United States Court of Appeals

for the

First Circuit

Case No. 25-1886

LORI CHAVEZ-DEREME, Secretary of Labor, US Department of Labor,

Plaintiff-Appellee,

v.

SUFFOLK ADMINISTRATIVE SERVICES, LLC.;
PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO;
WILLIAM BRYAN; ARJAN ZIEGER,

Defendants.

DATA MARKETING PARTNERSHIP, LP;
LP MANAGEMENT SERVICES, LLC,

Interested Parties-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
OF PUERTO RICO AT SAN JUAN, IN CASE NO. 3:24-CV-01512-CVR

JOINT APPENDIX
Volume 1 of 3 (Pages JA1 to JA447)

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INTAPPEAL

United States District Court
District of Puerto Rico (San Juan)
CIVIL DOCKET FOR CASE #: 3:24-cv-01512-CVR

Chavez-Demerer v. Suffolk Administrative Services, LLC. et al
Assigned to: Judge Camille L. Velez-Rive
Demand: $9,999,000
Case in other court: 25-01886
Cause: 29:1001 E.R.I.S.A.: Employee Retirement

Date Filed: 11/05/2024
Jury Demand: None
Nature of Suit: 791 Labor: E.R.I.S.A.
Jurisdiction: Federal Question

Plaintiff

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Date Filed	#	Docket Text
11/05/2024	1	COMPLAINT against William Bryan, Providence Insurance Company, I.I., Alexander Renfro, Suffolk Administrative Services, LLC., Arjan Zieger, filed by Julie A. Su. Service due by 2/3/2025, (Attachments: # 1 Civil Cover Sheet, # 2 Category Sheet)(Liu, Katrina) Modified on 11/6/2024 to remove fee information since payment is waived for USA (mcm). (Entered: 11/05/2024)
11/05/2024	2	NOTICE of Appearance by Jamie Leigh Bowers on behalf of Julie A. Su (Bowers, Jamie) (Entered: 11/05/2024)

11/05/2024	3	NOTICE of Appearance by Sarah D. Holz on behalf of Julie A. Su (Holz, Sarah) (Entered: 11/05/2024)
11/06/2024	4	NOTICE OF JUDGE ASSIGNMENT: Case has been assigned to Judge Camille L. Velez-Rive. (vdm) (Entered: 11/06/2024)
12/05/2024	5	WAIVER OF SERVICE Returned Executed by Julie A. Su. Suffolk Administrative Services, LLC. waiver sent on 11/5/2024, answer due 1/6/2025. (Bowers, Jamie) (Entered: 12/05/2024)
12/05/2024	6	WAIVER OF SERVICE Returned Executed by Julie A. Su. Providence Insurance Company, I.I. waiver sent on 11/5/2024, answer due 1/6/2025. (Bowers, Jamie) (Entered: 12/05/2024)
12/05/2024	7	WAIVER OF SERVICE Returned Executed by Julie A. Su. William Bryan waiver sent on 11/5/2024, answer due 1/6/2025. (Bowers, Jamie) (Entered: 12/05/2024)
12/05/2024	8	WAIVER OF SERVICE Returned Executed by Julie A. Su. Alexander Renfro waiver sent on 11/5/2024, answer due 1/6/2025. (Bowers, Jamie) (Entered: 12/05/2024)
12/05/2024	9	WAIVER OF SERVICE Returned Executed by Julie A. Su. Arjan Zieger waiver sent on 11/5/2024, answer due 1/6/2025. (Bowers, Jamie) (Entered: 12/05/2024)
01/02/2025	10	MOTION for extension of time until February 3, 2025 to answer or otherwise respond to the Complaint filed by Antonio L. Roig-Lorenzo on behalf of All Defendants. Responses due by 1/16/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Roig-Lorenzo, Antonio) (Entered: 01/02/2025)
01/02/2025	11	ORDER: granting Docket No. 10 Motion for extension of time. Defendants shall answer the Complaint or otherwise plead by February 3, 2025. Signed by Judge Camille L. Velez-Rive on January 2, 2025. (ASE) (Entered: 01/02/2025)
01/31/2025	12	Consent MOTION for extension of time until February 17, 2025 to answer or otherwise respond to the Complaint filed by Antonio L. Roig-Lorenzo on behalf of All Defendants. Responses due by 2/14/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Roig-Lorenzo, Antonio) (Entered: 01/31/2025)
01/31/2025	13	ORDER granting 12 Motion for extension of time. Defendants shall answer the Complaint or otherwise plead by February 17, 2025. Plaintiff is granted until April 18, 2025 to present any response, if necessary. Signed by Judge Camille L. Velez-Rive on 01/31/2025. (CVR) (Entered: 01/31/2025)
02/18/2025	14	NOTICE of Appearance by Alberto Jose Bayouth-Montes on behalf of All Defendants (Bayouth-Montes, Alberto) (Entered: 02/18/2025)
02/18/2025	15	***FILED IN ERROR. Missing PHV's handwritten signature*** Motion to allow James N. Henry, Jr. to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993360) filed by Alberto Jose Bayouth-Montes on behalf of Providence Insurance Company, I.I., Suffolk Administrative Services, LLC.. Responses due by 3/4/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) Modified on 2/19/2025 (mcm). (Entered: 02/18/2025)
02/18/2025	16	***FILED IN ERROR. Missing PHV's handwritten signature*** Motion to allow Robert G. Chadwick, Jr. to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993377) filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Arjan Zieger. Responses due by 3/4/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) Modified on 2/19/2025 (mcm). (Entered: 02/18/2025)

02/18/2025	17	***FILED IN ERROR. Missing PHV's handwritten signature*** Motion to allow Emaan Ali Bangash to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993406) filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Arjan Zieger. Responses due by 3/4/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) Modified on 2/19/2025 (mcm). (Entered: 02/18/2025)
02/18/2025	18	***FILED IN ERROR. Missing PHV's handwritten signature*** Motion to allow Edward P. Perrin, Jr. to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993432) filed by Alberto Jose Bayouth-Montes on behalf of Providence Insurance Company, I.I., Suffolk Administrative Services, LLC.. Responses due by 3/4/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) Modified on 2/19/2025 (mcm). (Entered: 02/18/2025)
02/18/2025	19	***FILED IN ERROR. Missing PHV's handwritten signature*** Motion to allow Jonathan Crumly to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993814) filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Arjan Zieger. Responses due by 3/4/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) Modified on 2/19/2025 (mcm). (Entered: 02/18/2025)
02/18/2025	20	ANSWER to 1 Complaint, filed by Alberto Jose Bayouth-Montes on behalf of Alexander Renfro.(Bayouth-Montes, Alberto) (Entered: 02/18/2025)
02/18/2025	21	ANSWER to 1 Complaint, filed by Alberto Jose Bayouth-Montes on behalf of Providence Insurance Company, I.I., Suffolk Administrative Services, LLC..(Bayouth-Montes, Alberto) (Entered: 02/18/2025)
02/18/2025	22	Corporate Disclosure Statement byProvidence Insurance Company, I.I.. (Bayouth-Montes, Alberto) (Entered: 02/18/2025)
02/18/2025	23	Corporate Disclosure Statement bySuffolk Administrative Services, LLC.. (Bayouth-Montes, Alberto) (Entered: 02/18/2025)
02/18/2025	24	ANSWER to 1 Complaint, filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Arjan Zieger.(Bayouth-Montes, Alberto) (Entered: 02/18/2025)
02/18/2025	25	COUNTERCLAIM against Julie A. Su, filed by Arjan Zieger, Alexander Renfro, Providence Insurance Company, I.I., Suffolk Administrative Services, LLC., William Bryan. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T, # 21 Exhibit U, # 22 Exhibit V)(Bayouth-Montes, Alberto) (Entered: 02/18/2025)
02/18/2025	26	MOTION to transfer case filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Providence Insurance Company, I.I., Alexander Renfro, Suffolk Administrative Services, LLC., Arjan Zieger. Responses due by 2/28/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit A)(Bayouth-Montes, Alberto) (Entered: 02/18/2025)
02/18/2025	27	MOTION to Stay *and Memorandum in Support* re: 26 MOTION to transfer case filed by Suffolk Administrative Services, LLC., William Bryan, Alexander Renfro, Providence Insurance Company, I.I., Arjan Zieger filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Providence Insurance Company, I.I., Alexander Renfro, Suffolk Administrative Services, LLC., Arjan Zieger. Responses due by 3/4/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically.

		(Attachments: # 1 Exhibit A, # 2 Exhibit B)(Related document(s) 26) (Bayouth-Montes, Alberto) (Entered: 02/18/2025)
02/19/2025		NOTICE of Docket Text Modification by Deputy Clerk re: 15 Motion to allow James N. Henry, Jr. to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993360), 16 Motion to allow Robert G. Chadwick, Jr. to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993377), 17 Motion to allow Emaan Ali Bangash to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993406), 18 Motion to allow Edward P. Perrin, Jr. to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993432), 19 Motion to allow Jonathan Crumly to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993814). ***FILED IN ERROR - Incorrect signature format for PHV. Pro Hac Vice shall use handwritten signature when requesting leave to appear. To be re-filed.*** (mcm) (Entered: 02/19/2025)
02/19/2025	28	Motion to allow James N. Henry, Jr. to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993360) filed by Alberto Jose Bayouth-Montes on behalf of Providence Insurance Company, I.I., Suffolk Administrative Services, LLC.. Responses due by 3/5/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) (Entered: 02/19/2025)
02/19/2025	29	ORDER granting 28 Motion to Appear PHV. Signed by Judge Camille L. Velez-Rive on 02/19/2025. (CVR) (Entered: 02/19/2025)
02/19/2025	30	Motion to allow Emaan Ali Bangash to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993406) filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Arjan Zieger. Responses due by 3/5/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) (Entered: 02/19/2025)
02/19/2025	31	Motion to allow Robert G. Chadwick, Jr. to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993377) filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Arjan Zieger. Responses due by 3/5/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) (Entered: 02/19/2025)
02/19/2025	32	ORDER granting 30 Motion to Appear PHV; granting 31 Motion to Appear PHV. Signed by Judge Camille L. Velez-Rive on 02/19/2025. (CVR) (Entered: 02/19/2025)
02/19/2025	33	Motion to allow Edward P. Perrin, Jr. to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993432) filed by Alberto Jose Bayouth-Montes on behalf of Providence Insurance Company, I.I., Suffolk Administrative Services, LLC.. Responses due by 3/5/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Text of Proposed Order)(Bayouth-Montes, Alberto) (Entered: 02/19/2025)
02/19/2025	34	ORDER granting 33 Motion to Appear PHV. Signed by Judge Camille L. Velez-Rive on 02/19/2025. (CVR) (Entered: 02/19/2025)
02/19/2025	35	Motion to allow Jonathan Crumly to appear pro hac vice (Pro Hac fee $300 receipt number APRDC-8993814) filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Arjan Zieger. Responses due by 3/5/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) (Entered: 02/19/2025)
02/20/2025	36	ORDER granting 35 Motion to Appear PHV. Signed by Judge Camille L. Velez-Rive on 02/20/2025. (CVR) (Entered: 02/20/2025)

02/20/2025	37	NOTICE TO PRO HAC VICE **James N. Henry, Jr.**, **Emaan Ali Bangash**, **Robert G. Chadwick, Jr.**, **Edward P. Perrin, Jr.** and **Jonathan Crumly** re: 34 Order on Motion to Appear PHV, 32 Order on Motion to Appear PHV, 36 Order on Motion to Appear PHV, 29 Order on Motion to Appear PHV : The Court has granted your pro hac vice application. In order to start receiving notifications, you must file a notice of appearance using your upgraded PACER account. For more information, visit the following link: **https://www.prd.uscourts.gov/nextgen-cmecf-what-it-means-you**. (mcm) (Entered: 02/20/2025)
02/20/2025	38	NOTICE of Appearance by Emaan Ali Bangash on behalf of William Bryan, Arjan Zieger (Bangash, Emaan) (Entered: 02/20/2025)
02/21/2025	39	NOTICE of Appearance by James N Henry, Jr on behalf of Providence Insurance Company, I.I., Suffolk Administrative Services, LLC. (Henry, James) (Entered: 02/21/2025)
02/21/2025	40	NOTICE of Appearance by Robert Glenn Chadwick, Jr on behalf of William Bryan, Arjan Zieger (Chadwick, Robert) (Entered: 02/21/2025)
02/21/2025	41	NOTICE of Appearance by Jonathan Crumly on behalf of William Bryan, Arjan Zieger (Crumly, Jonathan) (Entered: 02/21/2025)
02/25/2025	42	NOTICE of Appearance by Edward P. Perrin, Jr on behalf of Providence Insurance Company, I.I., Suffolk Administrative Services, LLC. (Perrin, Edward) (Entered: 02/25/2025)
02/25/2025	43	Consent MOTION for Extension of Time to File Response/Reply as to 25 Counterclaim,, filed by Suffolk Administrative Services, LLC., William Bryan, Alexander Renfro, Providence Insurance Company, I.I., Arjan Zieger, 27 MOTION to Stay *and Memorandum in Support* re: 26 MOTION to transfer case filed by Suffolk Administrative Services, LLC., William Bryan, Alexander Renfro, Providence Insurance Company, I.I., Arjan Zieger filed by Suffolk Administrative Services, LLC., William Bryan, Alexander Renfro, Providence Insurance Company, I.I., Arjan Zieger, 26 MOTION to transfer case filed by Suffolk Administrative Services, LLC., William Bryan, Alexander Renfro, Providence Insurance Company, I.I., Arjan Zieger filed by Jamie Leigh Bowers on behalf of Julie A. Su. Responses due by 3/11/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Related document(s) 25 , 27 , 26) (Bowers, Jamie) (Entered: 02/25/2025)
02/25/2025	44	ORDER granting 43 Motion for Extension of Time to File Response/Reply. The Acting Secretary of Labor is granted until April 25, 2025 to answer and/or respond to Defendants' Original Counterclaim for Declaratory and Injunctive Relief (ECF No. 25), Defendants' Motion to Transfer Venue and Memorandum in Support (ECF No. 26), and Defendants' Motion to Stay and Memorandum in Support (ECF No. 27). Signed by Judge Camille L. Velez-Rive on 02/25/2025. (CVR) (Entered: 02/25/2025)
02/26/2025	45	NOTICE *of Party Substitution* by Julie A. Su (Bowers, Jamie) (Entered: 02/26/2025)
03/06/2025	46	NOTICE of Appearance by Blair Lane Byrum on behalf of Vincent N. Micone, III (Byrum, Blair) (Entered: 03/06/2025)
03/20/2025	47	NOTICE *of Party Substitution* by Vincent N. Micone, III (Bowers, Jamie) (Entered: 03/20/2025)
04/25/2025	48	MOTION to Dismiss for Failure to State a Claim filed by Jamie Leigh Bowers on behalf of Lori Chavez-Deremer. Responses due by 5/9/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Memorandum in Support of Motion to Dismiss, # 2 Exhibit A (DMP Litigation Order from

		April 8, 2025), # 3 Exhibit B (Suffolk Administrative Services, LLC v. U.S. Department of Labor Order from March 28, 2022))(Bowers, Jamie) (Entered: 04/25/2025)
04/25/2025	49	MEMORANDUM in Opposition *to Defendants' Motion to Transfer Venue and Defendants' Motion to Stay* filed by Lori Chavez-Deremer Re: 27 MOTION to Stay *and Memorandum in Support* re: 26 MOTION to transfer case filed by Suffolk Administrative Services, LLC., William Bryan, Alexander Renfro, Providence Insurance Company, I.I., Arjan Zieger filed by Suffolk Administrative Services, LLC., William Bryan, Alexander Renfro, Providence Insurance Company, I.I., Arjan Zieger, 26 MOTION to transfer case filed by Suffolk Administrative Services, LLC., William Bryan, Alexander Renfro, Providence Insurance Company, I.I., Arjan Zieger filed by Lori Chavez-Deremer. (Bowers, Jamie) (Entered: 04/25/2025)
05/07/2025	50	MOTION for extension of time until 6/9/2025 to respond to the Motion to Dismiss (Docket No. 48), potentially amend its Counterclaim (Docket No. 25), and reply to the Response in Opposition to Defendants Motion to Transfer and Stay (Docket No. 49) filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Providence Insurance Company, I.I., Alexander Renfro, Suffolk Administrative Services, LLC., Arjan Zieger. Responses due by 5/21/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) (Entered: 05/07/2025)
05/07/2025	51	ORDER: granting Docket No. 50 Motion for extension of time. Defendants are granted until June 9, 2025 to file an Opposition the Motion to Dismiss (Docket No. 48), file an amended Counterclaim, and to file a Reply to the Opposition to the request to transfer and stay (Docket No. 49). Signed by Judge Camille L. Velez-Rive on May 7, 2025. (ASE) (Entered: 05/07/2025)
06/09/2025	52	First AMENDED COUNTERCLAIM *FOR DECLARATORY AND INJUNCTIVE RELIEF* against Lori Chavez-Deremer, filed by Arjan Zieger, William Bryan, Alexander Renfro, Providence Insurance Company, I.I., Suffolk Administrative Services, LLC.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T, # 21 Exhibit U, # 22 Exhibit V)(Bayouth-Montes, Alberto) (Entered: 06/09/2025)
06/09/2025	53	MOTION to Intervene filed by Alberto Jose Bayouth-Montes on behalf of Data Marketing Partnership, LP, LP Management Services, LLC. Responses due by 6/23/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) (Entered: 06/09/2025)
06/09/2025	54	MEMORANDUM in Support *of Motion to Intervene* filed by Data Marketing Partnership, LP, LP Management Services, LLC Re: 53 MOTION to Intervene filed by LP Management Services, LLC, Data Marketing Partnership, LP filed by Data Marketing Partnership, LP, LP Management Services, LLC. (Attachments: # 1 Proposed Complaint in Intervention, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q)(Bayouth-Montes, Alberto) (Entered: 06/09/2025)
06/10/2025	55	ORDER: Denying Docket No. 26 Motion to transfer case; and denying as moot Docket No. 27 Motion to Stay. Signed by Judge Camille L. Velez-Rive on June 10, 2025. (ASE) (Entered: 06/10/2025)
06/10/2025	56	ORDER: denying without prejudice Docket No. 48 Motion to Dismiss for Failure to State a Claim, in light of the filing at Docket No. 52. The Secretary of Labor is granted until June 30, 2025 to answer or otherwise plead as to the First Amended Counterclaim (Docket

		No. 52). Signed by Judge Camille L. Velez-Rive on June 10, 2025. (ASE) (Entered: 06/10/2025)
06/18/2025	57	Consent MOTION for extension of time until 08/08/2025 to Answer or Otherwise Plead in Response to Defendants' First Amended Counterclaim (ECF No. 52) and Respond to the Motion to Intervene (ECF No. 53) filed by Sarah D. Holz on behalf of Lori Chavez-Deremer. Responses due by 7/2/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Holz, Sarah) (Entered: 06/18/2025)
06/18/2025	58	ORDER granting 57 Motion for extension of time. The Secretary of Labor is granted until August 8, 2025, to answer and/or respond to Defendants First Amended Counterclaim for Declaratory and Injunctive Relief (ECF No. 52) and the Motion to Intervene filed by DMP and LPMS (ECF No. 53). Signed by Judge Camille L. Velez-Rive on 06/18/2025. (CVR) (Entered: 06/18/2025)
07/25/2025	59	NOTICE *of Withdrawal of Counsel* by Lori Chavez-Deremer (Liu, Katrina) (Entered: 07/25/2025)
08/08/2025	60	MOTION to Dismiss for Failure to State a Claim *(Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief)* filed by Jamie Leigh Bowers on behalf of Lori Chavez-Deremer. Responses due by 8/22/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Memorandum in Support of Secretary's Motion to Dismiss Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D)(Bowers, Jamie) (Entered: 08/08/2025)
08/08/2025	61	***FILED IN ERROR. Counsel filed using another counsel's login/password. To be re-filed.*** MEMORANDUM in Opposition filed by Lori Chavez-Deremer Re: 53 MOTION to Intervene filed by LP Management Services, LLC, Data Marketing Partnership, LP filed by Lori Chavez-Deremer. (Bowers, Jamie) Modified on 8/11/2025 (mcm). (Entered: 08/08/2025)
08/11/2025	62	MEMORANDUM in Opposition filed by Lori Chavez-Deremer Re: 53 MOTION to Intervene filed by LP Management Services, LLC, Data Marketing Partnership, LP filed by Lori Chavez-Deremer. (Byrum, Blair) (Entered: 08/11/2025)
08/14/2025	63	ORDER: denying Docket No. 53 Motion to Intervene. Data Marketing Partnership, LP and LP Management Services, LLC request intervention in this case alleging financial interests in the outcome of this litigation. As well explained by the Secretary in her opposition, these parties already have a case that has been ongoing for 5 years before the District Court for the Northern District of Texas against her regarding an advisory opinion as to whether certain plans were covered under the Employee Retirement Income Security Act (ERISA). (Docket No. 62). The claims they want to bring before this Court are directly related to the Texas case and not to the ones before this Court, where the Secretary alleges violations to fiduciary duties of ERISA plans by different plaintiffs. This Court has already ruled that besides the Secretary, the cases involve different parties, wholly different claims, and harms. (Docket No. 55). Thus, they are not the type of actions that would merit a finding in favor of intervention. In addition, the Court bases its ruling on the other grounds raised by the Secretary in her opposition to the motion to intervene, which are found to be persuasive. Signed by Judge Camille L. Velez-Rive on August 14, 2025. (ASE) (Entered: 08/14/2025)
08/15/2025	64	MOTION for extension of time until 9/22/2025 to to respond to the Motion to Dismiss at Docket Entry 60 filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Providence Insurance Company, I.I., Alexander Renfro, Suffolk Administrative Services, LLC., Arjan Zieger. Responses due by 8/29/2025. NOTE: Pursuant to FRCP 6(a) an

		additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) (Entered: 08/15/2025)
08/15/2025	65	ORDER granting as unopposed 64 Motion for extension of time. Defendants-Counterclaim Plaintiffs are granted until 9/22/2025 to respond to the Motion to Dismiss (ECF No. 60). Signed by Judge Camille L. Velez-Rive on 08/15/2025. (CVR) (Entered: 08/15/2025)
09/12/2025	66	NOTICE OF INTERLOCUTORY APPEAL as to 63 Order on Motion to Intervene,,,,, by Data Marketing Partnership, LP, LP Management Services, LLC. Filing fee $605, receipt number APRDC-9243078. **NOTICE TO COUNSEL: Counsel should register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf/. Counsel should also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf** (Bayouth-Montes, Alberto) Modified on 9/15/2025 to update event title (mcm). (Entered: 09/12/2025)
09/12/2025		***SEE IMAGE AT DOCKET 66 *** NOTICE OF INTERLOCUTORY APPEAL as to 63 Order on Motion to Intervene, by Data Marketing Partnership, LP, LP Management Services, LLC. (Filing fee $ 605, receipt number APRDC-9243078) (mcm) (Entered: 09/15/2025)
09/15/2025	67	MOTION to Stay *Pending Appeal* re: Notice of Interlocutory Appeal filed by LP Management Services, LLC, Data Marketing Partnership, LP, 66 Notice of Appeal,,, filed by LP Management Services, LLC, Data Marketing Partnership, LP filed by Alberto Jose Bayouth-Montes on behalf of Data Marketing Partnership, LP, LP Management Services, LLC. Responses due by 9/29/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Related document(s)[], 66) (Bayouth-Montes, Alberto) (Entered: 09/15/2025)
09/15/2025	68	MEMORANDUM in Support *of Motion to Stay* filed by Data Marketing Partnership, LP, LP Management Services, LLC Re: 67 MOTION to Stay *Pending Appeal* re: Notice of Interlocutory Appeal filed by LP Management Services, LLC, Data Marketing Partnership, LP, 66 Notice of Appeal,,, filed by LP Management Services, LLC, Data Marketing Partnership, LP filed by LP Management Services, LLC, Data Marketing Partnership, LP filed by Data Marketing Partnership, LP, LP Management Services, LLC. (Bayouth-Montes, Alberto) (Entered: 09/15/2025)
09/17/2025	69	Certified and Transmitted Record on Appeal to US Court of Appeals re 66 Notice of Interlocutory Appeal [Docket Entries 63 & 66] (idg) (Entered: 09/17/2025)
09/22/2025	70	USCA Case Number 25-1886 for Notice of Interlocutory Appeal filed by LP Management Services, LLC, Data Marketing Partnership, LP. (idg) (Entered: 09/22/2025)
09/22/2025	71	RESPONSE to Motion *to Dismiss First Amended Counterclaim for Declaratory and Injunctive Relief* filed by William Bryan, Providence Insurance Company, I.I., Alexander Renfro, Suffolk Administrative Services, LLC., Arjan Zieger Re: 60 MOTION to Dismiss for Failure to State a Claim *(Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief)* filed by Lori Chavez-Deremer filed by William Bryan, Providence Insurance Company, I.I., Alexander Renfro, Suffolk Administrative Services, LLC., Arjan Zieger. (Bayouth-Montes, Alberto) (Entered: 09/22/2025)
09/23/2025	72	Consent MOTION for Extension of Time until October 29, 2025 to File Response/Reply as to 60 MOTION to Dismiss for Failure to State a Claim *(Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief)* filed by Lori Chavez-Deremer, MOTION for Leave to File Document filed by Jamie Leigh Bowers on behalf of Lori Chavez-Deremer. Responses due by 10/7/2025. NOTE: Pursuant to FRCP 6(a) an

		additional three days does not apply to service done electronically. (Related document(s) 60) (Bowers, Jamie) (Entered: 09/23/2025)
09/23/2025	73	ORDER granting 72 Motion for Extension of Time to File Response/Reply; granting 72 Motion for Leave to File. Plaintiff and Counterclaim-Defendant Lori Chavez-DeReme is granted until 10/29/2025 to file a Reply to the Opposition to the Motion to Dismiss (ECF No. 71). Signed by Judge Camille L. Velez-Rive on 09/23/2025. (CVR) (Entered: 09/23/2025)
09/29/2025	74	MEMORANDUM in Opposition filed by Lori Chavez-Deremer Re: 67 MOTION to Stay *Pending Appeal* re: Notice of Interlocutory Appeal filed by LP Management Services, LLC, Data Marketing Partnership, LP, 66 Notice of Appeal,,, filed by LP Management Services, LLC, Data Marketing Partnership, LP filed by LP Management Services, LLC, Data Marketing Partnership, LP filed by Lori Chavez-Deremer. (Byrum, Blair) (Entered: 09/29/2025)
09/29/2025	75	ORDER denying 67 Motion to Stay for the reasons well explained by Secretary Lori Chavez-DeRemer in her Memorandum in Opposition (ECF No. 74). Signed by Judge Camille L. Velez-Rive on 09/29/2025. (CVR) (Entered: 09/29/2025)
10/21/2025	76	Consent MOTION for Extension of Time until 30 days after Congress restores appropriations to the Department of Labor to File Response/Reply as to 60 MOTION to Dismiss for Failure to State a Claim *(Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief)* filed by Lori Chavez-Deremer filed by Sarah D. Holz on behalf of Lori Chavez-Deremer. Responses due by 11/4/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Related document(s) 60) (Holz, Sarah) (Entered: 10/21/2025)
10/21/2025	77	ORDER granting 76 Motion for Extension of Time to File Response/Reply. The deadline to file a reply in support of the Secretary's motion to dismiss is extended until 30 days after Congress has restored appropriations to the Department of Labor. The Secretary shall notify the Court as soon as Congress has restored appropriations to the Department of Labor. Signed by Judge Camille L. Velez-Rive on 10/21/2025. (CVR) (Entered: 10/21/2025)
11/07/2025	78	MOTION to Withdraw *Emaan Ali Bangash as Counsel for Defendants-Counterclaim Plaintiffs William Bryan and Arjan Zieger* filed by Alberto Jose Bayouth-Montes on behalf of William Bryan, Arjan Zieger. Responses due by 11/21/2025. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Bayouth-Montes, Alberto) (Entered: 11/07/2025)
11/07/2025	79	ORDER granting 78 Motion to Withdraw Emaan Ali Bangash as Counsel for Defendants-Counterclaim Plaintiffs William Bryan and Arjan Zieger. Signed by Judge Camille L. Velez-Rive on 11/7/2025. (ari) (Entered: 11/07/2025)
11/10/2025	80	NOTICE of Change of Address by Jonathan Crumly filed on behalf of William Bryan, Arjan Zieger (Crumly, Jonathan) (Entered: 11/10/2025)
11/17/2025	81	NOTICE *of Restoration of Appropriations* by Lori Chavez-Deremer (Bowers, Jamie) (Entered: 11/17/2025)
12/15/2025	82	REPLY to Motion filed by Lori Chavez-Deremer Re: 60 MOTION to Dismiss for Failure to State a Claim *(Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief)* filed by Lori Chavez-Deremer filed by Lori Chavez-Deremer. (Holz, Sarah) (Entered: 12/15/2025)
01/14/2026	83	OPINION AND ORDER: GRANTING Docket No. 60 Motion to Dismiss for Failure to State a Claim. Defendants' Amended Counterclaim (Docket No. 52) is DISMISSED

		WITHOUT PREJUDICE. Partial Judgment will be entered accordingly. Signed by Judge Camille L. Velez-Rive on January 14, 2026. (ASE) (Entered: 01/14/2026)
01/14/2026	84	PARTIAL JUDGMENT. The Court hereby DISMISSES WITHOUT PREJUDICE the Counterclaim (Docket No. 52) filed by Defendants against Plaintiff. Signed by Judge Camille L. Velez-Rive on January 14, 2026. (ASE) (Entered: 01/14/2026)
01/14/2026	85	ORDER. The parties shall file a Joint Proposed Scheduling Memorandum including compliance with the Rule 26 disclosures; each party's factual and legal contentions; each party's fact and expert witnesses with a short summary of their testimonies; a discovery timetable with suggested deadlines; and whether each party consents to proceed before a United States Magistrate Judge for all further proceedings including the entry of judgment. The Court will then issue a Case Management Order approving and/or modifying the proposed discovery timetable, rendering those deadlines final and binding upon all parties. **Joint Proposed Scheduling Memorandum due by 2/13/2026.** Signed by Judge Camille L. Velez-Rive on 01/14/2026. (CVR) (Entered: 01/14/2026)

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

JULIE A. SU, ACTING SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, Plaintiff, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER Defendants.	)	CIVIL ACTION Case No.

COMPLAINT

Julie A. Su, Acting Secretary of the United States Department of Labor ("Secretary"), alleges as follows:

INTRODUCTION

1. Since at least 2016, Defendants Suffolk Administrative Services, LLC ("SAS") and Providence Insurance Company, I.I. ("PIC")—collectively "Providence" or the "Providence Companies"—and their owners and executives Alexander Renfro, William Bryan, and Arjan Zieger, have been marketing, selling, and servicing employer-sponsored health benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001. Providence markets its plans—the majority of which cover only preventive services and nothing more—as an "affordable" way for employers to offer health benefits to their employees while complying with the patient protections imposed by the Affordable Care Act ("ACA") and incorporated in ERISA. But

what Providence does not disclose is that Defendants use the plans as vehicles to collect and divert to themselves massive fees through self-dealing in violation of ERISA.

2. Defendants' ERISA violations stem from their control over ERISA-plan assets. Though Defendants sell plans to separate and distinct employers, Defendants pool the plans' monthly contributions together, and service the plans with the same slate of service providers (including the Providence Companies), through a structure known as a multiple employer welfare arrangement ("Providence MEWA"). 29 U.S.C. § 1002(40)(A).[1] Because the Plans are "self-funded"—meaning that claims are paid out of Plan funds rather than by an insurance company—the Plans' monthly contributions to the MEWA are earmarked for benefit payments, and are thus assets of the Participating Plans, not of the MEWA or the Providence Companies.

3. However, SAS and its executives—not the Participating Plans—decide on their own how much to take from those Plan assets for SAS and the other service providers as fees. Indeed, the Participating Plans agree only to pay a set monthly contribution amount; they do not agree on or approve how their contribution payments are allocated among the Plans' service providers, including to SAS and PIC. Rather, those decisions are made exclusively by SAS and SAS's executives.

[1] Since 2016, over 1,900 employers, located across at least 45 states, have established ERISA-governed health plans through the Providence MEWA. The Providence MEWA also includes health plans for multiple limited partnerships. Those limited partnership plans are the subject of an advisory opinion issued by the U.S. Department of Labor, which concluded that plans sponsored by such limited partnerships are not governed by ERISA. The advisory opinion was challenged and vacated in another litigation, *Data Marketing Partnership, LP v. United States Department of Labor, et al.*, No. 4:19-cv-800 (N.D. Tex.). The U.S. Court of Appeals for the Fifth Circuit affirmed the vacatur and remanded the case, and proceedings remain ongoing. *Data Marketing Partnership, et al. v. United States Department of Labor*, 45 F.4th 846 (5th Cir. 2020). The limited partnership plans are not among the Participating Plans at issue in this Complaint.

4. In determining which service providers to pay with the Plans' assets and how much to pay them, SAS and its executives violate their duties under ERISA in a variety of ways. First, SAS and its executives engage in self-dealing by unilaterally determining SAS's own service-provider fee and directing the payment of those fees to itself from Plan assets, without any review or approval by an independent Plan fiduciary (*i.e.*, a non-Providence-related fiduciary of the Participating Plans). SAS and its executives also violate their fiduciary duties of prudence and loyalty in setting SAS's fees because those fees are excessive relative to the services SAS provides.

5. Second, SAS and its executives also engage in self-dealing by unilaterally determining how much to pay SAS's affiliate, PIC—which is owned and operated by the same individual defendants that own and operate SAS—to serve as a "reinsurer" to the Participating Plans, without any review or approval by an independent Plan fiduciary. Here too, PIC's fees are excessive relative to the services it provides—indeed, PIC has not paid a single dollar of reinsurance—and, by approving PIC's fees, SAS and its executives violate their fiduciary duties of prudence and loyalty. For its part, PIC is liable for knowingly participating in these ERISA violations.

6. Third, SAS and its executives breach their fiduciary duties by directing payment out of Plan assets to entities that market the MEWA to prospective employers and initially enroll the Participating Plans. Not only do the enrollers provide no discernible service to the Participating Plans, but the fees that SAS and its executives authorize be paid to them are excessive.

7. The Secretary brings this action to redress Defendants' ERISA violations by restoring the Plans' losses, recovering unjust profits, and obtaining other remedial and

equitable relief, including enjoining Defendants from acting as fiduciaries or service providers to ERISA-covered employee benefit plans in the future.

JURISDICTION AND VENUE

8. This action arises under ERISA and is brought by the Secretary to obtain relief under 29 U.S.C. §§ 1109 and 1132(a)(2) and (5), to redress violations and enforce the provisions of Title I of ERISA.

9. This Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. § 1132(e)(1). The subject of the Secretary's Complaint is a MEWA (the Providence MEWA) as defined by 29 U.S.C. § 1002(40)(A), to which over 1,900 employers subscribed since 2016 for the purpose of providing health benefits to their employees, and in so doing established employee welfare benefit plans under ERISA (*i.e.*, the Participating Plans), 29 U.S.C. § 1002(1).

10. Venue is appropriate in this district under 29 U.S.C. § 1132(e)(2), and 28 U.S.C. § 1391(d), because SAS and PIC are headquartered in Puerto Rico, and they reside within this district. The Providence MEWA is administered by Providence in Puerto Rico and several of the alleged breaches took place here.

PARTIES

11. The Secretary is vested with the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of civil claims against fiduciaries and other parties who violate ERISA. 29 U.S.C. § 1132(a)(2) and (5).

12. **Defendant Suffolk Administrative Services ("SAS")** is a limited liability company registered in Puerto Rico. At all relevant times, SAS was owned by two holding companies, Anjo, LLC ("Anjo"), which owned 25% of SAS, and Momentum Capital, LLC ("Momentum Capital"), which owned the remaining 75%, and each company received a

proportional percentage of SAS's profits. SAS consists of three Strategic Business Units: (a) Incela HR ("Incela"); (b) Affordable Benefit Choices ("ABC"); and (c) ouTPAce. These units perform different functions within SAS. Incela generally provides administrative plan services and customer support (including health plan administration, approving fees of service providers, enrollment services, and Form 1094 and 1095 reporting); ABC provides consulting services, benefit designs, and plan documents; and ouTPAce collects a fee but does not provide services to the MEWA. SAS, through its Strategic Business Units, administers the entire Providence MEWA. Executives of SAS include Alexander Renfro (Chief Legal Officer), William Bryan (Chairman), and Arjan Zieger (Vice-Chairman). These executives are among the primary decisionmakers at SAS.

13. SAS performs functions that render it a fiduciary to the Participating Plans under 29 U.S.C. § 1002(21)(A). These functions include selecting and hiring the service providers to the Plans, determining the compensation for the service providers, and exercising authority over the disposition of Plan assets. As a fiduciary and service provider to the MEWA, SAS is a party-in-interest to the MEWA pursuant to 29 U.S.C. § 1002(14)(A) and (B).

14. **Defendant Providence Insurance Company, I.I. ("PIC")** is an insurance company incorporated in Puerto Rico. PIC is 100% owned by Suffolk Holdings, LLC ("Suffolk Holdings"). In turn, Suffolk Holdings was owned at all relevant times by Anjo (15% ownership) and Momentum Capital (85% ownership). PIC is a reinsurer to the Participating Plans. PIC's executives are William Bryan (President and Chief Executive Officer), Arjan Zieger (Treasurer and Chief Financial Officer), and Alexander Renfro (Secretary). As a service provider to the Participating Plans, PIC is a party-in-interest to the Plans under 29 U.S.C. § 1002(14)(B).

15. **Defendant Alexander Renfro ("Renfro")**, at all relevant times, owned 100% of Anjo, and, through his ownership of Anjo, owned 25% of SAS and 15% of PIC, and was entitled to a proportional share of the profits of those companies.[2] Renfro also served as Chief Legal Officer of SAS and Secretary of PIC during the relevant time period.

16. Renfro performed functions that render him a fiduciary to the Participating Plans under 29 U.S.C. § 1002(21)(A). He exercised discretion over funds of the Participating Plans, including dictating the rates paid to the Providence MEWA's service providers, confirming payment amounts to those service providers, and directing brokers on how to route participant contributions. He also participated in engaging service providers to the Providence MEWA and negotiating terms of the engagement.

17. Defendant William Bryan ("Bryan") owns the Lobos Trust, which owns 50% of Momentum Capital. Through his ownership of Momentum Capital, Bryan owns 37.5% of SAS and 42.5% of PIC, and is entitled to a proportional share of the profits of those companies. He also serves as Chairman of SAS, and as President and CEO of PIC.

18. Bryan performs functions that render him a fiduciary to the Participating Plans under 29 U.S.C. § 1002(21)(A). He negotiates the terms of engagement of service providers to the Providence MEWA and hires those service providers.

19. Defendant Arjan Zieger ("Zieger") owns the Tasman Trust, which owns 50% of Momentum Capital. Through his ownership of Momentum Capital, Zieger owns 37.5% of

[2] Shortly before the filing of this Complaint, on October 29, 2024, counsel for PIC, SAS, Bryan, and Zieger indicated that Renfro divested his ownership interest in SAS and PIC. The attorney did not represent Renfro and did not provide any supporting documentation. A recent ownership divestiture by Renfro, if true, does not impact the Secretary's claims against him for prior or continued actions taken as an officer for SAS and PIC, nor does it change the relief sought by the Secretary, so this Complaint describes Renfro's involvement in the present tense.

SAS and 42.5% of PIC, and is entitled to a proportional share of the profits of those companies. He also serves as Vice-Chairman of SAS, and as Treasurer and Chief Financial Officer of PIC.

20. Zieger performs functions that render him a fiduciary to the Participating Plans under 29 U.S.C. § 1002(21)(A). He exercises discretion over the Participating Plans' funds by, among other things, setting funding and replenishment levels of the Providence MEWA's claims accounts, approving fees to the Providence MEWA's service providers and directing third party administrators on routing the Participating Plans' assets. He also participates in engaging service providers to the Providence MEWA and negotiating terms of the engagement.

GENERAL ALLEGATIONS

I. Defendants Sell Self-Funded Health Plans to Employers Through the Providence MEWA

21. The Providence MEWA, though not itself an employee welfare benefit plan, consists of multiple underlying employee welfare benefit plans created by employers for their employees (*i.e.*, the Participating Plans). The employers that sponsor these Participating Plans are located in at least 45 states across the United States and come from a wide range of industries. The employer-sponsors of the Participating Plans are not under common control and do not have any other cohesive bond. The employers are heterogeneous and unrelated, with the only common purpose being a shared desire for employee medical coverage.

22. The Providence MEWA uses multiple enrollment companies ("enrollers") to market their plans and to enroll new employers into the arrangement.

23. Once recruited by an enroller, sponsoring employers create a Participating Plan by signing an Administrative Services Agreement ("ASA") with SAS.[3]

[3] Before mid-2016, Participating Plans executed an ASA with a predecessor to SAS, Providence Insurance Partners, LLC ("PIP"). On or about mid-2016, PIP assigned the ASAs to SAS, which took over plan administration services.

24. SAS provides Participating Plans with Summary Plan Descriptions ("SPDs"), Plan Documents, or both, which outline employee eligibility, describe benefits, explain how the plan is financed, and detail the process for obtaining benefits.

25. The Participating Plans—as explained in the SPD—are "self-funded" or "self-insured," meaning that the Plan sponsor, not an insurance company, is responsible for the payment of claims.

26. When employers join the Providence MEWA by establishing a Participating Plan, SAS obtains "reinsurance" for the employer through an insurance policy from PIC called a Contractual Liability Insurance Policy ("CLIP").

27. The Participating Plans make monthly contribution payments to the Providence MEWA. They pay contributions either directly to the Plan's third party administrator ("TPA")—which is responsible for administering health claims—or to the enroller that recruited the Plan into the MEWA, who then remits the payment to the TPA after taking a fee. As discussed further *infra*, the TPAs use the Plans' payments to (1) pay fees to other service providers as instructed by SAS, and (2) fund pooled accounts from which benefits for the Participating Plans are paid ("Claims Accounts"). If there are Plan contributions remaining after service providers are paid and the Claims Accounts are sufficiently funded, the TPA transfers the balance to PIC.

28. MEWA administrators are required to file a Form M-1 annually with the Secretary reporting the MEWA's financial condition. The Providence MEWA has never filed a Form M-1.

II. SAS and Its Executives Unilaterally Select the Service Providers to the Participating Plans and Determine Their Compensation

29. One of SAS's primary services to the Participating Plans is vendor management. The ASA states, "[SAS] maintains the right to subcontract services under any of the above

obligations or any aspect of forming, maintaining, or terminating a health and welfare benefits plan or program." It further states that SAS "reserves the right to preselect any subcontracted vendors on behalf of Employer" and provides that "[s]ervices performed by [SAS] under this Agreement may be performed directly by [SAS] or through the use of affiliates, subsidiaries, or sub-contractors."

30. The employers that sponsor the Participating Plans—who serve as the named plan administrators for their Plans—do not have any involvement in selecting or approving their Plans' service providers other than SAS. They also have no involvement in setting or approving the specific fees paid from Plan contributions (such as administrative fees or insurance premiums) for any service providers to the Participating Plans (including SAS's fee). Those decisions are made exclusively by SAS and its executives, including, at all relevant times, Renfro, Bryan, and Zieger. The employers agree only to the total monthly contributions paid by their respective Plans, but do not authorize or even know the discrete fee paid to each service provider of the Plan.

31. Among the service providers that SAS, Renfro, Bryan, and Zieger select is PIC, which provides reinsurance for the Participating Plans. PIC's insurance is reflected in the CLIP, which is ostensibly between PIC and the employers. However, the CLIP typically is not executed by the employer. For some Plans, in an attempt to appear as though the employer selected PIC, SAS provides the employer with an appointment form (drafted by SAS) that designates a representative chosen by SAS to procure insurance for the Plan. This representative then executes the CLIP with PIC on behalf of the Participating Plan. In other cases, the CLIP is not signed at all, either by the employer or anyone purporting to represent the employer. Regardless,

in either situation, neither the employer nor another independent fiduciary of the Participating Plan executes the CLIP with PIC.

32. In addition, SAS, Renfro, Zieger, and Bryan exclusively determine and authorize PIC's compensation based in part on rate-setting calculations performed and/or approved by Renfro, Zieger, and Bryan. Neither the employer-sponsors nor any other independent fiduciary of the Participating Plans authorize or approve PIC's compensation.

33. SAS, Renfro, Bryan, and Zieger also select the TPAs for the Participating Plans, which have included Boon Group ("Boon"),[4] Hawaii Mainland Administrators ("HMA"), S&S Health, Aither Health, Lucent Health, D.H. Cook, and others. SAS, Renfro, Bryan, and Zieger exclusively determine the compensation for all of the TPAs serving the Participating Plans, without authorization or approval by the employer-sponsors or any other independent fiduciary of the Participating Plans.

34. SAS's exclusive role in selecting service providers and determining their fees is reflected in the ASAs, which, at all relevant times, have not disclosed to the employers the amount each service provider receives in fees for the services provided to the Plans.

35. In short, SAS, Renfro, Bryan, and Zieger select all of the service providers to the Participating Plans (other than SAS itself, which employer-sponsors select), and determine their compensation (including SAS's own compensation), without authorization or approval by the employer-sponsors or any other independent fiduciary of the Participating Plans.

[4] While PIP initially hired Boon, PIP assigned SAS the obligations and benefits that PIP held in its agreement with Boon. In other words, SAS took over PIP's role in the Providence MEWA's relationship to Boon.

III. SAS Directs How TPAs Use Plan Contributions to Pay MEWA Service Providers, Including SAS and PIC

36. The ASA between an employer-sponsor and SAS includes a fee schedule for health plan services that lists the overall cost per enrollee per month ("PEPM"). Pursuant to the ASAs, employers make monthly payments (or "contributions") on behalf of their Participating Plan to fund health plan benefits. The payment is made either to an enroller or to one of the TPAs selected by SAS.

37. From the contributions they receive, the TPAs pay fees to various service providers to the Participating Plans (including SAS and PIC) based on directions from SAS, referred to as Confidential Payment Instructions ("CPIs").

38. After paying fees to the Plans' service providers, the TPAs then transfer the Plans' contributions to pooled bank accounts controlled by each of the TPAs, which are used specifically for paying benefit claims ("Claims Accounts").

39. SAS requires the TPAs to maintain a minimum balance in their Claims Accounts, and the TPAs only place into their Claims Accounts enough of the Participating Plans' contributions as necessary to maintain that minimum balance.

40. The TPAs each maintain only one Claims Account that includes contributions from multiple Participating Plans without tracking which assets in their Claims Accounts belong to which Plan.

41. The TPAs use the contributions placed in their Claims Account to pay for claims for all the Participating Plans they service, without regard to whether the funds used to pay a claim come from the contributions of the specific beneficiary's sponsoring employer.

42. If a TPA has a question about whether a claim is covered under the Plan, they ask SAS for an interpretation of the Plan, which SAS provides. Renfro is often the person interpreting the Plan on behalf of SAS.

43. Once the TPAs pay all the MEWA's service providers and replenish their Claims Accounts, the TPAs, at SAS's direction, send the remainder of the Participating Plans' contributions to PIC.

IV. SAS Directs Substantial Fees to Itself and Other Service Providers

44. The fees that SAS directs to itself and the other service providers to the Participating Plans exceed the amount spent by the Plans on medical claims.

45. The medical loss ratio for a health benefits plan is the share of total health care premiums or contributions spent on medical claims. For example, the ACA requires that health insurers in the individual and small group markets allocate at least 80% of premiums towards health care costs and improvements. The remaining 20% of premiums can be allocated towards administrative costs, overhead, and marketing. For the large group market, the percentage that the ACA requires to be allocated towards health care costs is 85%.

46. From 2016 to 2022, the Providence MEWA, though not subject to the ACA's medical loss ratio standard, had a targeted loss ratio between 27% to 48%. In other words, the MEWA aimed to devote only 27% to 48% of the Plans' contributions to pay for healthcare costs, with the remaining 52% to 73% going towards administrative costs, which are the fees paid to service providers.

47. The proportion of contributions used by the Providence MEWA to pay administrative fees between 2016 and 2022 were consistent with or exceeded the MEWA's

targeted loss ratios due to both the low number of claims paid and the low dollar amount of claims paid by the MEWA.

48. Indeed, the ASAs between SAS and participating employers show that the proportion of the Participating Plans' monthly contribution payments that go towards paying administrative costs (such as service provider fees) exceed 50%. For example, in one ASA between SAS and employer sponsor Maberry Packing, LLC dated 2019, the "Administration Costs" for a single-employee enrollment in a coverage option called WellMEC was $59.89 out of the total $82.50 monthly contribution, or 72%. Similarly, the "Administration Costs" for a single-employee enrollment in another coverage option called WellPrime was $62.95 out of the total $113.45 monthly contribution, or 55.5%.

49. SAS directs to itself (through CPIs directed to the TPAs) at least one-third of the contribution amounts allocated towards administrative costs. SAS directs these payments without disclosure to, or approval by, the employer-sponsors or any other independent fiduciary of the Participating Plans. For example, a SAS-created CPI for one of the Participating Plans, sponsored by Tiger Labor and Staffing, lists a $75.00 monthly contribution payment for a single employee enrolled in WellMEC coverage. Of that amount, $20.81 was paid to ABC (a SAS business unit), and $5.58 was paid to Incela (another SAS business unit) as fees, which means SAS received a total of $26.39 in fees from the $75.00 monthly payment, or 35.2%. Under the same CPI, for families enrolled in WellMEC coverage, the monthly contribution payment is $205.00, with $111.17 paid to SAS as fees ($105.59 to ABC and $5.58 to Incela), representing 54.2% of the total monthly payment.

50. As another example, for the Plan sponsored by Wegis Ranch, the monthly cost for single-employee enrollment in WellMEC coverage is $80.00, of which SAS directs the claims

administrator to pay $23.44 to ABC and $2.95 to Incela as fees, for a total of $26.39 paid as fees to SAS, or 33% of the monthly payment. For a family enrollment in WellMEC coverage, the monthly cost is $240.00, with $138.22 paid to ABC and $2.95 paid to Incela as fees, for a total of $141.17 paid as fees to SAS or 58.8% of the monthly payment.

51. Despite directing substantial fees to itself out of Plan assets, SAS does not actually perform the work of administering the Plans once they are established, which instead falls to other service providers to the Plans, most notably the TPAs. Yet SAS receives far greater compensation than the TPAs. For example, based on the CPI for Tiger Labor and Staffing, for a single-employee enrollment in WellMEC coverage, SAS receives $26.39 (or 35.2%) of the Plan's payment, while the TPA, HMA, receives a flat fee of $16.00 (or 21.3%). Similarly, based on the CPI for Wegis Ranch, for a single-employee enrollment in WellMEC coverage, SAS receives $26.39 (or 33%) of the Plan's payment, while HMA receives $16.00 (or 20%).

52. The discrepancy between SAS's compensation and the TPAs' is wider with respect to family coverage. For example, under the Tiger Labor and Staffing CPI, for a family enrollment in WellMEC coverage, SAS receives $111.17 (or 54.2%) of the Plan's total contribution, while HMA receives the same flat fee of $16.00 (or 7.8%). Similarly, under the Wegis Ranch CPI, for a family enrollment in WellMEC coverage, SAS receives $141.17 (or 58.8%) of the Plan's payment, while HMA receives the same $16.00 (or 6.7%). SAS performs the same services whether the participant enrolls in a single-employee or a family plan, but a TPA's workload increases because of the additional individuals—and potentially more claims—covered. Yet SAS's fee increases for higher-tier coverage while HMA's remains flat.

53. Additionally, the fees SAS directs to itself approximate the amount the Participating Plans pay in medical claims. For example, for all the claims adjudicated by HMA

between 2018 and 2020, the Providence MEWA paid just over $1 million for benefits per month (on average), whereas SAS's monthly fee was as high as $780,000 (based on its fee received in February 2019).

54. SAS also collects a fee for services performed by its Strategic Business Unit ouTPAce, despite ouTPAce providing no discernible service to the Participating Plans. SAS intended for ouTPAce to be a customer call center, but it never became operational. Nevertheless, the CPIs sent by SAS to claims administrators include fees to multiple of SAS's Strategic Business Units, including ouTPAce.

55. SAS also unilaterally directs compensation to be made to its affiliate, PIC, the amount of which is variable and unpredictable. The amount of PIC's compensation depends on the amount of contributions sent by the Participating Plans (which is set by SAS and varies for each client). After the TPAs receive the Plans' contributions, they distribute a portion of those contributions to pay the fees of the MEWA service providers (except for PIC) pursuant to SAS's directions. After divvying up the fees, TPAs then use another portion of the Plans' contributions to replenish their Claims Accounts (if necessary) so that they meet a minimum balance set by SAS. The amount needed to replenish the Claims Accounts varies each month depending on the starting balance.

56. The TPAs then send whatever remains of the Plans' contributions to PIC pursuant to SAS's instructions, no matter what that amount is. The amount of funds that PIC receives thus varies depending on (a) the amount of contributions from Participating Plans, (b) the amount of fees paid to other service providers, and (c) the amount needed to replenish the Claims Accounts. Neither the amount nor the variable nature of PIC's compensation is disclosed to the Participating Plans.

57. The funds transferred from TPAs to PIC are deposited into bank accounts under PIC's name at Banco Popular, in Puerto Rico. The accounts include, but are not limited to, those ending in the following numbers: -1129, -9630, -0667, -2350, -9312, -9923, and -9915. Funds transferred to PIC were also deposited into a bank account under PIC's name at Wells Fargo, N.A., with an account number ending -4609.

58. Moreover, PIC has never received and has never had to pay a claim for reinsurance. While PIC is responsible for paying any claims that exceed the amount of funds in the Claims Accounts, the Claims Accounts have never been overdrawn (due to the very low cost of benefits resulting from preventive-service-only coverage offered by the Plans).

59. The sums received from Plan contributions result in large profits for PIC, which PIC distributes as dividends to its owners, Anjo and Momentum Capital (which were in turn owned by Renfro, Bryan, and Zieger at the relevant time). For example, in 2019, PIC earned a net income of $14.7 million and distributed $12.6 million of that as dividend payments to Renfro, Bryan, and Zieger. For the first half of 2020, PIC earned a net income of $5.3 million and distributed $6.6 million in dividend payments to Renfro, Bryan, and Zieger.

60. SAS also directs a significant portion of the Participating Plans' contribution payments to pay the fees of the enrollers. The enrollers include the companies Crystal Bay, Enroll Prime, and Enrollment First.

61. While the enrollers market SAS's plans to potential new employer clients and enroll individuals in the Participating Plans, the enrollers provide no discernible ongoing administrative service to the Participating Plans.

62. SAS and its executives direct payments out of Plan assets to the enrollers without any review or approval by the employer sponsors or any other independent fiduciary of the

Participating Plans. SAS directs the TPAs to pay these rates to the enrollers through the CPIs that SAS issues.

63. Between 2016 and 2022, the enrollers received over 17% of all the contributions paid by the Participating Plans.

COUNT ONE

(Against SAS, Renfro, Bryan, and Zieger for Self-Dealing and Breaching Fiduciary Duties by Paying SAS with Plan Assets)

64. Paragraphs 1 through 63, above, are incorporated by reference.

65. SAS, Renfro, Bryan, and Zieger operate and administer the entire Providence MEWA through SAS's three Strategic Business Units (Incela, ABC, and ouTPAce).

66. SAS, Renfro, Bryan, and Zieger determine for themselves, without disclosure to the Participating Plans, multiple fees allocated to each of SAS's business units. Employer-sponsors of the Participating Plans do not authorize the specific fees that SAS collects.

67. The fees SAS directs to itself are excessive. Depending on the particular Participating Plan and coverage tier, SAS may receive as much as 58.8% of the Plan's contribution as compensation for itself. SAS often receives more than the TPAs as compensation from the Participating Plans, despite the TPAs performing the bulk of the ongoing administrative work necessary to operate the Plans. SAS also authorizes a fee to its Strategic Business Unit ouTPAce, though ouTPAce provides no discernible service to the MEWA.

68. SAS, Renfro, Bryan, and Zieger are fiduciaries to the Participating Plans based on the above-described actions, because they exercise discretionary authority over Plan management as well as authority and control over Plan assets by deciding how much to pay SAS out of Plan assets.

69. By the actions and failures to act as described above, SAS, Renfro, Bryan, and Zieger:

a. failed to discharge their duties with respect to the Participating Plans solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the Participating Plans, in violation of ERISA section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. failed to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

c. dealt with the assets of the Participating Plans in their own interest, in violation of ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1); and

d. acted on behalf of a party whose interests were adverse to the interests of the Participating Plans or the interests of their participants and beneficiaries, in violation of ERISA section 406(b)(2), 29 U.S.C. § 1106(b)(2).

COUNT TWO

(Against SAS, Renfro, Bryan, and Zieger for Self-Dealing and Breaching Fiduciary Duties by Paying PIC with Plan Assets)

70. Paragraphs 1 through 69, above, are incorporated by reference.

71. At all relevant times, Renfro, Bryan, and Zieger owned PIC through their ownership of the holding company Suffolk Holdings. Renfro, Bryan, and Zieger simultaneously

serve as executives of both SAS and PIC. As owners of PIC, Renfro, Bryan, and Zieger receive dividends from PIC's profits.

72. SAS, Renfro, Bryan, and Zieger selected SAS's affiliate, PIC, to provide reinsurance services for the Providence MEWA and its Participating Plans. On behalf of SAS, Renfro, Bryan, and Zieger directed payments to PIC from assets of the Participating Plans, without any review or approval by any independent fiduciaries of the Participating Plans as to the amount of PIC's compensation.

73. PIC's compensation is unreasonable because of its variable and unpredictable nature, which is not disclosed to sponsoring employers or participants. In addition, PIC has neither received nor had to pay a claim for reinsurance for any of the Participating Plans, allowing it to pocket all the Plan contributions it receives. PIC's ability to reap large profits is the product of SAS's plan designs, which intentionally cover very limited health benefits and thus incur low costs.

74. By the actions and failures to act as described above, SAS, Renfro, Bryan, and Zieger:

a. failed to discharge their duties with respect to the Participating Plans solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the Participating Plans, in violation of ERISA section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. failed to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like

character and with like aims, in violation of ERISA section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

c. dealt with the Participating Plans' assets in their own interest, in violation of ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1); and

d. acted in a transaction involving the Participating Plans on behalf of a party (or representing a party), whose interests are adverse to the interests of the Plan or the interests of its participants or beneficiaries, in violation of ERISA section 406(b)(2), 29 U.S.C. § 1106(b)(2).

e. caused the Participating Plans to engage in transactions that they knew or should have known constituted a direct or indirect "furnishing of goods, services, or facilities between the plan" and PIC, a "party in interest," in violation of ERISA section 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C).

COUNT THREE

(Against SAS, Renfro, Bryan, and Zieger for Breaching Fiduciary Duties by Authorizing Payment of Excessive Fees to the Enrollers)

75. Paragraphs 1 through 74, above, are incorporated by reference.

76. As described above, SAS authorizes payment of fees from Plan contributions to the entities that enroll employers in the Providence MEWA ("enrollers").

77. On behalf of SAS, Renfro, Bryan, and Zieger directed payments to the enrollers.

78. Between 2016 and 2022, the enrollers received over 17% of all the contributions paid by the Participating Plans. These fees are excessive because the enrollers provide no discernible ongoing administrative service to the Participating Plans.

79. By the actions and failures to act as described above, SAS, Renfro, Bryan, and Zieger:

a. failed to discharge their duties with respect to the Participating Plans solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the Participating Plans, in violation of ERISA section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. failed to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

c. caused the Participating Plans to engage in transactions that they knew or should have known constituted a direct or indirect "furnishing of goods, services, or facilities between the plan" and the enrollers, who are service providers and thus a "party in interest," 29 U.S.C. § 1001(14)(B), in violation of ERISA section 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C);

d. caused the Participating Plans to transfer to, or use by or for the benefit of a party in interest, of any assets of the plan, in violation of ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

COUNT FOUR

(Against PIC, Renfro, Bryan, and Zieger for Knowingly Participating in SAS's Fiduciary Breaches)

80. Paragraphs 1 through 79, above, are incorporated by reference.

81. Renfro served as Chief Legal Officer of SAS and was one of its primary decisionmakers, including authorizing the fees paid to SAS, PIC, and the enrollers.

82. Bryan served as Chairman of SAS and was one of its primary decisionmakers for SAS, including authorizing the fees paid to SAS, PIC, and the enrollers.

83. Zieger served as Vice-Chairman of SAS and was one of its primary decisionmakers, including authorizing the fees paid to SAS and PIC.

84. Even if they are not themselves fiduciaries, Renfro, Bryan, and Zieger, through their involvement in SAS, knowingly participated in SAS's fiduciary breaches as alleged in Counts 1, 2, and 3, and are thus subject to liability under ERISA section 502(a)(5), 29 U.S.C. § 1132(a)(5).

85. Because Renfro, Bryan, and Zieger also served as PIC's executives, their knowledge is imputed to PIC, such that PIC also knowingly participated in SAS's breaches of fiduciary duty and prohibited transactions as alleged in Count 2, and are thus subject to liability under ERISA section 502(a)(5), 29 U.S.C. § 1132(a)(5).

COUNT FIVE

(Against SAS for Failing to Comply with ERISA Reporting Requirements)

86. Paragraphs 1 through 85, above, are incorporated by reference.

87. SAS has never on behalf of the Providence MEWA filed a "Form M-1 Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)", which is required to be filed by MEWAs, in violation of ERISA section 101(g), 29 U.S.C. § 1021(g).

PRAYER FOR RELIEF

WHEREFORE, the Secretary asks that this Court enter an Order:

88. Permanently removing Defendants **SAS, PIC, Renfro**, **Bryan, and Zieger** and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries,

affiliates, service providers, accountants, attorneys, and any other party acting in concert with them or at their direction, as fiduciaries, service providers, and administrators of the Participating Plans.

89. Permanently enjoining Defendants **SAS, PIC, Renfro**, **Bryan, and Zieger**, and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, and any other party acting in concert with them or their direction from acting as a fiduciary, service provider, or administrator to the Participating Plans and the Providence MEWA;

90. Appointing an Independent Fiduciary to the Participating Plans and the Providence MEWA, with full and exclusive fiduciary authority over the Participating Plans' administration and management, and full and exclusive control over the Providence MEWA and Participating Plans' assets, including, but not limited to:

a. Authority to exercise all fiduciary responsibilities relating to the Providence MEWA and Participating Plans;

b. Authority to take exclusive control of all plan assets of the Providence MEWA and the Participating Plans;

c. Authority given to trustees and/or TPAs under the terms of the documents governing the Providence MEWA and Participating Plans;

d. Exclusive authority to appoint, replace and remove such administrators, trustees, attorneys, employees, assigns, agents, and service providers as the Independent Fiduciary shall, in the Independent Fiduciary's sole discretion, determine as necessary to aid the Independent Fiduciary in the exercise

of the Independent Fiduciary's powers, duties, and responsibilities to the Providence MEWA and Participating Plans;

e. Authority to terminate the Providence MEWA and Participating Plans, if in the best interest of the Providence MEWA and Participating Plans and, in that event, to establish a claims submission deadline, and to adjudicate all claims filed by such deadline, and to deny claims not filed by the claims submission deadline;

f. Authority to pursue recovery of monies owed and due to the Providence MEWA and Participating Plans from any person obligated to make such payments under the terms and conditions of the Providence MEWA and Participating Plans;

g. Authority to identify, pursue, and disburse recovery of Providence MEWA and Participating Plans' assets, as well as any monies to which the Providence MEWA or Participating Plans have a right of recovery;

h. Authority to identify and pursue claims on behalf of the Providence MEWA and Participating Plans;

i. Except as provided herein, the authority to delegate to such administrators, trustees, attorneys, employees, assigns, agents, and service providers such fiduciary responsibilities as the Independent Fiduciary shall determine appropriate. The Independent Fiduciary may not, however, delegate the authority to appoint, replace, and remove such administrators, trustees, attorneys, employees, assigns, agents, and service providers, or the responsibility to monitor

the activities of the Providence MEWA and Participating Plans' trustees, attorneys, agents, and service providers;

j. Authority to make all required filings on behalf of the Providence MEWA, including Forms M-1; and

k. Authority to pay the reasonable and necessary fees of service providers from the Providence MEWA and Participating Plans' assets.

91. Requiring Defendants **SAS, PIC, Renfro, Bryan, and Zieger** to provide to the Independent Fiduciary all documents, records, accounts or other information required to administer and manage the Participating Plans;

92. Requiring Defendant **SAS** to file all delinquent Forms M-1;

93. Requiring Defendants **SAS, Renfro, Bryan, and Zieger** to jointly and severally restore all losses, including interest, they caused to the Participating Plans;

94. Requiring Defendants **SAS, PIC, Renfro, Bryan, and Zieger** to jointly and severally make equitable restitution to the Participating Plans' participants of all losses resulting from their fiduciary breaches;

95. Requiring Defendants **SAS, PIC, Renfro, Bryan, and Zieger** to jointly and severally reimburse the fees and expenses of the Independent Fiduciary;

96. Requiring Defendants **SAS, PIC, Renfro, Bryan, and Zieger** to disgorge to the Providence MEWA all profits and fees and other monies earned in connection with their violations;

97. Permanently enjoining Defendants **SAS, PIC, Renfro, Bryan, and Zieger** from ever acting as a fiduciary, service provider, or trustee to any plan covered by Title I of ERISA;

98. Awarding the Secretary her costs incurred in this civil action;

99. Retaining jurisdiction to ensure that the Independent Fiduciary and MEWA participants and beneficiaries receive all monies they are entitled to; and

100. Granting such other relief as may be equitable, just, and proper.

Dated: November 5, 2024

Respectfully Submitted:

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Solicitor of Labor

WAYNE R. BERRY
Associate Solicitor
Plan Benefits Security

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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)

ANSWER OF DEFENDANT ALEX RENFRO

Defendant, Alex Renfro, hereby answers the allegations contained in the paragraphs in the Complaint as set forth below and states his affirmative defenses herein. To the extent any allegations in the Complaint that are directed against him are not directly responded to below, they are denied. The headings and subheadings of the Complaint do not constitute allegations pled against the Defendant, but to the extent they may be so construed, such allegations are denied, whether or not directly addressed below. Defendant specifically and expressly denies that Plaintiff is entitled to any of the relief set forth in the Prayer for Relief. Furthermore, Defendant asserts the Counterclaims set forth in the separate Counterclaim pleading filed on behalf of, and jointly by, all Defendants.

Defendant answers the allegations set forth in the numbered paragraphs of the Complaint as follows:

INTRODUCTION

1. Defendant denies the allegations contained in paragraph 1.

2. The allegations of this paragraph state conclusions of law to which no answer is required. To the extent an answer may be deemed to be required, the allegations of this paragraph are denied.

3. Defendant denies the allegations contained in this paragraph.

4. The allegations of this paragraph state conclusions of law to which no answer is required. To the extent an answer may be deemed to be required, the allegations of this paragraph are denied.

5. The allegations of this paragraph state conclusions of law to which no answer is required. To the extent an answer may be deemed to be required, the allegations of this paragraph are denied.

6. The allegations of this paragraph state conclusions of law to which no answer is required. To the extent an answer may be deemed to be required, the allegations of this paragraph are denied.

7. This paragraph is not directed to this Defendant and thus no answer is required. To the extent that any allegations of this paragraph may be deemed to require a response, they are denied.

JURISDICTION AND VENUE

8. The allegations of this paragraph state conclusions of law to which no answer is required. To the extent any allegations of this paragraph may be deemed to require a response, they are denied.

9. The allegations of this paragraph state conclusions of law to which no answer is required. To the extent any allegations of this paragraph may be deemed to require a response, they are denied.

10. The allegations of this paragraph state conclusions of law to which no answer is required. To the extent any allegations of this paragraph may be deemed to require a response, they are denied.

PARTIES

11. The allegations of this paragraph state conclusions of law to which no answer is required.

12. The allegations of this paragraph are not directed at this Defendant and therefore no answer is required. To the extent an answer may be required, Defendant denies the allegations of this paragraph.

13. The allegations of this paragraph state conclusions of law to which no answer is required. To the extent any allegations of this paragraph may be deemed to require a response, they are denied.

14. The allegations of this paragraph are not directed at this Defendant and therefore no answer is required. To the extent any allegations of this paragraph may be deemed to require a response, however, Defendant admits the allegations as to the incorporation and ownership of PIC and that PIC is a reinsurer to certain plans. Further responding, Defendant states that he is without sufficient information to enable him to admit or deny the positions of Bryan or Zieger, and denies that at all relevant times he was Secretary of PIC. Defendant states that the allegations contained in the final sentence of this paragraph state conclusions of law to which no answer is required but that, to the extent an answer may be deemed to be required, denies the allegations in the final

sentence of this paragraph. Further responding, Defendant is without sufficient information to enable him to admit or deny any remaining allegations in this paragraph.

15. Defendant denies the allegations contained in this paragraph.

16. Defendant denies the allegations contained in this paragraph.

17. The allegations of this paragraph are not directed at this Defendant and therefore no answer is required. To the extent any allegations contained in this paragraph may be deemed to require a response by this Defendant, Defendant states that he is without sufficient information to enable him to admit or deny the allegations contained in this paragraph.

18. The allegations of this paragraph are not directed at this Defendant and therefore no answer is required. To the extent any allegations contained in this paragraph may be deemed to require a response by this Defendant, they are denied.

19. The allegations of this paragraph are not directed at this Defendant and therefore no answer is required. To the extent any allegations contained in this paragraph may be deemed to require a response by this Defendant, Defendant states that he is without sufficient information to enable him to admit or deny the allegations contained in this paragraph.

20. The allegations of this paragraph are not directed at this Defendant and therefore no answer is required. To the extent any allegations contained in this paragraph may be deemed to require a response by this Defendant, they are denied.

GENERAL ALLEGATIONS

21. The first sentence of this paragraph state conclusions of law to which no answer is required, but to the extent that an answer may be deemed to be required, they are denied. Further answering, Defendant states that he is without sufficient information to enable him to admit or deny the allegations contained in this paragraph, and therefore denies the allegations.

22. Defendant denies the allegations contained in this paragraph.

23. Defendant denies the allegations contained in this paragraph, including in the footnote.

24. Defendant admits only that, upon information and belief, SAS prepares documents for certain plans in some instances and that all such documents speak for themselves. Further answering, Defendant states that he is without sufficient information to admit or deny the remaining allegations contained in this paragraph and thus denies them.

25. The allegations of this paragraph state conclusions of law to which no answer is required. To the extent any allegations of this paragraph may be deemed to require a response, they are denied.

26. Defendant denies the allegations contained in this paragraph.

27. Defendant denies the allegations contained in this paragraph.

28. The allegations of this paragraph state conclusions of law to which no answer is required. To the extent any allegations of this paragraph may be deemed to require a response, they are denied.

29. The allegations contained in this paragraph are not directed at this Defendant and therefore no answer is required. To the extent that an answer may be required, Defendant states that the documents identified in this paragraph speak for themselves and otherwise denies the allegations contained in this paragraph.

30. Defendant states that he is without sufficient information to enable him to admit or deny the allegations contained herein that concern the knowledge of others, but otherwise denies the allegations contained in this paragraph.

31. Defendant denies the allegations contained in this paragraph.

32. Defendant denies the allegations contained in this paragraph.

33. Defendant denies the allegations contained in this paragraph, including those set forth in the footnote.

34. Defendant denies the allegations contained in this paragraph.

35. Defendant denies the allegations contained in this paragraph.

36. Defendant denies the allegations contained in this paragraph.

37. Defendant denies the allegations contained in this paragraph.

38. Defendant denies the allegations contained in this paragraph.

39. Defendant denies the allegations contained in this paragraph.

40. Defendant denies the allegations contained in this paragraph.

41. Defendant denies the allegations contained in this paragraph.

42. Defendant denies the allegations contained in this paragraph.

43. Defendant denies the allegations contained in this paragraph.

44. Defendant denies the allegations contained in this paragraph.

45. This paragraph states conclusions of law to which no answer is required.

46. Defendant is without sufficient information to enable him to admit or deny the allegations contained in this paragraph, and therefore denies the allegations.

47. Defendant is without sufficient information to enable him to admit or deny the allegations contained in this paragraph, and therefore denies the allegations.

48. Defendant states that the ASAs referenced in this paragraph speak for themselves and Defendant denies any allegations that differ from the express terms of the ASAs.

49. Defendant denies the allegations contained in the first two sentences of this paragraph. Defendant states that he is without sufficient information to admit or deny the remaining allegations contained in this paragraph.

50. Defendant states that he is without sufficient information to admit or deny the allegations contained in this paragraph.

51. Defendant denies the allegations contained in the first sentence of this paragraph and states that he is without sufficient information to either admit or deny the remaining allegations contained in this paragraph and therefore denies them.

52. The allegations set forth in the first sentence of this paragraph are ambiguous, as the meaning of discrepancy in the context of the sentence is uncertain, and Defendant admits only that, upon information and belief, there is in some instances a difference between SAS's compensation and that of the TPAs with regard to family coverage. Further answering, Defendant states that the allegations contained in the final sentence of this paragraph are likewise ambiguous, in that the meaning of "higher-tier coverage" is unclear and Defendant therefore denies the allegations in this sentence. Further responding, Defendant is without sufficient information to enable him to admit or deny the remaining allegations contained in this paragraph and therefore denies them.

53. Defendant is without sufficient information to enable him to admit or deny the allegations contained in this paragraph, and therefore denies the allegations.

54. Defendant denies the allegations contained in this paragraph.

55. Defendant denies the allegations contained in this paragraph.

56. Defendant is without sufficient information to enable him to admit or deny the allegations contained in this paragraph, and therefore denies the allegations.

57. Defendant is without sufficient information to enable him to admit or deny the allegations contained in this paragraph.

58. Defendant denies the allegations contained in this paragraph.

59. Defendant is without sufficient information to enable him to admit or deny the allegations contained in this paragraph, and therefore denies the allegations.

60. Defendant denies the allegations contained in this paragraph.

61. Defendant denies the allegations contained in this paragraph.

62. Defendant denies the allegations contained in this paragraph.

63. Defendant is without sufficient information to enable him to either admit or deny the allegations contained in this paragraph and therefore denies them.

COUNT ONE

64. Defendant incorporates and restates, as though fully set forth herein, his responses to paragraphs 1-63 above.

65. Defendant denies the allegations contained in this paragraph.

66. Defendant denies the allegations contained in this paragraph.

67. Defendant denies the allegations contained in this paragraph.

68. Defendant denies the allegations contained in this paragraph.

69. Defendant denies the allegations contained in this paragraph.

COUNT TWO

70. Defendant incorporates and restates, as though fully set forth herein, his responses to paragraphs 1-69 above.

71. Defendant denies the allegations contained in this paragraph.

72. Defendant denies the allegations contained in this paragraph.

73. Defendant denies the allegations contained in this paragraph.

74. Defendant denies the allegations contained in this paragraph.

COUNT THREE

75. Defendant incorporates and restates, as though fully set forth herein, his responses to paragraphs 1-74 above.

76. Defendant denies the allegations contained in this paragraph.

77. Defendant denies the allegations contained in this paragraph.

78. Defendant is without sufficient information to enable him to admit or deny the allegations contained in the first sentence of this paragraph and therefore denies the allegations. Defendant denies the remaining allegations contained in this paragraph.

79. Defendant denies the allegations contained in this paragraph.

COUNT FOUR

80. Defendant incorporates and restates, as though fully set forth herein, his responses to paragraphs 1-80 above.

81. Defendant denies the allegation contained in this paragraph.

82. Defendant denies the allegations contained in this paragraph.

83. Defendant denies the allegations contained in this paragraph.

84. Defendant denies the allegations contained in this paragraph.

85. Defendant denies the allegations contained in this paragraph.

COUNT FIVE

86. Defendant incorporates and restates, as though fully set forth herein, his responses to paragraphs 1-85 above.

87. This paragraph is not directed to this Defendant and therefore no answer is required. To the extent an answer from this Defendant may be deemed to be required, the Defendant denies the allegations contained in this paragraph.

PRAYER FOR RELIEF

88. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

89. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

90. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

91. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

92. This paragraph is not directed to this Defendant and therefore no answer is required. To the extent an answer from this Defendant may be deemed to be required, the Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

93. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

94. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

95. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

96. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

97. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

98. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

99. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

100. Defendant denies the allegations contained in this paragraph and that Plaintiff is entitled to the requested relief.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a cause of action under which relief against this Defendant can be granted.

2. This Court lacks personal jurisdiction over this Defendant.

3. This Court lacks subject matter jurisdiction over any claims pled against this Defendant.

4. Venue is improper.

5. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

6. Plaintiff's claims are barred, in whole or in part, by waiver, estoppel, laches and/or unclean hands.

7. As set forth in Defendants' Counterclaim, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been, and is, "arbitrary, capricious, an abuse of discretion, [and] not in accordance with law," in contravention of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A).

8. As set forth in Defendants' Counterclaim, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been, and is, "contrary to constitutional right, power, privilege, or immunity," in contravention of the APA, 5 U.S.C. § 706(2)(B).

9. As set forth in Defendants' Counterclaim, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been, and is, "in excess of [its] statutory jurisdiction, authority, or limitations, or short of statutory right," in contravention of the APA, 5 U.S.C. § 706(2)(C).

10. As set forth in Defendants' Counterclaim, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been and, is "without observance of procedure required by law," in contravention of the APA, 5 U.S.C. § 706(2)(D).

COUNTERCLAIM

Defendant asserts, incorporates as though fully set forth herein, and joins in the Counterclaim filed by all Defendants.

JURY DEMAND

The Defendant demands a jury as to all issues and claims so triable.

WHEREFORE, PREMISES CONSIDERED, Defendant requests a judgment that Plaintiff take nothing on his claims and awarding Defendant all other relief, both in law and in equity, to which Defendant may be entitled.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court using 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.

O'NEILL & BORGES, LLC

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Local Counsel for Defendants-Counterclaim Plaintiffs

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 ANSWER OF DEFENDANTS SUFFOLK ADMINISTRATIVE SERVICES, LLC AND PROVIDENCE INSURANCE CO., I.I.;

TO THE HONORABLE COURT:

Defendants Suffolk Administrative Services, LLC ("SAS") and Providence Insurance Co., I.I. ("PIC")(collectively "Defendants") file this Original Answer to the Complaint (Doc. 1), filed by Plaintiff Vince Micone, Acting Secretary of Labor, and U.S. Department of Labor ("Plaintiff") and assert their affirmative defenses herein. To the extent any allegations in the Complaint that are not directly responded to below, they are denied. The headings and subheadings of the Complaint do not constitute allegations pled against the Defendants, but to the extent they may be so construed, such allegations are denied, whether or not directly addressed below. Defendants specifically and expressly deny that Plaintiff is entitled to any of the relief set forth in the Prayer for Relief. Furthermore, Defendants assert the Counterclaims set forth in the separate Counterclaim pleading filed on behalf of, and jointly by, all Defendants.

Defendants answer the allegations set forth in the numbered paragraphs of the Complaint as follows:

INTRODUCTION

1. Defendants deny the allegations in Paragraph 1 of the Complaint, including those in the first, second and last sentences of Footnote 1.

2. Defendants deny the allegations in Paragraph 2 of the Complaint.

3. Defendants deny the allegations in Paragraph 3 of the Complaint.

4. Defendants deny the allegations in Paragraph 4 of the Complaint.

5. Defendants deny the allegations in Paragraph 5 of the Complaint.

6. Defendants deny the allegations in Paragraph 6 of the Complaint.

7. Defendants deny the allegations in Paragraph 7 of the Complaint.

JURISDICTION AND VENUE

8. As to Paragraph 8 of the Complaint, Defendants admit this action is ostensibly brought under ERISA, but deny this action entails any viable violations of ERISA.

9. As to Paragraph 9 of the Complaint, the allegations set forth therein constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, Defendants deny such allegations.

10. As to Paragraph 10 of the Complaint, the allegations in the first sentence constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, Defendants admit Defendants Suffolk Administrative Services, LLC ("SAS") and Providence Insurance Co., I.I. ("PIC") are headquartered in Puerto Rico, but deny the remaining allegations. As to the second sentence of Paragraph 10 of the Complaint, Defendants deny the allegations.

PARTIES

11. As to Paragraph 11 of the Complaint, the allegations set forth therein constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, Defendants deny such allegations.

12. As to Paragraph 12 of the Complaint, Defendants admit SAS is a limited liability company registered in Puerto Rico, SAS provides vendor services to multiple employee welfare plans, and that Mr. Renfro, Mr. Bryan, and Mr. Zeiger are representatives of SAS, but deny the remaining allegations of the Paragraph.

13. As to Paragraph 13 of the Complaint, the allegations set forth therein constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, Defendants deny such allegations.

14. As to Paragraph 14 of the Complaint, Defendants admit PIC is an insurance company incorporated in Puerto Rico, that it is owned by Suffolk Holdings, LLC, and that Mr. Renfro, Mr. Bryan, and Mr. Zeiger are representatives of PIC, but otherwise deny the allegations of the Paragraph.

15. As to Paragraph 15 of the Complaint, Defendants admit Mr. Renfro was previously a representative of SAS and PIC and admits the allegations in the first two sentences of Footnote 2, but the remaining allegations in Footnote 2 constitute conclusions of law to which no response is required. Defendants deny the remaining allegations of Paragraph 15.

16. Defendants deny the allegations in Paragraph 16 of the Complaint.

17. As to Paragraph 17 of the Complaint, Defendants admit Mr. Bryan is a representative of SAS and PIC, but otherwise deny the allegations in Paragraph 17 of the Complaint.

18. Defendants deny the allegations in Paragraph 18 of the Complaint.

19. As to Paragraph 19 of the Complaint, Defendants admit Mr. Zieger is a representative of SAS and PIC, but otherwise deny the allegations in Paragraph 19 of the Complaint.

20. Defendants deny the allegations in Paragraph 20 of the Complaint.

GENERAL ALLEGATIONS

21. Defendants deny the allegations in Paragraph 21 of the Complaint.

22. Defendants deny the allegations in Paragraph 22 of the Complaint.

23. As to Paragraph 23 of the Complaint, Defendants admit SAS independently provides vendor services to employee welfare plans which include the preparation of plan documents, but otherwise deny the allegations in the Paragraph, including those in Footnote 3.

24. As to Paragraph 24 of the Complaint, Defendants admit SAS independently provides vendor services to employee welfare plans which include the preparation of plan documents, such as Summary Plan Descriptions, and that all such documents speak for themselves, but otherwise deny the allegations in the Paragraph.

25. As to Paragraph 25 of the Complaint, the allegations reference documents which speak for themselves, but otherwise deny the allegations in the Paragraph.

26. Defendants deny the allegations in Paragraph 26 of the Complaint.

27. Defendants deny the allegations in Paragraph 27 of the Complaint.

28. As to Paragraph 28 of the Complaint, the allegations set forth therein constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, Defendants deny such allegations.

29. As to Paragraph 29 of the Complaint, the documents referred to as ASAs speak for themselves and Defendants deny any allegations that differ from the express terms of those documents. Further, Defendants admit that SAS provides vendor services to employee welfare plans which include administrative services, but otherwise deny the remaining allegations in Paragraph 29 of the Complaint.

30. Defendants deny the allegations in Paragraph 30 of the Complaint.

31. Defendants deny the allegations in Paragraph 31 of the Complaint.

32. Defendants deny the allegations in Paragraph 32 of the Complaint.

33. Defendants deny the allegations in Paragraph 33 of the Complaint, including those in Footnote 4.

34. Defendants deny the allegations in Paragraph 34 of the Complaint.

35. Defendants deny the allegations in Paragraph 35 of the Complaint.

36. As to Paragraph 36 of the Complaint, the documents referred to as ASAs speak for themselves and Defendants deny any allegations that differ from the express terms of those documents. Further, Defendants otherwise deny the allegations in Paragraph 36 of the Complaint.

37. Defendants deny the allegations in Paragraph 37 of the Complaint.

38. Defendants deny the allegations in Paragraph 38 of the Complaint.

39. Defendants deny the allegations in Paragraph 39 of the Complaint.

40. Defendants deny the allegations in Paragraph 40 of the Complaint.

41. Defendants deny the allegations in Paragraph 41 of the Complaint.

42. Defendants deny the allegations in Paragraph 42 of the Complaint.

43. Defendants deny the allegations in Paragraph 43 of the Complaint.

44. Defendants deny the allegations in Paragraph 44 of the Complaint.

45. As to Paragraph 45 of the Complaint, the allegations set forth therein constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, Defendants deny such allegations.

46. Defendants deny the allegations in Paragraph 46 of the Complaint.

47. Defendants deny the allegations in Paragraph 47 of the Complaint.

48. As to Paragraph 48 of the Complaint, the documents referred to as ASAs speak for themselves and Defendants deny any allegations that differ from the express terms of the documents. To the extent further response is required, Defendants deny the allegations in Paragraph 48 of the Complaint.

49. As to Paragraph 49 of the Complaint, the documents referred to therein speak for themselves and Defendants deny any allegations that differ from the express terms of the documents. To the extent further response is required, Defendants deny the allegations in Paragraph 49 of the Complaint.

50. As to Paragraph 50 of the Complaint, the documents referred to therein speak for themselves and Defendants deny any allegations that differ from the express terms of the documents. To the extent further response is required, Defendants deny the allegations in Paragraph 50 0f the Complaint.

51. As to Paragraph 51 of the Complaint, the documents referred to therein speak for themselves and Defendants deny any allegations that differ from the express terms of the documents. To the extent further response is required, Defendants deny the allegations in Paragraph 51 of the Complaint.

52. As to Paragraph 52 of the Complaint, the documents referred to therein speak for themselves and Defendants deny any allegations that differ from the express terms of the

documents. To the extent further response is required, Defendants deny the allegations in Paragraph 52 of the Complaint.

53. Defendants deny the allegations in Paragraph 53 of the Complaint.

54. Defendants deny the allegations in Paragraph 54 of the Complaint.

55. Defendants deny the allegations in Paragraph 55 of the Complaint.

56. Defendants deny the allegations in Paragraph 56 of the Complaint.

57. As to Paragraph 57 of the Complaint, Defendants admit that PIC used bank accounts in its name at Banco Popular in Puerto Rico, but Defendants state that they are without sufficient information to enable them to admit or deny the remainder of the allegations in Paragraph 57 of the Complaint and thus denies them.

58. Defendants deny the allegations in Paragraph 58 of the Complaint.

59. Defendants deny the allegations in Paragraph 59 of the Complaint.

60. Defendants deny the allegations in Paragraph 60 of the Complaint.

61. Defendants deny the allegations in Paragraph 61 of the Complaint.

62. Defendants deny the allegations in Paragraph 62 of the Complaint.

63. Defendants deny the allegations in Paragraph 63 of the Complaint.

COUNT ONE

64. Defendants incorporates by reference their responses to Paragraphs 1-63 of the Original Complaint.

65. Defendants deny the allegations in Paragraph 65 of the Complaint.

66. Defendants deny the allegations in Paragraph 66 of the Complaint.

67. Defendants deny the allegations in Paragraph 67 of the Complaint.

68. Defendants deny the allegations in Paragraph 68 of the Complaint.

69. Defendants deny the allegations in Paragraph 69 of the Complaint.

COUNT TWO

70. Defendants incorporate by reference their responses to Paragraphs 1-69 of the Original Complaint.

71. Defendants deny the allegations in Paragraph 71 of the Complaint.

72. Defendants deny the allegations in Paragraph 72 of the Complaint.

73. Defendants deny the allegations in Paragraph 73 of the Complaint.

74. Defendants deny the allegations in Paragraph 74 of the Complaint.

COUNT THREE

75. Defendants incorporate by reference their responses to Paragraphs 1-74 of the Original Complaint.

76. Defendants deny the allegations in Paragraph 76 of the Complaint.

77. Defendants deny the allegations in Paragraph 77 of the Complaint.

78. Defendants deny the allegations in Paragraph 78 of the Complaint.

79. Defendants deny the allegations in Paragraph 79 of the Complaint.

COUNT FOUR

80. Defendants incorporate by reference their responses to Paragraphs 1-79 of the Original Complaint.

81. Defendants deny the allegations in Paragraph 81 of the Complaint.

82. Defendants deny the allegations in Paragraph 82 of the Complaint.

83. Defendants deny the allegations in Paragraph 83 of the Complaint.

84. Defendants deny the allegations in Paragraph 84 of the Complaint.

85 Defendants deny the allegations in Paragraph 85 of the Complaint.

COUNT FIVE

86. Defendants incorporate by reference their responses to Paragraphs 1-85 of the Original Complaint.

87. As to Paragraph 87 of the Complaint, Defendants admit SAS has never filed a Form M-1, but denies the remainder of the allegations, including that the filing of such form was ever legally required.

