IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

LORI CHAVEZ-DEREMER, SECRETARY OF LABOR, U.S. 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.	Case No. 25-1886

SECRETARY'S RESPONSE TO MOTION TO STAY PROCEEDINGS IN THE DISTRICT COURT OF PUERTO RICO PENDING APPEAL

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Appellee Lori Chavez-DeRemer, Secretary of the U.S. Department of Labor ("Secretary"), respectfully submits this response in opposition to the Motion to Stay Proceedings in the District Court of Puerto Rico Pending Appeal (Doc. 00118360365) ("Mot. Stay") filed by Data Marketing Partnership, LP ("DMP") and LP Management Services, LLC ("LPMS") (collectively, "Movants"). Movants fail to establish that a stay is warranted during this Court's consideration of Movants' appeal of the district court's denial of their motion to intervene.

The Secretary's complaint in the underlying action asserts that entirely different parties—Suffolk Administrative Services, LLC ("SAS"), Providence Insurance Company, I.I. ("PIC"), and their officers and indirect owners Alexander Renfro, William Bryan, and Arjan Zieger (collectively, "Defendants")—violated the Employee Retirement Income Security Act ("ERISA") by engaging in self-dealing and charging excessive fees.

Movants seek to intervene in the action below to bring claims of retaliation against the Secretary. *See, e.g.*, Compl. Intervention ¶¶ 27, 30, 105, 111, 121–23, *Chavez-DeRemer v. Suffolk Admin. Servs.*, No. 3:24-CV-01512 (D.P.R. June 9, 2025), ECF No. 54-1.[1] These claims relate to a separate lawsuit that Movants filed against the Secretary, *Data Marketing Partnership, LP v. U.S. Department of*

[1] Citations to trial court documents refer to filings in the action below unless otherwise noted.

Labor, No. 4:19-CV-00800-O (N.D. Tex.) ("*Data Marketing*" case), about whether certain health benefit plans sponsored by Movants ("Partnership Plans") are covered under ERISA. *See id.* Movants' proposed claims have absolutely no bearing on whether Defendants violated ERISA.

Movants do not demonstrate likelihood of success on appeal, do not establish an irreparable injury, and do not show that a stay is in the public interest. Their additional argument that "this appeal divests the District Court's jurisdiction," Mot. Stay 1, is meritless, as district court proceedings routinely continue while appeals of denied intervention motions are pending. For these reasons, the motion to stay should be denied.

BACKGROUND

Movants argue that they are the "real targets" of the Secretary's suit against Defendants. Mot. Stay 1. To the contrary, the Secretary's suit plainly concerns the conduct of the named Defendants.

I. Defendants

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. ¶¶ 10–20, ECF No. 1. The Department of Labor ("Department") investigated Defendants prior to filing suit and issued subpoenas requesting information starting in 2019. *See* Compl. Intervention Ex. F,

ECF No. 54-7 (investigative subpoenas). On November 5, 2024, the Secretary filed a complaint alleging that Defendants violated ERISA by causing more than 1,900 employer-sponsored health benefit plans governed by ERISA ("Employer Plans") to pay them excessive fees. Compl. ¶¶ 1–7, ECF No. 1. Specifically, the Secretary alleges that Defendants exercise "control over ERISA-plan assets" and "use [Employer Plans] as vehicles to collect and divert to themselves massive fees through self-dealing in violation of ERISA." *Id.* ¶¶ 1–2.

II. Movants

Movants DMP and LPMS (DMP's general partner), the putative intervenors, are plaintiffs in the *Data Marketing* case. The *Data Marketing* case relates to LPMS's request for an advisory opinion from the Department addressing whether ERISA applies to "Partnership Plans": health benefit plans sponsored by a "limited partnership" that recruits "limited partners" to install software on their personal phones to collect electronic data. *See* Compl. Intervention Ex. A at 1–2, ECF No. 54-2 (advisory opinion request). 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 id*. at 2.

