# 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

## BRIEF FOR INTERESTED PARTIES-APPELLANTS


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## CORPORATE DISCLOSURE STATEMENT

Interested Party-Appellant Data Marketing Partnership, LP ("DMP") is a limited partnership with no parent company. There is no publicly held company that has any interest in DMP.

Interested Party-Appellant LP Management Services, LLC ("LPMS") is wholly-owned by American Marketing Partners, LLC. There is no publicly held corporation that owns 10% or more of its stock**.**

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## INTRODUCTION

Data Marketing Partnership, LP ("DMP") and LP Management Services ("LPMS") (collectively, "Intervenors") appeal the District Court's denial of their motion to intervene in the underlying action brought by the Department of Labor ("DOL")[1] against Suffolk Administrative Service, LLC, Providence Insurance Company, I.I., Alex Renfro, William Bryan, and Arjan Zieger (collectively, "Defendants"), because the District Court abused its discretion by failing to even address, much less properly consider, the factors for intervention as of right. The District Court improperly took a very narrow view of the case below, ignoring the big picture and the potential for devastating consequences to Intervenors' business interests—including the 30,000 people that utilize their health plans—should the DOL succeed in its claims here against Defendants. This is exactly the type of business interest and adverse effect that intervention is meant to address.

The relevant big picture is that Intervenors have long been litigating with the DOL over whether their single employer employee welfare plans ("Partnership Plans") were qualified under the Employee Retirement Income Security Act ("ERISA").[2] That piece of the puzzle is happening in the District Court for the

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[1] DOL Secretary Lori Chavez-Demerer is the Plaintiff-Appellee. The official caption of this case inadvertently dropped the last letter of her last name.

[2] The Partnership Plans are a type of limited partnership where limited partners install software on their personal phones to track their use of data, and that electronic data is then sold to third-party marketing firms. (JA491–493).

Northern District of Texas[3] and the Fifth Circuit, wherein Intervenors successfully overturned as "arbitrary and capricious" under the Administrative Procedures Act ("APA") and contrary to law under ERISA an unfavorable Advisory Opinion ("AO") from the DOL that Intervenors' Partnership Plans were not protected under ERISA. *See Data Mktg. P'ship, LP v. U.S. Dep't of Labor*, 490 F. Supp. 3d 1048, 1068 (N.D. Tex. 2020); *Data Mktg. P'ship, LP v. U.S. Dep't of Labor*, 45 F.4th 846, 855 (5th Cir. 2022).

Suffolk Administrative Service, LLC ("SAS") and Providence Insurance Company, I.I. ("PIC") (collectively, "Providence") are critical vendors of Intervenors' Partnership Plans. They provide the key components for compliance (SAS) and financial solvency (PIC), without which the Partnership Plans cannot operate. If Providence is enjoined from servicing any ERISA plans, it would effectively end healthcare coverage for approximately 30,000 individuals in the Partnership Plans.

The lawsuit below in the United States District Court for the District of Puerto Rico ("PR Suit") is effectively a collateral attack on Intervenors' Partnership Plans. The DOL initiated the PR Suit after it lost its primary attack to disqualify the Partnership Plans in the Texas Suit, and it only became aware of the important

[3] *Data Marketing Partnership, LP, et al. v. U.S. Dept. of Labor, et al*., No. 4:19-cv-00800-O (N.D. Tex.) ("Texas Suit").

vendor services that Defendants provide for the Partnership Plans as a direct result of Intervenors' request for the DOL to issue an Advisory Opinion ("Request for AO"). Almost immediately after the Request for AO, the DOL launched an investigation into Defendants (the "Anjo Investigation") that eventually resulted in the PR Suit.

The related nature of Intervenors' legal interests with that of Defendants was put in bold relief when, in response to the Texas Suit, the DOL sought "global settlement negotiations" that linked halting the Anjo Investigation against Defendants to Intervenors withdrawing their AO Request and dismissing the Texas Suit. Defendants were not parties to the Texas Suit, but through the AO Request the DOL knew that Intervenors' Partnership Plans could not operate without Defendants' services. When Intervenors refused to withdraw the AO Request or dismiss the Texas Suit, the DOL initiated the underlying PR Suit—the ultimate goal of which includes enjoining Defendants "from ever acting as a fiduciary, service provider, or trustee to *any* plan covered by Title I of ERISA." (JA41 ¶ 97) (emphasis added). The DOL's protestation that the PR Suit has nothing to do with Intervenors' Partnership Plans rings hollow when the relief requested would, if granted, cease operations of Intervenors' Partnership Plans.

Intervenors seek to intervene here and assert claims of retaliation against the DOL under the First Amendment for exercising their rights of petition through the

AO Request and Texas Suit and under the APA. In the underlying PR Suit, Defendants raise similar, though not identical, APA violation issues by way of their Affirmative Defenses. (JA44, JA57, JA70).[4]

The District Court abused its discretion and erred by refusing to allow Intervenors to intervene in the underlying lawsuit. The District Court's "discretion" is more circumscribed when Rule 24(a) is in play, as it is here. "Rule 24(a) considerably restricts the court's discretion whether to allow intervention of right by providing that [a party meeting the requirements of Rule 24(a)(1) or (2)] '*shall* be permitted to intervene.'" *Int'l Paper Co. v. Inhabitants of Town of Jay, Me.*, 887 F.2d 338, 344 (1st Cir. 1989) (alterations in original) (quoting *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 382 n.1 (1987)). The District Court's failure to specifically address the criteria to intervene as of right is an error sufficient to reverse its decision in and of itself. Even if this Court determined the District Court did analyze the relevant factors, the decision to deny intervention was an abuse of discretion.

The intervention as of right factors clearly support the right to intervene here because the motion was timely filed, Intervenors have direct financial interests in the outcome of this litigation, the disposal of the matter could impair Intervenors'

[4] The Affirmative Defenses refer, in part, to details set forth in Defendants' Counterclaims. (JA54–55; JA67–68; JA80–81). Those Counterclaims were amended and then dismissed (JA448; JA1380), but the Affirmative Defenses remain.

ability to protect this interest, and Defendants do not adequately represent Intervenors' interests. The District Court's decision to the contrary was arbitrary and capricious.