PRAYER FOR RELIEF

88. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 88 of the Complaint. Defendants further deny any allegations contained in Paragraph 88 of the Complaint.

89. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 89 of the Complaint. Defendants further deny any allegations contained in Paragraph 89 of the Complaint.

90. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 90 of the Complaint. Defendants further deny any allegations contained in Paragraph 90 of the Complaint.

91. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 91 of the Complaint. Defendants further deny any allegations contained in Paragraph 91 of the Complaint.

92. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 92 of the Complaint. Defendants further deny any allegations contained in Paragraph 92 of the Complaint.

93. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 93 of the Complaint. Defendants further deny any allegations contained in Paragraph 93 of the Complaint.

94. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 94 of the Complaint. Defendants further deny any allegations contained in Paragraph 94 of the Complaint.

95. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 95 of the Complaint. Defendants further deny any allegations contained in Paragraph 95 of the Complaint.

96. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 96 of the Complaint. Defendants further deny any allegations contained in Paragraph 96 of the Complaint.

97. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 97 of the Complaint. Defendants further deny any allegations contained in Paragraph 97 of the Complaint.

98. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 98 of the Complaint. Defendants further deny any allegations contained in Paragraph 98 of the Complaint.

99. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 99 of the Complaint. Defendants further deny any allegations contained in Paragraph 99 of the Complaint.

100. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 100 of the Complaint. Defendants further deny any allegations contained in Paragraph 100 of the Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations to the extent not covered by applicable tolling agreements between Plaintiff and Defendants.

2. As set forth in Defendants' Counterclaim, which is being filed contemporaneously herewith, Plaintiff's claims are barred to the extent they frustrate rather than further the Congressional intent behind ERISA.

3. As set forth in Defendants' Counterclaim, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been, and is, "arbitrary, capricious, an abuse of discretion, [and] not in accordance with law", in contravention of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A).

4. As set forth in Defendants' Counterclaim, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been, and is, "contrary to constitutional right, power, privilege, or immunity", in contravention of the APA, 5 U.S.C. § 706(2)(B).

5. As set forth in Defendants' Counterclaim, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been, and is, "in excess of [its] statutory jurisdiction, authority, or limitations, or short of statutory right", in contravention of the APA, 5 U.S.C. § 706(2)(C).

6. As set forth in Defendants' Counterclaim, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been and, is "without observance of procedure required by law", in contravention of the APA, 5 U.S.C. § 706(2)(D).

7. To the extent Plaintiff seeks equitable relief under ERISA, such remedies are barred by the doctrines of unclean hands, estoppel, and waiver.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants requests a judgment that Plaintiff take nothing on his claims and awarding Defendants all other relief, both in law and in equity, to which Defendants may be entitled.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court using 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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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 ANSWER OF DEFENDANTS WILLIAM BRYAN AND ARJAN ZIEGER

TO THE HONORABLE COURT:

Defendants William Bryan ("Bryan") and Arjan Zieger ("Zieger") (collectively "Defendants") file this Original Answer to the *Complain*t (Doc. 1), filed by Plaintiff Vince Micone, Acting Secretary of Labor, and U.S. Department of Labor ("Plaintiff") [1], and assert their affirmative defenses herein. To the extent any allegations in the Complaint that are directed against them are not directly responded to below, they are denied. The headings and subheadings of the Complaint do not constitute allegations pled against the Defendants, but to the extent they may be so construed, such allegations are denied, whether or not directly addressed below. Defendants specifically and expressly denies that Plaintiff is entitled to any of the relief set forth in the Prayer for Relief. Furthermore, Defendants assert the Counterclaims set forth in the separate *Original*

[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.

Counterclaim for Declaratory and Injunctive Relief filed on behalf of, and jointly by, all Defendants contemporaneously herewith.

ALLEGATIONS OF COMPLAINT

In response to the allegations in the numbered paragraphs of the Complaint, Defendants plead as follows:

INTRODUCTION

1. Defendants deny the allegations in Paragraph 1 of the *Complaint,* including those in the first, second and last sentences of Footnote 1.

2. Defendants deny the allegations in Paragraph 2 of the *Complaint*.

3. Defendants deny the allegations in Paragraph 3 of the *Complaint*.

4. Defendants deny the allegations in Paragraph 4 of the *Complaint*.

5. Defendants deny the allegations in Paragraph 5 of the *Complaint*.

6. Defendants deny the allegations in Paragraph 6 of the *Complaint.*

7. Defendants deny the allegations in Paragraph 7 of the *Complaint*.

JURISDICTION AND VENUE

8. As to Paragraph 8 of the *Complaint*, Defendants admit this action is ostensibly brought under ERISA, but denies this action entails any viable violations of ERISA.

9. As to Paragraph 9 of the *Complaint*, the allegations set forth therein constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, they are denied.

10. As to Paragraph 10 of the *Complaint*, the allegations set forth therein constitute conclusions of law to which no response is required To the extent any of the remaining allegations are factual allegations, Defendants admit Defendants Suffolk Administrative Services, LLC

("SAS") and Providence Insurance Co., I.I. ("PIC") are headquartered in Puerto Rico, but deny the remaining allegations of the Paragraph.

PARTIES

11. As to Paragraph 11 of the *Complaint*, the allegations set forth therein constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, they are denied.

12. As to Paragraph 12 of the *Complaint,* Defendants admit SAS is a limited liability company headquartered in Puerto Rico, SAS provides vendor services to multiple employee welfare plans, and that Defendants are representatives of SAS, but otherwise deny the allegations of the Paragraph.

13. As to Paragraph 13 of the *Complaint*, the allegations set forth therein constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, they are denied.

14. As to Paragraph 12 of the *Complaint*, Defendants admit PIC is an insurance company incorporated in Puerto Rico and that Defendants are representatives of PIC but otherwise deny the allegations of the Paragraph.

15. As to Paragraph 15 of the *Complaint,* Defendants admit Alexander Renfro was previously a representative of SAS and PIC and admit the allegations in the first two sentences of Footnote 2, but the remaining allegations of Footnote 2 constitute conclusions of law to which no response is required. Defendant otherwise deny the remaining allegations of the Paragraph.

16. Defendants deny the allegations in Paragraph 16 of the *Complaint*.

17. As to Paragraph 17 of the *Complaint*, Defendants admit Bryan is a representative of SAS and PIC but otherwise the remaining allegations of the Paragraph.

18. Defendants deny the allegations in Paragraph 18 of the *Complaint*.

19. As to Paragraph 19 of the *Complaint,* Defendants admit Zieger is a representative of SAS and PIC but otherwise the remaining allegations of the Paragraph.

20. Defendants deny the allegations in Paragraph 20 of the *Complaint*.

GENERAL ALLEGATIONS

21. Defendants deny the allegations in Paragraph 21 of the *Complaint*.

22. Defendants deny the allegations in Paragraph 22 of the *Complaint*.

23. As to Paragraph 23 of the *Complaint*, Defendants admit SAS independently provides vendor services to employee welfare plans which include the preparation of plan documents but otherwise deny the remaining allegations in the Paragraph, including the allegations in Footnote 3.

24. As to Paragraph 24 of the *Complaint*, Defendants admit SAS independently provides vendor services to employee welfare plans which include the preparation of plan documents, such as Summary Plan Descriptions, and that all documents speak for themselves, but otherwise deny the remaining allegations in the Paragraph.

25. As to Paragraph 25 of the *Complaint*, Defendants admit SAS independently provides vendor services to self-insured employee welfare plans, and that all documents speak for themselves but otherwise deny the remaining allegations in the Paragraph.

26. Defendants deny the allegations in Paragraph 26 of the *Complaint*.

27. Defendants deny the allegations in Paragraph 27 of the *Complaint*.

28. As to Paragraph 28 of the *Complaint*, the allegations set forth therein constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, they are denied.

29. As to Paragraph 29 of the *Complaint*, the documents referred to as ASAs speak for themselves and Defendants deny any allegations that differ from the express terms of those documents. Further, Defendants admit that SAS provides vendor services to employee welfare plans which include administrative services but otherwise deny the remaining allegations in the Paragraph.

30. Defendants deny the allegations in Paragraph 30 of the *Complaint*.

31. Defendants deny the allegations in Paragraph 31 of the *Complaint*.

32. Defendants deny the allegations in Paragraph 32 of the *Complaint*.

33. Defendants deny the allegations in Paragraph 33 of the *Complaint*, including the allegations in Footnote 4.

34. Defendants deny the allegations in Paragraph 34 of the *Complaint*.

35. Defendants deny the allegations in Paragraph 35 of the *Complaint*.

36. As to Paragraph 36 of the *Complaint*, the documents referred to as ASAs speak for themselves and Defendants deny any allegations that differ from the express terms of those documents. Further, Defendants deny the remaining allegations in Paragraph 36 of the *Complaint*.

37. Defendants deny the allegations in Paragraph 37 of the *Complaint*.

38. Defendants deny the allegations in Paragraph 38 of the *Complaint*.

39. Defendants deny the allegations in Paragraph 39 of the *Complaint*.

40. Defendants deny the allegations in Paragraph 40 of the *Complaint*.

41. Defendants deny the allegations in Paragraph 41 of the *Complaint*.

42. Defendants deny the allegations in Paragraph 42 of the *Complaint*.

43. Defendants deny the allegations in Paragraph 43 of the *Complaint*.

44. Defendants deny the allegations in Paragraph 44 of the *Complaint*.

45. As to Paragraph 45 of the *Complaint*, the allegations set forth therein constitute conclusions of law to which no response is required. To the extent any of the remaining allegations are factual allegations, they are denied.

46. Defendants deny the allegations in Paragraph 46 of the *Complaint*.

47. Defendants deny the allegations in Paragraph 47 of the *Complaint*.

48. As to Paragraph 48 of the *Complaint*, the documents referred to as ASAs speak for themselves and Defendants deny any allegations that differ from the express terms of those documents. To the extent further responses is required, Defendants deny the remaining allegations in Paragraph 48 of the *Complaint*.

49. As to Paragraph 49 of the *Complaint*, the documents referred to as ASAs speak for themselves and Defendants deny any allegations that differ from the express terms of those documents. To the extent further responses is required, Defendants deny the remaining allegations in Paragraph 49 of the *Complaint*.

50. As to Paragraph 50 of the *Complaint*, the documents referred to as ASAs speak for themselves and Defendants deny any allegations that differ from the express terms of those documents. To the extent further responses is required, Defendants deny the allegations in Paragraph 50 of the *Complaint*.

51. As to Paragraph 51 of the *Complaint*, the documents referred to as ASAs speak for themselves and Defendants deny any allegations that differ from the express terms of those documents. To the extent further responses is required, Defendants deny the remaining allegations in Paragraph 51 of the *Complaint*.

52. As to Paragraph 52 of the *Complaint*, the documents referred to as ASAs speak for themselves and Defendants deny any allegations that differ from the express terms of those

documents. To the extent further responses is required, Defendants deny the allegations in Paragraph 52 of the *Complaint*.

53. Defendants deny the allegations in Paragraph 53 of the *Complaint*.

54. Defendants deny the allegations in Paragraph 54 of the *Complaint*.

55. Defendants deny the allegations in Paragraph 55 of the *Complaint*.

56. Defendants deny the allegations in Paragraph 56 of the *Complaint*.

57. As to Paragraph 57 of the *Complaint*, Defendants admit that PIC used bank accounts in Banco Popular in Puerto Rico, but Defendants state that they are without sufficient information to enable them to admit or deny the remaining allegations in Paragraph 57 of the *Complaint,* and thus deny them.

58. Defendants deny the allegations in Paragraph 58 of the *Complaint*.

59. Defendants deny the allegations in Paragraph 59 of the *Complaint*.

60. Defendants deny the allegations in Paragraph 60 of the *Complaint*.

61. Defendants deny the allegations in Paragraph 61 of the *Complaint*.

62. Defendants deny the allegations in Paragraph 62 of the *Complaint*.

63. Defendants deny the allegations in Paragraph 63 of the *Complaint*.

COUNT ONE

64. Defendants incorporate their responses to Paragraphs 1-63 of the *Original Complaint*.

65. Defendants deny the allegations in Paragraph 65 of the *Complaint*.

66. Defendants deny the allegations in Paragraph 66 of the *Complaint*.

67. Defendants deny the allegations in Paragraph 67 of the *Complaint*.

68. Defendants deny the allegations in Paragraph 68 of the *Complaint*.

69. Defendants deny the allegations in Paragraph 69 of the *Complaint*.

COUNT TWO

70. Defendants incorporate their responses to Paragraphs 1-69 of the *Original Complaint*.

71. Defendants deny the allegations in Paragraph 71 of the *Complaint*.

72. Defendants deny the allegations in Paragraph 72 of the *Complaint*.

73. Defendants deny the allegations in Paragraph 73 of the *Complaint*.

74. Defendants deny the allegations in Paragraph 74 of the *Complaint*.

COUNT THREE

75. Defendants incorporate their responses to Paragraphs 1-74 of the *Original Complaint*.

76. Defendants deny the allegations in Paragraph 76 of the *Complaint*.

77. Defendants deny the allegations in Paragraph 77 of the *Complaint*.

78. Defendants deny the allegations in Paragraph 78 of the *Complaint*.

79. Defendants deny the allegations in Paragraph 79 of the *Complaint*.

COUNT FOUR

80. Defendants incorporate their responses to Paragraphs 1-79 of the *Original Complaint*.

81. Defendants deny the allegations in Paragraph 81 of the *Complaint*.

82. Defendants deny the allegations in Paragraph 82 of the *Complaint*.

83. Defendants deny the allegations in Paragraph 83 of the *Complaint*.

84. Defendants deny the allegations in Paragraph 84 of the *Complaint*.

85 Defendants deny the allegations in Paragraph 85 of the *Complaint*.

COUNT FIVE

86. Defendants incorporate their responses to Paragraphs 1-85 of the *Original Complaint*.

87. As to Paragraph 87 of the *Complaint,* Defendants admit SAS has never filed a Form M-1 but denies the filing of such form was ever legally required.

PRAYER FOR RELIEF

88. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 88 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 88 of the *Complaint*.

89. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 89 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 89 of the *Complaint*.

90. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 90 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 90 of the *Complaint*.

91. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 91 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 91 of the *Complaint*.

92. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 92 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 92 of the *Complaint*.

93. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 93 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 93 of the *Complaint*.

94. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 94 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 94 of the *Complaint*.

95. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 95 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 95 of the *Complaint*.

96. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 96 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 96 of the *Complaint*.

97. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 97 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 97 of the *Complaint*.

98. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 98 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 98 of the *Complaint*.

99. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 99 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 99 of the *Complaint*.

100. Defendants deny Plaintiff's entitlement to any of the relief described in Paragraph 100 of the *Complaint*. Defendants further deny any and all allegations in Paragraph 100 of the *Complaint*.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations to the extent not covered by applicable tolling agreements between Plaintiff and Defendants.

2. As set forth in Defendants' *Counterclaim for Declaratory and Injunctive Relief,* which is being filed contemporaneously herewith, Plaintiff's claims are barred to the extent they frustrate rather than further the Congressional intent behind ERISA.

3. As set forth in Defendants' *Counterclaim for Declaratory and Injunctive Relief*, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been, and is, "arbitrary, capricious, an abuse of discretion, [and] not in accordance with law", in contravention of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A).

4. As set forth in Defendants' *Counterclaim for Declaratory and Injunctive Relief*, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been, and is, "contrary to constitutional right, power, privilege, or immunity", in contravention of the APA, 5 U.S.C. § 706(2)(B).

5. As set forth in Defendants' *Counterclaim for Declaratory and Injunctive Relief,* which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been, and is, "in excess of [its] statutory jurisdiction, authority, or limitations, or short of statutory right", in contravention of the APA, 5 U.S.C. § 706(2)(C).

6. As set forth in Defendants' *Counterclaim for Declaratory and Injunctive Relief*, which is being filed contemporaneously herewith, in filing and prosecuting this action Plaintiff's action has been and, is "without observance of procedure required by law", in contravention of the APA, 5 U.S.C. § 706(2)(D).

7. To the extent Plaintiff seeks equitable relief under ERISA, such remedies are barred by the doctrines of unclean hands, laches, estoppel, and waiver.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants requests a judgment that Plaintiff take nothing on his claims and awarding Defendants all other relief, both in law and in equity, to which Defendants may be entitled.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court using 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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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)

DEFENDANTS' MOTION TO TRANSFER VENUE AND MEMORANDUM IN SUPPORT

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") and respectfully submit their Motion to Transfer Venue of the case to the United States District Court for the Northern District of Texas—Fort Worth Division as follows:

I. INTRODUCTION

1. The Department of Labor ("DOL") has inexorably intertwined this suit with one pending since 2019 in the U.S. District Court for the Northern Texas, Fort Worth, Division 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"). Although Plaintiff Vincent N. Micone, III,[1] Acting Secretary of Labor, DOL alleges in the *Complaint* that these suits are separate and distinct, the opposite is shown by the allegations of the *Original Counterclaim for Declaratory and Injunctive Relief ("Counterclaim")*, which is being filed contemporaneously herewith, and the allegations of the *Supplemental Complaint for Declaratory/Injunctive Relief ("Supplemental Complaint,"* for which a *Motion for Leave* was filed in the Texas Suit on Nov. 25, 2024 (See Exhibit A, attached hereto).

2. As set forth in both the *Counterclaim* here and the proposed *Supplemental Complaint* in the Texas Suit, the real targets by the DOL 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 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 the Texas Suit.

3. Inexplicably, and contrary to its own 1999 Advisory Opinion, however, the 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. Notably, Renfro served as legal counsel to this Advisory Opinion. 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

[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.

Investigation"), which culminated in this suit; (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 against Defendants, whose vendor services are essential to the operation of the Partnership Plans, 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.

4. The improper motivation behind the actions of the DOL in undertaking the Anjo Investigation, and filing this suit against Defendants, are the subject of the *Counterclaim* here and the proposed *Supplemental Complaint* in the Texas Suit. Although each of these pleadings was filed by separate parties, the operative allegations are the same – by threatening or causing such economic and reputational damage to Defendants such that they can no longer provide the vendor services necessary to the continued operation of the Partnership Plans, the DOL seeks 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 effectively ending the Partnership Plans. In the Texas Suit, these facts form the basis for alleged violations of the First Amendment right of petition, the Administrative Procedure Act ("APA"), and the inherent authority of the court to protect the integrity of a suit through indirect misconduct. Here, these facts form the basis for alleged violations of the APA and the Employee Retirement Income Security Act ("ERISA").

5. Through its extortive settlement and litigation tactics, the DOL has already connected this suit to the fate of the Texas Suit. As detailed further in Paragraphs 138-152 of the

Counterclaim in this suit and Paragraphs 90-105 of the proposed *Supplemental Complaint* in the Texas Suit, it was the DOL, not Defendants, DMP or LPMS, which proposed "global settlement discussions" tying settlement of the Anjo Investigation to the dismissal of the Texas Suit and the withdrawal of the AO Request. The DOL cannot now claim this suit and the Texas Suit are separate and distinct. The DOL has made its bed, and now it must lie in it; the claims brought in this court against Defendants are now more appropriately and conveniently resolved in the Texas court where the DOL has so vigorously and indivisibly tied its settlement negotiations. DMP, LPMS, and the Defendants of this suit are now connected through the DOL's inappropriate and extortive settlement strategy that took place and continues in Texas and now should continue to be connected through ultimate resolution in Texas federal court.

6. For the convenience of parties and witnesses, the interest of justice, and to avoid overlapping and competing decisions by two federal courts, this suit should be transferred to the United States District Court for the Northern District of Texas, Fort Worth Division, under 28 U.S.C. § 1404(a), where the first suit was filed and is currently pending against the DOL.

II. LEGAL STANDARD

A. GENERAL RULE

7. 28 U.S. Code § 1391 provides that a civil action may be brought in:

> "(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
>
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
>
> (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action."

8. However, on a motion to transfer based on 28 U.S.C. § 1404(a), the Federal Rules allow that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The moving party must simply establish that (1) venue is adequate in the other court and (2) considerations of convenience and judicial efficiency strongly favor litigating the claim in the other court. *See Mercier v. Sheraton Int'l., Inc.*, 935 F.2d 419, 423-24 (1st Cir.1991). The first requirement is satisfied if the Defendant demonstrates that the alternative forum addresses the types of claims the Plaintiff brought and the Defendant is amenable to service of process there. *Id.*; *see also Aguakem Caribe, Inc. v. Kemiron Atl., Inc.*, 218 F. Supp. 2d 199, 202 (D.P.R. 2002).

9. In deciding on a motion to transfer under these grounds, the court conducts a balancing test, including: "(1) the overlap in issues, (2) the overlap in parties, (3) convenience to the parties, (4) convenience to witnesses and availability of evidence, and (5) the interest of justice." *Mercado-Salinas v. Bart Enterprises Int'l, Ltd*., 669 F. Supp. 2d 176, 187–88 (D.P.R. 2009). Such a decision is ultimately up to the "district court's sound discretion." *Mercier*, 935 F.2d at 423.

B. FIRST TO FILE RULE

10. Even if there is a presumption for the plaintiff's choice of forum, federal courts have discretion to transfer or decline to hear a case where an identical or substantially similar case is pending in a different federal court. *TPM Holdings, Inc. v. Intra–Gold Indus., Inc.*, 91 F.3d 1, 4 (1st Cir.1996). Known as the "first-to-file" rule, this rule creates a preference for the first-filed court where there is a complete overlap between suits in different federal courts. *See id*; see also *Aguakem Caribe, Inc. v. Kemiron Atl., Inc.*, 218 F. Supp. 2d 199, 203 (D.P.R. 2002); *Ridenti v. Google LLC*, 530 F. Supp. 3d 164, 167–68 (D. Mass. 2021).

11. If there is not complete overlap between the two suits, then courts may decide on a case-by-case basis, considering factors such as "the likelihood of conflict, the comparative advantage and the interest of each forum in resolving the dispute." *Id.* Only if there are compelling circumstances, such as bad faith attempt in filing an action or forum shopping, will a court choose not to transfer to the first filed court. However, this practice overall allows federal courts to promote judicial economy, including "wasted resources because of piecemeal litigation, the possibility of conflicting judgments, and a general concern that the courts may unduly interfere with each other's affairs." *TPM Holdings, Inc. v. Intra-Gold Industries, Inc.*, 91 F.3d 1, 4 (1st Cir. 1996).

12. Notably, the first-to-file rule is intended to be applied without rigid mechanical means—in other words, courts have leave to exercise discretion in promoting efficiency and comity. *Waithaka v. Amazon.com, Inc.*, 404 F. Supp. 3d 335, 350 (D. Mass. 2019), *aff'd*, 966 F.3d 10 (1st Cir. 2020). If claims are to be evaluated by considering the factors rigidly, "'defendants in the first-filed action may be incentivized to forum shop and commence similar but nonidentical actions in other venues,' resulting in duplicative litigation and potentially inconsistent rulings." *Id.* (quoting *Sinclair Cattle Co. Inc. v. Ward*, 80 F. Supp. 3d 553, 559 (M.D. Penn. 2015)). Importantly, in *Waithaka*, the court granted transfer under the first-to-file rule where the parties were not identical to the first-filed case, but were "subsumed within the nationwide FLSA action" in first-filed case. *Id.*

i. Venue is Proper in Texas Because Substantial Events Giving Rise to This Suit Occurred in Texas

13. The first requirement under 28 U.S.C. § 1404(a) is that Defendant must demonstrate that venue is adequate in the transferee court. *Mercier v. Sheraton Int'l., Inc.*, 935 F.2d 419, 423-24 (1st Cir.1991). As discussed above, 28 U.S.C. § 1391 provides three ways for venue to be

adequate. Though Defendants have their principal place of business in Puerto Rico, making venue proper in this Court, the same suit could have been brought in the district where a substantial part of the events or omissions giving rise to the claim occurred—namely, in Texas.

14. The DOL conducted its retaliatory investigation of the Defendants contemporaneously with the efforts of DMP and LPMS to challenge the DOL's Advisory Opinion through its ongoing Texas litigation. While Defendants internally felt they were being investigated for simply being vendors of LPMS and DMP, up until DOL's attempt at "global settlement," these concurrent activities were still largely unrelated and had separate counsels representing each party (though the fate of DMP's continued use of the Partnership Plans depends on the existence of the Defendants).

15. The DOL explicitly joined these unrelated activities together by proposing "global settlement" discussions regarding both the Texas suit and the ongoing Anjo Investigation. Indeed, the only reason this suit was brought to this Court to begin with was because DMP and LPMS refused to comply with DOL's ultimate "settlement" demands: (1) drop the suit in Texas and (2) withdraw the original 2018 Advisory Opinion request. In other words, abandon all of DMP and LPMS' legal victories in the Texas litigation with nothing in exchange.

16. The aforementioned facts show that as per § 1391, venue is adequate in Texas federal court due to the substantial event in which the DOL alone proposed and explicitly connected the Texas suit with its claims brought against Defendants in this Court. Had DMP simply moved to dismiss the Texas case, the DOL would have settled and the suit in this Court would not have been brought. For these reasons, venue is adequate and proper in Texas.

ii. Convenience and Judicial Efficiency Strongly Favor Litigating This Case in Texas

17. In the interests of convenience and judicial efficiency, this case should be transferred to the Texas District Court where the first-filed action occurred. Regarding the second requirement of venue transfer based on § 1404(a), courts consider "whether the balance of convenience and judicial efficiency favors litigating the claim in the alternative forum" *Mercier v. Sheraton Int'l, Inc.*, 935 F.2d 419, 424 (1st Cir. 1991). As part of this consideration, courts consider both private and public interest factors to guide its inquiry, all of which should help address practical issues in making trial expedited and inexpensive. *Id.* As discussed above, in considering these types of cases and balancing the various factors, this Court has considered factors such as "'the extent of overlap, the likelihood of conflict, the comparative advantage and the interest of each forum in resolving the dispute.'" *See Aguakem Caribe, Inc. v. Kemiron Atl., Inc.*, 218 F. Supp. 2d 199, 203 (D.P.R. 2002) (quoting *TPM Holdings, Inc. v. Intra-Gold Indus., Inc.*, 91 F.3d 1, 4 (1st Cir. 1996); *Mercado-Salinas v. Bart Enterprises Int'l, Ltd.*, 669 F. Supp. 2d 176, 187–88 (D.P.R. 2009).

18. As discussed above, federal courts typically will transfer or dismiss in favor of the case filed first in another jurisdiction dealing with identical or similar parties or issues. *TPM Holdings, Inc. v. Intra–Gold Indus., Inc.*, 91 F.3d 1, 4 (1st Cir.1996). Furthermore, even if both cases are not identical, courts will do so where there is a possibility of conflicting judgments, wasted resources and courts unduly interfering with each other's affairs. *Id.*; *see also Waithaka v. Amazon.com, Inc.*, 404 F. Supp. 3d 335, 351 (D. Mass. 2019), *aff'd*, 966 F.3d 10 (1st Cir. 2020).

19. Taking the first-to-file rule into account along with the balancing test, this Court should find that the factors supporting transfer predominate.

20. Firstly, the DOL is a party to both the Texas case and the case in this Court. The Texas suit was filed by DMP (later joined by LPMS) against the DOL on October 4, 2019. As discussed above, the Defendants in this case are directly related to the Plaintiffs in the Texas suit by DOL's actions during settlement negotiations and by virtue of the roles of SAS and PIC in providing services to the DMP Plan or its sponsor. Thus, though all the parties are not identical, they are closely and directly related solely through the DOL's actions in connecting them to the Texas litigation, making it proper that this Court should defer to the first filed action in Texas.

21. Furthermore, should this case proceed in this Court, the possibility of conflicting judgments is inevitable: if this Court finds Defendants liable for damages even close to the settlement amount DOL demands, Defendants' businesses and the Partnership Plans they service are jeopardized, and the Advisory Opinion litigation in the Texas suit is moot. Without the support of Defendants, DMP will be unable to function in providing continued healthcare plans through its Partnership Plans, as the participation of Defendants in its continued development is essential. Thus, the extremely likely ruling in favor of DMP and LPMS (taking into account the DOL's continued losses in Texas federal courts) would entirely conflict with a potentially adverse judgment in this Court.

22. Finally, the practical aspects of conducting a trial in Texas instead of in this Court largely favor litigating in Texas. The DOL has been in active litigation with the DMP and LPMS in the suit in Texas, demonstrating that they are fully capable to litigate issues related to these parties in Texas. Furthermore, by connecting the Texas suit with its settlement negotiations with Defendants, the DOL clearly increases this amenability to possible suit in Texas. The DOL is obviously not inconvenienced by a possible suit in Texas when it was the very entity that connected Defendants with the Texas suit itself.

23. As far as the ERISA violations it asserts against Defendants in this case, Texas courts are well-equipped to address such claims as they have in ruling in DMP's favor in finding the Partnership Plans are subject to ERISA. *See e.g. Chamber of Commerce of United States of America v. United States Department of* Labor, 885 F.3d 360 (5th Cir. 2018); *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); *American Council of Life Insurers v. United States Department of Labor*, Case No. 4:24-cv-00482 (N.D. Tex July 26, 2024). Furthermore, Texas federal courts have dealt with a significantly larger variety of cases interpreting or involving ERISA compared to Puerto Rico district courts, lending a comparative advantage to both parties in this case in having their case tried in a jurisdiction that has more extensive experience in interpreting ERISA.

24. Ultimately, the DOL may not have its cake and eat it too. If the DOL is to explicitly connect settlement to its ongoing litigation with different parties in Texas, it may not enjoy following through with its unreasonable threats by suing in a completely different jurisdiction.

25. When the DMP suit was first filed in Texas, arguably it may have appeared there was no direct relation between it and the suit in this Court. However, once the DOL itself commenced settlement negotiations expressly tying the threat of suit in this Court with the dismissal of a separate suit in another court, the DOL made the link between parties and issues in these two cases more than similar enough to justify litigation in the first-filed court in Texas.

III. CONCLUSION

26. For these reasons, Defendants respectfully request that this Court enter an order under 28 U.S.C. § 1404(a) grounds (1) transferring this action to the United States District Court

for the Northern District of Texas—Fort Worth Division and (2) awarding such other and further relief to which they may be justly entitled, including attorney's fees and costs.

WHEREFORE, Defendants and Counterclaim Plaintiffs respectfully request the Court to take notice of the above and grant the requested relief.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 18th day of February 2025.

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DATA MARKETING PARTNERSHIP, LP, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF LABOR, et al., Defendants.	)	Civil Action No. 4:19-cv-00800-O

OPPOSED AMENDED MOTION FOR LEAVE TO FILE AND SERVE SUPPLEMENTAL COMPLAINT AND SUPPORTING BRIEF

Defendants have fought vigorously but heretofore unsuccessfully to support the position, as set forth in a February 3, 2020 Advisory Opinion, that welfare plans sponsored by Plaintiffs are not governed by the Employee Retirement Income Security Act ("ERISA"). Their most recent strategy, as to the remaining issue of injunctive relief, has targeted vendors critical to the survival of the plans. This strategy, which has culminated in salacious and frivolous litigation consisting in a series of unfounded allegations, which have been comprehensively rebutted with documentary evidence provided to and ignored by Defendants, against the vendors in the U.S. District Court for the District of Puerto Rico styled as *Julie A. Su v. Suffolk Administrative Services, LLC; et al.*, Case 3:24-cv-01512 (the "*Puerto Rico Complaint,*" which is attached hereto as Exhibit A). The *Puerto Rico Complaint* seeks to (1) coerce Plaintiffs into dismissing this suit and withdrawing the request for an advisory opinion which prompted this suit; and/or (2) shut down the plans, thereby rendering injunctive relief moot. Such strategy is a challenge not only to the authority of this Court, but also to Plaintiffs' First Amendment rights of petition. So that this strategy may be properly

addressed by this Court, Plaintiffs now move, under Rule 15(d) of the Federal Rules of Civil Procedure, for leave to file the *Supplemental Complaint for Declaratory and Injunctive Relief (*"*Supplemental Complaint*") attached hereto as Exhibit B.

BACKGROUND

I. LIVE PLEADING CURRENTLY BEFORE THE COURT

On February 3, 2020, Plaintiffs Data Marketing Partnership, LP ("DMP), and LP Management Services, LLC ("LPMS") (collectively "Plaintiffs') filed their *First Amended Complaint for Declaratory and Injunctive Relief* [Doc. 9] ("*First Amended Complaint*") against Defendants U.S. Department of Labor; Secretary of Labor Eugene Scalia; and the United States of America (collectively "Defendants"). This pleading was followed by this Court's September 28, 2020 *Memorandum Opinion and Order* [Doc. 37] granting Plaintiffs' Motion for Summary Judgment, thereby (a) vacating a February 3, 2020 Advisory Opinion by Defendants in response to a November 8, 2018 request to Defendants by Plaintiffs ("AO Request"); and (b) enjoining Defendants from "refusing to recognize the ERISA-status of the [DMP] Plan or refusing to recognize the Limited Partners [of DMP] as working owners of DMP."

On appeal, an August 17, 2022 Opinion [Doc. 44] by the Fifth Circuit affirmed the vacatur of the February 3, 2020 Advisory Opinion but vacated the injunction and remanded to this Court for further findings as to the injunction. In an Opinion and Order dated August 11, 2023 [Doc. 51], this Court denied Defendants motion to remand the question of injunctive relief to the agency.

Thereafter, on January 15, 2024, *Plaintiffs' Motion for Summary Judgment* [Doc. 56] was filed seeking reinstatement of the injunction vacated by the Fifth Circuit. This Motion has been fully briefed by all parties and is awaiting a ruling by this Court.

II. DEFENDANTS TIE THREATENED LITIGATION AGAINST PLAINTIFF'S VENDORS TO PLAINTIFFS' WITHDRAWAL OF AO REQUEST AND DISMISSAL OF THIS SUIT

As set forth further in the *Supplemental Complaint*, the viability of the DMP Plan and other limited partnership plans sponsored by Plaintiffs are dependent upon the vendor services provided by Suffolk Administrative Services, LLC ("SAS") and Providence Insurance Co., I.I. ("PIC"). Without these vendors, the plans cannot operate. *[Supp. Complaint ¶¶ 21-22; 52-58]*

Beginning with a February 8, 2024, e-mail, Defendants undertook an extortive strategy which tied the continued fate of SAS and PIC to the present suit. Specifically, Defendants indicated a willingness to settle potentially financially and reputationally ruinous litigation against SAS and PIC in exchange for an agreement by Plaintiffs to (a) withdraw the AO Request, and (b) dismiss the present suit. *[Supp. Complaint ¶¶ 21-24, 93-101]*

Plaintiffs were unwilling to accede to Defendants' extortive strategy against their vendors. By letter dated October 31, 2024 to SAS and PIC, Defendants confirmed litigation against them was imminent. *[Supp. Complaint ¶ 103]*

III. DEFENDANTS SUE PLAINTIFFS' VENDORS IN PUERTO RICO

On November 5, 2024, Defendants carried through on their threats by filing suit ("*Puerto Rico Complaint*") against SAS, PIC, and their current or former principals, Alexander Renfro, William Bryan and Arjan Zieger, in the U.S. District Court for the District of Puerto Rico, (See Exhibit B, attached hereto). According to the Civil Cover Sheet accompanying the *Puerto Rico Complaint*, Defendants seek $40,000,000, payment of which would effectively bankrupt SAS and PIC and render them unable to continue to provide the vendor services necessary to the plans sponsored by Plaintiffs.[1].

[1] As of the date of this amended motion, no summons has been issued by the U.S. District for the District of Puerto Rico as to the *Puerto Rico Complaint*. Accordingly, it is as yet unclear whether or not Defendants intend to serve or amend such pleading.

Significantly, the *Puerto Rico Complaint* is devoid of facts showing a plausible claim against SAS, PIC, and their current and former principals. In fact, the Puerto Rico Complaint includes demonstrably false and defamatory allegations which contradict documentary evidence provided to Defendants over the course of the years long "investigation" into these vendors of plans sponsored by Plaintiffs. To the extent the pleading claims ERISA violations, such claims are salacious and frivolous.

PUERTO RICO SUIT INCLUDES VENDOR SERVICES PROVIDED TO PLANS SPONSORED BY PLAINTIFFS

The *Puerto Rico Complaint* mentions the present suit but disingenuously asserts that the plans at issue here are not among the "Participating Plans" at issue in that suit. The allegations of the pleading, however, show otherwise.

First, the *Puerto Complaint* alleges SAS and PIC constitute a single multiple employer welfare arrangement ("MEWA") which includes plans sponsored by employers and limited partnerships such as Plaintiffs. *[Puerto Rico 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.[2]

Second, the *Puerto Rico Complaint* alleges the commingling of funds by third-party administrators ("TPAs"). *[Puerto Rico Complaint* ¶¶ 40-41*]*. This alleged commingling necessarily included plans sponsored by both employers and limited partnerships such as Plaintiffs.

To be clear, SAS and PIC deny they are a MEWA and that they have engaged in unlawful behavior. They further deny that any assets of any ERISA plan which they service have ever been commingled, by the companies themselves or, to their knowledge by any third parties.

[2] Furthermore, Defendants acknowledged in Footnote 1 of Exhibit G to the *Supplemental Complaint*, that the plans sponsored by Plaintiffs here are part of the same MEWA which is the subject of the *Puerto Rico Complaint*.

Nevertheless, the allegations of the *Puerto Rico Complaint* encompass all plans serviced by SAS and PIC, including the plans at issue in the present suit.

ARGUMENT

Rule 15(d) of the Federal Rules of Civil Procedure provides that "[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." "A supplemental pleading may bring in new claims when the subsequent allegations stem from the original cause of action." *Mangwiro v. Napolitano,* 939 F.Supp.2d 639, 647-48 (N.D. Tex. 2013), citing *Chemetron Corp. v. Business Funds, Inc.*, 682 F.2d 1149, 1194 (5th Cir.1982), *vacated on other grounds by* 460 U.S. 1007 (1983).

Rule 15(d) is intended "to promote as complete an adjudication of the dispute between the parties as possible." 6A Charles A. Wright, Arthur R. Miller and Mary Kay Kane, *Federal Practice & Procedure* § 1504 (3d ed. Sept. 2018 Update). A supplemental pleading should be allowed when it "facilitates the efficient administration of justice." *Griffin v. County Sch. Bd. of Prince Edward County*, 377 U.S. 218, 226–27 (1964).

I. THE EVENTS COMPLAINED OF IN *SUPPLEMENT COMPLAINT* HAPPENED AFTER *FIRST AMENDED COMPLAINT*

There is no question the events alleged in the *Supplemental Complaint* occurred after the *First Amended Complaint* in the present suit. As set forth further in the *Supplemental Complaint*, Defendants did not tie the fate of SAS and PIC to the present suit until after the filing of *Plaintiffs' Motion for Summary Judgment* on January 15, 2024.

II. *SUPPLEMENTAL COMPLAINT* STEMS FROM CLAIMS OF *FIRST AMENDED COMPLAINT*

As set forth further in the *Supplemental Complaint*, the pleading responds to Defendants' strategy to avoid the injunctive relief sought in the *First Amended Complaint*. Specifically, the

pleading shows how Defendants expressly sought to coerce Plaintiffs into withdrawing the AO Request and dismissing this suit and the request for injunctive relief. The pleading also shows how Defendants have sought to moot the injunctive relief by shutting down the plans. There is thus no question the *Supplemental Complaint* stems from the claims of the *First Amended Complaint*.

III. THE *SUPPLEMENTAL COMPLAINT* PROMOTES JUSTICE

Justice would be served by granting leave to file the *Supplemental Complaint*.

First, the *Supplemental Complaint* implicates the First Amendment right to petition exercised by Plaintiffs both in the AO Request and the present suit. Here, Defendants have pressured Plaintiffs to abandon both petitions through threats against vendors necessary to the continued viability of the plans. Defendants have also sought to moot both petitions by shutting down the plans indirectly by targeting their vendors. Justice thus dictates that the alleged infringement of Plaintiffs' First Amendment rights be heard by this Court.

Second, the *Supplemental Complaint* implicates the integrity of this suit. Defendants have sought an end-around of this Court in a strategy designed to remove the ability of this Court to issue the injunctive relief sought by Plaintiffs. Justice mandates that Defendants be held accountable to the extent this strategy infringed upon this Court's inherent authority in this case.

Third, Plaintiffs are not parties to the Puerto Rico suit and thus have no ability to raise the allegations set forth in the *Supplemental Complaint* in that court. Justice thus requires that Plaintiffs be heard as to Defendant's strategy in the only action to which they are is a party, which is the present case.

Fourthly, the relief sought in the *Supplemental Complaint* seeks only to preserve the integrity of the injunctive relief sought by Plaintiffs in this action. The pleading merely seeks an injunction supportive of the injunction already sought by Plaintiffs which enjoins Defendants from engaging in any conduct against Plaintiffs or third parties which is intended to circumvent, moot

or otherwise thwart the injunction sought by the *First Amended Complaint*. Justice would thus undoubtedly be served by such a limited supplemental injunction.

Finally, this motion is not being filed for purposes of delay. The motion was filed only when it became necessary to do so.

CONCLUSION

For these reasons, and the reasons set forth in the *Supplemental Complaint* attached hereto, Plaintiffs respectfully request that this Court issue a memorandum opinion and order (1) granting leave to file the *Supplemental Complaint* attached hereto, and (2) awarding such other and further relief to which they may be just entitled.

Respectfully submitted this 25th day of November 2024.

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CERTIFICATE OF CONFERENCE

On October 31, 2024, I forwarded a draft of the original Motion for Leave and the proposed Supplemental Complaint to Galen Thorpe, counsel for Plaintiffs, requesting a written communication by the end of business on November 1, 2024 whether Plaintiffs opposed this Motion. On November 1, 2024, Mr. Thorpe advised via e-mail Defendants were opposed to the Motion.

/s/ *Robert G. Chadwick, Jr.*
Robert G. Chadwick, Jr.

CERTIFICATE OF SERVICE

On November 25, 2024, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I certify that I have served the parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ *Robert G. Chadwick, Jr.*
Robert G. Chadwick Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORTH WORTH DIVISION

DATA MARKETING PARTNERSHIP, LP, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF LABOR, et al., Defendants.	)	Civil Action No. 4:19-cv-00800-O

SUPPLEMENTAL COMPLAINT FOR DECLARATORY/INJUNCTIVE RELIEF

COME NOW Plaintiffs Data Marketing Partnership, LP ("DMP"), and LP Management Services, LLC ("LPMS") (collectively "Plaintiffs'), and by way of supplemental complaint against Defendants United States Department of Labor ("the DOL"), Acting Secretary of Labor Julie A. Su ("Su"), and the United States of America (collectively "Defendants") state as follows:

INTRODUCTION

1. At stake in this suit are welfare plans which provide health coverage for more than 30,000 individuals. Plaintiffs have sought to protect these plans under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.*, by petitioning (a) the DOL for an advisory opinion acknowledging such protection, and (b) this Court for an injunction enjoining Defendants from denying such protection. Defendants have fought these petitions vigorously. Now, rather than face potential judicial defeat, Defendants have tied imminent and now contemporaneous litigation in Puerto Rico against Plaintiffs' vendors to Plaintiffs' withdrawal of their DOL petition and the dismissal of this suit. This extortive strategy threatens not only the reputation and financial viability of Plaintiffs' vendors but the plans themselves which are

dependent upon the services of Plaintiffs' vendors. By undertaking this strategy Defendants are (a) infringing on Plaintiffs' First Amendment Petition rights; (b) circumventing the authority of this Court to hear Plaintiffs' petition; (c) violating the Administrative Procedure Act ("APA"); and (d) jeopardizing the health coverage of more than 30,000 individuals who, without the plans, would need to scramble to find higher-priced health insurance elsewhere. Plaintiffs seek injunctive relief from this Court ending Defendants' actual and threatened unlawful and harmful course of conduct.

I. FIRST AMENDMENT

2. The First Amendment "right to petition the government for a redress of grievances is "one of the most precious of the liberties safeguarded by the Bill of Rights," and is "high in the hierarchy of First Amendment values." *Lozman v. City of Riviera Beach, Fla*., 585 U.S. 87, 101 (2018). "The right to petition is cut from the same cloth as the other guarantees of [the First] Amendment, and is an assurance of a particular expression of freedom." *McDonald v. Smith*, 472 U.S. 479, 482 (1985). The right to petition the government for redress of grievances is such a fundamental right as to be "implied by '[t]he very idea of a government, republican in form.'"*BE & K Const*., 536 U.S. at 524–25.

3. The right to petition "extends to all departments of the Government", including administrative agencies and courts. *Cal. Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) ("The right of access to the courts is indeed but one aspect of the right of petition"). The right to petition includes not just petitions to redress grievances but petitions to influence government action. *E.R.R. Pres. Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 143 (1961).

4. It is a violation of the First Amendment for the federal government to directly or indirectly thwart, or endeavor to thwart, the availability of judicial machinery to resolve disputes with a federal court. *Doe v. Schneider*, 443 F.Supp. 780, 787 (D.Kan. 1978). An unconstitutional

deprivation of the right of access to the courts takes place "when government officials thwart vindication of a claim by violating basic principles that enable civil claimants to assert their rights effectively." *Barrett v. U.S..*, 798 F.2d 565, 575 (2nd Cir. 1986).

5. "Retaliation, though it is not expressly referred to in the Constitution, is nonetheless actionable because retaliatory actions may tend to chill individuals' exercise of constitutional rights." *ACLU of Md., Inc. v. Wicomico County*, 999 F.2d 780, 785 (4th Cir. 1993).

6. Even otherwise lawful conduct by government officials can run afoul of the First Amendment. In *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963), the Supreme Court affirmed that the First Amendment prohibits government officials from relying on the "threat of invoking legal sanctions and other means of coercion … to achieve the suppression" of disfavored speech. Just this past term, in *NRA v. Vullo*, 602 U.S. 175 (2024), the Supreme Court acknowledged in a 9-0 decision that actionable coercion includes actions directed at vendors which do business with the person or entity who exercised rights guaranteed by the First Amendment. Similarly, in *American Motor Club, Inc. v. Corcoran*, 644 F.Supp. 862 (S.D.N.Y. 1986), the U.S. District Court for the Southern District of New York issued a preliminary injunction against the New York Department of Insurance which, in response to a civil rights action against the Department by an automobile club, allegedly threatened the licenses of brokers who sold memberships in the automobile club. *See also Floridians Protecting Freedom, Inc. v. Ladapo*, et al, Case No. 4:24-cv-00419 (N.D. Florida).

7. Federal courts are empowered to issue general injunctive relief that enjoins a government defendant from retaliating against or otherwise infringing upon a plaintiff's rights under the First Amendment. *Mahan v. Texas Dept. of Public Safety*, No. 9:20-CV-119-RC-ZJH, 2020 WL 6935555 at *3 (E.D.Tex. Oct. 29, 2020).

II. THIS COURT'S INHERENT AUTHORITY

8. Just this past term, in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244, 2266 (2024), the Supreme Court confirmed that federal "agencies have no special competence in resolving statutory ambiguities. Courts do."

9. The Fifth Circuit recognizes that a federal court may issue injunctive relief to protect the court's inherent authority and control of its docket. *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181 (5th Cir. 2008); *Farguson v. MBank Houston, N.A.*, 808 F.2d 358, 359 (5th Cir. 1986). Indeed, the traditional standards for issuing relief (i.e., irreparable injury and inadequate remedy at law) are inapplicable to such injunctions. *Id.* The court's power to enter such orders flows not only from various statutes and rules relating to sanctions, but the inherent power of the court to protect its jurisdiction, its judgments, and to control its docket. *Fargason*, 808 F.2d at 359*; Citizens Bank & Trust Co. v. Case*, 931 F.2d 1014 (5th Cir. 1991).

10. As acknowledged by Chief Judge Lay in *McBride v. Coleman*, 955 F.2d 571, 582-83 (8th Cir. 1992):

> "The federal courts must have the inherent authority to enforce executive branch compliance with judicial orders which serve to restore to the status quo a party injured as a direct result of the government's contumacious conduct. Otherwise, the judiciary would be powerless to impose the most effective remedy for ensuring compliance with its order against the most frequent litigant in the federal courts."

See also Chilcutt v. U.S., 4 F.3d 1313, 1327 (5th Cir 1993) (citing Judge Lay).

11. The exercise of inherent authority over parties by a federal court "is particularly appropriate for impermissible conduct that adversely impacts the entire litigation." *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 516 (6th Cir. 2002).

12. A U.S. District Court hearing a particular case possesses the power to enjoin the filing of related lawsuits in other courts. *Kerotest Manufacturing Co. v. C–O–Two Fire Equipment Co.*, 342 U.S. 180 (1952).

III. BENEFITS OF ERISA

13. 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."

14. The legal protections afforded these millions of Americans by ERISA are uniform and strict. As noted by the 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." *Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985).

IV. PLAINTIFFS' PETITIONS AND DEFENDANTS' RESPONSES

15. In reliance upon and in comportment with Supreme Court precedent and prior DOL advisory opinions, Plaintiffs design and sponsor single employer employee welfare plans to comply with ERISA. The plans ("Partnership Plans"), which collectively provide affordable health insurance to more than 30,000 individuals, combine limited partners with common law employees.

16. In 2018, Plaintiffs petitioned Defendants directly for an advisory opinion, in accordance with ERISA Procedure 76-1. Plaintiffs specifically requested acknowledgment by the DOL that the Partnership Plans are subject to ERISA, and therefore not subject to regulation by state insurance departments.

17. Almost immediately after this petition, Defendants undertook an investigation, which came to be known as the "Anjo Investigation", of vendors for the Partnership Plans, including (a) Suffolk Administrative Services, LLC ("SAS"), which co-developed, owns, and

provides the intellectual property necessary to operate the Partnership Plans; and (b) Providence Insurance Company ("PIC"), which provides reinsurance needed to protect and provide financial capacity and stability for the self-funded Partnership Plans. Defendants would not have undertaken an investigation of these vendors, but for the exercise by Plaintiffs of their right of petition under the First Amendment.

18. The Anjo Investigation evolved into threats of litigation by Defendants against SAS and PIC, as well as Alexander Renfro ("Renfro"), a benefits attorney, former SAS principal, and filer of the original advisory opinion request on behalf of Plaintiffs, Arjan Zieger ("Zieger") and William Bryan ("Bryan"), principals in both SAS and PIC (collectively "the Anjo Targets"). These threats included allegations and monetary demands which would bankrupt and destroy the business reputations of SAS, PIC, and their respective principals.

19. Plaintiffs' second petition was filed with this Court after Defendants issued an Advisory Opinion finding the Partnership Plans are not subject to ERISA. Plaintiffs' *First Amended Complaint for Declaratory and Injunctive Relief* [Doc. 9] ("*First Amended Complaint*") specifically sought (a) vacatur of the Advisory Opinion as being arbitrary and capricious in violation of the Administrative Procedure Act, and (b) an injunction enjoining Defendants from refusing to acknowledge the ERISA status of the Partnership Plans.

20. Defendants' direct response to this second petition has largely been unsuccessful. This Court vacated the Advisory Opinion and the Fifth Circuit affirmed. The Court issued an injunction as to Defendants, which the Fifth Circuit vacated and remanded to this Court for further findings rather than reversing outright. Defendants' Motion for a "do-over" with respect to the Advisory Opinion was denied by this Court. Pending before this Court is Plaintiffs' Motion for Summary Judgment as to the injunction.

21. Faced with the prospect of further adverse rulings by this Court and the Fifth Circuit, Defendants have now attempted to leverage their threats of litigation against the Anjo Targets to indirectly achieve what they have henceforth been unable to directly achieve in this suit – an end to Plaintiff's two petitions. Although the Anjo Targets are not parties to this suit, Defendants have expressly tied their fate in imminent and now contemporaneous litigation to the abandonment by Plaintiffs of both petitions. Defendants have specifically said they would only agree to a settlement of the imminent litigation if Plaintiffs (a) withdraw their request for an advisory opinion from DOL as the Partnership Plans, and (b) dismiss this suit.

22. The coercion being brought to bear on the Anjo Targets by Defendant is potentially devastating not only to The Anjo Targets, but also to Plaintiffs. If SAS and PIC stop doing business with Plaintiffs either involuntarily or through financial and reputational ruin in conjunction with imminent and now contemporaneous litigation, the Partnership Plans would cease to operate. There are no other vendors which provide the services currently provided by the Anjo Targets to the Partnership Plans. The ability of Plaintiffs to offer group health coverage to prospective new partners through the Partnership Plans is an important attraction and retention tool, without which Plaintiff's core business of aggregating and marketing large volumes of electronic data would suffer significant impairment.

23. Lest this Court intervene with declaratory and injunctive relief against Defendants in this lawsuit, Defendants will likely make the relief sought herein by Plaintiffs moot: the Partnership Plans would cease to exist, and the limited partnerships which sponsor them would suffer great financial harm. In other words, by doing an end-around of this Court, Defendants would accomplish what Defendant's zealous efforts have heretofore failed to accomplish, an end to Plaintiffs' two petitions protected by the First Amendment.

24. This Supplemental Complaint therefore seeks merely to preserve the integrity of this lawsuit and maintenance of the status quo as to the injunctive relief already requested in Plaintiffs' *First Amended Complaint*. As set forth further in this pleading, Plaintiffs specifically seek a supplemental injunction enjoining Defendants from engaging in any conduct against Plaintiffs or third parties which is intended to circumvent, moot or otherwise thwart the injunction requested in the *First Amended Complaint* or its issuance by the Court.

PARTIES

25. Plaintiffs are limited partnerships aggrieved by the actions of Defendants following their AO Request against the Anjo Targets upon whose services Plaintiffs depend in the operation of the Partnership Plans, and the General Partner of said partnerships and other similar entities.

26. 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).

27. Su is the Acting Secretary of Labor and is sued solely in her official capacity.

28. The United States of America is joined as a defendant in this action as permitted by 5 U.S.C. § 702.

JURISDICTION AND VENUE

29. Pursuant to 28 U.S.C. § 1331, this Court has subject matter jurisdiction over the claims asserted in this Supplemental Complaint because this Supplemental Complaint involves claims based on the First Amendment and because the action seeks to prevent the deprivation of federal rights. The relief requested is authorized pursuant to 28 U.S.C. § 1651(a) (injunctive relief); 28 U.S.C. §§ 2201 and 2202 (declaratory and other appropriate relief); 42 U.S.C. § 1983 (deprivation of rights, privileges, and immunities secured by the Constitution); 5 U.S.C. § 702 (APA); and 42 U.S.C. § 1988 (attorney's fees and costs).

30. 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).

31. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) & (e)(1). Defendants are U.S. agencies or officers sued in their official capacities; Defendants reside in this District; and a substantial part of the events giving rise to this action occurred in this District.

HISTORY OF APA VIOLATIONS BY DOL

32. 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 this Court and the Fifth Circuit in this suit, federal jurisprudence nevertheless has repeatedly found the DOL to have exceeded or abused its statutory authority in violation of the APA.

33. 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, the DOL rule regarding association health plans under ERISA.

34. 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 the 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.

35. 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 the 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]."

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

37. 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 the DOL interpreting its ERISA Prohibited Transaction Exemption 2020-02, 85 Fed.Reg. 82798 (Dec. 18, 2020).

38. 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").

39. 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.

40. In *Restaurant Law Center v. DOL*, ___ F.4th ___, 2024 WL 3911308 (5th Cir. Aug. 23, 2024), the Fifth Circuit vacated the DOL's so-called 80/20/30 Rule that governed how tipped employees must be paid under the FLSA.

41. 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.

42. 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.

43. 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 the DOL's farmworker protection rule.

44. 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.

FACTS

I. BACKGROUND

A. The DMP Plan

45. 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.

46. 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.

47. As a business seeking to profit from the electronic data generation, aggregation, and sales market, DMP must collect and aggregate data generated by as many active users of its proprietary software and mobile applications as possible.

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

49. To attract and retain limited partners willing to contribute the data they generate for aggregation and sale, DMP established the DMP Plan. The DMP Plan provides health coverage more affordable than found elsewhere in non-ERISA plans, in particular those sold to individuals on the various "exchanges" established under the Patient Protection and Affordable Care Act (ACA).

50. Without the DMP Plan as a recruiting and retention tool, DMP would not be able to successfully 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

51. 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.

52. Dozens of companies, including DMP, are currently competing with each other to gain market share in the user-driven electronic data aggregation space, which is colloquially known as "Own Your Data," or "OYD." Without the DMP Plan as a recruiting and retention tool, DMP would be severely hampered in its ability to compete in OYD, by attracting and retaining limited partners willing to generate and contribute their data as working owners for the business purpose of the limited partnership.

C. SAS

53. The Partnership Plans, including the DMP Plan, were established with the irreplaceable assistance of SAS. SAS expended resources, time, and expertise to develop compliance structures and products tailored to assist LPMS in implementing the novel Partnership Plan structure through limited partnerships such as DMP.

54. 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.

55. There are no companies other than SAS able and willing to provide the compliance services to plans that utilize the structure of the Partnership Plans.

D. PIC

56. 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-insured group health plans.

57. PIC expended resources, time, and expertise to develop insurance and reinsurance products tailored to assist LPMS in implementing the Partnership Plans structure through limited partnerships such as DMP.

58. LPMS and DMP do not have the revenues to properly manage the risk of covered claims exceeding contributions without the stop loss insurance provided by PIC.

59. 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 DMP and LPMS

60. Without the services provided by SAS and reinsurance provided by PIC, DMP could not continue the DMP Plan and LPMS could not continue the other Partnership Plans.

61. If the DMP Plan and the Partnership Plans are discontinued, DMP and the other LPMS managed limited partnerships would have more difficulty attracting and retaining partners, thus threatening the long-term viability their core businesses, which rely upon achieving sufficient scale to profitably monetize electronic data.

II. PLAINTIFFS PETITION DOL FOR AN ADVISORY OPINION

62. As set forth in ERISA Procedure 76-1, DOL "invites inquiries of individuals or organizations affected, directly or indirectly, by the Employee Retirement Income Security Act …. as to their status under the Act and as to their status under the Act."

63. In 2018, Renfro was retained as legal counsel for LPMS to assist it in pursuing an advisory opinion from the DOL concerning a novel application of the "working owner" theory to the proposed Partnership Plans. At the time, Renfro was a principal of and salaried consultant to SAS, and provided services to LPMS with the consent and participation of SAS, facts which are known to the DOL.

64. On Nov. 8, 2018 (revised on Jan. 15, 2019, and Feb. 27, 2019), Renfro submitted a formal Advisory Opinion Request ("AO Request") under ERISA Procedure 76-1 with the DOL on behalf of LPMS, for the Partnership Plans. (See Exhibit A, attached hereto).

65. The AO Request detailed the legal and factual basis for application of ERISA to the Partnership Plans building upon the recognized concept under ERISA of "working owners", including the concepts recognized by the U.S. Supreme Court in *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1 (2002), and the DOL in Advisory Opinion 99-04A.

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

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

68. In October 2018, prior to submitting the AO Request, Renfro attended a meeting in Washington DC 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 DOL was Preston Rutledge, then Assistant Secretary of Labor for the Employee Benefits Security Administration ("EBSA"), the division of DOL responsible for ERISA compliance and interpretations.

69. At the meeting, Renfro and other LPMS representatives explained the Partnership Plan structure to 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 the representatives that an Advisory Opinion Request was the best route to ensure approval of the Plan by DOL. Renfro drafted and submitted the AO Request after this meeting.

70. On March 6, 2019, Renfro attended another meeting with various DOL officials in Washington DC. Also attending this meeting was then Louisiana Attorney General 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 B, attached hereto).

71. Defendants only became aware of the Anjo Targets through the AO Request.

III. DEFENDANTS INITIATE ANJO INVESTIGATION AND THREATEN LITIGATION

72. Within weeks of the March 6, 2019 meeting, Defendants began systematic efforts to discredit and dismantle the Partnership Plans. In what came to be known as the "Anjo Investigation," - Defendants began requesting information and issuing subpoenas, starting on April 19, 2019, as to the Anjo Targets.

73. Shortly after opening the Anjo Investigation, DOL issued numerous requests for information and subpoenas not only to SAS and PIC, but to numerous entities doing business with SAS or PIC. (See Exhibit C, attached hereto). The subpoenas were issued despite DOL having never posed at the time a single written question or other formal response to the AO Request.

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

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

76. Additionally, existing vendors of SAS and PIC reduced or terminated relations with SAS and PIC as a result of the Anjo Investigation.

77. 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 D, attached hereto).

78. On Dec 14, 2020, 20 months after the commencement of the Anjo Investigation, Katrina Liu, Trial Attorney, Office of the Solicitor of DOL (also an attorney representing DOL in the instant litigation), responded on behalf of DOL with a letter essentially noting DOL's "ample authority to conduct its investigation in order to determine whether ERISA violations have or are about to occur" noting that DOL was "not in a position to provide the specific information you seek regarding the timing and scope" of the Anjo Investigation. (See Exhibit E, attached hereto).

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

80. SAS and PIC closed their reply letter with yet another request that DOL reconsider its inexplicable approach to the Anjo Investigation. Counsel for 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."

81. The Anjo Investigation ultimately prompted a suit in the U.S. District Court for the District of Puerto Rico on Jan. 19, 2021 against Defendants, styled as *Suffolk Administrative Services, LLC, et al. v. U.S. Department of Labor, et al*, Cause No. 3:21-CV-01031. This suit was dismissed on March 28, 2022, on the ground of lack of ripeness without addressing the substantive merits.

82. On July 21, 2022, after over three years of seemingly endless subpoenas and "investigation," Defendants finally gave notice to the Anjo Targets as to the substance of its Anjo Investigation and alleged violations of ERISA. (See Exhibit G, attached hereto).

83. After July 21, 2022, the Anjo Targets were engaged in active settlement negotiations with Defendants.

84. Nearly one year later, on June 8, 2023, Defendants submitted their first threat of litigation against the Anjo Targets which included an express demand for injunctive and monetary relief. (See Exhibit H, attached hereto).

85. Progress towards settlement between Defendants and the Anjo Targets was very slow between June 2023 and January 2024. During this time, Defendants and the Anjo Targets entered into several tolling agreements which (1) extended the statute limitations for legal action, and (2) precluded Defendants and the Anjo Targets from initiating any legal proceedings with respect to the Anjo Investigation.

86. Under a continuing threat of litigation, Defendants sent the Anjo Targets, on Jan. 24, 2024, a demand for $15 million, a figure which would severely and negatively impact the companies and lead SAS and PIC to file for bankruptcy protection.

IV. PLAINTIFFS PETITION FOR RELIEF IN THIS COURT

87. On Feb. 3, 2020, DOL responded to the AO Request by issuing an Advisory Opinion finding the Partnership Plans are not subject to ERISA. (See Exhibit I, attached hereto).

88. This Advisory Opinion was the subject of the *First Amended Complaint* [Doc. 9] filed herein on February 3, 2020. In a *Memorandum Opinion and Order* [Doc. 37] dated Sept. 28, 2020, this Court (a) found the DMP Plan to be a single employer ERISA plan; (b) 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 (c) enjoined the DOL "from refusing to recognize the ERISA-status of the [DMP Partnership] Plan." On appeal, an Aug. 17, 2022 Opinion [Doc. 44] by the Fifth Circuit affirmed the vacatur of the Advisory Opinion but remanded the matter to this Court for further findings to support its injunction.

89. On remand, Defendants filed a *Motion to Remand* [Doc. 48] with this Court asking for a chance at a do-over as to the Advisory Opinion. This Court denied the Motion in an *Opinion and Order* [Doc. 51] dated Aug. 11, 2023. On Jan. 15, 2024, Plaintiffs filed a *Motion for Summary Judgment* [Doc. 56] and supporting *Brief* [Doc. 57] to reinstate the injunction enjoining the DOL from refusing to recognize the ERISA-status of the DMP Partnership Plan.

V. DEFENDANTS DIRECTLY TIE FATE OF THREATENED LITIGATION AGAINST ANJO TARGETS TO PLAINTIFFS' PETITIONS

90. Immediately after signaling that certain DOL personnel were adamantly opposed to consideration of the AO Request, the DOL initiated the Anjo Investigation.

91. As the Anjo investigation got under way, a long-scheduled June 2019 meeting between LPMS, Plaintiffs' representatives, and DOL was abruptly pushed back to July 2019. When the postponed meeting finally occurred, it lasted only ten minutes and the representatives

from DOL demonstrated little interest in continuing discussions with LPMS representatives about the Partnership Plans, or the AO Request.

92. The DOL subpoenaed more than ten entities related to LPMS and DMP as part of the Anjo Investigation.

93. On Jan. 11, 2024, counsel for DMP and LPMS sent a letter to counsel for the DOL as to potential settlement discussions in this suit. (See Exhibit J, attached hereto).

94. In response, the DOL sent an e-mail on February 8, 2024 to DMP, LPMS, SAS, PIC, and the individual Defendants proposing "global" settlement discussions as to this suit and the threatened litigation against the Anjo Targets. (See Exhibit K, attached hereto). Counsel for DMP, LPMS, and the Anjo Targets replied that although one individual attorney – Jonathan Crumly of Freeman, Mathis, & Gary – had at times represented some parties in each matter, the parties were nevertheless distinct, sharing no common ownership or control. Further, Mr. Crumly did not and does not represent all of the targets of the Anjo Investigation, and each party was and is represented by additional counsel. Counsel made these facts clear to the DOL, and also stressed that no "global settlement" which favored one or more parties at the expense of others would be possible, nor could any attorney ethically advise any client to accept demands against its self-interest in order to assist another, separate client. The DOL nonetheless pressed for "global settlement."

95. Thereafter, settlement discussions as to the Anjo Investigation accelerated substantially once Plaintiffs and the Anjo Targets agreed to participate in "global settlement discussions." The DOL's monetary demands for settling with the Anjo Targets lowered considerably over the next two months. Even as the demands for settling with the Anjo Targets

were lowered, the DOL's demand as to this suit remained constant – dismiss this suit entirely and withdraw the AO Request.

96. That any settlement with the Anjo Targets was entirely dependent upon the dismissal of this suit was made plain in the DOL's April 26, 2024 demand. The settlement demand was $5.5 million as to the Anjo Targets but was contingent upon the withdrawal of the AO Request and the dismissal of this suit by Plaintiffs. (See Exhibit L, attached hereto).[1]

97. On Friday, May 10, 2024, counsel for the DOL directly stated to counsel for Plaintiffs and the Anjo Targets that if this suit was not dismissed, the monetary demands for settling threatened litigation against the Anjo Targets would increase.

98. On Thursday, May 23, 2024, counsel for the DOL repeated that the AO Request needed to be withdrawn and this suit needed to be dismissed as part of a settlement with the Anjo Targets. Counsel for the DOL stated that either both matters were settled together, or neither matter would be settled.

[1] 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 the DOL are themselves the basis of this Supplemental Complaint, 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)).

99. In an e-mail dated Monday, May 27, 2024, counsel for the DOL again tied the settlement with the Anjo Targets to the dismissal of this suit. (See Exhibit M, attached hereto).

100. On Tuesday, May 28, 2024, counsel for DOL stated that if this suit were not dismissed, the DOL's monetary settlement demand as to the Anjo Targets would increase from $5.5 million inclusive of penalties back up to $15 million inclusive of penalties, the last demand from the DOL before it tied this suit to the settlement with the Anjo Targets.

101. On Tuesday, June 11, 2024, counsel for the DOL, responded to an inquiry from counsel for the Anjo Targets whether the January 24, 2024 demand of $15 million was still on the table if this case was not dismissed. The e-mail responded: "Yes, that January 24 demand is still on the table… But we'd have to know relatively soon if your clients are interested in that offer, as we're planning on filing the complaint by the end of the week, and I can't promise what our client would be willing to do once we file." (See Exhibit N, attached hereto)

102. Counsel for the Anjo Targets 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 Anjo Targets were capable of meeting.

103. Plaintiffs did not agree to undo the findings of this Court by dismissing this lawsuit or withdrawing the AO Request. As a result, Defendants now demand payment of $15 million in a time frame which would likely bankrupt SAS and PIC to avoid a costly federal complaint against them in the U.S. District Court for the District of Puerto Rico.

104. On Thursday, October 31, 2024, Defendants sent the Anjo Targets, through their legal counsel, an e-mail expressly referencing previous settlement negotiations tying this case to

the Anjo Investigation and other investigations. (See Exhibit O, attached hereto). The e-mail advised:

> "It appears we have reached an impasse. Accordingly, with the tolling period expiring on November 6, the Department will prepare to file suit before that date. Please advise as soon as possible if anything changes for your clients. Otherwise, **please let us know if you will accept service of the complaint on behalf of your clients via email**. [emphasis in original]."

Previous e-mails had indicated any suit would be filed in the U.S. District Court for the District of Puerto Rico.

105. On Nov. 5, 2024, Defendants carried through on their threats by filing suit ("*Puerto Rico Complaint*") against the Anjo Targets in the U.S. District Court for the District of Puerto Rico, styled as *Julie A. Su v. Suffolk Administrative Services, LLC; et al.*, Case 3:24-cv-01512. According to the Civil Cover Sheet accompanying the *Puerto Rico Complaint*, Defendants now seek $40,000,000 from the Anjo Targets.

VI. PLAINTIFFS' PREDICAMENT

106. As a result of imminent litigation with Defendants, SAS and PIC are considering terminating their relationships with the Partnership Plans to avoid bankruptcy. Both Plaintiffs and the Anjo Targets fear retaliatory action by Defendants and believe the Defendants' actions against them to be retaliatory in nature.

107. Even if they do not terminate their relationships with the Partnership Plans, SAS and PIC face financial and reputational ruin if Defendants carry through on their threat of imminent litigation.

108. Plaintiffs are not parties to the imminent litigation threatened by Defendants against the Anjo Targets, and cannot control or direct the prospective litigation defense.

109. The choices presented to Plaintiffs by the threats by Defendants against SAS and PIC are two-fold.

110. One choice is to await the Court's ruling on Plaintiff's *Motion for Summary Judgment* in this suit. A likely result of this choice is the end of the Partnership Plans irrespective of this Court's ruling, as the pressure being applied by Defendants against the Anjo Targets, the services of which are essential to the continued operation of the Partnership Plans, are likely to prove to be more than the Anjo Targets can bear. The immediate victims of this choice would be the 30,000 individuals covered by the Partnership Plans who would need to seek health insurance coverage elsewhere.

111. The second choice is the withdrawal of the AO Request and the dismissal of this suit. The result of this choice would be to expose the plans to the jurisdiction of state insurance laws in each individual state, several of which have already demonstrated hostility toward Partnership Plans. This is the result Plaintiffs sought to avoid in making the AO Request and petitioning this Court for declaratory and injunctive relief.

COUNT I: VIOLATION OF FIRST AMENDMENT RIGHTS (42 U.S.C. § 1983) AS TO AO REQUEST

112. Plaintiffs incorporate and re-allege the allegations in paragraphs 1 to 111 as if fully set forth herein.

113. The AO Request was a petition by Plaintiffs protected by the First Amendment of the Constitution regarding a matter of public concern, i.e., the applicability of ERISA to single employer employee welfare plans providing health coverage to more than 30,000 individuals.

114. Defendants have intentionally undertaken the following actions to obstruct, chill, deter, and retaliate against Plaintiffs for submitting the AO Request, and/or to coerce Plaintiffs to withdraw the AO Request:

a. Launching the Anjo Investigation as to the Anjo Targets, which Defendants knew, based upon the AO Request, provided services essential to the continued operation of the Partnership Plans;

b. Making unsupported allegations of wrongdoing against the Anjo Targets, with inflated monetary demands, and refusing to consider or acknowledge evidence provided by the Anjo Targets which largely, if not entirely, refutes or mitigates said allegations and monetary demands;

c. Making exorbitant unwarranted monetary demands on the Anjo Targets, under threat of litigation;

d. Conditioning settlement on achievable terms with the Anjo Targets on the withdrawal of the AO Request by Plaintiffs;

e. Conditioning settlement with the Anjo Targets, after Plaintiffs refused to withdraw the AO Request, on a public complaint which threatened to jeopardize their reputations in the employee benefits industry; and

f. Threatening imminent litigation and now filing contemporaneous litigation against the Anjo Targets after Plaintiffs refused to withdraw the AO Request.

115. Such actions have been undertaken by Defendants with full knowledge as to their potential devastating impact on the Partnership Plans.

116. Defendants' unlawful and intentional actions are not justified by a substantial or compelling government interest and are not narrowly tailored to serve any such interest.

117. As a proximate result of the conduct of Defendants as alleged under this Count, Plaintiffs have engaged legal counsel to prepare and prosecute this Supplemental Complaint. Accordingly, Plaintiffs have incurred substantial attorney's fees and costs.

118. Plaintiffs currently are seeking that this Court reinstate the injunction vacated by the Fifth Circuit enjoining the Defendants "from refusing to acknowledge the ERISA-status of the [DMP] Plan or refusing to recognize the Limited Partners as working owners of DMP."

119. As a direct and result of Defendants' unlawful conduct as alleged under this Count, the DMP Plan and the other Partnership Plans now face imminent, irrevocable, and irreparable harm which includes (a) the end of the DMP Plan and Partnership Plans and the termination of health insurance for more than 30,000 individual participants; or (b) vulnerability of the DMP Plan and Partnership Plans to regulation under state law rather than ERISA. Accordingly, in addition to the permanent injunction currently sought in this suit, Plaintiffs also seek and are entitled to a permanent injunction enjoining Defendants from engaging in any conduct against Plaintiffs or third parties which is intended to circumvent, moot or otherwise thwart the injunction or its issuance by this Court.

COUNT II: VIOLATION OF FIRST AMENDMENT RIGHTS (42 U.S.C. § 1983) AS TO THIS SUIT

120. Plaintiffs incorporate and re-allege the allegations in paragraphs 1 to 119 as if fully set forth herein.

121. The *First Amended Complaint*, filed herein on Feb. 3, 2020, was a petition protected by the First Amendment of the Constitution regarding a matter of public concern, i.e., the applicability of ERISA to single employer employee welfare plans providing health coverage to more than 30,000 individuals.

122. Defendants have intentionally undertaken the following actions to obstruct, chill, deter, and retaliate against Plaintiffs for filing the *First Amended Complaint,* and/or to coerce Plaintiffs to dismiss this suit:

a. Making exorbitant unwarranted monetary demands on the Anjo Targets, under threat of litigation;

b. Making unsupported allegations of wrongdoing against the Anjo Targets, with inflated monetary demands, and refusing to consider or acknowledge evidence provided by the Anjo Targets which largely, if not entirely, refutes or mitigates said allegations and monetary demands;

c. Conditioning settlement on achievable terms with the Anjo Targets on the dismissal of this suit by Plaintiffs;

d. Conditioning settlement with the Anjo Targets, after Plaintiffs refused to dismiss this suit, on a public complaint which threatened to jeopardize their reputations in the employee benefits industry; and

e. Threatening imminent litigation and now filing contemporaneous litigation against the Anjo Targets because Plaintiffs refused to dismiss this suit.

123. Such actions have been undertaken by Defendants with full knowledge as to their potential devastating impact on the Partnership Plans.

124. Defendants' unlawful and intentional actions are not justified by a substantial or compelling government interest and are not narrowly tailored to serve any such interest.

125. As a direct result of the conduct of Defendants as alleged under this Count, Plaintiffs have engaged legal counsel to prepare and prosecute this Supplemental Complaint. Accordingly, Plaintiffs have incurred substantial attorney's fees and costs.

126. Plaintiffs currently are seeking that this Court reinstate the injunction vacated by the Fifth Circuit enjoining the Defendants "from refusing to acknowledge the ERISA-status of the [DMP] Plan or refusing to recognize the Limited Partners as working owners of DMP."

127. As a direct and result of Defendants' unlawful conduct as alleged under this Count, the DMP Plan and other Partnership Plans now face imminent, irrevocable, and irreparable harm which includes (a) the end of the DMP Plan and the Partnership Plans and the termination of health coverage for more than 30,000 individual participants or (b) vulnerability of the DMP Plan and Partnership Plans to regulation under state law rather than ERISA. Accordingly, in addition to the permanent injunction sought by the *First Amended Complaint*, Plaintiffs also seek and are entitled to a permanent injunction enjoining Defendants from engaging in any conduct against Plaintiffs or third parties which is intended to circumvent, moot or otherwise thwart the injunction or its issuance by the Court.

COUNT III: CIRCUMVENTION OF COURT'S AUTHORITY

128. Plaintiffs incorporate and re-allege the allegations in paragraphs 1 to 127 as if fully set forth herein.

129. In the *First Amended Complaint*, Plaintiffs seek injunctive relief to protect the Partnership Plans under ERISA.

130. Defendants have intentionally undertaken the following actions to moot the injunctive relief sought by Plaintiffs in this action thereby circumventing this Court's authority to provide such relief:

a. Making exorbitant unwarranted monetary demands on The Anjo Targets, under threat of litigation;

b. Making unsupported allegations of wrongdoing against the Anjo Targets, with inflated monetary demands, and refusing to consider or acknowledge

evidence provided by the Anjo Targets which largely, if not entirely, refutes or mitigates said allegations and monetary demands;

c. Conditioning settlement on achievable terms with the Anjo Targets on the dismissal of this suit;

d. Conditioning settlement with the Anjo Targets, after Plaintiffs refused to dismiss this suit, on a public complaint which threatened to jeopardize their reputations in the employee benefits industry; and

e. Threatening imminent litigation and now filing contemporaneous litigation against the Anjo Targets because Plaintiffs refused to dismiss this suit.

131. Such actions have been undertaken by Defendants with full knowledge as to their potential devastating impact on the Partnership Plans.

132. Defendants' unlawful and intentional actions are not justified by a substantial or compelling government interest and are not narrowly tailored to serve any such interest.

133. As a proximate result of the conduct of Defendants as alleged under this Count, Plaintiffs have engaged legal counsel to prepare and prosecute this Supplemental Complaint. Accordingly, Plaintiffs have incurred substantial attorney's fees and costs.

134. Plaintiffs currently are seeking that this Court reinstate the injunction vacated by the Fifth Circuit enjoining the Defendants "from refusing to acknowledge the ERISA-status of the [DMP] Plan or refusing to recognize the Limited Partners as working owners of DMP."

135. As a direct result of Defendants' defiance of this Court's authority as alleged under this Count, the DMP Plan and other Partnership Plans now face imminent, irrevocable, and irreparable harm which includes (a) the end of the DMP Plan and the Partnership Plans and the termination of health coverage for more than 30,000 individual participants or (b) vulnerability of

the DMP Plan and Partnership Plans to regulation under state law rather than ERISA. Accordingly, in addition to the permanent injunction sought by the *First Amended Complaint*, Plaintiffs also seek and are entitled to a permanent injunction enjoining Defendants from engaging in any conduct against Plaintiffs or third parties which is intended to circumvent, moot or otherwise thwart the injunction or its issuance by the Court.

COUNT IV: VIOLATION OF APA

136. Plaintiffs incorporate and re-allege the allegations in paragraphs 1 to 135 as if fully set forth herein.

137. Plaintiffs are suffering legal harm because of Defendants' threats of imminent litigation against the Anjo Targets and are otherwise adversely affected or aggrieved by such action, within the meaning of 5 U.S.C. § 702.

138. 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."

139. 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."

140. 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."

141. 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."

142. It is a clear abuse of power for Defendants, in violation of 5 U.S.C. § 706(2)(A), to sue or threaten imminent litigation against the Anjo Targets, not on the basis of their own actions or inactions, or any losses to the plans which they service, but rather to obstruct, chill, deter, and retaliate against Plaintiffs for (a) creating the DMP Plan and the Partnership Plans; (b) sending an AO Request to Defendants; and (c) filing this suit against Defendants.

143. It is likewise a clear abuse of power for Defendants, in violation of 5 U.S.C. § 706(2)(B), to sue or threaten imminent litigation against the Anjo Targets, not on the basis of their own actions or inactions, or any losses to the plans which they service, but rather to obstruct, chill, deter, and retaliate against Plaintiffs for (a) creating the DMP Plan and the Partnership Plans; (b) sending an AO Request to Defendants; and (c) filing this suit against Defendants.

144. It is also in clear excess of the authority of Defendants, in violation of 5 U.S.C. § 706(2)(C), for them to sue or threaten imminent litigation against the Anjo Targets, not on the basis of their own actions or inactions, or any losses to the plans which they service, but rather to obstruct, chill, deter, and retaliate against Plaintiffs for (a) creating the DMP Plan and the Partnership Plans; (b) sending an AO Request to Defendants; and (c) filing this suit against Defendants.

145. Plaintiffs currently are seeking that this Court reinstate the injunction vacated by the Fifth Circuit enjoining the Defendants "from refusing to acknowledge the ERISA-status of the [DMP] Plan or refusing to recognize the Limited Partners as working owners of DMP."

146. As a direct result of Defendants' unlawful conduct as alleged under this Count, the DMP Plan and other Partnership Plans now face imminent, irrevocable, and irreparable harm which includes (a) the end of the DMP Plan and the Partnership Plans and the termination of health coverage for more than 30,000 individual participants or (b) vulnerability of the DMP Plan and Partnership Plans to regulation under state law rather than ERISA. Accordingly, in addition to the permanent injunction sought by the *First Amended Complaint*, Plaintiffs also seek and are entitled to a permanent injunction enjoining Defendants from engaging in any conduct against Plaintiffs or third parties which is intended to circumvent, moot or otherwise thwart the injunction or its issuance by the Court.

ATTORNEY'S FEES

147. Plaintiffs hereby incorporate and re-allege the allegations in paragraphs 1 to 146 as if fully set forth herein.

148. By reason of the foregoing, Plaintiffs are entitled to recover reasonable and necessary attorney's fees and expenses from Defendants pursuant to 42 U.S.C. § 1988 and the inherent power of this Court to issue attorney's fees as sanctions.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs demand judgment against Defendants and in favor of Plaintiffs as follows:

A. That this Court declare the conduct of Defendants violated and continues to violate the First Amendment, as enforced by 42 U.S.C. § 1983.

B. That this Court declare the conduct of Defendants violated and continues to violate the integrity of this suit.

C. That this Court issue a permanent injunction enjoining Defendants engaging in any conduct against Plaintiffs or third parties which is intended to circumvent, moot or otherwise thwart the injunction sought by the *First Amended Complaint*.

D. Award Plaintiffs their reasonable attorneys' fees, costs, and expenses associated with this action pursuant to 42 U.S.C. § 1988 and the inherent power of this Court to issue attorney's fees as sanctions.

E. Award Plaintiffs such other and further relief as this Court deems necessary and proper.

Respectfully submitted this 25th day of November 2024.

/s/ Jonathan D. Crumly, Sr.
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Attorneys For Plaintiffs

CERTIFICATE OF SERVICE

On November 25, 2024, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I certify that I have served the parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ *Robert G. Chadwick, Jr.*
Robert G. Chadwick, Jr.

EXHIBIT A

The Law Office of Alexander Renfro

November 8, 2018

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.

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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 General Partner, serves 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

[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

[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

ALEXANDER T. RENFRO, JD, LLM

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EXHIBIT
B

State of Louisiana
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE
70804-9005

Jeff Landry
Attorney General

February 21, 2019

The Honorable Alexander Acosta
Secretary of Labor
200 Constitution Ave. NW
Washington, DC 20210
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.

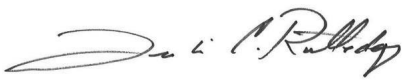
Based upon the questions and comments from Judge Bates at the January 24 hearing, along with the determination of the plaintiffs to accept nothing less than complete rescission of AHP expansion, it appears likely that the DOL will be forced to continue defending the Rule for some time. Our states include 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
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Doug Peterson
Nebraska Attorney General

Ken Paxton
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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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Nashville, TN 37204
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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 from the same source that sponsors said group health plan[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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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:

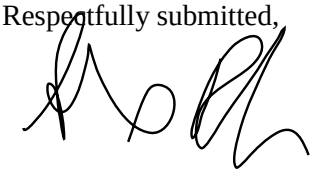
(1) The single-employer self-insured group health plan sponsored by LP is an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

(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).

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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 C

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

ERSA 200 (Rev. 6-12)

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.

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 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

ERSA 200 (Rev. 6-12)

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.

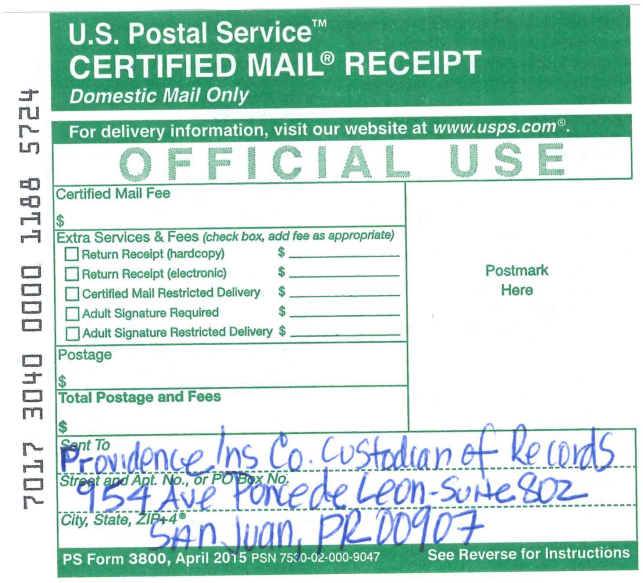
27. Fidelity bond(s) currently in effect for any Employee Welfare Benefit Plans to whom You provide Services.

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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- ☐ Adult Signature Restricted Delivery $

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Total Postage and Fees
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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.

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

EBSA 200 (Rev. 6-12)

ATTACHMENT TO SUBPOENA
Providence Insurance Partners, LLC

DEFINITIONS

A. "Providence," "Company," "You," and "Your" shall mean Providence Insurance Partners, LLC, a Tennessee Limited Liability Company, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of Providence Insurance Partners, 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 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

EBSA 200 (Rev.6-12)

JA206

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.

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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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.

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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 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

61 Forsyth Street SW
Atlanta, Georgia 30303 Ste 7B54

Official Business
Penalty for Private Use, $300

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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

JA217

Case: 25-1886 Document: 00118402574 Page: 222 Date Filed: 02/11/2026 Entry ID: 6785192

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

EBSA 200 (Rev.6-12)

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).

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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:

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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 A. Monhart

Jeffrey A. Monhart, Regional Director

EBSA 200 (Rev. 6-12)

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.

