not hinder Mr. Renfro from practicing law in the benefits space.

    - **Department's Response:** The Department is amenable to working out the details of the fiduciary and service provider bar while protecting Mr. Renfro's ability to practice employee benefits law.

6. Fiduciary Training

- **Providence Proposal:** Mr. Zieger and Mr. Bryan are willing to engage in fiduciary training but would like additional details on the type of training.

    - **Department's Response:** The Department suggests a training course focused on health plan compliance sponsored by the International Foundation of Employee Benefit Plans. *See* Self-Funded Health Plans Plan Administration (ifebp.org)

B. Providence MEWA – Monetary Relief

- **Providence Proposal**: $2.4 million, inclusive of the 20% penalty under ERISA section 502(l), paid over three years.

Department's Response: The Department is willing to lower its monetary demand to $5.5 million (inclusive of the mandatory 20% penalty under ERISA section 502(l)) but cannot agree to a three-year payment plan. The Department seeks that the monetary payment (except for the portion attributed to the Section 502(*l*) penalty) be paid by the Providence Parties to benefit the Participating Plans in a manner to be determined by the Department.

C. Providence MEWA – New Terms Proposed by the Providence Parties

- **Providence Proposal:** You request that the Department "not continue its aggressive investigatory approach (i.e. the new Socios Buenos LP (SB) subpoena) without independent, just cause[.]"
    - **Department's Response**: The Department agrees to close the Socios Buenos investigation as part of the global settlement. To the extent, however, the Providence Parties are seeking assurances that the Department will not investigate them in the future, the Department cannot (and does not) agree to place constraints on its future investigatory authority. The Department can agree, however, to issue a letter to Socios Buenos formally closing the investigation.

- **Providence Proposal:** Finally, you request that the Department issue a press release indicating that the Anjo Investigation has been concluded to its satisfaction and that no adverse action is being taken against PIC, Suffolk, Mr. Bryan, or Mr. Zieger.
    - **Department's Response**: The Department does not negotiate over press. The Department can agree, however, to issue a letter to the Providence Parties formally closing the investigation.

D. DMP Matter

The Department appreciates that DMP and LPMS are amenable to dismissing the *DMP* action. Your letter did not explicitly respond to the Department's request that LP Management Services LLC ("LPMS") also withdraw its advisory opinion request and the Department restates that request here. Regarding the various conditions of DMP and LPMS's dismissal of *DMP*, the Department provides the following responses:

- **LPMS Proposal:** Neither side issues press releases or makes public or private statements regarding the working owner and bona fide partner theory.

    - **Department Response:** The Department does not negotiate over press and cannot agree to place constraints on its future speech. The Department is not requesting that DMP or LPMS be restrained from making public or private statements regarding "the working owner and bona fide partner theory."

- **LPMS Proposal:** The Department will withdraw the Socios Buenos subpoena and acknowledge that Socios Buenos has complied with its obligations under the subpoena.

    - **Department Response:** As noted above, the Department agrees to withdraw the Socios Buenos subpoena and close that investigation as part of a global settlement. The Department cannot provide any public or private statements that Socios Buenos has complied with its obligations under the subpoena. The Department can agree, however, to issue to Socios Buenos a letter formally closing the investigation.

- **LPMS Proposal:** The Department will not initiate further investigatory efforts into LPMS or limited partnerships absent independent, just cause.

    - **Department Response:** The Department cannot (and does not) agree to place constraints on its future investigatory authority.

- **LPMS Proposal:** The Department will issue a letter to LPMS stating that the Department finds its practices and policies regarding the management of benefit plans consistent with ERISA rules and regulations regarding single-employer benefit plans.

    - **Department Response:** The Department cannot agree to this proposal.

- **LPMS Proposal:** LPMS and other limited partnerships will not disclose anything regarding its settlement with the Department.

    - **Department Response:** The Department is not seeking to restrain LPMS from disclosure about its settlement with the Department. As a matter of policy, the Department does not deem its settlement agreements to be confidential.

We are happy to have a call to discuss any aspects of this proposal; please let us know if you would like to speak this week or next. Thank you.