The Department issued an advisory opinion concluding that the Partnership Plans described in the advisory opinion request are not covered by ERISA because there is no "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 the *Data Marketing* decision 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 "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 DMP's Partnership Plan, *id.* at 860, and remanded the case, asking the district court to address interpretative questions about the terms "working owner" and "bona fide partners." *Id.* at 858–59. The *Data Marketing* case is currently in fact discovery relating to these issues. *See* Order at 1, *Data Mktg.* (N.D. Tex. May 6, 2025), ECF No. 77.

III. Settlement Negotiations

After the *Data Marketing* case was remanded, the Secretary engaged in settlement negotiations with Movants and their affiliates and vendors. These

negotiations included Defendants.[2] 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 the action below.[3] Compl. ¶¶ 1–2, ECF No. 1; Mot. Stay 2. 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. *See* Compl. Intervention Ex. A at 10, ECF No. 54-2. Negotiations with Movants were ultimately unsuccessful. *See, e.g.*, Compl. Intervention Ex. P, ECF No. 54-17; Ex. Q, ECF No. 54-18. Thereafter, the Secretary negotiated with Defendants alone. *Id.* Those negotiations also fell through, which led to the filing of the action below. *See id.*

IV. Efforts to Connect to the *Data Marketing* Case

Movants and Defendants alike have previously attempted to connect the action below to the *Data Marketing* case.

Around the time the Secretary filed the action below (and more than five years after the *Data Marketing* complaint was filed), Movants sought leave to file a supplemental complaint in the *Data Marketing* case, alleging "extort[ion]" based

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[2] Before the negotiations included Movants, the Secretary engaged in more than a year of negotiations with Defendants alone. *See* Compl. Intervention Exs. J & K, ECF Nos. 54-11 & 54-12; *see also* Ex. P ECF No. 54-17 (referencing negotiations that took place without Movants as recently as January 2024).

[3] As the Secretary's Complaint makes clear, Partnership Plans are not at issue in the action below. *See* Compl. ¶ 2 n.1, ECF No. 1.

on the settlement negotiations involving the Secretary, Defendants, and Movants. Am. Mot. File Compl. at 3, *Data Mktg.* (N.D. Tex. Nov. 25, 2024), ECF No. 69. The motion was denied; the district court held that "the scope of [the *Data Marketing* case] is limited to the issues on remand from the Fifth Circuit." Order at 1, *Data Mktg.* (N.D. Tex. Apr. 8, 2025), ECF No. 75.

Before that motion was decided, Defendants moved to transfer the action below to the district where the *Data Marketing* case was pending. Mot. Transfer, ECF No. 26. The district court denied the transfer motion, noting that "the Data Marketing case involves wholly different claims, parties, and defenses than the ones raised in the case at bar." Order Denying Transfer at 5 (D.P.R. June 10, 2025), ECF No. 55.

After the *Data Marketing* court denied the motion for leave to file a supplemental complaint, Movants moved to intervene in the action below. Mot. Intervene, ECF No. 53. Movants proposed to bring "claims of retaliation against the DOL under the First Amendment . . . and under the Administrative Procedure Act" based on the settlement negotiations involving both Defendants and Movants. Mem. Supp. Mot. Intervene at 2, ECF No. 54. The district court below denied the motion to intervene. Order Denying Intervention (D.P.R. Aug. 14, 2025), ECF No. 63.

Movants appealed the order denying their motion to intervene. Notice of

Appeal, ECF No. 66. Three days later, Movants moved the district court to stay the action below pending the appeal. Mot. Stay Pending Appeal, ECF No. 67. The district court denied that motion. Order Denying Stay (D.P.R. Sept. 29, 2025), ECF No. 75. Movants then filed the motion to stay district court proceedings now pending before this Court (Doc. 00118360365).