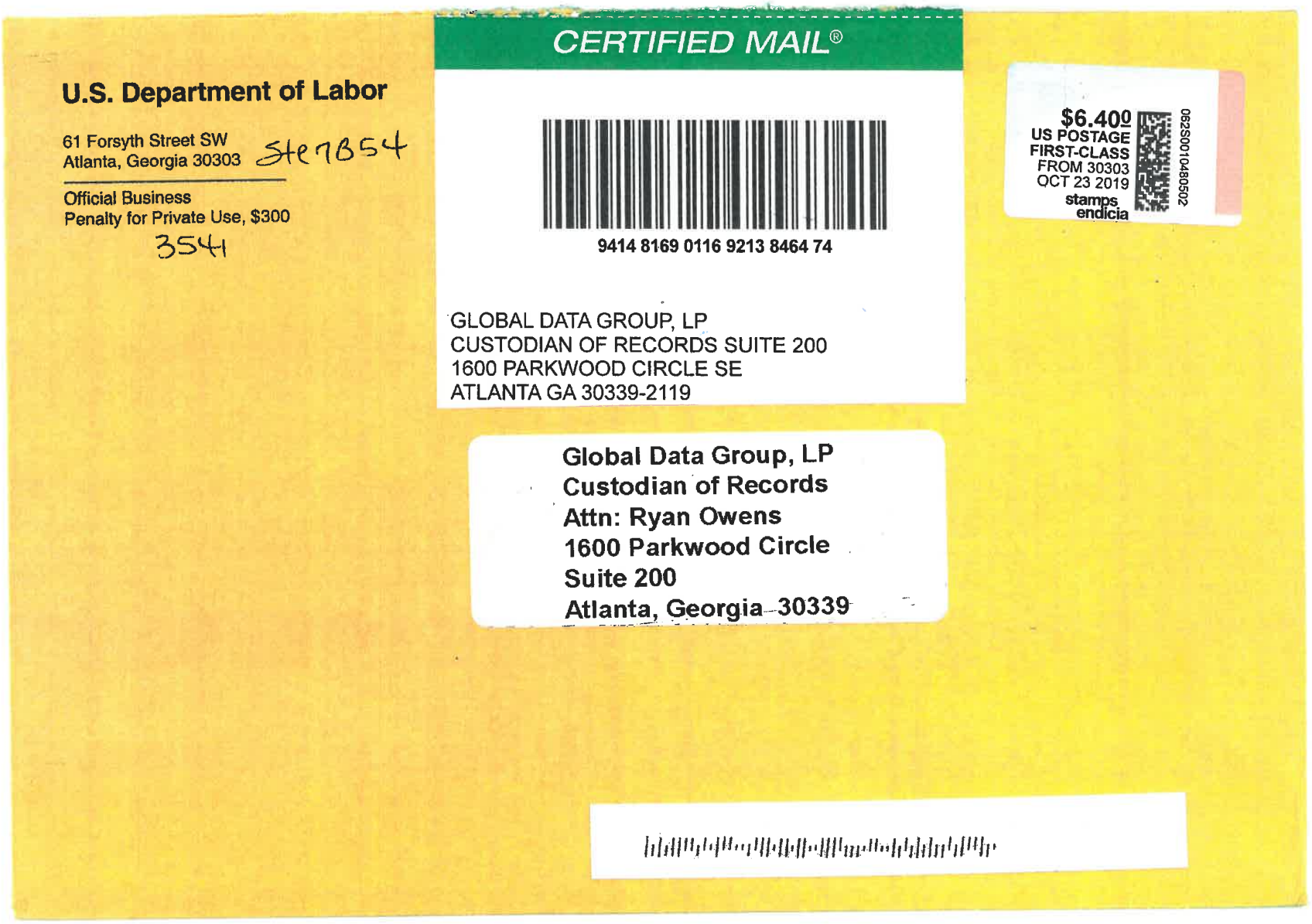
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

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.



CERTIFIED MAIL®

U.S. Department of Labor

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Atlanta, Georgia 30303 Ste7B54

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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

JA245

Case: 25-1886 Document: 00118402574 Page: 250 Date Filed: 02/11/2026 Entry ID: 6785192

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

EBSA 209 (Rev. 6-12)

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

JA259

Case: 25-1886 Document: 00118402574 Page: 264 Date Filed: 02/11/2026 Entry ID: 6785192

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.

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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 from A Monhart

Jeffrey A. Monhart, Regional Director

EBSA 200 (Rev. 6-12)

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.

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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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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).

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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.

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 AIW'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 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.

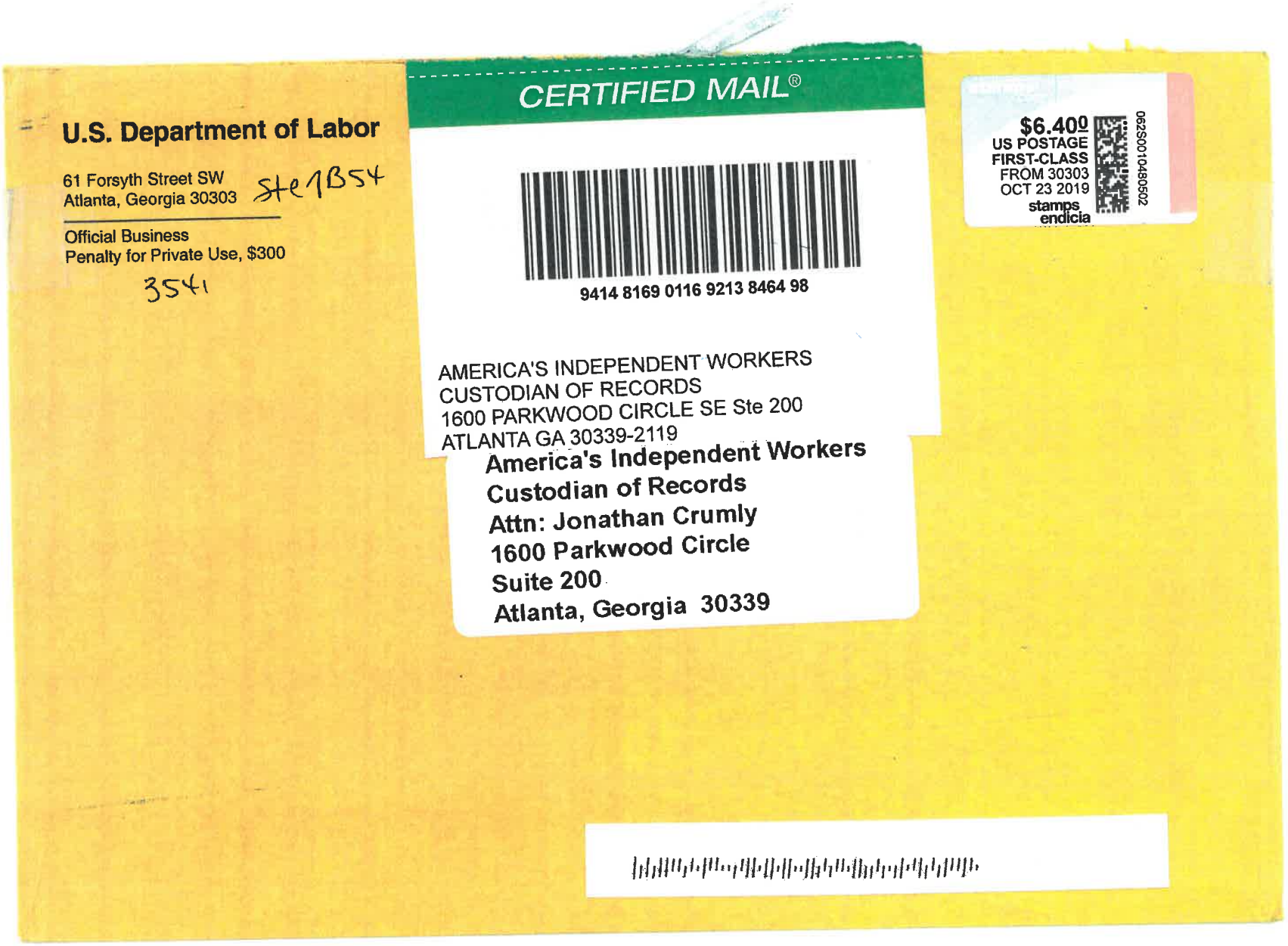
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

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

61 Forsyth Street SW
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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

JA273

Case: 25-1886 Document: 00118402574 Page: 278 Date Filed: 02/11/2026 Entry ID: 6785192

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

EBSA 200 (Rev. 6-12)

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)).

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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

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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 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.

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 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

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AMERICA'S CONSUMERS AND AFFILIATES, LP
CUSTODIAN OF RECORDS, SUITE 200
ATTN: JONATHAN CRUMLY
1600 PARKWOOD CIRCLE SE
ATLANTA GA 30339-2119

1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339

JA287

Case: 25-1886 Document: 00118402574 Page: 292 Date Filed: 02/11/2026 Entry ID: 6785192

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

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

EBSA 200 (Rev. 6-12)

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.

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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.

6. Communications between Agridata 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 Agridata 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 Agridata or the Plan or in consultation with Agridata 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 Agridata 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 Agridata or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

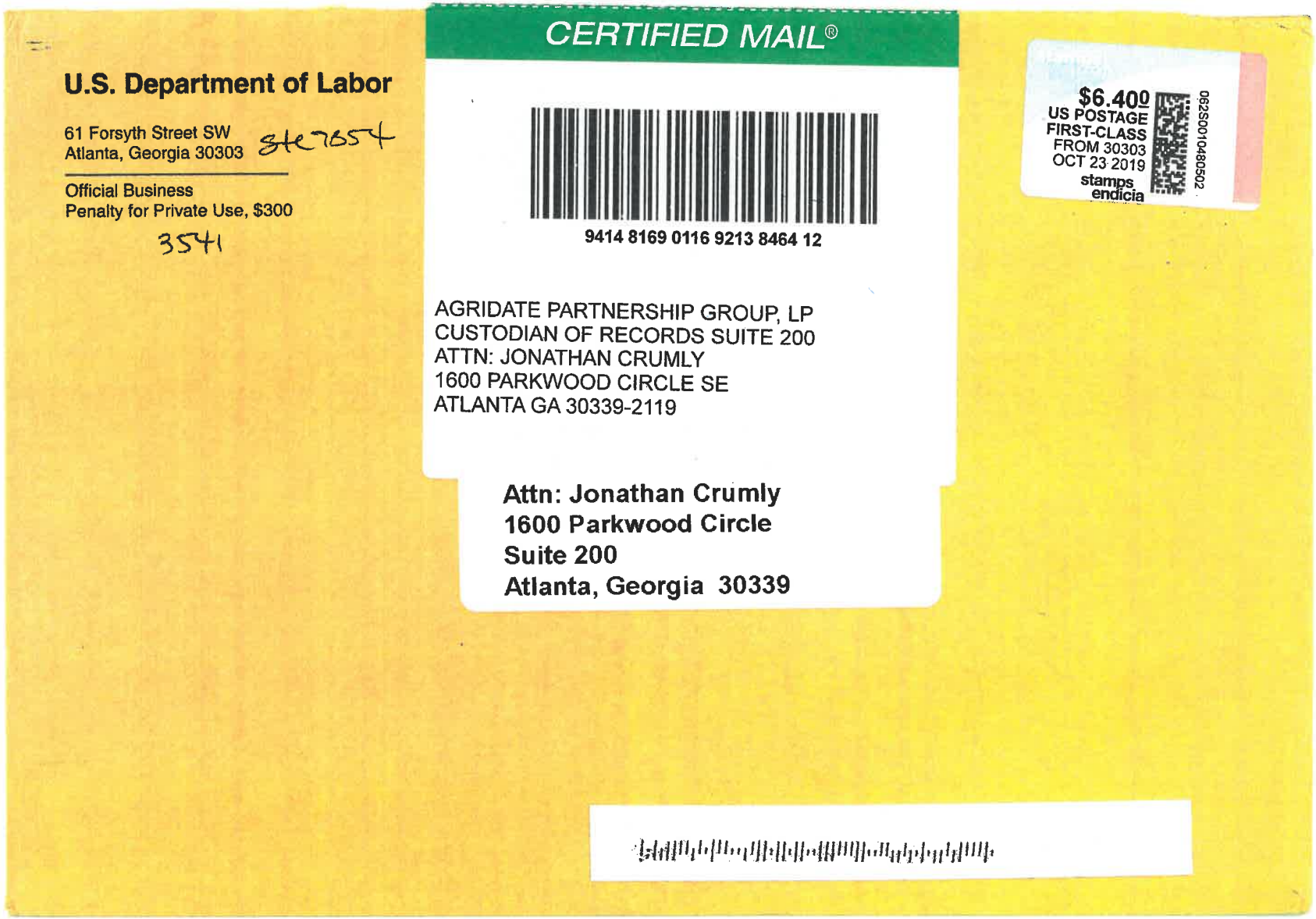
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and Agridata 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 Agridata 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. Agridata's Federal Income Tax Returns.



U.S. Department of Labor

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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

JA301

Case: 25-1886 Document: 00118402574 Page: 306 Date Filed: 02/11/2026 Entry ID: 6785192

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

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 **99-062106**

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

EBSA 200 (Rev. 6-12)

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, 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).

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 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 Cumby
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

PS Form 3811, July 2015 PSN 7530-02-000-9053

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

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)).

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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 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 D

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.

U.S. Department of Labor
Office of the Solicitor
Washington, DC 20210

EXHIBIT
E

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
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taylor | english
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EXHIBIT F

JONATHAN D. CRUMLY
DIRECT DIAL: (678) 426-4659
JCRUMLY@TAYLORENGLISH.COM

December 30, 2020

Via e-mail only to Liu.Katrina.Ti@dol.gov
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US Department of Labor
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Suite N-4611
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.

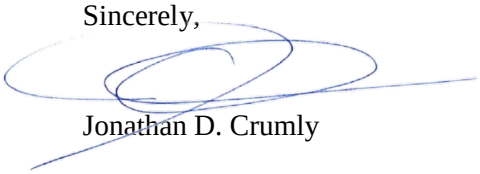
Id. (citation omitted). Our difference of opinion arises from your refusal to define, well over a year after DOL's exhaustive inquiry began, what said inquiry actually is. Consequently, we are left assuming DOL is simply asserting unfettered authority to cast about for potential wrongdoing without any 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

01920499-3

EXHIBIT G

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
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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

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EXHIBIT H

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]

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[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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EXHIBIT
I

U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

January 24, 2020

Alexander T. Renfro, JD, LLM
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3200 West End Avenue, Suite 500
Nashville, TN 37204

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 J

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January 11, 2024

Via Email: ***galen.thorp@usdoj.gov***
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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.

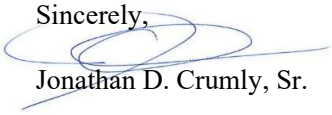
If imposed, a permanent injunction will act as a blunt instrument that will complicate–and ultimately hamper–the Department's ERISA regulatory and enforcement functions. The Department's autonomy to interpret certain regulations would be supplanted by the Courts, and more "data partnership copycats" 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
K

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

Caution: This email originated from outside of the FMG organization. **Do not click links** or **open attachments** unless you recognize the sender and know the content is safe.

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
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Civil Division, Federal Programs Branch
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EXHIBIT
L

U.S. Department of Labor
Office of the Solicitor
Washington, D.C. 20210

April 26, 2024

VIA ELECTRONIC MAIL

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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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EXHIBIT M

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

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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

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Katrina,

PIC, Mr. Zieger, and Mr. Bryan are in agreement with these terms.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
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www.fmglaw.com | Instagram | Twitter | Facebook

CA | CT | FL | GA | IL | IN | KY | MA | NJ | NY | OH | PA | RI | TN | TX
Please read this important notice and confidentiality statement

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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

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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

The Wagner Law Group

101 East Kennedy Boulevard, Suite 2140
Tampa, FL 33602
Tel: (813) 603-2959

www.wagnerlawgroup.com

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EXHIBIT N

Jonathan Crumly

From: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Sent: Tuesday, June 11, 2024 1:37 PM
To: Jonathan Crumly; Bob Chadwick; 'Roberta Watson'; 'Stephen Rosenberg'
Cc: Holz, Sarah D - SOL; Liu, Katrina T - SOL
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

Yes, that January 24 demand is still on the table (though of course the other injunctive pieces are still part of that demand). But we'd have to know relatively soon if your clients are interested in that offer, as we're planning on filing the complaint by the end of the week, and I can't promise what our client would be willing to do once we file.

Jeff Hahn
Counsel for Appellate and Special Litigation
U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
202-961-5182

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Tuesday, June 11, 2024 10:32 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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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
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
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decisions.fmglaw.com | Instagram | Twitter | Facebook

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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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Counsel,

We are planning to file a complaint by the end of this week. Please advise whether you are authorized to accept service on behalf of your clients and/or whether your clients will waive service.

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 30, 2024 10:29 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan
Importance: High

Counsel,

We haven't received any additional information from your clients since our discussion on Tuesday. We are planning to file the complaint by COB today. Please advise whether you are authorized to accept service on behalf of your clients and/or whether your clients will waive service.

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 3:03 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Dear counsel,

Since we have not heard from you since our calls on Thursday, May 16, we are preparing to commence an action next week in the U.S. District Court of Puerto Rico against Suffolk Administrative Services, Providence Insurance Company, Alexander Renfro, Arjan Zieger, and William Bryan for violations of ERISA. The complaint will allege that SAS, PIC, Renfro, Zieger, and Bryan violated their fiduciary duties to self-funded ERISA plans and engaged in prohibited transactions by self-dealing and authorizing excessive 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
100 Galleria Parkway
Suite 1600
Atlanta, GA 30339-5948

Roberta Watson
Stephen Rosenberg
The Wagner Law Group
101 East Kennedy Boulevard
Suite 2140
Tampa, FL 33602

Thank you,

Katrina T. Liu | Senior Trial Attorney
Plan Benefits Security Division | Office of the Solicitor | U.S. Department of Labor
200 Constitution Ave. N.W., Suite N-4611, Washington, D.C. 20210
liu.katrina.t@dol.gov | (202) 693-5520
Pronouns: she, her, hers

EXHIBIT
O

Jonathan Crumly

From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Thursday, October 31, 2024 10:27 AM
To: Jonathan Crumly; Robert G. Chadwick, Jr.; Roberta Watson; Stephen Rosenberg
Cc: Hahn, Jeffrey M - SOL; Holz, Sarah D - SOL; Bowers, Jamie L - SOL
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

We are perplexed by your assertion that the Department represented for the first time on September 3, 2024, that it would not release claims related to the limited partnership plans. The Department has been very clear at every step of the negotiations that our discussions are limited to Participating Plans sponsored by traditional employers and that our settlement discussions do not resolve any potential claims related to the limited partnership plans. Indeed, we have repeatedly reiterated this position throughout our settlement discussions (see, for example, the Department's demand letters of July 21, 2022 (footnote 1), June 8, 2023 (footnote 1), January 24, 2024 (footnote 1), and March 11, 2024 (footnote 1)).

Moreover, the Department has also made clear that it cannot constrain its ability to conduct future investigations (see the Department's demand letter from April 26, 2024). Relatedly, the Department is only authorized to release claims it has actually investigated. The claims outlined in our July 21, 2022 demand letter are the claims the Department investigated during the prior five years, which are the only claims we are able to release as part of these negotiations. At one point, when our negotiations encompassed potential settlement of the *DMP* litigation, we offered to drop our investigation of Socios Buenos LP, but we withdrew that offer when settlement of *DMP* fell through. Nevertheless, this offer did not at any point waive the Department's authority to investigate any potential future ERISA violations by your clients.

It appears we have reached an impasse. Accordingly, with the tolling period expiring on November 6, the Department will prepare to file suit before that date. Please advise as soon as possible if anything changes for your clients. Otherwise, **please let us know if you will accept service of the complaint on behalf of your clients via email**. I am also including Roberta and Stephen here, as I understand they represent Alex Renfro and SAS.

Thank you,

Katrina Liu (she/her)
Senior Trial Attorney
Plan Benefits Security Division
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Tuesday, October 29, 2024 10:10 AM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

In our phone call of September 3, you disclosed for the first time throughout our lengthy settlement discussions that the Department was unwilling to consider granting releases for any activities pertaining to our clients' providing services to customers utilizing the Limited Partnership (LP) structure. Further, the Department's revised release language is not even a full release of claims unrelated to our clients' involvement with LP customers. This came as a considerable surprise, and quite frankly, few if any of the other settlement terms would ever have been entertained by our clients, had we understood earlier that it was the intention of the Department to leave open the possibility (which we actually view as a certainty, given the history) of further investigations and other actions by the Department, post "settlement" for conduct the Department has been investigating for five years.

We have nonetheless endeavored over these past weeks to find some language that we could incorporate into a further redline which would be acceptable to all of our clients, as well as to those represented by the Wagner Group. This has proven not to be possible. The Department's latest redline not only removed references to the LP Plans, but it narrowed the release to merely to those claims "outlined in the Department's July 21, 2022 demand letter." That is hardly a full and complete release for an investigation conducted by the Department which began in April 2019. We and our clients believed that we were negotiating with the Department for a complete release of all conduct the Department may or may not consider a violation of ERISA up to the date the settlement agreement is executed, including that pertaining to the LPs. In other words, a full and complete release.

Whether or not the Department will consider a true full and complete release of the Providence Parties in a settlement agreement, I wanted to apprise you of the status of Mr. Renfro's ownership interest in Suffolk and Providence. As counsel for Mr. Renfro and Suffolk alerted you several months ago, Mr. Renfro intended to withdraw from ownership of both Suffolk and Providence as part of the settlement and lifetime ban provision. Despite no settlement agreement having been reached, Mr. Renfro has completed his divestiture of his ownership interest in Suffolk and Providence and no longer maintains an ownership interest in either entity.

I do hope we can reach an agreement given all the hard work put in by both sides to reach settlement terms. Please contact me at your convenience if you wish to discuss any of this.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
Email: Jonathan.Crumly@fmglaw.com
www.fmglaw.com | Instagram | Twitter | Facebook

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, September 30, 2024 1:36 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Let me circle up with my folks, but I think that will be fine. Assuming it is, we will circulate updated agreements.

Katrina Liu (she/her)
Senior Trial Attorney
Plan Benefits Security Division
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Monday, September 30, 2024 1:31 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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I was thinking a 30-day extension for both deadlines. I have meetings scheduled with the clients tomorrow & Wednesday so should have comments back to you no later than Friday.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
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www.fmglaw.com | Instagram | Twitter | Facebook

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, September 30, 2024 12:14 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Thanks for the update. How long are you thinking?

Katrina Liu (she/her)
Senior Trial Attorney
Plan Benefits Security Division
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Monday, September 30, 2024 12:02 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

Unfortunately, between travel schedules and the office closures related to hurricane Helene last week, I was not able to obtain feedback from my clients on the most recent revisions to the term sheet. The current litigation standstill expired last week with the tolling agreement expiring next week. Would the Department be open to one additional extension?

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
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www.fmglaw.com | Instagram | Twitter | Facebook

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, September 23, 2024 4:49 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Sounds good, thank you.

Katrina Liu (she/her)
Senior Trial Attorney
Plan Benefits Security Division
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Monday, September 23, 2024 4:25 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson

<rcwatson@wagnerlawgroup.com>; Bowers, Jamie L - SOL <Bowers.Jamie.L@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

Thank you for this. I was traveling Friday but we have circulated this new draft to our clients. I hope to have any questions/comments back to you by the end of the week.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
Jonathan.Crumly@fmglaw.com | LinkedIn | Bio
www.fmglaw.com | Instagram | Twitter | Facebook

FMG LAW Freeman Mathis & Gary LLP

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Friday, September 20, 2024 1:49 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>; Bowers, Jamie L - SOL <Bowers.Jamie.L@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Counsel,

Thank you for your patience. See attached for our counterproposal, presented as redlines to the version of the term sheet you sent us on July 29, 2024. I am also attaching a clean version.

At our last discussion, I believe I flagged for you how our client will not agree to include the limited partnership plans in this settlement, and will desire a briefer timeline for monetary payments. We also discussed a requirement for SAS to cap all administrative fees for plans, which you represented SAS was unable to do. Taking that into consideration, we now revert to our prior proposal for hiring a consultant to evaluate SAS and PIC's (and any other affiliate's and subcontractor's) fees. Please let us know if you would like to discuss.

Thank you,

Katrina Liu (she/her)

Senior Trial Attorney
Plan Benefits Security Division
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Monday, July 29, 2024 5:24 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

Thank you for this. I am back in the office now and have been able to review the proposed term sheet with our clients. Attached are revisions to the original proposed term sheet (a clean & redlined version).

Let me know if you want to discuss these proposed changes.

Jonathan Crumly
Senior Counsel
Freeman Mathis Decisions
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
Jonathan.Crumly@fmglaw.com
decisions.fmglaw.com | Instagram | Twitter | Facebook

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, July 22, 2024 4:15 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

We don't plan to put pen to paper until we reach a settlement in principle. But to keep things moving forward, I am attaching a proposed term sheet for your review. Let me know if you have any questions.

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Friday, July 19, 2024 8:52 AM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Subject: Re: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

Understood. Do you have a draft of the proposed settlement agreement you could share?

Thanks.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
Jonathan.Crumly@fmglaw.com | LinkedIn | Bio
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CA | CT | FL | GA | IL | IN | KY | MA | NJ | NY | OH | PA | RI | TN | TX
Please read this important notice and confidentiality statement

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Wednesday, July 17, 2024 5:12:02 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

Thank you for helping to handle during your leave. I am not allowed to share the Complaint document, but I am attaching our initial demand letter, which lays out the various ERISA claims we plan to bring. I'll add that, since we sent this initial demand and as we further analyzed our case based on the productions we received from your clients, we have decided not to bring claims related to coverage for preventive services, pre-existing condition exclusions or annual dollar limits, or the provision of deficient SPDs. The remaining claims described in the demand letter, specifically those related to the handling of plan contributions/fee payments and M-1 reporting, are contained in the Complaint. We have also decided not to name PIP as a defendant.

Thank you and let me know if you have any questions.

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Tuesday, July 16, 2024 11:39 AM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; 'Stephen Rosenberg' <SRosenberg@wagnerlawgroup.com>; 'Roberta Watson' <rcwatson@wagnerlawgroup.com>
Subject: Re: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

Thank you for this. We have forwarded it to our clients for review. However, we will be unable to respond substantively unless you can provide the proposed complaint referenced in the first bullet point. As the current stand still agreement within the tolling agreement expires this Friday, the sooner we can review the proposed complaint, the better.

Thanks again.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
Jonathan.Crumly@fmglaw.com | LinkedIn | Bio
www.fmglaw.com | Instagram | Twitter | Facebook

CA | CT | FL | GA | IL | IN | KY | MA | NJ | NY | OH | PA | RI | TN | TX
Please read this important notice and confidentiality statement

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, July 15, 2024 1:39 PM

To: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; 'Stephen Rosenberg' <SRosenberg@wagnerlawgroup.com>; 'Roberta Watson' <rcwatson@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Counsel,

Thank you for clarifying SAS's agreement to fully disclose all itemized fees to the plan clients. Based on that clarification, the Department's counteroffer is as follows:

- The Department will agree to a payment plan (rather than an immediate, single payment – more below) only if the parties agree that the Department will file the Complaint and an Unopposed Motion for Entry of a Consent Judgment in federal district court. The Consent Judgment will contain the terms of the parties' settlement, including the monetary payment and all injunctive actions detailed in the Department's January 24 letter.

- Your clients will make a monetary payment of $15 million, inclusive of the 502(l) penalty, within 12 months of the court's entry of the consent judgment. The payment schedule is as follows:
    - within one week of entry of the consent judgment, your clients will pay $2 million as a "good faith" payment;
    - within 6 months of entry of the consent judgment, your clients will pay at least half of the remaining balance of the $15 million (at least $6.5 million);
    - within 12 months of the entry of the consent judgment, your clients will pay the remaining balance of the $15 million (at most $6.5 million).

- As a term in the Consent Judgment, the Department will agree to release its claims contained in the Complaint, specifically the alleged ERISA violations by SAS, PIC, and Messrs. Renfro, Bryan, and Zieger that arose prior to the date of the filing of the Complaint.

- Execution of another tolling agreement, which will remain in effect until the filing of the Complaint or two months after the expiration of the current agreement (whichever is later).

Please let me know if you have any questions or would like to discuss.

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Sent: Wednesday, June 26, 2024 2:49 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Cc: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; 'Stephen Rosenberg' <SRosenberg@wagnerlawgroup.com>; 'Roberta Watson' <rcwatson@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Hi Jonathan,

Thank you for reaching out, and thanks to Roberta for her email last week. Our client is considering your proposal, and we anticipate providing a substance response during the week of July 8.

Thank you,
Sarah

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Wednesday, June 26, 2024 1:20 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

Can you advise on what you see as next steps & the potential timeline? Thanks.

Jonathan Crumly
Senior Counsel
Freeman Mathis Decisions
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From: Roberta Watson <rcwatson@wagnerlawgroup.com>
Sent: Wednesday, June 19, 2024 2:10 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Jonathan Crumly <Jonathan.Crumly@fmglaw.com>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina –

My clients have agreed to the following, and I have received assurance from Mr. Crumly that his clients have also agreed:

It is current SAS policy to require written confirmation that all plan sponsors have received and agreed to full itemized fee disclosures, substantially similar to the S&S contract recently provided to the Department. As part of settlement, SAS will formally agree not to accept fees from any plan or plan sponsor in the absence of such written confirmation (in the form of sponsor signatures) of accurate, transparent, and itemized fee disclosures. We are encouraged if this manner of disclosure meets the Department's standard; that's exactly what we were aiming for. If the Department has changes to propose, we plan to be receptive.

I believe we are now on the same page as the Department. Please let us know if you need any further clarification.

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

The Wagner Law Group

101 East Kennedy Boulevard, Suite 2140
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****

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, June 17, 2024 3:07 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Counsel

I'm writing with our initial thoughts on your clients' latest offer. First, it's not clear whether you've agreed that SAS will ensure that the fees of each plan service provider will be disclosed to and approved by the plan sponsor. Attached is an ASA template included as part of the May 30, 2024, document production. Page 3 includes a list of plan services, providers for each of those services, and a placeholder for fees for each service. Assuming the fee amounts are filled in for client review and approval at the outset of their enrollment in a SAS plan and upon any change to service provider fee amounts, this is the kind of disclosure that the Department is envisioning that all of SAS's clients receive and sign. Please confirm whether SAS is able to ensure fee disclosures such as the sample attached for all its Participating Plan sponsor clients.

Second, while the Department acknowledges your clients' significant monetary offer of $15 million, it is not willing to agree to a 5-year payment plan. Though I can't promise anything at this juncture, we may be willing to negotiate the terms of payment, but not unless and until we have agreement that SAS will make all appropriate fee disclosures to the plan sponsors.

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Thursday, June 13, 2024 11:26 AM
To: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Cc: Bob Chadwick <Bob.Chadwick@fmglaw.com>; 'Roberta Watson' <rcwatson@wagnerlawgroup.com>; 'Stephen Rosenberg' <SRosenberg@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jeff,

My Anjo Investigation clients (PIC, Mr. Bryan & Mr. Zieger) have just authorized me to offer the following:

- Total monetary relief of $15 million, inclusive of the 20% penalty pursuant to ERISA § 502(1).
- Five years from execution of the final settlement agreement to make the payments.
- Full and complete release of all claims against my clients by the Department, inclusive of any alleged ERISA violations arising from their services to any group health benefits plans or Plan Sponsors, prior to the date of the settlement agreement.
- All injunctive relief items detailed in the January 24 letter (all to be more explicitly spelled out in the final settlement agreement. To be clear – there is no opposition to the injunctive relief requested, just a desire to properly document the details such that my clients can, in fact, perform all of the required actions)
- Tenth Tolling Agreement to provide sufficient time to finalize the settlement agreement. We suggest 4 weeks.

My understanding is that SAS and Mr. Renfro are in agreement with these terms, and I expect you will receive a confirming email from their counsel.

Please advise if the Department is willing to settle on these terms.

Jonathan Crumly
Senior Counsel
Freeman Mathis Decisions
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Please read this important notice and confidentiality statement

From: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Sent: Tuesday, June 11, 2024 1:37 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: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

Yes, that January 24 demand is still on the table (though of course the other injunctive pieces are still part of that demand). But we'd have to know relatively soon if your clients are interested in that offer, as we're planning on filing the complaint by the end of the week, and I can't promise what our client would be willing to do once we file.

Jeff Hahn
Counsel for Appellate and Special Litigation
U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
202-961-5182

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Tuesday, June 11, 2024 10:32 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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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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D: 678-996-9137 | C: 770-883-6344
Jonathan.Crumly@fmglaw.com
decisions.fmglaw.com | Instagram | Twitter | Facebook

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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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Counsel,

We are planning to file a complaint by the end of this week. Please advise whether you are authorized to accept service on behalf of your clients and/or whether your clients will waive service.

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 30, 2024 10:29 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan
Importance: High

Counsel,

We haven't received any additional information from your clients since our discussion on Tuesday. We are planning to file the complaint by COB today. Please advise whether you are authorized to accept service on behalf of your clients and/or whether your clients will waive service.

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 3:03 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Dear counsel,

Since we have not heard from you since our calls on Thursday, May 16, we are preparing to commence an action next week in the U.S. District Court of Puerto Rico against Suffolk Administrative Services, Providence Insurance Company, Alexander Renfro, Arjan Zieger, and William Bryan for violations of ERISA. The complaint will allege that SAS, PIC, Renfro, Zieger, and Bryan violated their fiduciary duties to self-funded ERISA plans and engaged in prohibited transactions by self-dealing and authorizing excessive 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
100 Galleria Parkway
Suite 1600
Atlanta, GA 30339-5948

Roberta Watson
Stephen Rosenberg
The Wagner Law Group
101 East Kennedy Boulevard
Suite 2140
Tampa, FL 33602

Thank you,

Katrina T. Liu | Senior Trial Attorney
Plan Benefits Security Division | Office of the Solicitor | U.S. Department of Labor
200 Constitution Ave. N.W., Suite N-4611, Washington, D.C. 20210
liu.katrina.t@dol.gov | (202) 693-5520

Pronouns: she, her, hers

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)

DEFENDANTS' MOTION TO STAY AND MEMORANDUM IN SUPPORT

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") and respectfully move this Court for an order staying this action pending either (1) a final ruling on Defendants' Motion to Transfer Venue or (2) a final ruling on a recent filing in the United States District Court for the Northern District of Texas—Fort Worth Division.

I. INTRODUCTION

1. This case's existence is solely because the Department of Labor ("DOL") followed through with its threats as part of its extortive global settlement tactics involving PIC, SAS, and two other non-parties. A related dispute concerning important ERISA questions involving the DOL is ongoing in Texas federal court between the DOL and the non-parties. But instead of waiting for

that court's decision, the DOL has attempted to circumvent the Texas Court by attacking Defendants in a separate venue. This Court should use its broad discretionary authority to stop this abuse of the judicial process.

2. Alongside this Motion, Defendants filed a Motion to Transfer Venue, *Defendant's Motion to Transfer Venue and Memorandum in Support*, (Docket No. 26) (the "Motion to Transfer") seeking transfer of this case to the United States District Court for the Northern District of Texas—Fort Worth Division. *See Data Mktg. P'ship, LP v. United States Dep't of Lab.*, No. 4:19-CV-00800-O, 2023 WL 5939379 (N.D. Tex. Aug. 11, 2023) ("Texas DMP suit"). The Texas case involves Data Marketing Partnership, LP ("DMP") and LP Management Services, LLC ("LPMS"), who the DOL has inextricably connected to the Defendants in this case during settlement negotiations. The Texas DMP suit is ongoing, and most recently has a Motion for Leave to File Supplemental Complaint and Supporting Brief on file explaining the nature of the DOL's extortive strategy against DMP, LPMS, PIC and SAS, attached as Exhibit A to the Motion to Transfer. *See* Exhibit A, Amended Motion for Leave to File Supplemental Complaint and Supporting Brief, *Data Marketing Partnership, LP v. Department of Labor et al.*, ECF No. 74. This extortive strategy has been explained at length in the Motion to Transfer in this case, as well.

3. Although in its complaint, the DOL has disingenuously denied that this case concerns the Partnership Plans in the DMP suit, functionally, the DOL's allegations implicate the exact same plans (single employer employee welfare benefit plans) and baselessly allege wrongdoing by PIC and SAS related to such plans, which by definition include the Partnership Plans.

4. The DOL inextricably and unilaterally connected PIC and SAS to its litigation against DMP and LPMS in Texas. Now, after facing several losses in the Texas suit, it brings a case making baseless allegations against DMP and LPMS' vendors, PIC and SAS, in a brazen strategy to existentially threaten DMP and LPMS lest they abandon their case against DOL. But this extortive strategy should not prevail, as ultimately, a suit in this court not only potentially jeopardizes the business of PIC and SAS, but threatens the viability and existence of the Partnership Plans involved in the Texas DMP suit.

5. Staying these proceedings is in the interests of judicial efficiency and justice and does *not* burden the DOL. It was the DOL that caused these two cases to become intertwined. Thus, it is most efficient to resolve these issues where they initially began and currently reside—the Northern District of Texas.

6. As discussed in Defendants' Motion to Transfer Venue, the improperly motivated investigation of Defendants (the "Anjo Investigation") by the DOL was initiated in April 2019. That investigation was not concluded until July 2022. Settlement negotiations between the DOL and Defendants continued from then until November 2024. Clearly, staying the current proceedings would in no way prejudice the DOL, given the nearly five-year span between initiation of the investigation and initiation of these proceedings.

7. Not staying these proceedings ultimately greatly burdens both Defendants and DMP and LPMS in the Texas DMP suit. The very existence of the Partnership Plans depends on the existence of its vendors, SAS and PIC. In addition to the burden of litigating facts and issues already being litigated in Texas, potentially conflicting rulings between this court and Texas will not only threaten the business of PIC, SAS, DMP, and LPMS, but the ongoing viability of the plans

PIC and SAS help service and administer, thus jeopardizing access to health care for more than 30,000 plan participants.

8. Further, the DOL has brought this suit as if the Texas DMP suit does not exist. The Texas DMP court rejected remanding to the DOL for additional administrative adjudication. If the Texas court prevented the DOL from escaping its jurisdiction, DOL should not be able to do an end run around that Court by filing this case.

9. Finally, the stay Defendants request is for a reasonable duration, as it will only last as long as this court needs to decide on the Motion to Transfer Venue or until the Texas court issues its rulings on the fully briefed Motion pending in its court.

10. Thus, in the interests of efficiency and justice, Defendants now respectfully request that this Court exercise its broad judicial discretionary authority to control its docket and promote justice by staying all proceedings within this litigation until this court decides on the Motion to Transfer Venue, or alternatively, until a ruling on the pending Motion for Leave to File Supplemental Complaint in the Texas DMP suit bringing additional claims against the DOL for its tortious interference and extortive conduct.

II. ARGUMENTS AND AUTHORITIES

11. Courts are empowered to stay cases because of their inherent power to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *See Landis v. North Am. Co*., 299 U.S. 248, 254-255 (1936). Courts rely on their own broad discretion and judgment, weighing competing interests and ultimately maintaining an even balance." *Id.*; *Clinton v. Jones*, 520 U.S. 681, 706 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket."); *see also Torres v. Furiel Auto Corp.*, No. 21-CV-01593(GMM), 2023 WL 3058487, at *1 (D.P.R. Apr. 24, 2023).

12. "Indeed, a typical reason [for staying] is the pendency of a related proceeding in another tribunal." *Hewlett-Packard Co. v. Berg*, 61 F.3d 101, 105 (1st Cir. 1995); *see also Blue Cross & Blue Shield of Massachusetts, Inc. v. Regeneron Pharm., Inc.*, 633 F. Supp. 3d 385, 392 (D. Mass. 2022). This Court has granted stays pending decisions on other motions such as Motions to Dismiss. *See generally Rafael Rodriguez Barril, Inc. v. Conbraco Indus., Inc*., No. CV 08-1993 (JAG), 2008 WL 11495201, at *2 (D.P.R. Oct. 9, 2008).

13. Furthermore, this Court has embraced the notions presented in Rule 1 of the Federal Rules of Civil Procedure requiring that the rules be "construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." *Id.* at *1; Fed. R. Civ. P. R. 1.

14. Courts must be mindful "of the hardship and inequity to the moving party if the action is not stayed, and of the potential prejudice to the non-movant." *Ramos-Martir v. Astra Merck, Inc.*, No. CIV. 05-2038(PG), 2005 WL 3088372, at *1 (D.P.R. Nov. 17, 2005). Accordingly, courts consider (1) potential prejudice to the non-moving party, (2) any hardship or inequity to the moving party if a stay is not granted, and (3) principles of judicial economy. *See Torres,* 2023 WL 3058487 at *1; *Taunton Gardens Co. v. Hills*, 557 F.2d 877, 879 (1st Cir. 1977). Additionally, there must be good cause for a stay, it "must be reasonable in duration; and the court must ensure that competing equities are weighed and balanced." *Marquis v. F.D.I.C.*, 965 F.2d 1148, 1155 (1st Cir. 1992).

15. Importantly, when claims or issues overlap between suits, despite not being identical, courts choose to stay one of the cases to "avoid duplication of effort and potentially inconsistent judgments." *Acton Corp. v. Borden, Inc.*, 670 F.2d 377, 382 (1st Cir. 1982). Such claims do not need to be identical, but where an action is "substantially farther along than [the

second] action and is likely to be resolved more quickly," courts note it as a reason to stay the second proceeding until the first is resolved. *See Blue Cross & Blue Shield of Massachusetts, Inc. v. Regeneron Pharms., Inc.*, 633 F. Supp. 3d 385, 392 (D. Mass. 2022).

16. Furthermore, this Court has stayed a case where its resolution was "largely dependent" on issues being decided in another proceeding. *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 335 F. Supp. 3d 256, 262 (D.P.R. 2018). In this case, this Court explained:

> "[T]he parties' arguments related to the motion to dismiss rely on rulings of this Court in related proceedings which are either on review before the District Court Judge assigned to this matter or the First Circuit Court of Appeals. As *any decision by either court would significantly impact this Court's ruling* on the Motion to Dismiss, the Court hereby *stays* the pending Motion to Dismiss until after disposition of the standing issue by either court."
>
> *Id.* at 258 (emphasis added).

17. Further, in *Blue Cross*, the court considered whether to stay a current action alleging a kickback scheme by a pharmaceutical company until an ongoing Department of Justice False Claims Act action with the same "underlying factual dispute" against that same company in the same court was resolved. *See Blue Cross,* 633 F. Supp. 3d at 389, 392-393. Factors the court considered included (1) the first action was well underway and would likely be resolved faster, (2) "[r]isk of inconsistent judgments" as "[w]ithout a stay, Regeneron will face multiple private civil actions and a government civil enforcement action at the same time, based on the same basic set of facts, which conceivably could lead to inconsistent outcomes," and (3) the court's own interest in judicial efficiency in "conserv[ing] resources and avoid[ing] duplicative litigation" by preventing this case from litigating simultaneously alongside another dealing with substantially same facts. *Id.,* at 392-93.

18. In the case at bar, it is in this Court and both parties' interest to prevent duplicative proceedings and conserve resources in staying this litigation until either this Court decides to

transfer this proceeding to the Northern District of Texas or until the Motion for Leave to File Supplemental Complaint is ruled upon in the Texas DMP suit. The factors for a stay of this proceeding rule in the Defendants' favor here.

A. Defendants, Not the DOL, Will Be Burdened if a Stay is Not Granted

19. Defendants will be significantly burdened if a stay is not granted.

20. First, Defendants will face significant financial obstacles in litigating this frivolous suit—while attempting to continue to service healthcare options for more than 30,000 plan participants—while a suit involving substantially similar facts is already ongoing in another jurisdiction.

21. Second, the risk of a conflicting judgment presents significant potential burdens on the stability of Defendants' business and the relationships they have cultivated with its customers. PIC and SAS currently have harmonious business relations with DMP and LPMS in providing their essential administrative and stoploss insurance services. In the likely event that the Northern District rules favorably for the DMP and LPMS, and this Court rules favorably for the DOL, PIC and SAS will be unable to provide the services DMP and LPMS rely on, and Defendants' business relationships with DMP and LPMS are jeopardized.

22. Third, there is a very real threat to Defendants' customers, along with DMP and LPMS, to be caught in the chokehold of the DOL's extortive strategies. The Texas suit is ongoing, and important interpretive questions remain as to the ERISA-compliance of the Partnership Plans in the Texas DMP suit. As explained further in the Motion to Transfer Venue, this suit is the result of an extortive strategy the DOL created during settlement negotiations between it and Defendants, namely when the DOL requested (1) withdrawal of the request for an Advisory Opinion brought by LPMS (notably, for which Defendant Renfro was legal counsel) applicable to DMP and the

other limited partnerships it managed and (2) the dismissal of the DMP and LPMS' suit against the DOL in the Texas District Court.[1] That very same Advisory Opinion and the case in Texas District Court arise from ERISA healthcare plans for which SAS provides administrative services and that PIC provides stop loss coverage to the plan sponsor (DMP).

23. But when DMP and LPMS refused to relent to the DOL's extortive settlement terms, the DOL initiated other actions in courts across the country, including in this very Court, against entities related to DMP and LPMS. In doing so, the DOL threatened the financial viability of DMP, LPMS, the healthcare plans they sponsor, and now PIC and SAS. The DOL did this as if the ongoing Texas DMP suit and the ongoing ERISA questions did not exist.

24. For example, in addition to this case against SAS and PIC, the DOL recently filed Petition To Enforce Administrative Subpoena in federal court in Georgia, attached as Exhibit A to this Motion, against one of LPMS' partnerships Socios Buenos, LP ("Socios Buenos"), a Limited Partnership and plan sponsor of identical plans sponsored by DMP and which is also serviced by SAS and PIC. Socios Buenos was included by the DOL as part of its global settlement strategy with PIC, SAS, DMP, and LPMS in potentially agreeing to drop its administrative subpoena pursuit against Socios Buenos. When the DOL's unreasonable demands were not accepted, it continued to aggressively pursue Socios Buenos, culminating in the recent administrative subpoena duces

[1] 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 the DOL are themselves the basis of Defendants' Counterclaim in this action, 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)).

tecum. Notably, the DOL seeks information to determine whether Socios Buenos' eligible plan participants are "working owners" or "bona fide partners"—the exact same question being litigated, and yet to be answered, in the Texas court.

25. As to PIC and SAS, the DOL sues in this Court alleging several unfounded and misplaced facts against PIC and SAS in a frantic attempt to pressure DMP and LPMS to drop their suit in Texas and withdraw their original Advisory Opinion request, which was first made in 2018 and rejected by DOL in 2020, an action which has been found to be arbitrary and capricious and therefore invalid by two separate courts.

26. All of this has occurred even though the ongoing questions in the Texas Case have not yet been resolved. The DOL is clearly looking for other venues to threaten employers offering plans identical to the Partnership Plans and third-party vendors providing services to the Plaintiffs in the Texas DMP suit in an inappropriate attempt to circumvent the authority of the court currently reviewing issues that will directly impact the DOL's enforcement ability as to the Partnership Plans and other identical plans offered by other employers. Allowing the DOL to proceed this way burdens Defendants, DMP, LPMS, Partnership Plan participants and thousands of participants in other plans currently receiving healthcare coverage through these entities' efforts.

27. In contrast, the DOL will *not* be burdened or prejudiced by a stay as they are the very reason this suit was brought to this court, and ongoing proceedings already exist involving similar underlying facts and related parties in another court. Just as the DOL can connect unrelated parties together as part of its global settlement, it should be able to resolve its claims in the one place it all began—the Northern District of Texas.

28. As discussed, the DOL indelibly connected the Texas DMP suit with its investigation of Defendants during settlement negotiations when it required, in its settlement

demands to Defendants, affirmative action from two non-parties to the Anjo Investigation, specifically (1) withdrawal of a request for an Advisory Opinion brought by LPMS (notably, for which Defendant Renfro served as legal counsel) applicable to DMP and the other limited partnerships it managed and (2) the dismissal of the Texas DMP suit. SAS and PIC provide valuable services that keep the Partnership Plans functioning, and without them, health care coverage of nearly 30,000 individuals is at stake. Like *Blue Cross & Blue Shield of Massachusetts, Inc. v. Regeneron Pharms., Inc.*, 633 F. Supp. 3d 385, 392–93 (D. Mass. 2022), though the DOL does not pursue the same exact claims in this Court as in the Texas DMP suit, the underlying facts and claims have been made inextricably intertwined by DOL's own global settlement strategy explicitly connecting the facts, parties, and these two cases to one another. But since DMP and LPMS refused to drop their suit, the DOL has brought baseless allegations against their vendors SAS and PIC in this Puerto Rico federal district court to pressure DMP and LPMS to relent from their position.

29. This suit is not a whole new set of facts, but merely the DOL's attempt to point fingers to related entities regarding single employer welfare benefit plans, which by definition include the same Partnership Plans. The DOL will likely not suffer burdens related to discovery and litigation in the Texas suit when it unilaterally and explicitly tied PIC and SAS to that litigation.

B. Staying these Proceedings is in the Interests of Justice and Expediency

30. This Court has recognized that the Federal Rules of Civil Procedure require courts to construe the rules "to secure the just, speedy, and inexpensive determination" of cases. *Rafael Rodriguez Barril, Inc. v. Conbraco Indus., Inc.*, No. CV 08-1993 (JAG), 2008 WL 11495201, at *2 (D.P.R. Oct. 9, 2008). Nothing about the DOL's actions in pursuing this case in this Court are just, speedy, or inexpensive. Instead, the DOL's actions are designed and calculated to have the

opposite effect. The DOL has proven to be abusive and disrespectful of the courts themselves, and should not be allowed to prevail.

31. Importantly, the Texas district court recently denied the DOL's Motion to Remand for additional administrative adjudication because "the Fifth Circuit both explicitly and implicitly conferred responsibility upon the district court alone" to decide ERISA-issues related to the Partnership Plans. *Data Mktg. P'ship, LP v. United States Dep't of Lab.*, No. 4:19-CV-00800-O, 2023 WL 5939379, at *3 (N.D. Tex. Aug. 11, 2023). The gravity of this decision cannot be understated, as the general rule is that courts should remand agency actions by default. *See Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985). The DOL now seeks to escape the court's jurisdiction and "back door" that ruling, by its actions in this case.

32. It would be in the interests of expediency to stay until additional issues are resolved in Texas. The DOL is clearly seeking to avoid the decision it knows will likely be coming from the Texas District Court. Significantly, if the Plans are determined by the Texas District Court to be ERISA compliant, the DOL's case in this Court is faced with collateral estoppel with respect to its claims.

33. As facts alleged between both sides are now inextricably entwined, there is a substantial likelihood that the issues the DOL has with Defendants will be resolved in the Texas DMP suit. The Motion for Leave to File Supplemental Complaint and Supporting Brief alleges the same extortive strategy on the DOL's part and will likely resolve the baseless allegations brought by the DOL in this suit. Additionally, PIC and SAS actively service the Partnership Plans at dispute in the Texas DMP suit, so it would be even more expedient and convenient to litigate facts involving PIC and SAS in Texas, compared to separately in this Court. Ultimately, the DOL has provided a natural avenue to resolving all these issues in one place—the Northern District of Texas.

34. Thus, in the interests of justice and expediency, this Court should stay proceedings until this Court rules on the Motion to Transfer Venue, or alternatively, until further decisions are made in the Texas court.

C. The Timeline for Stay is Reasonable

35. Stays must be "reasonable in duration." *Marquis v. F.D.I.C.*, 965 F.2d 1148, 1155 (1st Cir. 1992). This Motion has provided two reasonable options to elect: to stay either (1) until the Motion for Leave to File Supplemental Complaint is filed in the Northern District of Texas or (2) until this Court decides on the Motion to Transfer venue.

36. Defendants offer these two options with this Court's interests in efficiency in mind. As discussed, the Texas DMP suit is well underway and has been expedient, as demonstrated by the docket attached as Exhibit B to this Motion. Furthermore, although the last ruling occurred in *Data Mktg. P'ship, LP v. United States Dep't of Lab.*, No. 4:19-CV-00800-O, 2023 WL 5939379 (N.D. Tex. Aug. 11, 2023), a Motion for Leave to File Supplemental Complaint and Supporting Brief has been fully briefed and is currently pending with the court, and many of the issues this Court would be required to rule upon have already been addressed or fully briefed therein.

37. Thus, staying this litigation until a decision has been made on the Motion for Leave to File Supplemental Complaint would not translate to an unnecessarily protracted stay length.

38. However, this Court can choose to stay this case until it decides upon the Motion to Transfer Venue, and the length of the stay would be limited to only as long as the Court requires to make its decision.

III. CONCLUSION

39. This Court is empowered to prevent unjust and unfair outcomes. Nothing about the DOL's strategy or practice in this litigation is just, fair or reasonable.

40. Therefore, in the interests of justice and judicial efficiency, this Court should exercise its broad discretionary powers and stay this current proceeding until either (1) this Court rules on the Motion to Transfer Venue filed alongside this Motion or (2) the Motion for Leave to File Supplemental Complaint and Supporting Brief is ruled upon in the Northern District of Texas.

WHEREFORE, Defendants and Counterclaim Plaintiffs respectfully request the Court to take notice of the above and grant the requested relief.

WE HEREBY CERTIFIY 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

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

JULIE A. SU, ACTING SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Petitioner, v. **SOCIOS BUENOS L.P.,** Respondent.	No. _____

PETITION TO ENFORCE ADMINISTRATIVE SUBPOENA

Petitioner Julie A. Su, Acting Secretary of Labor, United States Department of Labor, through her undersigned counsel, hereby asserts:

1. This Petition is brought to compel Respondent, Socios Buenos, L.P. ("Socios Buenos"), to comply with an administrative subpoena *duces tecum* ("Subpoena") issued and directed to it by the Director of the Office of Enforcement of the Employee Benefits Security Administration ("EBSA"), United States Department of Labor. The Subpoena was issued in an investigation being conducted pursuant to section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA") 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 promulgated thereunder. 29 U.S.C. § 1134.

2. This Court has subject matter jurisdiction over this petition pursuant to section 9 of the Federal Trade Commission Act, 15 U.S.C. § 49, as made applicable by section 504(c) of ERISA, 29 U.S.C. § 1134(c), and pursuant to ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1).

3. Socios Buenos is located at 4279 Roswell Rd., Box 371, Suite 208, Atlanta, GA 30342. Accordingly, venue is proper in the Northern District of Georgia, pursuant to ERISA section 502(e), 29 U.S.C. § 1132(e)(2).

4. In December 2023, EBSA began conducting an investigation of Socios Buenos, and the health plan offered through that partnership ("Socios Buenos Investigation"), to determine compliance with Title I of ERISA. Declaration of Jeri Meisel ¶¶ 2-5 ("Meisel Decl.").[1]

5. In connection with the Socios Buenos Investigation, on December 21, 2023, Colleen McKee, Director for the Office of Enforcement of EBSA, issued the Subpoena to Socios Buenos pursuant to the authority provided by ERISA section 504(c), 29 U.S.C. § 1134(c). A true and correct copy of the Subpoena is attached as Exhibit A to Investigator Meisel's Declaration.

[1] The Meisel Declaration is Exhibit 1 to the Petitioner's Memorandum of Law in Support of Petition to Enforce Administrative Subpoena.

6. The Subpoena was served electronically to Jonathan Crumly, counsel for Socios Buenos who was authorized to accept service of the Subpoena. Meisel Decl. ¶ 5; Exhibit B to Meisel Decl.

7. The Department attempted to secure Socios Buenos's compliance with the Subpoena throughout the last year, as detailed in the accompanying Petitioner's Memorandum of Law in Support of Petition to Enforce Administrative Subpoena, incorporated herein by reference. Socios Buenos has produced to the Department some, but not all, of the documents requested in the Subpoena. Many of the documents produced were nearly-identical member information packages that repeat the same information. Meisel Decl. ¶¶ 8, 13, 15.

8. EBSA repeatedly requested that Socios Buenos provide a production schedule and prioritize its production to certain requests. Socios Buenos has ignored EBSA's requests and produced fewer than 2,000 documents out of a claimed 100,000 under review. Many of the documents produced are nearly identical. Socios Buenos also has failed to meet the production schedule that it proposed for itself. Meisel Decl. ¶ 17. Finally, Socios Buenos maintains objections to producing any documents in response to 13 of the Subpoena's 41 requests. Declaration of Katrina Liu ¶ 5.

9. A full response to the Subpoena, including production of all responsive documents, is necessary for EBSA to determine whether any person has violated or

is about to violate any provision of Title I of ERISA or any regulation or order promulgated thereunder. Meisel Decl. ¶ 24.

10. The issuance and service of the Subpoena at issue are authorized by section 504 of ERISA, which states in pertinent part:

> INVESTIGATIVE AUTHORITY
>
> (a) Investigation and submission of reports, books, etc.
>
> The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order thereunder—
>
> (1) to make an investigation, and in connection therewith to require the submission of reports, books, and records . . . .
>
> ****
>
> (c) Other provisions applicable relating to attendance of witnesses and production of books, records, etc.
>
> For the purposes of any investigation provided for in this subchapter, the provisions of sections 49 and 50 of Title 15 [the Federal Trade Commission Act, 15 U.S.C. §§ 49, 50][2] (relating to the attendance of

[2] The Federal Trade Commission and, by incorporation, EBSA, is authorized to examine and copy documentation, and has:

> [the] power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. . . .
>
> Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in

witnesses, and the production of books, records and documents) are hereby made applicable (without regard to any limitation in such sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

****

29 U.S.C. § 1134(a)(1), (c).

WHEREFORE, for all the reasons set forth herein and in the accompanying Memorandum of Law, the Acting Secretary of Labor respectfully requests that this Court issue an Order:

a. Requiring Respondent to produce all of the records requested by the Subpoena by a date certain; and

b. Granting Petitioner such other relief as may be necessary and appropriate.

Respectfully submitted,

SEEMA NANDA
Solicitor of Labor

WAYNE R. BERRY
Associate Solicitor
for Plan Benefits Security

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requiring the attendance and testimony of witnesses and the production of documentary evidence.

15 U.S.C. § 49.

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Counsel for Litigation

s/ Jamie Troutman
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EXHIBIT B

U.S. District Court
Northern District of Texas (Fort Worth)
CIVIL DOCKET FOR CASE #: 4:19−cv−00800−O

Data Marketing Partnership, LP v. United States Department of Labor et al
Assigned to: Judge Reed C. O'Connor
Case in other court: United States Court of Appeals Fifth Circuit, 20−11179
Cause: 28:1132 E.R.I.S.A.

Date Filed: 10/03/2019
Jury Demand: None
Nature of Suit: 791 Labor: Employee Retirement Income Security Act (ERISA)
Jurisdiction: U.S. Government Defendant

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Date Filed	#	Docket Text
10/04/2019	1	COMPLAINT against All Defendants filed by Data Marketing Partnership, LP. (Filing fee $400; receipt number 0539−10313926) Clerk to issue summons(es). In each Notice of Electronic Filing, the judge assignment is indicated, and a link to the Judges Copy Requirements is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov, or by clicking here: Attorney Information − Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # 1 Cover Sheet, # 2 Cover Sheet Supplement Certificate of Interested Persons, # 3 Exhibit(s) Exhibit A, # 4 Exhibit(s) Exhibit B) (Snyder, Reginald) (Entered: 10/04/2019)
10/04/2019		CERTIFICATE OF INTERESTED PERSONS by Data Marketing Partnership, LP. (see doc. 1 for image) (tln) (Entered: 10/04/2019)
10/04/2019	2	New Case Notes: A filing fee has been paid. File to: Judge O Connor. Pursuant to Misc. Order 6, Plaintiff is provided the Notice of Right to Consent to Proceed Before A U.S. Magistrate Judge. Clerk to provide copy to plaintiff if not received electronically. (tln) (Entered: 10/04/2019)
10/04/2019	3	Summons issued as to Eugene Scalia, United States Department of Labor, United States of America, U.S. Attorney, and U.S. Attorney General. (tln) (Entered: 10/04/2019)
12/13/2019	4	SUMMONS Returned Executed as to United States of America ; served on 12/6/2019. (Snyder, Reginald) (Entered: 12/13/2019)
01/24/2020	5	NOTICE of Attorney Appearance by Galen N Thorp on behalf of Eugene Scalia, United States Department of Labor, United States of America. (Filer will update contact info in ECF.) (Thorp, Galen) (Entered: 01/24/2020)
01/27/2020	6	ORDER: Accordingly, it is ORDERED that the Parties either submit a status report on their disposition or voluntarily dismiss this action on or before February 3, 2020. (Ordered by Judge Reed C. O'Connor on 1/27/2020) (skg) (Entered: 01/27/2020)
01/29/2020	7	Joint STATUS REPORT *filed by Plaintiff and* filed by Eugene Scalia, United States Department of Labor, United States of America. (Attachments: # 1 Exhibit(s) A) (Thorp, Galen) (Entered: 01/29/2020)
01/30/2020	8	ORDER: Plaintiff shall file its Amended Complaint on or before February 21, 2020. Defendants shall answer or otherwise respond to the Amended Complaint on or before March 20, 2020. (Ordered by Judge Reed C. O'Connor on 1/30/2020) (skg) (Entered: 01/30/2020)
02/03/2020	9	AMENDED COMPLAINT *for Declaratory Judgment and Injunctive Relief* against All Defendants filed by Data Marketing Partnership LP. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov, or by clicking here: Attorney Information − Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # 1 Exhibit(s) Exhibit A to First Amended Complaint, # 2 Exhibit(s) Exhibit B to First Amended Complaint, # 3 Exhibit(s) Exhibit C to First Amended Complaint) (Snyder, Reginald) (Entered: 02/03/2020)
02/03/2020	10	MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION filed by Data Marketing Partnership LP, LP Management Services, LLC. Party LP Management Services, LLC added.Attorney Reginald L Snyder added to party LP Management Services, LLC(pty:pla) (Snyder, Reginald) (Entered:

		02/03/2020)
02/03/2020	11	Brief/Memorandum in Support filed by Data Marketing Partnership LP, LP Management Services, LLC re 10 MOTION for Temporary Restraining Order MOTION for Injunction (Attachments: # 1 Exhibit(s) Exhibit A to Brief in Support of TRO, # 2 Exhibit(s) Exhibit B to Brief in Support of TRO, # 3 Exhibit(s) Exhibit C to Brief in Support of TRO, # 4 Exhibit(s) Exhibit D to Brief in Support of TRO) (Snyder, Reginald) (Entered: 02/03/2020)
02/03/2020	12	CERTIFICATE of Conference re 10 MOTION for Temporary Restraining Order MOTION for Injunction by Reginald L Snyder on behalf of All Plaintiffs (Snyder, Reginald) (Entered: 02/03/2020)
02/04/2020	13	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Jonathan D. Crumly, Sr. (Filing fee $100; Receipt number 0539−10593931) filed by Data Marketing Partnership LP, LP Management Services, LLC (Attachments: # 1 Letter of Good Standing) (Crumly, Jonathan) Modified on 2/5/2020 (pef). (Entered: 02/04/2020)
02/04/2020	14	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Bryan Jacoutot (Filing fee $100; Receipt number 0539−10594220) filed by Data Marketing Partnership LP, LP Management Services, LLC (Attachments: # 1 Letter of Good Standing) (Jacoutot, Bryan) Modified on 2/5/2020 (pef). (Entered: 02/04/2020)
02/06/2020	15	ORDER: This proposed schedule should be filed on or before February 20, 2020. (Ordered by Judge Reed C. O'Connor on 2/6/2020) (skg) (Entered: 02/06/2020)
02/06/2020	16	ORDER denying 14 Application for Admission Pro Hac Vice. (Ordered by Judge Reed C. O'Connor on 2/6/2020) (skg) (Entered: 02/06/2020)
02/06/2020	17	ORDER denying 13 Application for Admission Pro Hac Vice. (Ordered by Judge Reed C. O'Connor on 2/6/2020) (skg) (Entered: 02/06/2020)
02/13/2020	18	Joint STATUS REPORT *Regarding Proposed Schedule* filed by Eugene Scalia, United States Department of Labor, United States of America. (Thorp, Galen) (Entered: 02/13/2020)
02/17/2020	19	ORDER: Setting deadlines (Ordered by Judge Reed C. O'Connor on 2/17/2020) (Judge Reed C. O'Connor) (Entered: 02/17/2020)
02/17/2020	20	NOTICE of Attorney Appearance by Reginald L Snyder for Michael L. Jones on behalf of Data Marketing Partnership LP, LP Management Services, LLC. (Snyder, Reginald) (Entered: 02/17/2020)
02/18/2020	21	Application for Admission Pro Hac Vice with Certificate of Good Standing (Clerk Note: Filer states no fee is to be collected due to prior payment or waiver by MO 16 or prior order.) filed by Data Marketing Partnership LP, LP Management Services, LLC (Attachments: # 1 Letter of Good Standing, # 2 Proposed Order) (Crumly, Jonathan) (Entered: 02/18/2020)
02/18/2020	22	Application for Admission Pro Hac Vice with Certificate of Good Standing (Clerk Note: Filer states no fee is to be collected due to prior payment or waiver by MO 16 or prior order.) filed by Data Marketing Partnership LP, LP Management Services, LLC (Attachments: # 1 Letter of Good Standing, # 2 Proposed Order) (Jacoutot, Bryan) (Entered: 02/18/2020)
02/19/2020	23	MOTION for Summary Judgment filed by Data Marketing Partnership LP, LP Management Services, LLC (Snyder, Reginald) (Entered: 02/19/2020)
02/19/2020	24	Brief/Memorandum in Support filed by Data Marketing Partnership LP, LP Management Services, LLC re 23 MOTION for Summary Judgment (Attachments: # 1 Appendix, # 2 Appendix Tab 1 − 6, # 3 Appendix Tab 7 − 15) (Snyder, Reginald) (Entered: 02/19/2020)
03/09/2020	25	Cross MOTION for Summary Judgment filed by Eugene Scalia, United States Department of Labor, United States of America (Thorp, Galen) (Entered: 03/09/2020)

03/09/2020	26	RESPONSE filed by Eugene Scalia, United States Department of Labor, United States of America re: 10 MOTION for Temporary Restraining Order MOTION for Injunction (Thorp, Galen) (Entered: 03/09/2020)
03/09/2020	27	RESPONSE filed by Eugene Scalia, United States Department of Labor, United States of America re: 23 MOTION for Summary Judgment (Thorp, Galen) (Entered: 03/09/2020)
03/09/2020	28	COMBINED BRIEF IN OPPOSITION filed by Eugene Scalia, United States Department of Labor, United States of America re 26 Response/Objection, 25 Cross MOTION for Summary Judgment , 27 Response/Objection (Thorp, Galen) (Entered: 03/09/2020)
04/06/2020	29	PLAINTIFFS' CONSOLIDATED REPLY BRIEF IN SUPPORT OF SUMMARY JUDGMENT AND INJUNCTION AS WELL AS OPPOSITION TO DEFENDANTS' 25 Cross MOTION for Summary Judgment (Attachments: # 1 Exhibit(s)) (Snyder, Reginald) (Entered: 04/06/2020)
04/07/2020	30	REPLY filed by Data Marketing Partnership LP, LP Management Services, LLC re: 25 Cross MOTION for Summary Judgment (Attachments: # 1 Exhibit(s)) (Snyder, Reginald) (Entered: 04/07/2020)
04/07/2020	31	ADDITIONAL ATTACHMENTS to 30 Reply, 29 Reply by Plaintiffs Data Marketing Partnership LP, LP Management Services, LLC. (Snyder, Reginald) (Entered: 04/07/2020)
04/09/2020	32	ORDER granting 21 Application for Admission Pro Hac Vice of Jonathan D. Crumly, Sr. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Reed C. O'Connor on 4/9/2020) (tln) (Entered: 04/09/2020)
04/09/2020	33	ORDER granting 22 Application for Admission Pro Hac Vice of Jacoutot. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Reed C. O'Connor on 4/9/2020) (tln) (Entered: 04/09/2020)
04/14/2020	34	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Allen Nelson (Filing fee $100; Receipt number 0539−10765027) filed by Data Marketing Partnership LP, LP Management Services, LLC (Attachments: # 1 Letter of Good Standing, # 2 Proposed Order) (Snyder, Reginald) (Entered: 04/14/2020)
04/17/2020	35	ELECTRONIC ORDER granting 34 Application for Admission Pro Hac Vice of Allen W. Nelson. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Reed C. O'Connor on 4/17/2020) (chmb) (hc) (Entered: 04/17/2020)
04/24/2020	36	REPLY filed by Eugene Scalia, United States Department of Labor, United States of America re: 25 Cross MOTION for Summary Judgment (Thorp, Galen) (Entered: 04/24/2020)
09/28/2020	37	MEMORANDUM OPINION AND ORDER: 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. (Ordered by Judge Reed C. O'Connor on 9/28/2020) (tln) (Main Document 37 replaced on 9/30/2020) (tln). (Entered: 09/28/2020)

09/28/2020	38	FINAL JUDGMENT: In accordance with the Court's Memorandum Opinion and Order (ECF No. 37), final judgment is rendered for Plaintiffs. 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. (Ordered by Judge Reed C. O'Connor on 9/28/2020) (tln) (Entered: 09/28/2020)
09/29/2020	39	ORDER: On September 28, 2020, the Court issued a Memorandum Opinion and Order (ECF No. 37). The Court inadvertently stated that "the Court Plaintiffs' Motion for Summary Judgment is GRANTED and DENIES Defendants' Cross Motion for Summary Judgment" on the first page of the Order. The Court will substitute a corrected order which will replace this sentence and read "the Court GRANTS Plaintiffs' Motion for Summary Judgment and DENIES Defendants' Cross Motion for Summary Judgment." No other change has been made. (Ordered by Judge Reed C. O'Connor on 9/29/2020) (tln) (Entered: 09/30/2020)
11/27/2020	40	NOTICE OF APPEAL as to 38 Judgment 37 Memorandum Opinion and Order, to the Fifth Circuit by Eugene Scalia, United States Department of Labor, United States of America. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non−ECF Users. See detailed instructions here. (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (Thorp, Galen) (Entered: 11/27/2020)
12/04/2020	41	USCA Case Number 20−11179 in United States Court of Appeals Fifth Circuit for 40 Notice of Appeal, filed by United States Department of Labor, Eugene Scalia, United States of America. (tle) (Entered: 12/04/2020)
12/07/2020		Record on Appeal for USCA5 20−11179 (related to 40 appeal): Record consisting of: 1 ECF electronic record on appeal (eROA) is certified,. **PLEASE NOTE THE FOLLOWING:** Licensed attorneys must have filed an appearance in the USCA5 case and be registered for electronic filing in the USCA5 to access the paginated eROA in the USCA5 ECF system. (Take these steps immediately if you have not already done so. Once you have filed the notice of appearance and/or USCA5 ECF registration, it may take up to 3 business days for the circuit to notify the district clerk that we may grant you access to the eROA in the USCA5 ECF system.) To access the paginated record, log in to the USCA5 ECF system, and under the Utilities menu, select Electronic Record on Appeal. Pro se litigants may request a copy of the record by contacting the appeals deputy in advance to arrange delivery. (tle) (Entered: 12/07/2020)
12/17/2020		APPEARANCE FORM FILED at USCA5 by Attorney(s) Jonathan D. Crumly Sr. for party(s) Appellee Data Marketing Partnership, L.P. Appellee L.P. Management Services, L.L.C., in case 20−11179. Access to the EROA has been granted. (tle) (Entered: 12/17/2020)
04/09/2021		APPEARANCE FORM FILED at USCA5 by Attorney Kathryn McDermott Speaks. Access to the EROA has been granted [20−11179]. (tle) (Entered: 04/09/2021)
04/09/2021		APPEARANCE FORM FILED at USCA5 by Attorney Caroline Van Zile for Amicus Curiae State of Wisconsin in [20−11179]. Access to the EROA has been granted. (tle) (Entered: 04/09/2021)
04/21/2021		APPEARANCE FORM FILED at USCA5 by Attorney(s) Yvonne Y. Ho for party(s) Appellee Data Marketing Partnership, L.P. Appellee L.P. Management Services, L.L.C., in case 20−11179. Access to the EROA has been granted. (tle) (Entered: 04/21/2021)
04/26/2021		APPEARANCE FORM FILED at USCA5 20−11179. Access to the EROA has been granted to Attorney: Nandan M. Joshi for Amicus Curiae Public Citizen... Allison M. Zieve for party(s) Amicus Curiae Public Citizen... Michael T. Raupp for Amicus

		Curiae National Association of Insurance Commissioners... Jennifer Maureen McAdam for party(s) Amicus Curiae National Association of Insurance Commissioners... Joel McElvain for Amicus Curiae National Organization for Rare Disorders in 20−11179, Attorney Joel McElvain for Amicus Curiae Cystic Fibrosis Foundation in 20−11179, Attorney Joel McElvain for Amicus Curiae American Cancer Society Cancer Action Network in 20−11179, Attorney Joel McElvain for Amicus Curiae American Cancer Society in 20−11179, Attorney Joel McElvain for Amicus Curiae Leukemia and Lymphoma Society...Gabriel Krimm for party(s) Amicus Curiae Cystic Fibrosis Foundation Amicus Curiae National Organization for Rare Disorders Amicus Curiae American Cancer Society Amicus Curiae Leukemia and Lymphoma Society Amicus Curiae American Cancer Society Cancer Action Network. (tle) Modified on 4/26/2021 (tle). (Entered: 04/26/2021)
04/26/2021		APPEARANCE FORM FILED at USCA5 20−11179. Access to the EROA has been granted to Attorney:: Jon Breyfogle for Amicus Curiae Blue Cross Blue Shield Association i access to the EROA...Tammy Killion for party(s) Amicus Curiae Blue Cross Blue Shield Association...Matthew W. Lanahan for party(s) Amicus Curiae Blue Cross Blue Shield Association. (tle) (Entered: 04/26/2021)
06/24/2021	42	ORDER of USCA 20−11179 as to 40 Notice of Appeal, filed by United States Department of Labor, Eugene Scalia, United States of America. The court has granted an extension of time to and including July 13, 2021 for filing a reply brief in this case. (tle) (Entered: 06/24/2021)
07/27/2021		APPEARANCE FORM FILED at USCA5 by Attorney Jason Elam for Amicus Curiae Benjamin Clear in 20−11179, Attorney Jason Elam for Amicus Curiae John Fiedler in 20−11179, Attorney Jason Elam for Amicus Curiae Adam Rochester in 20−11179 Sufficient Brief deadline satisfied. Access to the EROA has been granted. (tle) (Entered: 07/27/2021)
05/27/2022		APPEARANCE FORM FILED at USCA5 by Attorney(s) Alexander Kazam for party(s) Amicus Curiae Cystic Fibrosis Foundation Amicus Curiae National Organization for Rare Disorders Amicus Curiae American Cancer Society Amicus Curiae Leukemia and Lymphoma Society Amicus Curiae American Cancer Society Cancer Action Network, in case 20−11179. Access to the EROA has been granted. (tle) (Entered: 05/27/2022)
10/11/2022	43	JUDGMENT/MANDATE of USCA No. 20−11179 as to 40 Notice of Appeal, filed by United States Department of Labor, Eugene Scalia, United States of America. IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED IN PART, VACATED IN PART and REMANDED to the District Court for further proceedings in accordance with the opinion of this Court. Issued as Mandate: 10/11/2022. (Attachments: # 1 USCA5 Cover Letter) (tle) (Entered: 10/11/2022)
10/11/2022	44	Opinion of USCA No. 20−11179 in accordance with USCA judgment re 40 Notice of Appeal, filed by United States Department of Labor, Eugene Scalia, United States of America. The Department failed to do that. For the foregoing reasons, the district courts judgment is AFFIRMED in part, VACATED in part, and REMANDED. (tle) (Entered: 10/11/2022)
10/11/2022		Case reopened per United States Court of Appeals 5th Circuit Judgment 43 Opinion 44 Mandate. [20−11179] (tle) (Entered: 10/12/2022)
11/02/2022	45	ORDER:On August 17, 2022, the Fifth Circuit filed its opinion in Data Mktg. P'ship, LP v. United States Dep't of Lab., 45 F.4th 846 (5th Cir. 2022). The mandate for that opinion has now issued, and the case has been remanded to this Court. Accordingly, the Parties shall meet and confer as to the remaining issues before this Court. Following their meeting, the Parties shall submit a Joint Status Report to the Court, identifying the live issues in this case and outlining a plan for resolving them, no later than November 16, 2022. (Ordered by Judge Reed C. O'Connor on 11/2/2022) (sre) (Entered: 11/02/2022)
11/16/2022	46	Joint STATUS REPORT filed by Eugene Scalia, United States Department of Labor, United States of America. (Thorp, Galen) (Entered: 11/16/2022)
12/13/2022	47	POST−APPEAL SCHEDULING ORDER: Defendants' Motion for Remand to Agency due by 12/30/2022. Responses due by 1/31/2023. Replies due by 2/17/2023. (Ordered

		by Judge Reed C. O'Connor on 12/13/2022) (bdb) (Entered: 12/13/2022)
12/30/2022	48	MOTION to Remand to U.S. Department of Labor filed by Eugene Scalia, United States Department of Labor, United States of America with Brief/Memorandum in Support. (Thorp, Galen) (Entered: 12/30/2022)
01/31/2023	49	RESPONSE AND OBJECTION filed by Data Marketing Partnership LP, LP Management Services LLC re: 48 MOTION to Remand to U.S. Department of Labor (Crumly, Jonathan) (Entered: 01/31/2023)
02/17/2023	50	REPLY filed by Eugene Scalia, United States Department of Labor, United States of America re: 48 MOTION to Remand to U.S. Department of Labor (Thorp, Galen) (Entered: 02/17/2023)
08/11/2023	51	OPINION & ORDER DENYING DEFENDANTS' MOTION TO REMAND: Before the Court are Defendants Motion to Remand (ECF No. 48), filed December 30, 2022; Plaintiffs' Response (ECF No. 49), filed January 31, 2023; and Defendants' Reply to Plaintiffs' Response (ECF No. 50), filed February 17, 2023. After reviewing the briefing, relevant law, and applicable facts, the Court finds that Defendants' Motion to Remand should be DENIED in its entirety. The parties SHALL submit a joint report indicating their proposals for how this case should proceed no later than September 1, 2023. (Ordered by Judge Reed C. O'Connor on 8/11/2023) (sre) (Entered: 08/11/2023)
08/21/2023	52	Joint MOTION for Extension of Time to File Joint Status Report filed by Eugene Scalia, United States Department of Labor, United States of America with Brief/Memorandum in Support. (Thorp, Galen) (Entered: 08/21/2023)
08/21/2023	53	ORDER: Having considered the 52 motion and noting it is agreed, the Court GRANTS the parties' motion and ORDERS them to submit their joint report no later than September 14, 2023. (Ordered by Judge Reed C. O'Connor on 8/21/2023) (bdb) (Entered: 08/21/2023)
09/14/2023	54	STATUS REPORT filed by LP Management Services LLC. (Chadwick, Robert) (Entered: 09/14/2023)
09/15/2023	55	ORDER: Motions due by 1/15/2024. Responses due by 2/26/2024. Replies due by 3/18/2024. (Ordered by Judge Reed C. O'Connor on 9/15/2023) (sre) (Entered: 09/15/2023)
01/15/2024	56	MOTION for Summary Judgment filed by Data Marketing Partnership LP, LP Management Services LLC with Brief/Memorandum in Support. (Chadwick, Robert) (Entered: 01/15/2024)
01/15/2024	57	Brief/Memorandum in Support filed by Data Marketing Partnership LP, LP Management Services LLC re 56 MOTION for Summary Judgment (Chadwick, Robert) (Entered: 01/15/2024)
02/15/2024	58	MOTION for Extension of Time to File Response/Reply to 56 MOTION for Summary Judgment filed by Eugene Scalia, United States Department of Labor, United States of America with Brief/Memorandum in Support. (Thorp, Galen) (Entered: 02/15/2024)
02/15/2024	59	ORDER: Before the Court is Defendants' Consent Motion for Extension of Time for Summary Judgment Briefing (ECF No. 58), filed on February 15, 2024. Noting that the extension request is unopposed by Plaintiffs and may facilitate nonjudicial resolution of this matter, the Court GRANTS the extension. Accordingly, the briefing schedule for Plaintiffs' Motion for Summary Judgment (ECF No. 56) is modified as follows: 1. Defendants SHALL file their response by March 29, 2024. 2. Plaintiffs SHALL file their reply by April 19, 2024. (Ordered by Judge Reed C. O'Connor on 2/15/2024) (sre) (Entered: 02/15/2024)
03/26/2024	60	MOTION for Extension of Time to File Response/Reply to 56 MOTION for Summary Judgment filed by Eugene Scalia, United States Department of Labor, United States of America with Brief/Memorandum in Support. (Thorp, Galen) (Entered: 03/26/2024)
03/27/2024	61	SECOND ORDER EXTENDING BRIEFING SCHEDULE granting 60 Motion to Extend Time to File Response/Reply. Responses due by 5/10/2024. Replies due by 5/31/2024. (Ordered by Judge Reed C. O'Connor on 3/27/2024) (sre) (Entered: 03/27/2024)

04/29/2024	62	MOTION for Extension of Time to File Response/Reply to 56 MOTION for Summary Judgment filed by Eugene Scalia, United States Department of Labor, United States of America (Thorp, Galen) (Entered: 04/29/2024)
04/30/2024	63	THIRD ORDER EXTENDING BRIEFING SCHEDULE granting 62 Motion to Extend Time to File Response/Reply: the briefing schedule for Plaintiffs' Motion for Summary Judgment (ECF No. 56) is MODIFIED as follows: 1. Defendants SHALL file their response by May 31, 2024. 2. Plaintiffs SHALL file their reply by June 21, 2024. Additionally, given the length of time that Plaintiffs Motion for Summary Judgment (ECF No. 56) has been pending and that the issues raised therein will not come ripe until June 21, 2024 at the earliest, the Court formally DEFERS ruling on Plaintiffs' Motion for Summary Judgment (ECF No. 56) until such time that the briefing is complete. (Ordered by Judge Reed C. O'Connor on 4/30/2024) (sre) (Entered: 04/30/2024)
05/31/2024	64	RESPONSE filed by Eugene Scalia, United States Department of Labor, United States of America re: 56 MOTION for Summary Judgment (Thorp, Galen) (Entered: 05/31/2024)
06/21/2024	65	REPLY filed by Data Marketing Partnership LP, LP Management Services LLC re: 56 MOTION for Summary Judgment (Chadwick, Robert) (Entered: 06/21/2024)
11/01/2024	66	MOTION for Leave to File Supplemental Complaint filed by Data Marketing Partnership LP, LP Management Services LLC (Attachments: # 1 Exhibit(s), # 2 Proposed Order) (Chadwick, Robert) (Entered: 11/01/2024)
11/20/2024	67	MOTION for Extension of Time to File Response/Reply to 66 MOTION for Leave to File Supplemental Complaint filed by United States Department of Labor, Eugene Scalia, United States of America with Brief/Memorandum in Support. (Thorp, Galen) (Entered: 11/20/2024)
11/21/2024	68	ORDER: Before the Court is Defendants' Consent Motion for Extension of Time for Response to Motion for Leave to file and Serve Supplemental Complaint (ECF No. 67), filed on November 20, 2024. Noting that the extension request is unopposed by Plaintiffs, the Court GRANTS the extension. Accordingly, the briefing schedule for Plaintiffs' Motion for Leave to file and Serve Supplemental Complaint (ECF No. 67) is as follows: 1. Defendants SHALL file their response by December 6, 2024. 2. Plaintiffs SHALL file their reply by December 31, 2024. (Ordered by Judge Reed C. O'Connor on 11/21/2024) (sre) (Entered: 11/21/2024)
11/25/2024	69	Amended MOTION for Leave to File Supplemental Complaint and Supporting Brief filed by Data Marketing Partnership LP (Attachments: # 1 Exhibit(s) Exhibit A, # 2 Exhibit(s) Exhibit B, # 3 Proposed Order Proposed Order) (Chadwick, Robert) (Entered: 11/25/2024)
12/13/2024	70	MOTION for Extension of Time to File Response/Reply to 69 Amended MOTION for Leave to File Supplemental Complaint and Supporting Brief filed by United States Department of Labor, Eugene Scalia, United States of America with Brief/Memorandum in Support. (Thorp, Galen) (Entered: 12/13/2024)
12/17/2024	71	ORDER: Before the Court is Defendants' Consent Motion for Extension of Time for Response to Amended Motion for Leave to file and Serve Supplemental Complaint (ECF No. 70), filed on December 13, 2024. Noting that the extension request is unopposed by Plaintiffs, the Court GRANTS the extension. Accordingly, the briefing schedule for Plaintiffs' Amended Motion for Leave to file and Serve Supplemental Complaint (ECF No. 69) is as follows: 1. Defendants SHALL file their response by December 20, 2024. 2. Plaintiffs SHALL file their reply by January 10, 2025. Additionally, Plaintiff Motion for Leave to file and Serve Supplemental Complaint (ECF No. 66) is DENIED as moot. (Ordered by Judge Reed C. O'Connor on 12/17/2024) (sre) (Entered: 12/17/2024)
12/20/2024	72	RESPONSE filed by United States Department of Labor, Eugene Scalia, United States of America re: 69 Amended MOTION for Leave to File Supplemental Complaint and Supporting Brief (Thorp, Galen) (Entered: 12/20/2024)
12/20/2024	73	Appendix in Support filed by United States Department of Labor, Eugene Scalia, United States of America re 72 Response/Objection (Thorp, Galen) (Entered: 12/20/2024)

01/10/2025	74	REPLY filed by Data Marketing Partnership LP re: 69 Amended MOTION for Leave to File Supplemental Complaint and Supporting Brief (Chadwick, Robert) (Entered: 01/10/2025)

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

LORI CHAVEZ-DEREMER, SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, Plaintiff-Counterclaim Defendant, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER, Defendants-Counterclaim Plaintiffs.	Civil Action No. 3:24-CV-01512 (CVR)

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

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

I. BACKGROUND

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

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

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

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

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

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

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

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

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

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

II. ARGUMENT

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

A. Defendants Fail to Establish That Transfer Is Warranted

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

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

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

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

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

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

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

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

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

2. Defendants' Proffered Reasons Do Not Support Transfer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Defendants Fail to Establish That a Stay Is Warranted

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CONCLUSION

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

Dated: April 25, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I filed the Secretary's Consolidated Response in Opposition to Defendants' Motion to Transfer Venue and Motion to Stay on the docket via CM/ECF. Notice of this filing will be sent to all counsel of record through the Court's Electronic Case Filing System.

/s/ Jamie Troutman
Jamie Troutman

United States Court of Appeals

for the

First Circuit

Case No. 25-1886

LORI CHAVEZ-DEREME, Secretary of Labor, US Department of Labor,

Plaintiff-Appellee,

v.

SUFFOLK ADMINISTRATIVE SERVICES, LLC.;
PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO;
WILLIAM BRYAN; ARJAN ZIEGER,

Defendants.