Regards,

s/ *Katrina Liu*

Katrina Liu
Jeff Hahn
Jamie Bowers
Sarah Holz

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Galen Thorp
U.S. Department of Justice
Civil Division
Federal Programs Branch
galen.thorp@usdoj.gov

EXHIBIT T

Jonathan Crumly

From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, May 27, 2024 9:54 AM
To: Jonathan Crumly; Roberta Watson
Cc: Stephen Rosenberg
Subject: RE: Followup to Our Call Last Week

Thank you for this and I'll be in touch. In the meantime, Jonathan, do you have anything to add on the DMP side? As we discussed, my client is willing to issue closing letters for the Anjo and Socios Buenos investigations, but is unwilling to provide anything further in writing.

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Friday, May 24, 2024 7:21 PM
To: Roberta Watson <rcwatson@wagnerlawgroup.com>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Cc: Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>
Subject: Re: Followup to Our Call Last Week

Katrina,

PIC, Mr. Zieger, and Mr. Bryan are in agreement with these terms.

Jonathan Crumly
Senior Counsel
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CA | CT | FL | GA | IL | IN | KY | MA | NJ | NY | OH | PA | RI | TN | TX

From: Roberta Watson <rcwatson@wagnerlawgroup.com>
Sent: Friday, May 24, 2024 5:24:24 PM

To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Cc: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>
Subject: Followup to Our Call Last Week

CONFIDENTIAL TO FACILITATE SETTLEMENT OF LITIGATION

Katrina –

This is a followup to our call last week. Please pass it on to others in the Department, as appropriate.

As I told you then, I was surprised that some of the things I was hearing from you in that call (or thought I was hearing) were not things I had deduced from the prior correspondence. I am concerned that the parties are very close to settlement but may not realize how close they are because they don't fully understand the other side's position. This email is one last attempt to bridge that gap. I am writing solely on behalf of Suffolk and Mr. Renfro, my only clients in the Anjo investigation.

First, I think the DOL misunderstands what the DMP folks are requesting for the DOL to put in writing regarding that matter. But I'm not involved in that matter, so I'm hoping that they can clarify that for you in a way you will find acceptable.

Second, as to the disclosure and reasonableness of future fees, I believe that we are already there in that it appears to me that the DOL's position and Mr. Renfro's align. We only need to agree on how to articulate it in a settlement agreement.

You said that the Department wants Suffolk to disclose all fees to the employer, and for the fees to be reasonable. Suffolk and Mr. Renfro are fully agreeable to that to the extent that Suffolk can possibly do that or assist with that. Suffolk does not currently select the providers or control the fees, and it will commit not to do so in the future. Rather, the employer selects its own providers. Suffolk does get informed of the fees, and it makes sure that the employers are aware each month as to how much money goes where, to facilitate plan administration. Suffolk will commit to making sure that employers are clearly informed of the fees in the future on a provider-by-provider bases. In terms of a settlement, Suffolk is happy to make sure that all fees of which it is aware or can become aware are fully disclosed to the employer. (Our only hesitation here is that Suffolk is not always informed of brokerage fees, or of how the brokerage fees are divided, and Suffolk is not certain that it can force disclosure to it of that information.) This sounds to me like the parties are, essentially, in agreement on the various fees being fully disclosed to the employer.

As to writing up the agreement, we have assumed that the DOL would take the lead in preparing the agreement. If you need for us to take some action on that, please let us know.