ARGUMENT

"'A stay is an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right.'" *New Jersey v. Trump*, 131 F.4th 27, 34 (1st Cir. 2025) (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)). "Thus, the party seeking a stay . . . bears the burden of proving that the circumstances justify one." *Id.* To meet that burden, the party seeking a stay must:

> (1) make a "strong showing that [it] is likely to succeed on the merits" in its appeal; (2) show that it "will be irreparably injured absent a stay"; (3) show that "issuance of the stay will [not] substantially injure the other parties interested in the proceeding"; and (4) show that the stay would be in "the public interest."

Id. at 34–35 (quoting *Nken*, 556 U.S. at 434). This four-factor test has been applied to requests for stays of preliminary injunctions, judgments, and, as relevant here, district court proceedings.

I. This Appeal Does Not Divest the District Court of Jurisdiction.

Contrary to Movants' representations, appealing the denial of a motion to intervene does not automatically divest a district court of jurisdiction over ongoing

proceedings. Indeed, this Court has not hesitated to deny motions to stay district court proceedings while the appeal of an order denying a motion to intervene was pending. *See Cotter v. Mass. Assoc. of Minority Law Enf't Officers*, 219 F.3d 31, 33 (1st Cir. 2000) ("We refused to grant a stay of proceedings in the district court but expedited this appeal."). Other courts of appeals likewise do not treat putative intervenors' stay requests as jurisdictional, and instead require movants to meet the same factors as any other motion to stay. *See Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1267 (10th Cir. 2004) (noting that putative intervenor should have moved the appellate court to stay district court proceedings during appeal of intervention denial so that the appellate court could "review the merits of [putative intervenor's] claim and decide whether a stay was warranted pending final resolution of [its] appeal" (internal quotations omitted)); *Scotts Valley Band of Pomo Indians v. U.S. Dep't of the Interior*, No. 21-5009, 2021 WL 1049844, at *1 (D.C. Cir. Mar. 4, 2021) (finding *Nken* factors were satisfied when determining whether to stay district court proceedings during appeal of intervention denial); *Yocha Dehe v. U.S. Dep't of the Interior*, 3 F.4th 427, 429 (D.C. Cir. 2021) (providing context for *Scotts Valley* decision); *Abbott Labs. v. Diamedix Corp.*, No. 94-1345, 1994 WL 782247, at *2 (Fed. Cir. July 26, 1994) (applying same factors as *Nken* to determine whether a stay of proceedings was warranted during appeal of intervention denial).

Appellants only cite three district court rulings[4] where the court stayed proceedings during the appeal of a denied motion to intervene citing lack of jurisdiction. Mot. Stay 7–9. More frequently, district courts permit litigation to continue while an appeal of an intervention denial is pending. *See, e.g.*, *Candelario-Del Moral v. UBS Fin. Servs. Inc. of P.R.*, 290 F.R.D. 336, 344–47 (D.P.R. 2013), *as corrected* (May 8, 2013), *aff'd sub nom. In re Efron*, 746 F.3d 30 (1st Cir. 2014); *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-MD-2591-JWL, 2020 WL 7828765, at *2–3 (D. Kan. Dec. 31, 2020); *Benjamin v. Dep't of Pub. Welfare of the Commonwealth of Penn.*, No. 09-CV-1182, 2010 WL 11470607, at *1–3 (M.D. Pa. Dec. 16, 2010); *Kane Cnty., Utah v. United States*, No. 2:08-CV-315, 2009 WL 3816173, at *1 (D. Utah Nov. 13, 2009); *John R. Sand & Gravel Co. v. United States*, 60 Fed. Cl. 347, 348–49 (2004)*; Am. Mar. Transp., Inc. v. United States*, 15 Cl. Ct. 360, 361 (1988).