DATA MARKETING PARTNERSHIP, LP;
LP MANAGEMENT SERVICES, LLC,

Interested Parties-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
OF PUERTO RICO AT SAN JUAN, IN CASE NO. 3:24-CV-01512-CVR

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Exhibit E: February 21, 2019 Letter JA909
Exhibit F: October 21, 2019 Letter JA929

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Exhibit G: November 6, 2020 Letter JA1106

Exhibit H: December 14, 2020 Letter JA1113

Exhibit I: December 30, 2020 Letter JA1116

Exhibit J: July 21,2022 Letter JA1119

Exhibit K: June 8, 2023 Letter JA1125

Exhibit L: January 11, 2024 Letter JA1129

Exhibit M: Email Chain JA1133

Exhibit N: April 26, 2024 Letter JA1135

Exhibit O: Email Chain JA1142

Exhibit P: Email Chain JA1146

Exhibit Q: Email Chain JA1150

Order Denying Motion to Transfer and Denying as Moot Motion to Stay, June 10, 2025 [ECF 55] JA1167

Motion to Dismiss for Failure to State a Claim Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief, August 8, 2025 [ECF 60] JA1175

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Exhibit A: Verified Complaint for Declaratory and Injunctive Relief JA1213

Exhibit B: Opinion and Order JA1241

Exhibit C: Answer to Petition to Enforce Administrative Subpoena and Counterclaim for Declaratory and Injunctive Relief JA1270

Exhibit D: Answer JA1301

Secretary's Response in Opposition to Data Marketing Partnership, LP and LP Management Services, LLC's Motion to Intervene, August 11, 2025 [ECF 62] JA1320

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Brief in Opposition to Motion to Dismiss First Amended Counterclaim for Declaratory and Injunctive Relief, September 22, 2025 [ECF 71] JA1343

Reply in Support of Secretary's Motion to Dismiss First Amended Counterclaim for Declaratory and Injunctive Relief, December 15, 2025 [ECF 82] JA1364

Opinion and Order Granting Motion to Dismiss for Failure to State a Claim, January 14, 2026 [ECF 83] JA1380

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

LORI CHAVEZ-DEREMER, SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, Plaintiff-Counterclaim Defendant, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER, Defendants-Counterclaim Plaintiffs.	)	Civil No.: 3:24-cv-01512 (CVR)

FIRST AMENDED COUNTERCLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE COURT:

COME NOW Defendants and Counterclaim Plaintiffs Suffolk Administrative Services, LLC ("SAS") and 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 Secretary of Labor Lori Chavez-DeRemer ("Chavez-DeRemer" or "the DOL") state as follows:

INTRODUCTION

1. This suit is a continuation of a collateral attack by the DOL against Defendants based upon their vendor relationships with single employer employee welfare plans ("Partnership Plans"), sponsored by Data Marketing Partnership, LP ("DMP") and LP Management Services, LLC ("LPMS"), which are the subject of (a) a 2018 request to the DOL for an advisory opinion

("AO Request") confirming their protection under the Employee Retirement Income Security Act ("ERISA), 29 U.S.C. § 1001, *et seq*.;[1] (b) a 2020 DOL Advisory Opinion ("Advisory Opinion") denying such protection;[2] and (c) litigation currently pending in the U.S. District Court for the Northern District of Texas, styled as *Data Marketing Partnership, LP, et al. v. U.S. Dept. of Labor, et al*., Civil Action No. 4:19-cv-00900-O ("Texas Suit"), in which both the District Court[3] and Fifth Circuit Court[4] vacated the Advisory Opinion as "arbitrary and capricious" and in which DMP and LPMS seek to enjoin the DOL from denying the ERISA-status of the DMP Partnership Plan.

2. In response to the AO Request, which alerted the DOL to the services provided by Defendants to the Partnership Plans, the DOL immediately launched an investigation of Defendants, which came to be known as the Anjo Investigation. Contrary to the allegations of the *Complaint,* any allegedly unlawful behavior by Defendants was disproved in the Anjo Investigation.

3. In response to the Texas Suit, the DOL proposed settlement terms as to the Anjo Investigation which would have allowed SAS and PIC to continue to provide vendor services to the Partnership Plans, and other ERISA plans. The proposal came with a catch, however: It was contingent upon the agreement of DMP and LPMS to (a) withdraw the AO Request, and (b) dismiss the Texas Suit. Even though Defendants were not parties to the AO Request or the Texas Suit, the DOL knew from the Texas Suit that the Partnerships Plans cannot operate without Defendants' services, as there are no other vendors willing or able to provide such services due, in part, to the Anjo Investigation. The threat of this suit thus provided leverage against DMP and LPMS which the DOL did not have in the Texas Suit. When LMPS and DMP declined to withdraw

[1] Exhibit A attached hereto.
[2] Exhibit B attached hereto.
[3] Exhibit C attached hereto.
[4] Exhibit D attached hereto.

the AO Request or dismiss the Texas Suit, the DOL punished Defendants with this egregiously punitive suit seeking (a) monetary remedies - $40 million - which would effectively bankrupt SAS and PIC; and (b) an injunction "enjoining Defendants … from ever acting as a fiduciary, service provider or trustee" to any employee benefits plans, including the Partnership Plans and the other ERISA plans.[5]

4. It is plain that this suit is inextricably intertwined with the AO Request, Advisory Opinion, and the Texas Suit, and is being prosecuted by the DOL for the improper purposes of (a) punishing Defendants for continuing to provide services to the Partnership Plans; (b) pressuring Defendants to sever their vendor relationships with the Partnership Plans; (c) "enjoining Defendants … from ever acting as a fiduciary, service provider or trustee" to the Partnership Plans; (d) punishing DMP and LPMS for making and later not withdrawing the AO Request; (e) punishing DMP and LPMS for filing and later not dismissing the Texas Suit; and (f) eventually rendering the Texas Suit moot by depriving the Partnership Plans of the vendor services provided by Defendants necessary to continue operations.

5. By such conduct, the DOL has been and is threatening the group health insurance of 30,000 individuals covered by the Partnership Plans, as well as the insurance provided by over 1,900 employer ERISA plans to their employees ("Employer Plans')*.*[6]

6. By such conduct, the DOL has been and is violating the First Amendment as to DMP, LPMS, and Defendants. As noted by the U.S. Supreme Court and other federal jurisprudence, the "threat of invoking legal sanctions and other means of coercion" by a government agency against a vendor "to achieve the suppression" or punishment of disfavored speech by a customer violates the First Amendment rights of both the customer and vendor. *NRA*

[5] *Complaint* ¶ 97 [Doc. 1], Attachment 1.
[6] *Complaint* ¶ 2, Note 1.

v. Vullo, 602 U.S. ___ (2024); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963). *See also NRA v. Los Angeles*, 441 F.Supp.3d 915, 934-38 (C.D. Cal, 2019). Here, DMP and LPMS twice exercised their First Amendment rights of petition by (a) submitting the AO Request; and (b) filing the Texas Suit. That this suit was brought to suppress or punish DMP and LPMS for exercising their First Amendment rights, and to suppress or punish Defendants based upon their association with DMP and LPMS, is evidenced by (a) the timing of the Anjo Investigation, which commenced immediately after the AO Request; and (b) discussions preceding this suit, in which the DOL expressly and unilaterally linked the two matters, and tied resolution of the claims against Defendants to the withdrawal of the AO Request and the dismissal of the Texas Suit by DMP and LPMS.

7. By such conduct, the DOL has been and is acting contrary to the responsibility assigned to it by ERISA. As recognized by the U.S. Supreme Court, one of the purposes of ERISA is "to promote and facilitate employee benefit plans." *See Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon,* 541 U.S. 1, 17 (2004). As noted by both the District Court and the Fifth Circuit in the Texas Suit, the DOL has already acted contrary to these purposes in issuing the Advisory Opinion as to the Partnership Plans. Now, the DOL is doubling down on its rejected position by seeking to end the Partnership Plans altogether, which would be the inevitable result if the relief in this suit is ordered by this Court. Thus, the DOL seeks in this suit to accomplish what the purpose of ERISA forbids – the dismantling of a lawful ERISA plan.

8. In defense of its collateral attack against Defendants, the DOL claims sovereign immunity.[7] However, as set forth in the Administrative Procedure Act ("APA"): "An action in a court of the United States seeking relief other than money damages and stating a claim that an

[7] *Memorandum in Support of the Secretary's Motion to Dismiss Defendants' Original Counterclaim for Declaratory Relief* [Doc.48-1].

agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States." 5 U.S.C. § 702. In bringing this Counterclaim, Defendants do not seek damages; they seek only declaratory and injunctive relief for the DOL's unconstitutional and unlawful prosecution of this suit. Contrary to the DOL's claims, therefore, sovereign immunity is not a defense to such relief. *See U.S. v. Gilead Sciences, Inc*., 5151 F.Supp.3d 241, 254-55 (D.Del. 2021). *See also Delano v. Calif. Table Grape Comm'n*, 655 F.3d 1337, 1344 (Fed.Cir. 2011).

9. In defense of this collateral attack, the DOL also claims litigation discretion. *See* 5 U.S.C. § 701(a)(2). It is settled law, however, that litigation discretion does not extend to constitutional violations, as alleged here. *See Rueda Vidal v. U.S. Dept. of Homeland Security,* 536 F.Supp.3d 604, 618 (C.D.Cal. 2021). Litigation discretion likewise does not extend to agency action contrary to established law or congressional intent, as alleged here. *See Electricities of North Carolina, Inc. v. Southeastern Power Admin*., 774 F.2d 1262, 1267 (4th Cir. 1985). *See also Cardoza v. CFTC*, 768 F.2d 1542, 1547 (7th Cir.1985)(claiming reviewal authority when not to do so would "'frustrate Congressional intent"'). Contrary to the DOL's claims, therefore, litigation discretion is not a defense to this Counterclaim.

10. In defense of this collateral attack, the DOL also claims this suit is not a final agency action. This claim incorrectly presumes this Counterclaim turns entirely on the merits of this suit. It does not. Federal jurisprudence has long held that otherwise lawful action by government officials can still run afoul of the law if motivated by an unlawful purpose. See *Bantam Books, Inc. v. Sullivan, supra*; NRA v. *Vullo*, *supra*; *NRA v. Los Angeles, supra*. *See also American Motor Club, Inc. v. Corcoran*, 644 F.Supp. 862 (S.D.N.Y. 1986); *Floridians Protecting Freedom, Inc. v.*

Ladapo, et al, Case No. 4:24-cv-00419 (N.D. Fla.). Accordingly, the DOL has violated the law merely by threatening to file this suit and continues to violate the law by prosecuting this suit.

11. In defense of this collateral attack, the DOL also claims the Partnership Plans "are not among the Participating Plans at issue in this" suit.[8] This claim is false. The $40 million demand in the cover sheet to this suit includes funds attributed to the Partnership Plans. The M-1 reports sought by this suit, as to an alleged multiple employer welfare arrangement ("MEWA"),[9] would require the reporting of the "[t]total number of participants covered under the entity", including participants in the Partnership Plans. This suit seeks to enjoin Defendants "from ever acting as a fiduciary, service provider, or trustee to any plan covered by Title I of ERISA", including the Partnership Plans.[10] Contrary to the DOL's claims, therefore, the Partnership Plans simply cannot be excised from the broad, albeit frivolous, allegations here.

12. In short, the U.S. Constitution, APA and ERISA do not simply provide defenses to this suit, they provide viable grounds for claims against the DOL based on its improper motivation in bringing this suit. This Counterclaim simply seeks to hold the DOL accountable.

PARTIES

13. 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).

14. Chavez-Deremer is the Secretary of Labor and is sued solely in its official capacity.

15. 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.

[8] *Complaint* ¶ 2, Note 1.
[9] *Complaint* ¶ 92.
[10] *Complaint* ¶ 97.

16. 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.

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

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

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

JURISDICTION AND VENUE

20. 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).

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

FIRST AMENDMENT

22. The First Amendment "right to petition the government for a redress of grievances is "one of the most precious of the liberties safeguarded by the Bill of Rights," and is "high in the hierarchy of First Amendment values." *Lozman v. City of Riviera Beach, Fla*., 585 U.S. 87, 101 (2018). "The right to petition is cut from the same cloth as the other guarantees of [the First] Amendment, and is an assurance of a particular expression of freedom." *McDonald v. Smith,* 472 U.S. 479, 482 (1985). The right to petition the government for redress of grievances is such a fundamental right as to be "implied by '[t]he very idea of a government, republican in form.'"*BE & K Const*., 536 U.S. at 524–25.

23. The right to petition "extends to all departments of the Government", including administrative agencies and courts. *Cal. Motor Transport Co. v. Trucking Unlimited,* 404 U.S. 508, 510 (1972) ("The right of access to the courts is indeed but one aspect of the right of petition").

The right to petition includes not just petitions to redress grievances but petitions to influence government action. *E.R.R. Pres. Conf. v. Noerr Motor Freight, Inc.,* 365 U.S. 127, 143 (1961).

24. "Retaliation, though it is not expressly referred to in the Constitution, is nonetheless actionable because retaliatory actions may tend to chill individuals' exercise of constitutional rights." *ACLU of Md., Inc. v. Wicomico County,* 999 F.2d 780, 785 (4th Cir. 1993).

25. Even otherwise lawful conduct by government officials can run afoul of the First Amendment. In *Bantam Books, Inc. v. Sullivan*, *supra*, the Supreme Court affirmed that the First Amendment prohibits government officials from relying on the "threat of invoking legal sanctions and other means of coercion … to achieve the suppression" of disfavored speech. Just this past term, in *NRA v. Vullo*, *supra*, the Supreme Court acknowledged in a 9-0 decision that actionable coercion includes actions directed at vendors which do business with the person or entity who exercised rights guaranteed by the First Amendment – precisely the behavior which the Plaintiff and Counterclaim Defendant engaged in by harassing the Partnership Plan vendors for years, making extortionate, impossible demands, and ultimately bringing this suit. Similarly, in *American Motor Club, Inc. v. Corcoran*, 644 F.Supp. 862 (S.D.N.Y. 1986), the U.S. District Court for the Southern District of New York issued a preliminary injunction against the New York Department of Insurance which, in response to a civil rights action against the Department by an automobile club, allegedly threatened the licenses of brokers who sold memberships in the automobile club. *See also Floridians Protecting Freedom, Inc. v. Ladapo*, et al, Case No. 4:24-cv-00419 (N.D. Florida).

26. Federal jurisprudence has held that First Amendment protections can extend to business partners based upon their association with a person or organization who has exercised a right protected by the First Amendment. If a governmental action would chill a business partner

of ordinary firmness from associating with a person who has exercised a right protected by the First Amendment, the business partner is also protected. *NRA v. Los Angeles, supra*

27. Federal courts are empowered to issue general injunctive relief that enjoins a government defendant from retaliating against or otherwise infringing upon a plaintiff's rights under the First Amendment. *Mahan v. Texas Dept. of Public Safety*, No. 9:20-CV-119-RC-ZJH, 2020 WL 6935555 at *3 (E.D.Tex. Oct. 29, 2020).

ERISA

28. A primary purpose of ERISA is "to promote and facilitate employee benefit plans." *Raymond B. Yates*. 541 U.S.at 17. Another primary purpose of ERISA is "uniform national treatment of … benefits." *Id*.

29. 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."

30. 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." *Cent. States, Se. & Sw. Areas Pens. Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985).

HISTORY OF APA VIOLATIONS BY THE DOL

31. 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.

32. 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.

33. 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.

34. 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]."

35. 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.

36. 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).

37. 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").

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

FACTS

I. BACKGROUND

44. SAS and PIC provide vendors services not only to the Partnership Plans sponsored by DMP and LPMS, but also to the Employer Plans.

A. DMP Plan

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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

51. 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.

52. 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

53. 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

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

55. 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.

56. 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.

57. 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. As the Partnership Plans are based upon a unique combination of employees and working owners or partners, no companies other than SAS have experience servicing such a structure.

E. PIC

58. 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.

59. 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.

60. 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.

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

62. 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.

63. 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. Indeed, LPMS has reached out to several A-rated insurance carriers about providing reinsurance or stop loss insurance for the Partnership Plans. Each has declined to provide reinsurance to the Partnership Plans, in part based upon the negative Advisory Opinion by the DOL.

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

63. 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.

64. 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. PETITION FOR ADVISORY OPINION

65. In 2018, Renfro was retained as legal counsel for LPMS to assist it in pursuing an advisory opinion from the 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 the DOL.

66. On Nov. 8, 2018 (revised on Jan. 15, 2019, and Feb. 27, 2019), Renfro submitted the AO Request with the DOL on behalf of LPMS, for the Partnership Plans.

67. 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.

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

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

70. 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.

71. 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.

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

73. 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.

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

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

76. 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.

77. 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.

78. 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.

79. 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.[11]

80. 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 the DOL's new Association Health Plan ("AHP") rule.

81. 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.

82. Representatives for Defendants attempted to explain to Mr. Geale that even assuming the 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 the DOL guidance on their interpretation of ERISA.

83. 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.

[11] Exhibit E attached hereto.

84. 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.

III. AS TO DEFENDANTS, AO REQUEST LEADS TO RETALIATORY ANJO INVESTIGATION

86. The DOL first learned of Defendants as a result of the AO Request. This knowledge quickly led to the Anjo Investigation, which began within one month of the March 6, 2019 meeting between LPMS and the DOL as to the AO Request.

87. 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.[12]. These subpoenas were issued despite the 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).

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

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

[12] Exhibit F attached hereto.

90. 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.

91. 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.

92. 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."

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

94. 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.".

95. 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.

96. 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.

97. 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.

98. 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.

99. 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.

100. 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.

101. 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.

102. 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.[13]

103. On Dec. 14, 2020, twenty months after the commencement of the Anjo Investigation, Katrina Liu, Trial Attorney, Office of the Solicitor of the DOL (also an attorney representing the DOL in the instant litigation, as well as in the Texas Suit), responded on behalf of the 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

[13] Exhibit G attached hereto.

was "not in a position to provide the specific information you seek regarding the timing and scope" of the Anjo Investigation.[14]

104. 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 its letter of December 14.[15]

105. 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."

106. The Anjo Investigation ultimately prompted a civil action in this Court filed by SAS and PIC on Jan. 19, 2021, against the DOL, 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.

107. 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.

108. 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.

[14] Exhibit H attached hereto.
[15] Exhibit I attached hereto.

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.[16].

109. 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."[17] 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."

110. 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 the 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.

[16] Exhibit J attached hereto.
[17] Exhibit K attached hereto.

111. 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".[18] 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.

112. 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".[19] 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."

113. 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."[20]. 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

[18] Exhibit L attached hereto.
[19] Exhibit M attached hereto.
[20] Exhibit N attached hereto.

SAS and PIC by "poisoning the well" with the potential business partners, customers, and vendors that might work with them.

114. 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.

115. 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.

116. 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.[21]

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

118. Nearly one year later, on June 8, 2023, the DOL submitted its first express demand for injunctive and monetary relief.[22]

[21] Exhibit O attached hereto.
[22] Exhibit P attached hereto.

119. Progress towards settlement between the 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.

IV. AS TO DMP AND LPMS, AO REQUEST LEADS TO NEGATIVE ADVISORY OPINION AND TEXAS SUIT

120. 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. Contrary to U.S. 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.

121. 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 APA, 5 U.S.C. § 706(2); and (3) enjoined DOL "from refusing to recognize the ERISA-status of the [DMP Partnership] Plan." 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.

122. The DOL continues to fight the Texas Suit. The issue now is whether to reinstate the injunction enjoining the DOL from refusing to recognize the ERISA-status of the DMP Partnership Plan.

V. THE DOL CONNECTS FATE OF DEFENDANTS IN ANJO INVESTIGATION AND DMP AND LPMS IN TEXAS SUIT[23]

123. On Jan. 11, 2024, counsel for DMP and LPMS sent a letter to counsel for the DOL offering to engage in settlement discussions in the Texas Suit.[24]

124. In response, the 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.[25]

125. 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." The 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, the 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.

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[23] 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 the 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)).

[24] Exhibit Q attached hereto.
[25] Exhibit R attached hereto.

126. 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 the 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.[26]

127. 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.

128. 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.

129. 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.[27]

130. On Tuesday, May 28, 2024, counsel for the DOL stated that if the Texas Suit were not dismissed, the 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.

131. 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

[26] Exhibit S attached hereto.
[27] Exhibit T attached hereto.

the DOL, and its counsel was not sure if the DOL would settle the Anjo Investigation at all without DMP dismissing the Texas Suit.

132. 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.

133. 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.[28] This confirmation came after a statement by DOL counsel that the Defendants could not bear the financial exposure of such a settlement.

134. 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.

135. 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.

136. From these admissions by the 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

[28] Exhibit U attached hereto.

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 the 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.

VI. THE DOL DISREGARDS EXECUTIVE ORDER 13924

137. 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, the EO is now once again in effect, and the following arguments and authorities are now enforceable against the DOL.

138. 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.

139. 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").[29]

140. 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 the DOL violate by continuing their retaliatory investigation into Defendants.

[29] Exhibit V attached hereto.

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

142. 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).

143. 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.

144. 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…"

145. The Memo further instructs that "regulations should require investigating staff to either recommend or bring an enforcement action, or instead cease the investigation…"[30]

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

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

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

VII. THIS SUIT

A. Allegations Against Defendants Were Disproven by Anjo Investigation

148. Even though the Anjo Investigation disproved any wrongdoing by Defendants, this Suit makes unsubstantiated claims against them.

149. Contrary to the DOL's allegations of self-dealing, for instance, Defendants provided documents to the 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 any providing any facts to support the DOL's allegations.

150. Contrary to the DOL's allegations that Defendants commingled plan funds, Defendants also 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.

151. 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.

152. 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.

153. 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 malicious and calculated to harm Defendants' business and personal reputations and discredit or dismantle the Partnership Plans.

B. Relief Sought Against Defendants is Punitive

154. In exchange for the withdrawal by DMP and LPMS of the AO Request, and the dismissal by DMP and the LPMS of the Texas Suit, the DOL was willing to settle the Anjo Investigation for $5.5 million. Now that DMP and LPMS have refused to withdraw the AO Request and dismiss the Texas Suit, the DOL claims damages of more than seven (7) times the amount of $5.5 million, which would effectively bankrupt SAS and PIC and prevent them from servicing the Partnership Plans.

155. In exchange for the withdrawal by DMP and LPMS of the AO Request, and the dismissal by DMP and the LPMS of the Texas Suit, the DOL was willing to settle the Anjo Investigation under terms that would allow SAS and PIC to continue operations. Now that DMP and LPMS have refused to withdraw the AO Request and dismiss the Texas Suit, the DOL seeks to enjoin Defendants "from ever acting as a fiduciary, service provider, or trustee to any plan covered by Title I of ERISA", including the Partnership Plans.

COUNT I: VOLATION OF FIRST AMENDMENT AS TO AO REQUEST

156. Defendants hereby incorporate and re-allege the allegations in paragraphs 1 to 155 as if fully set forth herein.

157. It is settled law federal courts are empowered to issue general injunctive relief that enjoins a government defendant from retaliating against or otherwise infringing upon a plaintiff's

rights under the First Amendment. *Mahan v. Tex. Dept. of Pub. Safety*, No. 9:20-CV-119-RC-ZJH, 2020 WL 6935555 at *3 (E.D.Tex. Oct. 29, 2020).

158. Retaliation, though not expressly referenced in the Constitution, is nonetheless actionable because retaliatory actions may tend to chill individuals' exercise of constitutional rights." *ACLU of Md., Inc. v. Wicomico County,* 999 F.2d 780, 785 (4th Cir. 1993).

159. The AO Request is a petition by DMP and LPMS protected by the First Amendment of the Constitution regarding a matter of public concern, i.e., the applicability of ERISA to single employer employee welfare plans providing health coverage to more than 30,000 individuals.

160. Defendants have the right under the First Amendment to associate with DMP and LPMS without suppression or retaliation by the DOL because of their association as vendors to DMP and LPMS, which exercised their right of petition in the AO Request.

161. The DOL has intentionally undertaken the following actions against Defendants to obstruct, chill, deter, and retaliate against Defendants because of their association as vendors to DMP and LPMS, which exercised their right of petition in the AO Request:

a. Launching the Anjo Investigation shortly after the AO Request;

b. Making allegations of unlawful conduct against Defendants in conjunction with the Anjo Investigation;

c. Making monetary demands against Defendants in conjunction with the Anjo Investigation;

d. Conditioning the resolution of the allegations of unlawful conduct against Defendants in the Anjo Investigation on the withdrawal by DMP and LPMS of the AO Request;

e. Conditioning the resolution of the monetary demands against Defendants in the Anjo Investigation on the withdrawal by DMP and LPMS of the AO Request;

f. Making allegations of unlawful conduct against Defendants in this suit based upon the refusal of DMP and LPMS to withdraw the AO Request;

g. Making monetary demands against Defendants in this suit based on the refusal of DMP and LPMS to withdraw the AO Request; and

h. Seeking injunctive relief against SAS and PIC to enjoin them from servicing ERISA plans based on the refusal of DMP and LPMS to withdraw the AO Request.

162. Such actions have been undertaken by the DOL with full knowledge as to their potential devastating impact on the Partnership Plans.

163. The DOL's unlawful and intentional actions are not justified by a substantial or compelling government interest and are not narrowly tailored to serve any such interest.

164. As a direct and result of the DOL's' unlawful conduct as alleged under this Count, Defendants now face imminent, irrevocable, and irreparable harm which includes (a) the end of SAS and PIC; and/or (b) the termination of the vendor relationships between Defendants and DMP and LPMS. Accordingly, Defendants seek a permanent injunction enjoining the DOL from further violations of the First Amendment as to the AO Request including the continued prosecution of this suit against Defendants.

COUNT II: VIOLATION OF FIRST AMENDMENT AS TO TEXAS SUIT

159. Defendants hereby incorporate and re-allege the allegations in paragraphs 1 to 164 as if fully set forth herein.

160. The Texas Suit is a petition by DMP and LPMS protected by the First Amendment of the Constitution regarding a matter of public concern, i.e., the applicability of ERISA to single employer employee welfare plans providing health coverage to more than 30,000 individuals.

161. Defendants have the right under the First Amendment to associate with DMP and LPMS without suppression or retaliation by the DOL because of their association as vendors to DMP and LPMS, which exercised their right of petition in the Texas Suit.

162. The DOL has intentionally undertaken the following actions against Defendants to obstruct, chill, deter, and retaliate against Defendants because of their association as vendors to DMP and LPMS, which exercised their right of petition in the Texas Suit:

a. Conditioning the resolution of the allegations of unlawful conduct against Defendants in the Anjo Investigation on the dismissal by DMP and LPMS of the Texas Suit;

b. Conditioning the resolution of the monetary demands against Defendants in the Anjo Investigation on the dismissal by DMP and LPMS of the Texas Suit;

c. Making allegations of unlawful conduct against Defendants in this suit based upon the refusal of DMP and LPMS to dismiss the Texas Suit;

d. Making monetary demands against Defendants in this suit based on the refusal of DMP and LPMS to dismiss the Texas Suit; and

e. Seeking injunctive relief against SAS and PIC seeking to enjoin them from servicing ERISA plans based on the refusal of DMP and LPMS to dismiss the Texas Suit.

163. Such actions have been undertaken by the DOL with full knowledge as to their potential devastating impact on the Partnership Plans.

164. The DOL's unlawful and intentional actions are not justified by a substantial or compelling government interest and are not narrowly tailored to serve any such interest.

165. As a direct and proximate result of the DOL's' unlawful conduct as alleged under this Count, Defendants now face imminent, irrevocable, and irreparable harm which includes (a) the forced dissolution of SAS and PIC; and/or (b) the termination of the vendor relationships between Defendants and DMP and LPMS. Accordingly, Defendants seek a permanent injunction enjoining the DOL from further violations of the First Amendment as to the Texas Suit including the continued prosecution of this suit against Defendants.

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

166. Defendants hereby incorporate and re-allege the allegations in paragraphs 1 to **Error! Reference source not found.**65 as if fully set forth herein.

167. 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.

168. 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 (2004); (c) the U.S. District Court decision in the Texas Suit; and (d) the DOL in Advisory Opinion 99-04A.

169. 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.

170. 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.

171. 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."

172. 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."

173. 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."

174. 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."

175. 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.

176. 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.

177. 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.

178. 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.

179. 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.

180. 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 the DOL from continuing to violate the APA.

181. 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.

PRAYER FOR RELIEF

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

A. That this Court declare the conduct of the DOL violated the U.S. Constitution;

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

C. 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;

D. 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

E. 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.

Civil No.: 3:24-cv-01512 (CVR)

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 9th day of June 2025.

HALLETT & PERRIN, P.C.

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Civil No.: 3:24-cv-01512 (CVR)

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Local Counsel for all Defendants-Counterclaim Plaintiffs

EXHIBIT A

November 8, 2018

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.

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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).

---

[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

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

[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

ALEXANDER T. RENFRO, JD, LLM

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EXHIBIT B

U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

January 24, 2020

Alexander T. Renfro, JD, LLM
The Law Office of Alexander Renfro
3200 West End Avenue, Suite 500
Nashville, TN 37204

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

[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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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
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE
70804-9005

Jeff Landry
Attorney General

February 21, 2019

The Honorable Alexander Acosta
Secretary of Labor
200 Constitution Ave. NW
Washington, DC 20210
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.

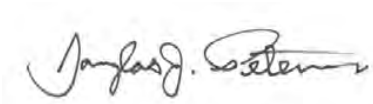
Respectfully yours,

Jeff Landry
Louisiana Attorney General

Chris Carr
Georgia Attorney General

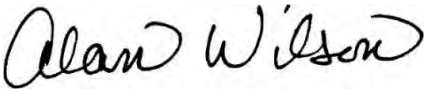
Leslie Rutledge
Arkansas Attorney General

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).

[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]

[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 from the same source that sponsors said group health plan[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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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:

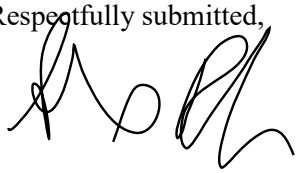
(1) The single-employer self-insured group health plan sponsored by LP is an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

(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,



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[26] See IRC § 162(l)(2-5).

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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

Jeffrey A. Monhart, Regional Director

ERSA 300 (Rev. 6-12)

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.

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 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

ERSA 209 (Rev. 6-75)

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.

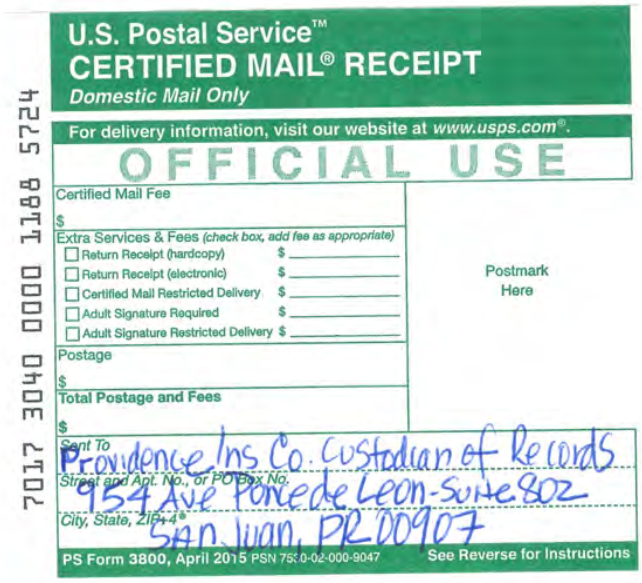
27. Fidelity bond(s) currently in effect for any Employee Welfare Benefit Plans to whom You provide Services.

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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- ☐ Adult Signature Restricted Delivery $

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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.

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

EBSA 200 (Rev. 6-12)

ATTACHMENT TO SUBPOENA
Providence Insurance Partners, LLC

DEFINITIONS

A. "Providence," "Company," "You," and "Your" shall mean Providence Insurance Partners, LLC, a Tennessee Limited Liability Company, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of Providence Insurance Partners, 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 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

EBSA 200 (Rev.6-12)

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.

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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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.

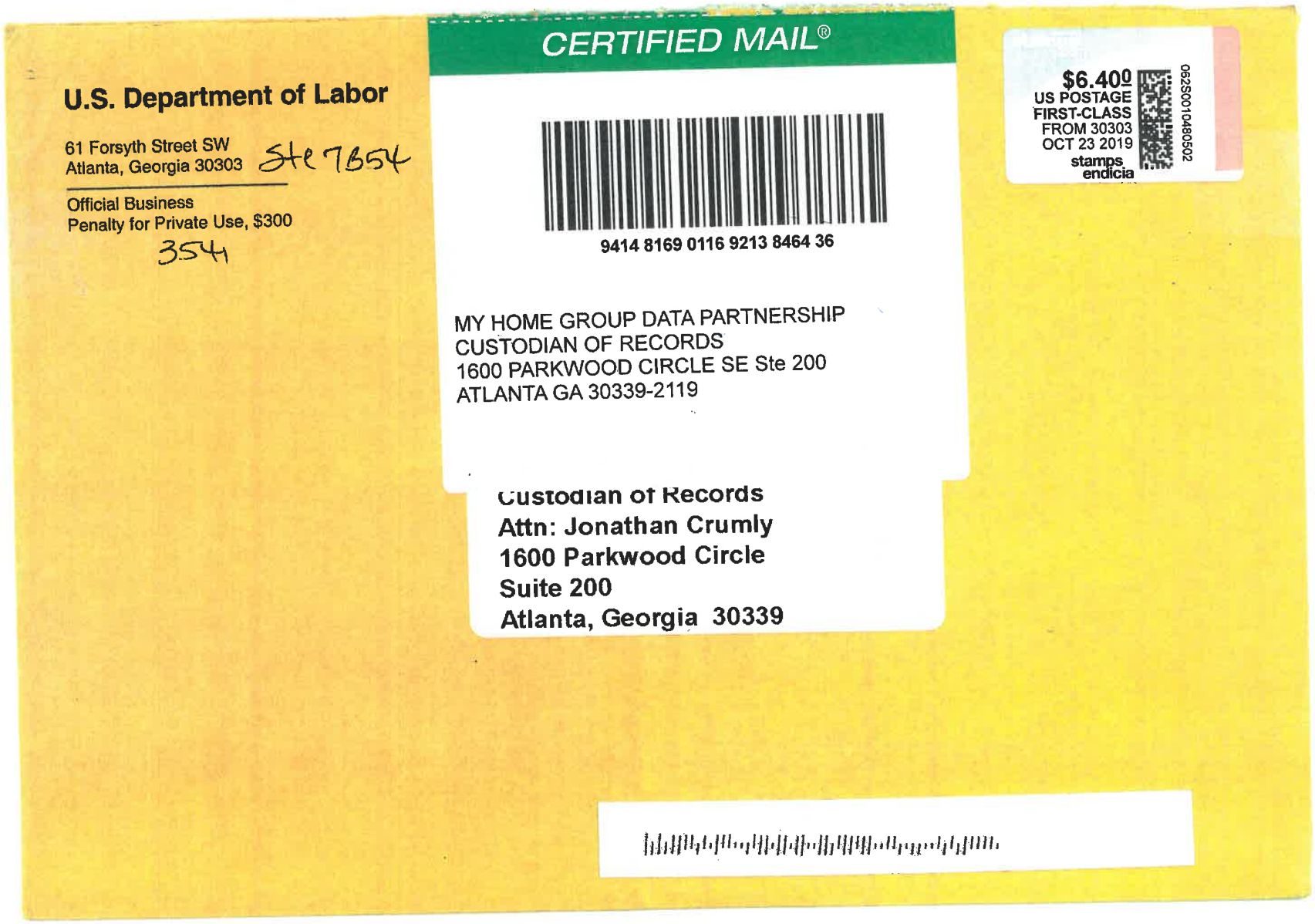
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

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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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

JA619

Case: 25-1886 Document: 00118402575 Page: 177 Date Filed: 02/11/2026 Entry ID: 6785192

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.

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* 12th *day of December 2019.*

Jeffrey A. Monhart

Jeffrey A. Monhart, Regional Director

EBSA 200 (Rev.6-12)

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.

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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 21 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 A. Monhart

Jeffrey A. Monhart, Regional Director

EBSA 209 (Rev. 6-12)

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.

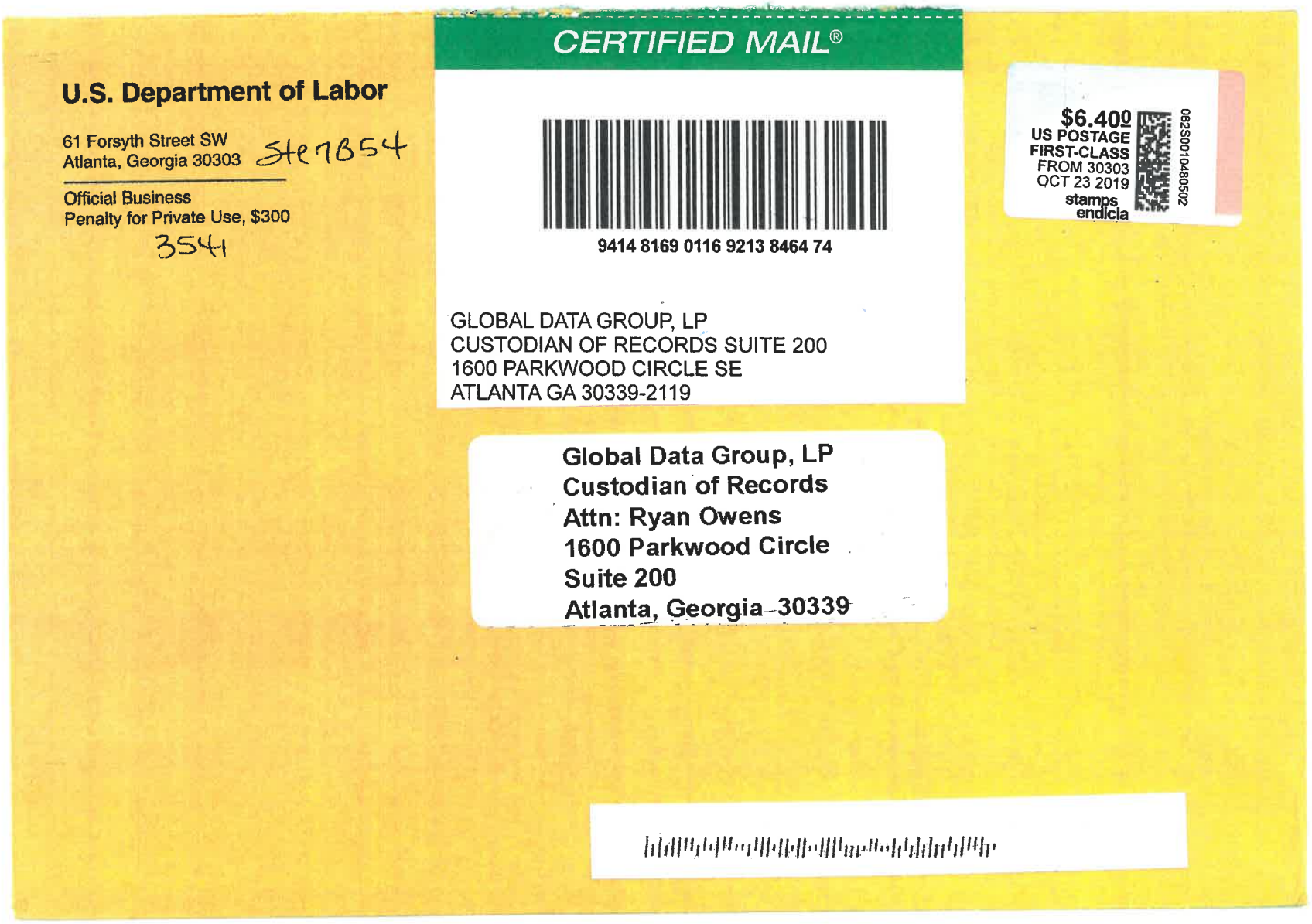
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

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.



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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

JA647

Case: 25-1886 Document: 00118402575 Page: 205 Date Filed: 02/11/2026 Entry ID: 6785192

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

EBSA 209 (Rev. 6-12)

JA650

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.

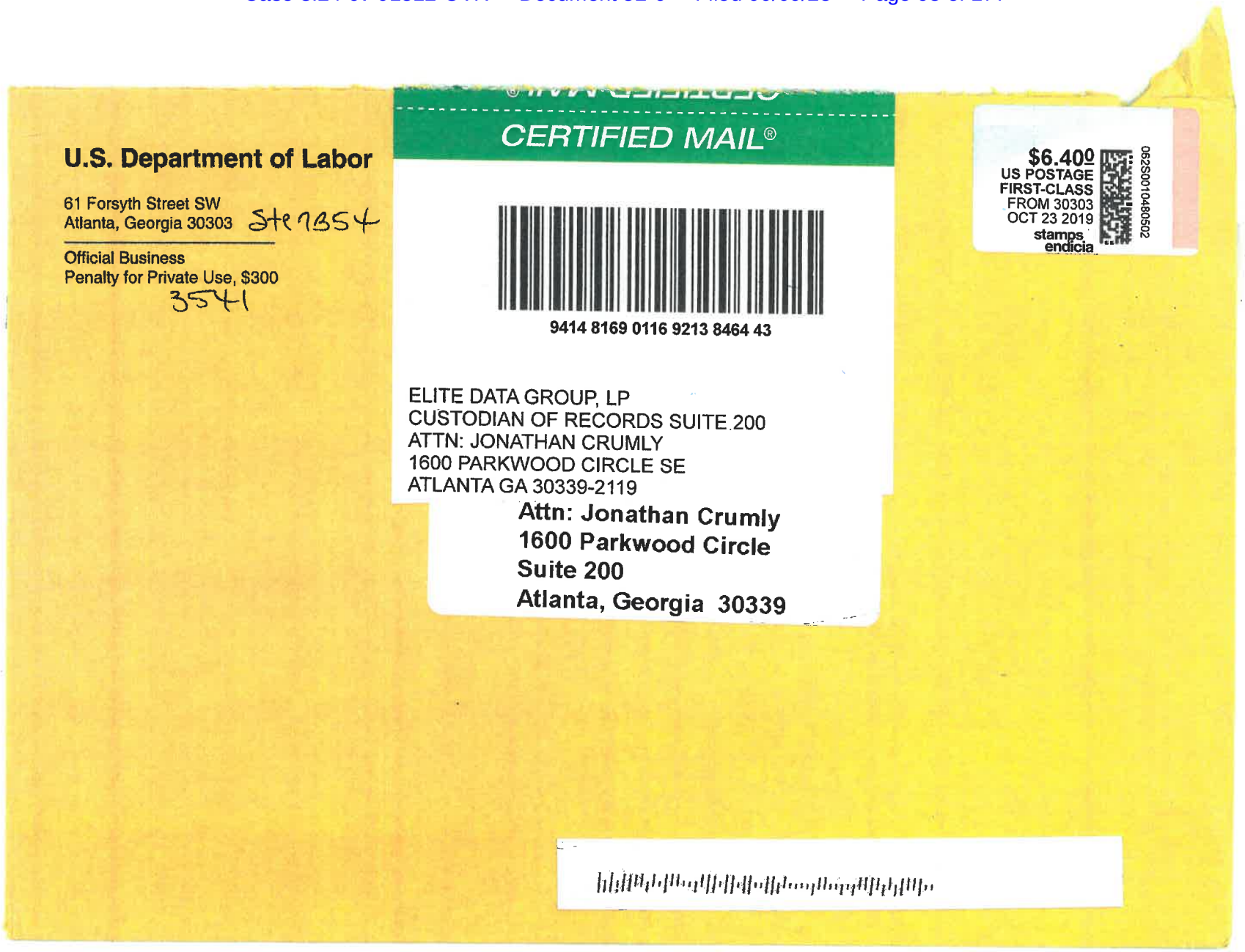
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

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.



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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

JA661

Case: 25-1886 Document: 00118402575 Page: 219 Date Filed: 02/11/2026 Entry ID: 6785192

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.*

/s/ for Jeffrey A. Monhart

Jeffrey A. Monhart, Regional Director

EBSA 200 (Rev. 6-12)

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.

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)).

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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 AIW'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 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.

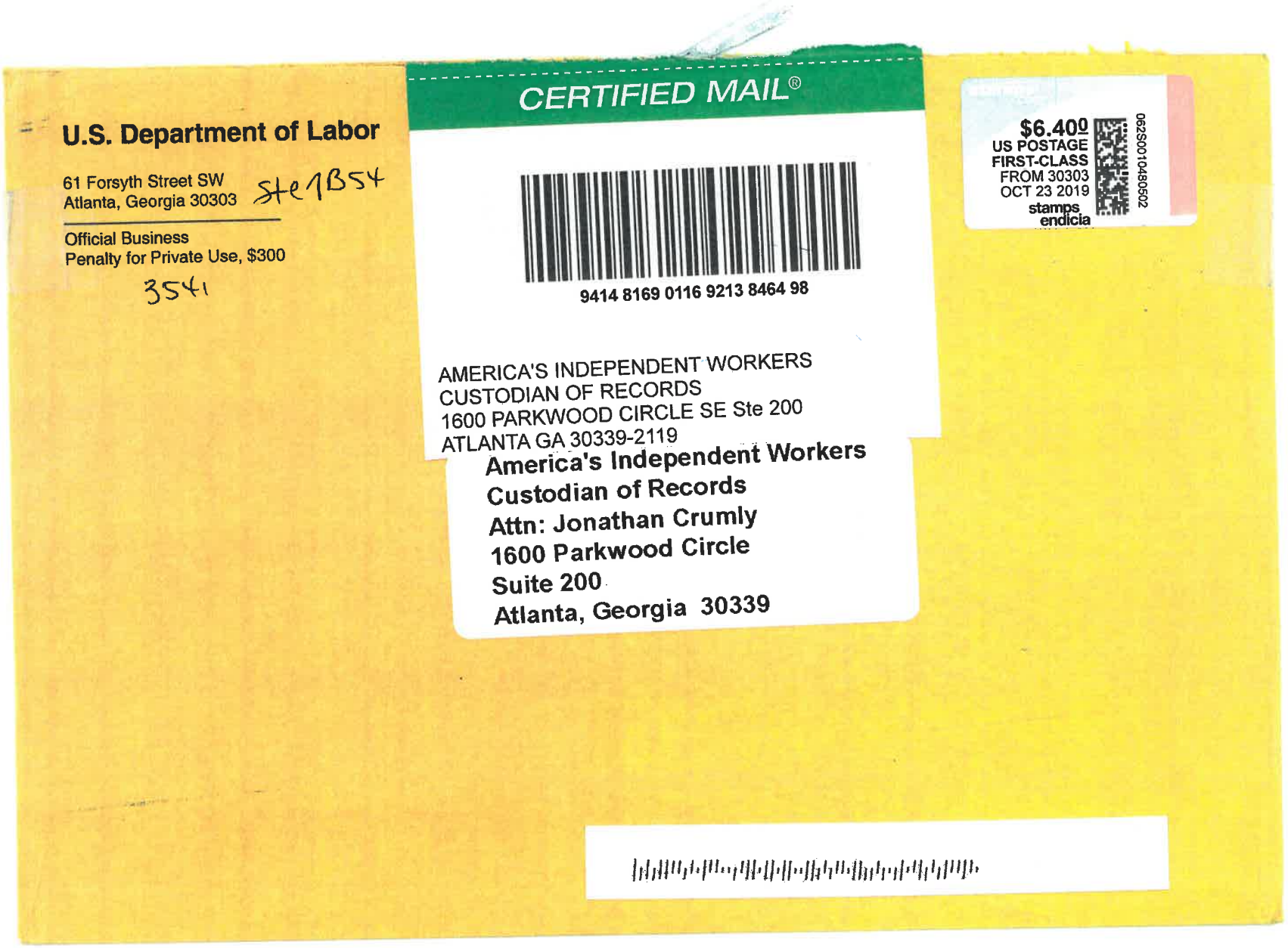
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

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

61 Forsyth Street SW
Atlanta, Georgia 30303 Ste 1B54

Official Business
Penalty for Private Use, $300

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CERTIFIED MAIL®

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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

JA675

Case: 25-1886 Document: 00118402575 Page: 233 Date Filed: 02/11/2026 Entry ID: 6785192

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

EBSA 200 (Rev. 6-12)

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.

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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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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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   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 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

Official Business
Penalty for Private Use, $300
3541

CERTIFIED MAIL®

9414 8169 0116 9213 8461 84

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US POSTAGE
FIRST-CLASS
FROM 30303
OCT 23 2019
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AMERICA'S CONSUMERS AND AFFILIATES, LP
CUSTODIAN OF RECORDS, SUITE 200
ATTN: JONATHAN CRUMLY
1600 PARKWOOD CIRCLE SE
ATLANTA GA 30339-2119

Al
Cu
At
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339

JA689

Case: 25-1886 Document: 00118402575 Page: 247 Date Filed: 02/11/2026 Entry ID: 6785192

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

EBSA 200 (Rev. 6-12)

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.

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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;
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   c. Wrap document;
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   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.

6. Communications between Agridata 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 Agridata 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 Agridata or the Plan or in consultation with Agridata 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 Agridata 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 Agridata or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

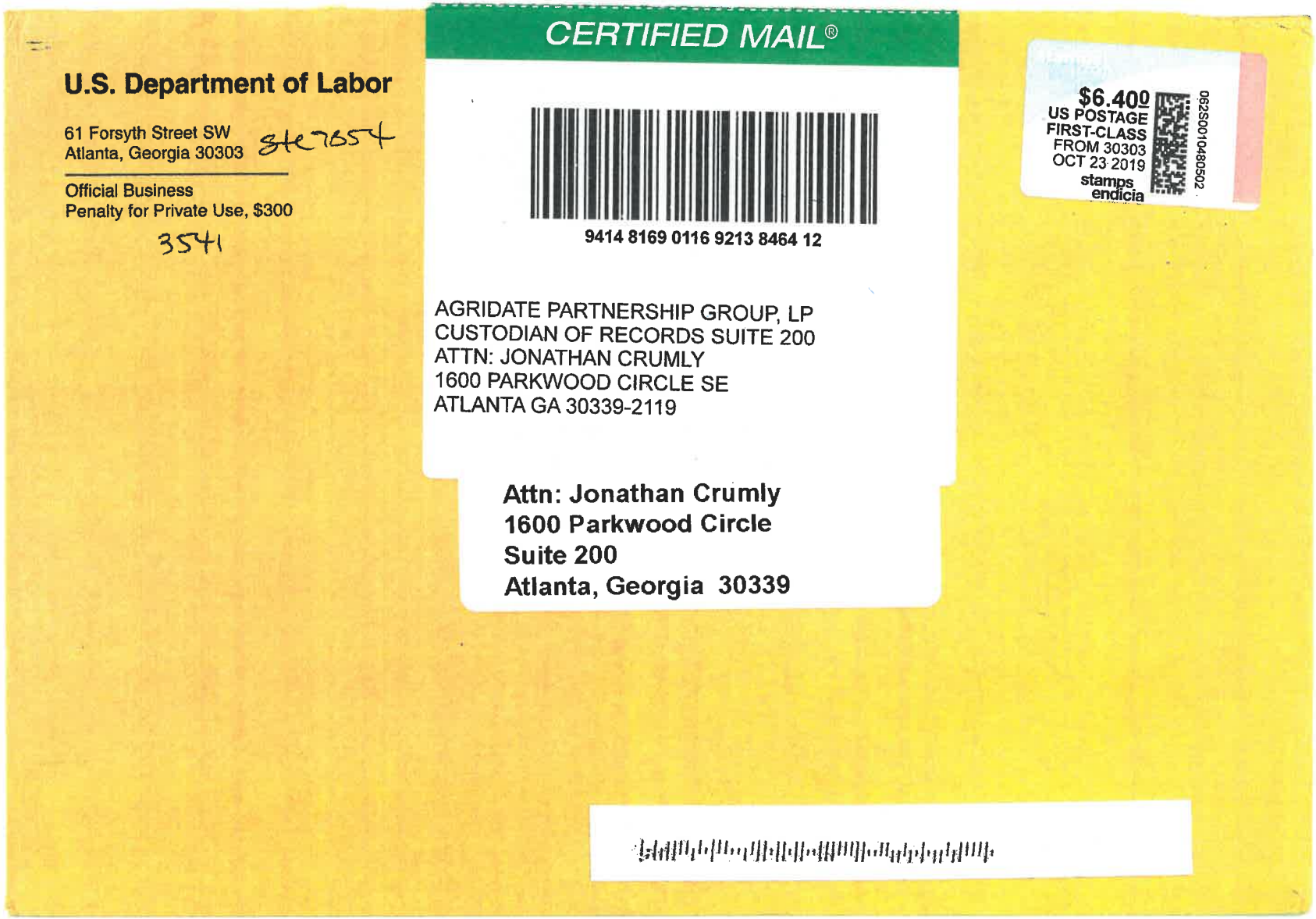
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and Agridata 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 Agridata 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. 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

JA703

Case: 25-1886 Document: 00118402575 Page: 261 Date Filed: 02/11/2026 Entry ID: 6785192

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

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

EBSA 200 (Rev. 6-12)

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;
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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;

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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, 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).

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 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 Cumby
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

PS Form 3811, July 2015 PSN 7530-02-000-9053

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

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.

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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 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.

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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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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 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 G

taylor | english

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November 6, 2020

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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
Taylor English Duma LLP
1600 Parkwood Circle, Suite 200
Atlanta, Georgia 30339
(678) 426-6959
jcrumly@taylorenglish.com

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

taylor | english
Taylor English Duma LLP 1600 Parkwood Circle, Suite 200, Atlanta, Georgia 30339
Main: 770.434.6868 Fax: 770.434.7376 taylorenglish.com

JONATHAN D. CRUMLY
DIRECT DIAL: (678) 426-4659
JCRUMLY@TAYLORENGLISH.COM

December 30, 2020

Via e-mail only to Liu.Katrina.Ti@dol.gov
Katrina Liu
Office of the Solicitor
US Department of Labor
200 Constitution Ave. N.W.
Suite N-4611
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.

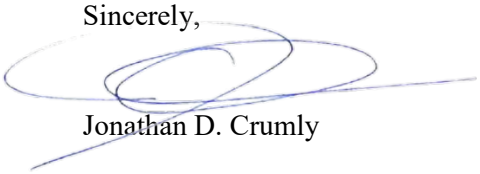
Id. (citation omitted). Our difference of opinion arises from your refusal to define, well over a year after DOL's exhaustive inquiry began, what said inquiry actually is. Consequently, we are left assuming DOL is simply asserting unfettered authority to cast about for potential wrongdoing without any 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

01920499-3

EXHIBIT J

[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

This Message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Employee Benefits Security Administration. If you think you have received this message in error, please notify the sender immediately

EXHIBIT K

[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]

--
Bill Bryan
Suffolk Administrative Services LLC
[redacted]

EXHIBIT L

[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]

[redacted]

[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]

[redacted]

EXHIBIT N

[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] MD [redacted]

EXHIBIT O

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

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EXHIBIT P

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]

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[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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EXHIBIT Q

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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
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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 R

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

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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 S

U.S. Department of Labor
Office of the Solicitor
Washington, D.C. 20210

April 26, 2024

VIA ELECTRONIC MAIL

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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
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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

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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

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Katrina,

PIC, Mr. Zieger, and Mr. Bryan are in agreement with these terms.

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CA | CT | FL | GA | IL | IN | KY | MA | NJ | NY | OH | PA | RI | TN | TX
Please read this important notice and confidentiality statement

---

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

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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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This message contains confidential information, intended only for the person(s) named above, which may also be privileged. Any use, distribution, copying or disclosure by any other person is strictly prohibited. If you have received this message in error, please notify us immediately by telephone (collect), and delete the original message without making a copy.

EXHIBIT U

Jonathan Crumly

From: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Sent: Tuesday, June 11, 2024 1:37 PM
To: Jonathan Crumly; Bob Chadwick; 'Roberta Watson'; 'Stephen Rosenberg'
Cc: Holz, Sarah D - SOL; Liu, Katrina T - SOL
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

Yes, that January 24 demand is still on the table (though of course the other injunctive pieces are still part of that demand). But we'd have to know relatively soon if your clients are interested in that offer, as we're planning on filing the complaint by the end of the week, and I can't promise what our client would be willing to do once we file.

Jeff Hahn
Counsel for Appellate and Special Litigation
U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
202-961-5182

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Tuesday, June 11, 2024 10:32 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

CAUTION: This email originated from outside of the Department of Labor. Do not click (select) links or open attachments unless you recognize the sender and know the content is safe. Report suspicious emails through the "Report Phishing" button on your email toolbar.

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
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
Jonathan.Crumly@fmglaw.com
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AZ | CA | CO | CT | DE | FL | GA | IL | IN | KY | MA | NJ | NM | NV | NY | OH | PA | RI | TN | TX | WA
Please read this important notice and confidentiality statement

---

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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Caution: This email originated from outside of the FMG organization. **Do not click links** or **open attachments** unless you recognize the sender and know the content is safe.

Counsel,

We are planning to file a complaint by the end of this week. Please advise whether you are authorized to accept service on behalf of your clients and/or whether your clients will waive service.

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 30, 2024 10:29 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan
Importance: High

Counsel,

We haven't received any additional information from your clients since our discussion on Tuesday. We are planning to file the complaint by COB today. Please advise whether you are authorized to accept service on behalf of your clients and/or whether your clients will waive service.

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 3:03 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Dear counsel,

Since we have not heard from you since our calls on Thursday, May 16, we are preparing to commence an action next week in the U.S. District Court of Puerto Rico against Suffolk Administrative Services, Providence Insurance Company, Alexander Renfro, Arjan Zieger, and William Bryan for violations of ERISA. The complaint will allege that SAS, PIC, Renfro, Zieger, and Bryan violated their fiduciary duties to self-funded ERISA plans and engaged in prohibited transactions by self-dealing and authorizing excessive 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
100 Galleria Parkway
Suite 1600
Atlanta, GA 30339-5948

Roberta Watson
Stephen Rosenberg
The Wagner Law Group
101 East Kennedy Boulevard
Suite 2140
Tampa, FL 33602

Thank you,

Katrina T. Liu | Senior Trial Attorney
Plan Benefits Security Division | Office of the Solicitor | U.S. Department of Labor
200 Constitution Ave. N.W., Suite N-4611, Washington, D.C. 20210
liu.katrina.t@dol.gov | (202) 693-5520
Pronouns: she, her, hers

EXHIBIT V

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

United States Court of Appeals

for the

First Circuit

Case No. 25-1886

LORI CHAVEZ-DEREME, Secretary of Labor, US Department of Labor,

Plaintiff-Appellee,

v.

SUFFOLK ADMINISTRATIVE SERVICES, LLC.;
PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO;
WILLIAM BRYAN; ARJAN ZIEGER,

Defendants.

DATA MARKETING PARTNERSHIP, LP;
LP MANAGEMENT SERVICES, LLC,

Interested Parties-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
OF PUERTO RICO AT SAN JUAN, IN CASE NO. 3:24-CV-01512-CVR

JOINT APPENDIX
Volume 3 of 3 (Pages JA808 to JA1407)

BLAIR LANE BYRUM
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Counsel for Interested Parties-Appellants

CP COUNSEL PRESS (800) 4-APPEAL • (390181)

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

LORI CHAVEZ-DEREMER, ACTING SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; *et al.,* Defendants-Counterclaim Plaintiffs.	Civil No.: 24-01512 (CVR)

MOTION TO INTERVENE

TO THE HONORABLE COURT:

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

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

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

WHEREFORE, Intervenors respectfully request the Court to take notice of the above and grant the requested relief.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 9th day of June 2025.

FREEMAN MATHIS & GARY, LLP

/s/ Jonathan Crumly
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Local Counsel for Intervenors

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

LORI CHAVEZ-DEREMER, ACTING SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; *et al.,* Defendants-Counterclaim Plaintiffs.	Civil No.: 24-01512 (CVR)

DMP AND LPMS' MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

TO THE HONORABLE COURT:

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

BACKGROUND

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

As a result of an unfavorable Advisory Opinion by the DOL in response to the AO Request, Intervenors sought to overturn the Advisory Opinion in the U.S. District Court for the Northern District of Texas, styled as *Data Marketing Partnership, LP, et al. v. U.S. Dept. of Labor, et al*., Civil Action No. 4:19-cv-00900-O ("Texas Suit"). Both the District Court and the Fifth Circuit, on appeal, vacated the Advisory Opinion as "arbitrary and capricious"; Intervenors now seek in the Texas Suit to enjoin the DOL from denying the ERISA-status of the Partnership Plans. In response to the Texas Suit, the DOL sought through "global settlement negotiations" to leverage the Anjo Investigation to obtain a (a) withdrawal by Intervenors of the AO Request by Intervenors, and (b) dismissal of the Texas Suit by Intervenors. Even though Defendants were not parties to the Texas Suit, the DOL knew from the Texas Suit that the Partnership Plans cannot operate without Defendants' services due, in part, to the Anjo Investigation.

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

GROUNDS FOR INTERVENTION AS OF RIGHT

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

"To intervene as of right under Rule 24(a)(2), a movant must demonstrate that: (i) the motion is timely; (ii) the movant has an interest relating to the property or transaction that is the subject of the action; (iii) the action's resolution may impair or impede the movant's ability to protect its interest; and (iv) no existing party adequately represents the movant's interest." *Aspen Am. Ins. Co. v. Luquis-Guadalupe*, No. CV 24-01277 (MAJ), 2024 WL 4456954 (D.P.R. Oct. 10, 2024); *see also T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 39 (1st Cir. 2020).

I. INTERVENORS' MOTION IS TIMELY FILED

Timeliness of filing an intervention of right depends on the "length of time that the putative intervenor knew or reasonably should have known that his interest was imperiled before he deigned to seek intervention." *In re Efron*, 746 F.3d 30, 35 (1st Cir. 2014) (finding no timeliness existed where an intervening party waited years until asserting his claim). Further, "'As a case progresses toward its ultimate conclusion, the scrutiny attached to a request for intervention necessarily intensifies.'" *Id.* (quoting *R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009)). "In the end, '[t]imeliness is to be gauged from all the circumstances, including the stage to which the proceedings have progressed before intervention is sought.'" *Id.* (quoting *Chase Manhattan Bank v. Corporacion Hotelera de P.R.,* 516 F.2d 1047, 1049 (1st Cir.1975) (per curiam)); *R & G Mortg. Corp.*, 584 F.3d at 9 (finding two-month delay unreasonable

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

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

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

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

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

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

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

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

III. Resolution of this Suit Could Impair or Impede Intervenors' Ability to Protect its Interests

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

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

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

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

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

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

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

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

ALTERNATIVELY, INTERVENORS SEEK PERMISSIVE INTERVENTION

In the alternative, Intervenors seek to intervene pursuant to Rule 24(b) of the Federal Rules of Civil Procedure. Courts may permit intervention for any party with a claim or defense that shares a common question of law or fact with the main action and where the intervention will not "unduly delay or prejudice the adjudication of the original parties' rights." *See* Fed. R. Civ. P. 24(b); *Melone v. Coit,* 100 F.4th 21, 28–29 (1st Cir. 2024). This inquiry is highly discretionary, and courts can consider "'almost any factor rationally relevant' in making that determination." *Melone*, 100 F.4th at 28-29 (citing *Daggett v. Comm'n on Gov. Ethics and Election Pracs.*, 172 F.3d 104, 113 (1st Cir. 1999)).

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

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

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

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

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

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

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

CONCLUSION

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

WHEREFORE, Intervenors respectfully request the Court to take notice of the above and grant the requested relief.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 9th day of June 2025.

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

LORI CHAVEZ-DEREMER, SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, Plaintiff-Counterclaim Defendant, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER, Defendants-Counterclaim Plaintiffs.	)	Civil No.: 3:24-cv-01512 (CVR)

COMPLAINT IN INTERVENTION

COME NOW Intervenors Data Marketing Partnership, LP ("DMP"), and LP Management Services, LLC ("LPMS") (collectively "Intervenors"), and by way of complaint against Plaintiff Secretary of Labor Lori Chavez-DeRemer ("Chavez-Deremer" or "the DOL") state as follows:

INTRODUCTION

1. This suit is a continuation of a collateral attack by the DOL against Suffolk Administrative Services ("SAS"), Providence Insurance Co., I.I. ("PIC"), Alexander Renfro ("Renfro"), William Bryan ("Bryan"), and Arjan Zieger ("Zieger") (collectively "Defendants") based upon their vendor relationships with single employer employee welfare plans ("Partnership Plans"), sponsored by Intervenors, which are the subject of (a) a 2019 request to the DOL for an advisory opinion ("AO Request") confirming their protection under the Employee Retirement Income Security Act ("ERISA), 29 U.S.C. § 1001, *et seq*.;[1] (b) a 2020 DOL Advisory Opinion

[1] Exhibit A attached hereto.

("Advisory Opinion") denying such protection;[2] and (c) litigation currently pending in the U.S. District Court for the Northern District of Texas, styled as *Data Marketing Partnership, LP, et al. v. U.S. Dept. of Labor, et al*., Civil Action No. 4:19-cv-00900-O ("Texas Suit"), in which both the District Court[3] and Fifth Circuit Court[4] vacated the Advisory Opinion as "arbitrary and capricious" and in which Intervenors seek to enjoin the DOL from denying the ERISA-status of the DMP Partnership Plan.[5]

2. In response to the AO Request, which alerted the DOL to the services provided by Defendants to the Partnership Plans, the DOL almost immediately launched an investigation of Defendants, which came to be known as the "Anjo Investigation." Contrary to the allegations of the *Complaint,* any unlawful behavior by Defendants was disproved in the Anjo Investigation.

3. In response to the Texas Suit, the DOL proposed settlement terms as to the Anjo Investigation which would have allowed SAS and PIC to continue to provide vendor services to the Partnership Plans, and other ERISA plans. The DOL's offer of settlement came with a major condition, however. The proposal was contingent upon the agreement of Intervenors to (a) withdraw the AO Request, and (b) dismiss the Texas Suit. Even though Defendants were not parties to the AO Request or the Texas Suit, the DOL knew from the Texas Suit that the Partnerships Plans cannot operate without Defendants' services, as there are no other vendors willing or able to provide such services due, in part, to the Anjo Investigation. The threat of this suit thus provided leverage against Intervenors which the DOL did not have in the Texas Suit. When Intervenors declined to withdraw the AO Request or dismiss the Texas Suit, the DOL

[2] Exhibit B attached hereto.
[3] Exhibit C attached hereto.
[4] Exhibit D attached hereto.
[5] By Order dated April 8, 2025, the District Court in the Texas Suit denied, as exceeding the scope of the Fifth Circuit's remand, Intervenors' Motion for Leave to File to file a Supplemental Complaint alleging the claims now set forth in this Complaint. Exhibit E attached hereto.

punished Defendants with this punitive suit seeking (a) monetary remedies—$40 million—which would effectively bankrupt SAS and PIC; and (b) an injunction "enjoining Defendants … from ever acting as a fiduciary, service provider or trustee" to any employee benefits plans, including the Partnership Plans.[6]

4. It is plain that this suit is inextricably intertwined with the AO Request, Advisory Opinion, and the Texas Suit, and is being prosecuted by the DOL for the improper purposes of (a) punishing Defendants for continuing to provide services to the Partnership Plans; (b) pressuring Defendants to sever their vendor relationships with the Partnership Plans; (c) "enjoining Defendants … from ever acting as a fiduciary, service provider or trustee" to the Partnership Plans; (d) punishing Intervenors for making and later not withdrawing the AO Request; (e) punishing Intervenors for filing and later not dismissing the Texas Suit; and (f) eventually rendering the Texas Suit moot by depriving the Partnership Plans of the vendor services provided by Defendants necessary to continue operations.

5. By such conduct, the DOL has been and is threatening the group health insurance of 30,000 individuals covered by the Partnership Plans.[7]

6. By such conduct, the DOL has been and is violating the First Amendment as to Intervenors and Defendants. As noted by the U.S. Supreme Court and other federal jurisprudence, the "threat of invoking legal sanctions and other means of coercion" by a government agency against a vendor "to achieve the suppression" or punishment of disfavored speech by a customer violates the First Amendment rights of both the customer and vendor. *NRA v. Vullo*, 602 U.S. 175, 176 (2024); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963); *see also NRA v. Los Angeles*, 441 F.Supp.3d 915, 934-38 (C.D. Cal, 2019). Here, Intervenors twice exercised their First

[6] *Complaint* ¶ 97 [Doc. 1], Attachment 1.
[7] *Complaint* ¶ 2, Note 1.

Amendment rights of petition by (a) submitting the AO Request; and (b) filing the Texas Suit. That this suit was brought to suppress or punish Intervenors for exercising their First Amendment rights, and to suppress or punish Defendants based upon their association with Intervenors is evidenced by (a) the timing of the Anjo Investigation, which commenced almost immediately after the AO Request; and (b) discussions preceding this suit in which the DOL expressly tied resolution of the claims against Defendants to the withdrawal of the AO Request and the dismissal of the Texas Suit by Intervenors.

7. By such conduct, the DOL has been and is acting contrary to the responsibility assigned to it by ERISA. As recognized by the U.S. Supreme Court, one of the purposes of ERISA is "to promote and facilitate employee benefit plans." *See Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon,* 541 U.S. 1, 17 (2004). As noted by both the District Court and the Fifth Circuit in the Texas Suit, the DOL has already acted contrary to these purposes in issuing the Advisory Opinion as to the Partnership Plans. Now, the DOL is doubling down on its rejected position by seeking to end the Partnership Plans altogether, which would be the inevitable result if the relief sought by the DOL in this suit is ordered by this Court. Thus, the DOL seeks in this suit to accomplish what ERISA expressly forbids—the dismantling of a lawful ERISA plan.

8. In defense of its collateral attack against Defendants and Intervenors, the DOL claims sovereign immunity.[8] However, as set forth in the Administrative Procedure Act ("APA"): "An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States." 5 U.S.C. § 702. In bringing this Complaint, Intervenors do not

[8] *Memorandum in Support of the Secretary's Motion to Dismiss Defendants' Original Counterclaim for Declaratory Relief* [Doc. 48-1].

seek damages; they seek only declaratory and injunctive relief for the DOL's unconstitutional and unlawful prosecution of this suit. Contrary to the DOL's claims, therefore, sovereign immunity is not a defense to such relief. *See U.S. v. Gilead Sciences, Inc*., 5151 F.Supp.3d 241, 254-55 (D.Del. 2021); *see also Delano v. Calif. Table Grape Comm'n*, 655 F.3d 1337, 1344 (Fed. Cir. 2011).

9. In defense of this collateral attack, the DOL also claims litigation discretion. *See* 5 U.S.C. § 701(a)(2). It is settled law, however, that litigation discretion does not extend to constitutional violations, as alleged here. *See Rueda Vidal v. U.S. Dept. of Homeland Security,* 536 F.Supp.3d 604, 618 (C.D. Cal. 2021). Litigation discretion likewise does not extend to agency action contrary to established law or congressional intent, as alleged here. *See Electricities of North Carolina, Inc. v. Southeastern Power Admin*., 774 F.2d 1262, 1267 (4th Cir. 1985); *see also Cardoza v. CFTC*, 768 F.2d 1542, 1547 (7th Cir. 1985) (claiming reviewal authority when not to do so would "'frustrate Congressional intent"'). Contrary to the DOL's claims, therefore, litigation discretion is not a defense to this Complaint.

10. In defense of this collateral attack, the DOL also claims this suit is not a final agency action. This claim incorrectly presumes this Complaint turns entirely on the merits of this suit. It does not. Federal jurisprudence has long held that otherwise lawful action by government officials can still run afoul of the law if motivated by an unlawful purpose. See *Bantam Books, Inc. v. Sullivan, supra*; *NRA v. Vullo*, *supra*; *NRA v. Los Angeles, supra*; *see also American Motor Club, Inc. v. Corcoran*, 644 F.Supp. 862 (S.D.N.Y. 1986); *Floridians Protecting Freedom, Inc. v. Ladapo*, et al, Case No. 4:24-cv-00419 (N.D. Fla.). Accordingly, the DOL has violated the law merely by threatening to file this suit and continues to violate the law by prosecuting this suit.

11. In defense of this collateral attack, the DOL also claims the Partnership Plans "are not among the Participating Plans at issue in this" suit.[9] This claim is false. In addition to the

[9] *Complaint* ¶ 2, Note 1.

blatant actions described in Paragraph 3 above, through which the DOL unilaterally tied these matters together in order to gain improper coercive leverage in the Texas suit, numerous other facts belie the DOL's assertion. The $40 million demand in the cover sheet to this suit includes funds attributed to the Partnership Plans. The M-1 reports sought by this suit, as to an alleged multiple employer welfare arrangement ("MEWA"),[10] would require the reporting of the "[t]total number of participants covered under the entity", including participants in the Partnership Plans. This suit seeks to enjoin Defendants "from ever acting as a fiduciary, service provider, or trustee to any plan covered by Title I of ERISA", including the Partnership Plans.[11] Contrary to the DOL's claims, therefore, the Partnership Plans simply cannot be excised from the broad, albeit frivolous, allegations here.

12. In short, the U.S. Constitution, APA and ERISA do not simply provide defenses to this suit, they provide viable grounds for claims against the DOL based on its improper motivation in bringing this suit. This Complaint seeks to hold the DOL accountable.

PARTIES

13. 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).

14. Chavez-Deremer is the Secretary of Labor and is sued solely in her official capacity.

15. 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.

16. 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.

[10] *Complaint* ¶ 92.
[11] *Complaint* ¶ 97.

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

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

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

20. DMP is a Texas limited liability partnership.

21. LPMS is the general partner of DMP.

JURISDICTION AND VENUE

22. 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).

23. Venue as to this Complaint is proper in this district under Rule 24 of the Federal Rules of Civil Procedure.

FIRST AMENDMENT

24. The First Amendment "right to petition the government for a redress of grievances is "one of the most precious of the liberties safeguarded by the Bill of Rights," and is "high in the hierarchy of First Amendment values." *Lozman v. City of Riviera Beach, Fla*., 585 U.S. 87, 101 (2018). "The right to petition is cut from the same cloth as the other guarantees of [the First] Amendment, and is an assurance of a particular expression of freedom." *McDonald v. Smith,* 472 U.S. 479, 482 (1985). The right to petition the government for redress of grievances is such a fundamental right as to be "implied by '[t]he very idea of a government, republican in form.'" *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 524-25 (2002).

25. The right to petition "extends to all departments of the Government", including administrative agencies and courts. *Cal. Motor Transport Co. v. Trucking Unlimited,* 404 U.S. 508, 510 (1972) ("The right of access to the courts is indeed but one aspect of the right of petition").

The right to petition includes not just petitions to redress grievances but petitions to influence government action. *E.R.R. Pres. Conf. v. Noerr Motor Freight, Inc.,* 365 U.S. 127, 143 (1961).

26. It is a violation of the First Amendment for the federal government to directly or indirectly thwart, or endeavor to thwart, the availability of judicial machinery to resolve disputes with a federal court. *Doe v. Schneider*, 443 F.Supp. 780, 787 (D. Kan. 1978). An unconstitutional deprivation of the right of access to the courts takes place "when government officials thwart vindication of a claim by violating basic principles that enable civil claimants to assert their rights effectively." *Barrett v. U.S..*, 798 F.2d 565, 575 (2nd Cir. 1986).

27. "Retaliation, though it is not expressly referred to in the Constitution, is nonetheless actionable because retaliatory actions may tend to chill individuals' exercise of constitutional rights." *ACLU of Md., Inc. v. Wicomico County,* 999 F.2d 780, 785 (4th Cir. 1993).

28. Even otherwise lawful conduct by government officials can run afoul of the First Amendment. In *Bantam Books, Inc. v. Sullivan*, *supra*, the Supreme Court affirmed that the First Amendment prohibits government officials from relying on the "threat of invoking legal sanctions and other means of coercion … to achieve the suppression" of disfavored speech. Just this past term, in *NRA v. Vullo*, *supra*, the Supreme Court acknowledged in a 9-0 decision that actionable coercion includes actions directed at vendors which do business with the person or entity who exercised rights guaranteed by the First Amendment. Similarly, in *American Motor Club, Inc. v. Corcoran*, 644 F.Supp. 862 (S.D.N.Y. 1986), the U.S. District Court for the Southern District of New York issued a preliminary injunction against the New York Department of Insurance which, in response to a civil rights action against the Department by an automobile club, allegedly threatened the licenses of brokers who sold memberships in the automobile club. *See also Floridians Protecting Freedom, Inc. v. Ladapo,* 754 F. Supp. 3d 1165, 1175-76 (N.D. Fla. 2024)

29. Federal jurisprudence has held that First Amendment protections can extend to business partners based upon their association with a person or organization who has exercised a right protected by the First Amendment. If a governmental action would chill a business partner of ordinary firmness from associating with a person who has exercised a right protected by the First Amendment, the business partner is also protected. *See NRA v. Los Angeles*, 441 F.Supp.3d 915, 934-38 (C.D. Cal, 2019).

30. Federal courts are empowered to issue general injunctive relief that enjoins a government defendant from retaliating against or otherwise infringing upon a plaintiff's rights under the First Amendment. *Mahan v. Texas Dept. of Public Safety*, No. 9:20-CV-119-RC-ZJH, 2020 WL 6935555 at *3 (E.D.Tex. Oct. 29, 2020).

ERISA

31. A primary purpose of ERISA is "to promote and facilitate employee benefit plans." *Raymond B. Yates*. 541 U.S. at 17. Another primary purpose of ERISA is "uniform national treatment of … benefits." *Id*.

32. 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."

33. 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." *Cent. States, Se. & Sw. Areas Pens. Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985).

HISTORY OF APA VIOLATIONS BY THE DOL

34. 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 this Court and the Fifth Circuit in this suit, federal jurisprudence nevertheless has repeatedly found the DOL to have exceeded or abused its statutory authority in violation of the APA.

35. 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, the DOL rule regarding association health plans under ERISA.

36. 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 the 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.

37. 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 the 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]."

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

39. 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 the DOL interpreting its ERISA Prohibited Transaction Exemption 2020-02, 85 Fed.Reg. 82798 (Dec. 18, 2020).

40. 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").

41. 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.

42. In *Restaurant Law Center v. United States Department of Labor*, 120 F.4th 163, 177 (5th Cir. 2024), the Fifth Circuit vacated the DOL's so-called "Final Rule" adding onto the previous 80/20 Rule that governed how tipped employees must be paid under the FLSA.

43. 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.

44. In *New York v. Scalia*, 490 F.Supp.3d 758, 796 (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.

45. 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 enforcement of the SCOL's farmworker protection rule during pendency of the case or until the court's further orders.

46. In *Tex. v. United States Dep't of Labor*, 756 F. Supp. 3d 361, 399 (E.D. Tex. 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.

FACTS

I. BACKGROUND

A. The DMP Plan

47. 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.

48. 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.

49. As a business seeking to profit from the electronic data generation, aggregation, and sales market, DMP must collect and aggregate data generated by as many active users of its proprietary software and mobile applications as possible.

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

51. To attract and retain limited partners willing to contribute the data they generate for aggregation and sale, DMP established the DMP Plan, an ERISA plan with its employees being the limited partners as working owners contributing their data. The DMP Plan provides health

coverage more affordable than found elsewhere in non-ERISA plans, in particular those sold to individuals on the various "exchanges" established under the Patient Protection and Affordable Care Act (ACA).

52. Without the DMP Plan as a recruiting and retention tool, DMP would not be able to successfully 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

53. 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.

54. Dozens of companies, including DMP, are currently competing with each other to gain market share in the user-driven electronic data aggregation space, which is colloquially known as "Own Your Data," or "OYD." Without the DMP Plan as a recruiting and retention tool, DMP would be severely hampered in its ability to compete in OYD, by attracting and retaining limited partners willing to generate and contribute their data as working owners for the business purpose of the limited partnership.

C. SAS

55. The Partnership Plans, including the DMP Plan, were established with the irreplaceable assistance of SAS. SAS expended resources, time, and expertise to develop compliance structures and products tailored to assist LPMS in implementing the novel Partnership Plan structure through limited partnerships such as DMP.

56. Intervenors 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.

57. There are no companies other than SAS able and willing to provide the compliance services to plans that utilize the structure of the Partnership Plans. As the Partnership Plans are based upon a unique combination of employees and working owners or partners, no companies other than SAS have experience servicing such structures.

D. PIC

58. The Partnership Plans, including the DMP Plan, obtain reinsurance, or stop-loss insurance, from PIC to cover the potential significant financial exposure inherent in sponsoring self-insured group health plans.

59. PIC expended resources, time, and expertise to develop insurance and reinsurance products tailored to assist LPMS in implementing the Partnership Plans structure through limited partnerships such as DMP.

60. LPMS and DMP do not have the revenues to properly manage the risk of covered claims exceeding contributions without the stop-loss insurance provided by PIC.

61. There are no insurance carriers other than PIC willing to underwrite the risk of covered claims exceeding contributions to the Partnership Plans. Indeed, LPMS has reached out to several A-rated insurance carriers about providing reinsurance or stop loss insurance for the Partnership Plans. Each has declined to provide insurance to the Partnership Plans, in part due to the negative Advisory Opinion by the DOL.

E. What End of Services of SAS and PIC Would Mean to DMP and LPMS

62. Without the services provided by SAS and reinsurance provided by PIC, DMP could not continue the DMP Plan and LPMS could not continue the other Partnership Plans.

63. If the DMP Plan and the Partnership Plans are discontinued, DMP and the other LPMS managed limited partnerships would have significantly more difficulty attracting and

retaining partners, thus threatening the long-term viability their core businesses, which rely upon achieving sufficient scale to profitably monetize electronic data.

II. INTERVENORS PETITION THE DOL FOR AN ADVISORY OPINION

64. As set forth in ERISA Procedure 76-1, the DOL "invites inquiries of individuals or organizations affected, directly or indirectly, by the Employee Retirement Income Security Act …. as to their status under the Act and as to their status under the Act."

65. In 2018, Renfro was retained as legal counsel for LPMS to assist it in pursuing an advisory opinion from the DOL concerning a novel application of the "working owner" theory to the proposed Partnership Plans. At the time, Renfro was a principal of and salaried consultant to SAS, and provided services to LPMS with the consent and participation of SAS, facts which are known to the DOL.

66. In October 2018, 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 was 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.

67. At the meeting, Renfro and other LPMS representatives explained the Partnership Plan structure to DOL representatives and provided high level detail of the goals of the plan and the business structure sought to be implemented by LPMS. Assistant Secretary Rutledge told the representatives that an Advisory Opinion Request was the best route to ensure approval of the Plan by the DOL. Renfro drafted and submitted the AO Request after this meeting.

68. On Nov. 8, 2018 Renfro submitted the AO Request under ERISA Procedure 76-1 to the DOL on behalf of LPMS, for the Partnership Plans. Following several telephone

conversations between LPMS representatives and DOL officials, revisions to the AO request were submitted on Jan. 15, 2019, and Feb. 27, 2019.

69. The AO Request detailed the legal and factual basis for application of ERISA to the Partnership Plans building upon the recognized concept under ERISA of "working owners," including the concepts recognized by the U.S. Supreme Court in *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon,* 541 U.S. 1 (2002), and the DOL in Advisory Opinion 99-04A.

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

71. 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 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.[12]

72. The DOL only became aware of Defendants through the AO Request.

III. DOL INITIATES ANJO INVESTIGATION AND THREATEN LITIGATION

73. Within weeks of the March 6, 2019 meeting, the DOL began aggressive systematic efforts to discredit and dismantle the Partnership Plans. In what came to be known as the "Anjo Investigation," the DOL began requesting information and issuing subpoenas, targeting Defendants.

74. Shortly after opening the Anjo Investigation, the DOL issued numerous requests for information and subpoenas not only to SAS and PIC, but also to numerous entities doing

[12] Exhibit E attached hereto.

business with SAS or PIC.[13]. The subpoenas were issued despite the DOL having never posed a single written question or other formal response to the AO Request.

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

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

77. Additionally, existing vendors of SAS and PIC reduced or terminated relations with SAS and PIC as a result of the Anjo Investigation.

78. On Nov. 6, 2020, 20 months after the commencement of the Anjo Investigation, counsel for SAS and PIC sent a letter to all known DOL officials involved in the investigation in an effort to seek clarity on its purpose, scope, and need[14].

79. On Dec 14, 2020, , Katrina Liu, Trial Attorney, Office of the Solicitor of the DOL (also an attorney representing the DOL in the instant litigation), responded on behalf of the DOL with a letter asserting 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.[15]

[13] Exhibit F attached hereto.
[14] Exhibit G attached hereto.
[15] Exhibit H attached hereto.

80. 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 December 14th letter.[16]

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

82. The Anjo Investigation ultimately prompted a suit in the U.S. District Court for the District of Puerto Rico on Jan. 19, 2021 against the DOL, styled as *Suffolk Administrative Services, LLC, et al. v. U.S. Department of Labor, et al*, Cause No. 3:21-CV-01031. This suit was dismissed on March 28, 2022, on the ground of lack of ripeness without addressing the substantive merits.

83. On July 21, 2022, after over three years of seemingly endless subpoenas and "investigation," the DOL finally gave notice to Defendants as to the substance of its Anjo Investigation and alleged violations of ERISA.[17]

84. After July 21, 2022, Defendants were engaged in active settlement negotiations with the DOL.

85. Nearly one year later, on June 8, 2023, the DOL submitted its first threat of suit against Defendants which included an express demand for injunctive and monetary relief.[18]

86. Progress towards settlement between the DOL and Defendants was very slow between June 2023 and January 2024. During this time, the DOL and Defendants entered into several tolling agreements which (1) extended the statute limitations for legal action, and (2)

[16] Exhibit I attached hereto.
[17] Exhibit J attached hereto.
[18] Exhibit K attached hereto.

precluded the DOL and Defendants from initiating any legal proceedings with respect to the Anjo Investigation.

87. Under a continuing threat of litigation, Defendants sent the Anjo Targets, on Jan. 24, 2024, a demand for $15 million, a figure which would severely and negatively impact the companies and potentially force SAS and PIC to file for bankruptcy protection.

IV. THE DOL DIRECTLY TIES FATE OF THREATENED LITIGATION AGAINST DEFENDANTS TO INTERVENORS' FIRST AMENDMENT PETITIONS[19]

88. On Jan. 11, 2024, counsel for Intervenors sent a letter to counsel for the DOL as to potential settlement discussions in this suit.[20].

89. In response, the DOL sent an e-mail on February 8, 2024 to Intervenors and Defendants proposing "global" settlement discussions as to the Texas Suit and the Anjo Investigation.[21] Counsel for Intervenors and Defendants replied that although one individual attorney – Jonathan Crumly of Freeman, Mathis, & Gary – had at times represented some parties in each matter, the parties were nevertheless distinct, sharing no common ownership or control.

[19] 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. Wash. 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 the DOL are themselves the basis of this Complaint in Intervention, 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)).

[20] Exhibit L attached hereto.

[21] Exhibit M attached hereto.

Further, Mr. Crumly did not and does not represent all of the targets of the Anjo Investigation, and each party was and is represented by additional counsel. Counsel made these facts clear to the DOL and also stressed that no "global settlement" which favored one or more parties at the expense of others would be possible, nor could any attorney ethically advise any client to accept demands against its self-interest in order to assist another, separate client. The DOL nonetheless pressed for "global settlement." Notably, in addition to demands made for PIC and SAS, one of the DOL's demands was that Intervenors drop their AO Request and the Texas Suit.

90. Thereafter, settlement discussions as to the Anjo Investigation accelerated substantially once Intervenors and Defendants agreed to participate in "global settlement discussions." The DOL's monetary demands for settling with Defendants lowered considerably over the next two months. As the demands for settling with Defendants were lowered, the DOL revealed its true purpose in pursuing global settlement: An inflexible demand that the Intervenors dismiss the Texas Suit entirely and withdraw the AO Request.

91. That any settlement with Defendants was entirely dependent upon the dismissal of the Texas Suit was made plain in the DOL's April 26, 2024 demand. The settlement demand was $5.5 million as to Defendants but was contingent upon the withdrawal of the AO Request and the dismissal of the Texas Suit by Intervenors.[22]

92. On Friday, May 10, 2024, counsel for the DOL directly stated to counsel for Intervenors and Defendants that if the Texas Suit was not dismissed, the monetary demands for settling threatened litigation against Defendants would increase.

93. On Thursday, May 23, 2024, counsel for the DOL repeated that the AO Request needed to be withdrawn, and the Texas Suit needed to be dismissed, by Intervenors as part of a

[22] Exhibit N attached hereto.

settlement with Defendants. Counsel for the DOL stated that either both matters were settled together, or neither matter would be settled.

