UNITED STATES COURT OF APPEALS
For the First Circuit

No. 25-1886

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

Plaintiff-Appellee,

v.

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

Defendants,

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

Interested Parties – Appellants

INTERESTED PARTIES-APPELLANTS' REPLY BRIEF IN FURTHER SUPPORT OF THEIR MOTION TO STAY PROCEEDINGS IN THE DISTRICT COURT OF PUERTO RICO PENDING APPEAL

Alberto J. Bayouth-Montes
O'NEILL & BORGES LLC
250 Munoz Rivera Avenue, Suite 800
San Juan, PR 00918-1813
787-282-5708
alberto.bayouth@oneillborges.com

Lisa Carney Eldridge
CLARK HILL PLC
2001 Market Street, Suite 2620
Two Commerce Square
Philadelphia, PA 19103
215-640-8514
leldridge@clarkhill.com

Counsel for Interested Parties – Appellants, Data Marketing Partnership, LP and LP Management Services, LLC

TABLE OF CONTENTS

INTRODUCTION 1

FACTUAL BACKGROUND 2

ARGUMENT 4

I. The District Court Lacks Jurisdiction to Continue with Proceedings Pending the Appeal of the Intervention Motion 4

II. Even if the District Court Retains Jurisdiction, the Movants Satisfy the Four Factors Considered on Motions to Stay 6

A. Movants' Likelihood of Success on Appeal Supports a Stay of the District Court Action 8

B. Movants Satisfy the Other Three Factors in Support of a Stay. 10

CONCLUSION 12

TABLE OF AUTHORITIES

Page(s)

Cases

Aspen Am. Ins. Co. v. Luquis-Gaudalupe,
No. CV 24-01277, 2024 WL 4456954 (D.P.R. Oct. 10, 2024).....11

B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.,
440 F.3d 541 (1st Cir. 2006).....9

Bantam Books v. Sullivan,
372 U.S. 58 (1963).....8

Barnes v. Sec. Life of Denver Ins. Co.,
2019 WL 142113 (D. Colo. 2019).....5, 6

Brown v. Google, LLC,
2024 WL 5682633 (N.D. Cal. 2024).....5, 6

Candelario-Del Moral v. UBS Financial Services Inc. of Puerto Rico,
290 F.R.D. 336 (D.P.R. 2013).....5

Chavez-Demerer v. Suffolk Administrative Services, LLC. et al,
Civil Action No. 3:24-cv-01512-CVR (D.P.R. 2024).....3

Conservation L. Found. of New England, Inc. v. Mosbacher,
966 F.2d 39 (1st Cir. 1992).....9

Cotter v. Massachusetts Ass'n of Minority L. Enf't Officers,
219 F.3d 31 (1st Cir. 2000).....4

Data Marketing Partnership, LP, et. al v. U.S. Dept. of Labor, et. al.,
Civil Action No. 4:19-cv-00900-O.....2, 3, 10

Dominion Video Satellite, Inc. v. Echostar Satellite Corp.,
356 F.3d 1256 (10th Cir. 2004).....5, 6, 7

Griggs v. Provident Consumer Disc. Co.,
459 U.S. 56 (1982).....1

International Paper Co. v. Town of Jay, Me.,
887 F.2d 338 (1st Cir. 1989).....9

Maine v. Norton,
148 F. Supp. 2d 81 (D. Me. 2001) 5, 6

Nken v. Holder,
556 U.S. 418 (2009).....5, 7

NRA v. Vullo,
602 U.S. 175 (2024).....8

Scotts Valley Band of Pomo Indians v. U.S. Dep't of the Interior,
No. 21-5009, 2021 WL 1049844 (D.C. Cir. Mar. 4, 2021).....5

T Mobile Ne. LLC v. Town of Barnstable,
969 F.3d 33 (1st Circ. 2020) 11

W. Energy All. v. Jewell,
2017 WL 3588648 (D.N.M. Mar 1, 2017) 10

Rules

Federal Rule of Civil Procedure 24(a).....8

Federal Rule of Civil Procedure 24(a)(2) 9

Interested Parties-Appellants Data Marketing Partnership, LP ("DMP") and LP Management Services, LLC ("LPMS") (collectively, "Movants") submit this Reply Brief in further support of their Motion to Stay Proceedings in the District Court of Puerto Rico Pending Appeal.

INTRODUCTION

The Secretary does not cite one case that refutes that the District Court lacks jurisdiction to continue with the underlying action while the Order denying Movants' Motion to Intervene is on appeal. The cases either do not address jurisdiction or involve circumstances not applicable here. Movants provided the Court with several opinions in which courts have applied the general rule that "entry of a notice of appeal divests the District Court of jurisdiction to adjudicate any matter relating to the appeal,"[1] and stayed the District Court action where an Order denying a motion to intervene was on appeal. If Movants are successful in their appeal but miss the opportunity to participate in the District Court litigation while their appeal is pending, the relief sought will be moot or result in duplicative and wasteful proceedings. Even if this Court determines that the District Court retains jurisdiction, consideration of the four factor test also weighs in favor of a stay.