Alternatively, the District Court also erred by not granting permissive intervention. Courts have broad discretion to permit intervention where, as here, there are common questions of law and fact between Intervenors' claims and the main action, and where intervention will not unduly delay or prejudice the adjudication of the original parties' rights.

## STATEMENT OF JURISDICTION

The United States District Court for the District of Puerto Rico denied Intervenors' Motion to Intervene on August 14, 2025, which Intervenors timely appealed to this Court on September 12, 2025. This Court has jurisdiction under 28 U.S.C. § 1291 because "[t]he denial of intervention claimed as of right is immediately appealable[.]" *Cotter v. Mass. Ass'n of Minority L. Enf't Officers*, 219 F.3d 31, 33 (1st Cir. 2000) (citing *Flynn v. Hubbard*, 782 F.2d 1084, 1086 (1st Cir. 1986)).

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the District Court abuse its discretion in denying Intervenors' Motion to Intervene, where the District Court's Text Order denying intervention

does not address any of the factors relevant to mandatory intervention under Fed. R. Civ. P. 24(a)(2)?

2. Did the District Court abuse its limited discretion by denying intervention as of right to DMP and LPMS under Fed. R. Civ. P. 24(a)?

3. Did the District Court abuse its discretion by denying permissive intervention to DMP and LPMS under Fed. R. Civ. P. 24(b)?

## STATEMENT OF THE CASE

To understand the basis for the Motion to Intervene and the District Court's error in denying intervention, it is necessary to understand the complicated and interconnected nature of the facts and law underlying the PR Suit and the Texas Suit.

### I. THE TEXAS SUIT

Intervenors are the subject of a 2019 AO Request to the DOL confirming their Partnership Plans' protection under ERISA. (JA823 ¶ 1). 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. (JA837 ¶ 64). In the AO Request, LPMS sought to implement a Plan structure through limited partnerships for which LPMS would act as general partner and build upon the recognized concept of "working owners." (JA838 ¶ 69). The Attorneys' General of Louisiana, Arkansas, Georgia, Indiana, Nebraska, South Carolina, and Texas submitted a letter in support of the AO Request

finding it "well-reasoned and thorough" and providing a much-needed option for people who were priced out of the Affordable Care Act. (JA147).

The DOL only became aware of Defendants through the AO Request in which it describes a number of its third-party vendors. (JA139). The Anjo Investigation into Defendants was initiated by the DOL in April 2019. (JA400). That investigation did not conclude until July 2022 and settlement negotiations between the DOL and Defendants were ongoing until November 2024. (*Id*.) (*see* Section C, *infra*).

On January 24, 2020, the DOL set forth an adverse Advisory Opinion (AO) denying Intervenors' protection under ERISA for their Partnership Plans. (JA360; JA824 ¶ 1). As a result, on February 3, 2020, Intervenors filed an Amended Complaint against the DOL in the Texas Suit.[5] Both the Texas district court and the Fifth Circuit vacated the AO, finding it to be "arbitrary and capricious." (JA824 ¶ 1). Specifically, the Texas district court granted Intervenors' motion for summary judgment: (a) finding the DMP Plan to be a single employer ERISA plan; (b) vacating the DOL's Advisory Opinion as arbitrary and capricious, and in material conflict with previous DOL advisory opinion in violation of the APA, 5 U.S.C. § 706(2); and (c) enjoining the DOL "from refusing to recognize the ERISA-status of the [DMP] Plan or refusing to recognize the Limited Partners [of DMP] as working

[5] The Texas Suit was originally filed in 2019 prior to the AO being issued but the Amended Complaint filed in 2020 is the operative Complaint in the Texas Suit.

owners of DMP." *Data Mktg. P'ship*, 490 F. Supp. 3d at 1069; *see also* (JA121). On appeal, the Fifth Circuit affirmed the vacatur of the DOL's February 3, 2020 Advisory Opinion as arbitrary and capricious but vacated the injunction for further findings related to the injunction. *See Data Mktg. P'ship*, 45 F.4th at 855; *see also* (JA121).

## II. THE DOL EMBARKED ON THE "ANJO INVESTIGATION" AS ANOTHER MEANS TO TRY AND SHUT DOWN INTERVENORS' PARTNERSHIP PLANS

As mentioned earlier, in 2019, after Intervenors filed its AO Request, the DOL initiated the Anjo Investigation against Defendants. (JA824 ¶ 2). Throughout the duration of the Anjo Investigation, the DOL aggressively and systematically sought to discredit and dismantle the Partnership Plans. (JA838 ¶ 73). The DOL began requesting information and issuing subpoenas, targeting Defendants. (*Id.*). Shortly after opening the Anjo Investigation, the DOL issued numerous requests for information and subpoenas not only to Providence, but also to numerous entities doing business with Providence. (JA166; JA178; JA204; JA232; JA246; JA260; JA274; JA288; JA302; JA315; JA329; JA342). Subpoenas in the Anjo Investigation were also served on LPMS, undercutting once again the DOL's claim that Intervenors' Partnership Plans are not part of the PR Suit. (JA218). The subpoenas were issued despite the DOL having never posed a single written question or other formal response to the AO Request. (JA839 ¶ 74). The very existence of the Anjo

Investigation both frightened potential Partnership Plan vendors and dissuaded them from providing services to the Partnership Plans. (*Id.* ¶ 76). It also frightened potential vendors and partners from conducting business with Providence, both generally and with respect to Partnership Plans. (*Id.*). Additionally, existing vendors of Providence reduced or terminated relations with them as a result of the Anjo Investigation. (*Id.* ¶ 77).

## III. THE DOL PROPOSES GLOBAL SETTLEMENT NEGOTIATIONS REGARDING THE ANJO INVESTIGATION AND THE TEXAS SUIT

After July 21, 2022, Defendants were engaged in active settlement negotiations with the DOL. (JA840 ¶ 84; JA352–397). 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. (JA369; JA841 ¶ 89). That was later followed up by a global settlement proposal on April 26, 2024. (JA370).[6]

[6] Federal Rule of Evidence 408 provides that statements made during settlement negotiations are "inadmissible…. either to prove or disprove the validity or amount of a disputed claim or to impeach a prior inconsistent statement or a contradiction," but that a "court may admit this evidence for another purpose[.]" Fed. R. Evid. 408. Improper use of settlement negotiations to harass or extort another person or entity have been found to fall within the admissibility exception. *See Block v. Washington State Bar Ass'n*, 860 F. App'x 508, 510 (9th Cir. 2021) (settlement emails offered to prove pattern of harassment and not to prove or disprove validity or amount of disputed claim); *Collier v. Town of Harvard*, 1997 WL 33781338, at *3 n.10 (D. Mass. Mar. 28, 1997) (allowed where purpose is to show extortionate scheme).