94. In an e-mail dated Monday, May 27, 2024, counsel for the DOL again tied the settlement with Defendants to the dismissal of the Texas Suit by Intervenors.[23]

95. On Tuesday, May 28, 2024, counsel for the DOL stated that if the Texas Suit was not dismissed by Intervenors, the DOL's monetary settlement demand as to Defendants would increase from $5.5 million inclusive of penalties back up to $15 million inclusive of penalties, the last demand from the DOL before it tied this suit to the settlement with Defendants.

96. On Tuesday, June 11, 2024, counsel for the DOL responded to an inquiry from counsel for Defendants as to whether the January 24, 2024 demand of $15 million was still on the table if the Texas Suit was not dismissed by Intervenors. The e-mail responded: "Yes, that January 24 demand is still on the table… But we'd have to know relatively soon if your clients are interested in that offer, as we're planning on filing the complaint by the end of the week, and I can't promise what our client would be willing to do once we file."[24] (See Exhibit N, attached hereto)

97. Counsel for 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 Defendants were capable of meeting.

98. Intervenors did not agree to undo the findings of the District Court and Fifth Circuit by dismissing the Texas Suit, or to withdrawing the AO Request. As a result, the DOL demanded

[23] Exhibit O attached hereto.
[24] Exhibit P attached hereto.

payment of $15 million in a time frame which would likely bankrupt SAS and PIC to avoid a costly federal complaint against them in the U.S. District Court for the District of Puerto Rico.

99. On Thursday, October 31, 2024, the DOL sent Defendants, through their legal counsel, an e-mail expressly referencing previous settlement negotiations tying this case to the Anjo Investigation and other investigations.[25] The e-mail advised:

> "It appears we have reached an impasse. Accordingly, with the tolling period expiring on November 6, the Department will prepare to file suit before that date. Please advise as soon as possible if anything changes for your clients. Otherwise, **please let us know if you will accept service of the complaint on behalf of your clients via email**. [emphasis in original]."

Previous e-mails had indicated any suit would be filed in the U.S. District Court for the District of Puerto Rico.

VI. THIS SUIT

100. On Nov. 5, 2024, the DOL carried through on their threats by filing this suit against Defendants.

101. Subject to the withdrawal by Intervenors of the AO Request, and the dismissal by Intervenors of the Texas Suit, the DOL was willing to settle the Anjo Investigation for $5.5 million. Now that Intervenors have refused to withdraw the AO Request and dismiss the Texas Suit, the DOL claims damages of more than seven (7) times the amount of $5.5 million, which would effectively bankrupt SAS and PIC and prevent them from servicing the Partnership Plans.

102. Only upon Intervenors withdrawing its AO Request and dismissing its Texas Suit was the DOL was willing to settle the Anjo Investigation under terms allowing SAS and PIC to continue operations. Now that Intervenors have refused to withdraw the AO Request and dismiss the Texas Suit, the DOL seeks to enjoin Defendants "from ever acting as a fiduciary, service provider, or trustee to any plan covered by Title I of ERISA", including the Partnership Plans.

[25] Exhibit Q attached hereto.

COUNT I: VIOLATION OF FIRST AMENDMENT RIGHTS AS TO AO REQUEST

103. Intervenors incorporate and re-allege the allegations in paragraphs 1 to 102 as if fully set forth herein.

104. The AO Request was a petition by Intervenors protected by the First Amendment of the Constitution regarding a matter of public concern, i.e., the applicability of ERISA to Partnership Plans providing health coverage to more than 30,000 individuals.

105. The DOL has intentionally undertaken the following actions to obstruct, chill, deter, and retaliate against Intervenors for submitting the AO Request, and/or to coerce Intervenors to withdraw the AO Request:

a. Launching the Anjo Investigation as to Defendants, which the DOL knew, based upon the AO Request, provided services essential to the continued operation of the Partnership Plans;

b. Making unsupported allegations of wrongdoing against Defendants, with inflated monetary demands, and refusing to consider or acknowledge evidence provided by Defendants which largely, if not entirely, refutes or mitigates said allegations and monetary demands;

c. Making exorbitant unwarranted monetary demands on Defendants, under threat of litigation;

d. Conditioning settlement on achievable terms with Defendants on the withdrawal of the AO Request by Intervenors;

e. Conditioning settlement with Defendants, after Intervenors refused to withdraw the AO Request, on a public complaint which threatened to jeopardize their reputations in the employee benefits industry; and

f. Threatening imminent litigation, and now filing litigation contemporaneous to the Texas Suit, against Defendants, after Intervenors refused to withdraw the AO Request.

106. Such actions have been undertaken by the DOL with full knowledge as to their potential devastating impact on the Partnership Plans.

107. The DOL's unlawful and intentional actions are not justified by a substantial or compelling government interest and are not narrowly tailored to serve any such interest.

108. As a direct and proximate result of the DOL's unlawful conduct as alleged under this Count, the DMP Plan and the other Partnership Plans now face imminent, irrevocable, and irreparable harm which includes (a) the end of the DMP Plan and Partnership Plans and the termination of health insurance for more than 30,000 individual participants; or (b) vulnerability of the DMP Plan and Partnership Plans to regulation under state law rather than ERISA. Accordingly, Intervenors seek and are entitled to a permanent injunction enjoining the DOL from engaging in any conduct against Intervenors or third parties which is intended to circumvent, moot or otherwise thwart the injunction or its issuance in the Texas Suit.

COUNT II: VIOLATION OF FIRST AMENDMENT RIGHTS AS TO TEXAS SUIT

109. Intervenors incorporate and re-allege the allegations in paragraphs 1 to 108 as if fully set forth herein.

110. The *First Amended Complaint,* filed in the Texas Suit by Intervenors on Feb. 3, 2020, was a petition protected by the First Amendment of the Constitution regarding a matter of public concern, i.e., the applicability of ERISA to the Partnership Plans providing health coverage to more than 30,000 individuals.

111. The DOL has intentionally undertaken the following actions to obstruct, chill, deter, and retaliate against Intervenors for filing the *First Amended Complaint*, and/or to coerce Intervenors to dismiss the Texas Suit:

a. Making exorbitant unwarranted monetary demands on Defendants, under threat of litigation;

b. Making unsupported allegations of wrongdoing against Defendants, with inflated monetary demands, and refusing to consider or acknowledge evidence provided by Defendants which largely, if not entirely, refutes or mitigates said allegations and monetary demands;

c. Conditioning settlement on achievable terms with Defendants on the dismissal of the Texas Suit by Intervenors;

d. Conditioning settlement with Defendants, after Intervenors refused to dismiss the Texas Suit, on a public complaint which threatened to jeopardize their reputations in the employee benefits industry; and

e. Threatening imminent litigation, and now filing contemporaneous litigation contemporaneous to the Texas Suit, against Defendants because Intervenors refused to dismiss the Texas Suit.

112. Such actions have been undertaken by the DOL with full knowledge as to their potential devastating impact on the Partnership Plans.

113. The DOL's unlawful and intentional actions are not justified by a substantial or compelling government interest and are not narrowly tailored to serve any such interest.

114. As a direct and proximate result of the DOL's unlawful conduct as alleged under this Count, the DMP Plan and the other Partnership Plans now face imminent, irrevocable, and irreparable harm which includes (a) the end of the DMP Plan and Partnership Plans and the

termination of health insurance for more than 30,000 individual participants; or (b) vulnerability of the DMP Plan and Partnership Plans to regulation under state law rather than ERISA. Accordingly, Intervenors seek and are entitled to a permanent injunction enjoining the DOL from engaging in any conduct against Intervenors or third parties which is intended to circumvent, moot or otherwise thwart the injunction or its issuance in the Texas Suit.

COUNT III: VIOLATION OF APA

115. Intervenors incorporate and re-allege the allegations in paragraphs 1 to 114 as if fully set forth herein.

116. Intervenors are suffering legal harm because of the threats imposed by the DOL against Defendants and are otherwise adversely affected or aggrieved by such action, within the meaning of 5 U.S.C. § 702.

117. 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."

118. 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."

119. 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."

120. 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."

121. It is a clear abuse of power for the DOL, in violation of 5 U.S.C. § 706(2)(A), to sue or threaten imminent litigation against Defendants, not on the basis of their own actions or inactions, or any losses to the plans which they service, but rather to obstruct, chill, deter, and retaliate against Intervenors for (a) sponsoring the DMP Plan and the Partnership Plans; (b) sending an AO Request to the DOL; and (c) filing the Texas Suit against the DOL.

122. It is likewise a clear abuse of power for the DOL, in violation of 5 U.S.C. § 706(2)(B), to sue or threaten imminent litigation against Defendants, not on the basis of their own actions or inactions, or any losses to the plans which they service, but rather to obstruct, chill, deter, and retaliate against Intervenors, for (a) creating the DMP Plan and the Partnership Plans; (b) sending an AO Request to the DOL; and (c) filing the Texas Suit against the DOL.

123. It is also in clear excess of the authority of the DOL, in violation of 5 U.S.C. § 706(2)(C), for them to sue or threaten imminent litigation against Defendants, not on the basis of their own actions or inactions, or any losses to the plans which they service, but rather to obstruct, chill, deter, and retaliate against Intervenors for (a) creating the DMP Plan and the Partnership Plans; (b) sending an AO Request to the DOL; and (c) filing the Texas Suit against the DOL.

124. As a direct result of the DOL's unlawful conduct as alleged under this Count, the DMP Plan and other Partnership Plans now face imminent, irrevocable, and irreparable harm which includes (a) the end of the DMP Plan and the Partnership Plans and the termination of health coverage for more than 30,000 individual participants or (b) vulnerability of the DMP Plan and Partnership Plans to regulation under state law rather than ERISA. Accordingly, Intervenors seek and are entitled to a permanent injunction enjoining the DOL from engaging in any conduct against

Intervenors or third parties which is intended to circumvent, moot or otherwise thwart the injunction or its issuance by the Court.

PRAYER FOR RELIEF

WHEREFORE Intervenors demand the dismissal of the Complaint and judgment against the DOL and in favor of Intervenors as follows:

A. That this Court declare the conduct of the DOL violated and continues to violate the First Amendment.

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

C. That this Court issue a permanent injunction enjoining the DOL from engaging in any conduct against Intervenors or Defendants in violation of the First Amendment or the APA.

D. Award Intervenors 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 9th day of June 2025.

FREEMAN MATHIS & GARY, LLP

/s/ Jonathan Crumly
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Local Counsel for Intervenors

EXHIBIT A

The Law Office of Alexander Renfro

November 8, 2018

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.

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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).

---

[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

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

[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

ALEXANDER T. RENFRO, JD, LLM

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EXHIBIT B

U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

January 24, 2020

Alexander T. Renfro, JD, LLM
The Law Office of Alexander Renfro
3200 West End Avenue, Suite 500
Nashville, TN 37204

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

[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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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
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE
70804-9005

Jeff Landry
Attorney General

February 21, 2019

The Honorable Alexander Acosta
Secretary of Labor
200 Constitution Ave. NW
Washington, DC 20210
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.

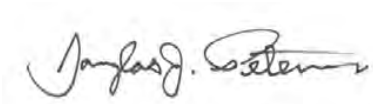
Respectfully yours,

Jeff Landry
Louisiana Attorney General

Chris Carr
Georgia Attorney General

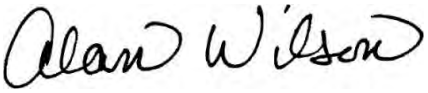
Leslie Rutledge
Arkansas Attorney General

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

The Law Office of Alexander Renfro

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]

[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 from the same source that sponsors said group health plan[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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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:

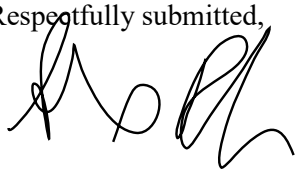
(1) The single-employer self-insured group health plan sponsored by LP is an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

(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,



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[26] See IRC § 162(l)(2-5).

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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

Jeffrey A. Monhart, Regional Director

ERSA 300 (Rev. 6-12)

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.

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 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

ERSA 209 (Rev. 6-75)

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.

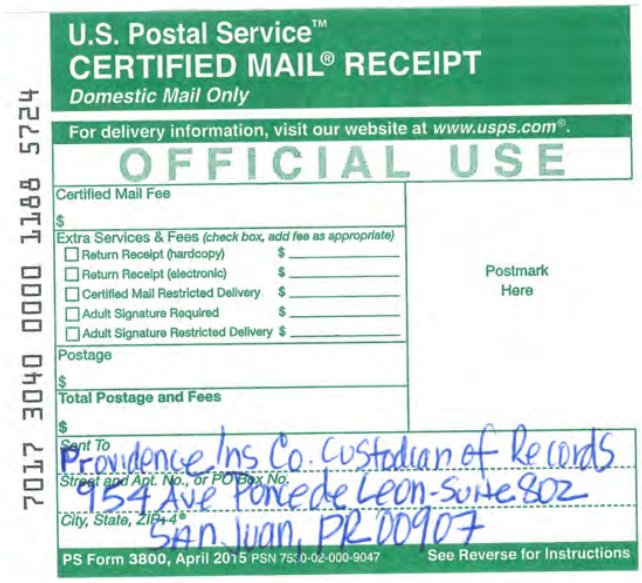
27. Fidelity bond(s) currently in effect for any Employee Welfare Benefit Plans to whom You provide Services.

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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- ☐ Adult Signature Restricted Delivery $

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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.

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

EBSA 200 (Rev. 6-12)

ATTACHMENT TO SUBPOENA
Providence Insurance Partners, LLC

DEFINITIONS

A. "Providence," "Company," "You," and "Your" shall mean Providence Insurance Partners, LLC, a Tennessee Limited Liability Company, including any predecessors, successors, affiliates or parent companies, its officers and directors, employees or anyone acting on behalf of Providence Insurance Partners, 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 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

EBSA 200 (Rev. 6-12)

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.

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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   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

61 Forsyth Street SW
Atlanta, Georgia 30303 Ste 7B54

Official Business
Penalty for Private Use, $300

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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

JA981

Case: 25-1886 Document: 00118402576 Page: 179 Date Filed: 02/11/2026 Entry ID: 6785192

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

EBSA 200 (Rev.6-12)

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.

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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 21 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 A. Monhart

Jeffrey A. Monhart, Regional Director

EBSA 200 (Rev. 6-12)

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.

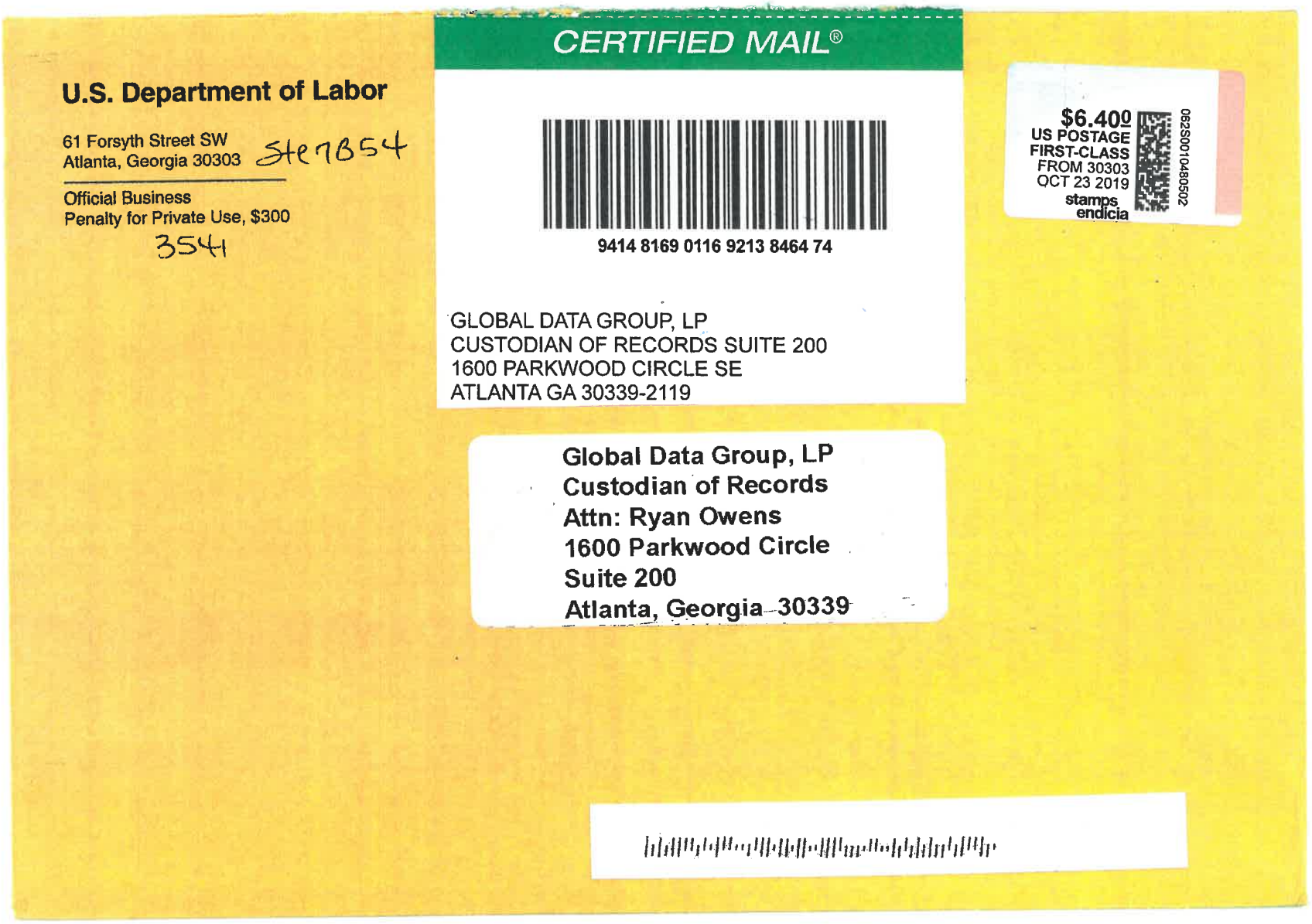
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

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.



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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

JA1009

Case: 25-1886 Document: 00118402576 Page: 207 Date Filed: 02/11/2026 Entry ID: 6785192

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

EBSA 209 (Rev. 6-12)

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.

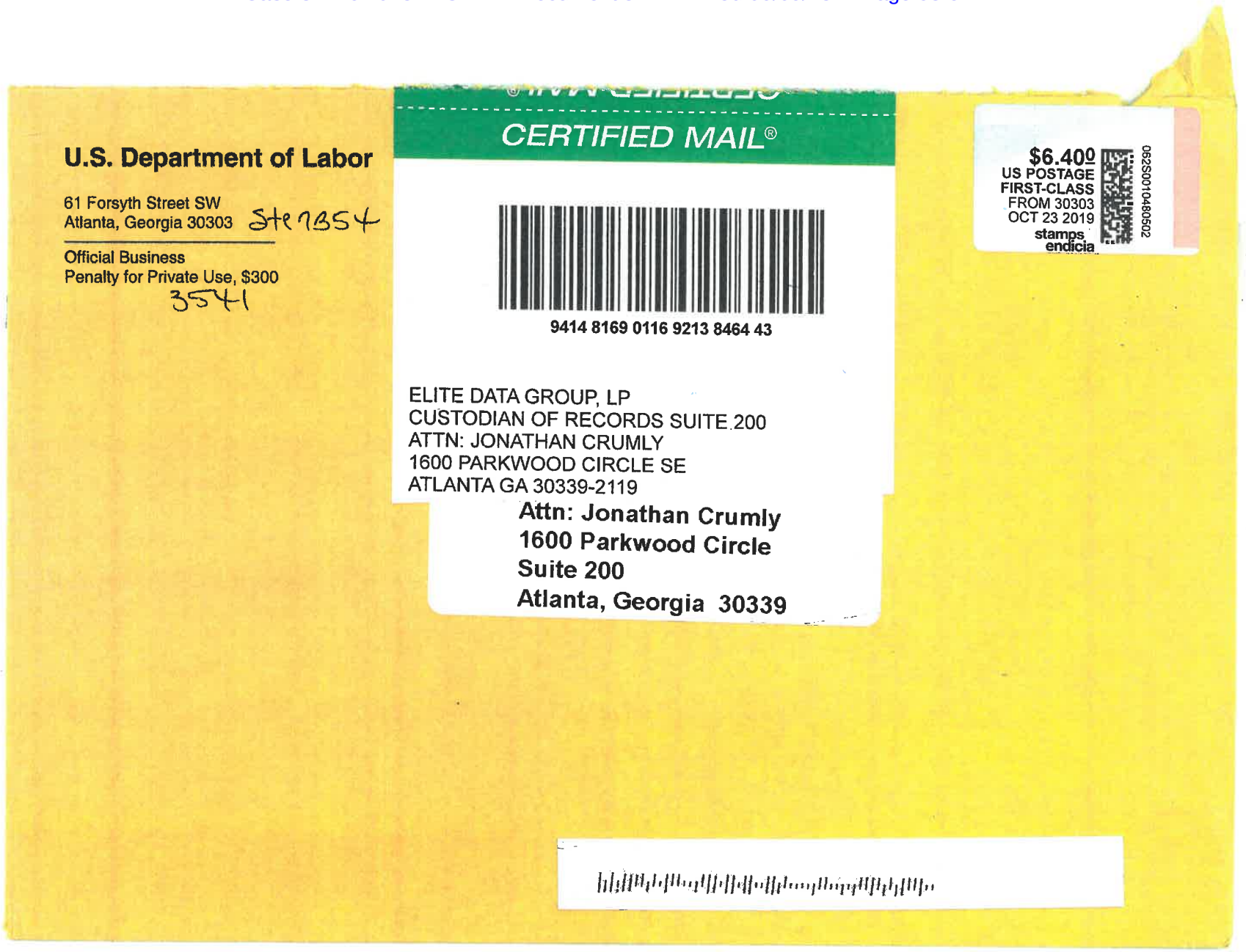
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

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

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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

JA1023

Case: 25-1886 Document: 00118402576 Page: 221 Date Filed: 02/11/2026 Entry ID: 6785192

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 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 from A Monhart

Jeffrey A. Monhart, Regional Director

EBSA 200 (Rev. 6-12)

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.

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 AIW'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 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.

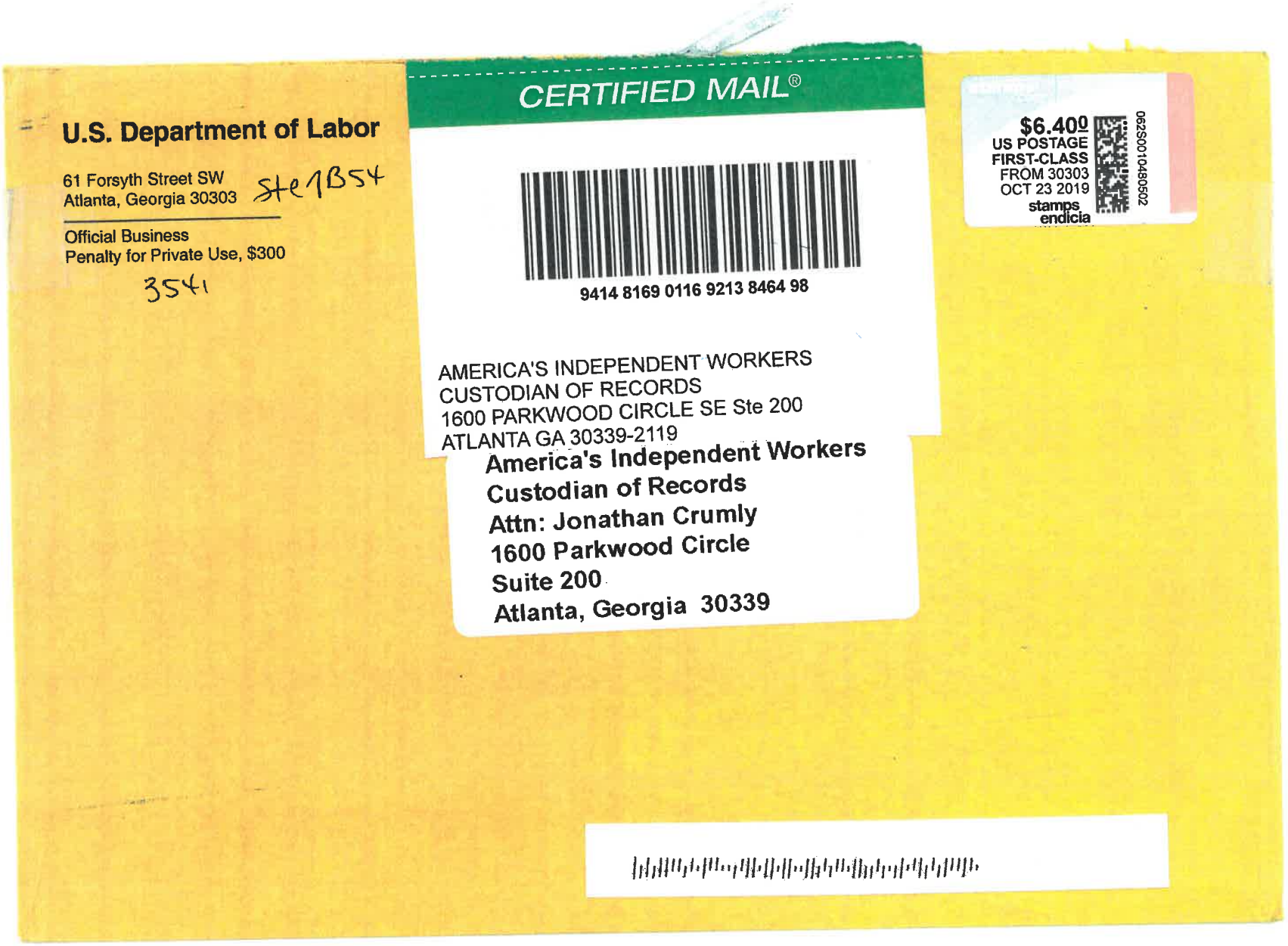
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

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
61 Forsyth Street SW
Atlanta, Georgia 30303
Ste 1B54
Official Business
Penalty for Private Use, $300
3541

CERTIFIED MAIL®

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$6.40
US POSTAGE
FIRST-CLASS
FROM 30303
OCT 23 2019
stamps endicia
062S0010480502

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

JA1037

Case: 25-1886 Document: 00118402576 Page: 235 Date Filed: 02/11/2026 Entry ID: 6785192

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

EBSA 200 (Rev. 6-12)

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.

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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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INSTRUCTIONS

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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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   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 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

Official Business
Penalty for Private Use, $300
3541

CERTIFIED MAIL®

9414 8169 0116 9213 8461 84

$6.400
US POSTAGE
FIRST-CLASS
FROM 30303
OCT 23 2019
stamps
endicia
0625001048050Z

AMERICA'S CONSUMERS AND AFFILIATES, LP
CUSTODIAN OF RECORDS, SUITE 200
ATTN: JONATHAN CRUMLY
1600 PARKWOOD CIRCLE SE
ATLANTA GA 30339-2119

Al
Cu
At
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339

JA1051

Case: 25-1886 Document: 00118402576 Page: 249 Date Filed: 02/11/2026 Entry ID: 6785192

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

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

EBSA 200 (Rev. 6-12)

JA1054

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.

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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.

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   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.

6. Communications between Agridata 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 Agridata 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 Agridata or the Plan or in consultation with Agridata 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 Agridata 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 Agridata or its principals, officers, directors, managers, employees, or representatives in connection with the Plan.

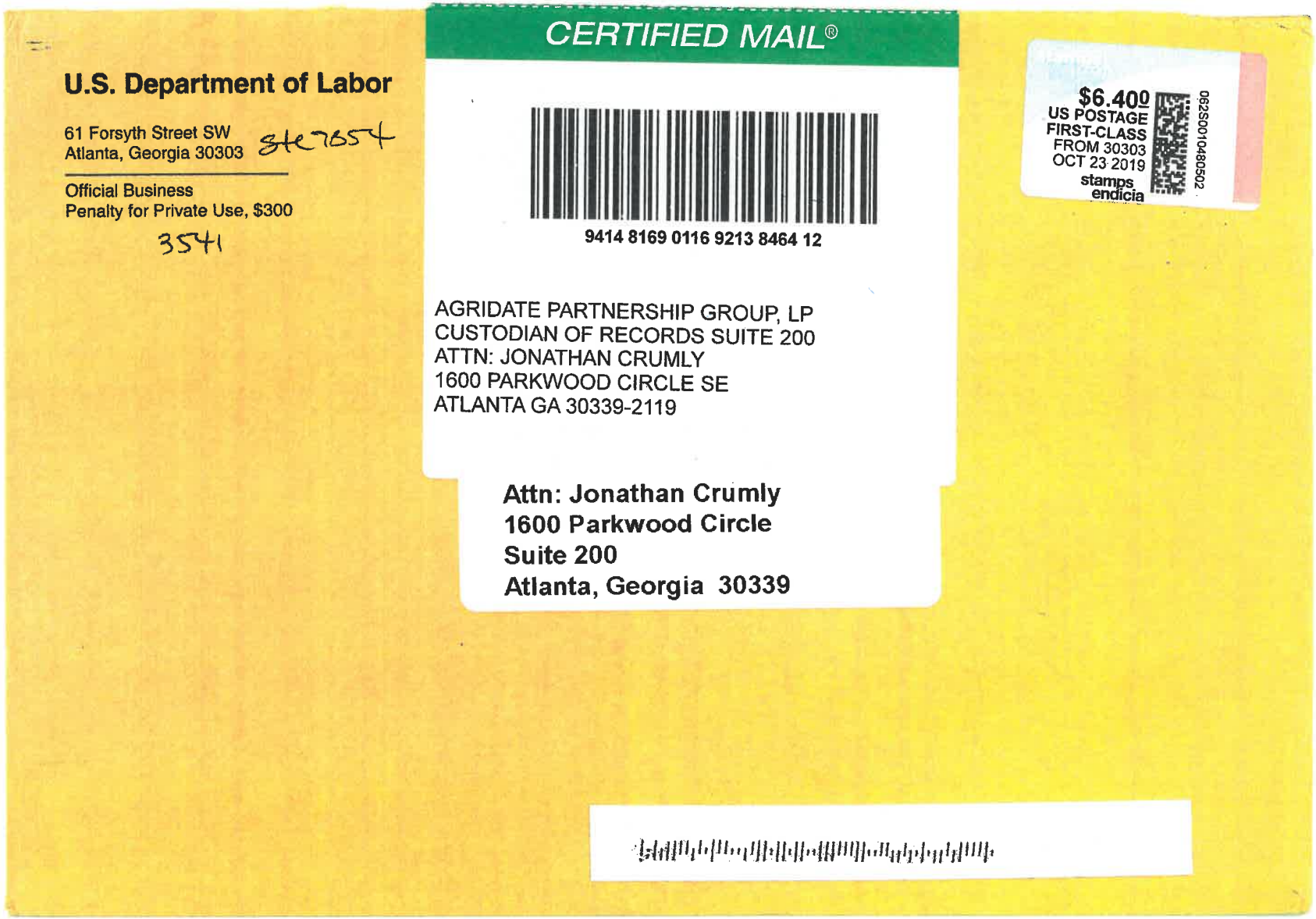
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

27. Documents related to gifts, gratuities, favors, expense reimbursements, and personal Services provided among or between the Plan, the Plan's Service Providers, and Agridata 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 Agridata 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. 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

JA1065

Case: 25-1886 Document: 00118402576 Page: 263 Date Filed: 02/11/2026 Entry ID: 6785192

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

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

EBSA 200 (Rev. 6-12)

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;
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    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;

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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, 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).

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 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.

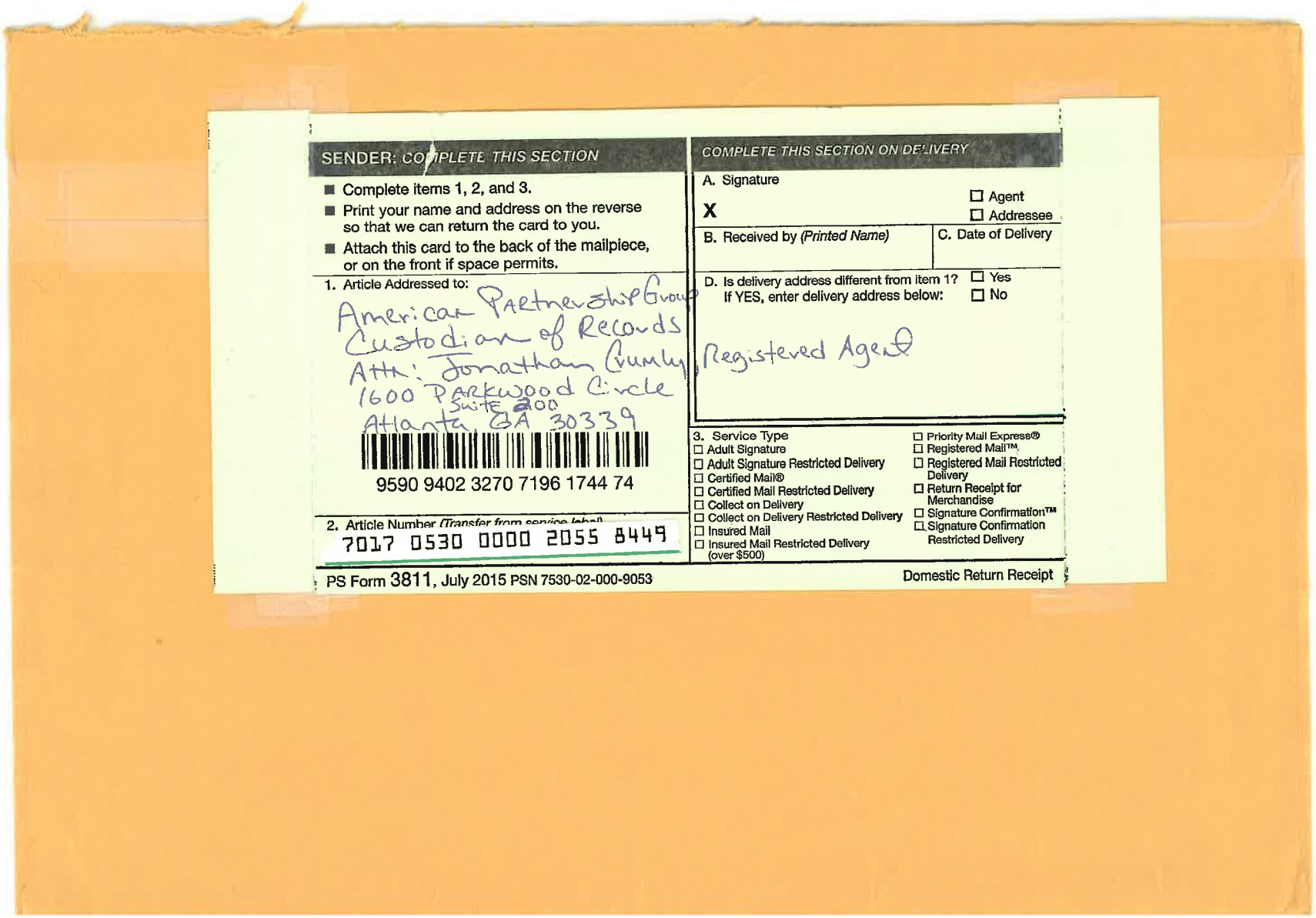
26. Documents sufficient to show any commissions, Fees, or other compensation paid in connection with the marketing of the Plan to employers or individuals, including contracts, agreements, invoices, cancelled checks or electronic transfer records, account statements, and financial statements.

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

JA1092

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.

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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 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.

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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).

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 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 G

taylor | english

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November 6, 2020

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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

taylor | english
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JONATHAN D. CRUMLY
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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.

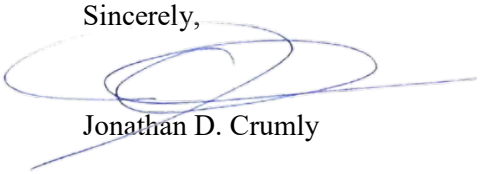
Id. (citation omitted). Our difference of opinion arises from your refusal to define, well over a year after DOL's exhaustive inquiry began, what said inquiry actually is. Consequently, we are left assuming DOL is simply asserting unfettered authority to cast about for potential wrongdoing without any 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

01920499-3

EXHIBIT J

U.S. Department of Labor **Office of the Solicitor**
Washington, D.C. 20210

July 21, 2022

VIA ELECTRONIC MAIL
Jonathan D. Crumly
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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
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EXHIBIT K

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]

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[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

U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
bowers.jamie.l@dol.gov
liu.katrina.t@dol.gov
hahn.jeffrey.m@dol.gov

EXHIBIT L

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Jonathan.Crumly@fmglaw.com

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 M

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

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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 N

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
100 Galleria Parkway
Suite 1600
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(678) 996-9137
jonathan.crumly@fmglaw.com

Roberta C. Watson
The Wagner Law Group
101 E. Kennedy Blvd.
Suite 2140
Tampa, FL 33602
(813) 603-2960
rcwatson@wagnerlawgroup.com

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

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
holz.sarah.d@dol.gov

Galen Thorp
U.S. Department of Justice
Civil Division
Federal Programs Branch
galen.thorp@usdoj.gov

EXHIBIT O

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

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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

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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
Please read this important notice and confidentiality statement

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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

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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

The Wagner Law Group

101 East Kennedy Boulevard, Suite 2140
Tampa, FL 33602
Tel: (813) 603-2959

www.wagnerlawgroup.com

****

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EXHIBIT P

Jonathan Crumly

From: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Sent: Tuesday, June 11, 2024 1:37 PM
To: Jonathan Crumly; Bob Chadwick; 'Roberta Watson'; 'Stephen Rosenberg'
Cc: Holz, Sarah D - SOL; Liu, Katrina T - SOL
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

Yes, that January 24 demand is still on the table (though of course the other injunctive pieces are still part of that demand). But we'd have to know relatively soon if your clients are interested in that offer, as we're planning on filing the complaint by the end of the week, and I can't promise what our client would be willing to do once we file.

Jeff Hahn
Counsel for Appellate and Special Litigation
U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
202-961-5182

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Tuesday, June 11, 2024 10:32 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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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
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AZ | CA | CO | CT | DE | FL | GA | IL | IN | KY | MA | NJ | NM | NV | NY | OH | PA | RI | TN | TX | WA
Please read this important notice and confidentiality statement

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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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Counsel,

We are planning to file a complaint by the end of this week. Please advise whether you are authorized to accept service on behalf of your clients and/or whether your clients will waive service.

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 30, 2024 10:29 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan
Importance: High

Counsel,

We haven't received any additional information from your clients since our discussion on Tuesday. We are planning to file the complaint by COB today. Please advise whether you are authorized to accept service on behalf of your clients and/or whether your clients will waive service.

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 3:03 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Dear counsel,

Since we have not heard from you since our calls on Thursday, May 16, we are preparing to commence an action next week in the U.S. District Court of Puerto Rico against Suffolk Administrative Services, Providence Insurance Company, Alexander Renfro, Arjan Zieger, and William Bryan for violations of ERISA. The complaint will allege that SAS, PIC, Renfro, Zieger, and Bryan violated their fiduciary duties to self-funded ERISA plans and engaged in prohibited transactions by self-dealing and authorizing excessive 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
100 Galleria Parkway
Suite 1600
Atlanta, GA 30339-5948

Roberta Watson
Stephen Rosenberg
The Wagner Law Group
101 East Kennedy Boulevard
Suite 2140
Tampa, FL 33602

Thank you,

Katrina T. Liu | Senior Trial Attorney
Plan Benefits Security Division | Office of the Solicitor | U.S. Department of Labor
200 Constitution Ave. N.W., Suite N-4611, Washington, D.C. 20210
liu.katrina.t@dol.gov | (202) 693-5520
Pronouns: she, her, hers

EXHIBIT Q

Jonathan Crumly

From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Thursday, October 31, 2024 10:27 AM
To: Jonathan Crumly; Robert G. Chadwick, Jr.; Roberta Watson; Stephen Rosenberg
Cc: Hahn, Jeffrey M - SOL; Holz, Sarah D - SOL; Bowers, Jamie L - SOL
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

We are perplexed by your assertion that the Department represented for the first time on September 3, 2024, that it would not release claims related to the limited partnership plans. The Department has been very clear at every step of the negotiations that our discussions are limited to Participating Plans sponsored by traditional employers and that our settlement discussions do not resolve any potential claims related to the limited partnership plans. Indeed, we have repeatedly reiterated this position throughout our settlement discussions (see, for example, the Department's demand letters of July 21, 2022 (footnote 1), June 8, 2023 (footnote 1), January 24, 2024 (footnote 1), and March 11, 2024 (footnote 1)).

Moreover, the Department has also made clear that it cannot constrain its ability to conduct future investigations (see the Department's demand letter from April 26, 2024). Relatedly, the Department is only authorized to release claims it has actually investigated. The claims outlined in our July 21, 2022 demand letter are the claims the Department investigated during the prior five years, which are the only claims we are able to release as part of these negotiations. At one point, when our negotiations encompassed potential settlement of the *DMP* litigation, we offered to drop our investigation of Socios Buenos LP, but we withdrew that offer when settlement of *DMP* fell through. Nevertheless, this offer did not at any point waive the Department's authority to investigate any potential future ERISA violations by your clients.

It appears we have reached an impasse. Accordingly, with the tolling period expiring on November 6, the Department will prepare to file suit before that date. Please advise as soon as possible if anything changes for your clients. Otherwise, **please let us know if you will accept service of the complaint on behalf of your clients via email**. I am also including Roberta and Stephen here, as I understand they represent Alex Renfro and SAS.

Thank you,

Katrina Liu (she/her)
Senior Trial Attorney
Plan Benefits Security Division
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Tuesday, October 29, 2024 10:10 AM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

CAUTION: This email originated from outside of the Department of Labor. Do not click (select) links or open attachments unless you recognize the sender and know the content is safe. Report suspicious emails through the "Report Phishing" button on your email toolbar.

Katrina,

In our phone call of September 3, you disclosed for the first time throughout our lengthy settlement discussions that the Department was unwilling to consider granting releases for any activities pertaining to our clients' providing services to customers utilizing the Limited Partnership (LP) structure. Further, the Department's revised release language is not even a full release of claims unrelated to our clients' involvement with LP customers. This came as a considerable surprise, and quite frankly, few if any of the other settlement terms would ever have been entertained by our clients, had we understood earlier that it was the intention of the Department to leave open the possibility (which we actually view as a certainty, given the history) of further investigations and other actions by the Department, post "settlement" for conduct the Department has been investigating for five years.

We have nonetheless endeavored over these past weeks to find some language that we could incorporate into a further redline which would be acceptable to all of our clients, as well as to those represented by the Wagner Group. This has proven not to be possible. The Department's latest redline not only removed references to the LP Plans, but it narrowed the release to merely to those claims "outlined in the Department's July 21, 2022 demand letter." That is hardly a full and complete release for an investigation conducted by the Department which began in April 2019. We and our clients believed that we were negotiating with the Department for a complete release of all conduct the Department may or may not consider a violation of ERISA up to the date the settlement agreement is executed, including that pertaining to the LPs. In other words, a full and complete release.

Whether or not the Department will consider a true full and complete release of the Providence Parties in a settlement agreement, I wanted to apprise you of the status of Mr. Renfro's ownership interest in Suffolk and Providence. As counsel for Mr. Renfro and Suffolk alerted you several months ago, Mr. Renfro intended to withdraw from ownership of both Suffolk and Providence as part of the settlement and lifetime ban provision. Despite no settlement agreement having been reached, Mr. Renfro has completed his divestiture of his ownership interest in Suffolk and Providence and no longer maintains an ownership interest in either entity.

I do hope we can reach an agreement given all the hard work put in by both sides to reach settlement terms. Please contact me at your convenience if you wish to discuss any of this.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
Email: Jonathan.Crumly@fmglaw.com
www.fmglaw.com | Instagram | Twitter | Facebook

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, September 30, 2024 1:36 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Let me circle up with my folks, but I think that will be fine. Assuming it is, we will circulate updated agreements.

Katrina Liu (she/her)
Senior Trial Attorney
Plan Benefits Security Division
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Monday, September 30, 2024 1:31 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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I was thinking a 30-day extension for both deadlines. I have meetings scheduled with the clients tomorrow & Wednesday so should have comments back to you no later than Friday.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
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www.fmglaw.com | Instagram | Twitter | Facebook

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, September 30, 2024 12:14 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Caution: This email originated from outside of the FMG organization. **Do not click links** or **open attachments** unless you recognize the sender and know the content is safe.

Thanks for the update. How long are you thinking?

Katrina Liu (she/her)
Senior Trial Attorney
Plan Benefits Security Division
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Monday, September 30, 2024 12:02 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

CAUTION: This email originated from outside of the Department of Labor. Do not click (select) links or open attachments unless you recognize the sender and know the content is safe. Report suspicious emails through the "Report Phishing" button on your email toolbar.

Katrina,

Unfortunately, between travel schedules and the office closures related to hurricane Helene last week, I was not able to obtain feedback from my clients on the most recent revisions to the term sheet. The current litigation standstill expired last week with the tolling agreement expiring next week. Would the Department be open to one additional extension?

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
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www.fmglaw.com | Instagram | Twitter | Facebook

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Please read this important notice and confidentiality statement

From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, September 23, 2024 4:49 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Caution: This email originated from outside of the FMG organization. **Do not click links** or **open attachments** unless you recognize the sender and know the content is safe.

Sounds good, thank you.

Katrina Liu (she/her)
Senior Trial Attorney
Plan Benefits Security Division
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Monday, September 23, 2024 4:25 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson

<rcwatson@wagnerlawgroup.com>; Bowers, Jamie L - SOL <Bowers.Jamie.L@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

CAUTION: This email originated from outside of the Department of Labor. Do not click (select) links or open attachments unless you recognize the sender and know the content is safe. Report suspicious emails through the "Report Phishing" button on your email toolbar.

Katrina,

Thank you for this. I was traveling Friday but we have circulated this new draft to our clients. I hope to have any questions/comments back to you by the end of the week.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
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www.fmglaw.com | Instagram | Twitter | Facebook

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Please read this important notice and confidentiality statement

From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Friday, September 20, 2024 1:49 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>; Bowers, Jamie L - SOL <Bowers.Jamie.L@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Counsel,

Thank you for your patience. See attached for our counterproposal, presented as redlines to the version of the term sheet you sent us on July 29, 2024. I am also attaching a clean version.

At our last discussion, I believe I flagged for you how our client will not agree to include the limited partnership plans in this settlement, and will desire a briefer timeline for monetary payments. We also discussed a requirement for SAS to cap all administrative fees for plans, which you represented SAS was unable to do. Taking that into consideration, we now revert to our prior proposal for hiring a consultant to evaluate SAS and PIC's (and any other affiliate's and subcontractor's) fees. Please let us know if you would like to discuss.

Thank you,

Katrina Liu (she/her)

Senior Trial Attorney
Plan Benefits Security Division
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Monday, July 29, 2024 5:24 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

Thank you for this. I am back in the office now and have been able to review the proposed term sheet with our clients. Attached are revisions to the original proposed term sheet (a clean & redlined version).

Let me know if you want to discuss these proposed changes.

Jonathan Crumly
Senior Counsel
Freeman Mathis Decisions
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
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Jonathan.Crumly@fmglaw.com
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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, July 22, 2024 4:15 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

We don't plan to put pen to paper until we reach a settlement in principle. But to keep things moving forward, I am attaching a proposed term sheet for your review. Let me know if you have any questions.

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Friday, July 19, 2024 8:52 AM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Subject: Re: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

Understood. Do you have a draft of the proposed settlement agreement you could share?

Thanks.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
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D: 678-996-9137 | C: 770-883-6344
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www.fmglaw.com | Instagram | Twitter | Facebook

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Wednesday, July 17, 2024 5:12:02 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>
Cc: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

Thank you for helping to handle during your leave. I am not allowed to share the Complaint document, but I am attaching our initial demand letter, which lays out the various ERISA claims we plan to bring. I'll add that, since we sent this initial demand and as we further analyzed our case based on the productions we received from your clients, we have decided not to bring claims related to coverage for preventive services, pre-existing condition exclusions or annual dollar limits, or the provision of deficient SPDs. The remaining claims described in the demand letter, specifically those related to the handling of plan contributions/fee payments and M-1 reporting, are contained in the Complaint. We have also decided not to name PIP as a defendant.

Thank you and let me know if you have any questions.

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Tuesday, July 16, 2024 11:39 AM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; 'Stephen Rosenberg' <SRosenberg@wagnerlawgroup.com>; 'Roberta Watson' <rcwatson@wagnerlawgroup.com>
Subject: Re: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

Thank you for this. We have forwarded it to our clients for review. However, we will be unable to respond substantively unless you can provide the proposed complaint referenced in the first bullet point. As the current stand still agreement within the tolling agreement expires this Friday, the sooner we can review the proposed complaint, the better.

Thanks again.

Jonathan Crumly
Senior Counsel
Freeman Mathis & Gary, LLP
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
Jonathan.Crumly@fmglaw.com | LinkedIn | Bio
www.fmglaw.com | Instagram | Twitter | Facebook

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, July 15, 2024 1:39 PM

To: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; 'Stephen Rosenberg' <SRosenberg@wagnerlawgroup.com>; 'Roberta Watson' <rcwatson@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Counsel,

Thank you for clarifying SAS's agreement to fully disclose all itemized fees to the plan clients. Based on that clarification, the Department's counteroffer is as follows:

- The Department will agree to a payment plan (rather than an immediate, single payment – more below) only if the parties agree that the Department will file the Complaint and an Unopposed Motion for Entry of a Consent Judgment in federal district court. The Consent Judgment will contain the terms of the parties' settlement, including the monetary payment and all injunctive actions detailed in the Department's January 24 letter.

- Your clients will make a monetary payment of $15 million, inclusive of the 502(l) penalty, within 12 months of the court's entry of the consent judgment. The payment schedule is as follows:
  - within one week of entry of the consent judgment, your clients will pay $2 million as a "good faith" payment;
  - within 6 months of entry of the consent judgment, your clients will pay at least half of the remaining balance of the $15 million (at least $6.5 million);
  - within 12 months of the entry of the consent judgment, your clients will pay the remaining balance of the $15 million (at most $6.5 million).

- As a term in the Consent Judgment, the Department will agree to release its claims contained in the Complaint, specifically the alleged ERISA violations by SAS, PIC, and Messrs. Renfro, Bryan, and Zieger that arose prior to the date of the filing of the Complaint.

- Execution of another tolling agreement, which will remain in effect until the filing of the Complaint or two months after the expiration of the current agreement (whichever is later).

Please let me know if you have any questions or would like to discuss.

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Sent: Wednesday, June 26, 2024 2:49 PM
To: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Cc: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>; Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; 'Stephen Rosenberg' <SRosenberg@wagnerlawgroup.com>; 'Roberta Watson' <rcwatson@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Hi Jonathan,

Thank you for reaching out, and thanks to Roberta for her email last week. Our client is considering your proposal, and we anticipate providing a substance response during the week of July 8.

Thank you,
Sarah

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Wednesday, June 26, 2024 1:20 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>; Roberta Watson <rcwatson@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina,

Can you advise on what you see as next steps & the potential timeline? Thanks.

Jonathan Crumly
Senior Counsel
Freeman Mathis Decisions
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Jonathan.Crumly@fmglaw.com
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Please read this important notice and confidentiality statement

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From: Roberta Watson <rcwatson@wagnerlawgroup.com>
Sent: Wednesday, June 19, 2024 2:10 PM
To: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Cc: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Jonathan Crumly <Jonathan.Crumly@fmglaw.com>; Bob Chadwick <Bob.Chadwick@fmglaw.com>; Stephen Rosenberg <SRosenberg@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Katrina –

My clients have agreed to the following, and I have received assurance from Mr. Crumly that his clients have also agreed:

It is current SAS policy to require written confirmation that all plan sponsors have received and agreed to full itemized fee disclosures, substantially similar to the S&S contract recently provided to the Department. As part of settlement, SAS will formally agree not to accept fees from any plan or plan sponsor in the absence of such written confirmation (in the form of sponsor signatures) of accurate, transparent, and itemized fee disclosures. We are encouraged if this manner of disclosure meets the Department's standard; that's exactly what we were aiming for. If the Department has changes to propose, we plan to be receptive.

I believe we are now on the same page as the Department. Please let us know if you need any further clarification.

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

The Wagner Law Group

101 East Kennedy Boulevard, Suite 2140
Tampa, FL 33602
Tel: (813) 603-2959

www.wagnerlawgroup.com

****

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From: Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Sent: Monday, June 17, 2024 3:07 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Counsel

I'm writing with our initial thoughts on your clients' latest offer. First, it's not clear whether you've agreed that SAS will ensure that the fees of each plan service provider will be disclosed to and approved by the plan sponsor. Attached is an ASA template included as part of the May 30, 2024, document production. Page 3 includes a list of plan services, providers for each of those services, and a placeholder for fees for each service. Assuming the fee amounts are filled in for client review and approval at the outset of their enrollment in a SAS plan and upon any change to service provider fee amounts, this is the kind of disclosure that the Department is envisioning that all of SAS's clients receive and sign. Please confirm whether SAS is able to ensure fee disclosures such as the sample attached for all its Participating Plan sponsor clients.

Second, while the Department acknowledges your clients' significant monetary offer of $15 million, it is not willing to agree to a 5-year payment plan. Though I can't promise anything at this juncture, we may be willing to negotiate the terms of payment, but not unless and until we have agreement that SAS will make all appropriate fee disclosures to the plan sponsors.

Katrina Liu (she/her)
Plan Benefits Security Division
Office of the Solicitor
202-693-5520

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Thursday, June 13, 2024 11:26 AM
To: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Cc: Bob Chadwick <Bob.Chadwick@fmglaw.com>; 'Roberta Watson' <rcwatson@wagnerlawgroup.com>; 'Stephen Rosenberg' <SRosenberg@wagnerlawgroup.com>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jeff,

My Anjo Investigation clients (PIC, Mr. Bryan & Mr. Zieger) have just authorized me to offer the following:

- Total monetary relief of $15 million, inclusive of the 20% penalty pursuant to ERISA § 502(1).
- Five years from execution of the final settlement agreement to make the payments.
- Full and complete release of all claims against my clients by the Department, inclusive of any alleged ERISA violations arising from their services to any group health benefits plans or Plan Sponsors, prior to the date of the settlement agreement.
- All injunctive relief items detailed in the January 24 letter (all to be more explicitly spelled out in the final settlement agreement. To be clear – there is no opposition to the injunctive relief requested, just a desire to properly document the details such that my clients can, in fact, perform all of the required actions)
- Tenth Tolling Agreement to provide sufficient time to finalize the settlement agreement. We suggest 4 weeks.

My understanding is that SAS and Mr. Renfro are in agreement with these terms, and I expect you will receive a confirming email from their counsel.

Please advise if the Department is willing to settle on these terms.

Jonathan Crumly
Senior Counsel
Freeman Mathis Decisions
100 Galleria Parkway | Suite 1600 | Atlanta, GA 30339-5948
D: 678-996-9137 | C: 770-883-6344
Jonathan.Crumly@fmglaw.com
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AZ | CA | CO | CT | DE | FL | GA | IL | IN | KY | MA | NJ | NM | NV | NY | OH | PA | RI | TN | TX | WA
Please read this important notice and confidentiality statement

From: Hahn, Jeffrey M - SOL <Hahn.Jeffrey.M@dol.gov>
Sent: Tuesday, June 11, 2024 1:37 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: Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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Jonathan,

Yes, that January 24 demand is still on the table (though of course the other injunctive pieces are still part of that demand). But we'd have to know relatively soon if your clients are interested in that offer, as we're planning on filing the complaint by the end of the week, and I can't promise what our client would be willing to do once we file.

Jeff Hahn
Counsel for Appellate and Special Litigation
U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
202-961-5182

From: Jonathan Crumly <Jonathan.Crumly@fmglaw.com>
Sent: Tuesday, June 11, 2024 10:32 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

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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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AZ | CA | CO | CT | DE | FL | GA | IL | IN | KY | MA | NJ | NM | NV | NY | OH | PA | RI | TN | TX | WA
Please read this important notice and confidentiality statement

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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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Caution: This email originated from outside of the FMG organization. **Do not click links** or **open attachments** unless you recognize the sender and know the content is safe.

Counsel,

We are planning to file a complaint by the end of this week. Please advise whether you are authorized to accept service on behalf of your clients and/or whether your clients will waive service.

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 30, 2024 10:29 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>
Subject: RE: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan
Importance: High

Counsel,

We haven't received any additional information from your clients since our discussion on Tuesday. We are planning to file the complaint by COB today. Please advise whether you are authorized to accept service on behalf of your clients and/or whether your clients will waive service.

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 3:03 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>; Holz, Sarah D - SOL <Holz.Sarah.D@dol.gov>; Liu, Katrina T - SOL <Liu.Katrina.T@dol.gov>
Subject: Commencement of action against SAS, PIC, Renfro, Zieger, and Bryan

Dear counsel,

Since we have not heard from you since our calls on Thursday, May 16, we are preparing to commence an action next week in the U.S. District Court of Puerto Rico against Suffolk Administrative Services, Providence Insurance Company, Alexander Renfro, Arjan Zieger, and William Bryan for violations of ERISA. The complaint will allege that SAS, PIC, Renfro, Zieger, and Bryan violated their fiduciary duties to self-funded ERISA plans and engaged in prohibited transactions by self-dealing and authorizing excessive 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
100 Galleria Parkway
Suite 1600
Atlanta, GA 30339-5948

Roberta Watson
Stephen Rosenberg
The Wagner Law Group
101 East Kennedy Boulevard
Suite 2140
Tampa, FL 33602

Thank you,

Katrina T. Liu | Senior Trial Attorney
Plan Benefits Security Division | Office of the Solicitor | U.S. Department of Labor
200 Constitution Ave. N.W., Suite N-4611, Washington, D.C. 20210
liu.katrina.t@dol.gov | (202) 693-5520

Pronouns: she, her, hers

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

LORI CHAVEZ-DEREMER, SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR,

Plaintiff,

v.

SUFFOLK ADMINISTRATIVE SERVICES, LLC, et al.,

Defendants.

CIVIL NO. 24-1512 (CVR)

ORDER

The present case was brought by the Secretary of Labor Lori Chavez-DeRemer[1] (the "Secretary") against Defendants Suffolk Administrative Services, LLC ("Suffolk"), Providence Insurance Co., I.I. ("PIC"), Alexander Renfro ("Renfro), William Bryan ("Bryan") and Arjan Zieger ("Zieger") (collectively "Defendants"). Suffolk and PIC are companies headquartered in Puerto Rico which market, sell, and service employer-sponsored health benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001. Renfro, Bryan, and Zieger are officers and indirect owners of both companies. The Secretary brings this case against Defendants alleging violation of their fiduciary duties of prudence and loyalty. She seeks to restore losses of the plans administrated by Defendants and to obtain other equitable

1 Julie Su was Acting Secretary of Labor in 2024 when this case was filed. Secretary of Labor Lori Chavez-DeRemer is automatically substituted as Plaintiff. See Fed. R. Civ. P. 25(d).

relief, including enjoining Defendants from future management of other employee benefit plans.

Before the Court is Defendants' "Motion to Transfer Venue and Memorandum in Support" (Docket No. 26) and "Motion to Stay and Memorandum in Support" (Docket No. 27), as well as Plaintiff's combined Opposition thereto. (Docket No. 49). Defendants were granted leave to reply to the combined opposition, but did not timely file a Reply. (Docket No. 51).

Defendants seek to transfer this action to the U.S. District Court for the Northern District of Texas, where a separate but related lawsuit is pending against the Secretary, to wit, Data Marketing Partnership, LP v. U.S. Department of Labor, Civil No. 19-0800-O (N.D. Tex.) (the "Data Marketing case"). Defendants proffer that the present case was improperly brought against them as part of a concerted effort by the Secretary to dismantle Defendants' plans because they compete with Affordable Care Act insurance. Defendants aver the Secretary, thorough her actions in the Data Marketing case and in filing the present case, is attempting to pressure them by disparaging their services, opening investigations into the vendors providing services to the plans, and to force the withdrawal of the Texas lawsuit in which the Secretary has already suffered a loss. Defendants proffer that the Department of Labor's actions against them, which are the subject of their Counterclaim against the Secretary in this case, are the same as those contained in a proposed "Supplemental Complaint" before the Texas court to amend those allegations. Defendants admit both cases involve separate parties with the only

constant being the Secretary, but argue that the operative allegations are the same, whereby the Secretary threatens or causes such damage to Defendants that they cannot provide the necessary services to run their benefit plans. Defendants ask this Court to transfer the present case to Texas where the Data Marketing case is pending or in the alternative, to stay this case until the Texas court rules on the pending motion to amend the pleadings or this Court rules on their transfer petition.

The Secretary proffers in opposition that Defendants have not met their burden of demonstrating that a transfer or a stay should be granted. She argues both cases are distinct, as are the parties and the causes of action, so the request to transfer should be denied. The Secretary also posits that the Texas court recently denied the Data Marketing Plaintiffs' leave to supplement the allegations, holding it did not have the power to hear those claims, which renders hollow Defendants' reason to transfer this case to that district. For that same reason, the request for stay, which was contingent upon that ruling, is likewise not warranted.

After a careful review, Defendants' "Motion to Transfer Venue and Memorandum in Support" (Docket No. 26) is DENIED for substantially the same reasons espoused by the Secretary.

Under § 1404(a), a district court may transfer any civil action to any other district where it may have been brought "[f]or the convenience of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a). The Court of Appeals for the First Circuit has identified the following factors for district courts to consider when evaluating a motion for

transfer, to wit: "(1) the convenience of the parties and the witnesses, (2) the availability of documents, (3) the possibility of consolidation, and (4) the order in which the district court obtained jurisdiction." Coady v. Ashcraft & Gerel, 223 F.3d 1, 11 (1st Cir. 2000). "Where identical actions are proceeding concurrently in two federal courts, entailing duplicative litigation and a waste of judicial resources, the first filed action is generally preferred in a choice-of-venue decision." Cianbro Corp. v. Curran-Lavoie, Inc., 814 F.2d 7, 11 (1st Cir. 1987).

Before reaching the § 1404(a) elements, the Court notes that no claims or parties other than the Secretary overlap. The Data Marketing case was brought by Data Marketing Partnership, LP and LP Management Services, LLC against the Secretary regarding an advisory opinion as to whether certain plans were covered under the Employee Retirement Income Security Act ("ERISA"). These are the plans Defendants currently administrate in the present case, but Defendants herein are not parties in the Data Marketing case.

In contrast, the case at bar alleges that Defendants, as fiduciaries to those plans, breached their fiduciary duties and violated federal law by engaging in self-dealing and charging disproportionately high fees to their plan clients. As candidly argued by the Secretary, the cases involve different parties, different claims, and harms, and are not the types of "identical actions" that militate a finding in favor of a transfer for purposes of judicial economy. This issue alone mitigates against the transfer petition.

The first two (2) elements of § 1404(a), the convenience of the parties and the witnesses and availability of documents, do not favor Defendants' request to transfer.

According to the Complaint, which the Court must accept as true at this stage of the litigation, co-Defendant Suffolk is a limited liability company registered in Puerto Rico, and co-Defendant PIC is an insurance company incorporated in Puerto Rico. The crux of the action in this case, that Defendants breached their fiduciary duties towards the ERISA plan assets, occurred in Puerto Rico. Therefore, and for that same reason, the witnesses and documentation supporting Defendants' claims and defenses should also be located in Puerto Rico.

Element number three (3), consolidation, is not feasible either, as the District of Texas has already rejected Defendants' attempt to amend the pleadings before that court. (Docket No. 49, pp. 3-4). Moreover, Defendants' argument that the case should nevertheless be heard in Texas because the Secretary has somehow "inextricably connected" the cases together by previously attempting a global settlement of all claims, is unavailing. Although the cases may be loosely related, as already discussed, the Data Marketing case involves wholly different claims, parties, and defenses than the ones raised in the case at bar.[2]

Additionally, the fact that the Secretary attempted to settle all claims together cannot be construed as somehow linking the cases for purposes of proper venue. Pursuant to federal law, a civil action may only be transferred to a district "where it might have been brought." 28 U.S.C. § 1404(a); Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Tex., 571 U.S. 49, 59, 134 S. Ct. 568, 579 (2013). Defendants argue that Texas constitutes proper

2 This also addresses Defendants' argument of the possibility of conflicting judgments. If the parties and claims are different, it is hard to argue that the two (2) cases will somehow result in conflicting judgments.

venue because "a substantial part of the events or omissions giving rise to the claim" occurred in Texas, and argue that the Secretary explicitly connected the cases. (Docket No. 26, pp. 6-7). The record however, belies this assertion. The only "substantial event" they mention are the "global settlement" talks to settle both the Texas case and the investigation that eventually gave rise to the instant case. A review of the exhibits accompanying the request further shows those talks entailed back and forth communications via email, video calls, and letters sent via U.S. Postal Service, and the attorneys involved where located in Tennessee, Georgia, and Florida, while the Secretary was acting out of offices in Washington, D.C., and Illinois. On this record, it is hard to argue that these actions can be construed as having all "occurred" in Texas. (Docket No. 25, Exhibits 5, 7, 10, 17, 18 and 19). In fact, the only link to Texas seems to be that it was the venue where the Data Marketing case was filed.

Conversely, Puerto Rico has a significant nexus to this action, since at least both corporations run their businesses from Puerto Rico and the activities complained of took place in Puerto Rico. Therefore, proper venue for *the instant* case is Puerto Rico, notwithstanding any related claims Defendants might have against the Secretary in a related case. See Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29, 108 S. Ct. 2239, 2243 (1988) (venue is proper in judicial district in which a corporation is doing business).

Element number four (4), that the Texas cases was filed first, only helps Defendants marginally. While Texas did indeed win the race to the courthouse in the Data Marketing case, that litigation has been ongoing for five (5) years, and is in a substantially more

advanced stage than this case, which is only beginning.

Defendants' additional argument in support of transfer, that Texas courts have more experience in ERISA cases, is likewise unavailing. The fact that Texas may have seen more ERISA cases is not a sufficiently valid reason for transfer, insofar as "a court with jurisdiction has a 'virtually unflagging obligation' to hear and resolve questions properly before it." Fed. Bureau of Investigation v. Fikre, 601 U.S. 234, 240, 144 S. Ct. 771, 777 (2024) (quoting Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817, 96 S.Ct. 1236 (1976)).

In sum, Defendants bring nothing to the Court to tilt the pendulum in favor of transferring the case at bar to the Northern District of Texas. Therefore, the Court declines Defendants' invitation and DENIES the Motion to Transfer. (Docket No. 26).

Lastly, Defendants ask the Court to stay the present case until one of two (2) things happen, namely, either a ruling by this Court on their Motion to Transfer in the present case, or a ruling by the Texas court allowing the Data Marketing case plaintiffs to file a Supplemental Complaint. In other words, Defendants' request to stay is contingent on either one of those conditions happening. Both conditions have been addressed above. The District Court for the Northern District of Texas recently denied the motion to amend the pleadings, finding it did not have the power to hear the additional claims those Plaintiffs wanted to present. Thus, Defendants' reason to transfer this case to that district has vanished. Additionally, this Court has denied herein Defendants' Motion to Transfer for the reasons explained above. Hence, Defendants' Motion to Stay (Docket No. 27) is

DENIED as moot.

For the foregoing reasons, Defendants' "Motion to Transfer Venue and Memorandum in Support" (Docket No. 26) is DENIED and "Motion to Stay and Memorandum in Support" (Docket No. 27) is DENIED as moot.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 10th day of June of 2025.

s/ CAMILLE L. VELEZ-RIVE
CAMILLE L. VELEZ-RIVE
UNITED STATES DISTRICT JUDGE

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

LORI CHAVEZ-DEREMER,
SECRETARY OF LABOR,
U.S. DEPARTMENT OF LABOR,

Plaintiff-Counterclaim Defendant,

v.

SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER,

Defendants-Counterclaim Plaintiffs.

Civil Action No. 3:24-CV-01512 (CVR)

MOTION TO DISMISS DEFENDANTS' FIRST AMENDED COUNTERCLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff-Counterclaim Defendant Lori Chavez-DeRemer, Secretary of the U.S. Department of Labor ("Secretary"), hereby moves to dismiss Defendants-Counterclaim Plaintiffs' First Amended Counterclaim for Declaratory and Injunctive Relief, ECF No. 52, pursuant to Federal Rule of Civil Procedure 12(b)(6).

As explained more fully in the accompanying memorandum of law, Defendants' Amended Counterclaim, which asserts claims under the First Amendment and the Administrative Procedure Act, should be dismissed in its entirety. Defendants' First Amendment claims (Counts I and II) fail to identify (i) any First Amendment protected activity; (ii) any adverse action by the Department of Labor sufficient to chill Defendants' exercise of their constitutional rights; and (iii) any causal link between an alleged protected activity and alleged adverse action.

With respect to Defendants' claim under the Administrative Procedure Act, none of the challenged actions (the investigation, settlement negotiations, or enforcement action) are final actions subject to judicial review.

For these reasons, the Secretary respectfully requests that the First Amended Counterclaim for Declaratory and Injunctive Relief be dismissed in its entirety.

Dated: August 8, 2025

Respectfully Submitted:

JONATHAN L. SNARE
Acting Solicitor of Labor

WAYNE R. BERRY
Associate Solicitor for
Plan Benefits Security

ISIDRO MARISCAL
Counsel for Litigation

BLAIR L. BYRUM
D.P.R. Bar No. G04216
SARAH D. HOLZ
D.P.R. Bar No. G04105
Senior Trial Attorneys

/s/ Jamie Troutman
JAMIE L. TROUTMAN
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D.P.R. Bar No. G03415
Attorneys for Plaintiff Lori Chavez-DeRemer,
Secretary of Labor

United States Department of Labor
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CERTIFICATE OF SERVICE

I hereby certify that I filed the Secretary's Motion to Dismiss Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief on the docket via CM/ECF. Notice of this filing will be sent to all counsel of record through the Court's Electronic Case Filing System.

/s/ Jamie L. Troutman
Jamie L. Troutman

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

LORI CHAVEZ-DEREMER, SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, Plaintiff-Counterclaim Defendant, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER, Defendants-Counterclaim Plaintiffs.	Civil Action No. 3:24-CV-01512 (CVR)

SECRETARY'S MOTION TO DISMISS DEFENDANTS' FIRST AMENDED COUNTERCLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

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Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief ("Amended Counterclaim") seeks to rehash and relitigate meritless claims against the Department of Labor ("Department"). Defendants have amended their counterclaims by abandoning their declaratory judgment and ERISA claims, replacing them instead with a variation of the First Amendment and Administrative Procedure Act ("APA") claims that they already unsuccessfully raised four years ago in this district, in a complaint against the Department that contains allegations nearly identical to those in the Amended Counterclaim. *Suffolk Admin. Servs. v. U.S. Dep't of Labor*, No. 3:21-cv-1031-DRD (D.P.R.), ECF No. 1 ("*Suffolk*"). The *Suffolk* court dismissed those claims at the pleadings stage. *Id.*, ECF No. 43 (March 28, 2022 Opinion and Order). Defendants' attempt to revive those claims should fair no better.

The First Amendment to the U.S. Constitution is designed to protect *expressive* activities, such as speech, advocacy, and religious and political conduct. Defendants' First Amendment claims are premised not on their own speech but on conduct by Data Marketing Partnership ("DMP") and LP Management Services ("LPMS"), plan sponsors who engaged Defendants as service providers and are not parties to this litigation. To the extent Defendants claim First Amendment protection for their association with DMP and LPMS, the conduct they have alleged is *business* activity that falls short of protected *expressive* activities. Even if any of Defendants' alleged conduct were subject to First Amendment protections, Defendants nevertheless fail to allege that the Department engaged in any "adverse action" to trigger scrutiny. The Department's investigation and the present enforcement action by the Secretary of Labor ("Secretary") do not constitute "adverse action" under the First Amendment, and Defendants point to no expressive conduct purportedly chilled by the government's actions. In any event, Defendants establish no

causal link between their actions and the Department's alleged retaliatory investigation. The only connection they allege is the submission of the request for an advisory opinion and filing of a lawsuit (actions taken by DMP and LPMS); otherwise, Defendants make no plausible, non-conclusory link between actions taken by other parties and the purported retaliation against Defendants.

Defendants' APA claim is similarly unavailing because the actions Defendants challenge—the Department's decision to investigate SAS and PIC, its efforts to resolve the violations revealed in the course of the investigation, and its decision to bring an enforcement action—are not "final agency action," and thus are not judicially reviewable under the APA. Defendants' efforts to convolute the facts of this case by dragging in extraneous parties and claims from other, separate lawsuits do not change the reality that the challenged actions fall squarely within the Department's discretionary authority and are not subject to judicial review under the APA.

For all these reasons, the Court should grant the Department's motion and dismiss Defendants' scattershot Amended Counterclaim with prejudice.

I. BACKGROUND

A. Defendants and the Health Benefit Plans They Service

The Amended Counterclaim describes two distinct groups of health benefit plans for whom Defendants provide services—Employer Plans and Partnership Plans. The Employer Plans are health plans sponsored by "over 1,900 [] employers." Am. Countercl. ¶ 5. These employers are not limited partnerships, and use Defendant Suffolk Administrative Services ("SAS") and Defendant Providence Insurance Co. I.I. ("PIC") as service providers to provide health benefits to their employees. *See* Am. Countercl. ¶¶ 5, 44, 53, 57, 63. The Secretary's

Complaint ("Complaint") only addresses the services that SAS and PIC provide to Employer Plans. Am. Countercl. ¶ 11; Compl. ¶ 2 n.1.

The Partnership Plans are "single employer employee welfare plans" that are the subject of a 2018 advisory opinion request ("AO Request") to the Department, a related January 2020 advisory opinion ("Advisory Opinion"), and "litigation currently pending in the U.S. District Court for the Northern District of Texas," *Data Marketing Partnership v. U.S. Department of Labor*, No. 4:19-cv-800-O (N.D. Tex.) ("*Data Marketing* case"). Am. Countercl. ¶ 1. The Partnership Plans are sponsored by DMP (and other similar partnerships) with LPMS as general partner; both entities are putative intervenors but are not currently parties to the instant litigation. *See, e.g.*, *id.* ¶¶ 49, 51; ECF Nos. 53 & 54.

Defendants SAS and PIC provide vendor services to the Partnership Plans and Employer Plans. *See* Am. Countercl. ¶ 44. SAS provides "intellectual property, benefits expertise, ministerial administrative services, . . . and the compliance support necessary to third parties who operate employee welfare benefit plans." *Id.* ¶ 54. PIC "provides reinsurance to the sponsors of self-insured employee welfare benefit plans," including the sponsors of the Partnership and Employer Plans. *Id.* ¶¶ 58–59.

B. The Department of Labor's Advisory Opinion and the *Data Marketing* Case

On November 8, 2018, Defendant Alexander Renfro, acting as legal counsel for LPMS, sent the Department the AO Request regarding whether a plan sponsored by a limited partnership (as described in the AO Request) was an employee welfare benefit plan under ERISA. Am. Countercl. ¶¶ 65–66. The AO Request described a "novel" hypothetical partnership different from the classic partnership, like a law firm or a physician's group, in which individual partners offer services to the public. *Id.* ¶¶ 67–69. The hypothetical partnership's business is to sell

"electronic data generated by [limited partners]," styled as "working owners," to "third-party marketing firms." Am. Countercl. Ex. A at 1–2, ECF No. 52-1. LPMS requested the Department's opinion on whether health benefits offered to limited partners who joined such a hypothetical partnership were covered under ERISA. *Id.* at 10.

In January 2020,[1] the Department issued an Advisory Opinion concluding that the health benefits administered by the partnership described in the AO Request were not ERISA-covered, because the nature of the purported "work" being performed by the limited partners did not establish an employment relationship. Am. Countercl. ¶ 120 & Ex. B. In an amended complaint, DMP (the sponsor of one of these partnerships) and LPMS (the general partner to DMP and other, similar partnerships) challenged the Advisory Opinion under the APA. *Data Marketing*, ECF No. 9; *see generally Data Mktg. P'ship, LP v. U.S. Dep't of Labor*, 490 F. Supp. 3d 1048 (N.D. Tex. 2020); Am. Countercl. ¶¶ 1, 121. In September 2020, the district court granted summary judgment to DMP and LPMS and vacated the Advisory Opinion as "arbitrary and capricious under the APA and contrary to law under ERISA," and enjoined the Department "from refusing to acknowledge the ERISA-status of the Plan[.]" *Data Mktg. P'ship, LP*, 490 F. Supp. 3d at 1064, 1069; *see also* Am. Countercl. Ex. C, ECF No. 52-3.

On appeal, the Fifth Circuit affirmed the vacatur of the Advisory Opinion but "vacate[d] . . . the district court's injunction" and remanded for the district court to determine whether the limited partners were "working owner[s]" or "bona fide partner[s]" under ERISA (inquiries relevant to the question of ERISA coverage). *Data Mktg. P'ship, LP v. U.S. Dep't of Labor*, 45

[1] The Amended Counterclaim describes the Advisory Opinion as dated February 3, 2020 (*see* Am. Countercl. ¶ 120), but the attached Exhibit B is dated January 24, 2020.

F.4th 846 (5th Cir. 2022); *see also* Am. Countercl. Ex. D, ECF No. 52-4.[2] The parties are currently in discovery before the district court on remand. *See Data Marketing*, ECF No. 76.

The hypothetical plan structure at issue in the *Data Marketing* case is ostensibly the structure that Defendants refer to as the "Partnership Plans" in their Amended Counterclaim. *See* Am. Countercl. ¶ 1 (defining the Partnership Plans, among other things, as the subject of the AO Request). Should the *Data Marketing* court conclude, after factual development, that the partnerships do not create an employment relationship, then a limited partnership plan such as one described in the AO Request would not be governed by ERISA and the Department would lack jurisdiction to regulate it.

C. The Secretary's Investigation of Defendants and Defendants' Lawsuit to Enjoin the Secretary

The Amended Counterclaim includes allegations about the Secretary's investigation of SAS and PIC that led to her Complaint in this case (the "SAS/PIC Investigation," referred to by Defendants as the "Anjo Investigation," where Anjo is a holding company that directly owns part of SAS and indirectly owns part of PIC). Am. Countercl. ¶ 2. As part of the SAS/PIC Investigation, which began in 2019, the Department "issued numerous requests for information . . . to SAS and PIC" as well as other "key entities doing business with" them. *Id.* ¶ 87. The

[2] Defendants' renewed assertion in their Amended Counterclaim that "[a]t least four authorities show that the Partnership Plans are single employer employee welfare plans . . . subject to ERISA" is incorrect. The district court injunction they reference (mandating that the Partnership Plans be treated as ERISA plans) was *vacated* by the Fifth Circuit nearly three years ago, and three months ago the same district court which issued the initial ruling held that it did not have sufficient facts to determine whether the limited partners were working owners or bona fide partners such that their health plan was subject to ERISA. *Compare* Am. Countercl. ¶ 168 *with Data Mktg. P'ship*, 45 F.4th at 860 *and Data Marketing*, ECF No. 75 at 4–5. Additionally, contrary to Defendants' representations, neither "ERISA," the opinion in *Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1 (2004), nor the Department's 1999 Advisory Opinion state that the Partnership Plans (as described in the AO Request) are single-employer employee welfare benefit plans.

parties here agree that Defendants SAS and PIC are service providers to the Employer Plans—i.e., health plans sponsored by individual employers—that provide health benefits to their employees. Compl. ¶¶ 2 n.1, 12–14; Am. Countercl. ¶¶ 44, 53, 54, 58–59. The Employer Plans are separate and independent from the Partnership Plans.

In January 2021, after the Department opened the SAS/PIC Investigation, Defendants sued the Department in this district, claiming (i) the investigation was retaliatory and violated their First Amendment right to freedom of speech and freedom of association; (ii) the investigation violated their Fifth Amendment right to "equal protection of the law"; (iii) the investigation violated the APA; and (iv) the investigation violated ERISA. *See Suffolk*, Complaint ¶¶ 105–48 (attached as Exhibit A). After filing an answer, the Secretary moved for judgment on the pleadings (ECF No. 28) and the court granted her motion (ECF No. 43, attached as Exhibit B). Specifically, the court held that there was no final agency action to review under the APA and that the constitutional claims were not ripe because the Department had not made any final agency decision. Ex. B.[3]

D. The Parties Attempt to Resolve the Secretary's Investigation

On July 21, 2022, the Secretary sent a letter to Defendants summarizing the findings of her investigation and the basis of the Secretary's prospective ERISA claims. Am. Countercl. ¶ 116, & Ex. O, ECF No. 52-15. The letter sparked initial negotiations between the parties. Am.

[3] The *Suffolk* Complaint is not the only other time Defendants have brought their constitutional and APA claims against the Secretary. Defendants also raised the same First Amendment and APA claims in a counterclaim they filed in a subpoena enforcement proceeding related to the SAS/PIC Investigation in November 2021 in this district. *See Walsh v. Providence Ins. Co., I.I.*, No. 3:21-mc-00413 (ADC) (D.P.R.) (answer/counterclaim attached as Exhibit C). The counterclaim was dismissed as part of a voluntary dismissal of the action by both parties. *Walsh*, ECF No. 19. As discussed in the Secretary's opposition to Defendants' motion to transfer, DMP and LPMS attempted to raise similar arguments in a proposed supplemental complaint in the *Data Marketing* case, but the court rejected that attempt on April 8, 2025.

Countercl. ¶ 117. On June 8, 2023, the Secretary sent a demand letter outlining estimated plan losses at $60.3 million, and proposed settling for $40 million, among other terms. Am. Countercl. Ex. P at 2–3, ECF No. 52-16. Based on the Secretary's demand, the parties executed tolling agreements to allow time to continue settlement discussions. Am. Countercl. ¶ 119.

While negotiations about the SAS/PIC Investigation were ongoing, DMP and LPMS sent a letter on January 11, 2024, to the Department's counsel in the *Data Marketing* case "to explore the possibility of settlement discussions." Am. Countercl. ¶ 123 & Ex. Q, ECF No. 52-17. On February 8, 2024, counsel for the Department responded with a request "to have a broader conversation" including the *Data Marketing* case and the SAS/PIC Investigation. Am. Countercl. ¶ 124 & Ex. R, ECF No. 52-18. Thereafter, the parties to both the *Data Marketing* case and the SAS/PIC Investigation engaged in global negotiations that included the proposed dismissal of the *Data Marketing* case and a reduced monetary demand of $5.5 million from Defendants to settle the SAS/PIC Investigation. *See* Am. Countercl. ¶¶ 124–28 & Ex. S, ECF No. 52-19. Ultimately, DMP and LPMS did not agree to dismiss the *Data Marketing* case, and the "global" negotiations failed. Am. Countercl. ¶ 135.

The Department resumed negotiations with Defendants alone in an attempt to resolve the SAS/PIC Investigation, but the discussions were unsuccessful and the Secretary filed the instant Complaint. *Id.* & Ex. U, ECF No. 52-21. Defendants filed answers to the Secretary's Complaint, along with their original counterclaim asserting claims under the Declaratory Judgment Act, the APA, and ERISA. ECF Nos. 20, 21, 24, 25. The Secretary moved to dismiss the original counterclaim, ECF No. 48, and in response, Defendants amended their counterclaim, reasserting their APA claims but replacing their declaratory judgment and ERISA claims with First Amendment claims, ECF No. 52.

II. LEGAL STANDARD

When considering a motion to dismiss under Rule 12(b)(6), the First Circuit describes a two-step test for the sufficiency of a claim or counterclaim: "Step one: isolate and ignore statements in the complaint that simply offer legal labels and conclusions or merely rehash cause-of-action elements." *Schatz v. Republican State Leadership Comm.*, 669 F.3d 50, 55 (1st Cir. 2012) (citing *Ocasio–Hernández v. Fortuño–Burset*, 640 F.3d 1, 12 (1st Cir. 2011)); *see also Bautista Cayman Asset Co. v. Reliance Mfg.*, No. 16-1418 (FAB), 2017 WL 243362, at *2 (D.P.R. Jan. 20, 2017) (applying Rule 12(b)(6) to a counterclaim). "Step two: take the complaint's well-pled (i.e., non-conclusory, non-speculative) facts as true, drawing all reasonable inferences in the pleader's favor, and see if they plausibly narrate a claim for relief." *Schatz*, 669 F.3d at 55.

"Plausible, of course, means more than merely possible, and gauging a pleaded situation's plausibility is a 'context-specific' job that compels [the court] 'to draw on' [its] 'judicial experience and common sense." *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009)). One reason a claim might be implausible is where there is an "obvious alternative explanation" for the challenged conduct, such that the reviewing court cannot plausibly "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678, 682.

III. ARGUMENT

A. Defendants' Counts I and II Fail to State a Claim

Defendants' Counts I and II allege that the Department has violated the First Amendment by retaliating against Defendants for their association with DMP and LPMS, the entities that submitted the AO Request and filed the *Data Marketing* case. *See* Am. Countercl. ¶¶ 156–164,

159–165 (pp. 35–37).[4] These First Amendment claims are nearly identical to Defendants' claims in *Suffolk*, which they filed while the SAS/PIC Investigation was ongoing. But, as the Department also argued in *Suffolk*, the First Amendment claims are meritless.

Defendants' claims under the First Amendment suffer multiple fatal flaws—Defendants fail to allege (i) that they engaged in activity that is protected by the First Amendment, (ii) that the Department has taken an adverse action sufficient to chill Defendants' exercise of First Amendment rights, or (iii) that Defendants' purported protected activity caused any alleged retaliation by the Department. For these reasons, Defendants' First Amendment claims (Counts I and II) should be dismissed.

1. The First Amendment to the U.S. Constitution

The First Amendment exists to protect an individual's freedom of speech, which includes the right to advocate ideas, associate with others, and petition the government. *See Smith v. Ark. State Highway Emp., Local 1315*, 441 U.S. 463, 464 (1979). The First Amendment prohibits official retaliation on the basis of protected speech. *Mattei v. Dunbar*, 217 F. Supp. 3d 367, 373 (D. Mass. 2016) (citing *Hartman v. Moore*, 547 U.S. 250, 256 (2006)).

To present a *prima facie* case of First Amendment retaliation in the First Circuit, a party must allege that they (1) "engaged in an activity protected by the First Amendment;" (2) that the government "took an adverse action against [them]; and (3) there is a causal link between the protected activity and the adverse action." *Staples v. Gerry*, 923 F.3d 7, 15 (1st Cir. 2019). Importantly, "[i]t is not enough to show that an official acted with a retaliatory motive," but "the motive must *cause* the injury. Specifically, it must be a 'but-for' cause, meaning that the adverse

[4] Defendants' Amended Counterclaim includes two separate sets of paragraphs labeled as 159–164.

action . . . would not have been taken absent the retaliatory motive." *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019) (quotation omitted). With respect to the second element, any alleged "adverse action" must be sufficient to "have a chilling effect" on the plaintiff's exercise of their First Amendment rights for a constitutional violation. *Barton v. Clancy*, 632 F.3d 9, 29 (1st Cir. 2011) (citing *Bergeron v. Cabral*, 560 F.3d 1, 8 (1st Cir. 2009)). The pertinent question when determining whether an action has a "chilling effect" is whether it would "deter a reasonably hardy individual from exercising his constitutional rights." *Id.* (citing *Agosto-de-Feliciano v. Aponte-Roque*, 889 F.2d 1209, 1217 (1st Cir. 1989) (internal quotations omitted)). And "[w]here a chilling effect is speculative, indirect or too remote, finding an abridgment of First Amendment rights is unfounded." *Sullivan v. Carrick*, 888 F.2d 1, 4 (1st Cir. 1989) (citation omitted). Defendants fail to plead facts sufficient to meet *any* prong of this test.