The primary consideration of whether a district court is divested of jurisdiction during the pendency of an appeal is whether the remainder of the litigation relates to "aspects of the case involved in the appeal," because "a federal

[4] These cases include *Maine v. Norton*, 148 F. Supp. 2d 81 (D. Me. 2001), *Barnes v. Sec. Life of Denver Ins. Co.*, No. 18-CV-718-WJM-SKC, 2019 WL 142113 (D. Colo. Jan. 9, 2019), and *Brown v. Google, LLC*, No. 4:20-cv-03664-YGR, 2024 WL 5682633 (N.D. Cal. Nov. 8, 2024). None of these decisions were made by an appeals court. Here, the district court already denied a motion to stay proceedings. Order Denying Stay (D.P.R. Sept. 29, 2025), ECF No. 75.

district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Thus, a district court is divested of jurisdiction only over matters *relating to the appeal*, as Movants' cited authority recognizes. *See id.* (an appeal "divests the district court of its control over those aspects of the case involved in the appeal"); *United States v. Distasio*, 820 F.2d 20, 23 (1st Cir. 1987) ("entry of a notice of appeal divests the district court of jurisdiction to adjudicate any matters related to the appeal"); *United States v. Hurley*, 63 F.3d 1, 23–24 (1st Cir. 1995) (allowing forfeiture proceeding to continue during appeal of criminal conviction); *United States v. Mala*, 7 F.3d 1058, 1060–61 (1st Cir. 1993) (an appeal "divests a district court of authority to proceed with respect to any matter touching upon, or involved in, the appeal" but "an interlocutory appeal that is brought without any colorable jurisdictional basis does not deprive the district court of jurisdiction over the underlying case"). This authority does not suffice to automatically wrest jurisdiction from a district court, particularly where Movants seek to intervene to bring claims that the district court has already concluded are "wholly different" from the claims at issue in the action below. Order Denying Intervention (D.P.R. Aug. 14, 2025), ECF No. 63.

II. Movants Fail to Establish That a Stay Is Warranted.

Movants fail to meet even one of the four factors that justify the imposition

of a stay. *See New Jersey*, 131 F.4th at 34–35. Their likelihood of success on the merits of their interlocutory appeal is low because they are unlikely to demonstrate that the district court abused its discretion in denying their motion for intervention as of right or permissive intervention. Movants also fail to establish irreparable injury: Movants' proposed claims bear no direct relationship to the Secretary's claims against Defendants, so Movants' proposed claims would suffer no prejudice if litigation continued while their appeal is pending. For the participants and beneficiaries of the ERISA-covered plans at issue, though, a stay would delay relief from the excessive fees charged by Defendants. This action should progress so that the Secretary may fulfill her statutory duties of enforcing ERISA's standards of fiduciary conduct and protecting the interests of participants in employee benefit plans and their beneficiaries. *See* 29 U.S.C. §§ 1001 & 1132.

A. Movants Are Unlikely to Succeed on Appeal.

The party seeking a stay bears the burden of making a "strong showing" that their substantive legal argument "is likely to succeed." *New Jersey*, 131 F.4th at 34, 37. Movants argue for a lower standard. Mot. Stay 10, 17. They claim that because they "seek to preserve the status quo in the trial court . . . the Court may give more weight to the factors balancing the harms and equities of interim relief than to the moving party's ability to demonstrate a likelihood of success on the merits of appeal." Mot. Stay 10. This runs afoul of *Nken*, where the Supreme Court

emphasized that a "strong showing" of likelihood of success on the merits is required. 556 U.S. at 434. *Nken* held that "[i]t is not enough that the chance of success on the merits be better than negligible," and that a "possibility" standard for relief or irreparable injury is "too lenient." *Id.* at 434–35 (quotation omitted); *see also New Jersey*, 131 F.4th at 35 (repeatedly requiring a "strong showing").

While *Nken* sets the standard, it is worth noting that the older cases cited by Movants still required appellants to "show[] that their appeals have potential merit." *Providence Journal Co. v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979) (merely holding that "an *absolute probability* of success" is not required where "[o]nce the documents are surrendered . . . confidentiality will be lost for all time" (emphasis added)). *See also Public Serv. Co. of N.H. v. Patch*, 167 F.3d 15, 26–27 (1st Cir. 1998) (concluding in context of preliminary injunction that lesser standard was "defensible" because of "rather powerful showing" of irreparable injury based on contractual rights). Here, Movants make no compelling arguments that they are entitled to intervene as of right or permissively.