The DOL proposed settlement terms which tied the targets of the Anjo Investigation, such as Providence, to Intervenors. (JA824 ¶ 3). Although the proposal would have allowed Providence to continue to offer vendor services to Intervenors' Partnership Plans and other ERISA plans, it was contingent upon the agreement of Intervenors to (a) withdraw their AO Request, and (b) dismiss the Texas Suit. (*Id.*). This occurred even though Defendants were not parties to the AO Request or the Texas Suit. (*Id.*). However, the DOL knew from the Texas Suit that the Partnership Plans cannot operate without Defendants' services, as no other vendors are willing to provide the complicated (and high risk judging from the Anjo Investigation) services that the Partnership Plans required in each state where they exist. (*Id.*).

On 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. (JA842 ¶ 92). On May 23, 2024, counsel for the DOL repeated that Intervenors needed to withdraw the AO Request and dismiss the Texas Suit as part of a settlement with Defendants. (JA842–843 ¶ 93). Counsel for the DOL stated that both matters would be settled together, or neither would be settled at all. (*Id.*). On May 28, 2024, counsel for the DOL stated that if Intervenors did not dismiss the Texas Suit, the DOL's monetary settlement demand as to Defendants would increase

from $5.5 million inclusive of penalties to $15 million inclusive of penalties, the last demand from the DOL before it tied its subsequent lawsuit to the settlement with Defendants. (JA843 ¶ 95). Intervenors declined to withdraw the AO Request or dismiss the Texas Suit, so the DOL filed the underlying PR Suit.

## IV. WHEN GLOBAL SETTLEMENT NEGOTIATIONS FAIL, THE DOL FILES THE PR SUIT AGAINST INTERVENORS' PRIMARY VENDORS

On November 5, 2024, the DOL filed the PR Suit against Intervenors' primary vendors alleging certain ERISA violations against them. (JA7; JA17). Providence markets, sells and services employer-sponsored health benefit plans governed by ERISA, including health plans for multiple limited partnerships, that the DOL admits in its Complaint are the subject of an AO that was challenged and vacated in the Texas Suit. (JA18 ¶ 2 n.1). While the DOL claims that "the limited partnership plans are not among the Participating Plans at issue in the Complaint" (*id*.), it expressly seeks relief "enjoining Defendants from acting as fiduciaries or service providers to ERISA-covered employee benefit plans in the future." (JA19–20 ¶ 7). If successful, the DOL will have effectively hurt Intervenors by enjoining the only vendors that can properly service Intervenors' unique Partnership Plans.

Defendants denied all allegations in their Answers (JA44; JA57; JA70) and raised various affirmative defenses, including that the DOL's actions are "arbitrary, capricious, an abuse of discretion, [and] not in accordance with law," in

contravention of the APA, 5 U.S.C. § 706(2)(A) among other defenses. (JA54 ¶ 7; JA67 ¶ 3; JA80 ¶ 3). They also sought to transfer venue to the Northern District of Texas—the same district in which the Texas Suit is pending. (JA83). In Defendants' words, the DOL "had inexorably intertwined this suit with" the Texas Suit. (*Id.* ¶ 1). Defendants further stated that "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 [DMP], whose general partners is [LPMS], and serviced by SAS and PIC." (JA84 ¶ 2). 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. (*Id*.).

Notably, Defendant Renfro served as legal counsel to LPMS when it submitted its Request for AO that its Partnership Plans are protected by ERISA. (JA84 ¶ 3; JA434). The DOL responded to the AO Request with an "unwarranted and retaliatory investigation of the vendors providing essential services to the Partnership Plans, including SAS and PIC ('Anjo Investigation'), which culminated in the [PR Suit]." (JA84–85 ¶ 3). It also issued an AO that the Partnership Plans are not protected by ERISA, which was later found to be arbitrary and capricious in the Texas Suit, and participated in "extortive" settlement demands in the Anjo

Investigation that were contingent upon Intervenors dismissing the Texas Suit and withdrawing the AO Request. (*Id.*). Defendants emphasized the interrelated nature of the facts that form the basis for their Affirmative Defenses and the then-pending (later dismissed) Counterclaims alleging violations of the APA and ERISA, and Intervenors' proposed Supplemental Complaint in the Texas Suit (*see infra*). That proposed Supplemental Complaint sought to allege violations of the First Amendment right of petition, the APA, and the inherent authority of the Texas district court to protect the integrity of its rulings based on the same general allegations of fact relating to the DOL's activities vis-à-vis Intervenors and Defendants. (JA85 ¶ 4).

As Defendants correctly pointed out in their attempt to transfer the PR Suit to Texas, the DOL "already connected this suit to the fate of the Texas suit." (JA85–86 ¶ 5). It was the DOL, not Defendants nor Intervenors, who first proposed "global settlement discussions" making settlement of the Anjo Investigation contingent upon dismissal of the Texas Suit and withdrawal of the AO Request. (*Id.*). The DOL admits that it "unsuccessfully sought settlement of all pending disputes with the DMP plaintiffs and their affiliates and vendors. These negotiations included SAS, PIC, and their principals." (JA433–434). In addition, Defendants believe that the underlying case is "directly related" to the Texas Suit by virtue of their roles providing services to the Partnership Plans. (JA91 ¶ 20).

As Defendants have aptly stated, "[this] case's existence is solely because the [DOL] followed through with its threats as part of its extortive global settlement tactics involving PIC, SAS, and two other non-parties." (JA398 ¶ 1). Defendants further call "disingenuous" the DOL's denial that the underlying action does not concern Intervenors' Partnership Plans that are the subject of the Texas Suit. (JA399 ¶ 3). "[F]unctionally 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." (*Id*.). Defendants further state that "ultimately, a suit in this court not only potentially jeopardizes the business of PIC and SAS, but threatens the viability of the Partnership Plans involved in the Texas DMP suit." (JA400 ¶ 4).