2. Defendants Fail to Allege That They Engaged in Protected First Amendment Activity

As best the Department can understand, Defendants allege that they engaged in protected First Amendment activity because they were associated with DMP and LPMS, who submitted the AO Request (Count I) and initiated the *Data Marketing* case (Count II),[5] and that the Department began investigating SAS and PIC—and ultimately filed this enforcement action—to retaliate either for DMP and LPMS's actions or Defendants' association with DMP and LPMS.

Defendants' First Amendment claim fails at the first prong, because Defendants did not submit the AO Request or file the *Data Marketing* case, the purported protected speech. Rather, those actions were taken by separate actors—DMP and LPMS. Defendants lack standing to assert any alleged violation of the First Amendment rights of these third parties. *See Nogueras Cartagena v. María Calderón*, 150 F. Supp. 2d 338, 345 (D.P.R. 2001) ("Generally, a plaintiff

[5] Defendants' Amended Counterclaim refers to the *Data Marketing* case as the "Texas Suit." *See* Am. Countercl. ¶ 1.

has standing only to bring claims for his own rights and interests, and not for the rights and interests of third parties."). Nor have Defendants attempted to plead that they satisfy an exception to standing requirements that would allow them to litigate First Amendment claims on behalf of DMP or LPMS. And absent the AO Request and *Data Marketing* case, Defendants fail to identify any protected activity that they engaged in to support their own First Amendment claim.

Defendants also fail to allege that they engaged in any constitutional exercise of associational rights through their association with DMP and LPMS. As the First Circuit has explained, the First Amendment's guarantee of freedom of association is not "defined unreservedly." *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 57 (1st Cir. 1990), *abrogated on other grounds by Ecuadores Puertorriqueños en Acción v. Hernández*, 367 F.3d 61 (1st Cir. 2004). The First Amendment only applies to acts of association if the purpose of the association falls within the scope of activities considered protected under the First Amendment. *Id.*; *see also Wine & Spirits Retailers, Inc. v. Rhode Island*, 418 F.3d 36, 50 (1st Cir. 2005) ("[T]he embedded associational right protects only collective speech and expressive conduct in pursuit of those ends; it does not cover concerted action that lacks an expressive purpose[.]") (citation omitted). "Protected associations include, for example, political or religious associations." *El Día, Inc. v. Rossello*, 20 F. Supp. 2d 296, 305 (D.P.R. 1998) (citing *Correa-Martinez*, 903 F.2d at 57).

Defendants did not plead that they associate with DMP and LPMS for any sort of protected purpose—such as political expression, religious expression, or advocacy. To the contrary, they explicitly allege that their relationship with DMP and LPMS is a business one, with a financial interest shared between the entities. Am. Countercl. ¶¶ 1, 3, 6, 44, 57, 63(1), 63(2), 64, 160 (p. 34), and 161 (p. 36). But financial or business relationships are not

associations protected by the First Amendment. *El Día, Inc.*, 20 F. Supp. 2d at 305 ("Neither friendship nor financial interest is a protected association under the First Amendment."); *Wine & Spirits Retailers*, 418 F.3d at 51 ("concerted business activities" are not speech or expressive conduct protected by the First Amendment); *Perez Acevedo v. Puerto Rico*, No. 04-1962 (HL/CVR), 2006 WL 8445542, at *3 (D.P.R. Sept. 27, 2006) (explaining that expressive activities enjoy First Amendment protection while commercial association does not). Defendants' failure to plead facts that show they engaged in protected First Amendment activity means their Counts I and II must be dismissed.

3. The Department's Actions Are Not Adverse Actions Sufficient to Chill Defendants' First Amendment Rights

Defendants also fail to establish the second prong of a First Amendment retaliation claim, which requires "adverse action" by the government. They complain about the Department's investigation and this subsequent enforcement action, but such action does not suffice as "adverse action" sufficient to constitute retaliation. An agency investigation, without more, is insufficient to constitute "adverse action" by the government in the context of a First Amendment retaliation claim. *See Rehberg v. Paulk*, 611 F.3d 828, 850 n.24 (11th Cir. 2010), *aff'd*, 566 U.S. 356 (2012) ("The initiation of a criminal investigation in and of itself does not implicate a federal constitutional right."); *Trueman v. United States*, No. 7:12-cv-73-F, 2015 WL 1456134, at *13 (E.D.N.C. Mar. 30, 2015), *aff'd*, 615 F. App'x 122 (4th Cir. 2015) (agreeing with other courts "that a retaliatory investigation does not form the basis of a constitutional claim"); *Buckner v. Shumlin*, No. 1:12-cv-90-JGM, 2013 WL 6571814, at *5 (D. Vt. Dec. 13, 2013) (collecting cases); *cf. Hartman v. Moore*, 547 U.S. 250, 262 n.9 (2006) (addressing retaliatory prosecutions but declining to address whether "simply conducting a retaliatory investigation with a view to promote a prosecution is a constitutional tort").

Moreover, a subsequent civil enforcement action by a government agency is not necessarily an adverse action. Relevant factors to consider include whether the government's enforcement action is legitimate or frivolous, and whether it would deter a person from engaging in constitutionally protected activity. *See Nat'l Rifle Ass'n of Am. v. Vullo*, No. 21-0636-CV, 2025 WL 1966596, at *7–8 (2d Cir. July 17, 2025) (the First Amendment does not bar legitimate law enforcement by the government); *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1298–1300 (11th Cir. 2019) (discussing other circuit decisions that examine whether the government's civil action against the plaintiff was frivolous when addressing a First Amendment retaliation claim); *Shero v. City of Grove, Oklahoma*, 510 F.3d 1196, 1203–04 (10th Cir. 2007) (the government filing a declaratory judgment action against a plaintiff would not chill a person of ordinary firmness from engaging in constitutionally protected activity).

Here, neither the Department's investigation nor enforcement action constitute adverse action for purposes of Defendants' retaliation claim. The Amended Counterclaim describes the Department's actions in a manner consistent with the Department's investigative authority under ERISA and thus does not allege that the Department conducted the SAS/PIC Investigation in a retaliatory manner. For example, the Amended Counterclaim states that the Department issued subpoenas and conducted interviews. Am. Countercl. ¶¶ 87, 108. ERISA gives the Department authority "to make an investigation," and the Department may "require the submission of reports, books, and records . . . and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation." 29 U.S.C. § 1134(a)(1)–(2).

To the extent Defendants instead argue that the Department's investigation infringes upon their First Amendment right to freedom of association, they have also failed to state a claim. In the First Circuit, "the target of a subpoena" who is challenging a subpoena or investigative action

pursuant to the First Amendment "must make a prima facie showing of a first amendment infringement—typically, that enforcement of the disclosure requirement will result in harassment of current members, a decline in new members, or other chilling of associational rights." *United States v. Comley*, 890 F.2d 539, 544 (1st Cir. 1989) (finding that challenged subpoena did not violate First Amendment, because the target made only "general allegations concerning the harassment or harm that will result to his associates" by the requested information, which fell short of the "solid, uncontroverted evidence of actual harassment" required to find a violation of the freedom of association).

The only adverse action Defendants allege is that the SAS/PIC Investigation has prevented prospective growth of their business and lost them vendors because it makes companies wary of transacting with them. Am. Countercl. ¶¶ 97–98, 109–13. But such natural consequences of an investigation do not rise to the level of infringing on Defendants' associational rights. *See Nat'l Rifle Ass'n of Am. v. Cuomo*, 350 F. Supp. 3d 94, 120–21 (N.D.N.Y. 2018) (where the NRA contended that public statements by Governor Cuomo led to financial institutions ending their business relationships with the NRA, the court found that this did not "directly and substantially" interfere with the NRA's associational rights); *see also Lyng v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW*, 485 U.S. 360, 367 (1988) (government must pose a "direct and substantial" threat to the right to associate to rise to the level of a First Amendment violation). Defendants' allegations—that a government investigation of their operations caused other companies to be wary of engaging in business with them—would likely be true for any government investigation by any agency. Finding a First Amendment violation for the natural consequences of a routine investigation and enforcement

action is unwarranted, and it does not constitute a "direct and substantial" threat to Defendants' right to associate. *See Lyng*, 485 U.S. at 367.

Defendants cite to *National Rifle Ass'n of America v. Vullo*, 602 U.S. 175 (2024) ("*Vullo*"), to argue that the "threat of invoking legal sanctions and other means of coercion" by the government "to achieve the suppression" of disfavored speech is a First Amendment violation. Am. Countercl. ¶ 6 (citing *Vullo* and *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963)). But *Vullo* did not hold that a governmental entity cannot investigate potential violations of law—in fact, it stated that "[Government official] Vullo was free to criticize the NRA and pursue the conceded violations of New York insurance law." *Vullo*, 602 U.S. at 187. The Supreme Court clarified that what the government is prohibited from doing is "threaten[ing] enforcement actions" to "punish or suppress the NRA's gun-promotion advocacy," which is a First Amendment protected activity. *Id.* By contrast, Defendants' provision of services related to health plans is not protected speech or advocacy, and the Department's actions are consistent with its mandate to investigate potential violations of ERISA. *See Vullo*, 602 U.S. at 187; 29 U.S.C. § 1134(a).

But even if an alleged retaliatory investigation *could* support a First Amendment claim, it is clear that neither the initiation of the SAS/PIC Investigation nor the filing of this enforcement action have had any chilling effect on Defendants' ability to engage in protected speech. *See Barton*, 632 F.3d at 29 (citing *Bergeron*, 560 F.3d at 7–8). Since the Department opened the SAS/PIC Investigation, Defendants have sued to stop the investigation in this district (*see* Ex. A), negotiated for a potential resolution with the Department, and filed multiple counterclaims against the Department in this action and in the Department's subpoena enforcement action (*see* Ex. C). *See also* Am. Countercl. ¶¶ 106, 123–36. The vigorous litigation against the Department

indicates that Defendants are not intimidated by any action taken by the Department. *See, e.g.*, *Sullivan*, 888 F.2d at 4 (finding that the exercise of First Amendment rights were not chilled by letter from a government official, where recipient filed a section 1983 claim against the official and moved to dismiss a complaint related to the letter).

Accordingly, because Defendants fail to show any adverse action taken against them by the Department, let alone one sufficient to chill their exercise of their First Amendment rights, Counts I and II should be dismissed as meritless.

4. Defendants Fail to Allege Any Plausible Causal Link Between Their Actions and the Department's Alleged Retaliation

Even assuming that Defendants engaged in protected activity and the Department engaged in adverse action—neither of which is true—the Amended Counterclaim fails to establish the third prong of a First Amendment retaliation claim: a causal link between the protected activity and the adverse governmental action. *See Staples*, 923 F.3d at 15. Causation requires a showing that the plaintiff's conduct was a "substantial" or "motivating" factor in bringing about the allegedly retaliatory action. *Goldstein v. Galvin*, 719 F.3d 16, 30 (1st Cir. 2013) (citation omitted). Where the government's action is supported by "another explanation that is so obviously correct" as opposed to retaliatory motive, "the charge of improper motivation [is rendered] implausible." *Maloy v. Ballori-Lage*, 744 F.3d 250, 253 (1st Cir. 2014).

The Amended Counterclaim lacks any allegations that any supposed First Amendment activities by Defendants were a "substantial" or "motivating" factor in the Department's initiation of the SAS/PIC Investigation. Defendants seem to argue that the Department's initiation of the SAS/PIC investigation in April 2019 is retaliatory because it occurred five months after DMP and LPMS submitted the AO Request to the Department. Am. Countercl. ¶¶ 66, 86. But temporal proximity, on its own, is insufficient to establish a causal connection

between First Amendment protected activity and adverse action by the government.[6] *See, e.g.*, *Pagán-Colón v. Walgreens of San Patricio, Inc.*, 697 F.3d 1, 10 (1st Cir. 2012) (temporal proximity between FMLA-protected leave and termination, alone, is insufficient to establish a causal connection); *Acevedo-Diaz v. Aponte*, 1 F.3d 62, 69 (1st Cir. 1993) (temporal proximity between a change of administration and a public employee's termination was not (alone) enough to establish discriminatory animus).

Further, as Defendants admit, they did not submit the AO Request or file the *Data Marketing* case; DMP and LPMS were responsible for both. *See* Am. Countercl. ¶¶ 66, 121. The Department is unaware of any support for a First Amendment retaliation claim for an adverse governmental action based on protected speech *by another person*. To allege a causal link in such circumstances strains credulity. *See, e.g.*, *El Día, Inc.*, 20 F. Supp. 2d at 305–06 (finding that a company who alleged financial injury due to its association with a newspaper that published critical stories about the governor did not have the requisite causal link to support a First Amendment claim); *Correa-Martinez*, 903 F.2d at 57 (a government employee who claimed he was forced to resign due to a friendship with an employee who had political differences with others at work lacked requisite causal link for a First Amendment claim).

To the extent Defendants claim that their association with DMP and LPMS was a "substantial" or "motivating" factor in the Department's investigation, that also cannot establish the requisite causal link. First, as explained in the Amended Counterclaim, Defendants'

[6] The Secretary's Answer in the *Suffolk* litigation notes that the SAS/PIC Investigation was initiated "after receiving several participant complaints and state referrals involving [Suffolk Administrative Services and Providence Insurance Company] and entities associated with [them], including: (a) five referrals from state insurance regulators on August 16, 2018, September 21, 2018, February 8, 2019, February 14, 2019, and April 10, 2019, regarding products, plans and companies associated with [SAS and PIC][.]" *See Suffolk*, Answer ¶ 52 (attached as Exhibit D).

association with DMP and LPMS is for business purposes, not expressive purposes protected by the First Amendment (such as advocacy). Am. Countercl. ¶¶ 1, 3, 6, 44, 57, 63(1), 63(2), 64, & 160 (p. 34). Additionally, Defendants make no plausible, non-conclusory allegations as to why the Department would be motivated to investigate them due solely to their association with DMP and LPMS. To the contrary, the Department's initiation of the SAS/PIC Investigation is supported by a clear, lawful explanation other than retaliation: the Department was investigating the service providers SAS and PIC, along with the other individuals named as defendants here, for their services related to the Employer Plans, to determine if they were engaging in any violations of ERISA. *See* note 6, *supra*; 29 U.S.C. § 1134(a). Whether Defendants violated ERISA is entirely unrelated to DMP and LPMS's submission of the AO Request and filing of the *Data Marketing* case, which concern whether DMP and LPMS are operating plans governed by ERISA. Where the government's action has another "explanation that is so obviously correct as to render the charge of improper motivation implausible," there is no First Amendment violation. *Maloy*, 744 F.3d at 253. Accordingly, Defendants' Count I and II should be dismissed because they cannot establish a causal link between any protected activity and adverse action by the Department.

B. Defendants' Count III Fails to State a Claim

Defendants also renew their claim under the APA as Count III, which largely repeats the allegations made in their initial Counterclaim, ECF No. 25. Count III avers that the Department "sue[d] or threaten[ed] suit against Defendants" based on "unsupported monetary demands" and "the identity of plans with which they lawfully do business," with the goal of "discredit[ing] or dismantl[ing] the Partnership Plans as well as SAS and PIC." Am. Countercl. ¶¶ 176–79. Defendants argue that the Department's lawsuit and threats of the lawsuit violate 5 U.S.C. §

706(2)(A)–(D). This claim, however, should be dismissed for failure to state a claim upon which relief can be granted.

1. Threshold Requirements Under the APA for Judicial Review

The APA does not apply to actions "committed to agency discretion by law." 5 U.S.C. § 701(a)(2). This arises where "[s]tatutes are drawn in such broad terms that in a given case there is no law to apply," *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971), and "a court would have no meaningful standard against which to judge the agency's exercise of discretion," *Lincoln v. Virgil*, 508 U.S. 182, 191 (1993) (quotation marks omitted). Such situations involve "a complicated balancing of . . . factors which are peculiarly within [the agency's] expertise." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

Where the APA does provide for judicial review, that review is limited to "final agency action for which there is no other adequate remedy in a court[.]" 5 U.S.C. § 704; *see also Conservation Law Found., Inc. v. Busey*, 79 F.3d 1250, 1261 (1st Cir. 1996). The APA's judicial review provision "is not so all-encompassing as to authorize . . . judicial review over everything done by an administrative agency." *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th Cir. 2013) (quotation marks omitted). "Agency action" is defined as "the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). The agency action must also be final to be reviewable, which means it satisfies two conditions. *Harper v. Werfel*, 118 F.4th 100, 116 (1st Cir. 2024). First, it "must mark the 'consummation' of the agency's decisionmaking process." *Id.* (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997)). Second, "the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Id.*

2. Defendants Fail to Plead any Reviewable Agency Action

Defendants' Count III suffers from multiple fatal flaws—it (i) fails to provide fair notice of the basis for their APA claim, (ii) challenges decisions committed to agency discretion, and (iii) complains about actions that are not final agency action subject to judicial review. Accordingly, Count III is meritless and should be dismissed.

To begin, Defendants' Count III does not provide "fair notice" of the basis for their APA claim, as they interchangeably allude to the SAS/PIC Investigation, the Secretary's Complaint in this case, and negotiations to settle the Secretary's claims. *See* Am. Countercl. ¶¶ 167–79; *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It is also not clear whether the challenged actions relate to the Partnership Plans, the Employer Plans, or both. *See, e.g.*, Am. Countercl. ¶¶ 167–79. Such a pleading cannot stand under Rule 8. *See Gonzalez-Camacho v. Banco Popular de Puerto Rico*, 318 F. Supp. 3d 461, 504 (D.P.R. 2018), *aff'd in part, dismissed in part*, No. 17-1973, 2020 WL 5543934 (1st Cir. July 21, 2020) ("Finally, Plaintiffs' 'kitchen [sink] type' approach [. . .] has created lack of compliance with Rule 8(a) also causing dismissal.").

Nonetheless, whichever of these actions underlie Defendants' Count III, none pass muster as reviewable under the APA. First, to the extent Defendants challenge the SAS/PIC Investigation, such decisions are committed to agency discretion. It has long been recognized that the APA precludes judicial review of "agency refusals to institute investigative or enforcement proceedings[.]" *Heckler*, 470 U.S. at 838; *see also S. Ry. Co. v. Seaboard Allied Milling Corp.*, 442 U.S. 444, 461 (1979); *Mass. Pub. Interest Research Grp., Inc. v. Nuclear Regulatory Comm'n*, 852 F.2d 9, 14–15 (1st Cir. 1988). The same logic applies to an agency's decision to open an investigation. In *Gentile v. Securities and Exchange Commission*, the Third Circuit applied *Heckler* to a Securities and Exchange Commission decision to initiate an

investigation, concluding that "a decision to investigate involves a complicated balancing of several factors peculiarly within the agency's expertise, including the allocation of scarce resources," and the APA precluded judicial review where Congress had not "articulated specific standards governing a decision to initiate an investigation under the Exchange Act." 974 F.3d 311, 319 (3d Cir. 2020). Further, the court also concluded that the agency's "allegedly retributive motive" did not alter the unreviewability of the investigation because the APA "shields the entirety of an agency action that is committed to agency discretion by law." *Id.* at 319–20.

Along with being committed to agency discretion, conducting an investigation pursuant to an agency's authority is not reviewable final agency action. The First Circuit has clearly explained that "investigatory measures are not final agency action" for failure to mark the "consummation" of the agency's decision-making process. *Harper*, 118 F.4th at 116–17 (collecting cases); *see also Conservation Law Found., Inc. v. Jackson*, 964 F. Supp. 2d 152, 167 (D. Mass. 2013) ("[I]nvestigation prior to any enforcement action is quintessentially non-final as a form of agency action." (quotation omitted)). Defendants previously challenged the SAS/PIC Investigation in this Court prior to the filing of the enforcement action, and this Court properly dismissed Defendants' APA claim because the investigation was not final agency action. *See* Ex. A ¶¶ 133–40; Ex. B at 23–24. Further, to the extent that Defendants are challenging any settlement negotiations with the Secretary during the investigation, such discussions are similarly an interim step that is not final agency action subject to review. *See Nimmrich & Prahm Reederei Gmbh & Co. KG MS Sonja v. United States*, 925 F. Supp. 2d 850, 854–55 (S.D. Tex. 2012) ("[I]t cannot be said on this record that the parties' impasse in their negotiations marks the 'consummation' of the Coast Guard's decision making process[.]"); *Robishaw Eng'g, Inc. v.*

United States, 891 F. Supp. 1134, 1150–51 (E.D. Va. 1995) (statements during settlement negotiations are not final agency action).

Neither is the Secretary's decision to bring an enforcement action a reviewable "final agency action" under the APA. *City of Oakland v. Holder*, 901 F. Supp. 2d 1188, 1195 (N.D. Cal. 2013), *aff'd*, *City of Oakland v. Lynch*, 798 F.3d 1159 (9th Cir. 2015). As the *Holder* court explained, an agency's decision to file a civil action does not meet the definition of agency action because "it is not a rule, order, license, sanction, form of relief, or failure to act." *Id.* at 1195. Furthermore, an agency's filing of a civil complaint does not meet the *Bennett* criteria for finality, as simply filing a complaint does not determine any rights or obligations or result in consequences. *Id.* The *Holder* court could not locate any authority holding that filing a civil complaint qualified as final agency action under the APA, and it was unwilling to expand the definition of "final agency action" to allow every civil or criminal suit filed by the United States government to be subject to separate judicial review. *Id.* at 1195–96.

Accordingly, Count III should be dismissed, as the Secretary's investigation, negotiations, and enforcement action regarding either the Employer Plans or Partnership Plans are not subject to judicial review under the APA.

3. Defendants Have Not Pled Any Violation of the APA

Even if the Secretary's decisions to investigate, negotiate, or bring an enforcement action were reviewable under the APA, Defendants have still failed to state a claim under APA sections 706(2)(A), (B), (C), and (D). The standard for review under the APA is "narrow" and requires courts to ensure that the agency "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983). Defendants plead no facts that the SAS/PIC Investigation, settlement negotiations,

or filing of a civil enforcement action are either (i) arbitrary and capricious; (ii) contrary to their constitutional right, power, privilege or immunity; (iii) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (iv) without observance of procedure required by law. 5 U.S.C. §§ 706(2)(A)–(D).

Frankly, Defendants' allegations undercut their claim that the Secretary has violated the APA. With respect to the SAS/PIC Investigation, Defendants allege that the Secretary investigated Defendants for over five years, from 2019 through 2024 (Am. Countercl. ¶¶ 86, 87, 133–35), the Secretary gathered information using at least ten subpoenas to SAS, PIC, and other "key entities" (*Id.* ¶¶ 87, 116), and the Secretary gave notice to SAS and PIC "as to the substance of its [] Investigation and alleged violations of ERISA" (*Id.* ¶ 116 & Ex. O).[7] Defendants' Amended Counterclaim also explains how, for more than two years, the Secretary attempted to negotiate a resolution of Defendants' alleged violations of ERISA (Am. Countercl. ¶¶ 123–36), engaged in several rounds of proposals and responses on potential settlement terms (*Id.* ¶¶ 118, 125 & Exs. P, Q, R), and filed the Complaint only after negotiations broke down (*Id.* ¶ 135). None of these actions are arbitrary and capricious, retaliatory, or otherwise a violation of law.

To the contrary, the obvious alternative explanation for the Secretary's actions is that she was pursuing her lawful investigative authority under 29 U.S.C. § 1134 and conducting a thorough investigation. Upon a determination of ERISA violations, the Secretary made a good faith attempt at resolving the claims in a way that would protect the Employer Plans and their

[7] The Counterclaim also references state investigations of SAS and PIC, but such activities are clearly not "agency action" by the Secretary. Am. Countercl. ¶¶ 109–14. To the extent Defendants attempt to connect state investigations with the SAS/PIC Investigation, ERISA permits coordination by the Secretary and states. *See* 29 U.S.C. § 1134(d) (communications between Secretary and state authorities), § 1136(c) (Secretary may delegate authority to states), and § 1144(b)(6)(A) (Secretary and states may have concurrent jurisdiction over MEWAs).

participants. Defendants admit that, as of July 21, 2022, the parties were in "active settlement negotiations" (Am. Countercl. ¶ 117 & Ex. O) and those negotiations, though at times "very slow," continued into 2024 as the Secretary delayed filing any enforcement action (*Id.* ¶ 119). The Counterclaim describes how DMP and LPMS first proposed settling the *Data Marketing* case,[8] which prompted the Secretary's suggestion for global settlement discussions, to which Defendants, DMP, and LPMS agreed. *Id.* ¶¶ 123–25 & Exs. Q & R. With the potential for settling the *Data Marketing* case, the Secretary accordingly lowered her monetary demand of the Defendants (Am. Countercl. ¶ 125), and, when DMP and LPMS refused to dismiss the *Data Marketing* case, the Secretary accordingly withdrew her lower monetary offer (*id.* ¶¶ 130, 133, 135). While Defendants claim that such demands were "extortive," increasing a monetary demand after a proposed benefit is taken off the table is not extortion—it is a basic principle of negotiations. Only when the parties were unable to reach resolution did the Secretary file for enforcement pursuant to 29 U.S.C. §§ 1132(a)(2) and (a)(5). The Secretary's actions as alleged in the Counterclaim are thus commensurate with her statutory authority and do not support an APA violation. *See Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 597 (8th Cir. 2009) ("An inference pressed by the plaintiff is not plausible if the facts he points to are precisely the result one would expect from lawful conduct in which the defendant is known to have engaged.").

Because Defendants fail to plead any reviewable final agency action and the alleged actions, even if reviewable, do not violate the APA, Count III should be dismissed.

[8] Contrary to Defendants' suggestion that the Secretary linked the *Data Marketing* case with this action, DMP and LPMS suggested settling the *Data Marketing* case, not the Secretary. Only after DMP and LPMS suggested settlement did the Secretary propose a resolution of both the SAS/PIC Investigation and the *Data Marketing* case due to the connection among the parties. Am. Countercl. ¶¶ 123–24.

IV. CONCLUSION

For the foregoing reasons, the Secretary respectfully requests that her Motion to Dismiss Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief be granted and the Amended Counterclaim be dismissed in its entirety.

Dated: August 8, 2025

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that I filed the Secretary's Motion to Dismiss Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief on the docket via CM/ECF. Notice of this filing will be sent to all counsel of record through the Court's Electronic Case Filing System.

/s/ Jamie L. Troutman
Jamie L. Troutman

EXHIBIT A

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

SUFFOLK ADMINISTRATIVE SERVICES, LLC, PROVIDENCE INSURANCE COMPANY, I.I., PROVIDENCE INSURANCE PARTNERS, LLC, and ANJO, LLC, Plaintiffs, UNITED STATES DEPARTMENT OF LABOR, EUGENE SCALIA, *in his official capacity as Secretary of the United States Department of Labor*, and UNITED STATES OF AMERICA, Defendants.	)	Civil No. _____

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE COURT:

COME NOW Plaintiffs, Suffolk Administrative Services, LLC ("SAS"), Providence Insurance Company, I.I. ("PIC"), Providence Insurance Partners, LLC ("PIP"), and Anjo, LLC ("Anjo") and file this Verified Complaint for Declaratory and Injunctive Relief against Defendants United States Department of Labor ("DOL"), Eugene Scalia, in his official capacity as Secretary of the United States Department of Labor, and shows the Court as follows:

INTRODUCTION

1. Plaintiffs sought guidance from DOL to ensure that a proposed business structure to provide a novel way for companies to provide access to health coverage to their personnel and recruits complied with applicable law. Plaintiffs never approached this novel structure with a "catch us if you can" philosophy. Rather, Plaintiffs literally "walked through the front door" of DOL seeking its guidance and view on the applicable law before implementing it. Plaintiffs relied in good faith on the unequivocal representations and guidance of DOL officials regarding the novel concept. For this, DOL has been punishing Plaintiffs with a retaliatory "investigation."

2. On November 8, 2018, LP Management Services, LLC ("LPMS"), filed a formal Advisory Opinion Request ("2018 Request") with the United States Department of Labor ("DOL") seeking guidance on whether a proposed health benefit plan ("Plan") was a lawful single employer health plan under the Employee Retirement Income Security Act ("ERISA"). A true and correct of the 2018 Request is attached hereto as Exhibit 1.

3. The structure of the Plan was developed by Alexander Renfro ("Mr. Renfro"), the Chief Legal Officer of PIP and an officer of Anjo, SAS and PIC. Mr. Renfro is a benefits attorney licensed in the State of Tennessee. Mr. Renfro received a juris doctor from Southern Methodist University Dedman School of Law, and a certificate in employee benefits, as well as an LLM in taxation from Georgetown University Law Center.

4. Mr. Renfro, as attorney for LPMS, was the principal author of the 2018 Request. The 2018 Request detailed the legal and factual basis for application of ERISA to the Plan building upon the previously recognized concept under ERISA of "working owners." Given the novel nature of the structure applicable to limited partnerships, LPMS sought guidance from DOL with respect to four issues, seeking confirmation from DOL that:

a. 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).

b. 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").

c. 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).

d. The single-employer self-insured group health plan sponsored by the limited partnership is governed by Title I of ERISA.

5. On January 15, 2019, and on February 27, 2019, Mr. Renfro revised the 2018 Request culminating in a final revised request ("Revised Request") to include additional factors and legal arguments for consideration by DOL. A true and correct copy of the Revised Request is attached hereto as Exhibit 2.

6. As noted in the Revised Request, LPMS sought to implement this Plan structure through several limited partnerships for which LPMS would act as general partner (the "Partnership Plans").

7. SAS is a Puerto Rican limited liability company with principal offices located in Guaynabo, Puerto Rico, providing benefits consulting and vendor management company providing compliance assistance to employers located in the United States mainland to implement, administer, and maintain self-insured group health plans. In addition to traditional benefits administration services, SAS provides other services including ERISA compliance advice, Affordable Care Act compliance advice, advice on local or federal wage ordinance provisions, and vendor management to employers with self-insured group health plans. SAS provides such benefits consulting and vendor management services to employers implementing both traditional self-insured group health plans and the novel Partnership Plan structure.

8. PIC is Puerto Rican international insurance company with principal offices located in San Juan, Puerto Rico, providing reinsurance for employers located in the United States mainland implementing both traditional self-insured group health plans and the novel Partnership Plan structure.

9. Anjo is a Tennessee limited liability company that does not provide any services of any kind to any individual or entity relating to ERISA or group health plans, be they fully insured or self-insured. Anjo does not participate in any ERISA plans of any nature nor does it act as a vendor to any ERISA plan. Its only involvement in any of the issues relevant to this Complaint is its connection to Mr. Renfro.

10. PIP is a Tennessee limited liability company providing consultation and advice on structuring reinsurance coverage for employers implementing both traditional self-insured group health plans and the novel Partnership Plan structure.

11. SAS, PIC, and PIP all expended resources, time, and expertise to develop products tailored to assist employers seeking to implement the novel Partnership Plan structure.

12. On February 21, 2019, several state Attorneys General sent DOL a letter encouraging them to act on the Revised Request because the applicability of ERISA to the Plan heavily impacts the economic and public health interests of the states ("AG Letter"). A true and correct copy of the AG Letter is attached hereto as Exhibit 3.

13. DOL has never provided any response to the AG Letter.

14. For more than one year, DOL provided no formal response to the Revised Request, forcing LPMS and Data Marketing Partnership LP ("DMP"), a limited partnership for which LPMS serves as general partner, to file suit in the United States District Court for the Northern District of Texas, *Data Marketing Partnership, LP, and LP Management Services, LLC v. Department of Labor*, Civil Case 4:19–cv–00800–O (the "AO Case").

15. While DOL refused to make any formal response to the AO Request and AG Letter, and in so doing violated the terms of its own published policies for AO review and response, DOL simultaneously opened a retaliatory investigation against Anjo, targeting the Partnership Plans,

Plaintiffs, and several related organizations in a transparent effort to provide a post hoc explanation for their lack of action on the Revised Request, and with the transparent aim to chill the speech and association rights of Plaintiffs and those organizations in violation of the First and Fifth Amendments to the United States Constitution (the "Anjo Investigation").

16. On January 24, 2020, six business days before its response was due in the AO Case, and more than fourteen months after the Request had been duly and properly filed, DOL finally issued an adverse action response ("Response") to the AO Request. A true and correct copy of the AG Letter is attached hereto as Exhibit 4.

17. The six-page Response was arbitrary and capricious, containing almost no legal analysis by DOL and, in direct violation of ERISA Procedure 76-1, was based on erroneous facts and misstatements of the proposed business structure.

18. Because the Response contained so many factual misstatements and so little legal analysis, it appeared to be just another calculated effort by DOL to hamper implementation of the novel structure at the expense of Plaintiffs' constitutional rights and the rights of employers, limited partners, and employees seeking the benefits of the Partnership Plans and similar plans providing affordable access to health care.

19. In light of the adverse Response, the AO Case continued.

20. LPMS and DMP eventually received relief when the court granted its Motion for Summary Judgment setting aside DOL's Response (*See*, AO Case at Doc. 37).

21. This lawsuit seeks relief from the ongoing retaliatory and unconstitutional acts of DOL related to their purported Anjo Investigation.

JURISDICTION AND VENUE

22. 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).

23. 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).

24. 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. SAS is subject to the jurisdiction and venue of the Court.

25. PIC is a Puerto Rican international insurer with a principal place of business located at 954 Ponce de Leon Avenue, Miramar Plaza, Suite 802, San Juan, PR 00907. PIC is subject to the jurisdiction and venue of the Court.

26. PIP is a Tennessee limited liability company with a principal place of business located at 3200 West End Ave, Suite 500, Nashville, TN 37203. PIP voluntarily submits itself to the jurisdiction and venue of the Court.

27. Anjo is a Tennessee limited liability company with its business office located at 5032 South Bur Oak Place, Sioux Falls, SD 57108. Anjo voluntarily submits itself to the jurisdiction and venue of the Court.

28. Venue is proper in this district pursuant to the express provisions of ERISA, 29 U.S.C. §§ 1132(k). Venue is also proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (e)(1). Defendants are United States agencies or officers sued in their official capacities; Defendants reside in this District; and a substantial part of the events giving rise to this action occurred in this District.

PARTIES

29. Plaintiffs are aggrieved by the unreasonable, retaliatory investigation into all businesses engaged in providing services to the Partnership Plans. This investigation, and the vindictive manner in which it has been carried out over the past 18 months, evinces a clear design to silence Plaintiffs and otherwise inflict damage upon Plaintiffs by any and all means available to DOL. Notably, and as further described herein, DOL is violating its own procedures for the conduct of such investigations. Accordingly, Plaintiffs have standing to bring this action pursuant to 29 U.S.C. § 1132(k).

30. Defendant 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).

31. Defendant Eugene Scalia ("Secretary") is the Secretary of Labor and is sued solely in his official capacity.

32. Defendant the United States of America is sued as permitted under 5 U.S.C. § 702.

FACTS

33. This case arises out of DOL's blatant retaliation against the Plaintiffs for exercising their constitutionally protected rights and, in doing so, relying on the unequivocal representations and guidance of DOL officials regarding a business structure which provided the personnel and prospective recruits of its client companies with a novel way to access private health coverage.

PETITIONING THE GOVERNMENT

34. In October, 2018 (the "October Meeting"), the Plaintiffs met with the United States DOL in an effort to be transparent with the relevant regulatory agencies that would interact with the Plan, its participants, and its sponsors.

35. In attendance at the October Meeting and representing the interests of the Plaintiffs was Alex Renfro, among others.

36. In attendance at the October Meeting and representing the interests of DOL was Preston Rutledge, then Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA), the division of DOL responsible for ERISA compliance and interpretations.

37. By all accounts, the October Meeting was very successful. Plaintiffs' representatives explained the plan structure to DOL representatives and provided high level detail of the goals of the plan and the business structure.

38. At the October Meeting, Assistant Secretary Rutledge told representatives from Plaintiffs that an Advisory Opinion Request was the best route to ensure approval of the Plan by DOL, which Mr. Renfro promptly submitted.

39. The parties parted ways with an explicit agreement to continue discussions so that DOL could be comfortable approving the Plan as ERISA compliant.

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

41. Assistant Secretary Rutledge verbally expressed to Christopher Condeluci, an advisor to Plaintiff 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.

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

43. As a result of this and other advice from DOL, the 2018 request was slightly revised and resubmitted to DOL in early 2019, culminating in the final Revised Request submitted on or about February 26, 2019.

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

45. 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. DOL made no formal response to any of these submissions.

46. Instead, during a meeting on March 6, 2019, then DOL Chief of Staff Nicholas Geale told a group of representatives from the Plaintiffs and interested states, including Mr. Renfro, Mr. Condeluci, and Louisiana Attorney General, Jeff Landry (the lead signatory to the aforementioned letter) 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 perceived conflict with litigation around DOL's new Association Health Plan ("AHP") rule.

47. At one point during the meeting, representatives from DOL became animated and said that if the Plaintiffs' group disagreed about DOL's priorities, they should "take it up with the White House," which had instructed DOL not to approve the Revised Request.

48. In a subsequent meeting between Mr. Condeluci and Mr. Geale at DOL, 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 DOL would not investigate or otherwise interfere with any LPMS-managed partnership plans.

49. Representatives for Plaintiffs attempted to explain to Mr. Geale that even assuming DOL refrained from investigating or hampering DMP, the fifty separate state insurance regulators could pose significant and indefinite regulatory 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 politically motivated investigations by individual states in the absence of an ERISA ruling.

50. Several staff members of DOL were present at this meeting, including, upon information and belief, members of the enforcement division of DOL and Joseph Canary, who is the Director of the Office of Regulations and Interpretations and the purported author of the adverse Response.

51. It turns out Plaintiffs' reticence to accept handshake deals with DOL was well-founded, because once Plaintiffs declined DOL's offer, DOL embarked on a fishing expedition through what can only be described as a vindictive and retaliatory investigation.

52. Plaintiffs believe the first subpoena related to the Anjo Investigation was issued by DOL shortly after the earlier described meeting in which Joseph Canary was in attendance, thus beginning the investigation into Anjo despite DOL having *never* posed a single written question or other formal response to the Revised Request or the AG Letter. This lack of interaction on the Revised Request is highly unusual for DOL's advisory opinion process, as questions from DOL to the requestor routinely occur following submission of an advisory opinion request.

53. DOL issued subpoenas to almost every key entity doing business with Anjo, SAS, or PIP, including some businesses that have nothing whatsoever to do with any partnership plans.

54. The clear intent of the investigation and the subpoenas is to intimidate Plaintiffs and their partners, and to stifle their speech and associational rights, while inflicting as much economic damage on Plaintiffs as possible.

55. The maltreatment by DOL notwithstanding, Plaintiffs have complied with all requests, and encouraged their partners to do the same.

56. But such compliance comes at a price, having collectively cost hundreds of thousands of dollars and immeasurable time and energy to date (precious time diverted from serving clients and improving all aspects of Plaintiffs' businesses and those of Plaintiffs' clients, including data collection and marketing).

57. Defendants' actions have also prevented Plaintiffs from growing their business, because they have naturally been obliged to disclose the investigation to all potential new distribution sources, who have all understandably said, "Call us when it's over." Additionally, current vendors and distribution partners of Plaintiffs have either reduced or terminated relations with Plaintiffs as a result of receiving subpoenas in the Anjo Investigation.

58. Immediately before the initiation of the investigation of Anjo and since that time, DOL rapidly changed course in its dealings with the Plaintiffs regarding the propriety of the Partnership Plans as well.

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

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

61. During this time-period, DOL subpoenaed more than ten entities related to LPMS and Plaintiffs as part of the Anjo Investigation. True and correct copies of these subpoenas are attached hereto as Exhibit 5.

62. The subpoenas from DOL are ostensibly issued pursuant to 29 U.S.C. § 1134(a)(1), which grants EBSA the authority to determine whether someone is violating or about to violate ERISA.

63. Nevertheless, this explanation is especially curious since these subpoenas were issued within weeks of the adverse Response issued by DOL that explicitly presumed the Partnership Plans are not covered by ERISA. Despite this Response, DOL continued to pursue its amorphous, ill-defined, and indefinite "investigation" into Anjo.

64. The Response, in fact, expressly states, "it is the Department's view that the proposed [Partnership Plan] health benefit programs would not be single-employer group health plans ***or ERISA plans at all."*** [Emphasis Added].

65. In the AO Case, the District Court rejected DOL's view.

66. DOL is attempting to have it both ways. On the one hand, they state that the Partnership Plans covered by the Revised Request are not subject to ERISA, and yet they are investigating Anjo and others under their authority to ensure compliance with ERISA. Now that the District Court in the AO Case has resoundingly rejected this misguided view of DOL, it has failed to abandon (or even curtail) its retaliatory investigation of Anjo. This is emblematic of the abusive, duplicitous, and unconstitutional conduct DOL has subjected Plaintiffs to for well over a year.

67. Plaintiffs welcomed DOL oversight from the beginning – literally walking in its front door to seek guidance on the novel Partnership Plans before implementing them. However, DOL oversight must still comply with the United States Constitution and ERISA. DOL oversight does not extend to baseless, retaliatory fishing expeditions.

68. DOL issued the subpoenas to stifle the ability of Plaintiffs to continue their services with respect to the Partnership Plans, to hinder or altogether block the right of the partners to join together and freely associate with one another, to hinder or altogether block the right of Plaintiffs'

customers to join together and freely associate with one another and/or with Plaintiffs, and in response to LPMS' petition to the government through the 2018 Request and Revised Request.

69. Having been thwarted by the District Court's ruling in the AO Case, DOL is using its abusive investigatory tactics to achieve its desired end by other, unlawful means.

70. DOL's efforts have been highly successful. Indeed, the effect of this retaliatory investigation and the associated subpoenas has been to thwart the ability of Plaintiffs to refine and implement the Partnership Plan, as well as conduct their ordinary course of business with respect to more traditional group health plans.

71. The very existence of the seemingly interminable investigation has understandably both frightened potential Partnership Plan vendors and dissuaded them from providing services to the Partnership Plans.

72. The very existence of the seemingly interminable investigation has understandably both frightened potential Partnership Plan vendors and dissuaded them from providing services to the Partnership Plans and frightened potential vendors and partners from conducting business with Plaintiffs both generally and with respect to Partnership Plans. Additionally, existing vendors of Plaintiffs have reduced or terminated relations with Plaintiffs as a result of the retaliatory Anjo Investigation.

73. Such an outcome threatens the viability and longevity of the Partnership Plans and the limited partnerships sponsoring them, because the success of such limited partnerships depends on attracting many partners, as well as Plaintiffs' viability as going concerns, since their ability to conduct business at all has been stymied by the loss of goodwill and reputation among existing and potential partners while the cost of complying and attempting to respond in good faith to the retaliatory Anjo Investigation continues.

74. The retaliatory investigation has inhibited the ability of Plaintiffs, the clients they service, their clients' plan participants, potential plan participants, and Plaintiffs' customers and business partners to associate with one another on the basis of their political and protected viewpoints.

75. This abuse must stop.

DOL CONTINUES TO DISREGARD ITS OWN RULES

76. On May 19, 2020, the President signed Executive Order 13924, *Executive Order on Regulatory Relief to Support Economic Recovery* ("EO").

77. 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.

78. Understanding this, 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"). A true and correct copy of the Memo is attached hereto as Exhibit 6.

79. 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 Plaintiffs.

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

81. 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).

82. Defendants do not comply with these basic tenants of due process, fairness, and justice highlighted by the Memo and commanded by the EO.

83. 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…"

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

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

86. The content of this Memo and the EO that inspired its creation, coupled with the aforementioned facts, show not only that the Defendants' investigation is nothing more than a thinly veiled attempt to silence the speech and association rights of Plaintiffs, but also a blatant violation of the direction of the President expressed in the EO.

87. Beyond the terms of the EO and the implementing Memo, DOL also failed to follow its own procedures, specifically ERISA Procedure 76-1.

88. After submission of the Revised Request, DOL never requested any follow up information from LPMS and it never contacted any representative of LPMS to confirm its understanding of the facts presented in the Revised Request. This failure led to DOL's flawed understanding of the relevant facts.

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

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

91. In the Response, however, DOL did not accept as true even the most basic facts presented in the Revised Request.

92. For these violations of ERISA Procedure 76-1, among other reasons, the District Court in the AO Case found DOL's conduct relative to the Response to be arbitrary and capricious.

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

94. This Court should not permit DOL to run roughshod over its own policies and over Constitutional restraints that exist to safeguard American citizens from the considerable power of the administrative state.

DOL REFUSES TO PROVIDE PLAINTIFFS INFORMATION ON SCOPE AND PURPOSE OF INVESTIGATION

95. On November 6, 2020, counsel for Plaintiffs 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.

96. As noted in the November 6, 2020, letter, Plaintiffs have all cooperated with DOL in the Anjo Investigation at great cost in legal fees and lost productivity. Plaintiffs noted that each is a small business with limited personnel resources available to respond to the subpoenas. Despite these limited resources, Plaintiffs 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.

97. Having expended considerable resources in legal fees and lost productivity cooperating with DOL, Plaintiffs requested that DOL provide responses to reasonable requests for clarifying information on the Anjo Investigation, posing the following questions:

> 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?

98. Regardless of whether DOL desired to respond to the above reasonable requests, Plaintiffs sought a path to reach a resolution to the Anjo Investigation without needing to resort to litigation. Specifically, Plaintiffs offered to engage in a constructive dialogue with DOL around the following suggestions:

> • 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.
>
> • 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 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.

99. As with all of Plaintiffs prior interactions with DOL, the November 6 letter was delivered in good faith seeking to develop a working framework between Plaintiffs and DOL within which DOL could be fully satisfied that the implementation of the Partnership Plans complies with ERISA and allow Plaintiffs to continue their business within the requirements of ERISA.

100. Rather than accept the good faith offer to engage in constructive dialogue on how best to ensure ERISA compliance, satisfy DOL's concerns (assuming there were any legitimate concerns at the onset of the Anjo Investigation) that led to the amorphous and undefined Anjo Investigation, and create a structure for future interactions ensuring Plaintiffs' ERISA compliance, DOL rejected out of hand Plaintiffs' overtures.

101. On December 14, 2020, Katrina Liu, Trial Attorney, Office of the Solicitor of DOL (also an attorney representing DOL in the AO Case), responded on behalf of DOL with a letter essentially noting DOL's "ample authority to conduct its investigation in order to determine whether ERISA violations have or are about to occur." In short, DOL was "not in a position to provide the specific information you seek regarding the timing and scope" of the Anjo Investigation.

102. If there is or ever was a legitimate basis for the Anjo Investigation, DOL refuses to state what it is.

103. On December 30, 2020, Plaintiffs responded to Attorney Liu with citations to authority showing that, while broad, DOL's investigatory authority is not as limitless as portrayed in her letter of December 14. Plaintiffs closed their reply letter with yet another request that DOL reconsider its inexplicable approach to the Anjo Investigation. Plaintiffs 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." Despite the obvious damage that the DOL is causing, DOL has not reconsidered its position.

104. True and correct copies of the November 6, December 14, and December 30 letters are attached hereto as Exhibit 7.

CAUSES OF ACTION

COUNT I
(VIOLATIONS OF THE FIRST AMENDMENT)

105. The preceding allegations are all incorporated by reference herein as if fully set out.

106. The First Amendment protects private speech from government interference or restriction when the specific motivating ideology, opinion, or perspective of the speaker is the rationale for the restriction.

107. Plaintiffs' speech, via its submission of the 2018 Request and Revised Request, is entitled to First Amendment protection.

108. Defendants unlawfully deprived Plaintiffs of their First Amendment rights in connection with and arising from their Advisory Opinion Requests by launching a retaliatory investigation into an entity, Anjo, for the sole purpose of harassing Plaintiffs and the entities that were subpoenaed due to their partnership or other relationship with the Partnership Plans; issuing unconstitutional and overly

intrusive requests for information via the subpoena process; delaying the processing of LPMS's Advisory Opinion Request on the basis of DMP's viewpoints and in violation of ERISA Procedure 76-1, the EO and 29 U.S.C. § 1134(b); seeking to undermine the duly issued order of a Federal Court determining that the Partnership Plans are explicitly legal constructs under ERISA, and failing to prevent such conduct by DOL employees and agents under their direct supervision and control while they were fully aware of such unconstitutional misconduct.

109. In targeting Plaintiffs' business associates and partners for additional and illegitimate scrutiny, Defendants engaged in impermissible viewpoint-based discrimination in violation of established First Amendment principles, while acting under color of federal authority in their respective official DOL positions.

110. Defendants' conduct directly infringed upon Plaintiffs' speech by inhibiting their ability to engage in effective advocacy and other expressive activities.

111. Defendants' conduct constitutes retaliation against Plaintiffs on the basis of the actual or perceived viewpoint of their protected speech.

112. Defendants knew, or reasonably should have known, that their conduct would violate Plaintiffs' federal constitutional rights.

113. Plaintiffs have no other adequate monetary remedy in court for Defendants' violations of their constitutional rights as complained of herein.

114. Absent congressional direction otherwise, courts may grant injunctive relief against prospective harms.

COUNT II
(VIOLATIONS OF THE FIRST AMENDMENT – FREEDOM OF ASSOCIATION)

115. The preceding allegations are all incorporated by reference herein as if fully set out.

116. The First Amendment to the United States Constitution protects Plaintiffs' right to freely associate with others of their choosing for the purposes of engaging in protected speech.

117. Plaintiffs and their partners and business affiliates are entitled under the First Amendment to freely associate with one another.

118. Defendants unlawfully deprived Plaintiffs of their First Amendment rights in connection with and arising from their AO Request by launching a retaliatory investigation into an entity, Anjo, as a pretext to issue overly broad, intrusive subpoenas to Plaintiffs and any other vendor providing services to Partnership Plans, for the sole purpose of harassing Plaintiffs and the entities that were subpoenaed due to their servicing or other relationship with limited partnerships sponsoring Partnership Plans; issuing unconstitutional and overly intrusive requests for information via the subpoena process; delaying the processing of LPMS's Advisory Opinion Request on the basis of DMP's viewpoints and in violation of ERISA Procedure 76-1, the EO and 29 U.S.C. § 1134(b); seeking to undermine the duly issued order of a Federal Court determining that the Partnership Plans are explicitly legal constructs under ERISA, and failing to prevent such conduct by DOL employees and agents under their direct supervision and control while they were fully aware of such unconstitutional misconduct.

119. Defendants, while acting under color of federal authority, infringed upon Plaintiffs' ability to freely associate for protected speech purposes with others of their choosing – including potential future limited partners, Partnership Plan participants, and Partnership Plan vendors.

120. Defendants knew, or reasonably should have known, that targeting Plaintiffs and their partners and affiliates for additional and illegitimate scrutiny would violate Plaintiffs' federal constitutional rights.

121. Plaintiffs have no other adequate monetary remedy in court for Defendants' violations of their constitutional rights as complained of herein.

122. Absent congressional direction otherwise, courts may grant injunctive relief against prospective harms.

COUNT III
(VIOLATIONS OF THE FIFTH AMENDMENT – EQUAL PROTECTION UNDER THE DUE PROCESS CLAUSE)

123. The preceding allegations are all incorporated by reference herein as if fully set out.

124. The Fifth Amendment to the United States Constitution protects persons against the deprivation of life, liberty, or property without due process of the law and forbids the federal government from denying the equal protection of the laws.

125. The Fifth Amendment to the United States Constitution guarantees persons the right to be free from illegal discrimination and selective viewpoint-based scrutiny and enforcement.

126. Defendants unlawfully deprived Plaintiffs of their First Amendment rights in connection with and arising from their Advisory Opinion Requests by launching an investigation into an entity, Anjo, for the sole purpose of harassing Plaintiffs and the entities that were subpoenaed due to their relationship as sponsors of Partnership Plans or vendors to Partnership Plans; issuing unconstitutional and overly intrusive requests for information via the subpoena process; delaying the processing of LPMS's Advisory Opinion Request on the basis of DMP's viewpoints and in violation of ERISA Procedure 76-1, the EO and 29 U.S.C. § 1134(b); seeking to undermine the duly issued order of a Federal Court determining that the Partnership Plans are explicitly legal constructs under ERISA, and failing to prevent such conduct by DOL employees and agents under their direct supervision and control while they were fully aware of such unconstitutional misconduct.

127. Defendants, while acting under color of federal authority, caused Plaintiffs to be treated differently than other similarly situated organizations filing AO Requests.

128. The disparate treatment of Plaintiffs based on their viewpoints was a result of a discriminatory purpose on the part of Defendants.

129. Defendants' disparate treatment of Plaintiffs based on their viewpoints is not rationally related to any legitimate governmental interest.

130. Defendants knew, or reasonably should have known, that their conduct would violate Plaintiffs' federal constitutional rights.

131. Plaintiffs have no other adequate monetary remedy in a court for Defendants' violations of their constitutional rights as complained of herein.

132. Absent congressional direction otherwise, courts may grant injunctive relief against prospective harms.

COUNT IV
(VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT ("APA"))

133. The preceding allegations are all incorporated by reference herein as if fully set out.

134. The APA provides a cause of action for persons suffering a legal wrong from – or adversely or 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

135. The APA requires the federal courts to: (1) compel agency action unlawfully withheld or unreasonably delayed and (2) hold unlawful and set aside agency action, findings, and conclusions found to be contrary to any constitutional right, power, privilege, or immunity. 5 U.S.C. § 706.

136. The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702 in actions seeking relief other than money damages and stating a claim that an agency of the United States and/or officers thereof acted or failed to act in an official capacity.

137. DOL is an agency of the United States of America for purposes of the APA.

138. Defendants' unlawful and viewpoint-based discriminatory investigation into Plaintiffs' partners and affiliates and unconstitutional and intrusive requests for information unreasonably delayed DOL's final determinations of Plaintiffs' Revised Request.

139. Defendants' perfunctory Response and simultaneous retaliatory investigation described herein – based solely on Plaintiffs' viewpoints – violates the United States Constitution, ERISA Procedure 76-1, 29 U.S.C. § 1134(b), and the continuing the investigation constitutes final agency actions having the force and effect of law that are contrary to Plaintiffs' federal constitutional rights to freedom of speech and freedom of association under the First Amendment and the equal protection of the laws under the Fifth Amendment.

140. Defendants' demand that Plaintiffs, partnerships implementing the Partnership Plans, and business associates supporting the Partnership Plans respond to irrelevant, unlawful, unconstitutional, and overly intrusive requests for information issued by subpoena described herein is plainly contrary to the intent of Congress as expressed in ERISA and therefore, such action is not committed to agency discretion by law. 5 U.S.C. §701(a)(2).

COUNT V
(VIOLATIONS OF ERISA)

141. The preceding allegations are all incorporated by reference herein as if fully set out.

142. DOL's ongoing and interminable investigation is marked by repeated and intrusive subpoenas either to Plaintiffs, plan members, plan supporters, plan providers, plan vendors, or affiliates thereof.

143. DOL's seemingly disparate issuance of subpoenas are, in reality, all targeting the same Partnership Plans and the entities which facilitated the Revised Request on their behalf.

144. Many of the targets of the subpoenas are associated with or vendors to the Partnership Plans either by facilitating its existence or participating its benefits.

145. DOL has not provided any reasonable cause for its repetitive and abusive subpoenas issued the Anjo Investigation.

146. Indeed, the only explanation proffered by DOL is that it issuing the subpoenas pursuant to its authority to determine whether someone is violating or is about to violate ERISA.

147. But this authority does not provide rights to issue subpoenas as retaliation for invoking ERISA Procedure 76-1.

148. An order from this Court preliminarily and permanently enjoining the Defendants' unlawful conduct is the only adequate remedy available at law.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs demand judgment against Defendants and in favor of Plaintiffs as follows:

A. That this Court declare that the conduct of the Defendants, while acting under color of federal authority, violated the constitutional rights of Plaintiffs;

B. That this Court declare the conduct of the agency Defendants violated the Administrative Procedure Act;

C. That this Court declare the conduct of the agency Defendants violated the Employee Retirement Income Security Act;

D. That this Court issue a permanent injunction prohibiting all Defendants, and all those in active concert with them, from unlawfully targeting the Plaintiffs through its retaliatory investigation, immediately cease issuing new subpoenas related to the investigation to Plaintiffs, any affiliates, or potential partners or participants involved in the Partnership Plans; and an order quashing any active or pending subpoenas issued by Defendants to the Plaintiffs, its affiliates, or others related to the Anjo Investigation;

E. Alternatively to the preceding prayer for relief, that this Court issue a permanent injunction prohibiting all Defendants, and all those in active concert with them, from unlawfully targeting the Plaintiffs through its retaliatory Anjo Investigation, immediately cease issuing new subpoenas related to the investigation to Plaintiffs, any affiliates, or potential partners or participants involved in the Partnership Plans unless and until Defendants (i) define in writing the scope and concerns of the Anjo Investigation, and (ii) either recommend or bring an enforcement action for any alleged ERISA violation by Plaintiffs; and an order quashing or suspending enforcement of any active or pending subpoenas issued by Defendants to the Plaintiffs, its affiliates, or others related to the Anjo Investigation unless and until Defendants (i) define in writing the scope and concerns of the Anjo Investigation, and (ii) either recommend or bring an enforcement action for any alleged ERISA violation by Plaintiffs;

F. Award Plaintiffs 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

G. Award Plaintiffs such other and further relief as this Court deems necessary and proper.

JURY DEMAND

Plaintiffs demand trial by jury on all claims and issues so triable.

DATED: January 19, 2021

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EXHIBIT B

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

SUFFOLK ADMINISTRATIVE SERVICES, LLC, ET AL., Plaintiff, v. **UNITED STATES DEPARTMENT OF LABOR, ET AL.**, Defendants.	CIVIL NO.: **21-1031 (DRD)**

OPINION AND ORDER

Pending before the Court is the United States Department of Labor, the Secretary of Labor, and the United States' (jointly, "Defendants") *Motion for Judgment on the Pleadings*. *See* Docket No. 28. After considering Defendants' contentions and Sufflolk Administrative Services, LLC ("SAS"), Providence Insurance Company, I.I., ("PIC"), Providence Insurance Partners, LLC ("PIP"), and Anjo, LLC's ("Anjo"; jointly with SAS, PIC, and PIP, "Plaintiffs") arguments in opposition; for the reasons detailed below, the Court hereby **GRANTS** Defendants' petition.

I. INTRODUCTION

Plaintiffs filed the *Verified Complaint for Declaratory and Injunctive Relief* ("*Complaint*") that commenced the instant proceedings. *See* Docket No. 1. Pursuant to the allegations contained therein, on October 2018, Plaintiffs met with the Department of Labor ("DOL"). During said meeting, Plaintiffs presented to the DOL a proposed "novel" health benefit plan structure ("*Plan*"), "in an effort to be transparent with the relevant regulatory agencies that would interact with the Plan, its participants, and its sponsors." *Id.* at ¶ 34; *see, also, id*. at 37. Purportedly, during the course of said meeting, and during additional informal conversations that took place over the

following months, the DOL suggested that the *Plan* was compliant with the Employee Retirement Income Security Act ("ERISA"), and that Plaintiffs should implement it. *See id.* at ¶ 38-44.

Nonetheless, on November 8, 2018, LP Management Services, LLC ("LPMS"), a non-party to this litigation, filed a formal *Advisory Opinion Request* ("*2018 Request*") before the DOL "seeking guidance on whether the *Plan* was a lawful single employer health plan under [29 U.S.C. § 1002 (1)] of [ERISA]." Docket No. 1 at ¶ 2. The *2018 Request* was revised on February 27, 2019 ("*Revised Request*"), to include additional information and applicable legal principles. *Id.* at ¶ 5.[1] After the submission of the *Revised Request*, other meetings and conversations took place between LPMS, Plaintiffs and the DOL. Purportedly, the representations made by the DOL at this stage made Plaintiffs doubt whether the *Revised Request* would be approved and whether the DOL would open an investigation with regards to the *Plan*. *See id.* at ¶ 46-50.

A year after the filing of the *2018 Request*, LPMS had yet to receive a response from the DOL. Therefore, LPMS -alongside Data Marketing Partnership LP ("DMP"), a limited partnership for which LPMS serves as general partner, which is not a Codefendant to the instant case- filed a suit before the United States District Court for the Northern District of Texas against the DOL. In essence, they claimed that the DOL's decision as to the *Revised Request* had been unreasonably delayed (the "*AO Case*"). *See id.* at ¶ 14; *see, also,* Data Marketing Partnership, LP, and LP management Services, LLC v. Department of Labor, Civil Case No. 4:19-cv-00800-O. On January 24, 2020, while the *AO Case* was ongoing, the DOL entered their corresponding response to the

[1] The *2018 Request*, the *Revised Request* and the corresponding *Plan* was developed by Alexander Renfro, Esq., who is the Chief Legal Officer of Codefendants PIP and an officer of Codefendants, Anjo, SAS and PIC. *Id.* at ¶ 3. Specifically, the *Revised Request* asserts that the plan will be organized as a single-employer self-insured group health plan that would provide major medical health benefits to Limited Partnership's eligible employees, along with Limited Partnership's limited partners. In attention to the aforesaid, the *Revised Request* looked for the DOL to address the following matters: (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. *See* Docket No. 1-2 at 1-2.

Revised Request (the "*DOL Response*"). *See id.* at ¶ 16. In essence, the DOL determined that the *Plan* did not fall under the scope of ERISA. To reach said conclusion, the DOL determined, among other matters, that the limited partners could not be considered to "work for" or "perform any services" for the partnership, since they merely "install specific software on their personal electronic devices that capture data as they browse the Internet or use those devises for their own purpose." *See* Docket No. 1-4 at 2. However, the District Court granted LPMS and DMP's motion for summary judgment and concluded as follows: "the [DOL]'s Opinion is set aside as arbitrary and capricious under the [Administrative Procedure Act] 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." Data Mktg. P'ship, LP v. United States Dep't of Lab., 490 F. Supp. 3d 1048, 1068 (N.D. Tex. 2020). That is, the District Court concluded that the limited partners' activities were sufficient to constitute services and would therefore activate ERISA eligibility. The Court notes that the District Court's determination is currently pending appeal before the Fifth Circuit. *See* Data Marketing Partnership v. LABR, 20-11179.

On the other hand, in April 2019 -prior to the entry of the *DOL Response*-, the DOL opened an investigation against Anjo with regards to the implementation of the *Plan* ("*Anjo Investigation*"). *See* Docket No. 1 at ¶ 15. To that end, the DOL issued various subpoenas directed at Anjo and "almost every key entity doing business with [them], SAS, or PIP, including some businesses that have nothing whatsoever to do with any partnership plans." *Id.* at ¶ 53; *see, also*, Docket No. 1-5. Said subpoenas were issued pursuant to 29 U.S.C. § 1134(a)(1), which grants the DOL the authority to investigate whether someone is violating or about to violate ERISA. *Id.* at ¶

62. Plaintiffs further alleged that they complied with all of the investigation requests and "encouraged their partners to do the same." *Id.* at ¶ 55; ¶ 96.

On November 6, 2020, "Plaintiffs 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." *Id.* at 95; 97-98. Said letter was answered on December 14, 2020; the DOL stated that the agency had "ample authority to conduct its investigation in order to determine whether ERISA violations have or are about to occur […and, therefore, the DOL] was not in a position to provide the specific information [Plaintiffs sought] regarding the timing and the scope] of the investigation." *Id.* at 101; *see, also*, Docket No. 1-7. On December 30, 2020, Plaintiffs responded to said letter. *Id.*

Considering the above, in an attempt to stop the DOL's administrative investigation and quash the subpoenas the agency issued, Plaintiffs assert five (5) causes of actions in the *Complaint*. First, violation to their right to free speech guaranteed under the Constitution of the United States. Specifically, Plaintiffs believe that, as a result of their filing of the *Revised Request* -which they categorize as "speech" for purposes of the corresponding analysis-, the DOL commenced their "retaliatory" administrative investigation in violation of the First Amendment. *Id.* at 19-20. Second, Plaintiffs also contend that the DOL's administrative investigation violates their freedom of association rights, also guaranteed under the First Amendment. Their contention is premised in their belief that the DOL's administrative investigation "prevented Plaintiffs from growing their business, because they have naturally been obliged to disclose the investigation to all potential new distribution sources […] Additionally, current vendors and distribution partners of Plaintiffs have either reduced or terminated relations with Plaintiffs as a result of receiving subpoenas in the Anjo Investigation." *Id.* at ¶ 57. Third, Plaintiffs argue that the DOL's administrative investigation

violates their right to equal protection under the due process clause of the Fifth Amendment, considering that said investigation "[c]aused Plaintiffs to be treated differently than other similarly situated organizations filing AO Requests." *Id.* at 27.

Additionally, Plaintiffs contend that the *Anjo Investigation* infringes the Administrative Procedure Act ("APA"), since the same violates their constitutional rights, the ERISA Procedure 76-1, 29 U.S.C. § 1134 (b) and is overly intrusive. *See id.* at 24. Finally, Plaintiffs believe that the DOL's administrative investigation violated ERISA, considering that the "DOL has not provided any reasonable cause for its repetitive and abusive subpoenas issued [in] the Anjo investigation." *Id.* at 25.[2]

I. LEGAL STANDARD

A. *Rule 12 (c)-Judgment on the Pleadings*[3]

Rule 12(c) of the Federal Rules of Civil Procedure "allows a party to move for judgment on the pleadings at any time '[a]fter the pleadings are closed but within such time as not to delay the trial.'" R.G. Fin. Corp. v. Vergara-Nuñez, 446 F.3d 178, 182 (1st Cir. 2006) (*quoting* Fed. R. Civ. P. 12(c)); Gulf Coast Bank & Tr. Co. v. Reder, 355 F.3d 50, 54 (1st Cir. 2004). Further, "because rendition of judgment in such an abrupt fashion represents an extremely early assessment of the merits of the case, the trial court must accept all of the nonmovant's well-pleaded factual averments as true and draw all reasonable inferences in his favor." Rivera-Gomez v. de Castro, 843 F.2d 631, 635 (1st Cir. 1988) (internal citations omitted); *see, also*, Kando v. R.I. State Bd. of Elections, 880 F.3d 53, 58 (1st Cir. 2018)).

[2] Defendants then proceeded to detail various of the complaints received between 2017-2019. *See* Docket No. 28 at 10-11.

[3] "A motion for judgment on the pleadings bears a strong family resemblance to a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), and these two types of motions are treated in much the same way." Integrand Assurance Co. v. Puma Energy Caribe, LLC, 463 F. Supp. 3d 291, 295 (D.P.R. 2020) (*citing* Kando v. R.I. State Bd. of Elections, 880 F.3d 53, 58 (1st Cir. 2018)).

Similar to the analysis of requests for dismissal under Rule 12 (b)(6) of the Federal Rules of Civil Procedure, the Court must "isolate and ignore statements in the complaint that simply offer legal labels and conclusions **or merely rehash cause-of-action elements**." Ojeda-Resto v. Blankenship, 2018 WL 4657191, at *2 (D.P.R. 2018) (quotation omitted)(emphasis provided). When performing said examination, the Court must consider that "[a] Rule 12(c) motion, unlike a Rule 12(b)(6) motion, implicates the pleadings as a whole." Aponte–Torres v. Univ. of P.R., 445 F.3d 50, 55 (1st Cir. 2006). Therefore, "only facts contained in the pleadings and documents fairly incorporated therein, and those susceptible to judicial notice" will be considered. Mercury Sys., Inc. v. Shareholder Representative Servs., LLC, 820 F.3d 46, 51 (1st Cir. 2016).

On the other hand, "'[l]ike Rule 12(b)(6), Rule 12(c) does not allow for any resolution of contested facts; rather, a court may enter judgment on the pleadings only if the uncontested and properly considered facts conclusively establish the movant's entitlement to a favorable judgment.'" Autoridad de Carreteras y Transportacion v. TransCore Atl., Inc., 387 F. Supp. 3d 163, 166 (D.P.R. 2017)(*citing* Cruz v. Puerto Rico, 558 F.Supp.2d 165, 179 (D.P.R. 2007) (Besosa, J.)).[4] Therefore, dismissal is proper "if it appears that the nonmovant could prove no set of facts that would entitle" them to relief. Díaz-Nieves v. United States, 858 F.3d 678, 689 (1st Cir. 2017) (citation omitted).

[4] The Court notes that "any new facts contained in the answer, to which no responsive pleading by the plaintiff is required, are deemed denied." Kando v. Rhode Island State Bd. of Elections, 880 F.3d 53, 58 (1st Cir. 2018); *see, also,* Ortiz-Vazquez v. Aon Risk Servs. of Puerto Rico, Inc., 2021 WL 2221591 at 2 (D.P.R. June 1, 2021)("In the context of the standard of review of a motion for judgment on the pleadings, Aon's allegations made in the answer that contradict Ortiz's complaint are treated as false."); Lopes v. Riendeau, 177 F. Supp. 3d 634, 665 (D. Mass. 2016) (Gorton, J.) ("As a result of the obligation to view the facts and reasonable inferences in favor of the nonmovant, however, 'the court treats any allegations in the answer that contradict the complaint as false.'")

II. ARGUMENTS

Defendants' motion to dismiss contains multiple arguments tailored to challenge every one of Plaintiffs' claims. Hence, the Government commences their argumentation by providing the Court with their background to the *Anjo Investigation*.

A. Defendants' background to the Anjo Investigation

Defendants allege that the administrative investigation directed at Anjo was initiated because "[o]ver a two year period, the [DOL] had received several complaints about health plans and products designed and serviced by Plaintiffs PIC, PIP, and SAS, and the [DOL] began to suspect that the complaints might be related to the plans described in the advisory opinion request Mr. Renfro authored." Docket No. 28 at 10; *see, also,* Docket No. 24 at 8-9. Therefore, "the Anjo investigation's initial purpose was to determine whether the health plans and products designed and serviced by PIC, PIP, and SAS were covered by ERISA, since it was unclear at the time and, if so, whether any ERISA violation had occurred." *Id.* at 11; *see, also,* Docket No. 24 at 9-10. Further, Defendants informed that the DOL sent twenty-six (26) subpoenas to "entities it believed had information about Plaintiffs' business and related health plans". *Id.*

As a result of the responses to the aforementioned subpoenas, the DOL "learned that Plaintiffs' plans encompassed both plans administered through limited partnerships as well as traditional employee benefit plans unrelated to the partnerships." *Id.* Moreover, the DOL "continued to receive complaints and state referrals regarding Plaintiffs and entities associated with Plaintiffs"; therefore, the DOL "continued to investigate whether either the partnership plans or the traditional employee benefit plans had violated ERISA." *Id.; see, also,* Docket No. 24 at 11.

Plaintiffs' see it a little different. They contend that the *Anjo Investigation* was initiated due to the DOL's "retaliatory motivation and actions, all of which [they] believe -based on the facts as known to them- have the aim of destroying their respective business." Docket No. 32 at 6.

Further, Plaintiffs note that "[a]s evidenced by Assistant Secretary Rutledge telling LPMS to implement the proposed Plan before DOL launched its witch hunt, such an explanation is clearly a ruse, merely an effort to harass Plaintiffs, and an effort to inflict as much damage as possible." *Id.* at 10. That is, Plaintiffs believe that the "DOL is not engaged in a legitimate effort to seek information, it is driven by animus to destroy Plaintiffs' businesses for the sin of actually following the advice of Assistant Secretary Rutledge." *Id.* at 11.

In reply, Defendants attempt to shift Plaintiffs' narrative by providing perspective as to the extent of the *Anjo Investigation*; hence, Defendants contend that "Plaintiffs' hyperbole obscures the fact that the Department has simply requested documents from three of the Plaintiffs, some of the partnerships they created, and entities that sponsored or serviced plans designed by Plaintiffs." Docket No. 35 at 3.

B. Plaintiffs' statutory claims

1. Defendants' challenge to Plaintiffs' APA claims

Defendants, first, highlight that ERISA grants the Secretary of the DOL the authority to perform an investigation to "determine whether any person has violated or is about to violate any provisions of [ERISA] or any regulation or order thereunder". 29 U.S.C. § 1134 (a). Hinging on applicable case law discussed below, Defendants stress that "the [DOL's] exercise of its investigatory power under ERISA […] must be recognized as 'committed to agency discretion by law' and thus not subject to judicial review under the APA." Docket No. 28 at 15.

Although Plaintiffs acknowledge the DOL's investigative authority under ERISA, their stance is that the *Anjo Investigation* is being performed as if the DOL's investigative powers were "limitless". Docket No. 32, 18-19. Therefore, Plaintiffs suggest that the *Anjo Investigation* is one of the types that federal courts have deemed as improper and not reasonably limited in scope. Hence, they argue that, "while federal agencies have lawful regulatory power to investigate

businesses, that power is limited in scope." *Id.* at 19. Moreover, Plaintiffs contend that the *Anjo Investigation* is subject to judicial scrutiny since "[t]his case involve allegations of an abuse of that discretion by a government agency […] and courts have the ability to scrutinize investigations as is the subject of this case." Docket No. 32 at 28. Plaintiffs further argue that the DOL acts in attention to the limits set by ERISA and, therefore, "[t]here is appropriate guidance in ERISA to provide appropriate limits to DOL's activities and the investigation in this case." *Id.*

Second, Defendants contend that Plaintiffs fail to provide any legal argument that would contravene the Third Circuit's decision in *Gentile v. SEC*, 974 F.3d 311 (3d Cir. 2020), where it was decided that "a decision to start an investigation [is] not subject to review under the APA, even for a challenge to the agency's 'alleged retributive motive.'" Docket No. 35 at 4. On the other hand, Defendants argue that judicial review under the APA is only available for "final agency actions". *See* 5 U.S.C. § 704. After referencing the applicable caselaw, which clearly states that agency investigations do not constitute "final agency actions" for purposes of judicial review under the APA, Defendants contend that "[t]he investigation is not the culmination of the [DOL's] decision making process and, while Plaintiffs may complain about the burden of responding to subpoenas, the 'expense and annoyance of administrative audits and investigations' and 'not the kind or burdens that support a finding of finality'". Docket No. 28 at 16 (internal citations omitted).[5]

Plaintiffs attempt to counter Defendants' reviewability argument by arguing that "the Anjo Investigation is intertwined with a final agency action, [the] DOL's arbitrary and capricious AO." Docket No. 32 at 29. Considering that the District Court in *Data Marketing Partnership v. U.S.*

[5] It is worth noting that Defendants apply the same arguments to Plaintiffs' challenge to the validity of the *DOL's Response*; that is, they contest that the *DOL's Response* is not a "final agency action" subject to judicial review under the APA. However, taking into account that the validity of the *DOL's Response* is currently being reviewed by the Fifth Circuit, the District Court is without jurisdiction to examine the merits of said advisory opinion.

Dep't of Labor, determined that the *DOL Response* was a "final agency action", and considering that they believe the *Anjo Investigation* is directly related to, and derivative of, the *DOL Response*, they propose that the *Anjo Investigation* "should be deemed to be part of a final agency action." *Id.*

In reply, Defendants oppose Plaintiffs' arguments by asserting that "[t]he [DOL's] ongoing investigation is plainly not dependent on the currently-vacated advisory opinion." Docket No. 35 at 5. Further, Defendants highlight that "Plaintiffs cite no authority for the proposition that a non-final agency action can be subject to APA review merely due to its connection to some other allegedly-final action." *Id.*

Finally, Defendants contend that Plaintiffs' claims under the APA also fail on the merits. Although Plaintiffs allege that the *Anjo Investigation* delayed the DOL's response to the *Revised Request* and that said delay is unreasonable and unlawful, Defendants believe that said claims are now moot since the *Advisory Opinion* was issued on January 24, 2020. Further, Defendants contend that "Plaintiffs cannot show that the [DOL] was required to issue an advisory opinion or that it was unreasonable to issue it within fourteen months after it was first requested". Docket No. 28 at 18. Defendants also highlight that the aforementioned ERISA Procedure 76-1 establishes the discretion the DOL holds over the issuance of Advisory Opinions and stresses that there is no law or regulation which would establish a timeframe to issue said Advisory Opinions.

In response to Defendants' final arguments, Plaintiffs contend that, although they did not participate in the requests nor the judicial proceeding in DMP, "they have been directly harmed by the Anjo Investigation and the delay with which DOL acted in connection with the AO." Docket No. 32 at 29. On the other hand, Plaintiffs agree that there is no "formula for deciding" what is a reasonable time for the DOL to respond to an Advisory Opinion request; however, they stress that

"in this case the delay occasioned by DOL cause great harm to Plaintiffs" and that it was motivated by the purported retaliatory intent. *Id.*

Defendants' answer to Plaintiffs' opposition is that it fails to establish constitutional standing to advance an APA claim for delay "where the desired action occurred before the case was filed." Docket No. 35 at 5. Further, Defendants highlight that the purported "delay" in the issuance of the *DOL Response* was not unreasonable and Plaintiffs have failed to cite any caselaw, or regulation, which would support their contention that it was unduly delayed. *Id.*

2. Defendants' challenge against Plaintiffs' ERISA claims

Defendants contend that "ERISA provides a limited waiver of sovereign immunity and cause of action for certain suits against the [DOL]." Docket No. 28 at 19. Further, Defendants clarify that "[s]uits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this chapter, or to compel him to take action required under this subchapter". 29 U.S.C. § 1132 (k). Based on said provision, Defendants argue that Plaintiffs are neither participants, beneficiaries, administrators nor fiduciaries of an ERISA plan; and, therefore, the DOL's '[s]overeign immunity to Plaintiffs'' claims was not waived under 29 U.S.C. § 1132 (k)".

Plaintiffs do not offer any concrete legal argument in opposition; they merely state that if the Court were to apply Defendants' reasoning -which is based on the law- "[s]uch an outcome would give [the] DOL the ability to run roughshod over any party outside of the four groups identified in the statute -administrators, fiduciaries, participants, and beneficiaries of employees benefits plans[…]- with no judicial remedy available to the party suffering [the] DOL's

inappropriate behavior." Docket No. 32 at 31.[6] In reply, Defendants stress that Plaintiffs admitted that they fall outside the groups ERISA permits, under 29 U.S.C. § 1132 (k), to file claims against agency actions. *See* Docket No. 35 at 5.

Further, considering that Plaintiffs' assert their ERISA claims pursuant to 29 U.S.C. § 1132 (k), Defendants argue that the instant suit has to be filed before the proper venue; that is, "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." 29 U.S.C. § 1132 (k). Considering the aforesaid, Defendants reason that, "[b]ecause Plaintiffs SAS and PIC do not allege they are themselves employee benefit plans, their office locations cannot provide venue under § 1132 (k)." Docket No. 28 at 19. Further, Defendants contend that Plaintiffs did not allege that "any employee benefit plan relevant to the investigation 'has its principal office' in Puerto Rico" *Id.* at 20. Considering the aforesaid, Defendants believe that this District Court is not a proper venue for Plaintiffs' ERISA claims.

Plaintiffs suggest that by including the term "may", 29 U.S.C. § 1132 (k) allows for the claims to be filed before this District Court. *See* Docket No. 32 at 31. On the other hand, they contend that this Court may apply the pendent venue doctrine to maintain the suit before this District. However, Defendants refute said contentions, and reiterate that the statute is clear as to the available venues Plaintiffs have; that is, "Washington, D.C., or in 'the district where the plan has its principal office." Docket No. 35 at 5. Further, Defendants cites to case law where sister District Courts have concluded that the pendent venue doctrine should not be applied where it

[6] The Court takes the opportunity to note that "[i]t is not the place of this court, however, to pass judgment on the wisdom of the policies adopted by the […] legislature." Pharm. Care Mgmt. Ass'n v. Rowe, 429 F.3d 294, 312-313 (1st Cir. 2005).

would override limitations to specific venue provision included in a statute such as 29 U.S.C. § 1132 (k). *See id.* at 5.

Defendants also challenge the merits of Plaintiffs' ERISA claims. To that end, Defendants contend that Plaintiffs have failed to show that the DOL took any actions contrary to ERISA. That is, although Plaintiffs believe that the DOL issued subpoenas during the *Anjo Investigation* without providing reasonable cause and as retaliation, "[i]t is well-established that the [DOL] is not required to show reasonable cause of an ERISA violation before opening an investigation or issuing subpoenas." *Id.* at 20. Moreover, Defendants argue that "ERISA [does not] provide any textual basis for courts to intervene in an investigation where the subject of the investigation alleges that the investigation is retaliatory." *Id.* Finally, in reply, Defendants highlight that Plaintiffs failed to show that their claims fall into one of the three (3) types of claims available under 29 U.S.C. § 1132. *See* Docket No. 35 at 6.

A. Plaintiffs' constitutional claims

1. Defendants' general arguments

First, Defendants suggest that Plaintiffs' constitutional claims are moot given that they have not been subject to neither a compulsory process nor any legal proceedings. *See* Docket No. 28 at 20-21. Therefore, Defendants reasons that Plaintiffs' claims should be dismissed since they constitute an "attempt to short-circuit the [DOL's] investigation." *Id.* at 21.

In opposition, Plaintiffs contend that their constitutional claims satisfy the applicable "ripeness" criteria. Specifically, Plaintiffs contend that the first element, fitness of the judicial decision, is satisfied since their "allegations as set forth in the complaint plausibly state a claim against DOL." Docket No. 32 at 15. Further, Plaintiffs assert that the second element, hardship to the parties of withholding court consideration, is also satisfied since "the draw-out nature of the Anjo Investigation and the ongoing business and reputational harms suffered by Plaintiffs are

certainly an 'injury cognizable by a court of equity' that satisfy the second element of ripeness." *Id.* Finally, Plaintiffs argue that their claims are also "justiciable" because they purportedly satisfy the elements of constitutional standing; that is, injury in fact, causation, and redressability. *Id.* at 15-16.[7]

In response, Defendants argue that "Plaintiffs have failed to show that, at this stage -where Plaintiffs have not been subject to either [a] compulsory process or any legal proceeding- the Court should wade into the [DOL's] ongoing investigation." Docket No. 35 at 6. Further, Defendants contend that this Court's intervention in the investigation would cause it to be delayed and would present premature challenges to it. *See id.* Moreover, Defendants argue that declining to provide Plaintiffs with information about the scope of the investigation and requesting confidential documents through subpoenas does not need to call into question the legality of the *Anjo Investigation* nor should it suggest that the DOL is attempting to destroy Plaintiffs' businesses. Therefore, none of Plaintiffs' allegations "differentiate this investigation from many other routine government investigations or potential statutory violations by a regulated entity." *Id.* at 7.

Second, Defendants contend that Plaintiffs do not have a right "'not to be investigated for suspected violations of federal law by an agency authorized by Congress to conduct such investigations in its discretion, or not to be injured in one's reputation or business prospect as a consequence of such an investigation." Docket No. 28 at 21 (*citing* Hunter v. SEC, 879 F.Supp. 494, 501 (E.D. Pa. 1995). Finally, Defendants stress that federal court are reluctant to intervene in agency investigations.

[7] On the other hand, Plaintiffs recognize that their claims may be asserted under the provisions of the APA. However, they justify the inclusion of their constitutional claims since they "may be used in cases where the APA fails to provide a plaintiff with a remedy." Docket No. 31 at 16. In opposition, Defendants assert that Plaintiffs' argument fails since this "nonstatutory review" only applies in "limited circumstances" where the agency's nonfinal action must wholly deprive the party of a meaningful and adequate means of vindicating its rights". Docket No. 35 at 8 (internal citations omitted). Considering that "Plaintiffs have not show what they would be 'wholly deprive[d]' of an opportunity to vindicate their rights" their argument fails. *Id.*

2. Defendants' challenge to Plaintiffs' free speech retaliation claim

First, Defendants argue that "Plaintiffs have failed to allege facts from which retaliatory intent can plausibly be inferred." Docket No. 28 at 23. To support said argument, first, they reference various of the allegations contained in the *Complaint* where Plaintiffs highlight that the DOL had multiple favorable meetings to discuss the *Plan* and also encouraged them to submit the *2018 Request* for their consideration. Further, although Defendants acknowledge that Plaintiffs alleged that there was an apparent shift in attitude towards the *Plan* by the DOL's representatives sometime in 2019, "Plaintiffs identify no reason that the [DOL] needed Plaintiffs to withdraw their request. Under the [DOL's] guidance, it could simply decline to issue an advisory opinion as a matter of discretion." *Id.* at 24. Further, Defendants note that Plaintiffs made no allegations "suggesting that any [of the DOL's officials] developed any malice after Plaintiffs declined to withdraw their request." *Id.* at 24-25. Moreover, Defendants contend that Plaintiffs fail to make any allegations as to specific facts surrounding the investigation that would move the Court to reasonably infer retaliation or harassment as motivating factor to commence and continue the *Anjo Investigation*. *See id.*

Furthermore, Defendants suggest that Plaintiffs failed to allege "but for" causation. That is, Plaintiffs cannot show that the *Anjo Investigation* would not have occurred "but for" the purported retaliatory motive provoked by the presentation of the *2018 Request* and the *Revised Request*. *See id.* at 25-26.

Plaintiffs object to Defendants' assertion as to the causation standard applicable to their free speech claims. Specifically, they contend that the "DOL interprets this standard to mean that if there is any other justification, then the adverse action is permissible. However, that is not the standard. It is clear that while there could have been other considerations, DOL's animus having

been an inspiration for-a driving cause of- 'a but for cause' of the Anjo Investigation would give rise to redressable claims." Docket No. 32 at 21.

Additionally, Defendants argue that Plaintiffs' allegations as to the "but for" causation are not plausible. That is, they cannot show that "'non-retaliatory grounds are in fact insufficient to provoke the adverse consequences.'" Docket No. 35 at 10 (internal citations omitted). To justify said contention, Defendants state that "[t]here is nothing unusual about an agency undertaking an investigation in light of concerns that entities may be violating applicable statutes." *Id.*

Defendants further reiterate that the DOL is responsible for investigating potential violations of ERISA and that they received complaints that justified the *Anjo Investigation*; therefore, the presentation of the *2018 Request* and the *Revised Request* had no relation to the DOL's decision to investigate. Finally, Defendants contend that Plaintiffs' allegations are not even enough to "infer that the investigation would not have occurred without invidious intent". Docket No 28 at 2.

In general, Plaintiffs oppose Defendants' contentions by stating that they "have alleged sufficient facts to support their free speech claim." Docket No. 32 at 21. To that end, Plaintiffs highlight that they "allege that [the] DOL acted with retaliatory animus against [them]." *Id.* Second, Plaintiffs argue that they, in fact, alleged that the "retaliatory animus was the but-for cause of Plaintiffs' injury" by contesting that the "sole purpose" of the *Anjo Investigation* was to harass Plaintiffs. *Id.*; *see, also,* Docket No. 1 at ¶ 108.

Finally, Defendants contend that Plaintiffs' allegation as to retaliatory intent consists of a "bare allegation of animus". Docket No. 35 at 8. Therefore, "Plaintiffs rest on mere speculation because nothing suggests that any official actually developed animus-neither the number of

subpoenas nor the Department's decision not to specify the scope of the investigation to its subjects reasonably imply retaliatory intent." *Id.* at 9.

3. Defendants' challenge to Plaintiffs' free speech chilling effect claim

In response to Plaintiffs' allegations that the *Anjo Investigation* produced a "chilling effect" to their First Amendment rights, Defendants contend that conducting agency investigations nor issuing subpoenas, *per sé*, cause harm sufficient to give rise to a First Amendment claim. *See* Docket No. 28 at 27-28. Further, considering the objective standard adopted by the First Circuit in *Starr v. Dube*, 334 Fed. Appx. 341 (1st Cir. 2009), Defendants contend that "Plaintiff cannot show that businesses of 'ordinary firmness' would be deterred by an ERISA investigation." *Id.* at 29.

In opposition, Plaintiffs restated that they "have sufficiently pled that the investigation chilled their First Amendment rights." Docket No. 32 at 23. To that end, Plaintiffs argued that "[t]hese actions taken by DOL have inhibited Plaintiffs from growing their business, causing potential distribution sources to avoid forming a relationship with Plaintiffs until DOL's investigation has finally run its course". *Id.* They find that these allegations are sufficient to satisfy the standard of plausibility.