[1] *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982).

FACTUAL BACKGROUND

The Secretary does her best to zoom in the Court's lens on what she purports is an action with "wholly different claims, parties, and defenses" than the ones attempting to be raised by the Movants. However, there is a "big picture" here that should not be ignored. The PR Action arises from Movants' 2019 Advisory Opinion Request ("AO Request") that prompted the Department of Labor ("DOL") to investigate the Defendants ("the Anjo Investigation"), who perform critical vendor services to Movants' limited partnership plans. Movants have already defended their plans in years-long litigation with the DOL in Texas (including a significant win in the Fifth Circuit).[2]

Although the Secretary claims that the Movants' limited partnership plans are not among the "Participating Plans" at issue in the PR Action, (Response at fn. 3) that is not true as the relief sought would prevent Defendants from operating as vendors for any ERISA plan. *See* First Am. Counterclaim (EFC No. 52) ¶ 11.[3] The Secretary obliquely admits that there were settlement negotiations with "Movants, their affiliates and vendors," (Response at 5) as if to imply there were many participants but those negotiations involved only the Movants and Defendants, as

[2] *See Data Marketing Partnership, LP, et. al v. U.S. Dept. of Labor, et. al.*, Civil Action No. 4:19-cv-00900-O ("Texas Suit").
[3] Defendants in the PR Action filed Amended Counterclaims that the Secretary is moving to dismiss.

Defendants are critical vendors who manage Movants' ERISA plans, which cover approximately 30,000 individuals.

As the Secretary acknowledges, Movants have tried numerous avenues to protect their limited partnership plans, including trying to join the issues into the Texas Suit prior to filing the motion to intervene here. The Texas District Court denied Movants' motion to file a supplemental complaint "because it was beyond the Court's power on remand," not because it found that the allegations the plaintiffs sought to bring into that case were not related. *See* Order (ECF No. 75 in the Texas Suit). Thereafter, the District Court denied Defendants' motion to transfer the PR Action to Texas but noted that the Texas Suit is "a separate *but related* lawsuit []pending against the Secretary…." (emphasis added).[4]

When Movants declined a "global settlement" with the DOL that required them to withdraw the AO Request and dismiss its successful Texas Suit against the DOL, the DOL proceeded with the PR Action[5] against Defendants, alleging ERISA violations, seeking monetary remedies of $40 million and to enjoin Defendants from "ever acting as a fiduciary, service provider or trustee" to any employee benefits plans, which necessarily includes the limited partnership plans. The Movants have

[4] ECF 55.
[5] *Chavez-Demerer v. Suffolk Administrative Services, LLC. et al*, Civil Action No. 3:24-cv-01512-CVR (D.P.R. 2024).

been effectively barred from protecting their interests in the PR action when their motion to intervene was denied.

ARGUMENT

I. The District Court Lacks Jurisdiction to Continue with Proceedings Pending the Appeal of the Intervention Motion.

The Secretary concedes that 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." *See* Response at pp. 9-10. None of the cases cited by the Secretary refute the well-reasoned opinions in Movants' Motion to Stay that, in the context of an appeal of a denial of a motion to intervene, the District Court lacks jurisdiction to continue with the underlying action as the Movants' appeal, if successful, would have an effect on the entire pending action. For example, the Secretary cites the *Cotter*[6] decision, but in that case, the First Circuit vacated an order denying intervention and remanded with directions to allow intervention. The Court mentions it denied a motion to stay and expedited the appeal but there is no indication that the issue of jurisdiction was raised or considered.

[6] *Cotter v. Massachusetts Ass'n of Minority L. Enf't Officers*, 219 F.3d 31, 33 (1st Cir. 2000).

Similarly, the other cases cited by the Secretary do not address jurisdiction but focus on the traditional four-factor test. *See e.g. Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1267 (10th Cir. 2004) (deeming purported intervenor's appeal after injunction moot); *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) (granting stay pending appeal and to expedite consideration of appeal where four factor test of *Nken v. Holder*, 556 U.S. 418, 434 (2009) was satisfied); *Candelario-Del Moral v. UBS Financial Services Inc. of Puerto Rico*, 290 F.R.D. 336, 344-47 (D.P.R. 2013), *as corrected* (May 8, 2013) (denying motion to intervene and motion to stay where litigant provided no legal analysis and waited two years to file).

