IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMERICAN ACADEMY OF
PEDIATRICS, ET AL

Plaintiffs

Versus **Case no. 1:25-cv-11916-WGY**

ROBERT F. KENNEDY , JR , et al

Defendants

_____/

INTERVENOR'S REPLY TO PLAINTIFFS' OPPOSITION
TO HIS SECOND AMENDED MOTION TO INTERVENE

Jose A. Perez appears in propia persona and opposes the Plaintiffs' Motion In Opposition to his Second Amended Motion to Intervene. As grounds in support thereof Mr. Perez shows :

1- **The Plaintiffs claim that Mr. Perez Failed to meet and confer** . Mr. Perez objects – it is Mr. Perez' understanding that the referenced rule applies to discovery disputes and dispositive motions[1] The Plaintiffs did not, and could

1 https://www.law.cornell.edu/wex/meet_and_confer#:~:text=A%20requirement%20in%20some%20jurisdictions,resolve%20disputes%20without%20court%20action.

not , identify one single issue that could have been resolved by the parties themselves[2]

2- **The Plaintiffs' claim that Mr. Perez failed to comply with the Notice and Pleading Requirements** – The Plaintiffs' have failed or refused to allege that Mr. Perez' Motions do not contain sufficient factual matter, which if accepted as true, "fail to state a claim to relief that is plausible on its face[3].The Court must accept all factual allegations in the Motions to Intervene as true and draw all reasonable inferences in the Intervenor's favor[4]. If the facts in the Motion to Intervene are sufficient to state a cause of action, a motion to dismiss the complaint must be denied[5].

3- **The Plaintiffs claim Mr. Perez filed an amended motion without permission.** The Plaintiffs' claim lacks candor. Mr. Perez has repeatedly stated that he has relied upon, inter alia, Brandon v Holt[6] , 469 US 464

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[2] US ex rel Pogue v Diabetes Treatment Centers , 235 FRD 521 (DCDC-2006) citing Pulsecard, Inc. v. Discover Card Servs., Inc. 168 FRD 295, 302 (D.Kan.1996)

[3] Stichting Pensionenfunds OPG v Stae Street Banks & Trust Co, 671 F Supp 2d 213 (D Mass-2009) citing Bell Atlantic Corp. v. Twombly, 550 US 544, 570 (2007).

[4] Ibid citing *Langadinos v. American Airlines, Inc.,199 F. 3d 68, 69* (1st Cir.2000).

[5] Ibid *Nollet v. Justices of the Trial Court of Mass., 83 F Supp. 2d 204, 208* (D.Mass.2000) aff *'d, 248 F.3d 1127* (1st Cir.2000).

[6] Brandon v Holt , 469 US 464 FN19 (1985) See Fed. Rule Civ. Proc. 15(b); 3 J. Moore, Federal Practice ¶ 15.13[2], p. 15-157 (2d ed. 1984) (**amendment to conform to evidence may be made at any time**); *id.*, at 15-168 (Rule 15(b) amendment allowed "so long as the opposing party has not been prejudiced in presenting his ease"); 6 C. Wright & A. Miller, Federal Practice and Procedure § 1491, pp. 453, 454 (1971 ed. and Supp. 1983) **(Rule 15(b) is "intended to promote the objective of deciding cases on their merits rather than in terms of the relative pleading skills of counsel");** *ibid.* ("[Courts should interpret [Rule 15(b)]

FN19 (1985) and Rule 15(b) for the amendments . Rule 15(b) does not require a motion seeking leave of court[7] . The Plaintiffs have failed or refused to rebut or refute Mr. Perez' position.

4- Furthermore , In Brandon v Holt , the Supreme Court emphasized that Rule 15(b) is **"intended to promote the objective of deciding cases on their merits rather than in terms of the relative pleading skills of counsel"** . Mr. Perez respectfully submits that Rule 15(b), FRCP is essential in this case because federal courts have consistently ruled that when reviewing Pro Se complaints they must consider "all filings" before dismissing the same [8].

5- **The Plaintiffs claim that Rule 59(e) FRCP prejudices and inconveniences them**. The Plaintiffs frivolously contend that the mere fact that the Court issued an order , sua sponte, dismissing Mr. Perez' right to access the Court as a Rule24(a)(1) Intervenor without giving him an

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liberally and permit an amendment whenever doing so will effectuate the underlying purpose of the rule").. Accord: [6] Cruz v Coach Stores, Inc, 202 F.3d 560, 569 (2nd Cir-2000)
[77] NY State Electric & Gas v Secretary of Labor, 88 F.3d 98 (2nd Cir-1996) citing Howell v Cataldi, 464 F. 2d 272, 275 (3rd Cir-1972).
[8] Brown v Whole Foods Market Group, Inc , 789 F. 3d 146 , 152 (DC Cir-2015) (district court must consider all allegations — including those in Brown's opposition to Whole Foods's motion to dismiss) citing *Richardson v. United States, 193 F. 3d 545, 548* , (D.C.Cir.1999). Accord : Pearson v. Gatto, 933 F.2d 521, 527 (7th Cir. 1991) (the District Court should have construed a pro se plaintiff's letter to judge to be an amended complaint); Cooper v. Sheriff, Lubbock County, Texas, 929 F.2d 1078, 1081 (5th Cir. 1991) (finding, in an appeal of a Fed. R. Civ. P. 12(b) (6) dismissal, that the magistrate judge should have considered a pro se litigant's reply to the defendant's answer as a motion to amend the complaint).

explanation or an opportunity to be heard as required by First Circuit Court Precedents did not transgress upon Mr. Perez' Constitutional Rights.