As to making sure that the fees are reasonable, you asked that there be a consultant who would evaluate the reasonableness of all the fees. Suffolk and Mr. Renfro are totally agreeable to that as well. You said you wanted agreement on the process for the consultant to follow to determine if the fees are reasonable. Suffolk and Mr. Renfro are agreeable to whatever process the DOL requires. As a starting point, we suggest the following process:

- Third-party firm reviews the total expenses of a particular client's plan (or, if the client sponsors multiple designs, each plan design)

- Third-party firm reviews the depth of coverage in each client's plan/plan design, as applicable, as well as the actuarial value of each plan/plan design
- Third-party firm reviews the level of funding for administration of the plan and the level of funding for claims of the plan
- Third-party firm reviews the level of funding by the plan sponsor and the level of funding expected of plan participants
- Third-party firm reviews a list of each vendor providing services to the plan, the services these vendors provide, and the fees these vendors charge the plan
- Third-party firm reviews an assessment of the client's ability to self-administer the services of each vendor
- Third-party firm reviews comparisons to each vendor's service and fee model with one to three comparable market competitors
- With respect to each vendor to the plan, the third-party review firm will perform a valuation of the vendor's services compared to the fees charged to determine whether those fees are excessive in the opinion of the third-party firm
    - This valuation will not be controlled by any other party and will be based on the information provided above, as well as any specific or supplementary guidance provided by the Department

But any process that the DOL finds acceptable will be agreeable to Suffolk and Mr. Renfro.

As we discussed Mr. Renfro has agreed to accept a ban on his being a fiduciary to an ERISA plan in the future. We have agreed that he will be allowed to practice law, including ERISA law. You were going to let me know whether he must avoid any ERISA engagement where he would be paid by a plan. He can live with that answer either way, but he would like to be sure he knows what his limits are. For your information, Mr. Renfro is in the process now of resigning from Suffolk and PIC; he will not wait for the resolution of this matter for that.

In any event, we object to having a settlement of the Anjo investigation be dependent on settling the DMP case.

Please let me know if you would like to discuss anything further.

Roberta Casper Watson
Direct line (813) 603-2960
Tampa Fax (813) 603-2961
Boston Fax (617) 357-5250
iPhone (617) 615-5200
rcwatson@wagnerlawgroup.com

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****

EXHIBIT

Jonathan Crumly

From: ahn, Je rey M - SOL < ahn.Je rey.M@dol.gov>
Sent: Tuesday, June , 2024 : 7 M
To: Jonathan Crumly; ob Chadwi k; Roberta Watson ; Stephen Rosenberg
Cc: ol , Sarah - SOL; Liu, Katrina T - SOL
Subject: RE: Commen ement o a tion against SAS, C, Ren ro, ieger, and ryan

onathan,

es, that anuary demand is still on the ta le though of course the other in uncti e ieces are still art of that demand . But we d ha e to know relati ely soon if your clients are interested in that offer, as we re lanning on filing the com laint y the end of the week, and I can t romise what our client would e willing to do once we file.

eff ahn
Counsel for A ellate and ecial itigation
. . e artment of a or
ffice of the olicitor
Plan Benefits ecurity i ision

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Tuesday, June 11, 2024 10: 2 AM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Hol , Sarah D - SOL <Hol .Sarah.D@dol.gov>
Subject: R : Commencement of action against SAS, PIC, Renfro, ieger, and Bryan

Katrina,

We are disappointed to hear that our discussions have failed to produce mutually acceptable settlements of the two matters. I have had several discussions with my clients since our call yesterday afternoon. Jeffrey stated that if the DMP Matter is not dismissed, the monetary demand in the Anjo Investigation would increase substantially. My Anjo Investigation clients have requested that I confirm what that amount would be. In my review of the settlement correspondence in the Anjo Investigation, I noted that on January 24 (prior to Galen Thorp's proposal of global settlement discussions) the Department presented a demand of $12.5 million plus the 20% penalty pursuant to ERISA § 502(1) for a total of $15.0 million. Is that demand still on the table if the DMP Matter is not dismissed?

If the Department files a complaint, I am authorized to accept service on behalf of PIC, Mr. Bryan, and Mr. Zieger. You can email the service materials to me.

Jonathan Crumly
Senior Counsel
Freeman Mathis Decisions
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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Tuesday, June 11, 2024 11:10 AM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Hol , Sarah D - SOL <Hol .Sarah.D@dol.gov>
Subject: R : Commencement of action against SAS, PIC, Renfro, ieger, and Bryan

> **Caution:** This email originated from outside of the FMG organi ation. **Do not click links** or **open attachments** unless you recogni e the sender and know the content is safe.

