No. 25-1886

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

KEITH E. SONDERLING, Acting 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,

and

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

Interested Parties–Appellants.

On appeal from the United States District Court
for the District of Puerto Rico
The Honorable Camille L. Velez-Rive
No. 3:24-cv-01512-CVR

INTERESTED PARTIES–APPELLANTS' REPLY BRIEF

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INTRODUCTION

The district court failed to address the Rule 24(a) factors for intervention as of right when it denied the motion to intervene filed by Data Marketing Partnership, LP ("DMP") and LP Management Services ("LPMS") (collectively, "Intervenors"), and for that very straightforward reason its Order should be reversed. The summary reasons provided for denying intervention by the district court in its Text Order are wholly unrelated to the Rule 24(a)(2) factors that courts must consider when determining intervention as of right. Even if this Court does not reverse based on the district court's failure to address the Rule 24(a)(2) factors, a review of those factors makes clear that the district court's decision to deny intervention was an abuse of discretion. That analysis is set forth at length in Intervenors' Opening Brief (cited herein as "Int. Br.").

In its Response Brief,[1] the Department of Labor ("DOL") attempts to argue that Intervenors' interest in the underlying lawsuit is insufficient to support intervention. However, an intervenor has a sufficient interest in the subject of the litigation where the intervenor's contractual rights or interests may be affected by a proposed remedy. While the DOL claims the underlying suit has nothing to do with Intervenors' Partnership Plans, the injunctive relief that the DOL seeks goes well beyond the Employer Plans that are the purported subject of the litigation; if the

[1] The DOL's brief is cited herein as "DOL Br."

district court ultimately grants the DOL's requested injunctive relief, it would enjoin Defendants from servicing Intervenors' Partnership Plans and the 30,000 plus people who receive healthcare under those plans. That interest is sufficient under First Circuit and other federal case law to warrant intervention as of right.

ARGUMENT

I. THE DISTRICT COURT'S TEXT ORDER DENYING INTERVENTION DID NOT ADDRESS ANY OF THE RULE 24(a)(2) FACTORS AND IS AN ABUSE OF DISCRETION

In attempting to dispute Intervenors' first argument regarding the district court's wholly deficient Text Order, the DOL actually *confirms* that the Text Order fails to address all of the Rule 24(a)(2) factors for intervention. *See* DOL Br. at 14. Such a failure, as the DOL readily admits, warrants reversal. *See id.* at 13 (quoting *Pub. Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 204 (1st Cir. 1998)) ("A district court's 'denial of a motion to intervene as of right' should only be reversed 'if the court fails to apply the general standard provided by the text of Rule 24(a)(2), or if the court reaches a decision that so fails to comport with that standard as to indicate an abuse of discretion.'"); *see also* Int. Br. at 21-23 (collecting cases).

Contrary to the DOL's assertion, Intervenors did *not* "argue at the outset that the district court abused its discretion because it denied their motion in a text order." DOL Br. at 13. Rather, Intervenors assert that the *contents* of the Text Order show that the district court abused its discretion, because "[n]othing in th[e] Text Order

addresses, touches upon, or is even remotely related to the Rule 24(a)(2) factors for intervention." Int. Br. at 23. It is of no importance that the Text Order "provided explicit reasons for denying Movants' motion to intervene" as the DOL points out (DOL Br. at 14), because those "explicit reasons" have nothing to do with the Rule 24(a)(2) factors for intervention. *See* Int. Br. at 23 (quoting Text Order in full).

As both parties have noted, the Rule 24(a)(2) factors for intervention assess (1) the timeliness of the intervention motion, (2) the intervenor's interest in the subject matter of the action, (3) whether the disposition of the action will threaten the intervenor's ability to protect its interests, and (4) whether any existing party to the action adequately represents the intervenor's interests. *See* Int. Br. at 21 (citing *B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 544-45 (1st Cir. 2006)); DOL Br. at 12 (citing *T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 39 (1st Cir. 2020)). It is thus completely absurd for the DOL to suggest that the district court's finding "that [Intervenors]' proposed claims are not directly related to the Secretary's allegations of 'violations to fiduciary duties of ERISA plans' by Defendants[,]" and that the Texas Suit and PR Suit "'involve different parties, wholly different claims, and harms'"[2] somehow address the Rule 24(a)(2) factors for intervention, when *none* of the 24(a)(2) factors involve a bare assessment of

[2] DOL Br. at 14 (quoting JA13).

similarities between two cases or the proposed claims intervenors seek to assert upon their intervention.