1. Intervention as of Right

A party seeking to intervene as of right must establish (1) "the timeliness of its motion to intervene"; (2) "the existence of an interest relating to the property or transaction that forms the basis of the pending action"; (3) "a realistic threat that the disposition of the action will impede its ability to protect that interest"; and (4)

"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); Fed. R. Civ. P. 24(a)(2). "[F]ailure to satisfy any one of [these requirements] defeats intervention as of right." *Ungar v. Arafat*, 634 F.3d 46, 51 (1st Cir. 2011). This Court reviews the denial of a motion to intervene as of right for abuse of discretion. *Id.*

Because Movants fail to satisfy any of those four factors, the district court did not abuse its discretion by concluding that Movants did not demonstrate entitlement to intervention as of right. Most notably, Movants failed to assert an interest in the outcome of the underlying action that "bear[s] a sufficiently close relationship to the dispute between the original litigants." *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 638 (1st Cir. 1989) (quotation omitted). The interest must be "direct, not contingent," *id.*, and "'significantly protectable,'" *Ungar*, 634 F.3d at 51 (quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971)).

Movants argued before the district court that this prong was satisfied because "their data marketing business and their Partnership Plans largely depend on the outcome of this case" as "Defendants are the only vendors willing and capable to service these plans." Mem. Supp. Mot. Intervene at 5, ECF No. 54; *see also* Mot. Stay 10 (referencing "threat to their essential vendors" on whom Movants' "business model is entirely reliant"), 15. But Movants' interest in

ensuring Defendants' continued operation has absolutely no bearing on the core question in the Secretary's suit: whether Defendants violated ERISA by charging excessive fees to ERISA plan clients.[5] *See* Compl. ¶ 4; *Ungar*, 634 F.3d at 51–52 ("An interest that is too contingent or speculative—let alone an interest that is wholly nonexistent—cannot furnish a basis for intervention as of right.").

Movants also failed to satisfy the remaining prongs of the standard for intervention as of right. As to timeliness, Movants admitted that they saw no need to intervene in the underlying action until their motion to file supplemental claims in the *Data Marketing* case was denied. *See* Mem. Supp. Mot. Intervene at 4, ECF No. 54. This demonstrates that there is nothing time-sensitive or fundamental to the action below that warrants their participation as of right. *See R&G Mortg. Corp.*, 584 F.3d at 7 (assessing timeliness by when a putative intervenor "knew . . . his interests were at risk"). As to prejudice, Movants argue that they will be unable to protect their interests if they are not permitted to intervene, but the interests they cite—for example, protecting the services that Defendants provide to the Partnership Plans or proving that the Secretary violated Movants' First

[5] This lack of a protectable interest also raises the issue of whether Movants have Article III standing to become involved in this matter. *See Cotter*, 219 F.3d at 34 ("[A]n applicant who satisfies the 'interest' requirement of the intervention rule is almost always going to have a sufficient stake in the controversy to satisfy Article III as well.").

Amendment rights—are simply not relevant to the ERISA violations alleged in this case. *See* Mot. Stay 1, 14. With respect to the final prong, which requires that a putative intervenor demonstrate a lack of adequate representation of its position by any existing party, Movants have not explained why Defendants would not be able to adequately represent Movants' position, as Defendants have the greatest interest in their own continued operation.