## V. INTERVENORS ATTEMPT TO FILE A SUPPLEMENTAL COMPLAINT IN TEXAS AND DEFENDANTS ATTEMPT TO TRANSFER THE PR SUIT TO THE NORTHERN DISTRICT OF TEXAS TO CONSOLIDATE IT WITH THE TEXAS SUIT BUT BOTH ATTEMPTS ARE DENIED

On November 25, 2024, Intervenors moved to file and serve a Supplemental Complaint in the Texas Suit (JA96) seeking relief from the DOL's actions against its primary vendors in the underlying PR Suit. That proposed Supplemental Complaint alleged that the viability of the DMP Plan and other limited partnership plans sponsored by Intervenors are dependent upon the vendor services provided by Defendants in the PR Suit. (JA98). It alleged that the DOL undertook an extortive

strategy that tied the continued fate of SAS and PIC to the Texas Suit. (*Id.*). When the DOL indicated willingness to settle the potentially financially and reputationally ruinous litigation against Providence in exchange for an agreement by Intervenors to (a) withdraw the AO Request, and (b) dismiss the Texas Suit, Intervenors refused. (*Id.*). The Supplemental Complaint sought to bring a First Amendment claim based on Intervenors' right to petition the Government to redress grievances as well as the Texas district court's inherent authority to issue injunction orders to be complied with by government agencies. (JA98–99). On April 8, 2025, the Texas district court denied Intervenors' motion for leave to file a Supplemental Complaint because it was "beyond the Court's power on remand" from the Fifth Circuit. (JA434–435).

On June 10, 2025, the district court in the underlying PR Suit denied Defendants' motion to transfer venue to Texas. (JA1167). Part of the reason for that denial was that the Texas court "recently denied [Intervenors'] 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." (JA1169). The district court acknowledged that "[a]lthough the cases may be loosely related . . . the [Texas Suit] involves wholly different claims, parties, and defenses than the ones raised in the case at bar." (JA1171).

## VI. INTERVENORS' BUSINESS INTEREST IN THE PARTNERSHIP PLANS IS IMPLICATED BY THE PR SUIT AND THEIR MOTION TO INTERVENE IN THE PR SUIT TO PROTECT THEIR INTERESTS IS DENIED

The PR Suit absolutely involves Intervenors' Partnership Plans despite the DOL's attempt to separate out those Partnership Plans. The DOL's Complaint in the PR Suit alleges that Providence constitutes a single multiple employer welfare arrangement ("MEWA") that includes plans sponsored by employers and limited partnerships such as those sponsored by Intervenors. (JA18 ¶ 2). These allegations relate to the operations of the MEWA as a whole, and not to specific plans administered by the alleged MEWA. Providence denies these allegations in whole, (JA44, JA57, JA70) but nonetheless it is clear that the PR Suit encompasses all plans serviced by Providence—including those at issue in the Texas Suit. (JA99–100; *see also* JA353 n.1) (letter from DOL dated July 21, 2022 claiming that SIS and PAC operate one MEWA and that the health plans sponsored by limited partnerships such as the ones at issue in the Texas Lawsuit "are not included in the DOL's analysis" but also admit the Partnership Plans "are part of the Providence MEWA alongside traditional employer-sponsored health plans.").

On June 9, 2025, Intervenors filed a Motion to Intervene in the underlying PR Suit with a proposed Complaint in Intervention. (JA12; JA808–1166 ¶¶ 1–124). As set forth in detail above, it is clear that the PR Suit is "inextricably intertwined" with the Request for AO, Advisory Opinion and the Texas Suit. (JA825 ¶ 4). Ultimately,

the win that Intervenors obtained in the Texas Suit—which vacated the DOL's AO relating to the Partnership Plans as "arbitrary and capricious"—can be rendered moot if the Partnership Plans are deprived of Defendants' vendor services that are necessary to continue their operations. (JA824–825 ¶¶ 3-4). As such, the DOL has been and is threatening the group health insurance of 30,000 individuals covered by the Partnership Plans and serviced by Defendants. (JA825 ¶ 5).

On August 11, 2025, the DOL opposed the Motion to Intervene. (JA13; JA1320). Just three days later, the District Court issued the following Text Order denying the Motion to Intervene:

> 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.

(ADD1–2; *see also* JA13).

## SUMMARY OF THE ARGUMENT

This Court should find that the district court abused its discretion in denying Intervenors' Motion to Intervene in the PR Suit for several reasons. First, the district court's denial of intervention was by way of a Text Order that does not address any of the factors pertinent to mandatory intervention under Rule 24(a)(2) (timeliness, related interest, potential jeopardized interests, inadequate representation); the Text Order merely shows that the district court denied intervention because the Texas Suit is different than the PR Suit. That the district court seemingly failed to consider any of the Rule 24(a)(2) factors for intervention is, in and of itself, an abuse of discretion that warrants reversal. *See Ewers v. Heron*, 419 F.3d 1, 2-3 (1st Cir. 2005) ("One way to show such an abuse of discretion is to show that the district court ignored the four pertinent legal criteria that one must meet in order to intervene under Fed.R.Civ.P. 24(a)(2)").

But even if this Court does not find that the district court's Text Order amounts to an abuse of discretion, it should nevertheless find that the district court abused its discretion in denying intervention as of right under Rule 24(a)(2) because Intervenors adequately demonstrated that they satisfied all of the Rule 24(a)(2) factors for mandatory intervention. Intervenors timely filed their Motion to Intervene shortly after learning that their interests were at risk, and also moved to intervene in the early stages of the PR Suit when no discovery had yet to be

exchanged and no substantive rulings had yet to be issued. Intervenors also have an interest in the outcome of the PR Suit because Defendants are the exclusive vendors of Intervenors' Partnership Plans, and the DOL's requested relief seeks to permanently enjoin Defendants from servicing any Title I ERISA plans—which, if granted, would enjoin Defendants from servicing the Partnership Plans. For this same reason, disposition of the PR Suit could absolutely affect Intervenors' ability to protect their interests. Finally, Defendants do not adequately represent Intervenors because they have a sufficiently different degree of interests at stake—Defendants have an interest in continuing to service all kinds of employee benefit plans and avoiding a forced turnover of its control of the Providence MEWA and Participating Plans to an Independent Fiduciary, whereas Intervenors only have an interest in Defendants' ability to continue servicing their Partnership Plans. Moreover, this difference in degrees of interest can diverge as the case progresses.