Accordingly, this Court can—and should—reverse the district court's denial of intervention because the Text Order itself demonstrates that the district court "fail[ed] to apply the general standard provided by Federal Rule of Civil Procedure 24(a)(2)[.]" *Conservation L. Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 41 (1st Cir. 1992); *see also* Int. Br. at 22-23 (citing *Torres–Rivera v. O'Neill–Cancel*, 524 F.3d 331, 335-36 (1st Cir. 2008); *Ewers v. Heron*, 419 F.3d 1, 2-3 (1st Cir. 2005); *B. Fernandez*, 440 F.3d at 544; *Ungar v. Arafat*, 634 F.3d 46, 51 (1st Cir. 2011); *Am. C.L. Union of Minnesota v. Tarek ibn Ziyad Acad.*, 643 F.3d 1088, 1093 (8th Cir. 2011)).

II. EVEN IF THE DISTRICT COURT'S FAILURE TO APPLY RULE 24(a)(2) FACTORS IS NOT A *PER SE* ABUSE OF DISCRETION WARRANTING REVERSAL, INTERVENORS HAVE AN INTEREST IN THE OUTCOME OF THE UNDERLYING ACTION THAT MAY BE IMPAIRED WITHOUT INTERVENTION

Intervenors set forth at length in their Opening Brief why they qualify to intervene as of right under Rule 24(a) and will not reiterate that here. *See* Int. Br. at 24-33. Instead, Intervenors respond to the crux of the DOL's argument in its Response Brief—that Intervenors' "interest" is not sufficient for intervention. *See* DOL Br. at 15-24. For the reasons below, that argument is incorrect.

A. The Injunctive Relief Sought by the DOL Can Adversely Affect Intervenors' Interests

The DOL does not dispute that Defendants in the underlying case service Intervenors' Partnership Plans, or that those Partnership Plans currently provide healthcare services to over 30,000 people. Rather, the DOL claims that because there are no contract claims in the underlying litigation, that Intervenors' contractual relationship with Defendants, and the potential impact on those contracts by the remedy sought by the DOL in the action below, is not "sufficiently related" to the underlying action to warrant intervention. *See* DOL Br. at 15-20.

However, in the context of intervention, courts not only consider whether there is an overlap in interest on the merits of the claims, but also whether the remedy sought can affect the proposed intervenors' rights. *See, e.g.*, *B. Fernandez*, 440 F.3d at 545 (citing *Forest Conserv. Council v. United States Forest Serv.*, 66 F.3d 1489, 1495 (9th Cir. 1995)) (holding distributor could intervene as of right in lawsuit brought by dealers against cereal manufacturer as injunctive relief required specific performance of a contract that could bind the intervenor, a party to distribution contracts); *Forest Conserv.*, 66 F.3d at 1495, *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (for purposes of intervention analysis "the subject of the action" includes the injunctive relief sought not just the liability or merits portion of the complaint); *Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994) (holding that timber purchasers and processors may

intervene as of right in law suit by Sierra Club again local government agencies for alleged environmental violations because they "have legally protectable property interests in existing timber contracts that are threatened by" the requested injunctive relief barring such sales); *Allco Renewable Energy Ltd. v. Haaland*, 2022 WL 1803302, at *4 (D. Mass. Jan. 7, 2022), *aff'd sub nom*, 100 F.4th 21 (1st Cir. 2024) (citations omitted) (proposed intervenor may satisfy "interest" requirement by showing that its "contractual rights may be affected by a proposed remedy" or where the litigation threatens "[p]otential economic harm" or "an economic right or benefit presently enjoyed by any would-be intervenor").

Here, the DOL seeks injunctive relief to "permanently enjoin[] Defendants … from ever acting as a fiduciary, service provider or trustee to *any* plan covered by Title I of ERISA" necessarily includes Intervenors' Partnership Plans. Int. Br. at 29 (quoting JA41 ¶ 97). The DOL's complaint also alleges that Defendant 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; *see also* JA 99-100; JA353 n.1) (acknowledging that the Partnership Plans "are part of the Providence MEWA alongside traditional employer-sponsored health plans). As such, Intervenors have an interest at stake that is sufficiently related to the underlying action.