Movants' cases are factually on point and the jurisdictional analysis provided by those cases makes sense in light of the nature of the claim being appealed – the ability to intervene and participate in the underlying litigation. *See Maine v. Norton*, 148 F. Supp. 2d 81, 83 (D. Me. 2001); *Barnes v. Sec. Life of Denver Ins. Co.*, 2019 WL 142113, at *1 (D. Colo. 2019); *Brown v. Google, LLC*, 2024 WL 5682633, at *1 (N.D. Cal. 2024). *Norton*, *Barnes* and *Brown* provide the proper analytical framework where, as here, there is a motion to intervene in which intervenors seek to bring claims that are wholly related to the claims at issue in the action below.

II. Even if the District Court Retains Jurisdiction, the Movants Satisfy the Four Factors Considered on Motions to Stay.

The *Dominion* case cited in the Response is particularly instructive as to the importance of a Circuit Court issuing a stay of District Court proceedings when a motion to intervene has been denied. *See Dominion*, 356 F.3d at 1256. Although utilizing the four-factor traditional test, the analysis of the *Dominion* Court is in line with the reasoning behind *Norton, Barnes, and Brown.*[7]

The *Dominion* case involved an operator of a Christian-themed television network who sought an injunction and damages against a television broadcaster it alleged violated an exclusivity agreement. *Id.* at 1259. A competitor Christian station, Daystar, sought to intervene in the proceedings and was denied before an injunction was issued. *Id.* The Tenth Circuit addressed Daystar's appeal of the order denying its motion to intervene by stating that where a district court has rejected a party's attempt to intervene and refuses to stay the proceedings pending appeal, the unsuccessful intervening party should move before the Circuit Court for a stay. *Id.* at 1267. "[T]he sole purpose of such a stay is to preserve the status quo pending appeal so that the appellant may reap the benefit of a potentially meritorious appeal." *Id*. (citation omitted).

[7] *See Norton*, 148 F. Supp. 2d at 83, *Barnes*, 2019 WL 142113, at *1; *Brown*, 2024 WL 5682633, at *1.

Dominion makes clear that Daystar's failure to seek a stay of the injunction proceeding with the Circuit Court pending an appeal of its intervention order, effectively mooted the Circuit Court's ability to provide the relief it was seeking. *Id*. at 1267. "The preliminary injunction hearing is over, the district court has issued a ruling, and we have determined on appeal that the district court ruling was erroneous – a result, coincidentally, for which Daystar would have advocated had it been permitted to intervene below." *Id*. (the original parties in the action were ordered to arbitration and the motion to intervene was deemed moot).

Movants seek the stay here so that the relief they seek on appeal does not become moot. Contrary to the Secretary's assertion, Movants do not argue for a "lower standard" and address all four factors listed in *Nken*, 556 U.S. at 434 (Motion to Stay at pp. 15-20). *Nken* is not a case involving an appeal of a motion to intervene but a case in which the Plaintiff sought a stay of a deportation Order pending appeal. That Movants focus on the issues of irreparable harm and balance of equities here as the more important criteria in seeking to preserve the status quo pending appeal in this context is not a "lower standard" and supported by case law. Nonetheless, all four factors are satisfied here.

A. Movants' Likelihood of Success on Appeal Supports a Stay of the District Court Action.

The Secretary claims that Movants have not shown a likelihood of success of the appeal but Movants have satisfied Rule 24(a). Movants seek intervention at an early stage of the litigation (pre-discovery), have a significant and protectable interest in the disposition of the PR Action, timely filed their Motion to Intervene, and have cast sufficient doubt on the Defendants' ability to represent Movants' interests in the PR action.

The Secretary claims that the core question of the underlying action is whether Defendants violated ERISA, when in fact, the DOL knows that enjoining Defendants from "ever acting as a fiduciary, service provider or trustee" to any employee benefits plans includes the Movants' plans. *See* Proposed Complaint In Intervention at ¶¶ 2-7 (ECF 54-A). Movants' interests thus lie at the very heart of the underlying PR action. Not only does the DOL threaten group health insurance for roughly 30,000 individuals currently in the plans, the DOL violates the First Amendment rights of Movants to petition, and theirs and Defendants' right to association by threatening "invoking legal sanctions and other means of coercion" against a vendor (Defendants) "to achieve the suppression" or punishment of disfavored speech by a customer (Movants). *See NRA v. Vullo*, 602 U.S. 175, 176 (2024); *Bantam Books v. Sullivan*, 372 U.S. 58, 67 (1963).