Counsel,

e are lanning to file a com laint y the end of this week. Please ad ise whether you are authorized to acce t ser ice on ehalf of your clients and or whether your clients will wai e ser ice.

Thank you,

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Liu, Katrina T - SOL
Sent: Thursday, May 0, 2024 10:2 AM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Hol , Sarah D - SOL <Hol .Sarah.D@dol.gov>
Subject: R : Commencement of action against SAS, PIC, Renfro, ieger, and Bryan
Importance: High

Counsel,

e ha en t recei ed any additional information from your clients since our discussion on Tuesday. e are lanning to file the com laint y C B today. Please ad ise whether you are authorized to acce t ser ice on ehalf of your clients and or whether your clients will wai e ser ice.

Thank you,

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Friday, May 24, 2024 :0 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Hol , Sarah D - SOL <Hol .Sarah.D@dol.gov>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: Commencement of action against SAS, PIC, Renfro, ieger, and Bryan

Dear counsel,

Since we have not heard from you since our calls on Thursday, May 1 , we are preparing to commence an action ne t week in the .S. District Court of Puerto Rico against Suffolk Administrative Services, Providence Insurance Company, Ale ander Renfro, Arjan ieger, and William Bryan for violations of RISA. The complaint will allege that SAS, PIC, Renfro, ieger, and Bryan violated their fiduciary duties to self-funded RISA plans and engaged in prohibited transactions by self-dealing and authori ing e cessive and unreasonable fees from plan assets. The complaint will also allege a failure by SAS to file Form M-1s with the Department.

Please advise whether you are authorized to accept service of the complaint on behalf of your clients and, if so, please confirm your addresses:

Jonathan Crumly
Bob Chadwick
Freeman, Mathis Gary LLP
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Thank you,

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EXHIBIT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

August 31, 2020

M-20-31

MEMORANDUM FOR THE DEPUTY SECRETARIES OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Paul J. Ray
Administrator, Office of Information and Regulatory Affairs

SUBJECT: Implementation of Section 6 of Executive Order 13924

On May 19, 2020, the President signed Executive Order 13924, *Executive Order on Regulatory Relief to Support Economic Recovery*. Section 8 of the Order provides that the Director of the Office of Management and Budget, in consultation with the Assistant to the President for Domestic Policy and the Assistant to the President for Economic Policy, shall issue any memoranda needed to guide implementation of the Order. Building on Director Russell T. Vought's June 9, 2020, Memorandum M-20-25, *Implementation of Executive Order 13924* and pursuant to his delegation, this memorandum is being issued to implement Section 6 of Executive Order 13924.

Section 6 of the Order directs "heads of all agencies" to "consider the principles of fairness in administrative enforcement and adjudication" enumerated in subparts (a) through (j) and to "revise their procedures and practices in light of them, consistent with applicable law and as they deem appropriate in the context of particular statutory and regulatory programs and the policy considerations identified in section 1 of this order." I request that agencies coordinate with OIRA staff to issue any needed final rules under 5 U.S.C. § 553(a)(2) and (b)(A) wherever possible, by November 26, 2020 (absent a waiver granted by the Administrator), with a request for public comment that agencies may consider in any future revisions.

To assist in implementation of section 6, OMB has compiled the below list of best practices for your consideration, insofar as consistent with your "particular statutory" authority, "regulatory programs," or other "policy considerations identified in Section 1" of the Order, as you review your existing procedures and prepare any needed revisions.

(a) The Government should bear the burden of proving an alleged violation of law; the subject of enforcement should not bear the burden of proving compliance.

- Agencies should review their procedures to ensure that members of the regulated public are not required to prove a negative to prevent liability and enforcement consequences in the absence of statutory standards requiring otherwise. This general

principle should not be applied to prevent placing the burden of proof on the potential recipients of government benefits, including in benefit termination actions.

- Agencies should consider applying the rule of lenity in administrative investigations, enforcement actions, and adjudication by reading genuine statutory or regulatory ambiguities related to administrative violations and penalties in favor of the targeted party in enforcement.