The DOL attempts to distinguish this case from *B.Fernandez* on the basis that there is no contract at issue in the underlying case; that because the claims against Defendants are based on alleged breaches of ERISA and not a breach of contract, that Intervenors' contract rights with Defendants are not "related." *See* DOL Br. at 15-18. But *B Fernandez* and the cases it relies on are not so limited. *B. Fernandez* was not a common law contract action but was based on an alleged violation of Puerto Rico Law 75 (P.R. Laws Ann. tit. 10, § 278) prohibiting a principal from terminating without just cause a distribution agreement with its dealer and the dealers. Those dealers were seeking damages along with injunctive and declaratory relief under the law of the commonwealth. *See B. Fernandez*, 440 F.3d at 542.

The focus of this Court's analysis in *B. Fernandez* was not on whether the proposed intervenor had a similar claim under Puerto Rico Law 75 as the plaintiff dealers in the underlying action, but rather whether the litigation could result in an order "directly affecting [intervenor's] contractual rights. *Id*. at 545 (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 in receiving public campaign funds was adequate to satisfy the "practical" test of adverse effect that governs Rule 24(a)); *see also Cabot LNG Corp. v. Puerto Rico Elec. Power Auth.*, 162 F.R.D. 427, 430 (D.P.R. 1995) (losing party in competitive bid to provide power to

commonwealth challenged bidding procedure and sought injunctive relief; companies awarded bids allowed to intervene as of right because they had direct and substantial interest in the action and if injunction issued it might bar their performance under agreements).

The DOL's attempt to distinguish the interests in *Cabot* from those asserted here by Intervenors is unavailing. The *Cabot* court focused on whether the disposition of a case might impair or impede the potential intervenor's ability to protects its interests in practical terms. As the DOL seeks injunctive relief beyond the parties in the underlying action, the disposition of the underlying action would adversely impact Intervenors' contracts with Defendants and its ability to service Intervenors' Partnership Plans and the 30,000 members in those plans.

B. Intervenors' Interest is Not "Speculative"

The DOL also attempts to argue that Intervenors' interest in this action is "speculative" because the Secretary claims that it depends on Intervenors' success in the Texas Litigation. *See* DOL Br. at 18-20. Labeling Intervenors' interest as speculative is erroneous.

As set forth at length in Intervenors' Opening Brief, the DOL's 2020 advisory opinion that the Partnership Plans were not covered by ERISA was vacated as "arbitrary and capricious" by the District Court in the Northern District of Texas. *See* Int. Br. at 7-8; *Data Mktg. P'ship, LP v. US Dep't of Labor*, 490 F. Supp. 3d

1048, 1063-66 (N.D. Tex. 2020). The Fifth Circuit affirmed the vacatur of the DOL's advisory opinion but remanded the case on a narrow basis to perform further analysis and conduct fact discovery relating to the issue of whether the limited partners are "working owners" or "bona fide partners." *See Data Mktg. P'ship, LP v. US Dep't of Labor*, 45 F.4th 846, 858-59 (5th Cir. 2022). While the parties in the Texas Suit are currently enmeshed in discovery on the limited remand issue, the Partnership Plans are currently operating as ERISA plans, they are being serviced by Defendants and, unless and until something legally changes in the future, Intervenors have a valid interest in the outcome of the below litigation. Any argument to the contrary is speculative.

C. There is no Requirement that Intervenors Assert the Exact Same Claims as Defendants, So Long as They Stem from the Same Underlying Facts and Circumstances

The DOL claims that Intervenors' proposed complaint in intervention does not assert a "direct or protectable interest" in the subject of the action below because it seeks to assert claims under the Administrative Procedures Act and the First Amendment. *See* DOL Br. at 20 (citing JA845-850). The DOL then claims there is no "overlap" with this litigation, despite admitting that Defendants sought to assert similar APA and First Amendment retaliation claims in amended counterclaims that were recently dismissed, and also asserted similar claims in affirmative defenses that the DOL intends to also seek to dismiss. *See id.* at 20-21.

Whether or not those affirmative defenses remain in the case, the fact that Defendants asserted them makes clear that Intervenors' interests are part of the same underlying fact pattern. Moreover, the DOL cites to *no* cases in support of its assertion that there must be an identity of claims between Intervenors and the underlying action so long as there is a legitimate claim that Intervenors seek to protect. As set forth above, Intervenors clearly have a legitimate interest in the nature of the injunctive relief sought by the DOL that would threaten Intervenors' ability to continue providing the Partnership Plans to 30,000 members of those plans—which is sufficient to warrant intervention to protect those interests.[3]

III. ALTERNATIVELY, THE DISTRICT COURT ABUSED ITS DISCRETION IN FAILING TO CONSIDER WHETHER INTERVENORS WERE ENTITLED TO PERMISSIVE INTERVENTION UNDER RULE 24(b)