Lastly, this Court should find that the district court abused its discretion in failing to entertain Intervenors' alternative request for permissive intervention under Rule 24(b). The DOL entwined the facts between Intervenors and Defendants through its settlement negotiations, and after Intervenors refused to dismiss the Texas Suit the DOL initiated the PR Suit seeking to permanently enjoin Defendants from servicing any and all Title I ERISA Plans (which include Intervenors'

Partnership Plans). Common questions of fact and law thus exist because the DOL requests injunctive relief that would directly harm both Defendants and Intervenors.

## STANDARD OF REVIEW

Appellate courts review a district court's denial of a motion to intervene for an abuse of discretion. *See Negron-Almeda v. Santiago*, 528 F.3d 15, 21 (1st Cir. 2008). "[T]he abuse-of-discretion standard is not a monolith: within it, abstract legal rulings are scrutinized de novo, factual findings are assayed for clear error, and the degree of deference afforded to issues of law application waxes or wanes depending on the particular circumstances." *T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 38 (1st Cir. 2020) (citing *In re Efron*, 746 F.3d 30, 35 (1st Cir. 2014) and *Cotter*, 219 F.3d at 34); *see also R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7-8 (1st Cir. 2009) (citations omitted) ("[T]he abuse of discretion standard is not one-dimensional. Within that rubric, a material error of law constitutes a per se abuse of discretion, and a trial court's answers to abstract legal questions are reviewed de novo.").

While the abuse of discretion standard can be "relatively deferential," it is not "a rubber stamp, counseling affirmance of every discretionary decision made by a trial court." *Negron-Almeda*, 528 F.3d at 21. "[W]here, as here, the district court summarily denies a motion to intervene, the court of appeals must review the record as a whole to ascertain whether, on the facts at hand, the denial was within the

compass of the district court's discretion." *T-Mobile*, 969 F.3d at 38. "A district court may abuse its discretion if it fails to consider a significant factor in the decisional calculus, if it relies on an improper factor in working that calculus, or if it considers all the appropriate factors but makes a serious error in judgment as to their relative weight." *Torres–Rivera v. O'Neill–Cancel*, 524 F.3d 331, 335-36 (1st Cir. 2008). "Within this framework, an error of law is always tantamount to an abuse of discretion." *Id.* at 336.

## ARGUMENT

### I. THE DISTRICT COURT'S DENIAL OF INTERVENTION DID NOT ADDRESS ANY OF THE RULE 24(a)(2) FACTORS

To begin with, the District Court abused its discretion in denying intervention because, in its Text Order denying intervention, it did not address *any* of the factors pertinent to mandatory intervention under Rule 24(a)(2)—*i.e.*, whether (1) the Motion was timely filed; (2) Intervenors have an interest in the subject matter of the action; (3) the disposition of the action will threaten Intervenors' ability to protect their interests; and whether (4) any existing party adequately represents Intervenors' interests. *See B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 544-45 (1st Cir. 2006).

"[T]he phrasing of a court order is significant" because a "district court has less discretion to deny intervention as of right than is appropriate when permissive intervention is sought." *Negron-Almeda*, 528 F.3d at 23 (citations omitted);

*Conservation L. Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 41 (1st Cir. 1992). Therefore, "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." *Mosbacher*, 966 F.2d at 41 (citing *Int'l Paper Co.*, 887 F.2d at 343-44); *see also Torres–Rivera*, 524 F.3d at 335-36 ("A district court may abuse its discretion if it fails to consider a significant factor in the decisional calculus" or "relies on an improper factor in working that calculus"); *Ewers*, 419 F.3d at 2-3 ("One way to show such an abuse of discretion is to show that the district court ignored the four pertinent legal criteria that one must meet in order to intervene under Fed.R.Civ.P. 24(a)(2)."); *B. Fernandez*, 440 F.3d at 544 (citing *Pub. Serv. Co. of New Hampshire v. Patch*, 136 F.3d 197, 204 (1st Cir. 1998)) ("We will reverse if the district court committed a legal error, or if the court reaches a decision patently out-of-step with the purposes of Rule 24(a)(2)."); *Ungar v. Arafat*, 634 F.3d 46, 51 (1st Cir. 2011) (citing *Patch*, 136 F.3d at 204 and *Int'l Paper Co.*, 887 F.2d at 344) ("If the district court either fails to follow the general recipe provided in Rule 24(a)(2) or reaches a plainly incorrect decision, we will intrude."); *Am. C.L. Union of Minnesota v. Tarek ibn Ziyad Acad.*, 643 F.3d 1088, 1093 (8th Cir. 2011) (citing *Verizon Commc'ns, Inc. v. Inverizon Int'l, Inc.*, 295 F.3d 870, 873 (8th Cir. 2002)) ("The district court abuses its discretion when it fails to consider a relevant factor

that should have been given significant weight, considers an irrelevant or improper factor and gives it significant weight, or considers all the proper factors but commits a clear error of judgment in weighing those factors.").

All of the above authority supports an abuse of discretion finding here. Rather than issue a memorandum opinion and order assessing the Rule 24(a)(2) factors for intervention and explaining the reasons why it found intervention was not warranted, the District Court instead only entered the following Text Order:

> 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.

(ADD1–2; *see also* JA13). ***Nothing*** in this Text Order addresses, touches upon, or is even remotely related to the Rule 24(a)(2) factors for intervention; the District Court's denial of intervention was merely based on the fact that the Texas Suit "involve[s] different parties, wholly different claims, and harms" than the underlying

PR Suit. (*Ids.*). That the Text Order does not at all address the "four pertinent legal criteria that one must meet in order to intervene under Fed.R.Civ.P. 24(a)(2)" warrants an abuse of discretion finding. *Ewers*, 419 F.3d at 2-3; *see also Mosbacher*, 966 F.2d at 41; *B. Fernandez*, 440 F.3d at 544; *Ungar*, 634 F.3d at 51; *Patch*, 136 F.3d at 204; *Int'l Paper Co.*, 887 F.2d at 344.