(b) Administrative enforcement should be prompt and fair.

- Agencies should seek approval of an Officer of the United States, or if necessitated by good cause, his or her designee, before entering into a tolling agreement that would have the effect of extending the statute of limitations for an infraction.
- Agency regulations should apply limiting principles to the duration of investigations; regulations should require investigating staff to either recommend or bring an enforcement action, or instead cease the investigation within a defined time period after its commencement absent a showing of unusual circumstances that is endorsed by an Officer of the United States, or if necessitated by good cause, by his or her designee.
- If a party has been informed by an agency that it is under investigation, the agency should inform the party when the investigation is closed and, when the agency has made no finding of violation, so state.
- Agencies should consider and appropriately adopt estoppel and res judicata principles to eliminate multiple enforcement actions for a single body of operative facts. Simply put, an agency should have only one bite at the apple to investigate and seek enforcement against a regulated entity for a static factual predicate that is not a continuing or expanding violation.
- Agency employees' performance metrics and compensation structures should incentivize excellence, accuracy, integrity, efficiency, and fairness in the application and execution of the law. Performance metrics should not detract from the aim of reaching fact-based, unbiased decisions with respect to all aspects of enforcement; employees should not be rewarded on any basis that incentivizes them to bring cases or seek penalties or settlements that are meritless or unwarranted.
- If they have not done so already, agencies must publish a rule of agency procedure governing civil administrative inspections. *See* Executive Order 13892 section 7.

(c) Administrative adjudicators should operate independently of enforcement staff on matters within their areas of adjudication.

- Agency adjudicators[1] should not engage in ex parte communications with, and should operate independently from, investigators and enforcement staff, as the Administrative Procedure Act requires for formal adjudications under 5 U.S.C. §§ 554(d) and 557(d). Agency line adjudicators should not engage in ex parte

[1] This term includes line adjudicators, administrative appellate entities, and those engaging in informal adjudications.

communications with, and should operate independently from, administrative appellate entities. Agencies should develop reporting and disclosure structures for violations of such requirements and should establish command structures for these offices that are independent of each other.

- Agency adjudicators' performance metrics and compensation structures should incentivize fact-based, unbiased adjudication decisions. Adjudicators should not be rewarded based on the penalties they award or in any other way that misaligns incentives.

(d) Consistent with any executive branch confidentiality interests, the Government should provide favorable relevant evidence in possession of the agency to the subject of an administrative enforcement action.

- Administrative agencies should conform their civil adjudicatory evidence disclosure practices to those described by the Supreme Court in *Brady v. Maryland*, 373 U.S. 83, 87 (1963), *Giglio v. United States*, 405 U.S. 150, 154 (1972), and *Kyles v. Whitley*, 514 U.S. 419, 432–33 (1995). Agency officials should timely disclose exculpatory evidence to the target party of enforcement using similar procedures as those laid out in the *Justice Manual* of the U.S. Department of Justice (previously known as the *U.S. Attorney's Manual*). Likewise, agencies should automatically disclose evidence material to the mitigation of damages or penalties, consistent with *Brady*, 373 U.S. at 87.

(e) All rules of evidence and procedure should be public, clear, and effective.

- In addition to ensuring compliance with 5 U.S.C. § 556(d), agencies should adopt or amend regulations regarding evidence and adjudicatory procedure to eliminate any unfair prejudice, reduce undue delay, avoid the needless presentation of cumulative evidence, and promote efficiency. Agencies should seek to reduce the use of hearsay evidence with limited exceptions (*Richardson v. Perales*, 402 U.S. 389 (1971)). They should generally require the application of the framework in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to determine the veracity of scientific evidence. Based on the nature of the statute administered, agencies should consider incorporating other standards under the Federal Rules of Evidence, including Rule 403. Agencies should make their rules of evidence and procedure easily accessible on their websites.
- In furtherance of the requirement contained in 5 U.S.C. § 555(b), agencies should explicitly authorize the representation of regulated parties by legal counsel and in appropriate cases, by qualified representatives. Agencies should also take steps to avoid disadvantaging parties who are not represented by counsel, including by writing rules of evidence and procedure in plain language.