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). This is a "low threshold." *Tirrell v. Edelblut*, 2025 WL 1939965, at *3 (D.N.H. July 15, 2025) (quoting *Mass.*

[3] Rule 24(a)(2)'s timeliness and adequacy of representation requirements are discussed fully in Intervenor's Opening Brief. *See* Int. Br. at 25-27, 32-33. Those factors are highly fact sensitive. Intervenors sought to intervene here when they learned they could not transfer and consolidate this case in Texas or raise these issues in the Texas Suit due to the narrow nature of the remand. As for "adequacy of representation," there is not a perfect identity of interests between Defendants and Intervenors and no basis to believe that Defendants will serve as a full proxy for Intervenors and their Partnership Plans.

Food Ass'n v. Mass. Alcoholic Beverages Control Comm'n, 197 F.3d 560, 568 (1st Cir. 1999)). "[A] district court can consider almost any factor rationally relevant" in its determination to allow permissive intervention. *Daggett*, 172 F.3d at 113. One factor a court may consider is whether the proposed intervenor "may be helpful in fully developing the case." *Id.* (citation omitted).

Here, Intervenors clear the "low threshold" for permissive intervention under Rule 24(b). The Court should not be so convinced by the DOL's attempts to narrow the fact issues in the underlying case so as to suggest that it has nothing in common with the pending Texas Suit involving Intervenors' Partnership Plans. As set forth at length in their Opening Brief, Intervenors' claims undeniably share common questions of law or fact with the claims at issue in the underlying action: (1) the PR Action against Defendants came about as a result of information provided in the AO Request by Intervenors that is the basis for the Texas Suit; (2) the global settlement discussions with the DOL, Intervenors and Defendants fell apart when Intervenors declined the DOL's settlement terms that required withdrawal of the AO Request and dismissing the Texas Suit; (3) soon after Intervenors' refusal to settle, the DOL filed the PR Suit against Defendants; (4) Defendants asserted amended counterclaims (since dismissed) and affirmative defenses against the DOL that asserted violations of the APA and ERISA. *See* Int. Br. at 34-36.

The commonality of facts and interests shared between Intervenors and Defendants is also evidenced by Defendants' attempt to transfer the PR Suit to the Northern District of Texas—the same district in which the Texas Suit is pending—and asserted their belief that the PR Suit is "directly related" to the Texas Suit by virtue of their roles providing services to the Partnership Plans. (JA91 ¶ 20). Defendants aptly stated that "functionally the DOL's allegations implicate the exact same plans (single employer employee welfare benefit plans) and baselessly allege wrongdoing by PIC and SAS related to such plans, which by definition include the Partnership Plans." (*Id.*).

Rule 24(b)(1) requires that there is at least one common question of law or fact; it does not require that Intervenors' proposed arguments "entirely overlap with the existing parties' positions." *Tirrell*, 2025 WL 1939965, at *3 n.5 (citing *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 577 (6th Cir. 2018)). Since the outcome of the PR Suit directly "threatens the viability of the Partnership Plans involved in the Texas DMP suit" (JA400 ¶ 4), the DOL's assertion that Intervenors' claims are "many (speculative) steps removed"[4] from the ramifications of the PR Suit fails to consider that permissive intervention does not require direct overlap of *every* argument, claim, or defense.

[4] DOL Br. at 31.

Likewise, permitting Intervenors to intervene will not "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). Despite the PR Suit being initiated in November 2024, the action remains at the early stages of litigation. Given the procedural posture of the PR Suit, permissive intervention by Intervenors would not unduly delay the resolution of the action or prejudice the parties' rights—and most definitely would not cause "significant delays" or "impact[] more than 1,900 ERISA-covered plans" as the DOL suggests. DOL Br. at 32. Intervenors' participation in the PR Suit would help the parties fully develop the record and assist in reaching a fair resolution of the underlying dispute.

CONCLUSION

For the foregoing reasons as well as those set forth in Intervenors' Opening Brief, this Court should reverse the district court's denial of Intervenors' Motion to Intervene and remand the case for further proceedings.

Dated: May 20, 2026

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limit,
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1. This Reply Brief complies with the word limit of Fed. R. App. P. 32(a)(7)(B)(ii) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 3,101 words.

2. This Reply 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: May 20, 2026

/s/ Lisa Carney Eldridge
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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' Reply 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: May 20, 2026

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