6- But Federal Courts disagree : they have declared that Rule 59(e) allows a party to direct the district court's attention to a manifest error of law or fact, thereby enabling the court to correct its own errors before appellate review[9]. They define a "manifest error" as those situations where , as here, there is a "wholesale disregard, misapplication, or failure to recognize controlling precedent[10].

7- **The Plaintiffs' claim that Mr. Perez failed to show that he has a right to intervene:** As previously shown, Mr. Perez seeks to protect his rights as (a) a consumer of healthcare services and (b) as a Medico Legal Researcher.

8- A competent person, like Mr. Perez , has a liberty interest under the Due Process Clause to be <u>well informed</u> thereby an individual can decide whether or not to consent to medical treatments[11]. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is Constitutional notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and

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[9] Pomerlau v West Springfield Public Schools , 362 F. 3d 143 FN2 (1st Cir-2004) citing FDIC v. World Univ. Inc.,978 F. 2d 10, 16 (1st Cir.1992)

[10] Ibid; Accord: *In Re August, 1993 Regular Grand Jury,* 854 F. Supp. 1403, 1407 (S.D.Ind.1994).

[11] Cruzan v Director, Missouri Department of Health , 497 US 261 (1990) citing Jacobson v. Massachusetts, 197 US 11, 24-30 (1905)

afford them an opportunity to present their objections[12]. The fundamental requisite of due process of law is the opportunity to be heard." This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.[13] – specifically , in the instant case , to vaccinate or not vaccinate – i.e. are the medicines. Vaccines and equipment in the marketplace safe and reliable.

9- The fact that the Defendants actions adversely affect Americans generally and that the potential health care risks are "widely shared" does not minimize Mr. Perez' interest in the outcome of this litigation[14]. Where a harm is concrete, though widely shared, the Supreme Court has found 'injury in fact[15].

10- **Plaintiffs claim that Mr. Perez' stated interest and injury(ies) are outside the scope of litigation.** The Plaintiffs' claim is frivolous , please see Town of Chester , NY v. Laroe States, No. 16-605 (June 5th, 2017) Third Party intervenors may seek relief different than extant Defendants .

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[12] Mullane v Central Hanover Bank and Trust Co, 339 US 306 , 314 (1950)
[13] Ibid
[14] Massachusetts v EPA , 549 US 497 , 522 (2007) citing Federal Election Comm'n v. Akins, 524 U. S. 11, 24 (1998)
[15] Ibid

11- **Plaintiffs claim that Mr. Perez does not have a right to seek relief pursuant to Rule 24(a)(1) .** That argument is also baseless. The Administrative Procedures Act – 5 USC 701-706 – provides Mr. Perez an absolute right of intervention within the meaning of Rule 24(a)(1) , FRCP: The Administrative Procedures Act provides, in unqualified terms, that any individual suffering legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof [16]. It is not necessary that the statute specifically state that Litigants have the "absolute right to intervene[17].

12- The personal stake necessary to create an Article III case or controversy may be created by Constitutional or legislative action[18]. That is, either federal or state lawmakers may create new rights and, to some extent,

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[16] Instituto de Educacion Universal Corp v U.S. Department of Education, 209 F. 3d 18 (1st Cir-2000) citing 5 USC 702 ; Cf: In the Matter of Marin Motor Oil , Inc , 689 F. 2d 445 (3rd Cir-1984) (11 U.S.C. § 1109(b). provides an absolute right of intervention to a creditors' committee in a Chapter 11 "case."

[17] Assured Guaranty Corp v Financial Oversight & Management Board , 872 F.2d 57(1st Cir-2017) The plaintiffs' argument against intervention is largely predicated on their contention that § 1109(b) does not provide an unconditional right to participate in an adversary proceeding. The plaintiffs do, however, also point out that the statute "says nothing about intervention at all." .....we view the rights described in § 1109(b) to be entirely consistent with intervention rights generally. Accordingly, § 1109(b) provides the UCC with an "unconditional right to intervene" in the adversary proceeding. Fed. R. Civ. P. 24(a)(1). Accord : *Official Unsecured Creditors' Committee v. Michaels (In re Marin Motor Oil, Inc.),689 F.2d 445 , 451-53* (3d Cir.1982),

[18] Parow v Kinnon, 300 F Supp 2d 256 (2004) citing Benjamin v Aroostock Medical Center , Inc , 57 F. 3d 101, 104 (1st Cir- 1995) ; Warth v Seldin , 422 US 490 , 98 (19750

confer standing to enforce them[19]. Most obviously, state or federal law can create a "right," the violation of which constitutes an Article III injury[20] – The rights to life, 21 U. S. C. § 301 *et seq, and* Due Process Clause right to be well informed are some of those rights .

13- **The Plaintiffs claim that the Defendants adequately represent Mr. Perez' purported interest.** This claim is wholly without foundation and contradictory as well.

14- The Plaintiffs claim that Mr. Perez cause of action is "outside the scope of litigation". No explanation as to the basis for concluding that the Defendants will nevertheless adequately represent Mr. Perez' position.

15- Mr. Perez' position is that the covid19 "vaccination" must be completely and totally removed from the marketplace pursuant to, inter alia, 21 USC 355(e) . The Plaintiffs have failed or refused to identify the basis for concluding that the existing Defendants will support that endeavor.

[19] Ibid
[20] Ibid

CONCLUSION

Mr. Perez respectfully submit that the Defendants Motion ought to be denied

Respectfully Submitted

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CERTIFICATE OF SERVICE

It is hereby certified that on this 25th day of August 2025 a true and correct copy of the foregoing document was served upon all counsel identified in the docket sheet via email.

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