(f) Penalties should be proportionate, transparent, and imposed in adherence to consistent standards and only as authorized by law.

- Agencies should establish policies of enforcement discretion that decline enforcement or the imposition of a penalty, as appropriate, in the course of enforcement when the agency determines that the regulated party attempted in good faith to comply with the law.
- Agencies should make the public aware of the conditions in which investigations and enforcement actions will be brought and provide the public with information on the penalties sought for common infractions.
- Agencies should adopt expiration dates and/or termination criteria for consent orders, consent decrees, and settlements that are proportionate to the violation of the law that is being remedied. Decade(s)-long settlement terms that are disproportionate to the violation(s) of law should be strongly disfavored absent a clear and convincing need for time to implement a remedy such as, e.g., infrastructure improvements or long-term remedial actions.
- Consent orders, consent decrees, and settlements should not bar private parties from disseminating information about their cases.
- If they have not already done so, agencies should establish procedures to encourage voluntary self-reporting of regulatory violations by regulated parties in exchange for reductions or waivers of civil penalties, including grace periods to cure minor violations without fear of penalty in compliance with Executive Order 13892 section 9.

(g) Administrative enforcement should be free of improper Government coercion.

- Retaliatory or punitive motives, or the desire to compel capitulation, should not form the basis for an agency's selection of targets for investigations or enforcement actions, or other investigation and enforcement decisions such as, e.g., rulings on discovery.
- To prevent the above motives from playing a role, agencies should not initiate additional investigations of a party after commencing an enforcement action against that party absent an internal showing of good cause that is reviewed by an Officer of the United States, except when the additional investigation is prompted by facts uncovered in the initial investigation.

(h) Liability should be imposed only for violations of statutes or duly issued regulations, after notice and an opportunity to respond.

- Agencies should review their procedures for adjudication to ensure that liability is imposed only after notice and an opportunity to respond.
- In any document initiating an investigation or enforcement action, an agency should include a citation to the statute and regulation asserted to be violated, and an explanation as to how the asserted conduct is prohibited by the cited statute and regulation, in addition to complying with Executive Order 13892 section 3.
- Information or materials obtained in an administrative investigation or enforcement action should only be referred to the U.S. Department of Justice or other relevant criminal investigation or enforcement authority for criminal investigation in a manner

that is consistent with the law and with best practices as established by policies, procedures, and guidelines regarding parallel investigations.

(i) Administrative enforcement should be free of unfair surprise.

- If they have not already done so, agencies should create procedures to make available pre-enforcement rulings as required by Executive Orders 13892 section 9 and 13924 section 5.
- Agencies should ensure they have rules in place that provide parties with a reasonable period of time to respond to filings or charges brought by the agency. For example, agencies should provide parties with at least as much time to respond to an agency notice of charges as parties would have to respond to filings in civil complaints brought in federal court under the Federal Rules of Civil Procedure, unless the need for urgent action to protect the public warrants otherwise.

(j) Agencies must be accountable for their administrative enforcement decisions.

- In addition to the substantive mandates of 5 U.S.C. §§ 552(a)(1), 555(c) and other Administrative Procedure Act provisions, the initiation of investigations and enforcement actions should carry the structural protection of requiring approval of an agency official who is an Officer of the United States or, if necessitated by good cause, his or her designee. Such agency official should condition approval at the investigation and enforcement stages on the agency's compliance with Executive Order 13892 sections 3 through 9 and Executive Order 13891 sections 3 and 4 as they pertain to the matter, among other factors.
- Agencies should identify, collect, and periodically make publicly available decisional quality and efficiency metrics regarding adjudications under bureaucratic, judicial, and split enforcement models (of adjudication), to include, e.g., the number of matters that have been pending with the agency over relevant time periods, the number of matters disposed by the agency annually, and data on the types of matters before and disposed of by the agency.

cc: The Assistant to the President for Domestic Policy
The Assistant to the President for Economic Policy
The Director of the Office of Management and Budget