In reply, Defendants contend that it has shown that "an ERISA investigation does not, by nature, cause or threaten objective harm and this is insufficient to support a First Amendment retaliation claim." Docket No. 35 at 10. Further, Defendants argue that Plaintiffs' allegations are premised on the notion that "the investigation 'caus[ed] potential distribution sources to avoid forming a relationship with Plaintiffs until DOL's investigation has finally run its course.'" *Id.* In attention to the aforesaid, Defendants believe that said allegations are insufficient to plausibly assert a chilling effect claim since "allegations about third parties' choices are too 'speculative, indirect [and] too remote' to sustain a claim, […], specially where the government's action had no effect on Plaintiffs' own behavior." *Id.*

4. Defendants' challenge to Plaintiffs' freedom of association claim

Defendants argue that Plaintiffs' freedom of association claims fail for two (2) reasons. First, "Plaintiffs have alleged no facts plausibly showing that any of the relationships they describe were 'for protected speech purposes.'" Docket No. 28 at 30. That is, Plaintiffs fail to "explain how their relationship with other companies, or those companies' clients, serve a constitutionally expressive purpose." *Id.* Second, Defendants contend that Plaintiffs' allegations do not reflect that the "DOL's actions have limited any opportunity to associate for expressive purposes." *Id.* at 31. Further, considering First Amendment violations examined in case law, Defendants highlight that Plaintiffs "do not challenge a disclosure requirement […] [n]or has the [DOL] ordered or requested that anyone stop doing business with Plaintiffs." *Id.* Considering the above, Defendants find that Plaintiffs' allegations fall short of what is required to sustain a freedom of association claim under the First Amendment.

In opposition, Plaintiffs restate that they have "[a]lleged that business partners -actual and potential- have reduced, terminated, or avoided forming business relationships with Plaintiffs as a direct result of the investigation." Docket No. 32 at 24. Further, they highlight that their *Complaint* includes allegations as to the *Anjo Investigation* effect on "Plaintiffs' ability to freely associate for protected speech purposes with others of their choosing-including potential future limited partners, Partnership Plan participants, and Partnership Plan vendors." *Id.* at 25; *see, also,* Docket No. 1 at ¶ 119. Plaintiffs "are not petitioning this Court to be free from any 'restraint from the State' but rather to [be] free from unconstitutional, arbitrary, capricious, and retaliatory harassment from the State." Docket No. 32 at 25.

Defendants respond by reiterating that Plaintiffs' allegations do not reference any facts demonstrating that the relationships in which their asserted claims hinge on, were for protected speech purposes. Specifically, Defendants state that "Plaintiffs have pointed to no facts from which

the Court can conclude that either the individuals who signed up for health insurance by becoming 'limited partners' or the vendors who provided services to plans Plaintiffs created entered these business relationships for any expressive purpose." Docket No. 35 at 11. Moreover, "Plaintiffs have likewise failed to plausibly allege that the [DOL's] actions have limited any opportunity to associate for expressive purposes." *Id*. Defendants find that the purported issues that Plaintiffs claim to be infringements to their free association rights "fall short of a 'direct and substantial' interference with associational rights." *Id.*

5. Defendants' challenge to Plaintiffs' equal protection claim

Defendants note that Plaintiffs alleged Fifth Amendment claims are premised on the same allegations that sustain their purported First Amendment claims. Focusing on the First Circuit's decision in *Pagan v. Calderon*, 448 F.3d 16, 36 (1st Cir. 2006), Defendants contents that "[b]ecause Plaintiffs merely recapitulate their First Amendment claims, there is no need to analyze their claims through the equal protection lens." Docket No. 28 at 32.

In response, Plaintiffs cite a District of Massachusetts decision, *Wilborn v. Wall*, 2015 WL 5662717 (D. Mass. Sept. 25, 2015), for the proposition that Defendants' reading of *Pagan* is too broad; that is, they allege that *Pagan's* decision is of narrow application and should only be applicable in cases where there are discretionary decisions denying a state or local benefit.

On the other hand, taking aim at the merits of said claim, Defendants contend that Plaintiffs' allegations that the DOL treated them differently from other similarly situated organizations filing Advisory Opinion requests merely constitutes a "conclusory restatement of an element of an equal protection claim [which] falls far short of what is required to state a plausible claim". Docket No. 28 at 33. Plaintiff opposes said statement by merely restating the allegation that recites the applicable standard; that is, "Defendants, while acting under color of federal

authority, caused Plaintiffs to be treated differently than other similarly situated organizations filing AO Requests." Docket No. 32 at 26.

Finally, in reply, Defendants reiterate that, pursuant to First Circuit precedent, equal protections claims that can be brought "under specific provisions of the First Amendment" should not be considered. Docket No. 35 at 12; *see, also*, Pagan v. Calderon, 448 F.3d at 36.

III. ANALYSIS

A. Plausibility of Plaintiffs' APA claims

In order for a Court to engage in judicial review of an agency action, said action must be "final". *See* Manchanda v. Lewis, No. 21-1088-CV, 2021 WL 5986877, at *5 (2d Cir. Dec. 17, 2021) ("[T]he APA makes clear that judicial review is only proper where there is a 'final agency action for which there is no other adequate remedy.'")(*citing* 5 U.S.C. § 704); Larson v. United States, 888 F.3d 578, 587 (2d Cir. 2018) ("APA review is limited to [a] final agency action."); Hindes v. FDIC, 137 F.3d 148, 161 (3d Cir. 1998); Ukiah Valley Med. Ctr. v. FTC, 911 F.2d 261, 266 (9th Cir. 1990). Therefore, "[t]he core question is whether the agency has completed its decision-making process, and whether the result of that process is one that will directly affect the parties." Franklin v. Massachusetts, 505 U.S. 788, 797, 112 S.Ct. 2767, 120 L.Ed.2d 636 (1992).

The Supreme Court has stated that, generally, the following two (2) conditions must be met for an agency action to be "final" under the APA: "'[f]irst, the action must mark the consummation of the agency's decision-making process—it must not be of a merely tentative or interlocutory nature.'" U.S. Army Corps of Engineers v. Hawkes Co., 578 U.S. 590, 597, 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)). That is, the action must not be of the kind which orderly process of adjudication would be disrupted by judicial review. *See* Port of Boston Marine Terminal Ass'n v. Rederiaktiebolaget

Transatlantic, 400 U.S. 62, 71 (1970). Second, "'the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.'" U.S. Army Corps of Engineers v. Hawkes Co., 578 U.S. at 597 (*citing* Bennett v. Spear, *supra*). "In other words, it must have a 'sufficiently direct and immediate' impact on the aggrieved party and a 'direct effect on [its] day-to-day business.'" Berry v. United States Dep't of Lab., 832 F.3d 627, 633 (6th Cir. 2016).

Should the "final agency action" prerequisite is satisfied, said action is presumptively reviewable under the APA. *See* Sackett v. E.P.A., 566 U.S. 120 (2012); *see, also*, Berry v. United States Dep't of Lab., 832 F.3d 627, 634 (6th Cir. 2016).[8] Nonetheless, an agency action may be exempt from judicial review under the APA if it is "committed to agency discretion by law". 5 U.S.C. § 701(a)(2). "Such a commitment exists when the agency action is of a kind 'traditionally regarded as committed to agency discretion,' or when the relevant statute 'is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion'". Union of Concerned Scientists v. Wheeler, 954 F.3d at 17-18 (internal citations omitted).

Taking the aforesaid into consideration, Federal Courts have concluded that the decision to initiate investigations do not constitute "final agency actions" subject to judicial review under the APA. *See*, *e.g.*, Manchanda v. Lewis, 2021 WL 5986877 at 6 ("It is well settled that such interlocutory investigative steps by an agency do not constitute final agency actions under the APA."); Veldhoen v. U.S. Coast Guard, 35 F.3d 222, 225 (5th Cir. 1994)("An agency's initiation

[8] The APA, generally, "provides a vehicle for reviewing agency decisions that are alleged to violate federal law." Union of Concerned Scientists v. Wheeler, 954 F.3d 11, 17 (1st Cir. 2020); *see, also*, Cowels v. Fed. Bureau of Investigation, 936 F.3d 62, 66 (1st Cir. 2019) ("The [APA] waives federal sovereign immunity for suits alleging injury by agency action.") (*citing* 5 U.S.C. § 702). There is a "strong presumption" of judicial review under said statute. *See*, *e.g.*, Mach Mining, LLC v. EEOC, 575 U.S. 480, 486, 135 S.Ct. 1645, 191 L.Ed.2d 607 (2015); NAACP v. Sec'y of Housing & Urban Dev., 817 F.2d 149, 152 (1st Cir. 1987).

of an investigation does not constitute final agency action […] Normally, the plaintiff must await resolution of the agency's inquiry and challenge the final agency decision."); FTC v. Standard Oil Co., 449 U.S. 232, 239-245 (1980). "An attack on the authority of an agency to conduct an investigation does not obviate the final agency action requirement." Veldhoen v. U.S. Coast Guard, 35 F.3d at 225.

On the other hand, various Federal Courts have also concluded that refraining from initiating an agency investigation also fails to constitute a "final agency action". *See, e.g.*, Texas v. United States, 787 F.3d 733, 757 (5th Cir. 2015) ("The general exception to reviewability provided by § 701(a)(2) for action 'committed to agency discretion' remains a narrow one, but within that exception are included agency refusals to institute investigative or enforcement proceedings, unless Congress has indicated otherwise.")(internal citations omitted); Takamiya v. DNP Am., LLC, No. 14-CV-10301 (VEC), 2016 WL 4030861, at *2 (S.D.N.Y. July 25, 2016)("Here, the challenged action, DOL's decision not to investigate because of the untimeliness of the complaint, is a discretionary function committed solely to DOL by law.").

Finally, Federal Courts have concluded that carrying out agency investigations fall squarely under actions "committed to agency discretion by law", which, as stated above, are not reviewable under the APA. Hence, the Court highlights the Third Circuit's recent decision in *Gentil v. Securities & Exchange Commission*, where a *Formal Order of Investigation* issued by the SEC was challenged. After a careful analysis, the Third Circuit undoubtedly concluded that "an agency decision to exercise its investigative power overcomes the 'basic presumption' in favor of judicial review of agency action." Gentile v. Sec. & Exch. Comm'n, 974 F.3d 311, 318 (3d Cir. 2020); *see, also*, Assoc. Of Am. Med. Colls v. United States, 217 F.3d 770, 781 (9th Cir. 2000)("An investigation, even one conducted with an eye to enforcement, is quintessentially non-

final as a form of agency action"); Jefferson v. Harris, 170 F. Supp. 3d 194, 218 (D.D.C. 2016)(Concluding that investigations are not "final agency actions" and that they are exempt from judicial review since they are "committed to agency discretion by law"). Hence, the Third Circuit highlighted that an agency's investigative activity is a type of agency action which is governed by a "tradition of nonreviewability". *Id.* at note 12.[9]

Considering the aforementioned principles and judicial precedents from various Federal Courts, the Court concludes that the *Anjo Investigation* does not constitute a "final agency action" subject to judicial review under the APA. Therefore, the Court finds that Plaintiffs' claims pursuant to the APA are not plausible, taking into account that there is no "final agency action" that may be reviewed by the Court. On the other hand, as previously stated, Plaintiffs attempt to escape this reality by alleging that the *Anjo Investigation* is, in fact, a "final agency action" because it is tied to the *DOL Response*. However, Plaintiffs did not offer any factual allegation, statutory reference

[9] The Third Circuit referenced the following case law:

> *Chaney*, 470 U.S. at 838, 105 S.Ct. 1649 ("[A]gency refusals to institute investigative or enforcement proceedings [are committed to agency discretion], unless Congress has indicated otherwise."); *S. Ry. Co. v. Seaboard Allied Milling Corp.*, 442 U.S. 444, 461-64, 99 S.Ct. 2388, 60 L.Ed.2d 1017 (1979); *Am. Disabled for Attendant Programs Today v. U.S. Dep't of Housing & Urban Dev.*, 170 F.3d 381, 384 (3d Cir. 1999) (opining, in a failure to investigate case, that *Chaney* "established a presumption *against* judicial review of agency decisions that involve whether to undertake investigative or enforcement actions" (emphasis in original)); *see also Webster v. Doe*, 486 U.S. 592, 608, 108 S.Ct. 2047, 100 L.Ed.2d 632 (1988) (Scalia, J., dissenting) ("A United States Attorney's decision to prosecute, for example, will not be reviewed on the claim that it was prompted by personal animosity."); *United States v. Nixon*, 418 U.S. 683, 693, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974) ("[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case ...."); *see generally Sec. & Exchange Comm'n v. Wheeling-Pittsburgh Steel Corp.*, 648 F.2d 118, 127 n.12 (3d Cir. 1981) (collecting cases); *Leighton v. Sec. & Exchange Comm'n*, 221 F.2d 91, 91-92 (D.C. Cir. 1955) (*per curiam*) ("The discretionary character of the [SEC]'s action [to refuse to investigate] likewise removes it from Section 10 of the [APA], which excepts from its provisions for judicial review agency action committed by law to agency discretion.").

Gentile v. Sec. & Exch. Comm'n, 974 F.3d 311 at note 12 (3d Cir. 2020).

nor legal precedent that would justify their contention. That is, the Court finds no reason to view the *Anjo Investigation* and the *DOL Response* as one "final" agency action.

Further, and finally, the Court notes that, at this time, whether the *DOL Response* is a "final agency action", is a matter to be considered on appeal before the Fifth Circuit. Taking this fact into account, the Court notes that it cannot entertain any matters related to the characterization of the *DOL Response* as a "final agency action"; therefore, Plaintiffs cannot use said characterization for purposes of their argumentation. *See, e.g.*, United States v. Naphaeng, 906 F.3d 173, 177 (1st Cir. 2018) ("It is settled that once an appeal is taken, a district court generally loses jurisdiction to proceed with any matter related to the appeal's substance during the pendency of the appeal."); United States v. Distasio, 820 F.2d 20, 23 (1st Cir. 1987) ("As a general rule with only limited exceptions, entry of a notice of appeal divests the district court of jurisdiction to adjudicate any matters related to the appeal.").

B. Plausibility of Plaintiffs' ERISA claims[10]

As previously stated, Plaintiffs articulate their ERISA claims pursuant to 29 U.S.C. § 1132 (k). *See* Docket No. 1 at 6.[11] As Defendants correctly point out, ERISA's civil enforcement provision contains a special venue provision. Specifically, the referenced special venue provision states that claims under ERISA's civil enforcement subchapter "may be brought in the district where the plan is administered, where the breach took place, or where a Defendants resides or may

[10] ERISA was enacted to "'protect ... the interests of participants in employee benefit plans and their beneficiaries' by setting out substantive regulatory requirements for employee benefit plans and to 'provid[e] for appropriate remedies, sanctions, and ready access to the Federal courts.'" Aetna Health Inc. v. Davila, 542 U.S. 200, 208, 124 S. Ct. 2488, 2495, 159 L. Ed. 2d 312 (2004)(*citing* 29 U.S.C. § 1001(b)); Jette v. United of Omaha Life Ins. Co., 18 F.4th 18, 26 (1st Cir. 2021). In sum, the "purpose of ERISA is to provide a uniform regulatory regime over employee benefit plans." *Id.*

[11] The Court notes that Plaintiffs also state that venue is proper, pursuant to 28 U.S.C. § 1391 (b). However, 28 U.S.C. § 1391 (a) states that Section 1391 is applicable "[e]xcept as otherwise provided by law". *See, e.g.*, Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas, 571 U.S. 49, 55, 134 S. Ct. 568, 577, 187 L. Ed. 2d 487 (2013). Therefore, taking into account that ERISA contains a special venue provision, we need to examine Defendants' improper venue challenge in the context of said legislation.

be found". 28 U.S.C. § 1132 (e)(2). As Defendants correctly highlight, the *Complaint* does not contain allegations that would lead the Court to ascertain that the District of Puerto Rico is the proper venue pursuant to the referenced criteria. In their opposition, Plaintiffs chose to focus on Congress use of the word "may" to justify the filing of their ERISA claims before this District. However, the word "may" does not open the door to other venue options that were not specifically contemplated in 28 U.S.C. § 1132 (e)(2). Just last year, the Circuit Court for the Ninth Circuit, clarified this matter, stating the following:

> ERISA's venue provision provides that an action "*may* be brought" where: (1) the plan is administered; (2) the breach took place; or (3) a Defendants resides or may be found. 29 U.S.C. § 1132 (emphasis added). **Congress's use of permissive "may" is instructive. It chose to open three venues for suit**, but not to require them.

In re Becker, 993 F.3d 731, 732–33 (9th Cir. 2021)(emphasis provided). Therefore, Plaintiffs proposition that Congress use of the word "may" opened the possibility of filing ERISA claims on venues not contemplated on the special venue provision, is misplaced. Consequently, the Court finds that Plaintiffs have failed to present their claims before the proper venue; it its discretion, the Court hereby dismisses Plaintiffs' ERISA claims without prejudice.[12]

On the other hand, Defendants highlight that 28 U.S.C. § 1132 allows for suits filed by "an administrator, fiduciary, participant, or beneficiary of an employee benefit plan"; however, there is no allegation in the *Complaint* that would lead the Court to conclude that any of Plaintiffs fall under one of said categories. Further, Plaintiffs also failed to allege that they are one of the "persons empowered to bring civil action" under 29 U.S.C. § 1132 (a). Certainly, if Plaintiffs are

[12] The Court notes that, pursuant to 28 U.S.C. § 1406, "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.". No argument was made to convince the Court that the ERISA claims should be transferred to the appropriate venue, in the interest of justice.

not allowed to file a civil action under ERISA's civil enforcement provision, their claims pursuant to said statute are not plausible either and must be dismissed without prejudice.[13]

C. Plausibility of Plaintiffs' constitutional claims

As stated above, one of Defendants' challenges to Plaintiffs' constitutional claims is their "ripeness". Taking into account that Plaintiffs constitutional claims are directed towards the **ongoing** *Anjo Investigation*, Defendants argue that the Court's intervention at this time would present premature challenges to the DOL's proceedings.

The Court notes that "[t]he issue of ripeness turns on the 'fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" W.R. Grace & Co.--Conn. v. U.S. E.P.A., 959 F.2d 360, 364 (1st Cir. 1992)(*citing* Lincoln House, Inc. v. Dupre, 903 F.2d 845, 847 (1st Cir. 1990). "Insofar as ripeness is rooted in Article III, we must consider it as part of our assessment of whether we have jurisdiction to hear the lawsuit." Reddy v. Foster, 845 F.3d 493, 500–01 (1st Cir. 2017). The First Circuit has clarified that the ripeness analysis has two prongs: "fitness" and "hardship." Therefore,

> [f]irst, the court must consider whether the issue presented is fit for review. This branch of the test typically involves subsidiary queries concerning finality, definiteness, and the extent to which resolution of the challenge depends upon facts that may not yet be sufficiently developed. The second branch of the Abbott Labs test requires the court to consider the extent to which hardship looms -- an inquiry that typically "turns upon whether the challenged action creates a 'direct and immediate' dilemma for the parties.

Ernst & Young v. Depositors Econ. Prot. Corp., 45 F.3d 530, 535 (1st Cir. 1995) (citation omitted) (*quoting* W.R. Grace & Co. v. EPA, 959 F.2d 360, 364 (1st Cir. 1992)).

[13] Considering that Plaintiffs' ERISA claims are not plausible as they do not meet the basic requirements established in 29 U.S.C. § 1132; the Court finds that it is unnecessary to evaluate Defendants' additional contentions as to the merits of Plaintiffs' ERISA claims.

As to the first part of the test, the Court finds it necessary to examine the ripeness requirements in the context of agency decisions. To that end, it is worth noting that the Supreme Court has explained that "ripeness" is a "doctrine designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, **and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties**.'" Nat'l Park Hosp. Ass'n v. Dep't of Interior, 538 U.S. 803, 807–08, 123 S. Ct. 2026, 2030, 155 L. Ed. 2d 1017 (2003)(internal citations omitted)(emphasis provided).

Moreover, the Supreme Court has warned that "**judicial intervention into the agency process denies the agency an opportunity to correct its own mistakes and to apply its expertise**." F.T.C. v. Standard Oil Co. of Cal., 449 U.S. 232, 239, 101 S.Ct. 488, 66 L.Ed.2d 416 (1980)(emphasis provided). Therefore, "'agency action is fit for review if the issues presented are purely legal and **the regulation at issue is a final agency action**.'" Ass'n of Am. Med. Colleges v. United States, 217 F.3d 770, 780 (9th Cir. 2000)(*citing* Anchorage v. United States, 980 F.2d 1320, 1323 (9th Cir.1992))(emphasis provided); W.R. Grace & Co.--Conn. v. U.S. E.P.A., 959 F.2d at 364; "The core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties." Franklin v. Massachusetts, 505 U.S. 788, 797, 112 S.Ct. 2767, 120 L.Ed.2d 636 (1992).

Finally, when addressing the second prong, the Court must examine whether "the challenged action creates a 'direct and immediate' dilemma for the parties." Ernst & Young v. Depositors Economic Protection Corp., 45 F.3d 530, 535 (1st Cir. 1995) (internal citations omitted). "Plaintiff must generally demonstrate both prongs of the test to establish ripeness." Matos v. O'Neill, 220 F. Supp. 2d at 103.

As previously stated, and taking into account the allegations provided by Plaintiffs in the *Complaint*, it is undisputed that the *Anjo Investigation* is ongoing and the DOL has not entered any final agency decision with regards to the result of said investigation. Considering this scenario, this Court's intervention on the DOL's ongoing investigation would be premature. Therefore, Plaintiffs' constitutional claims do not pass the "ripeness" criteria necessary to justify judicial intervention at this stage. As a result, the Court dismisses, without prejudice, all of Plaintiffs' constitutional claims.

IV. CONCLUSION

Pursuant to the above, the Court hereby **GRANTS** Defendants' *Motion for Judgment on the Pleadings*. Consequently, the Court **DISMISSES**, **without prejudice**, all of Plaintiffs' claims asserted in the *Complaint*.

IT IS SO ORDERED.

In San Juan, Puerto Rico, on March 28, 2022.

S/Daniel R. Domínguez
Daniel R. Domínguez
United States District Judge

EXHIBIT C

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

MARTIN J. WALSH, SECRETARY LABOR, UNITED STATES DEPARTMENT OF LABOR,	)	
Petitioner,	)	**Civil No. 3:21-mc-00413 (ADC)**
PROVIDENCE INSURANCE COMPANY, I.I.,	)	
Respondent.	)	

ANSWER TO PETITION TO ENFORCE ADMINISTRATIVE SUBPOENA AND COUNTERCLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE COURT:

COMES NOW Respondent, Providence Insurance Company, I.I. ("PIC"), and file this, its Answer to Petition to Enforce Administrative Subpoena and Counterclaim for Declaratory and Injunctive Relief against Petitioner Martin J. Walsh, Secretary of Labor, United States Department of Labor ("DOL"), and shows the Court as follows:

ANSWER TO PETITION

PIC hereby files its Answer, showing the Court its response to the allegations in the numbered paragraphs of the Petition as follows:

1. Paragraph 1 contains conclusions of law, not assertions of fact. As such, PIC is not required to either admit or deny the same. To the extent paragraph 1 is deemed to include factual allegations, PIC is without sufficient knowledge and information to admit or deny the allegations in paragraph 1 concerning the motivations of DOL as to the purpose and issuance of the Subpoena and therefore denies same.

2. PIC admits the allegations in paragraph 2.

3. PIC admits the allegations in paragraph 3.

4. PIC is without sufficient knowledge and information to admit or deny the allegations in paragraph 4 concerning the motivations of DOL as to the purpose and origins of the Anjo Investigation and therefore denies same. By way of further response, PIC notes that it, along with three other entities, previously commenced litigation against DOL asserting claims for various constitutional and statutory violations arising from DOL's retaliatory and improper conduct in the Anjo Investigation. That matter is currently pending in the United States District Court, District of Puerto Rico and is known as *Suffolk Administrative Services, LLC, et al., v. United States Department of Labor, et. al.*, United States District Court, District of Puerto Rico, Civil Action No. 3:21-cv-01031 (DRD) (the "Constitutional Case").

5. PIC admits that counsel for PIC accepted service of the Subpoena on July 9, 2020 and that a true and correct copy of the Subpoena was attached as Exhibit 1 to the Gewin Declaration. The remaining allegations of paragraph 5 contain conclusions of law, not assertions of fact. As such, PIC is not required to either admit or deny the same.

6. PIC admits that counsel for PIC accepted service of the Subpoena on July 9, 2020 and upon information and belief admits the remaining allegations in paragraph 6.

7. PIC denies the allegations in paragraph 7.

8. PIC states that the correspondence referenced in paragraph 8 speak for themselves, and PIC denies any characterization or paraphrasing of the correspondences' contents that is incomplete or inconsistent with its express language. PIC admits that DOL did not respond to its letter of March 12, 2021 until filing of the Petition.

9. In response to paragraph 9, PIC admits that it will not voluntarily produce certain documents unredacted in response to the Subpoena. PIC denies the remaining allegations in paragraph 9.

10. Paragraph 10 contains conclusions of law, not assertions of fact. As such, PIC is not required to either admit or deny the same. To the extent paragraph 10 is deemed to include factual allegations, PIC denies the same.

WHEREFORE, Respondent PIC, having filed its Answer to DOL's Petition, respectfully requests that the Petition be dismissed or, in the alternative, that Subpoena be reasonably limited with all costs of this action being cast against DOL and for such other and further relief as this Court deems just and proper.

COUNTERCLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF[1]

INTRODUCTION

1. PIC, Suffolk Administrative Services, LLC ("SAS") and Providence Insurance Partners, LLC ("PIP") sought guidance from DOL to ensure that a proposed business structure to provide a novel way for companies to provide access to health coverage to their personnel and recruits complied with applicable law. PIC, SAS and PIP never approached this novel structure with a "catch us if you can" philosophy. Rather, they literally "walked through the front door" of DOL seeking its guidance and view on the applicable law before implementing it. PIC, SAS and PIP relied in good faith on the unequivocal representations and guidance of DOL officials

[1]The facts and claims asserted in this Counterclaim have been asserted by PIC in the Constitutional Case and are re-asserted herein in order to preserve all of PIC's rights and remedies. The facts asserted in the Counterclaim have been updated to include additional unconstitutional actions by DOL. The claims have also been modified to account for the fact that not all of the Plaintiffs in the Constitutional Case are parties to this action. Given the interconnectedness of the claims, PIC believes that the best course for both this case and the Constitutional Case is for this case to be re-assigned to the judge assigned to the Constitutional Case.

regarding the novel concept. For this, DOL has been punishing PIC, as well as SAS and PIP, with a retaliatory "investigation" – the Anjo Investigation referenced in the Petition.

2. On November 8, 2018, LP Management Services, LLC ("LPMS"), filed a formal Advisory Opinion Request ("2018 Request") with the United States Department of Labor ("DOL") seeking guidance on whether a proposed health benefit plan ("Plan") was a lawful single employer health plan under the Employee Retirement Income Security Act ("ERISA"). LPMS is an owner of clients of SAS and PIC and is not otherwise connected to Anjo LLC ("Anjo"), PIC, PIP, and SAS. A true and correct copy of the 2018 Request is attached hereto as Exhibit 1.

3. The structure of the Plan was developed by Alexander Renfro ("Mr. Renfro"), the Chief Legal Officer of PIP and a manager of Anjo, SAS, and PIC. Mr. Renfro is a benefits attorney licensed in the State of Tennessee. Mr. Renfro received a juris doctor from Southern Methodist University Dedman School of Law, and a certificate in employee benefits, as well as an LLM in taxation from Georgetown University Law Center.

4. Mr. Renfro, as attorney for LPMS, was the principal author of the 2018 Request. The 2018 Request detailed the legal and factual basis for application of ERISA to the Plan building upon the previously recognized concept under ERISA of "working owners." Given the novel corporate structure of the limited partnerships, LPMS sought guidance from DOL with respect to four issues, seeking confirmation from DOL that:

a. 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).

b. 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").

c. 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).

d. The single-employer self-insured group health plan sponsored by the limited partnership is governed by Title I of ERISA.

5. On January 15, 2019, and on February 27, 2019, Mr. Renfro again as attorney for LPMS revised the 2018 Request culminating in a final revised request ("Revised Request") to include additional factors and legal arguments for consideration by DOL. A true and correct copy of the Revised Request is attached hereto as Exhibit 2.

6. As noted in the Revised Request, LPMS sought to implement this Plan structure through several limited partnerships for which LPMS would act as general partner (the "Partnership Plans").

7. SAS is a Puerto Rican limited liability company with principal offices located in Guaynabo, Puerto Rico, providing benefits consulting and vendor management company providing compliance assistance to employers located in the United States mainland to implement, administer, and maintain self-insured group health plans. In addition to traditional benefits administration services, SAS provides other services including ERISA compliance advice, Affordable Care Act compliance advice, advice on local or federal wage ordinance provisions, and vendor management to employers with self-insured group health plans. SAS provides such benefits consulting and vendor management services to employers implementing both traditional self-insured group health plans and the novel Partnership Plan structure.

8. PIC is Puerto Rican international insurance company with principal offices located in San Juan, Puerto Rico, providing reinsurance for employers located in the United States

mainland implementing both traditional self-insured group health plans and the novel Partnership Plan structure.

9. Anjo is a Tennessee limited liability company that does not provide any services of any kind to any individual or entity relating to ERISA or group health plans, be they fully insured or self-insured. Anjo does not participate in any ERISA plans of any nature nor does it act as a vendor to any ERISA plan. Its only involvement in any of the issues relevant to this Complaint is its connection to Mr. Renfro.

10. PIP is a Tennessee limited liability company providing consultation and advice on structuring reinsurance coverage for employers implementing both traditional self-insured group health plans and the novel Partnership Plan structure.

11. SAS, PIC, and PIP all expended resources, time, and expertise to develop products tailored to assist employers seeking to implement the novel Partnership Plan structure.

12. On February 21, 2019, several state Attorneys General sent DOL a letter encouraging them to act on the Revised Request because the applicability of ERISA to the Plan heavily impacts the economic and public health interests of the states ("AG Letter"). A true and correct copy of the AG Letter is attached hereto as Exhibit 3.

13. DOL has never provided any response to the AG Letter.

14. For more than one year, DOL provided no formal response to the Revised Request, forcing LPMS and Data Marketing Partnership LP ("DMP"), a limited partnership for which LPMS serves as general partner, to file suit in the United States District Court for the Northern District of Texas, *Data Marketing Partnership, LP, and LP Management Services, LLC v. Department of Labor*, Civil Case 4:19–cv–00800–O (the "AO Case").

15. While DOL refused to make any formal response to the AO Request and AG Letter, and in so doing violated the terms of its own published policies for AO review and response, DOL simultaneously opened a retaliatory investigation against Anjo, targeting the Partnership Plans, PIC, and several related organizations in a transparent effort to provide a post hoc explanation for their lack of action on the Revised Request, and with the transparent aim to chill the speech and association rights of PIC, as well as SAS and PIP, in violation of the First and Fifth Amendments to the United States Constitution (the "Anjo Investigation").

16. On January 24, 2020, six business days before its response was due in the AO Case, and more than fourteen months after the Request had been duly and properly filed, DOL finally issued an adverse action response ("Response") to the AO Request. A true and correct copy of the Response is attached hereto as Exhibit 4.

17. The six-page Response was arbitrary and capricious, containing almost no legal analysis by DOL and, in direct violation of ERISA Procedure 76-1, was based on erroneous facts and misstatements of the proposed business structure.

18. Because the Response contained so many factual misstatements and so little legal analysis, it appeared to be just another calculated effort by DOL to hamper implementation of the traditional plan to a less common corporate structure at the expense of PIC's, as well as SAS and PIP's, constitutional rights and the rights of employers, limited partners, and employees seeking the benefits of the Partnership Plans and similar plans providing affordable access to health care.

19. In light of the adverse Response, the AO Case continued.

20. LPMS and DMP eventually received relief when the court granted its Motion for Summary Judgment setting aside DOL's Response (See, AO Case at Doc. 37).

21. This counterclaim seeks relief from the ongoing retaliatory and unconstitutional acts of DOL related to their purported Anjo Investigation.

JURISDICTION AND VENUE

22. 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) as well as by virtue of DOL having filed the instant Petition in this Court.

23. 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).

24. PIC is a Puerto Rican international insurer with a principal place of business located at 954 Ponce de Leon Avenue, Miramar Plaza, Suite 802, San Juan, PR 00907. PIC is subject to the jurisdiction and venue of the Court.

25. Venue is proper in this district pursuant to the express provisions of ERISA, 29 U.S.C. §§ 1132(k). Venue is also proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (e)(1). Respondent is a United States agency or officer sued in his official capacity and a substantial part of the events giving rise to this action occurred in this District.

PARTIES

26. PIC, as well as SAS and PIP, is aggrieved by the unreasonable, retaliatory investigation into all businesses engaged in providing services to the Partnership Plans. This investigation, and the vindictive manner in which it has been carried out over the past 30 months, evinces a clear design to silence PIC, SAS and PIP and otherwise inflict damage upon them by any and all means available to DOL. Notably, and as further described herein, DOL is violating its

own procedures for the conduct of such investigations. Accordingly, PIC has standing to bring this action pursuant to 29 U.S.C. § 1132(k).

27. 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).

FACTS

28. This case arises out of DOL's blatant retaliation against PIC, as well as SAS and PIP, for exercising its constitutionally protected rights and, in doing so, relying on the unequivocal representations and guidance of DOL officials regarding a business structure which provided the personnel and prospective recruits of its client companies with a novel way to access private health coverage.

PETITIONING THE GOVERNMENT

29. In October, 2018 (the "October Meeting"), representatives of PIC, SAS, and PIP met with the United States DOL in an effort to be transparent with the relevant regulatory agencies that would interact with the Plan, its participants, and its sponsors.

30. In attendance at the October Meeting and representing the interests of PIC, SAS, and PIP was Alex Renfro, among others.

31. In attendance at the October Meeting and representing the interests of DOL was Preston Rutledge, then Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA), the division of DOL responsible for ERISA compliance and interpretations.

32. By all accounts, the October Meeting was very successful. PIC, SAS, and PIP's representatives explained the plan structure to DOL representatives and provided high level detail of the goals of the plan and the business structure.

33. At the October Meeting, Assistant Secretary Rutledge told representatives from PIC and co-Plaintiffs in the Constitutional Case that an Advisory Opinion Request was the best route to ensure approval of the Plan by DOL, which Mr. Renfro promptly submitted.

34. The parties parted ways with an explicit agreement to continue discussions so that DOL could be comfortable approving the Plan as ERISA compliant.

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

36. 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.

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

38. As a result of this and other advice from DOL, the 2018 request was slightly revised and resubmitted to DOL in early 2019, culminating in the final Revised Request submitted on or about February 26, 2019.

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

40. 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. DOL made no formal response to any of these submissions.

41. Instead, during a meeting on March 6, 2019, then DOL Chief of Staff Nicholas Geale told a group of representatives from PIC, SAS, and PIP and interested states, including Mr. Renfro, Mr. Condeluci, and Louisiana Attorney General, Jeff Landry (the lead signatory to the aforementioned letter) 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 perceived conflict with litigation around DOL's new Association Health Plan ("AHP") rule.

42. At one point during the meeting, representatives from DOL became animated and said that if PIC, SAS, and PIP's group disagreed about DOL's priorities, they should "take it up with the White House," which had instructed DOL not to approve the Revised Request.

43. In a subsequent meeting between Mr. Condeluci and Mr. Geale at DOL, 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 DOL would not investigate or otherwise interfere with any LPMS-managed partnership plans.

44. Representatives for PIC, SAS, and PIP attempted to explain to Mr. Geale that even assuming DOL refrained from investigating or hampering DMP, the fifty separate state insurance regulators could pose significant and indefinite regulatory 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 politically motivated investigations by individual states in the absence of an ERISA ruling.

45. Several staff members of DOL were present at this meeting, including, upon information and belief, members of the enforcement division of DOL and Joseph Canary, who is the Director of the Office of Regulations and Interpretations and the purported author of the adverse Response.

46. It turns out PIC, SAS, and PIP's reticence to accept handshake deals with DOL was well-founded, because once PIC, SAS, and PIP declined DOL's offer, DOL embarked on a fishing expedition through what can only be described as a vindictive and retaliatory investigation.

47. PIC believes the first subpoena related to the Anjo Investigation was issued by DOL shortly after the earlier described meeting in which Joseph Canary was in attendance, thus beginning the investigation into Anjo despite DOL having never posed a single written question or other formal response to the Revised Request or the AG Letter. This lack of interaction on the Revised Request is highly unusual for DOL's advisory opinion process, as questions from DOL to the requestor routinely occur following submission of an advisory opinion request.

48. DOL issued subpoenas to almost every key entity doing business with Anjo, PIC, SAS, or PIP, including some businesses that have nothing whatsoever to do with any partnership plans.

49. The clear intent of the investigation and the subpoenas is to intimidate PIC, SAS, PIP and their partners, and to stifle their speech and associational rights, while inflicting as much economic damage on PIC, SAS, and PIP as possible.

50. The maltreatment by DOL notwithstanding, PIC, SAS, and PIP have complied with all requests, and encouraged their partners to do the same.

51. But such compliance comes at a price, having collectively cost hundreds of thousands of dollars and immeasurable time and energy to date (precious time diverted from serving clients and improving all aspects of PIC, SAS, and PIP's businesses and those of PIC, SAS, and PIP's clients, including data collection and marketing).

52. DOL's actions have also prevented PIC, SAS, and PIP from growing their business, because they have naturally been obliged to disclose the investigation to all potential new

distribution sources, who have all understandably said, "Call us when it's over." Additionally, current vendors and distribution partners of PIC, SAS, and PIP have either reduced or terminated relations with PIC, SAS, and PIP as a result of receiving subpoenas in the Anjo Investigation.

53. Immediately before the initiation of the investigation of Anjo and since that time, DOL rapidly changed course in its dealings with the PIC, SAS, and PIP regarding the propriety of the Partnership Plans as well.

54. As the investigation got under way, a long-scheduled June 2019 meeting between LPMS, PIC, SAS, and PIP's representatives, and DOL was abruptly pushed back to July.

55. When the scheduled meeting finally occurred, it lasted only ten minutes and the representatives from DOL demonstrated little interest in continuing discussions with LPMS, PIC, SAS, and PIP's representatives about the Partnership Plans, or the Revised Request.

56. During this time-period, DOL subpoenaed more than ten entities related to LPMS, PIC, SAS, and PIP as part of the Anjo Investigation. True and correct copies of these subpoenas are attached hereto as Exhibit 5.

57. The subpoenas from DOL are ostensibly issued pursuant to 29 U.S.C. § 1134(a)(1), which grants EBSA the authority to determine whether someone is violating or about to violate ERISA.

58. Nevertheless, this explanation is especially curious since these subpoenas were issued within weeks of the adverse Response issued by DOL that explicitly presumed the Partnership Plans are not covered by ERISA. Despite this Response, DOL continued to pursue its amorphous, ill-defined, and indefinite "investigation" into Anjo.

59. The Response, in fact, expressly states, "it is the Department's view that the proposed [Partnership Plan] health benefit programs would not be single-employer group health plans ***or ERISA plans at all."*** [Emphasis Added].

60. In the AO Case, the District Court rejected DOL's view.

61. DOL is attempting to have it both ways. On the one hand, they state that the Partnership Plans covered by the Revised Request are not subject to ERISA, and yet they are investigating Anjo and others under their authority to ensure compliance with ERISA. Now that the District Court in the AO Case has resoundingly rejected this misguided view of DOL, it has failed to abandon (or even curtail) its retaliatory investigation of Anjo. This is emblematic of the abusive, duplicitous, and unconstitutional conduct DOL has subjected PIC, SAS, and PIP to for over two and a half years.

62. PIC, SAS, and PIP welcomed DOL oversight from the beginning – literally walking in its front door to seek guidance on the novel Partnership Plans before implementing them. However, DOL oversight must still comply with the United States Constitution and ERISA. DOL oversight does not extend to baseless, retaliatory fishing expeditions.

63. DOL issued the subpoenas to stifle the ability of PIC, SAS, and PIP to continue their services with respect to the Partnership Plans, to hinder or altogether block the right of the partners to join together and freely associate with one another, to hinder or altogether block the right of PIC, SAS, and PIP's customers to join together and freely associate with one another and/or with PIC, SAS, and PIP, and in response to LPMS' petition to the government through the 2018 Request and Revised Request ("Advisory Opinion Requests").

64. Having been thwarted by the District Court's ruling in the AO Case, DOL is using its abusive investigatory tactics to achieve its desired end by other, unlawful means.

65. DOL's efforts have been highly successful. Indeed, the effect of this retaliatory investigation and the associated subpoenas has been to thwart the ability of PIC and PIC's co-Plaintiffs in the Constitutional Case to refine and implement the Partnership Plan on behalf of their client(s), as well as conduct their ordinary course of business with respect to more traditional group health plans.

66. The very existence of the seemingly interminable investigation has understandably both frightened potential Partnership Plan vendors and dissuaded them from providing services to the Partnership Plans.

67. The very existence of the seemingly interminable investigation has understandably both frightened potential Partnership Plan vendors and dissuaded them from providing services to the Partnership Plans and frightened potential vendors and partners from conducting business with PIC, SAS, and PIP both generally and with respect to Partnership Plans. Additionally, existing vendors of PIC, SAS, and PIP have reduced or terminated relations with PIC, SAS, and PIP as a result of the retaliatory Anjo Investigation.

68. As a direct result of this egregious conduct, PIC, along with SAS, PIP and Anjo filed the Constitutional Case on January 19, 2021.

69. Since late July 2021, DOL has accelerated the abusive wielding of its investigative power to confuse and prejudice state agencies and intimidate those who engage in business or contemplate engaging in business with PIC, SAS and PIP. In short, DOL has intentionally targeted PIC, SAS and PIP's business efforts whether they are connected to providing services to the limited number of clients implementing Partnership Plans, or to PIC, SAS and PIP's broader client base of traditional employers implementing uncontroversial self-insured benefit plans.

70. On July 20, 2021, DOL initiated an unprompted direct interview of one of PIC, SAS and PIP's traditional employer clients. This unannounced and unwarranted action by DOL was the first of several new instances of DOL's inappropriate conduct that have become known to PIC, SAS and PIP since late July.

71. On July 23, 2021, PIC, SAS and PIP 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." He was informed there were "major concerns" with PIC, SAS and PIP's plan – even though the contemplated plans were not Partnership Plans – and that "the plan" was "under investigation in several jurisdictions."

72. Upon learning of this disturbing contact by the Delaware Department of Insurance ("DE DOI") to a prospective business partner, Mr. Renfro made contact with DE DOI in an effort to organize a conference call with the appropriate DE DOI personnel, SAS, and its business partners. On July 26, 2021, Mr. Renfro received a call from Mr. Frank Pyle, Special Deputy Commissioner of DE DOI. During this extensive conversation, Mr. 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 DOL regarding the AO Case 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 as a result of the DOL guidance, regardless of whether the client of SAS and/or PIC was implementing Partner Plans or not.

73. On August 6, 2021, a distribution 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 PIC, SAS and

PIP's programs in the State of Washington "was under investigation and shut down" following entanglement with DOL and that SAS structured plans were likely not "ACA compliant". Additionally, this business partner also noted that the PA DOI special investigator admitted his information came from the DE DOI, likely Mr. Pyle. This business partner of PIC and SAS also indicated that when he contacted the DE DOI he was informed by a "Delaware DOI regulator" (again, likely Mr. Pyle) 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.

74. Later that same day, PIC, SAS and PIP learned that the President of one of their potential distribution partners had spoken with the "Special Deputy Commissioner of DE" (presumably Mr. Pyle). Following that conversation with Mr. Pyle, that potential distribution 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."

75. On August 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." Upon information and belief, each of these facts relates directly to the improper actions of DOL at least, and perhaps are a result of a larger effort (orchestrated by 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 PIC, SAS and PIP by "poisoning the well" with the potential business partners, customers, and vendors that might work with PIC, SAS and PIP.

76. On August 10, 2021, Mr. Renfro and PIC, SAS and PIP's 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 SAS and PIC services for even employers implementing traditional (i.e. non-Partnership Plan) self-insured benefit plans designed, administered, and/or insured by PIC and SAS.

77. Such an outcome threatens the viability and longevity of the Partnership Plans and the limited partnerships sponsoring them, because the success of such limited partnerships depends on attracting many partners, as well as PIC, SAS, and PIP's viability as going concerns, since their ability to conduct business at all has been stymied by the loss of goodwill and reputation among existing and potential partners while the cost of complying and attempting to respond in good faith to the retaliatory Anjo Investigation continues.

78. The retaliatory investigation has inhibited the ability of PIC, SAS and PIP, the clients they service, their clients' plan participants, potential plan participants, and PIC, SAS, and PIP's customers and business partners to associate with one another on the basis of their political and protected viewpoints.

79. This abuse must stop.

DOL CONTINUES TO DISREGARD ITS OWN RULES

80. DOL also failed to follow its own procedures, specifically ERISA Procedure 76-1.

81. After submission of the Revised Request, DOL never requested any follow up information from LPMS and it never contacted any representative of LPMS to confirm its understanding of the facts presented in the Revised Request. This failure led to DOL's flawed understanding of the relevant facts.

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

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

84. In the Response, however, DOL did not accept as true even the most basic facts presented in the Revised Request.

85. For these violations of ERISA Procedure 76-1, among other reasons, the District Court in the AO Case found DOL's conduct relative to the Response to be arbitrary and capricious.

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

87. This Court should not permit DOL to run roughshod over its own policies and over Constitutional restraints that exist to safeguard American citizens from the considerable power of the administrative state.

DOL REFUSES TO PROVIDE PIC INFORMATION ON SCOPE AND PURPOSE OF INVESTIGATION

88. On November 6, 2020, counsel for PIC, SAS and PIP 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.

89. As noted in the November 6, 2020, letter, PIC, SAS and PIP have all cooperated with DOL in the Anjo Investigation at great cost in legal fees and lost productivity. PIC, SAS and

PIP noted that each is a small business with limited personnel resources available to respond to the subpoenas. Despite these limited resources, PIC, SAS and PIP and associated entities implementing the Partnership Plans have produced nearly 20,000 documents comprising over 340,000 pages in response to the various DOL subpoenas issued in furtherance of the Anjo Investigation.

90. Having expended considerable resources in legal fees and lost productivity cooperating with DOL, PIC, SAS and PIP requested that DOL provide responses to reasonable requests for clarifying information on the Anjo Investigation, posing the following questions:

> 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?

91. Regardless of whether DOL desired to respond to the above reasonable requests, PIC, SAS and PIP sought a path to reach a resolution to the Anjo Investigation without needing to resort to litigation. Specifically, PIC, SAS and PIP offered to engage in a constructive dialogue with DOL around the following suggestions:

- 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.
- 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 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.

92. As with all of PIC, SAS and PIP's prior interactions with DOL, the November 6 letter was delivered in good faith seeking to develop a working framework between PIC, SAS and PIP and DOL within which DOL could be fully satisfied that the implementation of the Partnership Plans complies with ERISA and allow PIC, SAS and PIP to continue their business within the requirements of ERISA.

93. Rather than accept the good faith offer to engage in constructive dialogue on how best to ensure ERISA compliance, satisfy DOL's concerns (assuming there were any legitimate concerns at the onset of the Anjo Investigation) that led to the amorphous and undefined Anjo Investigation, and create a structure for future interactions ensuring PIC, SAS and PIP's ERISA compliance, DOL rejected out of hand PIC, SAS and PIP's overtures.

94. On December 14, 2020, Katrina Liu, Trial Attorney, Office of the Solicitor of DOL (also an attorney representing DOL in this Petition, the AO Case, and the Constitutional Case),

responded on behalf of DOL with a letter essentially noting DOL's "ample authority to conduct its investigation in order to determine whether ERISA violations have or are about to occur." In short, DOL was "not in a position to provide the specific information you seek regarding the timing and scope" of the Anjo Investigation.

95. If there is or ever was a legitimate basis for the Anjo Investigation, DOL refuses to state what it is.

96. On December 30, 2020, PIC, SAS and PIP responded to Attorney Liu with citations to authority showing that, while broad, DOL's investigatory authority is not as limitless as portrayed in her letter of December 14. PIC, SAS and PIP closed their reply letter with yet another request that DOL reconsider its inexplicable approach to the Anjo Investigation. PIC, SAS and PIP 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." Despite the obvious damage that the DOL is causing, DOL has not reconsidered its position.

97. True and correct copies of the November 6, December 14, and December 30 letters are attached hereto as Exhibit 6.

CAUSES OF ACTION

COUNT I
(VIOLATIONS OF THE FIRST AMENDMENT)

98. The preceding allegations are all incorporated by reference herein as if fully set out.

99. The First Amendment protects private speech from government interference or restriction when the specific motivating ideology, opinion, or perspective of the speaker is the rationale for the restriction.

100. PIC's speech, via submission of the Advisory Opinion Requests, is entitled to First Amendment protection.

101. DOL unlawfully deprived PIC of its First Amendment rights in connection with and arising from LPMS's Advisory Opinion Requests by launching a retaliatory investigation into an entity, Anjo, for the sole purpose of harassing PIC, PIC's co-Plaintiffs in the Constitutional Case and the entities that were subpoenaed due to their partnership or other relationship with the Partnership Plans; issuing unconstitutional and overly intrusive requests for information via the subpoena process; delaying the processing of LPMS's Advisory Opinion Request on the basis of DMP's viewpoints and in violation of ERISA Procedure 76-1, the EO and 29 U.S.C. § 1134(b); seeking to undermine the duly issued order of a Federal Court determining that the Partnership Plans are explicitly legal constructs under ERISA; and failing to prevent such conduct by DOL employees and agents under their direct supervision and control while they were fully aware of such unconstitutional misconduct.

102. PIC holds the same viewpoint as LMPS in the Advisory Opinion Requests as evidenced by the fact that PIC voluntarily and continues to service clients owned by LPMS which are the subject of the Request itself.

103. In targeting PIC's business associates and partners for additional and illegitimate scrutiny, DOL engaged in impermissible viewpoint-based discrimination in violation of established First Amendment principles, while acting under color of federal authority in their respective official DOL positions.

104. DOL's conduct directly infringed upon PIC's speech by inhibiting their ability to engage in effective advocacy and other expressive activities.

105. DOL's conduct constitutes retaliation against PIC on the basis of the actual or perceived viewpoint of their protected speech.

106. DOL knew, or reasonably should have known, that their conduct would violate PIC's federal constitutional rights.

107. PIC has no other adequate monetary remedy in court for DOL's violations of its constitutional rights as complained of herein.

108. Absent congressional direction otherwise, courts may grant injunctive relief against prospective harms.

COUNT II
(VIOLATIONS OF THE FIRST AMENDMENT – FREEDOM OF ASSOCIATION)

109. The preceding allegations are all incorporated by reference herein as if fully set out.

110. The First Amendment to the United States Constitution protects PIC's right to freely associate with others of their choosing for the purposes of engaging in protected speech.

111. PIC and its partners and business affiliates are entitled under the First Amendment to freely associate with one another.

112. DOL unlawfully deprived PIC of its First Amendment rights in connection with and arising from LPMS's Advisory Opinion Requests by launching a retaliatory investigation into an entity, Anjo, as a pretext to issue overly broad, intrusive subpoenas to PIC and any other vendor providing services to Partnership Plans, for the sole purpose of harassing PIC and the entities that were subpoenaed due to their servicing relationship with limited partnerships sponsoring Partnership Plans; issuing unconstitutional and overly intrusive requests for information via the subpoena process; delaying the processing of LPMS's Advisory Opinion Request on the basis of DMP's viewpoints and in violation of ERISA Procedure 76-1, the EO and 29 U.S.C. § 1134(b); seeking to undermine the duly issued order of a Federal Court determining that the Partnership Plans are explicitly legal constructs under ERISA, and failing to prevent such conduct by DOL

employees and agents under their direct supervision and control while they were fully aware of such unconstitutional misconduct.

113. DOL, while acting under color of federal authority, infringed upon PIC's ability to freely associate for protected speech purposes with others of their choosing – including potential future clients, plan participants, and plan vendors.

114. DOL knew, or reasonably should have known, that targeting PIC and its partners and affiliates for additional and illegitimate scrutiny would violate PIC's federal constitutional rights.

115. PIC has no other adequate monetary remedy in court for DOL's violations of its constitutional rights as complained of herein.

116. Absent congressional direction otherwise, courts may grant injunctive relief against prospective harms.

COUNT III
(VIOLATIONS OF THE FIFTH AMENDMENT – EQUAL PROTECTION UNDER THE DUE PROCESS CLAUSE)

117. The preceding allegations are all incorporated by reference herein as if fully set out.

118. The Fifth Amendment to the United States Constitution protects persons against the deprivation of life, liberty, or property without due process of the law and forbids the federal government from denying the equal protection of the laws.

119. The Fifth Amendment to the United States Constitution guarantees persons the right to be free from illegal discrimination and selective viewpoint-based scrutiny and enforcement.

120. DOL unlawfully deprived PIC of its First Amendment rights in connection with and arising from LPMS's Advisory Opinion Requests by launching an investigation into an entity,

Anjo, for the sole purpose of harassing PIC and the entities that were subpoenaed due to their relationship as sponsors of Partnership Plans or vendors to Partnership Plans; issuing unconstitutional and overly intrusive requests for information via the subpoena process; delaying the processing of LPMS's Advisory Opinion Request on the basis of DMP's viewpoints and in violation of ERISA Procedure 76-1, the EO and 29 U.S.C. § 1134(b); seeking to undermine the duly issued order of a Federal Court determining that the Partnership Plans are explicitly legal constructs under ERISA, and failing to prevent such conduct by DOL employees and agents under their direct supervision and control while they were fully aware of such unconstitutional misconduct.

121. DOL, while acting under color of federal authority, caused PIC to be treated differently than other similarly situated organizations which serve as plan vendors of plan sponsors or their owners who file advisory opinion requests.

122. The disparate treatment of PIC based on their viewpoints was a result of a discriminatory purpose on the part of DOL.

123. DOL's disparate treatment of PIC based on its viewpoint is not rationally related to any legitimate governmental interest.

124. DOL knew, or reasonably should have known, that its conduct would violate PIC's federal constitutional rights.

125. PIC has no other adequate monetary remedy in a court for DOL's violations of its constitutional rights as complained of herein.

126. Absent congressional direction otherwise, courts may grant injunctive relief against prospective harms.

COUNT IV
(VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT ("APA"))

127. The preceding allegations are all incorporated by reference herein as if fully set out.

128. The APA provides a cause of action for persons suffering a legal wrong from – or adversely or 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

129. The APA requires the federal courts to: (1) compel agency action unlawfully withheld or unreasonably delayed and (2) hold unlawful and set aside agency action, findings, and conclusions found to be contrary to any constitutional right, power, privilege, or immunity. 5 U.S.C. § 706.

130. The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702 in actions seeking relief other than money damages and stating a claim that an agency of the United States and/or officers thereof acted or failed to act in an official capacity.

131. DOL is an agency of the United States of America for purposes of the APA.

132. DOL's unlawful and viewpoint-based discriminatory investigation into PIC's partners and affiliates and unconstitutional and intrusive requests for information unreasonably delayed DOL's final determinations of the Revised Request.

133. DOL's perfunctory Response and simultaneous retaliatory investigation described herein – based solely on PIC's viewpoint – violates the United States Constitution, ERISA Procedure 76-1, 29 U.S.C. § 1134(b), and the continuing the investigation constitutes final agency actions having the force and effect of law that are contrary to PIC's federal constitutional rights to freedom of speech and freedom of association under the First Amendment and the equal protection of the laws under the Fifth Amendment.

134. DOL's demand that PIC, partnerships implementing the Partnership Plans, and business associates supporting the Partnership Plans respond to irrelevant, unlawful,

unconstitutional, and overly intrusive requests for information issued by subpoena described herein is plainly contrary to the intent of Congress as expressed in ERISA and therefore, such action is not committed to agency discretion by law. 5 U.S.C. §701(a)(2).

COUNT V
(VIOLATIONS OF ERISA)

135. The preceding allegations are all incorporated by reference herein as if fully set out.

136. DOL's ongoing and interminable investigation is marked by repeated and intrusive subpoenas either to PIC, plan members, plan supporters, plan providers, plan vendors, or affiliates thereof.

137. DOL's seemingly disparate issuance of subpoenas are, in reality, all targeting the same Partnership Plans and their vendors, real or perceived, stemming from LPMS's submission of the Revised Request.

138. Many of the targets of the subpoenas are associated with or vendors to the Partnership Plans either by facilitating its existence or participating its benefits.

139. DOL has not provided any reasonable cause for its repetitive and abusive subpoenas issued the Anjo Investigation.

140. Indeed, the only explanation proffered by DOL is that it issuing the subpoenas pursuant to its authority to determine whether someone is violating or is about to violate ERISA.

141. But this authority does not provide rights to issue subpoenas as retaliation for invoking ERISA Procedure 76-1.

142. An order from this Court preliminarily and permanently enjoining the DOL's unlawful conduct is the only adequate remedy available at law.

PRAYER FOR RELIEF

WHEREFORE PIC demand judgment against DOL and in favor of PIC as follows:

A. That this Court declare that the conduct of the DOL, while acting under color of federal authority, violated the constitutional rights of PIC;

B. That this Court declare the conduct of DOL violated the Administrative Procedure Act;

C. That this Court declare the conduct of DOL violated the Employee Retirement Income Security Act;

D. That this Court issue a permanent injunction prohibiting DOL, and all those in active concert with it, from unlawfully targeting PIC through its retaliatory investigation, immediately cease issuing new subpoenas related to the investigation to PIC, any affiliates, or potential partners or participants involved in the Partnership Plans; and an order quashing any active or pending subpoenas issued by DOL to PIC, its affiliates, or others related to the Anjo Investigation;

E. Alternatively to the preceding prayer for relief, that this Court issue a permanent injunction prohibiting DOL, and all those in active concert with it, from unlawfully targeting PIC through its retaliatory Anjo Investigation, immediately cease issuing new subpoenas related to the investigation to PIC, any affiliates, or potential partners or participants involved in the Partnership Plans unless and until DOL (i) defines in writing the scope and concerns of the Anjo Investigation, and (ii) either recommend or bring an enforcement action for any alleged ERISA violation by PIC; and an order quashing or suspending enforcement of any active or pending subpoenas issued by DOL to PIC, its affiliates, or others related to the Anjo Investigation unless and until DOL (i) defines in writing the scope and concerns of the Anjo Investigation, and (ii) either recommend or bring an enforcement action for any alleged ERISA violation by PIC;

F. Award PIC its 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

G. Award PIC such other and further relief as this Court deems necessary and proper.

JURY DEMAND

PIC demands trial by jury on all claims and issues so triable.

DATED: November 19, 2021

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of the instant filing to all CM/ECF participants in this case.

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EXHIBIT D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

SUFFOLK ADMINISTRATIVE SERVICES, LLC, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF LABOR, et al., Defendants.	)	Case No. 3:21-cv-01031-DRD

ANSWER

Defendants, the United States Department of Labor, the Secretary of Labor, and the United States, by and through undersigned counsel, hereby answer Plaintiffs' Complaint, ECF No. 1, as follows:

FIRST DEFENSE

Venue is not proper in the District of Puerto Rico for Count V.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The United States has not waived its sovereign immunity to permit a jury trial over the matters subject to this action.

FOURTH DEFENSE

Defendants answer the individually numbered paragraphs of the Amended Complaint, using the same numbering contained in the Amended Complaint, as follows:

INTRODUCTION

1. This paragraph is denied except to admit that Plaintiffs presented a proposed business structure involving "novel" partnerships during meetings with U.S. Department of Labor (Department) officials.

2. Admitted.

3. Defendants are without sufficient knowledge or information to admit or deny the allegations in this paragraph. Defendants aver that Alexander Renfro is the owner of Anjo, LLC.

4. Defendants are without sufficient knowledge or information to admit or deny the allegations in the first sentence. The remaining sentences of this paragraph characterize the November 8, 2018 Advisory Opinion Request, and the Court is respectfully referred thereto for the terms thereof.

5. This paragraph is denied except to admit that revised versions of the November 8, 2018 Advisory Opinion Request were submitted on January 15, 2019 and February 28, 2019; and to further admit that Plaintiffs' Exhibit 2 is a true and correct copy of the February 28, 2019 revised Advisory Opinion Request (Revised Request).

6. This paragraph characterizes the Revised Request, and the Court is respectfully referred thereto for the terms thereof. To the extent this paragraph asserts facts about LP Management Service's (LPMS) intentions, Defendants are without sufficient knowledge or information to admit or deny the allegations in this paragraph.

7. Defendants admit that Suffolk Administrative Services, LLC (SAS) is a Puerto Rican limited liability company with principal offices located in Guaynabo, Puerto Rico, and further admit that SAS designs products for and services both the "novel Partnership Plan structure" (hereinafter, "novel partnership plans") and traditional employee benefit plans unrelated

to the partnerships. Defendants deny that the group health plans with which SAS is associated are actually self-insured. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph.

8. Defendants admit that Providence Insurance Company, I.I. (PIC) is a Puerto Rican international insurance company with principal offices located in San Juan, Puerto Rico, and further admit that PIC services both the "novel partnership plans" and traditional employee benefit plans unrelated to the partnerships. Defendants deny that what PIC provides is reinsurance, and further deny that the group health plans with which it is affiliated are actually self-insured, and further deny the balance of the allegations in this paragraph.

9. This paragraph is denied, except to admit that Anjo LLC (Anjo) is a Tennessee limited liability company which does not directly participate in or provide services to any of the health plans or products designed and serviced by PIC, PIP, and SAS, and to admit that Defendants have reason to believe that Anjo is a holding company that partially owns SAS and PIP, and indirectly owns PIC.

10. Defendants admit that Providence Insurance Partners, LLC (PIP) is a Tennessee limited liability company, and further admit that PIP designs products for and services both the "novel partnership plans" and traditional employee benefit plans unrelated to the partnerships. Defendants deny that what PIC provides is reinsurance, and further deny that the group health plans with which it is affiliated are actually self-insured, and further deny the balance of the allegations in this paragraph.

11. Defendants are without sufficient knowledge or information to admit or deny the allegations in this paragraph.

12. The first sentence is denied, except to admit that several state attorneys general submitted a letter dated February 21, 2019 to the Department (AG Letter), attached as Plaintiffs' Exhibit 3, and the Court is respectfully referred thereto for the terms thereof. The second sentence is admitted.

13. This paragraph is denied, except to admit that the Department did not respond in writing to the authors of the AG Letter, and to further admit that the contents of the AG Letter were considered in preparing the January 24, 2020 Advisory Opinion.

14. This paragraph is denied, except to admit that the January 24, 2020 Advisory Opinion was issued within one year of the Revised Request but more than one year after November 8, 2018, and to further admit that LPMS and Data Marketing Partnership LP filed suit against the Department of Labor on October 8, 2019 (*Data Marketing Partnership* case).

15. Denied.

16. This paragraph is denied, except to admit that the Department issued its Advisory Opinion responding to the Revised Request on January 24, 2020, and to further admit that Plaintiffs' Exhibit 4 is a true and correct copy of Advisory Opinion 2020-01A (Advisory Opinion).

17-18. Denied.

19. This paragraph is denied, except to admit that the parties to the *Data Marketing Partnership* case continued to litigate after the Department issued the January 24, 2020 Advisory Opinion.

20. This paragraph is denied, except to admit that the U.S. District Court for the Northern District of Texas granted the plaintiffs' motion for summary judgment; Defendants further aver that the judgment in the *Data Marketing Partnership* case is on appeal to the U.S. Court of Appeals for the Fifth Circuit, *see* Case No. 20-11179.

21. This paragraph contains Plaintiffs' characterization of this action to which no response is required, but insofar as one is deemed required, denied.

JURISDICTION AND VENUE

22-23. These paragraphs contain conclusions of law to which no answer is required, but insofar as one is deemed required, denied.

24. The first sentence is admitted. The second sentence contains conclusions of law to which no answer is required.

25. The first sentence is admitted. The second sentence contains conclusions of law to which no answer is required.

26. The first sentence is admitted. The second sentence contains conclusions of law to which no answer is required.

27. The first sentence is admitted. The second sentence contains conclusions of law to which no answer is required.

28. The first sentence contains conclusions of law to which no answer is required, but insofar as one is deemed required, denied; Defendants further aver they are unaware of any employee benefit plan relevant to the Department's investigation that has a principal office in Puerto Rico; and further aver that none of the subpoenas described in Defendants' response to paragraph 61, below, were issued to a plan with a principal office in Puerto Rico. The second sentence contains conclusions of law to which no answer is required. The third sentence is denied, except to admit that the Department and Secretary of Labor are sued in their official capacity.

PARTIES

29. The first and second sentences are denied. The remaining sentences contain conclusions of law to which no answer is required, but insofar as one is deemed required, denied.

30. Admitted.

31. This paragraph is denied, except to admit Eugene Scalia served as Secretary of Labor until January 20, 2021, and to further admit that Martin J. Walsh was confirmed as Secretary of Labor on March 23, 2021.

32. This paragraph contains conclusions of law to which no answer is required.

FACTS

33. This paragraph contains Plaintiffs' characterization of this action to which no response is required, but insofar as one is deemed required, denied.

PETITIONING THE GOVERNMENT

34-39. These paragraphs are denied, except [1] to admit that the Department's Employee Benefits Security Administration (EBSA) is responsible for, among other things, interpreting and administering the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; [2] to further admit that at some point in 2018 Alexander Renfro met with then-Assistant Secretary of Labor for EBSA, Preston Rutledge, regarding the "novel partnership plans"; and [3] to further admit that Mr. Rutledge stated that EBSA's career staff would also need to review Mr. Renfro's proposal if Mr. Renfro wanted guidance.

40. This paragraph is denied, except to admit that Plaintiffs submitted revised advisory opinion requests to the Department on January 15, 2019 and February 28, 2019.

41-42. Denied.

43. This paragraph is denied, except to admit that Plaintiffs submitted revised advisory opinion requests to the Department on January 15, 2019 and February 28, 2019.

44. Defendants are without sufficient knowledge or information to admit or deny the allegations in this paragraph.

45. The first sentence characterizes the AG Letter, and the Court is respectfully referred thereto for the terms thereof. The second is denied, except [1] to admit that the Department did not respond in writing to the authors of the AG Letter; [2] to further admit that the contents of the AG Letter were considered in preparing the January 24, 2020 Advisory Opinion; and [3] to further admit that the Department responded to the Revised Request on January 24, 2020.

46. This paragraph is denied, except [1] to admit that on March 6, 2019, several Department officials, including then-Chief of Staff Nicholas Geale, met with Alexander Renfro, Christopher Condeluci, Jeff Landry, and others regarding the Revised Request; [2] to further admit that Department officials questioned Alexander Renfro, Christopher Condeluci, Jeff Landry, and others about the proposed plans described in the Revised Request; [3] to further admit that no Department official made any representations about whether the proposed plans would be encompassed by ERISA; and [4] to further admit that, while Mr. Geale expressed concern about whether the issues raised in the Revised Request would implicate the Department's Association Health Plan rule, no Department official stated that the Department would not respond to the Revised Request.

47-48. Denied.

49. This paragraph is ambiguous about what alleged meeting it refers to and is therefore denied. To the extent it describes state insurance regulation, Defendants admit that state insurance regulators are not bound by the Department's views regarding ERISA coverage, and further admit that at a meeting with Plaintiffs' representatives Mr. Geale explained that regardless of the outcome of the Revised Request the states may still try to regulate.

50. This paragraph is ambiguous about what alleged meeting it refers to, and is therefore denied. To the extent it concerns the March 6, 2019 meeting referenced in Paragraph 46,

it is admitted that Joseph Canary, Director of the Office or Regulations and Interpretations, was in attendance.

51. Denied.

52. Defendants are without sufficient knowledge or information to form a conclusion about what "Plaintiffs believe." To the extent this paragraph makes factual allegations regarding the Department's investigation, it is denied except [1] to admit that the Department initiated its investigation of the health plans and products designed and serviced by PIC, PIP, and SAS on April 29, 2019 (Anjo Investigation); [2] to further admit that the Department initiated the Anjo Investigation after receiving several participant complaints and state referrals involving Plaintiffs and entities associated with Plaintiffs, including:

(a) five referrals from state insurance regulators on August 16, 2018, September 21, 2018, February 8, 2019, February 14, 2019, and April 10, 2019, regarding products, plans and companies associated with Plaintiffs; where the two 2018 were sent because the state regulators were told that the health plans complained about were covered by ERISA; the February 8, 2019 referral involved a complainant who believed they purchased an individual insurance policy, but the plan documents described the plan as a self-funded ERISA plan; and the April 10, 2019 referral specifically mentioned SAS;

(b) a complaint received on March 17, 2017 involving alleged misrepresentations about health benefits, where the name "Providence LLC" appeared on the complainant's temporary insurance card and the Department asked and the complainant confirmed that the insurance was not part of an employer-sponsored plan;

(c) a complaint received on July 14, 2017 involving health insurance that the complainant had found online after they had lost a job, the payment required for the insurance included a membership fee to an alliance for self-employed individuals who were direct sellers, but the complainant was not a direct seller and did not seem to qualify for the alliance or the alliance's group health plan;

(d) a Congressional letter dated April 19, 2019, referring an individual complaint received through constituency services regarding a medical claim denial, and the Department determined that the health plan at issue had been purchased through a company that was associated with the Plaintiffs at the time;

[3] to further admit that the Department checked the Better Business Bureau website regarding the company named in the April 19, 2019 complaint, which had been enrolling individuals into Plaintiffs' plans and collecting premiums, and found that 125 complaints had been filed about that company as of April 2019; [4] to further admit that the Anjo investigation's initial purpose was to determine whether the health plans and products designed and serviced by PIC, PIP, and SAS were covered by ERISA and, if so, whether any ERISA violations had occurred; [5] to further admit that, upon receiving the complaints and state referrals, the Department began to suspect that the complaints were possibly related to the plans described in the Revised Request; and [6] to further admit that the Department first issued subpoenas in this investigation on July 19, 2019.

53. This paragraph is denied, except to admit that the Department issued subpoenas to PIC, PIP, and SAS, and other entities that the Department had reason to believe sponsored or serviced health plans and products designed and serviced by PIC, PIP, and SAS, including for both the "novel partnership plans" and traditional employee benefit plans unrelated to the partnerships.

54-55. Denied.

56-57. Defendants are without sufficient knowledge or information to admit or deny the allegations in these paragraphs.

58-60. Denied.

61. This paragraph is denied, except to admit that Plaintiffs' Exhibit 5 contains true and correct copies of 13 subpoenas the Department issued in the Anjo Investigation:

(a) on July 19, 2019, the Department issued subpoenas to two affiliated partnerships: American Partnership Group, LP, and Data Partnership Group, LP;

(b) on October 21, 2019, the Department issued subpoenas to seven affiliated partnerships: My Home Group Data Partnership, LP, Global Data Group, LP, Elite Data Group, LP, America's Independent Workers DG, LP, America's Consumers & Affiliates LP, Agridata Partnership Group, LP, United Data Group, LP;

(c) on October 21, 2019, the Department issued subpoenas to SAS and PIP;

(d) on December 13, 2019, the Department issued a subpoena to LPMS;

(e) on July 7, 2020, the Department issued a subpoena to PIC.

Defendants further aver that the Department issued 13 additional subpoenas, which Plaintiffs did not attach to their complaint, to entities that the Department had reason to believe sponsored or serviced employee benefit plans designed and serviced by PIP, SAS, and PIC, including:

(f) on July 19, 2019 to one general partnership, one third party claims administrator, and one company that collected premiums for Plaintiffs' plans;

(g) on August 19, 2019 to two actuary companies that conducted analyses for Plaintiffs' plans;

(h) on October 21, 2019, to two other third party claims administrators;

(i) on November 7, 2019, to two companies that enroll employers for Plaintiffs' plans;

(j) on November 26, 2019, to another company that enrolls employers for Plaintiffs' plans;

(k) on January 29, 2020, to two sister companies that collected premiums for Plaintiffs' plans; and

(l) on April 1, 2020, a second subpoena to one of the third party administrators requesting more information.

62. This paragraph is denied, except to admit that the Department issued its subpoenas pursuant to 29 U.S.C. § 1134(a)(1) which provides authority to determine whether someone "has violated or is about to violate [ERISA]."

63. This paragraph is denied, except [1] to admit that the Department initiated the Anjo Investigation while it was considering the Revised Request and pursued that investigation separate from its consideration of the Revised Request; [2] to further admit that the Department continued the Anjo investigation after January 24, 2020, in light of the Department's clear jurisdiction under ERISA to investigate the health plans and products designed and serviced by PIC, PIP, and SAS to the extent the health plans and products were for traditional employee benefit plans, [3] to further admit that information obtained regarding the "novel partnership plans" remained part of

the Anjo investigation after January 24, 2020 and that the creators of those plans were seeking to be covered by ERISA and had filed suit seeking to enforce that view; [4] to further admit the entities to which the Department issued subpoenas are involved in the design, maintenance and/or administration of health plans or products designed and serviced by PIC, PIP, and SAS, including both the "novel partnership plans" and traditional employee benefit plans unrelated to the partnerships; and [5] to further admit that during the course of the investigation, the Department has continued to receive additional referrals and complaints involving Plaintiffs and entities associated with Plaintiffs, including ten referrals from state insurance regulators dated May 23, 2019, July 25, 2019, September 25, 2019, September 26, 2019, January 23, 2020, April 30, 2020, June 12, 2020, two on June 26, 2020, and July 22, 2020, as well as one more individual complaint on October 8, 2019.

64. This paragraph characterizes the January 24, 2020 Advisory Opinion, attached as Plaintiffs' Exhibit 4, and the Court is respectfully referred thereto for the terms thereof.

65. This paragraph is denied, except to admit that the U.S. District Court for the Northern District of Texas concluded that LPMS and Data Marketing Partnership, LP were encompassed by ERISA.

66. This paragraph is denied, except to admit that the Department has pursued the Anjo Investigation to determine whether any relevant entity has violated or is about to violate ERISA; and to further admit that under the judgment of the U.S. District Court for the Northern District of Texas, it is plainly appropriate to assess whether Plaintiffs and related entities are complying with ERISA's requirements.

67. The first sentence is denied. The second sentence is denied, except to admit that Department oversight must comply with the United States Constitution and ERISA. The third

sentence is denied to the extent it implies that the Anjo Investigation is a "baseless, retaliatory fishing expedition."

68-69. Denied.

70. The first sentence is denied. With regard to the second sentence, Defendants deny that the Anjo Investigation is retaliatory and are without sufficient knowledge or information to admit or deny the remaining allegations in this sentence.

71. Defendants deny that the Anjo Investigation is "seemingly interminable." Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph.

72. Defendants deny that the Anjo Investigation is retaliatory or "seemingly interminable;" Defendants further aver that the Department granted extensions on the production deadlines for every subpoena issued in the Anjo Investigation, upon request of the entities that received the subpoenas. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph.

73. Defendants deny that the Anjo Investigation is retaliatory. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in this paragraph.

74. Denied.

75. Defendants deny both that the Anjo Investigation is abusive and that any aspect of its investigation must be stopped by the Court.

DOL CONTINUES TO DISREGARD ITS OWN RULES

76. This paragraph is denied, except to admit that Executive Order 13924, Regulatory Relief to Support Economic Recovery was issued on May 19, 2020, see 85 Fed. Reg. 31353 (May 22, 2020); to further admit that Executive Order 13924 specified that it was "not intended to, and

does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person," 85 Fed. Reg. at 31356; and to further admit that Executive Order 13924 was revoked by Executive Order 14018, Revocation of Certain Presidential Actions, see 86 Fed. Reg. 11855 (Mar. 1, 2021).

77. Denied.

78. This paragraph is denied, except to admit that Paul J. Ray, Administrator for the Office of Information and Regulatory Affairs (OIRA), issued a memorandum dated August 31, 2020; and to further admit that Plaintiffs' Exhibit 6 is a true and correct copy of that memorandum.

79. This paragraph characterizes the August 31, 2020 OIRA memorandum and the Court is respectfully referred thereto for the terms thereof. Defendants deny that the Department violated any of the terms of the OIRA memorandum, and further deny that the Anjo Investigation was "retaliatory."

80-81. These paragraphs characterize the August 31, 2020 OIRA memorandum and the Court is respectfully referred thereto for the terms thereof.

82. Denied.

83-85. These paragraphs characterize the August 31, 2020 OIRA memorandum and the Court is respectfully referred thereto for the terms thereof.

86-89. Denied.

90. The first sentence is denied. The second sentence characterizes ERISA Procedure 76-1, 41 Fed. Reg. 36281 (Aug. 27, 1976), and the Court is respectfully referred thereto for the terms thereof.

91-93. Denied.

94. This paragraph is denied. Defendants specifically deny that the Department has violated its own policies or any provision of the Constitution.

DOL REFUSES TO PROVIDE PLAINTIFFS INFORMATION ON SCOPE AND PURPOSE OF INVESTIGATION

95. This paragraph characterizes a letter from Jonathan Crumly dated November 6, 2020, attached in Plaintiffs' Exhibit 7, and the Court is respectfully referred thereto for the terms thereof.

96. This paragraph characterizes Jonathan Crumly's November 6, 2020 letter, and the Court is respectfully referred thereto for the terms thereof. To the extent this paragraph alleges facts beyond a characterization of Jonathan Crumly's November 6, 2020 letter, Defendants admit that the Department received approximately 20,000 documents comprised of over 200,000 pages in response to the subpoenas attached in Plaintiffs' Exhibit 5, including information related to the "novel partnership plans" as well as traditional employee benefit plans unrelated to the partnerships; Defendants are without sufficient knowledge or information to admit or deny the balance of the allegations.

97. This paragraph characterizes Jonathan Crumly's November 6, 2020 letter, and the Court is respectfully referred thereto for the terms thereof.

98. Defendants are without sufficient knowledge or information to admit or deny the allegations in the first sentence regarding Plaintiffs' motives. The second sentence and associated bullets characterize Jonathan Crumly's November 6, 2020 letter, and the Court is respectfully referred thereto for the terms thereof.

99. Defendants are without sufficient knowledge or information to admit or deny the allegations in this paragraph regarding Plaintiffs' intent and mental state.

100. Denied.

101. This paragraph characterizes a letter from Katrina Liu dated December 14, 2020, attached in Plaintiffs' Exhibit 7, and the Court is respectfully referred thereto for the terms thereof.

102. Denied.

103. The first three sentences of this paragraph characterize a letter from Jonathan Crumly dated December 30, 2020, attached in Plaintiffs' Exhibit 7, and the Court is respectfully referred thereto for the terms thereof. The fourth sentence is denied.

104. Admitted.

CAUSES OF ACTION

COUNT I (VIOLATIONS OF THE FIRST AMENDMENT)

105. Defendants restate and incorporate by reference their responses to Paragraphs 1 through 104 of the Complaint.

106-107. These paragraphs contain conclusions of law to which no answer is required, but insofar as one is deemed required, denied.

108-112. Denied.

113-114. These paragraphs contain conclusions of law to which no answer is required, but insofar as one is deemed required, denied.

COUNT II (VIOLATIONS OF THE FIRST AMENDMENT – FREEDOM OF ASSOCIATION)

115. Defendants restate and incorporate by reference their responses to Paragraphs 1 through 114 of the Complaint.

116-117. These paragraphs contain conclusions of law to which no answer is required, but insofar as one is deemed required, denied.

118-120. Denied.

121-122. These paragraphs contain conclusions of law to which no answer is required, but insofar as one is deemed required, denied.

COUNT III (VIOLATIONS OF THE FIFTH AMENDMENT – EQUAL PROTECTION UNDER THE DUE PROCESS CLAUSE)

123. Defendants restate and incorporate by reference their responses to Paragraphs 1 through 122 of the Complaint.

124. This paragraph contains conclusions of law to which no answer is required.

125. This paragraph contains conclusions of law to which no answer is required, but insofar as one is deemed required, denied.

126-130. Denied.

131-132. These paragraphs contain conclusions of law to which no answer is required, but insofar as one is deemed required, denied.

COUNT IV (VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT ("APA"))

133. Defendants restate and incorporate by reference their responses to Paragraphs 1 through 132 of the Complaint.

134-136. These paragraphs contain conclusions of law to which no answer is required, but insofar as one is deemed required, denied.

137. Defendants admit that the United States Department of Labor is an "agency" as defined by the APA, 5 U.S.C. § 551(1).

138-140. Denied.

COUNT V (VIOLATIONS OF ERISA)

141. Defendants restate and incorporate by reference its responses to Paragraphs 1 through 140 of the Complaint.

142-143. Denied.

144. This paragraph is denied, except to admit that the subpoenas issued in the Anjo Investigation were sent to entities involved with Plaintiffs' business relating to the partnership plans and/or traditional employee benefit plans unrelated to the partnerships.

145. Denied.

146. This paragraph is denied, except to admit that all of the subpoenas issued in connection with the Anjo Investigation were issued pursuant to ERISA, 29 U.S.C. § 1134(a)(1).

147. This paragraph contains conclusions of law to which no answer is required, but insofar as one is deemed required, Defendants deny the allegation that the Anjo Investigation constituted "retaliation."

148. This paragraph contains conclusions of law to which no answer is required, but insofar as one is deemed required, denied.

PRAYER FOR RELIEF

The remaining paragraphs set forth plaintiffs' prayer for relief to which no answer is required, but insofar as an answer is deemed required, Defendants deny that plaintiffs are entitled to the relief requested or to any relief at all.

Defendants hereby deny all allegations of the Amended Complaint not otherwise specifically answered above.

Wherefore, having fully answered, Defendants respectfully request that the Court enter judgment dismissing the Complaint with prejudice, and awarding Defendants their costs and attorney's fees and such other relief as the Court deems just and proper.

* * * *

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of the instant filing to the attorney(s) of record.

RESPECTFULLY SUBMITTED, this 21st day of May, 2021.

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

LORI CHAVEZ-DEREMER,
SECRETARY OF LABOR,
U.S. DEPARTMENT OF LABOR,

Plaintiff-Counterclaim Defendant,

v.

SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER,

Defendants-Counterclaim Plaintiffs.

Civil Action No. 3:24-CV-01512 (CVR)

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

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

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

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

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

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

BACKGROUND

Defendants SAS and PIC are companies headquartered in Puerto Rico, and Defendants Alexander Renfro, William Bryan, and Arjan Zieger are officers and indirect owners of SAS and PIC. Compl. ¶¶ 10–19, ECF No. 1. On November 5, 2024, the Secretary filed a complaint alleging that Defendants have violated ERISA and engaged in self-dealing by unilaterally causing more than 1,900 employer-sponsored health benefit plans governed by ERISA ("Employer Plans") to pay them excessive fees. *Id.* ¶¶ 1–7.

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

The Department of Labor issued an advisory opinion concluding that the Partnership Plans described in the request are not covered by ERISA due to the lack of an "genuine employment relationship" between the partnership and the limited partners. *See* Compl. Intervention Ex. B at 4, ECF No. 54-3 ("Advisory Opinion"). That Advisory Opinion was subsequently vacated in the *Data Marketing* case. *Data Mktg. P'ship, LP v. U.S. Dep't of Labor*,

490 F. Supp. 3d 1048 (N.D. Tex. 2020). The Secretary appealed to the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit affirmed the district court's vacatur of the advisory opinion, but it also found that the district court erred in its analysis concluding that the limited partners were "working owners" or, alternatively, "bona fide partners." *Data Mktg. P'ship, LP v. U.S. Dep't of Labor*, 45 F.4th 846, 858–59 (5th Cir. 2022). These terms relate to whether an individual constitutes an "employee" of a limited partnership and thus a "participant" under ERISA. *Id.* The Fifth Circuit vacated the district court's injunction prohibiting the Department "'from refusing to acknowledge the ERISA-status of the Plan or refusing to recognize the Limited Partners as working owners of' Data Marketing," *id.* at 860, and remanded the case with "interpretive questions for the district court's consideration," *id.* at 855.

After the case was remanded, the Secretary unsuccessfully sought settlement of all pending disputes with Intervenors and their affiliates and vendors. These negotiations included the Defendants here—SAS, PIC, and their principals. SAS and PIC are service providers to the Partnership Plans at issue in the *Data Marketing* case, just as they are service providers to the Employer Plans at issue in this action.[1] Compl. ¶¶ 1–2; Mot. Transfer ¶ 2, ECF No. 26. And Defendant Alexander Renfro, an officer and indirect owner of SAS and PIC, authored LPMS's request for an advisory opinion in his capacity as LPMS's counsel at the time. *See* Compl. Intervention Ex. A at 10, ECF No. 54-1. Negotiations with Intervenors fell through, and subsequently, negotiations with SAS, PIC, and their principals also fell through. *See* Compl. Intervention Ex. Q, ECF No. 54-18; Ex. U, ECF No. 54-21.

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

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

Meanwhile, the Secretary's action here asserts that SAS, PIC, and their principals—completely different parties from Intervenors—violated ERISA with respect to their Employer Plan clients. The Employer Plans are a different subset of Defendants' clients than the Partnership Plans at issue in the *Data Marketing* case. Specifically, the Employer Plans are more than 1,900 ERISA-covered, employer-sponsored health benefit plans, where the sponsoring employer is not a limited partnership of the type described in LPMS's advisory opinion request. *See* Compl. ¶ 2 n.1.

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Intervenors Do Not Demonstrate Impairment.

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

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

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

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

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

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

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

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

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

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

II. Permissive Intervention Is Not Warranted.

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

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

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

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

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

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

[3] Intervenors argue that "an adverse ruling [in this action] in the DOL's favor would bring all efforts to recognize the Partnership Plans as fully compliant with ERISA to a screeching and wrongful stop." Mem. Supp. Mot. Intervene at 10. But a resolution in this action would have no bearing on the outcome or continuation of the *Data Marketing* case, which is ongoing and concerns the ERISA status of the Partnership Plans.

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

CONCLUSION

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

Dated: August 8, 2025

Respectfully Submitted:

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CERTIFICATE OF SERVICE

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

/s/Blair L. Byrum
BLAIR L. BYRUM

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

LORI CHAVEZ-DEREMER, ACTING SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO, I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER, Defendants-Counterclaim Plaintiffs.	Civil No.: 3:24-cv-01512 (CVR)

NOTICE OF APPEAL

TO THE HONORABLE COURT:

Notice is hereby given that Data Marketing Partnership, LP and LP Management Services, LLC, Intervening Defendants in the above-named matter, hereby appeal to the United States Court of Appeals for the First Circuit from the Order Denying Intervenors' Motion to Intervene entered in this action on August 14, 2025, at Docket Number 63.

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 12th day of September, 2025

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

LORI CHAVEZ-DEREMER, SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, Plaintiff-Counterclaim Defendant, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER, Defendants-Counterclaim Plaintiffs.	Civil No.: 3:24-cv-01512 (CVR)

BRIEF IN OPPOSITION TO MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

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PLAINTIFF MISREPESENTS DEFENDANTS' PLEADING BURDEN AS TO THEIR FIRST AMENDMENT CLAIMS

It is well settled that a government official cannot use her power to punish or suppress rights protected by the First Amendment. *NRA v. Vullo*, 602 U.S. 175, 188 (2024). Actionable punishment or suppression includes not just direct action against a person who engages in protected activity, but also indirect action against the person which targets his business relations. *Id.* at 190. Such indirect actions can be actionable punishment or suppression to the extent they pressure (1) the person to abandon his protected activity, for fear of losing the business relations, or (2) the business relations to dissociate themselves from supporting the person engaging in the protected activity. *Id*. at 198. *See also NRA, et al. v. City of Los Angeles*, 441 F.Supp.3d 915 (C.D. Calif. 2019) (denying motion to dismiss as to First Amendment speech and association claims by both the NRA and its business partners).