The District Court's Text Order (ECF 63) denying intervention did not address any of the Rule 24(a)(2) criteria for intervention. This Court reviews the denial of intervention under an abuse of discretion standard. *Conservation L. Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 41 (1st Cir. 1992) (citation omitted). "However, the district court has less discretion to deny intervention as of right than is appropriate when permissive intervention is sought." *Id.* "Consequently, an appellate court will reverse a district court's determination if it fails to apply the general standard provided by Federal Rule of Civil Procedure 24(a)(2) or if the decision so fails to comport with that standard as to indicate an abuse of discretion." *Id.* (citing *International Paper Co. v. Town of Jay, Me.*, 887 F.2d 338, 343–44 (1st Cir. 1989); *see also B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 544 (1st Cir. 2006) (citation omitted) ("We will reverse…if the court reaches a decision patently out-of-step with the purposes of Rule 24(a)(2).").

Here, the District Court failed to consider the factors of intervention as of right. The Court considered that Movants "already have a case that has been ongoing for 5 years" in Texas, while failing to acknowledge, "the District of Texas has already rejected Defendants' attempt to amend the pleadings before that court." (ECF 55). Indeed, the fact that Movants have a case in Texas challenging the DOL's AO as to the same plans to which Defendants provide vital services only justifies intervention. At the very least, a common question of law or fact is involved between

all parties, which is the DOL's scrutiny of Movants and its vendors as it relates to ERISA. The Court further failed to acknowledge the connection the DOL itself created between the parties and Movants through settlement negotiations and its linking of the Texas Suit. The District Court was required to consider and reach a decision based on facts relevant to intervention. The District Court's focus on other factors is an abuse of discretion, and Movants are likely to prevail on appeal.

B. Movants Satisfy the Other Three Factors in Support of a Stay.

If discovery and/or trial proceeds without Movants and then this Court determines that Movants may participate in the PR action, the potential duplication of lawsuits and a waste of time and efficiency for both the Court and the parties will harm all parties. *See W. Energy All. v. Jewell*, 2017 WL 3588648, at *12 (D.N.M. Mar 1, 2017). Ultimately, a stay will preserve the important issues in this case and preclude further district court proceedings until this Court determines whether Movants will be participating in the PR action. Thus, the nature of the issues on appeal and the balance of the equities weigh in favor of granting a stay.

Ultimately, the PR Action is part of the DOL's plan to dismantle a lawful ERISA plan sponsored by the Movants that they were unsuccessful in derailing through its Advisory Opinion and in the Texas Suit. The PR Action is inextricably intertwined with the AO Request, the Advisory Opinion, and the Texas Suit, which

is why Movants seek to intervene in the PR Action. Movants' irreparable injury is not imagined or speculative.

Typically, an intervenor need only make "a minimal showing that the representation afforded by an existing party *may* prove inadequate." *Aspen Am. Ins. Co. v. Luquis-Gaudalupe*, No. CV 24-01277, 2024 WL 4456954, at *2 (D.P.R. Oct. 10, 2024). This may include that Movants will add a missing element to the defense in the main action or that an existing party is unlikely to advance a particular argument. *See T Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 40 (1st Circ. 2020). Without Movants' involvement, for example, the Secretary may limit factual findings to Employer Plans even though the relief sought would significantly impact the limited partnership plans and Defendants may not feel it prudent to defend aspects of the DOL's allegations that pertain chiefly to the Movants, such as the Advisory Opinion and the joint settlement negotiations. Ultimately, the Defendants have other clients and continue to do business without Movants while Movants would not be able to continue to operate their plans without Defendants. Thus, it is not clear that Defendants' representation will be adequate here.

CONCLUSION

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

Respectfully submitted,

/s/ Alberto J. Bayouth-Montes
Alberto J. Bayouth-Montes
O'NEILL & BORGES LLC
250 Munoz Rivera Avenue, Suite 800
San Juan, PR 00918-1813
787-282-5708
alberto.bayouth@oneillborges.com

Counsel for Interested Parties – Appellants, Data Marketing Partnership, LP and LP Management Services, LLC

/s/ Lisa Carney Eldridge
Lisa Carney Eldridge
CLARK HILL PLC
2001 Market Street, Suite 2620
Two Commerce Square
Philadelphia, PA 19103
215-640-8514
leldridge@clarkhill.com

Counsel for Interested Parties – Appellants, Data Marketing Partnership, LP and LP Management Services, LLC

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing reply complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because the reply brief contains 2548 words. The reply brief complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5) and (6) because it has been prepared using Microsoft Word for Office 365 in proportionally spaced 14-point Times New Roman typeface.

/s/ Lisa Carney Eldridge
Lisa Carney Eldridge

CERTIFICATE OF SERVICE

I, Lisa Carney Eldridge, hereby certify that on December 22, 2025, I caused this document to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the Court's appellate CM/ECF system. Plaintiff/Appellee's counsel is a registered CM/ECF user and will be served via the Notice of Docket Activity through the Court's CM/ECF system.

/s/ Lisa Carney Eldridge
Lisa Carney Eldridge