Movants suggest that the district court abused its discretion by evaluating factors relevant to a motion to transfer, as opposed to a motion to intervene. *See* Mot. Stay 16, 19. They cite the district court's determination that Movants' claims were "directly related to the Texas case and not to the ones before this Court" and that "the cases involve different parties, wholly different claims, and harms." Mot. Stay 16 (citing Order Denying Intervention (D.P.R. Aug. 14, 2025), ECF No. 63). But these findings are directly relevant to whether Movants have "an interest relating to the property or transaction that forms the basis of the pending action," *R&G Mortg. Corp.*, 584 F.3d at 7, and support the district court's conclusion that Movants' proposed claims "are not the type of actions that would merit a finding in favor of intervention." Order Denying Intervention (D.P.R. Aug. 14, 2025), ECF No. 63.

Movants also imply that the district court abused its discretion by issuing a quick decision and relying on the case record. Mot. Stay 2. But a court's speed and

brevity do not undermine the strength and logic of its decision, as this Court has noted. *See T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 38 (1st Cir. 2020), (finding that "brevity in denying a motion for intervention" does not constitute an "abuse of discretion"); *Ungar*, 634 F.3d at 51 (finding that the district court correctly "denied the motion to intervene in a bench decision" and that the court's "findings and reasoning" could "easily be inferred from the record").

2. Permissive Intervention

The reasons above make it even less likely that Movants would successfully overturn the district court's denial of permissive intervention. Rule 24(b) gives the district court discretion to allow the intervention of any party with "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). "[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 (quotation omitted). Denial of a motion for permissive intervention is also reviewed for abuse of discretion. *Int'l Paper Co. v. Inhabitants of Town of Jay, Me.*, 887 F.2d 338, 343 (1st Cir. 1989).

Here, the district court did not abuse its discretion in denying Movants' motion for permissive intervention. The district court found that "[t]he claims" Movants "want to bring" are not related "to the [claims] before this Court." Order

Denying Intervention (D.P.R. Aug. 14, 2025), ECF No. 63. This is a perfectly acceptable reason to deny Movants' motion for permissive intervention.

Movants allege that the Department "inextricably entwine[d] Movants with Defendants" by engaging in settlement negotiations involving both groups. Mot. Stay 14. But disparate topics do not become legally related simply because the Department engaged with both parties in the context of settlement negotiations. Moreover, Movants' proposed claims would inject entirely new facts and issues into the action below, causing significant delays. *See* Fed. R. Civ. P. 24(b)(3) ("the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights").

In sum, Movants fail to make a strong showing that they are likely to succeed on the merits of their appeal both as to permissive intervention and intervention as of right, and this first factor weighs heavily against the issuance of a stay.

B. Movants Will Not Be Irreparably Injured Absent a Stay.

Movants also fail to meet their burden of showing the "irreparable harm" necessary to justify a stay. This factor is closely tied to the moving party's chance of success. "In essence, the issuance of a stay depends on whether the harm caused movant without the stay, in light of the movant's likelihood of eventual success on the merits, outweighs the harm the stay will cause the non-moving party."

Acevedo-García v. Vera-Monroig, 296 F.3d 13, 16–17 (1st Cir. 2002) (per curiam) (cleaned up). Movants must show that the purported irreparable harm is based in "fact and reality," *Common Cause R.I. v. Gorbea*, 970 F.3d 11, 15 (1st Cir. 2020), and on something "more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store," *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004).

Movants argue that they will suffer irreparable economic injuries if the underlying action is not stayed. Specifically, Movants argue that if the Secretary's ERISA claims against Defendants are successful in some unspecified future timeframe, Defendants will be forced out of business thereafter (presumably after all trial and appellate court proceedings have been exhausted) and, in turn, Movants' business will be damaged. Mot. Stay 11. But Movants' purported chain-of-events injury is a quintessential example of conjecture, speculation, and "unsubstantiated fears of what the future may have in store" that cannot support a stay. *See Charlesbank*, 370 F.3d at 162. These are uncertain events untethered to the timeline of this interlocutory appeal.

Movants also suggest that they face irreparable harm if they are not able to bring their First Amendment claims in the action below. Mot. Stay 5, 11. But Movants' claims of retaliation are entirely distinct from the claims of fiduciary breach and self-dealing that the Secretary asserts against Defendants. If this Court

ultimately permits Movants to intervene, Movants then can initiate the unique discovery that would be necessary for their claims, regardless of how far other claims in this matter have progressed.