## II. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING INTERVENTION AS OF RIGHT

Even if District Court's Text Order showed that it properly applied and considered the Rule 24(a)(2) factors in denying intervention, this Court should still find that the District Court abused its discretion in denying mandatory intervention as of right.

In order to intervene as of right, "[a] putative intervenor [] must show that (1) it timely moved to intervene; (2) it has an interest relating to the property or transaction that forms the basis of the ongoing suit; (3) the disposition of the action threatens to create a practical impediment to its ability to protects its interest; and (4) no existing party adequately represents its interests." *B. Fernandez*, 440 F.3d at 544–45 (citing *Patch*, 136 F.3d at 204). As shown below, Intervenors adequately demonstrated that they satisfied all of the Rule 24(a)(2) factors for mandatory intervention, and the District Court abused its discretion by seemingly failing to consider any of Intervenors' meritorious arguments for each factor.

### A. Intervenors' Intervention Motion Was Timely Filed

"A motion to intervene is timely if it is filed promptly after a person obtains actual or constructive notice that a pending case threatens to jeopardize his rights." *R & G Mortg.*, 584 F.3d at 8 (citing *Banco Popular v. Greenblatt*, 964 F.2d 1227, 1231 (1st Cir. 1992) and *Caterino v. Barry*, 922 F.2d 37, 40–41 (1st Cir. 1990)). But because timeliness "is inherently fact-sensitive and depends on the totality of the circumstances. . . . 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." *Id.* at 7 (citing *Greenblatt*, 964 F.2d at 1231).

"Perfect knowledge of the particulars of the pending litigation is not essential to start the clock running; knowledge of a measurable risk to one's rights is enough." *Id.* at 8 (citing *Greenblatt*, 964 F.2d at 1231 and *Culbreath v. Dukakis*, 630 F.2d 15, 20–21 (1st Cir. 1980)). Moreover, "[t]he passage of time is measured in relative, not absolute, terms." *Id.*; *see also Puerto Rico Tel. Co. v. Sistema de Retiro de los Empleados del Gobierno y la Judicatura*, 637 F.3d 10, 15 (1st Cir. 2011) (timeliness "is not measured, like a statute of limitations, in terms of specific units of time, but rather derives meaning from assessment of prejudice in the context of the particular

litigation."). "Thus, what may constitute reasonably prompt action in one situation may be unreasonably dilatory in another." *R & G Mortg.*, 584 F.3d at 8; *see also Puerto Rico Tel. Co.*, 637 F.3d at 15 (collecting cases). Importantly, "the timeliness requirement is often applied less strictly with respect to intervention as of right." *R & G Mortg.*, 584 F.3d at 8.

Here, the district court abused its discretion in denying intervention because it seemingly did not at all assess or consider the timeliness factor in rendering its decision. *See* Section I, *supra*. If it had, it should have found that Intervenors sufficiently demonstrated their motion to intervene was timely. Intervenors moved to intervene shortly after learning that their interests were at risk—*i.e.*, upon the district court's denial of their Motion for Leave to File Supplemental Complaint was denied in the Texas Suit. (JA814). Intervenors also moved to intervene "in the very early stages of this suit" when "no discovery ha[d] been exchanged" and "no court orders or substantive rulings ha[d] yet been issued" (*id.*)—*i.e.*, when the prejudice to the existing parties was marginal at best. *See Geiger v. Foley Hoag LLP Ret. Plan*, 521 F.3d 60, 64–65 (1st Cir. 2008) (intervention motion was timely where "the case had not progressed beyond the initial stages when the motion was filed. . . . In the absence of any discovery or substantive legal progress, we cannot say the litigation was in any way at an 'advanced stage.'"); *cf. R & G Mortg.*, 584 F.3d at 9 (emphasis added) ("One of the core purposes of the timeliness requirement is to

prevent disruptive, *late-stage* intervention"). Moreover, the DOL never meaningfully disputed timeliness; rather, in opposing intervention, it merely used the timeliness factor as an opportunity to further factually distinguish this case from the Texas Suit. (JA1330–1331).

### B. Intervenors Have an Interest in the Outcome of This Action

"An intervenor has a sufficient interest in the subject of the litigation where the intervenor's contractual rights may be affected by a proposed remedy." *B. Fernandez*, 440 F.3d at 545 (citing *Forest Conserv. Council v. United States Forest Serv.*, 66 F.3d 1489, 1495 (9th Cir. 1995) and *Harris v. Pernsley*, 820 F.2d 592, 601 (3d Cir. 1987)). Similarly, "[a] moving party may satisfy the interest requirement with a showing that . . . the litigation directly threatens '[p]otential economic harm' or 'an economic right or benefit presently enjoyed by any would-be intervenor[.]'" *Allco Renewable Energy Ltd. v. Haaland*, 2022 WL 18033002, at *4 (D. Mass. Jan. 7, 2022), *aff'd sub nom.*, 100 F.4th 21 (1st Cir. 2024) (quoting *Patch*, 136 F.3d at 205).

Indeed, courts have found that intervenors satisfy the interest requirement where an intervenor has some form of contractual agreement with the defendant in the case, and a proposed injunctive remedy would, if granted, directly affect a right or benefit that the contractual agreement provides to the intervenor. In *B. Fernandez*, this Court found that the "appellees' proposed remedy—an injunction requiring

specific performance of the agreements—obviously would affect [the intervenor]'s asserted contractual rights" because "an injunction specifically enforcing the agreements would surely limit its opportunity to terminate or alter its future business relationship with appellees." 440 F.3d at 545.