Here, the Defendants are being targeted by the DOL in this suit based upon their vendor relationships with businesses which are exercising rights protected by the First Amendment. Indeed, the DOL does not dispute the factual allegations of the *First Amended Counterclaim for Declaratory and Injunctive Relief* [Doc. 62] ("*Counterclaim*") alleging:

1. Data Marketing Partnership, L.P. ("DMP") and LP Management Services, LLC ("LPMS") have exercised, and continued to exercise, their First Amendment rights of petition seeking the protection of single employer employee welfare plans under the Employee Retirement Income Security Act ("ERISA") by (a) requesting an advisory opinion ("AO Request") confirming such protection; and (b) filing suit against the DOL in the U.S. District Court for the Northern District of Texas, styled as *Data Marketing Partnership, LP, et al. v. DOL, et al.,* Civil Action No. 4:19-cv-00900-O ("Texas Suit"), for a court order providing such protection.

2. The DOL learned that the Defendants provide essential vendor services to the Partnership Plans through the AO Request and initiated the Anjo Investigation subpoenaing documents from the Defendants almost immediately thereafter.

3. The DOL conditioned a reasonable settlement of the Anjo Investigation, which would have obviated the need for this suit, upon the withdrawal by DMP and LPMS of the AO Request, and the dismissal by DMP and LPMS of the Texas Suit.

4. This suit was filed against the Defendants seeking $40 million and an injunction enjoining the Defendants "from ever acting as a fiduciary, service provider, or trustee to any plan covered by … ERISA"[1], including the Partnership Plans[2], when DMP and LPMS refused to withdraw the AO Request or dismiss the Texas Suit.[3]

Similar to the vendors in *Vullo*, therefore, this suit has the intent and effect of pressuring (a) DMP and LPMS to abandon the AO Request and Texas Suit, lest they lose vendor services provided by the Defendants essential to the operation of the Partnership Plans, or (b) pressuring the Defendants to disassociate from DMP and LPMS, thereby causing DMP and LPMS to

[1] *Complaint* ¶ 97.

[2] Plaintiff has admitted that the Defendants are service providers for both the Employer Plans and the Partnership Plans. *Response in Opposition to Defendants' Motion to Transfer* [Doc ¶ 49], p. 3. Plaintiff nevertheless falsely claims in Footnote 1 of the *Complaint* [Doc. 1] that this action only involves the Employer Plans. The relief sought by Plaintiff, which includes the Partnership Plans, as well as the allegations of a Multiple Employer Welfare Arrangement ("MEWA"), which necessarily include the Partnership Plans, contradict this false claim.

[3] In its *Motion to Dismiss*, the DOL has made the false suggestion that it was ultimately the idea of DMP and LPMS to join the two cases for settlement discussions when it stated "DMP and LPMS suggested settling the *Data Marketing* case, not the Secretary. Only after DMP and LPMS suggested settlement did the Secretary propose a resolution of both the Anjo Investigation and the *Data Marketing* case." [Doc. 60-1], pg. 24. To be clear – DMP and LPMS sought settlement of the Texas Suit without any reference to the Anjo Investigation. As admitted here by the DOL, it was their request to join the two cases for purposes of settlement, thus admitting that the DOL understood the two cases were significantly related.

discontinue the Partnership Plans, and rendering the AO Request and Texas Suit moot. This suit, and the actions of the DOL preceding this suit, thus clearly implicate First Amendment rights of petition and association not only for DMP and LPMS, but also for the Defendants.[4]

The only defenses offered by the DOL to its behavior have effectively been "so what"; the law provides free passes for this behavior. As set forth below, the DOL could not be more wrong in its callousness to the protective reach of the First Amendment or its behavior in seeking to quash rights protected by the First Amendment, as to the Defendants, LPMS, and DMP.

I. THE DOL ARGUES FACTS NOT ALLEGED IN THE *COUNTERCLAIM*

Rule 12(b)(6) simply does not allow for the consideration of facts not alleged in the pleading sought to be dismissed *See Foley v. Wells Fargo Bank, N A.*, 772 F.3d 63, 72 (1st Cir. 2014) ("[C]ourts [reviewing a Rule 12(b)(6) motion] usually consider only the complaint, documents attached to it, and documents expressly incorporated into it").

One of the primary arguments asserted by the DOL here for dismissal of the *Counterclaim* is that its actions against the Defendants in the Anjo Investigation and this suit are "so obviously correct as to render the charge of improper motivation implausible."[5] The facts cited by the DOL in support of this argument, however, are nowhere to be found in the *Counterclaim*. Instead, such facts are found only in the *Motion to Dismiss* itself. [6] No evidence is cited by the DOL to support

[4] DMP and LPMS have sought to intervene in this suit to protect their First Amendment rights of petition, but this Court denied their motion in a docket order [Doc. 63] dated August 14, 2025. This order has been appealed by DMP and LPMS to the First Circuit.

[5] *Motion to Dismiss,* p. 18.

[6] *Motion to Dismiss*, p. 18 ("the Department was investigating the service providers SAS and PIC, along with the other individuals named as defendants here, for their services related to the Employer Plans, to determine if they were engaging in any violations of ERISA"); *Motion to Dismiss,* pp. 23-24 ("… the obvious explanation for the Secretary's actions is that she was pursuing her lawful investigatory authority … and conducting a thorough investigation. Upon a determination of ERISA violations, the Secretary made a good faith attempt at resolving the claims in a way that would protect the Employer Plans and their participants").

these facts. To the extent the DOL seeks dismissal of the *Counterclaim* by citing any contrary motivation for the Anjo Investigation or this suit to that alleged by the Defendants, such arguments cannot be considered by this Court.

II. The DOL Overstates Defendants' Burden of Alleging a First Amendment Violation at the Pleading Stage

The First Circuit has held that "[a] dismissal on the pleadings will be upheld only if it appears beyond doubt that plaintiff can prove no set of facts in support of its claims which would entitle it to relief." S*ee Gaskell v. Harvard Coop. Soc'y,* 3 F.3d 495, 497–98 (1st Cir.1993). Courts in the First Circuit are especially reticent to dismissing First Amendment claims based solely upon the pleadings. *See, e.g., Huffman v. City of Boston*, Civil Action No. 21-cv-10985, 2022 WL 2308937 at *6 (D.Mass. June 27, 2022) ("As Plaintiffs rightly point out… asking more of plaintiffs at the pleading stage would make First Amendment retaliation claims all but impossible …"). See also *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th Cir. 2005) ("[A]t the pleading stage, we have *never* required a litigant, *per impossible,* to demonstrate a total chilling of his First Amendment rights .. to perfect a retaliation claim.").

Here, Defendant's *Counterclaim* pleads the essential elements of a First Amendment retaliation claim by alleging facts of (1) constitutionally protected conduct; (2) adverse actions by the DOL, and (3) a causal link between the protected activity and the adverse actions. *Staples v. Gerry*, 923 F.3d 7, 15 (1st Cir. 2019). To the extent the DOL alleges otherwise, it seeks to hold the Defendants to a higher burden than required at this early stage of this suit.

III. Defendants Sufficiently Plead Rights Protected by First Amendment

A. The Defendants Sufficiently Plead Right of Association with DMP and LPMS

The U.S. Supreme Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v.*

Jaycees, 468 U.S. 609, 622 (1984). In *Citizens United v. FEC*, 558 U.S. 310, 363-64 (2010), the Court rejected the notion that commercial identity matters when it comes to First Amendment protections. See also *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 710-9 (2014).

The Counterclaim here alleges that, with the AO Request and Texas Suit, DMP and LPMS have exercised a right of petition protected by the First Amendment.[7] In doing so, they have advocated, on behalf of 30,000 individuals with group health insurance under the Partnership Plans, the protection of such Plans under ERISA.[8] There is likewise no dispute here that the Defendants provide essential vendor services to the Partnership Plans.[9] In doing so, the Defendants not only enable the continuation of the Partnership Plans, but also the advocacy efforts of DMP and LPMS to obtain ERISA protection for the Plans.

In arguing their associations with DMP and LPMS are protected by the First Amendment, the Defendants are making similar arguments which were made by business partners with contracts with the National Rifle Association ("NRA") in *NRA, et al. v. City of Los Angeles*, *supra*, cited by the Defendants in their *Counterclaim* but conspicuously omitted from Plaintiff's *Motion to Dismiss*. In that suit, business contractors doing business with the NRA challenged, along with the NRA, an ordinance requiring the disclosure by contractors with the City of Los Angeles of any contractual relationships with the NRA. The court held that the business partners had standing to sue for violation of their First Amendment rights of association to the extent the purpose of the ordinance was "to deter association with the NRA." *NRA, et al. v. City of Los Angeles,* 441 F.Supp.3d at 938.

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[7] *Counterclaim* ¶ 6.

[8] *Counterclaim* ¶¶ 1, 5.

[9] *Counterclaim* ¶¶ 3, 55-57, 62-63.

As alleged in the *Counterclaim*, the purpose of the Anjo Investigation and this suit has been to pressure (1) DMP and LPMS to abandon the AO Request and the Texas Suit, for fear of losing the vendor services provided by the Defendants, or (2) the Defendants to disassociate from the Partnership Plans, thereby rendering the AO Request and the Texas Suit moot and stifling DMP/LMPS's First Amendment protected activity.[10] The Anjo Investigation and this suit thus clearly implicate the Defendants' First Amendment right to associate with DMP and LPMS and DMP and LPMS' First Amendment efforts to seek ERISA protections for the Partnership Plans. The linkage between the two is not conjecture on the part of the Defendants, but rather verifiable facts, simply supported by substantial documentary evidence, as well as by Plaintiff's admission in its *Motion to Dismiss* that Plaintiff, and not the Defendants, initiated "global settlement" discussions of two cases it now disingenuously claims to be unrelated.

B. The *Counterclaim* is Based Upon Expressive Association With DMP and LPMS

As alleged in the *Counterclaim*, the DOL only became aware of the vendor relationships between the Defendants and LMPS and DMP as a result of the AO Request, which almost immediately prompted the Anjo Investigation of the Defendants.[11] The Anjo Investigation included subpoenas directed to the Defendants which necessarily encompassed the services performed for the Partnership Plans sponsored by DMP and LPMS.[12] The Anjo Investigation prompted the Defendants to exercise their own First Amendment right of petition by filing a suit against the DOL in this court, styled as *Suffolk Administrative Services, et al. v. U.S. Department of Labor, et al*.,

[10] *Counterclaim* ¶ 4.

[11] *Counterclaim* ¶ 86.

[12] *Counterclaim* ¶ 87, Ex. F.

Cause No. 3:21-cv-01031, which was ultimately dismissed by this Court without prejudice, due to lack of ripeness without any findings as to the underlying claims.[13]

As further alleged in the *Counterclaim*, the Defendants were also active participants in global settlement discussions, suggested by the DOL, as to the Anjo Investigation, the AO Request, and the Texas Suit.[14] At that time, at least, the DOL acknowledged the importance of the association amongst the Defendants, DMP, and LPMS. Indeed, the DOL tied the Defendants' fate during these settlement discussions to the actions of DMP and LPMS.[15] The DOL did so despite the protests of the Defendants that (1) the Partnership Plans could not function in the event of their disassociation from the Plans, and (2) they were financially incapable of a settlement in excess of the $5.5 million being proposed by the DOL in the absence of concessions by DMP and LPMS as to their AO Request and the Texas Suit.[16]

The Defendants' association with DMP and LPMS and DMP and LPMS' advocacy efforts to obtain ERISA protection for the Partnership Plans has thus been unquestionably an expressive association which meets the *de minimis* threshold established by the Supreme Court. *City of Dallas v. Stanglin*, 490 U.S. 19 (1989). Under pressure from the DOL, the Defendants refused to disassociate from DMP and LPMS and their efforts. To the extent the DOL now argues otherwise, it grossly misrepresents the content and context of the Defendants' *Counterclaim*.

C. The *Counterclaim* is Based Upon Cognizable Harms to the Defendants

Again, as set forth in the *Counterclaim*, the Defendants allege that they have been (1) coerced by the DOL to end their vendor relationships with DMP and LPMS based upon the

[13] *Counterclaim* ¶ 106.

[14] *Counterclaim* ¶¶ 123-125.

[15] *Counterclaim* ¶¶ 125-133.

[16] *Counterclaim* ¶¶ 126, 130, 133-135.

exercise of DMP and LPMS of their First Amendment rights of petition in the AO Request and (2) been retaliated against in the filing of this suit based upon their refusal to sever their business relationships with DMP and LPMS and the refusal of DMP and LPMS to relinquish their First Amendment rights of petition.[17]

The First Amendment claims brought by the Defendants here are thus again similar to those brought by the business partners with the NRA in *NRA, et al. v. City of Los Angeles*. There, as here, the business partners alleged they were being chilled by the disclosure ordinance "from submitting bids to the City or entering into 'contracts or sponsorship' agreements with the NRA." *NRA, et al. v. City of Los Angeles,* 441 F.Supp.3d at 937.

In denying the 12(b)(6) motion filed by the City of Los Angeles, even as to the business partners of the NRA, the Court rejected the argument now made by the DOL that only the person who exercises rights protected by the First Amendment can sue for retaliation or suppression of such rights. *Id*. Specifically, the court allowed the business partners of the NRA to sue on their own behalf for First Amendment violations even though the actual target of the government's actions was the First Amendment rights of the NRA. *Id*. [18]

The court began its justification of this holding by noting that disclosure requirements are impermissible when they "become [ ] a means of facilitating harassment that impermissibly chills

[17] *Counterclaim* ¶ 4.

[18] A statement in a brief may be treated as a judicial admission. *Cerqueira v. Cerqueira,* 828 F.2d 863, 865 (1st Cir.1987). In light of the DOL's argument in its *Response in Opposition to Data Marketing Partnership, LP and LP Management Services, LLC's Motion to Intervene* ("*Intervention Response*") [Doc. 61], the DOL is now judicially estopped from arguing that the Defendants are not proper parties for prosecution of these claims as the DOL explicitly argued in its Response that DMP's and LPMS's asserted interests are adequately represented by the Defendants. *Intervention Response* at p. 11. *See also* Court's Docket Order [Doc. 63] ("In addition, the Court bases its ruling on the other grounds raised by the Secretary in her opposition to the motion to intervene, which are found to be persuasive.")

the exercise of First Amendment rights." *See John Doe No. 1 v. Reed*, 561 U.S. 186 (2010)). The court then cited two Ninth Circuit cases for the proposition that this prohibition extends to the First Amendment right of association.

First, the case cited *Competitive Politics v. Harris*, 784 F.3d 1307 (9th Cir. 2015). *See NRA, et al. v. City of Los Angeles*, 441 F.Supp.3d. at 935-7. In that case, the Ninth Circuit held that a disclosure requirement intended to chill political speech or harass a certain speaker does create an actual burden on the First Amendment right of association. *Competitive Politics*, 784 F.3d at 1313 ("compelled disclosure can also infringe First Amendment rights when the disclosure requirement is itself a form or harassment intended to chill protected expression").

Second, the court cited *Americans for Prosperity Foundation v. Becerra*, 903 F.3d 1000 (9th Cir. 2018). *See NRA, et al. v. City of Los Angeles,* 441 F.Supp.3d at 936-8. In that case, the Ninth Circuit observed: "'To assess the possibility that disclosure will impinge upon protected associational activity' … we consider 'any deterrent effect on the exercise of First Amendment rights.'").

Based upon these Ninth Circuit cases, the court found that Competitive Politics and Americans for Prosperity together "hold that the First Amendment right of association can be burdened … through an actual chilling effect … by a government intent to harass a certain speaker." *NRA, et al. v. City of Los Angeles,* 441 F.Supp.3d at 937. The court thus held that the burden placed upon the business partners by the ordinance gave them a cause of action under the First Amendment which survived the City's 12(b)(6) motion to dismiss. *Id*. at 942-3.

Here, the Defendants have pleaded in detail the burden which they have experienced in the Anjo Investigation and this suit based upon their business relationships and expressive association with DMP and LPMS. As set forth further below, they have otherwise pled how these

burdens were motivated to harass and coerce the Defendants, DMP, and LPMS based upon the exercise by DMP and LPMS of their First Amendment rights of petition to the DOL. This Court should thus follow the lead of the court in *NRA v. City of Los Angeles* and deny the DOL's 12(b)(6) motion to dismiss the *Counterclaim.*

IV. THE DOL'S ERISA CLAIMS AGAINST DEFENDANTS DO NOT EXCUSE ITS VIOLATION OF THE FIRST AMENDMENT

The DOL has argued in repeated filings with this Court that the allegations in this suit are separate and apart from the AO Request and Texas Suit. Such arguments, however, are best presented as part of a motion or summary judgment before this Court rather than a motion to dismiss filed under 12(b)(6) of the Federal Rules of Civil Procedure. After all, the documents obtained by the DOL during the Anjo Investigation are not before this Court. Without such documents it cannot be determined whether, as alleged in the *Counterclaim*, this suit (1) is inextricably intertwined with the AO Request and the Texas Suit, and (2) seeks relief which would prevent the Defendants from providing vendor services to the Partnership Plans sponsored by DMP and LPMS, despite the contrary allegations of the *Complaint* [Doc. 1].

That the allegations of ERISA violations against the Defendants in this suit are allegedly justified, a claim disputed by the Defendants, does not otherwise refute the allegations in the *Counterclaim* that this suit is motivated by an intent by the DOL to retaliate against the exercise, and/or to suppress the further exercise, of the rights of petition by DMP and LPMS in the AO Request and Texas Suit. **"**Otherwise lawful government action may nonetheless be unlawful if motivated by retaliation for having engaged in activity protected by the First Amendment." *O'Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016). Indeed, the U.S. Supreme Court in *Vullo* specifically observed that, even assuming the NRA vendors had acted unlawfully, such assumption did not insulate the government from First Amendment scrutiny. *NRA v. Vullo*, 602 U.S. at 196.

This holding is also supportive of the Defendants' claims as recognized by the application of the First Amendment protection to vendors of the NRA in *NRA, et al v. City of Los Angeles.* If the purpose of enforcement action is to retaliate against or suppress the exercise of First Amendment rights, therefore, the legality of the enforcement action does not override the First Amendment violations by the government agency pursuing such enforcement action. *Id*.

V. DEFENDANTS SUFFICIENTLY ALLEGE ACTIONS BY THE DOL WHICH WOULD CHILL A PERSON OF ORDINARY FIRMNESS FROM CONTINUING TO EXERCISE FIRST AMENDMENT RIGHTS

First Amendment jurisprudence is clear that, even conduct that "fall[s] short of a direct prohibition against the exercise of First Amendment rights" can be actionable if it has a "deterrent, or 'chilling,' effect." *Board. of Cnty. Comm'rs, Wabaunsee Cnty., Kan. v. Umbehr*, 518 U.S. 668, 674 (1996) (quoting *Laird v. Tatum*, 408 U.S. 1, 11 (1972)). The relevant inquiry is not whether the defendant was successful in completing the retaliatory act as intended, or whether the act was successful in preventing the plaintiff from engaging in further speech; rather, it is whether the act as actually completed "would likely deter a person of ordinary firmness from the exercise of First Amendment rights." *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005) (internal quotation marks omitted); *see also Gomez v. Vernon*, 255 F.3d 1118, 1127 (9th Cir. 2001) ("[A] retaliation claim may assert an injury no more tangible than a chilling effect on First Amendment rights.").

"[T]hreats alone can constitute an adverse action if the threat is capable of deterring a person of ordinary firmness from engaging in protected conduct." *Hill v. Lappin*, 630 F.3d 468, 474 (6th Cir. 2010). Even an unsuccessful attempt to have someone physically harmed in retaliation for protected speech would likely have a substantial chilling effect. *See Santiago v. Blair*, 707 F.3d 984, 992 (8th Cir. 2013). "'Any form of official retaliation for exercising one's freedom of speech, including prosecution, threatened prosecution, bad faith investigation, and legal harassment,

constitutes an infringement of that freedom.'" *Izen v. Catalina*, 398 F.3d 363, 367 n.5 (5th Cir. 2005) (citing *Smith v. Plati*, 258 F.3d 1167, 1176 (10th Cir. 2001)).

Try as the DOL may argue to the contrary, the First Amendment does not limit the types of actions which if taken by a government agency may constitute a violation of the First Amendment. The only limitation is whether the action is capable of deterring a person of ordinary firmness from exercising their First Amendment rights.

Here, the First Amendment claims by the Defendants against the DOL encompass both threats and action. The threats included the Anjo Investigation, and the filing of this suit should DMP and LPMS not withdraw the AO Request or dismiss the Texas Suit. The action included the filing of this suit when DMP and LPMS refused to withdraw the AO Request or dismiss the Texas Suit. That DMP and LPMS have not relinquished their First Amendment rights of petition is not, of course, determinative of whether the DOL acted unlawfully. The threat of the loss of vendor services essential to the continued operation of the Partnership Plans, which is the specific relief sought by the DOL in this suit, would likely deter any reasonable company from continuing to exercise their First Amendment rights.

VI. DEFENDANTS SUFFICIENTLY PLEAD CAUSAL CONNECTION BETWEEN THEIR PROTECTED RIGHTS AND PLAINTIFF'S ADVERSE ACTION

The First Circuit has observed that a First Amendment violation may be satisfied by circumstantial evidence that the constitutionally protected conduct was the driving factor that caused the retaliation. *Rosaura Bldg. Corp. v. Mun. of Mayagüez*, 778 F.3d 55, 67 (1st Cir. 2015), "'Close' temporal proximity between a plaintiff's protected activity and the state's retaliatory conduct can 'raise an inference of causation.'" *Rivera-Corraliza v. Puig-Morales*, 794 F.3d 208, 226 (1st Cir. 2015).

Contrary to the argument of the DOL, the *Counterclaim* specifically alleges that the DOL's First Amendment violations were "intentional."[19] The *Counterclaim* is also replete with facts showing a causal connection between this suit and the AO Request and Texas Suit and the Anjo Investigation. The Anjo Investigation was initiated by the DOL against the Defendants almost immediately after learning that the Defendants were providing services to the Partnership Plans.[20] It was the DOL which suggested tying settlement negotiations as to the Anjo Investigation with settlement negotiations as to the AO Request and Texas Suit.[21] The reason for this suggestion became clear when the DOL conditioned a favorable settlement of the Anjo Investigation against the Defendants upon the withdrawal by DMP and LPMS of the AO Request, and the dismissal by DMP and LPMS of the Texas Suit.[22] Only when DMP and LPMS refused to withdraw the AO Request and dismiss the Texas Suit, did the DOL (1) renew its extortive settlement demand of nearly *$10 million more* to settle with the Defendants than it had demanded to settle with the Defendants *and* DMP/LPMS and (2) file this suit against the Defendants seeking $40 million and an injunction enjoining the Defendants from ever acting as a fiduciary, service provider, or trustee to any plan covered by Title I of ERISA.[23]

In short, the factual allegations of the *Counterclaim* are more than sufficient to show a plausible causal connection between this suit and the AO Request, the Texas Suit, and the Anjo Investigation. It was the DOL itself, through its actions with respect to the Defendants, which established the requisite causal connection.

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[19] *Counterclaim* ¶¶ 162-163.

[20] *Counterclaim* ¶¶ 86-87.

[21] *Counterclaim* ¶¶ 123-124.

[22] *Counterclaim* ¶¶ 125-126, 133.

[23] *Counterclaim* ¶ 135.

PLAINTIFF MISREPRESENTS DEFENDANTS' PLEADING BURDEN AS TO THEIR APA CLAIMS

I. APA DOES NOT PROVIDE THE DOL THE DISCRETION TO VIOLATE THE LAW

The DOL's *Motion to Dismiss* broadly argues that the Administrative Procedure Act ("APA") does not apply to actions "committed to agency discretion by law."[24] It is settled law, however, that this discretion does not extend to constitutional violations, as alleged by the *Counterclaim* here. *See Rueda Vidal v. Dept. of Homeland Security,* 536 F.Supp.3d 604, 618 (C.D.Cal. 2021). Discretion likewise does not extend to agency action contrary to established law or congressional intent, as alleged by the *Counterclaim* here with respect to the DOL's enforcement of ERISA as to the Partnership Plans.[25] *See Electricities of North Carolina, Inc. v. Southeastern Power Admin.*, 774 F.2d 1262, 1267 (4th Circ. 1985) *See also Cardoza v. CFTC*, 768 F.2d 1542, 1547 (7th Cir. 1985) (claiming reviewal authority when not to do so would "frustrate Congressional intent"). Contrary to the DOL's position, discretion is not a defense to the *Counterclaim*.

II. FINAL AGENCY ACTION FORMS THE BASIS OF THE *COUNTERCLAIM*

The DOL's *Motion to Dismiss* also broadly argues that there has been no final agency action with respect to the Anjo Investigation or this suit.[26] This argument incorrectly presumes that the *Counterclaim* turns entirely upon the merits of the Anjo Investigation and this suit. It does not. The *Counterclaim* is based upon the DOL's motivation in instituting the Anjo Investigation and this suit, which is to (1) chill the First Amendment rights of the Defendants, DMP, and LPMS; and (2) abrogate its enforcement responsibilities under ERISA. As noted above, otherwise lawful conduct by the government may still be unlawful if motivated by an unlawful purpose.

[24] *Motion to Dismiss*, p. 19.

[25] *Counterclaim* ¶¶ 167-168.

[26] *Motion to Dismiss*, pp. 21-22.

In this respect, the U.S. Supreme Court decision in *Bennett v. Spear*, 520 U.S. 154 (1997) is instructive. There the Court held that "two conditions must be satisfied for agency action to be 'final.'" *Id* at 177. "First, the action must mark the "consummation" of the agency's decisionmaking process." Id. at 177-78. "And second, the action must be one by which 'rights or obligations have been determined, 'or from which 'legal consequences will flow.'" Id. at 178.

Here, the decision to file suit against the Defendants was arguably the consummation of the DOL's decision-making process as to the Anjo Investigation. This conclusion is supported by the analysis in *Alpine Securities Corp. v. SEC*, Case No. 2:18-cv-00504, 2024 WL 4681816 at * 13 (D. Utah Nov. 5, 2024):

> "…the decision to file an enforcement action in federal court arguably represents the conclusion of the agency's deliberations and that judicial action is necessary. Once an agency initiates a judicial action, the progress of the enforcement proceedings are outside of its exclusive control and further decisionmaking is lodged in the court. And any judgment that would be entered in the action would be entered by the court, rather than the agency."

See also AT&T v. E.E.O.C., 270 F.3d 973, 975 (D.C. Cir. 2001)("there clearly would be final agency action if the Commission filed a lawsuit against AT&T").

Legal consequences also have plainly flowed from the DOL's decision to file this suit. The Defendants do not find themselves defending against an ordinary enforcement action by the DOL; they find themselves defending an enforcement action brought by the DOL in violation of the First Amendment and ERISA. As such, the decision to file this suit is a final agency action reviewable under the APA.

CONCLUSION

For the reasons set forth herein, the Defendants respectfully request that this Court enter an order (1) denying Plaintiff's *Motion to Dismiss*; and (2) awarding such other and further relief to which the Defendants may be justly entitled. Alternatively, the Defendants request the

opportunity to file an amended Counterclaim to cure any pleading deficiencies identified in the *Counterclaim* by the Court.

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 22nd day of September 2025.

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

LORI CHAVEZ-DEREMER, SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, Plaintiff-Counterclaim Defendant, v. SUFFOLK ADMINISTRATIVE SERVICES, LLC; PROVIDENCE INSURANCE CO., I.I.; ALEXANDER RENFRO; WILLIAM BRYAN; ARJAN ZIEGER, Defendants-Counterclaim Plaintiffs.	Civil Action No. 3:24-CV-01512 (CVR)

REPLY IN SUPPORT OF SECRETARY'S
MOTION TO DISMISS DEFENDANTS' FIRST AMENDED COUNTERCLAIM
FOR DECLARATORY AND INJUNCTIVE RELIEF

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Plaintiff Lori Chavez-DeRemer, Secretary of Labor ("Secretary") respectfully submits this Reply in support of her Motion to Dismiss Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief (ECF No. 60). Defendants' Opposition to the Department's Motion fails to offer any explanation for the gaps in their Amended Counterclaim. Instead, it rehashes the same muddled claim that the Department initiated an investigation and ultimately filed the instant lawsuit to retaliate against Defendants for their business relationships with DMP and LPMS, who were allegedly engaged in protected First Amendment activity.

Defendants' Opposition brief completely fails to connect this claim to a legitimate legal framework. Assuming Defendants' allegations are true—though many are undermined by confidential settlement negotiations Defendants themselves filed as exhibits to their Amended Counterclaim—Defendants still fail to allege that they engaged in protected First Amendment activity, or that the Department initiated its investigation of Defendants to suppress viewpoints advocated by either Defendants or by DMP and LPMS. Further, Defendants have failed to show that the instant enforcement action is a final agency action reviewable under the Administrative Procedure Act. For these reasons, the Court should grant the Secretary's Motion to Dismiss Defendants' First Amended Counterclaim (ECF No. 60).

ARGUMENT

I. Defendants Have Not Pled a First Amendment Claim Under the Framework in *National Rifle Association v. Vullo*

Defendants' Opposition to the Department's Motion to Dismiss argues that the Department is improperly using its "power to punish or suppress rights protected by the First Amendment," in violation of the Supreme Court's recent decision in *National Rifle Association of America v. Vullo*. ECF No. 71 at 1 (citing 602 U.S. 175 (2024)). However, Defendants fail to state a First Amendment claim under *Vullo*'s framework.

Plaintiffs in *Vullo* challenged enforcement activity and public statements by New York's Department of Financial Services ("DFS"). *Vullo*, 602 U.S. at 188–81. DFS's superintendent, Maria Vullo, allegedly reached a deal with a major insurance company in which it "would instruct its syndicates to cease underwriting firearm-related policies" and would reduce its business with the National Rifle Association ("NRA"), a gun-rights advocacy organization. *Id.* at 183. In exchange for these actions, DFS promised to "focus its . . . enforcement action solely on those syndicates which served the NRA, and ignore other syndicates writing similar policies." *Id.*

Vullo also published official letters encouraging "DFS-regulated entities to . . . evaluat[e] and manag[e] their risks . . . that may arise from their dealings with the NRA or similar gun promotion organizations" and issued a press release urging New York's banks and insurance companies to "discontinue[] their arrangements with the NRA." *Vullo*, 602 U.S. at 183–84. Evaluating these alleged facts, the Supreme Court found that the plaintiff "plausibly allege[d] conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress the plaintiff's speech" and that plaintiff therefore stated "a claim that the government violated the First Amendment through coercion of a third party . . . ." *Id.* at 191. In other words, plaintiff plausibly alleged that "Vullo coerced DFS-regulated entities to cut their ties with the NRA in order to stifle the NRA's gun-promotion advocacy and advance her views on gun control." *Id.* at 197.

This case is factually distinct from *Vullo* in many respects. First, neither DMP nor LPMS is an advocacy organization. DMP's "primary business purpose . . . is the production, capture, segregation, aggregation, anonymization, organization, and sale to third parties of electronic data generated by its partners." ECF No. 52 (Am. Countercl.) ¶ 45. And 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." *Id.* ¶ 51.

Further, seeking an advisory opinion about ERISA coverage from the government agency tasked with enforcing ERISA is not protected speech. And even if it was, Defendants do not allege that the Department has engaged in retaliatory conduct against DMP and LPMS because of the legal position they asked the Department to adopt. Defendants argue instead that the Department is "punishing" Defendants for their role as service providers to DMP and other similar plans (a business function that does not involve protected speech) because DMP and LPMS sought an Advisory Opinion and filed suit against the Department—but not because of the *content* of either the Advisory Opinion request or the lawsuit.[1] *See* Am. Countercl. ¶¶ 1–4. And

[1] Defendants' counterclaims also imply that they were "punished" when, in the course of settlement negotiations, the Department allegedly increased the monetary and nonmonetary components of its settlement demand only because DMP and LPMS declined to withdraw their Advisory Opinion Request and dismiss the *Data Marketing* case. *See* Am. Countercl. at ¶¶ 154–55. This is undermined by the sampling of confidential settlement communications that Defendants filed as exhibits to their counterclaim.

Global settlement negotiations began in this case in 2024, after a year and a half of negotiations between just the Department and Defendants in this case. *See, e.g.*, Am. Countercl. Ex. R, ECF No. 52-18 (February 2024 e-mail broaching the subject of a global settlement discussion). In July 2022, the Department sent Defendants a letter outlining the claims in the instant lawsuit. *See* Am. Countercl. Ex. O, ECF No. 52-15. And in June 2023, the Department sent a demand letter estimating that SAS and PIC would be liable to disgorge *at least* $60.3 million in damages if they were found liable in litigation; the letter offered to settle the Department's claims for $40 million in addition to a civil penalty and injunctive relief (including removal of each of the Defendants from their roles as fiduciaries). *See* Am. Countercl. Ex. P at 2–3, ECF No. 52-16. In short, the Department outlined its claims and made a settlement demand consistent with the relief sought in this suit long before the parties explored the possibility of a global settlement.

Further, it is clear from the confidential settlement communications that these negotiations were nuanced and cannot be boiled down to Defendants' oversimplified version of events that the Department "conditioned a reasonable settlement of the Anjo Investigation . . . upon the withdrawal by DMP and LPMS of the AO Request, and the dismissal by DMP and LPMS of the Texas suit." *Compare* ECF No. 71 at 2 *with* Am. Countercl. Ex. S, ECF No. 52-19 (multi-page letter outlining Department's global settlement proposal).

unlike *Vullo*, Defendants do not point to any public or private statements by the Department threatening to initiate or refrain from initiating legal action against Defendants or other entities simply because they seek advisory opinions from the Department or file lawsuits against the Department.

Moreover, the government officials in *Vullo* allegedly sought "to 'expand their regulatory jurisdiction to suppress the speech of organizations that they have no direct control over.'" *Vullo*, 602 U.S. at 197–98 (quoting Brief for First Amendment Scholars as *Amici Curiae* Supporting Petitioner at 8). But here, Defendants do not allege that the Department acted outside of its regulatory jurisdiction. Indeed, the Department is indisputably acting within the bounds of its authority when making determinations about ERISA coverage and issuing requested advisory opinions.

Applying *Vullo*'s framework, Defendants have failed to state a First Amendment claim. Indeed, it appears that Defendants' counterclaims seek what *Vullo* expressly prohibits: a "right to absolute immunity from [government] investigation," or a "right to disregard [state or federal] laws." *Vullo*, 602 U.S. at 198 (quoting *NAACP v. State of Ala.*, 357 U.S. 449, 463 (1958) (alterations in *Vullo*)).

II. Defendants Otherwise Fail to State a First Amendment Claim

Defendants have not stated a First Amendment claim under *any* legal framework. They have not shown they have standing to bring First Amendment claims and they have not plead the three elements necessary to make a *prima facie* case of First Amendment retaliation in the First Circuit. In particular, Defendants have not alleged that they "engaged in an activity protected by the First Amendment." *Staples v. Gerry*, 923 F.3d 7, 15 (1st Cir. 2019). But they also fail to

allege that the government "took an adverse action against [them]" and further fail to demonstrate a "causal link between the protected activity and the adverse action." *Id.*

A. Defendants Fail to Demonstrate Standing

Defendants rely on a single case from the Central District of California, *NRA v. City of Los Angeles*, to argue they have standing "to sue for violation of their First Amendment rights of association" with DMP and LPMS. ECF No. 71 at 5 (citing 441 F. Supp. 3d 915 (C.D. Cal. 2019)). This case is inapplicable.

City of Los Angeles addresses the constitutionality of a city ordinance requiring business owners to disclose contracts with and sponsorship of the NRA when seeking business opportunities with the City of Los Angeles, to prevent public funds from "undermin[ing] the City's efforts to legislate and promote gun safety." *City of Los Angeles*, 441 F. Supp. 3d at 932 (internal quotations omitted). One of the plaintiffs, "Doe," was a contractor who supported the NRA and desired "'to continue bidding for and obtaining' City contracts." *Id.* at 925. Doe brought suit, in conjunction with the NRA, alleging a violation of his own First Amendment rights. *Id.* at 925–26. The court found that Doe stated a First Amendment claim because he "undisputedly engaged in the protected First Amendment activity of pro-firearm speech," through his involvement with the NRA (*id.* at 941–42), and because the record supports the "contention that the purpose of the Ordinance is to deter association with the NRA." *Id.* at 938. Though Defendants cite *City of Los Angeles* to argue they have standing, the case does not address the question of standing.

Unlike the plaintiffs in *City of Los Angeles*, Defendants do not allege that they are part of a group or association that expresses a viewpoint on any topic. And while Defendants argue that DMP and LPMS have engaged in First Amendment activity, it is well-settled that "[a] party

ordinarily has no standing to assert the First Amendment rights of third parties." *Wine & Spirits Retailers, Inc. v. Rhode Island*, 418 F.3d 36, 49 (1st Cir. 2005). Here, where Defendants do not allege their own First Amendment rights are being violated, and where they otherwise fail to explain why they have standing, they do not have standing to pursue First Amendment counterclaims.[2]

B. Defendants Do Not Make a Prima Facie Case of First Amendment Retaliation

1. Defendants Do Not Argue Their Conduct is Protected By the First Amendment

"It is the duty of the party seeking to engage in allegedly expressive conduct to demonstrate that the First Amendment applies to that conduct." *Wine & Spirits*, 418 F.3d at 49. Defendants have failed to meet this burden: it is impossible to discern the nature of their First Amendment claim from their Counterclaim.

Defendants appear to argue that their association with DMP and LPMS is constitutionally protected conduct. *See* ECF No. 71 at 5–7. But freedom of association is a legal concept with a specific definition: "a right to associate for the purpose of engaging in those activities protected

[2] Defendants incorrectly allege that the Department is "judicially estopped" from making arguments about standing, because the Department's Opposition to DMP and LPMS's Motion to Intervene argued "that DMP's and LPMS's asserted interests are adequately represented by the Defendants." ECF No. 71 at 8 n.18. They do not offer further explanation. At least "two conditions must be satisfied before judicial estoppel can attach. . . . [f]irst, the estopping position and the estopped position must be directly inconsistent . . .[s]econd, the responsible party must have succeeded in persuading a court to accept its prior position." *Alt. Sys. Concepts, Inc. v. Synopsys, Inc.*, 374 F.3d 23, 33 (1st Cir. 2004). Defendants do not address these factors and could not argue that they are satisfied. First, the Department's earlier brief argues that the proposed First Amendment claims were not "related to the subject matter of the Secretary's Complaint" and therefore did not assess whether any associated interests were adequately represented. ECF No. 62 at 11–12. Second, this Court's order on the Motion to Intervene did not find that Defendants have standing to assert First Amendment claims on behalf of DMP and LPMS. Therefore, DMP and LPMS have failed to demonstrate that judicial estoppel should attach.

by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). The First Amendment's protections for freedom of association do not protect the right of one business to do business with another.

The cases Defendants cite to argue that they are engaged in protected associational activity address the constitutionality of disclosure requirements; in each of those cases, the protected associational conduct was uncontested, and the decisions are completely inapplicable. *See, e.g.*, *City of Los Angeles*, 441 F. Supp. 3d at 929 (evaluating constitutionality of city ordinance requiring disclosure of association with NRA); *Competitive Politics v. Harris*, 784 F.3d 1307 (9th Cir. 2015) (evaluating constitutionality of state's non-profit registration requirement, which required the disclosure of the names and contributions of "significant donors"); *Am. for Prosp. Found. v. Becerra*, 903 F.3d 1000 (9th Cir. 2018), *rev'd sub nom. Am. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021) (similar).

Defendants do not allege that they engage in advocacy efforts along with DMP and LPMS. And DMP and LPMS do not "engage[] in extensive political advocacy" but simply promote a business purpose. *City of Los Angeles*, 441 F. Supp. 3d at 925. In fact, Defendants' Amended Counterclaim explains that DMP requested an advisory opinion from the Department not in furtherance of an ideology, but because "the fifty separate state insurance regulatory agencies could pose significant and indefinite burdens on DMP through investigations and rulings of their own." Am. Countercl. ¶ 82. This is not political advocacy subject to First Amendment protection. "The First Amendment's core concern is with the free transmission of a message or idea from speaker to listener, not with the speaker's ability to turn a profit . . .". *Wine & Spirits*, 418 F.3d at 48.

2. Defendants Fail to Plead the Second or Third Elements of a Retaliation Claim

Defendants argue that the Department filed the instant lawsuit because DMP and LPMS "refused to withdraw the AO Request or dismiss the Texas suit." ECF No. 71 at 12. But this statement merely repeats Defendants' conclusory argument that the government took adverse action against them. *O'Brien v. Welty*, the case Defendants cite to argue that the government took an adverse action against them because of their First Amendment activity, actually pinpoints the holes in their counterclaim. 818 F.3d 920 (9th Cir. 2016). Plaintiff in *O'Brien* was a politically active university student who supported "constitutional conservati[sm]." *Id.* at 924. He alleged he was subject to harassment from school officials as a result of his political activities. *Id.* at 933–35. He was subject to disciplinary action after a campus incident and alleged his disciplinary hearing was unfair and that additional sanctions (including a sanction effectively prohibiting him from filling leadership roles within his political advocacy group for the duration of his university career) were imposed as a result of his political activity. *Id.* at 934. The Ninth Circuit found that plaintiff sufficiently alleged that his "protected activity was a substantial or motivating factor" that caused the university to "conduct[] disciplinary proceedings and impos[e] sanctions." *Id.* at 935 (quoting *Pinard v. Clatskanie Sch. Dist. 6J*, 467 F.3d 755, 770 (9th Cir. 2006)). Defendants' Counterclaim is completely devoid of analogous facts to support their contention that the Department's "[o]therwise lawful" investigation and enforcement action was nonetheless an unlawful adverse action. Defendants do not – and cannot – allege facts demonstrating that the Department initiated its investigation, conducted its investigation unfairly, or imposed unreasonable sanctions because Defendants were engaged in protected First Amendment conduct.

Moreover, Defendants renew their conclusory allegations that "temporal proximity" between their supposedly protected speech and the Department's enforcement action demonstrates a causal link between the two. But Defendants do not engage with the fact that this causal link dissolves because their underlying allegations are implausible, as the Secretary's motion explains.[3] *See, e.g.*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). For these reasons, Defendants' First Amendment retaliation claim should be dismissed.

II. Defendants Fail to State an APA Claim

Defendants either misunderstand or purposely misrepresent the holding of *Alpine Securities Corporation v. SEC*. No. 2:18-cv-00504-CW-CMR, 2024 WL 4681816, at *12 (D. Utah Nov. 5, 2024). In *Alpine*, the court considered whether an SEC enforcement action was final agency action subject to review under the Administrative Procedure Act ("APA"), using the two-prong test set forth in *Bennett v. Spear*: (1) whether the action marks the "consummation of the agency's decisionmaking process," and (2) whether the action either determines "rights or obligations" or from which "legal consequences will flow." 520 U.S. 154, 177–78 (1997) (internal quotation omitted). *Id.* While the *Alpine* court noted that filing an enforcement action in

[3] Defendants object to the Department's explanation of the motivations for opening its investigation, because that information is not alleged in the Counterclaim. *See* ECF No. 71 at 3. It appears this is an objection to a quote from the Department's answer in a separate lawsuit, which states that "the SAS/PIC Investigation was initiated 'after receiving several participant complaints and state referrals involving [SAS and PIC] and entities associated with [them] . . .'" ECF No. 60-1 at 17 n.6 (quoting *Suffolk Admin. Servs. v. U.S. Dep't of Labor*, No. 3:21-cv-1031-DRD (D.P.R.), ECF No. 24 ¶ 72). A court is permitted to take "judicial notice of the fact that another proceeding took place, or of certain other undisputable aspects of those proceedings." *Diaz-Morales v. Rubio-Paredes*, 170 F. Supp. 3d 276, 281 n.2 (D.P.R. 2016) (quoting *MVM Inc. v. Rodriguez*, 568 F. Supp. 2d 158, 164 (D.P.R. 2008)). Defendants reference the *Suffolk* case in their counterclaim. *See* Am. Countercl. ¶ 106. And this Court may reasonably take judicial notice of the fact that in 2021 – long before much of the allegedly retaliatory conduct took place – the Department publicly stated reasons for opening the investigation that led to the instant lawsuit. This further undermines the plausibility of Defendants' allegations and claims.

federal court "arguably" satisfied the first *Bennett* prong, it concluded that the enforcement action failed the second *Bennett* prong because it did not "determine any rights or obligations" of the defendants and did not "impose any legal consequences that are cognizable for purposes of the APA." 2024 WL 4681816, at *12. The court held that the enforcement action was not final agency action subject to review and dismissed the case for lack of standing. *Id.* at *13. The conclusion here is the same—the Secretary's enforcement action does not determine any rights or obligations of Defendants, nor does it impose any legal consequences for purposes of APA review; thus, the lawsuit is not reviewable under the APA.

Defendants' reliance on *AT&T v. EEOC*, 270 F.3d 973 (D.C. Cir. 2001) fares no better. While the *AT&T* court muses that while "there clearly would be final agency action if the [agency] filed a lawsuit against AT&T," this would not be reviewable "as final agency action under the APA." *Id.* at 975. Instead, the company should "simply defend itself against the suit." *Id.* As the *Alpine* court pointed out, *AT&T* suggests an agency's enforcement action is *not* reviewable under the APA, and the proper response to an enforcement action is to *defend that action*, not to file a separate lawsuit (or bring a counterclaim) challenging the enforcement action under the APA. In sum, neither *Alpine* nor *AT&T* hold that an agency enforcement action is reviewable under the APA; thus, Defendants' APA claim should be dismissed.

CONCLUSION

For the reasons above, the Secretary respectfully requests that the Court grant her Motion to Dismiss Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief (ECF No. 60).

Dated: December 15, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I filed the Reply in Support of Secretary's Motion to Dismiss Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief on the docket via CM/ECF. Notice of this filing will be sent to all counsel of record through the Court's Electronic Case Filing System.

/s/ *Sarah D. Holz*
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

LORI CHAVEZ-DEREMER,

Plaintiff,

v.

SUFFOLK ADMINISTRATIVE SERVICES, LLC, et al.,

Defendants.

CIVIL NO. 24-1512 (CVR)

OPINION AND ORDER

INTRODUCTION

This case involves several parties and several cases in several jurisdictions. In the end, despite Defendants' artful pleading efforts, the Court finds the claims before it to be distinct and narrow.

"Data Marketing Partnership ("DMP") is a Texas limited partnership that specializes in the production and sale of its limited partners' electronic data to third party purchasers." Data Mktg. P'ship, LP v. U. S. Dep't of Labor, 490 F.Supp.3d 1048, 1052 (N.D. Tex. 2020). DMP has thousands of limited partners, but only one general partner: LP Management Services, LLC ("LPMS"). DMP and LPMS developed the structure of an employee benefit plan that would be "organized as a single-employer self-insured group health plan that w[ould] provide major medical health benefits to DMP's eligible employees, along with DMP's limited partners." Id., at 1053. Unsure whether this proposed program, known as a Partnership Plan, would be governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq*. ("ERISA"), they sought

guidance from the United States Department of Labor ("Department"). On November 8, 2018, LPMS requested an Advisory Opinion ("AO") from the Department in which it requested confirmation that the plan it was going to propose was governed by ERISA.

In the Department's AO, it concluded that the plan would not be governed by any title of ERISA for a few reasons, namely, the outlined employment relationship, ownership interest and employee-to-partner ratio. Data Mktg., 490 F.Supp.3d at 1054. As a result, an extensive litigation ensued between DMP, LPMS and the Department in the Northern District of Texas (the "Texas suit"), whereby DMP and LPMS challenged the AO's validity. On September 28, 2020, the Texas District Court ultimately declared the AO arbitrary and capricious and concluded that the proposed plan was governed by Title I of ERISA. Id., at 1064. The Court of Appeals for the Fifth Circuit later affirmed the AO's invalidity. See Data Mktg. P'ship, LP v. U.S. Dep't of Labor, 45 F.4th 846 (5th Cir. 2022).

On November 5, 2024, Julie A. Su,[1] Acting Secretary of the United States Department of Labor (the "Secretary" or "Plaintiff") filed the present suit against Suffolk Administrative Services, LLC ("Suffolk"), Providence Insurance Company, I.I. ("Providence"), Alexander Renfro ("Mr. Renfro"), William Bryan ("Mr. Bryan"), and Arjan Zieger ("Mr. Zieger") (collectively, "Defendants").[2] Suffolk and Providence market, sell and service employer-sponsored health benefit programs sponsored by DMP and

1 On March 11, 2025, Lori Chavez-DeRemer ("Ms. DeRemer") was sworn in as Secretary of Labor. On March 20, 2025, pursuant to FED. R. CIV. P. 25(d), Ms. DeRemer was substituted as the Plaintiff. (Docket No. 47). For purposes of clarity, from this point forward, when the Court refers to the Secretary, it is referring to Ms. DeRemer.

2 Mr. Renfro is the sole owner of Anjo. Likewise, Mr. Bryan is the sole owner of the Lobos Trust and Mr. Zieger is the sole owner of the Tasman Trust. The Lobos and the Tasman Trust, jointly, are equal owners of Momentum Capital. Anjo and Momentum Capital own Suffolk Administration Services, LLC and Suffolk Holdings. Finally, Suffolk Holdings is the sole owner of Providence Insurance Company.

LPMS. Plaintiff alleges Defendants sell plans through these programs and use them as vehicles to collect and divert to themselves excessive fees through self-dealing.

After some motion practice, Defendants eventually filed their "First Amended Counterclaim for Declaratory and Injunctive Relief." Defendants' filings in this case are rather unique because they allege claims between other parties in other forums, mainly the Texas suit. Defendants herein allege the Secretary filed the present suit in retaliation for Defendants' relationship with DMP and LPMS, violating their First Amendment right to association, U.S. CONST., AMEND. I, and that in declining to recognize the Partnership Plans, the Department has violated the Administrative Procedure Act, 5 U.S.C. § 706 ("APA"). (Docket No. 52).

Before the Court is the Secretary's Motion to Dismiss (Docket No. 60, Exhibit No. 1), Defendants' Opposition (Docket No. 71) and the Secretary's corresponding Reply. (Docket No. 82).

For the reasons explained below, the "Secretary's Motion to Dismiss Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief" is GRANTED. (Docket No. 60, Exhibit No. 1).

STANDARD

To rule on a 12(b)(6) motion, the Court must first "isolate and ignore statements in the complaint that simply offer legal labels and conclusions or merely rehash cause-of-action elements." Schatz v. Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir. 2012). Second, it should take the complaint's well-pled allegations as true and draw all reasonable inferences in the non-movant's favor. Id.

Federal Rule of Civil Procedure 8(a) requires plaintiffs to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED.R.CIV. P. 8(a)(2). A "short and plain" statement needs only enough detail to provide defendants with "fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); Erickson v. Pardus, 551 U.S. 89, 93 (2007). To show entitlement to relief, a complaint must contain enough factual material "to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Twombly, 550 U.S. at 555. A plaintiff must provide the grounds of his cause of action with more than just a formulaic recitation of the elements of a cause of action. Id., at 555-556. "[T]he combined allegations, taken as true, must state a plausible, not a merely conceivable, case for relief." Sepúlveda-Villarini v. Dep't of Educ. of P.R., 628 F.3d 25, 29 (1st Cir. 2010).

STATEMENT OF FACTS

The Court accepts the allegations of the Amended Counterclaim as true for purposes of the Motion to Dismiss. Rae v. Woburn Pub. Sch., 113 F.4th 86, 98 (1st Cir. 2024); Rivera-Rosario v. LSREF2 Island Holdings, Ltd. Inc., 79 F.4th 1, 4 (1st Cir. 2023). All facts are derived from the Amended Counterclaim. (Docket No. 52).

Suffolk and Providence provide vendor services to DMP and LPMS for their Employer and Partnership Plans. To attract and retain limited partners willing to contribute the data they generate for aggregation and sale, DMP established the DMP Plan ("DMP Plan"), which implements the Partnership Plan structure set forth in the AO Request. Unlike the sponsors of Employer Plans, the Partnership Plans' only vendor options are Suffolk and Providence.

Suffolk's area of expertise is intellectual property, benefits, ministerial administrative services, and compliance support necessary to third parties that operate employee welfare benefit plans. Similarly, Providence is an insurer licensed and operating exclusively in Puerto Rico, where it provides reinsurance to the sponsors of the self-insured employee welfare benefit plans. The DMP Plan, like other Partnership Plans, was established with Suffolk and Providence's irreplaceable assistance, since DMP and LPMS do not have the expertise or resources to ensure proper compliance with applicable ERISA provisions and regulations, nor the insurance necessary to cover the potential financial exposure inherent in sponsoring self-funded group health plans. Without Suffolk and Providence, DMP and LMPS would not be able to service the plans that use the Partnership Plan structure.

In 2018, Mr. Renfro was retained as legal counsel for LPMS to assist in pursuing an advisory opinion from the Department concerning a novel application of the "working owner" that was going to be proposed in the Partnership Plans. At the time, Mr. Renfro was a principal of Suffolk and provided services to LPMS, with Suffolk's consent.

In October of 2018, Mr. Renfro, representing LPMS, attended a meeting in Washington D.C. with Department representatives to discuss ERISA's applicability to the Partnership Plans. At the meeting, Mr. Renfro explained the Partnership Plan structure and provided extensive details of the plan's goals and the business structure LPMS sought to implement. Assistant Secretary of the Department, Preston Rutledge ("Mr. Rutledge"), told Mr. Renfro that the best route to ensure approval of the proposed plan was to request an advisory opinion. The meeting ended with an explicit agreement to continue

discussions so that the Department would approve the Partnership Plan as ERISA-compliant.

On November 8, 2018, on behalf of LPMS, Mr. Renfro submitted the AO Request for the Partnership Plans with the Department. The AO Request detailed the legal and factual basis for application of ERISA to the Partnership Plans, building upon the "working owners" concept of ERISA. LPMS sought to implement this Partnership Plan structure through limited partnerships.

In the weeks and months that followed, occasional informal conversations continued between LPMS and the Department. At one point, Mr. Rutledge told one of Suffolk's advisors that he did not see why the Department needed to issue an advisory opinion since ERISA already allowed partners to be treated like employees for purposes of plan eligibility and Defendants claim he told the Suffolk advisor to "just do it."[3] Thus, LPMS began accepting limited partners into DMP and formed the Partnership Plans.

On March 6, 2019, Mr. Renfro attended another meeting with Department officials in Washington D.C. During this meeting Defendants allege that the Chief of Staff of the Department, Nicholas Geale ("Mr. Geale"), stated that, although the Partnership Plan structure was ingenious and he wished he had thought of it himself, the Department could not respond to the AO Request.[4] Mr. Geale proposed that if LPMS withdrew its AO Request, the Department would not investigate or otherwise interfere with any LPMS-managed partnership plans. Once Defendants and LPMS declined Mr. Geale's offer,

[3] Docket No. 52, p. 17.
[4] In the beginning of 2019, seven state Attorney Generals sent letters to the Secretary stressing the urgency with which the AO should be emitted and requesting its expedited consideration.

Defendants aver that the Department embarked on a fishing expedition that they describe as the "vindictive and retaliatory Anjo Investigation."[5]

Within one month of the March 6 meeting, the Department began investigating Suffolk and Providence.[6] Defendants claim this investigation was separate from the AO Request and that, as part of the investigation, the Department issued numerous requests for information and subpoenas not only to Suffolk and Providence, but also to various entities that did business with them. Defendants aver that, in conducting the inquiry, the Department failed to follow the procedure required for information requests and for the issuance of advisory opinions. Defendants argue the existence of this examination, i.e. the Anjo Investigation, frightened potential Partnership Plan vendors and dissuaded them from providing services to the Partnership Plans and from generally conducting business with Suffolk and Providence. They further claim that, because of the investigation, enrollment of both Partnership and Employer Plans dropped. The Anjo Investigation also delayed a meeting between Defendants, LPMS and the Department, which, when finally celebrated, ended up lasting only ten minutes as the Department demonstrated little interest in continuing discussions about the Partnership Plans.

More than a year after filing the AO Request and not receiving an answer, DMP and LPMS filed suit in the District Court for the Northern District of Texas as more than fifty thousand people had signed up for the Partnership Plan and the Department had yet to decide if the plan was ERISA-compliant. On February 3, 2020, the Department published the AO where it concluded that the Partnership Plans were not protected by

[5] Docket No. 52, p. 19.
[6] To avoid confusion, the Court will refer to this investigation as the "Anjo Investigation."

ERISA because of the nature of the "work" performed by the limited partners. Soon thereafter, DMP and LPMS amended their Complaint and included claims regarding the AO. However, on September 28, 2020, the District Court for the Northern District of Texas found the DMP Plan to be a single employer ERISA plan, vacated the AO as arbitrary and capricious, in material conflict with previous Department advisory opinions and in violation of the APA, and enjoined the Department from refusing to recognize the ERISA-status of the Partnership Plan. On appeal, the Court of Appeals for the Fifth Circuit affirmed the vacatur of the AO but remanded to the District Court for further findings as to some of the plan's participants.

On November 6, 2020, counsel for Suffolk and Providence sent a letter to all known Department officials involved in the investigation to seek clarity on the purpose, scope and need for the Anjo Investigation. On December 14, 2020, twenty months after the investigation began, the Department responded to the letter essentially noting its "ample authority to conduct its investigation in order to determine whether ERISA violations have or are about to occur" noting that the Department was "not in a position to provide the specific information [Defendants] seek[sought] regarding the timing and scope of the Anjo Investigation."[7] On December 30, 2020, Suffolk and Providence responded with citations to authority showing that, while broad, the Department's investigatory authority is not as limitless as portrayed in its December 14 letter. They, once again, requested the Department reconsider its approach to the Anjo Investigation.

[7] Docket No. 52, p. 21-22.

On January 19, 2021, Suffolk and Providence filed a civil action before in this District Court against the Department. They alleged freedom of speech, freedom of association, equal protection, APA and ERISA violations. It was ultimately dismissed without prejudice on March 28, 2022, for lack of ripeness. See Suffolk Administrative Services, LLC, et al. v. U.S. Department of Labor, et al., Civil No. 21-1031 (DRD).[8]

Defendants aver that on July 31, 2021, they learned that the Department of Insurance for Delaware and the Pennsylvania Chamber of Commerce told prospective business partners to refrain from doing business with Suffolk and Providence due to investigations that the Department was conducting regarding the Partnership Plans. Defendants communicated with these offices and learned that their high-level representatives made it clear that much of their skepticism and concerns about Suffolk and Providence arose from communications with Department officials who expressed their disdain with plans administered and/or insured by Suffolk or Providence.

On July 21, 2022, the Department gave notice to counsel for Suffolk and Providence of the substance of its Anjo Investigation. After this day, Suffolk and Providence were in active settlement negotiations with the Department. The Department and Defendants made slow progress between June 2023 and February 2024 while they entered into several tolling agreements which extended the statute of limitations for legal

8 Plaintiffs filed the Complaint in Civil No. 21-1031 (DRD) against the Department, the Secretary and the United States alleging violations to their constitutional rights to free speech, freedom of association and equal protection under the due process clause. They also argued the Anjo Investigation violated the APA and ERISA since no reasonable cause was provided for the investigation and discovery was repetitive and abusive. The Court ultimately dismissed all claims because they were premature but discussed that Plaintiffs had otherwise failed to prove that they had standing to bring an ERISA claim or that there was a final agency action that the Court could review. Finally, the Court asserted that whether the AO was a final agency action was a matter for the Fifth Circuit to decide on appeal from the Texas suit, not in this new suit in another District Court. As a result, the constitutional claims were not considered ripe for adjudication.

action and precluded the Department and Defendants from initiating any legal proceedings with respect to the Anjo Investigation.

On January 11, 2024, counsel for DMP and LPMS sent a letter to counsel for the Department offering to engage in settlement discussions as to the Texas suit. In response, the Department sent an e-mail on February 8, 2024, to DMP, LPMS and all Defendants proposing settlement discussions regarding both the Texas suit and the Anjo Investigation. The discussion as to the Anjo Investigation accelerated substantially once DMP, LPMS and Defendants agreed to participate in "global settlement discussions."[9] The Department'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, the Department's position on the Texas suit began with, what Defendants consider, a wholly unreasonable position.[10]

On May 10, 2024, counsel for the Department directly stated to counsel for DMP, LMPS and Defendants that, if the Texas suit was not dismissed, the monetary demands for the Anjo Investigation settlement would increase. The Department indicated that either both matters would be settled together, or neither matter would be settled. Later, counsel for the Department averred that, if the Texas Suit was not dismissed, the Department's monetary settlement demand would increase to $15 million inclusive of penalties, and the Department later put this offer in writing. Counsel for the Defendants advised the Department that their clients would be unable to pay it immediately.

[9] Docket No. 52, p. 27.
[10] The Department offered to settle the Anjo Investigation for $5.5 million, dependent on the dismissal of the Texas suit and the withdrawal of the AO Request.

However, the Department refused to entertain a payment schedule that the Defendants could undertake.

DMP and LPMS did not agree to the dismissal of the Texas Suit or the withdrawal of the AO Request. As a result, the Department demanded payment of $15 million from Providence and Suffolk. Defendants claim that the time frame given for this payment would likely bankrupt them.

This lengthy recount brings the Court to the present case. After their inability to pay, the Department filed this suit against Mr. Renfro, Mr. Bryan and Mr. Zieger alleging breach of fiduciary duty for mismanaging Suffolk and Providence's assets, against Providence for knowingly participating in the fiduciary breaches, and against Suffolk for failing to comply with ERISA reporting requirements. (Docket No. 1).

Defendants filed this Counterclaim because they provided all documents to the Department in the Anjo Investigation and the Department simply ignored the rebuttal evidence provided to them. Specifically, Defendants argue the Secretary is in possession of documents disproving the very allegations she raises in this suit. They also argue the Secretary's request is punitive because she claims more than seven times the amount of $5.5 million, which would effectively bankrupt Suffolk and Providence and prevent them from servicing their Partnership Plans.

Defendants posit the filing of the present suit violated their First Amendment right of association and the APA by retaliating against Defendants for their association with DMP and LPMS, who had in turn filed the AO Request and the Texas suit. They further argue the Department has declined to recognize the Partnership Plans as a single employer welfare plan subject to ERISA and that it has actively sought to discredit the

plans through the present suit and the Texas suit, creating a cause of action under the APA for making Defendants suffer legal harm from their actions or inactions. Defendants request injunctive relief to prohibit any further enforcement by the Department against Defendants based on the Anjo Investigation and the Texas suit, that the Court declare the Department's conduct violated the U.S. Constitution and the APA, attorney's fees, costs and expenses.

LEGAL ANALYSIS

The Secretary requests dismissal of the Counterclaim for failure to state a claim. First, the Secretary argues Defendants fail to meet the elements to establish a *prima facie* First Amendment claim. Second, the Secretary argues Defendants fail to plead any reviewable agency action or any APA violation. (Docket No. 60, Exhibit No. 1).

Defendants in opposition argue that they sufficiently pled a *prima facie* First Amendment case and that the Department's ERISA claims do not excuse its violation of the First Amendment. They support their First Amendment violation argument on the United States Supreme Court's ruling in Nat'l Rifle Ass'n of Am. v. Vullo, 602 U.S. 175 (2024) and their APA violation argument on Alpine Sec. Corp. v. SEC, Civil No. 2:18-cv-00504-CW-CMR, 2024 WL 4681816 (D. Utah November 5, 2024) and on AT&T Co. v. E.E.O.C., 270 F.3d 973 (D.C. Cir. 2001). (Docket No. 71).

The Secretary's Reply focuses on distinguishing Vullo, Alpine and AT&T from the present case and reiterating that Defendants have failed to state a claim for both First Amendment and APA violations. (Docket No. 82).

A. First Amendment violation claims.

The First Amendment of the United States' Constitution guarantees, among other things, freedom of association. U.S. CONST. amend. I. The Supreme Court's interpretation of freedom of association has "two distinct senses." Roberts v. U.S. Jaycees, 468 U.S. 609, 617 (1984). On one hand, freedom of association implies "protection as a fundamental element of personal liberty" and protects the choices of entering or maintaining "certain intimate human relationships" from intrusion from the State. Id. at 617-618. On the other, it protects peoples' engagement in activities that are already protected by the First Amendment, i.e., speech, assembly, petition for the redress of grievances and the exercise of religion. Id.

> When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals. The risk of a chilling effect on association is enough, 'because First Amendment freedoms need breathing space to survive.'
>
> Americans for Prosperity Found. v. Bonta, 594 U.S. 595, 619 (2021) (quoting Nat'l Ass'n for Advancement of Colored People v. Button, 371 U.S. 415, 433 (1963)).

Thus, a violation of freedom of association does not necessarily entail a prohibition to associate with someone else. A chilling effect, namely, the fear of being subjected to illegal surveillance which deters the person from conducting constitutionally protected activities is enough to conclude there was a First Amendment violation. Clapper v. Amnesty Int'l USA, 568 U.S. 398, 418 (2013). The First Amendment also prohibits "retaliation [ ] subject to recovery as the but-for cause of official action offending the Constitution." Hartman v. Moore, 547 U.S. 250, 257 (2006).

To establish a *prima facie* case of First Amendment retaliation, a party must allege that: (1) they engaged in activity that is protected by the First Amendment, (2) the government took an adverse action against them and (3) there is a causal link between the protected activity and the adverse action. Staples v. Gerry, 923 F.3d 7, 15 (1st Cir. 2019). In essence, the party alleging the violation must prove that it engaged in one of the two senses of freedom of association, that the government took an adverse action against the party and that its "protected activity was a substantial or motivating factor in the adverse action." Id.

Defendants aver they have the right under the First Amendment to associate with DMP and LPMS without suppression or retaliation by the Department because of their association as vendors to DMP and LPMS, who in turn, exercised their own right of petition in the AO Request and by filing the Texas suit. In other words, Defendants' harm flows, via their association, from DMP and LPMS's own protected activity. They contend both petitions are protected by the First Amendment of the Constitution regarding a matter of public concern. They proffer the Anjo Investigation, all actions associated with it, and conditioning the resolution of the Anjo Investigation to the dismissal of the Texas suit were done intentionally to obstruct, chill, deter and retaliate against Defendants. They algo argue the Department's unlawful and intentional actions are not justified by a substantial or compelling government interest, nor are they tailored to serve any such interest. (Docket No. 52).

The Secretary posits Defendants fail to allege that they engaged in any constitutional exercise of associational rights through their association with DMP and LPMS, or that they were associated with them for any sort of protected purpose. Since

Defendants admit their relationship with DMP and LPMS is a business one with financial interest, she argues those associations are not protected by the First Amendment. Moreover, she claims Defendants fail to state an adverse action sufficient to constitute retaliation since an agency's investigation, and its subsequent enforcement, is insufficient to constitute an adverse action by the government in the context of a retaliation claim. (Docket No. 60, Exhibit No. 1).

In Defendants' Opposition they raise several points, to wit: they argue the Secretary brings facts that were not alleged in the Complaint; she is holding Defendants to a higher burden than required this early in the case; they have sufficiently plead their right of association with DMP and LPMS; the Secretary's ERISA claims do not justify their violation of the First Amendment; they have sufficiently alleged that the Secretary's actions would chill a person of ordinary firmness; and they have sufficiently alleged the three factors of a *prima facie* First Amendment retaliation claim. They specifically reference Vullo to argue this case has the intent and effect of pressuring DMP and LPMS to abandon the AO Request and the Texas suit and of pressuring Defendants to disassociate from DMP and LMPS.[11] (Docket No. 71).

The Secretary reiterates in her Reply that Defendants did not plead a First Amendment claim under any legal framework since they fail to evince standing or the *prima facie* elements of a First Amendment claim. (Docket No. 82).

[11] In Vullo, the Supreme Court held that "Government officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors." 602 U.S. at 180. Evidently, there is a clear difference between Vullo and the present case, since in Vullo government officials were allegedly terminating business relationships with the National Rifle Association to punish them and suppress their advocacy. In the present suit, Defendants are alleging freedom of association merely due to a business relationship with others which, without more, does not qualify for First Amendment protection.

For purposes of this Motion to Dismiss, the Court will assume Defendants have standing to bring their claims. However, after evaluating the arguments on the merits, the Court finds there is no valid First Amendment claim.

1. Protected activity.

"[T]he [F]irst [A]mendment does not protect against all deprivations arising out of an act of association unless the act itself [ ] falls within the scope of activities eligible for inclusion within the constitutional tent." Correa Martínez v. Arrillaga-Beléndez, 903 F.2d 49, 57 (1st Cir. 1990). As examples of these eligible activities, the Court listed "joining a church or political party, speaking out on matters of public interest, [and] advocacy of reform." Id. Thus, these eligible activities are actions that would be protected by the First Amendment, had the subject engaged in them himself/herself.

Now, "[e]ntry into the constitutional orbit requires more than a mere relationship." Correa-Martínez, 903 F.2d at 57. As Courts have stated in more than one occasion, "there is only minimal constitutional protection of the freedom of commercial association." Pérez-Acevedo v. Puerto Rico, Civil No. 04-1962 (HL/CVR), 2006 WL 8445542 (D.P.R. September 27, 2006) (quoting U.S. Jaycees, 468 U.S. at 634 (O'Connor, J., concurring in part and concurring in judgment)). See also El Día, Inc. v. Rosselló, 20 F.Supp.2d 296, 305 (D.P.R. 1998) ("Protected associations include, for example, political or religious associations."); Correa-Martínez, 903 F.2d at 56 ("the [F]irst [A]mendment protects nonpolicy makers from being drummed out of public services on the basis of their political affiliation or advocacy of ideas."); Elrod v. Burns, 427 U.S. 347, 357 (1976) (the First Amendment protects "freedom to associate with others for the common advancement of political beliefs and ideas"). In sum, "the embedded associational right protects only

collective speech and expressive conduct in pursuit of those ends; it does not cover concerted action that lacks an expressive purpose." Wine and Spirits Retailers, Inc. v. Rhode Island, 418 F.3d 36, 50 (1st Cir. 2005).

"[A]n organization engaged in commercial activity enjoys only minimal constitutional protection of its recruitment, training, and solicitation activities." U.S. Jaycees, 468 U.S. at 635 (O'Connor, J., concurring in part and concurring in judgment). In determining whether a group enjoys First Amendment protection, the Court must evaluate whether a group "engage[s] in some form of expression, whether it be public or private." Boy Scouts of Am. v. Dale, 530 U.S. 640, 648 (2000). Since Defendants have failed to plead that they associate with DMP or LPMS for non-commercial reasons, i.e. for some sort of expressive association, the Court cannot conclude their alleged association falls within the scope of the "constitutional tent." Correa-Martínez, 903 F.2d at 57. See U.S. Jaycees, 468 U.S. at 626-627 (where the Court declined to recognize First Amendment protection for freedom of association for the U.S. Jaycees because there was no evidence on the record that validating the challenged law would affect the organization's "civic, charitable, lobbying, fundraising, [or] other activities worthy of constitutional protection under the First Amendment"); Wine & Spirits, 418 F.3d at 48 (where the Court declined to recognize First Amendment protection for Wine & Spirits Retailers, Inc. because plaintiff alleged defendant was constricting its ability to peddle marketing and management advice, advertising services and trade name protection, to wit, no expressive conduct).

Defendants here admit that their relationship with DMP and LPMS is a business one. Specifically, Defendants only provide them with intellectual property, benefits,

administrative, compliance support and reinsurance services to operate employee welfare benefit plans. There is no allegation on record of any expressive conduct on the record. As a business association, without more, is not protected by the constitutional tent, this relationship does not meet the threshold to establish it is protected by the First Amendment. Moreover, Defendants do not allege any protected activity they engaged in other than this business association. Thus, the Court finds Defendants have not engaged in protected activity that justifies First Amendment protection.

2. Adverse action.

By the same token, the Court finds the adverse action prong is not met. An adverse action is an action that would deter a reasonably hardy person from exercising his or her constitutional right. Barton v. Clancy, 632 F.3d 9, 29 (1st Cir. 2011). Thus, an action that causes a chilling effect, that is, "when the government's actions are sufficiently severe to [make people] compromise their political beliefs and associations in favor of the prevailing party," is enough to raise a First Amendment violation claim. Agosto-de-Feliciano v. Aponte-Roque, 889 F.2d 1209, 1217 (1st Cir. 1989). Defendants claim that the alleged Anjo Investigation is enough to meet this factor. The Court disagrees.

ERISA gives the Secretary "the power, [] to determine whether any person has violated or is about to violate any provision of [ERISA]." 29 U.S.C. § 1134. Upon belief that there may be an ERISA violation, the Secretary can exercise its investigative authority by conducting investigations of places, reports, books and records, or by requesting any data she deems necessary. Id. Her investigative authority is only limited to evidentiary privileges and to conducting an investigation once every twelve months. Id.

Through the Anjo Investigation, which began in 2019, the Department has requested numerous subpoenas and information requests and has spoken to entities that have been doing business with Suffolk and Providence. These actions are within the Secretary's investigative authority as outlined in 29 U.S.C. § 1134. Therefore, the Secretary has been exercising her authority as head of the Department and Defendants have limited their arguments to conclusory allegations that she exceeded her authority in doing so. See 29 U.S.C.A. § 1134 (detailing Secretary of Labor's investigative authority); Wadsworth v. Whaland, 562 F.2d 70, 74 (1st Cir. 1977) (indicating that ERISA "gives the Secretary of Labor broad investigative powers and authority to promulgate regulations"); West v. Butler, 621 F.2d 240, 244 (6th Cir. 1980); Donovan v. Shaw, 668 F.2d 985, 987 (8th Cir. 1982).

The Supreme Court has not decided whether an investigation can give rise to a First Amendment retaliation claim. See Hartman v. Moore, 547 U.S. at 262 n. 9 ("Whether the expense or other adverse consequences of a retaliatory investigation would ever justify recognizing such an investigation as a distinct constitutional violation is not before us."). The Court of Appeals for the First Circuit has likewise not addressed this issue. However, other courts have concluded that a retaliatory investigation does not form the basis of a constitutional claim. See Buckner v. Shumlin, No. 1:12-cv-90-jgm, 2013 WL 6571814 at *5 (D. Vt. December 13, 2013) (where the Court stated the Second Circuit had not resolved whether an investigation could give rise to a First Amendment retaliation claim, and declined to do so); Calabria v. State Operated Sch. Dist. for City of Paterson, Civil Action No. 06-cv-6256 (DMC), 2008 WL 3925174 at *3 (D. N.J. August 26, 2008) (where the Court highlighted Hartman's lack of a conclusion as to a constitutional tort for a

retaliatory investigation and failed to consider the plaintiff's retaliatory investigation claim); Trueman v. U.S., 7:12-CV-73-F, 2015 WL 1456134 at *13 (E.D.N.C. March 30, 2015) *aff'd*, 615 Fed. Appx. 122 (4th Cir. 2015) ("conducting a retaliatory investigation does not, in and of itself, form the basis of a constitutional tort"); Grisham v. Valenciano, Case No. SA-21-CV-00983-JKP, 2023 WL 367216 at *5 (W.D. Tex. January 20, 2023) ("the Fifth Circuit has explicitly said an investigation is not actionable under its First Amendment retaliation jurisprudence" (citing Colson v. Graham, 174 F.3d 498, 512 (5th Cir. 1999))); Evans v. City of Chicago, No. 16 CV 7665, 2017 WL 1954544 at *6 (N.D. Ill. May 11, 2017) (declining to recognize a First Amendment retaliation claim because the plaintiff "cite[d] no case law suggesting that a retaliatory investigation, alone, is a sufficient deprivation to support a First Amendment retaliation claim"); J.T.H. v. Missouri Dep't of Soc. Serv. Child. Div., 39 F.4th 489, 493 (8th Cir. 2022) ("[W]e have never recognized a retaliatory-investigation claim of this kind. Nor have other courts around the country, which have either rejected the possibility outright or concluded, like we do today, that the law is still in flux."); Moore v. Garnand, 83 F.4th 743, 752 (9th Cir. 2023) (declining to recognize a First Amendment violation based on a retaliatory investigation because the "Supreme Court has not decided the issue"); Rehberg v. Paulk, 611 F.3d 828, 850 n. 24 (11th Cir. 2010), *aff'd*, 566 U.S. 356 (2012) ("The initiation of a criminal investigation in and of itself does not implicate a federal constitutional right. The Constitution does not require evidence of wrongdoing or reasonable suspicion of wrongdoing by a suspect before the government can begin investigating that suspect."). The Court similarly declines to do so today.

Defendants only claim the investigation prevented prospective growth of their business. Since ERISA gives the Secretary ample investigative authority and the Supreme Court has not expressly addressed the existence of a First Amendment cause of action due to a retaliatory investigation, concluding today that a mere investigation constitutes an adverse action would limit the Secretary's ample authority and be contrary to her functions as head of the Department. Therefore, the "adverse action" prong also fails.[12]

3. Causal link.

Since Defendants failed to prove the existence of the first two factors, the Court need not address the causal link prong.

Due to Defendants' failure to establish the existence of protected activity and an adverse action, the Court finds there is no viable First Amendment claim. Consequently, the Motion to Dismiss the First Amendment causes of action of the Amended Counterclaim is GRANTED. (Docket No. 60, Exhibit No. 1).

B. APA violation claim.

The APA governs procedures of administrative law, specifically, how agencies are meant to regulate and adjudicate. 5 U.S.C. §§ 553-554. "The APA provides for judicial review of final agency action for which there is no other adequate remedy in a court." Harper v. Werfel, 118 F.4th 100, 116 (1st Cir. 2024). An "agency action" is defined as "includ[ing] the whole or a part of an agency rule, order, license, sanction, relief or the equivalent or denial thereof." 5 U.S.C. § 551(13). However, to be considered final, the

[12] The Court, like the Secretary, is unaware of any support for a First Amendment retaliation claim for an adverse governmental action based on protected speech by a third party. Even assuming this could be a valid cause of action, it could give rise to a possible standing challenge. That issue, however, has not been properly briefed by the parties in this case.

Supreme Court developed a set of factors in Bennett v. Spear, 520 U.S. 154, 177-178 (1997) for courts to consider (the "Bennett factors"). First, "the action must mark the consummation of the agency's decision[-]making process." Id. Second, "the action must be one by which rights or obligations have been determined or from which legal consequences will flow." Id.

As an administrative agency, the Department must comply with the APA. Among the many topics the Department specializes in are retirement plans, specifically those governed by ERISA. ERISA is a federal United States tax and labor law that establishes minimum standards for pension plans in the private sector. As such, the Department is tasked with issuing information letters and advisory opinions to individuals and organizations that it applies to. ERISA Procedure 76-1 for ERISA Advisory Opinions, § 5.[13] Relevant to the present suit, "[a]n advisory opinion is a written statement issued to an individual or organization, or to the authorized representative of such individual or organization . . . that interprets and applies [ERISA] to a specific factual situation." Id. The issuance of the advisory opinion is up to the Department's discretion and only the parties described in the request for opinion may rely on it. Id. The advisory opinion, though given deference because of the Department's expertise, is not binding between the people that did not request it. Id.

Defendants allege the Department has declined to recognize the Partnership Plans as single employer welfare plans subject to ERISA, in defiance of its responsibility to enforce ERISA, and has actively sought, through its efforts in the Texas suit and the

[13] Employee Benefits Security Administration, U.S. DEPARTMENT OF LABOR, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/filing-requests-for-erisa-aos (last visited January 12, 2026).

present suit, to dismantle or discredit the Partnership Plans to the detriment of Defendants and the thousands of participants of those plans. They posit their Counterclaim is necessary because the Complaint makes no mention of the undeniable connections to the Texas suit or the inextricable link the Department created between this lawsuit and the Texas suit as part of its efforts to discredit or dismantle the Partnership Plans, as well as Suffolk and Providence. Specifically, they claim the Department abused its power by threatening to sue Defendants based on unsupported monetary demands and the identity of plans with which they lawfully do business. 5 U.S.C. § 706(2)(A)-(C). For these reasons, they move the Court to issue an injunction to prevent the Department from continuing to violate the APA. (Docket No. 52).

Conversely, the Secretary raises three different arguments. First, she claims Defendants fail to meet the Rule 8(a) standard since they fail to provide fair notice of their basis for the APA claim because they interchangeably allude to the Anjo Investigation, the present suit, and the negotiations to settle the Secretary's claims. Additionally, she states it is unclear whether the challenged actions relate to the Partnership Plans, the Employer Plans or both. Second, she maintains Defendants challenge a decision committed to agency discretion, the Anjo investigation, which is not reviewable under the APA. She also asserts the actions complained of are not final actions subject to judicial review because investigatory measures and the decision to bring an enforcement action are not final agency actions. Thus, the Secretary avers her investigation, negotiation, and the filing of this case vis-à-vis the Employer and Partnership Plans are not subject to judicial review under the APA. Finally, even if her actions here were reviewable under the APA, the

Secretary claims Defendants have not pled any specific APA violations under 5 U.S.C. §§ 706(2)(A)–(D). (Docket No. 60, Exhibit No. 1).

In Defendants' Opposition, they posit that, even if the APA gives the Department discretion, it does not allow them to violate the law. Furthermore, they maintain that their Counterclaim is based on final agency actions. Specifically, they argue the Secretary's decision to file suit against them was the consummation of the Department's decision-making process as to the Anjo Investigation, as supported by Alpine and AT&T, where the courts concluded that the decision to file an enforcement action in court is the conclusion of the administrative review and evinces the need for judicial intervention, which proves the agency's action was final. [14] (Docket No. 71).

In the Secretary's Reply, she argues that Defendants APA claims fail under the two-prong test set forth in Bennett v. Spear, because the filing of this case, alone, does not determine any rights or obligations of Defendants or impose legal consequences for purposes of APA review. She further asserts that under AT&T, the proper response to an enforcement action is not to file a separate suit or counterclaim under the APA to challenge the enforcement action, but rather, to defend that action on the merits. (Docket No. 82).

[14] Although Defendants cite cases from different districts, that are merely persuasive, they also cite cases which do not help further their argument. In Alpine, the questioned agency action failed the second prong of the Bennett test, and thus, the court there found plaintiffs lacked standing to bring their claim under the APA. Alpine, 2024 WL 4681816 at *12. Similarly, in AT&T, the Court said "[u]nder the circumstances of this case, there clearly would be final agency action if the Commission filed a lawsuit against AT&T. (Of course, the Company could not challenge that decision as final agency action under the APA; it would instead simply defend itself against the suit.)" AT&T, 270 F.3d at 976. Thus, both cases concluded there was no final agency action that could be reviewable under the APA. In fact, if the Court were to adopt AT&T's analysis, Defendants' only option would be to defend themselves from the suit, not to present a Counterclaim.

Before moving on, the Court notes that Defendants' APA claim is wholly centered around the facts that gave rise to the Texas suit. As such, the relevance of the acts alleged in the Counterclaim to those alleged in this case is limited. Defendants aver this Counterclaim is necessary because this suit and the Texas suit are inextricably linked, but the Court disagrees. The present claim is about Defendants' mismanagement of the assets used to fund the plans they market, sell and service, while the Counterclaim alleges constitutional and APA violations for their alleged association with third parties DMP and LPMS and based upon the actions of those third parties.

Nevertheless, even assuming the relevance of these facts to this case, Defendants do not plead any specific APA violation. Instead, they merely list the clauses of 5 U.S.C. § 706(2) without detailing how they were allegedly infringed. Rule 8(a) of Civil Procedure requires "a short and plain statement of the claim showing that the pleader is entitled to relief." FED.R.CIV.P. 8(a)(2). Apart from including a multitude of allegations of what led to the Anjo Investigation, the Texas suit and the AO Request, Defendants simply conclude that the Secretary filed this suit in retaliation, without giving any plausible indication as to how her actions were either (i) arbitrary and capricious, (ii) contrary to their constitutional right, power, privilege or immunity, (iii) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, or (iv) without observance of procedure required by law. 5 U.S.C. §§ 706(2)(A)–(D). As the Secretary argues, her actions here were taken pursuing her lawful investigative authority under 29 U.S.C. § 1134 and conducting a thorough investigation. The settlement talks were undertaken in furtherance of that authority and Defendants provide no reasoning, besides conclusory allegations, in support of their allegations.

The Court finds there is also no final agency action that merits judicial review. As stated by the Secretary, the standard for review under the APA is narrow and "a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made". Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983). Although it is unclear what final agency action Defendants seek judicial review of, the Court finds none of the actions mentioned in the Counterclaim are reviewable.

From the outset, the Anjo Investigation fails to meet the Bennett factors, as it is not considered a final agency action. See Harper, 118 F.4th at 116 (listing cases that hold that investigatory measures do not constitute final agency action). The Anjo Investigation additionally did not create any rights or obligations from which legal consequences flow that would give rise to a cognizable claim under the APA, as it was simply an investigation.

Furthermore, the Secretary's decision to bring an enforcement action, i.e. the present suit, is also not reviewable under the APA because the simple act of filing a complaint does not determine any rights or obligations and it is not a rule, order, license, sanction, form of relief or failure to act conducted by an agency. See City of Oakland v. Holder, 901 F.Supp.2d 1188, 1195 (N.D. Cal. 2013), *aff'd sub nom.* City of Oakland v. Lynch, 798 F.3d 1159 (9th Cir. 2015) (finding that the filing of a civil action does not fit within the APA's definition of agency action); 5 U.S.C. § 551(13). As noted by the Secretary, "the Holder court could not locate any authority holding that filing a civil complaint qualified as final agency action under the APA, and it was unwilling to expand the definition of 'final agency action' to allow every civil or criminal suit filed by the United

States government to be subject to separate judicial review." (Docket No. 60, Exhibit No. 1, p. 29).

Finally, if the agency action refers to the Texas suit or the AO, this Court lacks jurisdiction to entertain it since the parties present in this suit were not the parties that brought that suit or requested the opinion. "Federal judges decide only *live* controversies that will have a real effect on real parties in interest." Boston Bit Labs, Inc. v. Baker, 11 F4th 3, 8 (1st Cir. 2021). Since Defendants are not parties in the Texas suit nor did they request the AO, they are not real parties in interest. Furthermore, this Court cannot alter the judgment the Northern District of Texas emitted. See Baker by Thomas v. General Motors Corp., 522 U.S. 222, 233 (1988) ("A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land."); see also Miliken v. Meyer, 311 U.S. 457, 462 (1940) ("the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based."). Thus, if Defendants intend to use their Counterclaim to review and alter the AO Request or the Texas suit, this Court lacks jurisdiction to do so.

In sum, Defendants have failed to present a viable APA claim, and consequently, the Motion to Dismiss as to the APA claim in the Amended Counterclaim is also GRANTED. (Docket No. 60, Exhibit No. 1).

CONCLUSION

For the above-mentioned reasons, the "Secretary's Motion to Dismiss Defendants' First Amended Counterclaim for Declaratory and Injunctive Relief" is GRANTED. (Docket No. 60, Exhibit No. 1). Consequently, Defendants' Amended Counterclaim (Docket No. 52) is DISMISSED WITHOUT PREJUDICE. Partial Judgment will be entered accordingly.

IT IS SO ORDERED.

In San Juan, Puerto Rico, on this 14th day of January 2026.

S/CAMILLE L. VELEZ-RIVE
CAMILLE L. VELEZ-RIVE
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing Joint Appendix to be electronically submitted to the Clerk of Court for the United States Court of Appeals for the First Circuit using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants in this case.

Dated: February 11, 2026

/s/ Lisa Carney Eldridge
Lisa Carney Eldridge