Finally, even if Movants' appeal is successful and they are permitted to assert their claims, Movants' First Amendment claims are not a defense to any violations of ERISA committed by Defendants. In other words, Movants' intervention will not change whether Defendants have violated ERISA, so the purported "irreparable harm" has the same chance of occurring whether or not Movants are permitted to intervene. A stay does nothing to mitigate Movants' asserted irreparable injury, which combined with Movants' low chance of success on appeal, counsels strongly in favor of denying the stay.

C. The Public Interest Weighs in Favor of Denying the Stay.

The third and fourth factors Movants must show to justify a stay (harm to the opposing party and the public interest) "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. These factors also favor denial of the stay, as participants of affected Employer Plans will be injured if the stay is granted, and swift protection of participants' benefits is in the public interest.

"[A]ny time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (quotation omitted); *see also*

Somerville Public Schools v. McMahon, 139 F.4th 63, 74 (1st Cir. 2025). The Secretary has alleged that Defendants are engaging in ongoing violations of ERISA, resulting in excessive fees for thousands of participants in Employer Plans. If a stay is granted, Defendants' fiduciary breaches and prohibited transactions will continue during the pendency of the appeal. Movants will not be injured if they must wait to initiate discovery on their claims until the appeal is decided because their claims are unrelated, whereas harm to participants will continue while Movants' appeal is pending. Thus, the harm to interested parties weighs in favor of denying the stay.

In addition, the public interest favors allowing the Secretary to continue to litigate her claims that participants are being harmed through violations of ERISA. The public at large has an interest in timely enforcement of laws meant to protect it. *See, e.g.*, *U.S. Pub. Interest Research Grp. v. Atl. Salmon of Me., LLC*, 262 F. Supp. 2d 1, 3 (D. Me. 2003) (denying a stay pending appeal, finding that public interest supported enforcement of Clean Water Act); *Fargo Women's Health Org. v. Schafer*, 819 F. Supp. 865, 867 (D.N.D. 1993) (denying stay pending appeal, finding that public interest lies in enforcement of statutes enacted by legislature). *Cf. Herman v. S.C. Nat'l Bank*, 140 F.3d 1413, 1423 (11th Cir. 1998) ("[I]n suing for ERISA violations, the Secretary seeks not only to recoup plan losses, but also to supervise enforcement of ERISA, to guarantee uniform compliance with

ERISA, [and] to expose and deter plan asset mismanagement . . . .").

None of Movants' arguments demonstrate that staying these proceedings would serve the public. Movants argue that the delay is only a small inconvenience to the Department because of the length of the Department's investigation prior to filing suit, Mot. Stay 13, but this argument overlooks that it is participants who are suffering financial harm while Defendants' ERISA violations remain unaddressed. Movants also argue that there is no harm to participants because the Department has not appointed a receiver to take over fiduciary duties from plan sponsors. Mot. Stay 14. This argument is nonsensical—the Secretary cannot unilaterally seize control of the affected plans, particularly absent a court order finding Defendants violated the law. That is why among the relief the Secretary seeks, should she prevail, is the appointment of an Independent Fiduciary. *See* Compl., Prayer for Relief ¶ 90, ECF No. 1.

Movants fail to show that a stay would serve the public interest and would not injure affected participants of the Employer Plans; accordingly, their motion should be denied**.**

CONCLUSION

For the reasons above, the Secretary respectfully requests that the Court deny Movants' Motion to Stay Proceedings in the District Court of Puerto Rico Pending Appeal (Doc. 00118360365).

Dated: December 15, 2025

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by the Fed. R. App. P. 32(f), this document contains 5,096 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared using Microsoft 365 Word in proportionally spaced 14-point Times New Roman typeface.

/s/ *Blair L. Byrum*
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