In *Cabot LNG Corp. v. Puerto Rico Elec. Power Auth.*, a case in which the plaintiff "attack[ed] the validity of the selection process employed by [the defendant] which ultimately developed into electric power purchase contracts with" the intervenors, the district court likewise found the interest requirement was satisfied. 162 F.R.D. 427, 430 (D.P.R. 1995). Notably, the plaintiff's opposition arguments are similar to those asserted by the DOL here—that the intervenors' interests were merely "contingent" because the "core dispute" was more broadly about whether the defendant was required to "employ competitive bidding to purchase electric power," and the intervenors' contracts with the defendant were only "incidental to that dispute." *Id.* The district court rejected the plaintiff's arguments and explained that the intervenors "ha[d] a substantial interest in the subject matter of the action" because "injunctive relief [wa]s sought, not only to enjoin [the defendant] into compliance with the bidding requirements, but also prohibiting [the defendant] from entering into or performing under the [intervenors'] contracts, unless the bidding requirements are complied with." *Id.* Therefore, "[s]hould [the plaintiff]'s request

for relief be granted, both [intervenors'] economic interests in the contracts they have executed with [the defendant] would be adversely affected." *Id.*[7]

*B. Fernandez* and *Cabot* are both particularly instructive and should lead this Court to find that Intervenors have satisfied the interest requirement here. Like in *B. Fernandez* and *Cabot*, Defendants have contracted with Intervenors to serve as the vendor that services Intervenors' Partnership Plans. (JA815). Among the DOL's proposed injunctive remedies is a request to "[p]ermanently enjoin[] Defendants . . . from ever acting as a fiduciary, service provider, or trustee to *any plan* covered by Title I of ERISA[.]" (JA41 ¶ 97) (emphasis added). Intervenors thus have a direct interest in the outcome of this action because, if this requested injunctive relief is granted, Defendants would be permanently enjoined from servicing Intervenors' Partnership Plans. This is especially significant given that "[n]o other vendor to date has been willing to provide the services for the unique employee benefit plan structures managed and sponsored by" Intervenors; "Defendants are the only vendors willing and capable to service these plans." (JA815).

[7] *See also Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Allis-Chalmers Corp.*, 447 F. Supp. 766, 772 (E.D. Wis. 1978) ("Since the complaint draws into question the viability of an agreement to which Siemens-Allis is a party, I believe that Siemens-Allis may properly interpose 'an interest relating to the . . . transaction which is the subject of the action . . .' under Rule 24(a)(2).").

### C. Disposition of This Action Will Affect Intervenors' Ability to Protect Their Interests

"Intervention is appropriate as of right when the disposition of an action may impair or impede the applicant's cognizable interest." *In re Grand Jury Subpoena*, 274 F.3d 563, 570 (1st Cir. 2001) (citing Fed. R. Civ. P. 24(a)(2)). "[E]ven a small threat that the intervention applicants' [interests] could be jeopardized would be ample reason for finding that their ability to protect their interest 'may' be adversely affected." *Cotter*, 219 F.3d at 35.

Courts routinely find this factor is satisfied where the preceding factor (sufficient interest) has been satisfied. *See, e.g.*, *B. Fernandez*, 440 F.3d at 545 (holding that the "same rationale" for why the intervenor satisfied the interest requirement likewise supported a finding that the intervenor's interests "may be impaired by th[e] litigation" and explaining that "th[e] litigation could result . . . in an order directly affecting [the intervenor]'s contractual rights" was "more than sufficient to satisfy the 'practical impediment' requirement."); *see also id.* (citing *Daggett v. Comm. on Governmental Ethics & Election Practices*, 172 F.3d 104, 110–11 (1st Cir. 1999) (holding that the possibility that the litigation could end with an injunction adversely affecting intervenors' interests was adequate to satisfy this aspect of Rule 24(a)(2)); *Allco*, 2022 WL 18033002, at *4 (citing *Daggett*, 172 F.3d at 110–11) ("Having found Vineyard Wind has a sufficient interest at stake, it follows that this interest would be adversely affected should Plaintiffs in either

matter obtain the relief sought. Where the disposition of the case could result in a judicially enforceable order that adversely affects the would-be intervenor's significant interest, this requirement is satisfied."); *Cabot*, 162 F.R.D. at 430 (holding that the intervenors "compl[ied] with the third requirement for intervention as of right" because "if the injunctive relief sought by [the plaintiff] were to be granted, [the defendant] would be precluded from performing under the contracts and therefore, a preclusive effect would befall on both [intervenors].").[8]

Here, this Court should likewise find that Intervenors have satisfied the third requirement for intervention. As explained in Section II.B, *supra*, Intervenors have a significant interest in the outcome of this action because, if the DOL's injunctive relief is granted, then Defendants will be permanently enjoined from servicing Intervenors' Partnership Plans. That the ultimate disposition of this action could result in Intervenors losing the *only* vendor willing to service their Partnership Plans is precisely the kind of circumstance that should satisfy the third intervention requirement.

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[8] *See also Allis-Chalmers*, 447 F. Supp. at 772 (emphasis added) ("Since the complaint draws into question the viability of an agreement to which Siemens-Allis is a party, I believe that Siemens-Allis may properly interpose 'an interest relating to the . . . transaction which is the subject of the action . . .' under Rule 24(a) (2). *It is equally apparent that the eventual disposition of the action might impair Siemens-Allis' ability to protect its interest in the agreement which it has undertaken with Allis-Chalmers*.").

### D. Intervenors Are Not Adequately Represented by Any Named Party to This Action

"Typically, an intervenor need only make a 'minimal' showing that the representation afforded by a named party would prove inadequate. However, in cases where the intervenor's ultimate objective matches that of the named party, a rebuttable presumption of adequate representation applies." *B. Fernandez*, 440 F.3d at 545-46 (citations omitted). "[T]o overcome the presumption, the intervenor need only offer 'an adequate explanation as to why' it is not sufficiently represented by the named party." *Id.* at 546 (citing *Maine v. United States Fish & Wildlife Serv.*, 262 F.3d 13, 19 (1st Cir. 2001)). Where the intervenor has "a tangible and substantial stake in the outcome of th[e] case. . . . the burden on [the intervenor] to show inadequate representation is lighter than if its interest was 'thin and widely shared.'" *Id.* (citing *Daggett*, 172 F.3d at 113-14).

"[W]ithout a perfect identity of interests, a court must be very cautious in concluding that a litigant will serve as a proxy for an absent party." *Tell v. Trustees of Dartmouth Coll.*, 145 F.3d 417, 419 (1st Cir. 1998). Therefore, "[o]ne way for the intervenor to show inadequate representation is to demonstrate that its interests are sufficiently different *in kind* ***or*** *degree* from those of the named party." *B. Fernandez*, 440 F.3d at 546 (emphasis added) (citing *United Nuclear Corp. v. Cannon*, 696 F.2d 141, 144 (1st Cir. 1982)); *see also id.* (citing *Glancy v. Taubman*

*Cts., Inc.*, 373 F.3d 656, 675 (6th Cir. 2004) ("Asymmetry in the intensity . . . of interest can prevent a named party from representing the interests of the absentee.")).

Here, this Court should find that Intervenors are not adequately represented by Defendants because they have sufficiently different degrees of interest. While Defendants have an interest in avoiding all of the requested injunctive relief in this action, Intervenors have a far *lesser* degree of interest—they only have an interest in avoiding the injunctive relief that would permanently enjoin Defendants from "ever acting as a fiduciary, service provider, or trustee to any plan covered by Title I of ERISA[.]" (JA41 ¶ 97). Otherwise put, while Defendants have an interest in continuing to service all kinds of employee benefit plans and avoiding a forced turnover of its control of the Providence MEWA and Participating Plans to an Independent Fiduciary (*see* JA38–42 ¶¶ 88-100), Intervenors only have an interest in Defendants' ability to continue servicing Intervenors' Partnership Plans. This difference in degree of interest "certainly ha[s] the potential for divergence"[9] as the case progresses; for example, "[s]ettlement negotiations may prove more favorable to both the 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." (JA818).

[9] *Allis-Chalmers*, 447 F. Supp. at 772-73.

## III. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING PERMISSIVE INTERVENTION

Alternatively, this Court should find that the District Court abused its discretion by wholly failing to consider whether Intervenors were entitled to permissively intervene pursuant to Rule 24(b).[10]

Under Rule 24(b), "[o]n timely motion[] the 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). "[A] district court can consider almost any factor rationally relevant" in its determination to allow permissive intervention. *Daggett*, 172 F.3d at 113. "The fact that the applicants may be helpful in fully developing the case is a reasonable consideration in deciding on permissive intervention." *Id.* (citation omitted).

Here, the District Court abused its discretion by failing to consider Intervenors' alternative argument to permissively intervene pursuant to Rule 24(b). Intervenors' claims are factually and legally related to the PR Suit, as Defendants are the primary vendors that service Intervenors' Partnership Plans, and a ruling in the DOL's favor would permanently enjoin Defendants from servicing those Partnership Plans. (JA815). Without Defendants' services, Intervenors' Partnership Plans may well have to end. Therefore, Intervenors' claims—such as defending their

[10] Intervenors moved to intervene in the District Court pursuant to Rule 24(a) and, alternatively, Rule 24(b). (JA819).

Partnership Plans—are directly related to the PR Suit because its resolution directly affects their protectable business interest in continuing to provide their Partnership Plans to 30,000 participants.

Dismantling the Partnership Plans has been part of the DOL's goal all along. The DOL only initiated the Anjo Investigation of Defendants in retaliation against Intervenors. (JA824 ¶ 2). Throughout the duration of the Anjo Investigation, the DOL aggressively and systematically sought to discredit and dismantle Intervenors' Partnership Plans. (JA838 ¶ 73). The DOL served subpoenas on Defendants, such as Providence, as well as other entities doing business with Providence. (JA838–839 ¶ 74; JA166; JA178; JA204; JA232; JA246; JA260; JA274; JA288; JA302; JA315; JA329; JA342). Subpoenas in the Anjo Investigation were also served on LPMS, undercutting once again the DOL's claim that Intervenors' Partnership Plans are not part of the PR Suit. (JA218). The Anjo Investigation has resulted in dissuading (albeit, frightening) all other potential Partnership Plan vendors and partners from providing services to the Partnership Plans and conducting business with Defendants. (JA815). The DOL's proposed "global" settlement terms, which tied the targets of the Anjo Investigation, such as Providence, to Intervenors made it all the more obvious that the DOL has been planning to eliminate Intervenors' Partnership Plans all along. (JA824 ¶ 3). Thus, Intervenors' claims undoubtedly share common questions of both law and fact with the underlying PR Suit.

Moreover, even if this Court does not find that Intervenors have satisfied all of the requirements for mandatory intervention, it should nevertheless grant permissive intervention because Intervenors seek to defend interests that will otherwise go unprotected in the PR Suit. No existing party to the underlying action adequately represents Intervenors' interests. Intervenors are not adequately represented by Defendants because Defendants have an interest in continuing to service all kinds of employee benefit plans, while Intervenors only have an interest in Defendants' ability to continue servicing *Intervenors'* Partnership Plans. Therefore, while Defendants' and Intervenors' interests are unquestionably related, they will eventually diverge. *See* Section II.D, *supra*. In addition, there is a significant risk that the parties to the PR Suit may terminate the action by means of settlement that "may prove more favorable to both [the 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." (JA818). Intervenors' participation in the PR Suit eliminates this risk.

## CONCLUSION

For all the foregoing reasons, this Court should reverse the District Court's denial of Intervenors' Motion to Intervene and remand the case for further proceedings.

Dated: February 26, 2026

Respectfully Submitted,

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## CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limit,
Typeface Requirements, and Type-Style Requirements

1. This Opening Brief complies with the word limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 8,841 words.

2. This Opening Brief 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 it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman.

Dated: February 26, 2026

*/s/ Lisa Carney Eldridge*
Lisa Carney Eldridge

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

## CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing Appellants' Opening Brief 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 26, 2026

*/s/ Lisa Carney Eldridge*
Lisa Carney Eldridge

# ADDENDUM

## ADDENDUM TABLE OF CONTENTS

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**Sent:** Thursday, August 14, 2025 11:19 AM
**To:** prd_docketing@prd.uscourts.gov
**Subject:** Activity in Case 3:24-cv-01512-CVR Chavez-Demerer v. Suffolk Administrative Services, LLC. et al Order on Motion to Intervene



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**District of Puerto Rico**

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**Filer:**
**Document Number:** 63(No document attached)

**Docket Text:**
**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)**

**3:24-cv-01512-CVR Notice has been electronically mailed to:**

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