No. 25-1886

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

KEITH E. SONDERLING, ACTING SECRETARY OF LABOR,
U.S. DEPARTMENT OF LABOR, Plaintiff-Appellee,

v.

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

v.

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
Case No. 3:24-cv-01512
The Honorable Judge Camille L. Vélez-Rivé

BRIEF FOR THE U.S. SECRETARY OF LABOR

JONATHAN BERRY
Solicitor of Labor

WAYNE R. BERRY
Associate Solicitor
for Plan Benefits Security

ISIDRO MARISCAL
Counsel for Litigation

BLAIR L. BYRUM
SARAH D. HOLZ
JAMIE TROUTMAN
AUDREY KOONTZ
Trial Attorneys

U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
200 Constitution Ave. NW, N4611
Washington, DC 20210
202.693.5600 (t) | 202.693.5610 (f)

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STATEMENT OF JURISDICTION

The district court has jurisdiction over the underlying action pursuant to 28 U.S.C. § 1331. This Court has jurisdiction to review the district court's order denying a motion to intervene. *R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009).

STATEMENT OF THE ISSUES

Plaintiff-Appellee Keith E. Sonderling, Acting Secretary of Labor ("Secretary")[1] respectfully submits this brief in response to the appeal filed by Data Marketing Partnership, LP ("DMP") and LP Management Services, LLC ("LPMS") (collectively, "Movants") challenging the district court's order denying their motion to intervene in the Secretary's enforcement action below. As restated by the Secretary, the issues presented are:

1. Did the district court abuse its discretion in denying intervention as of right?

2. Did the district court abuse its discretion in denying permissive intervention?

[1] Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Acting Secretary Keith E. Sonderling is automatically substituted as Plaintiff-Appellee.

STATEMENT OF THE CASE

Congress conferred upon the Secretary the authority to enforce the strict fiduciary duties enshrined by Title I of the Employee Retirement Income Security Act ("ERISA"). *See* 29 U.S.C. §§ 1132(a)(2), (5) & 1109(a). Pursuant to this statutory authority, the Secretary filed the complaint in the action below, asserting ERISA violations against Defendants Suffolk Administrative Services, LLC ("SAS"), Providence Insurance Company, I.I. ("PIC"), and their officers and indirect owners Alexander Renfro, William Bryan, and Arjan Zieger. The Secretary alleges that Defendants have engaged in self-dealing and charged excessive fees to their ERISA plan clients to the detriment of thousands of participants and beneficiaries in those plans.

Movants broadly state that they seek to intervene in this case to defend against any relief that would enjoin Defendants from continuing to service health benefit plans that are sponsored by Movants. JA815; Br. Interested Parties-Appellants ("Br.") 19. But Movants' health plans are not the subject of the Secretary's claims in the action below. *See, e.g.*, JA18 (Compl. ¶ 2 n.1). And in contrast to Movants' proffered reason for intervention, Movants' proposed complaint in intervention alleges claims of retaliation against the Secretary. *See, e.g.*, JA830–JA849. Movants' proposed complaint alleges that the Secretary brought suit against Defendants to retaliate for a separate lawsuit that Movants

filed against the Secretary more than six years ago, *Data Marketing Partnership, LP v. U.S. Department of Labor*, No. 4:19-CV-00800-O (N.D. Tex.) ("*Data Marketing*" case). That case concerns whether the health benefit plans sponsored by Movants are covered by ERISA. *See* Am. Compl., *Data Mktg.*, No. 4:19-CV-00800-O (N.D. Tex. Feb. 3, 2020), ECF No. 9. It involves different claims and, except for the Secretary, entirely different parties than the action below. *Id.*

SAS and PIC provide services to more than 1,900 ERISA-covered, employer-sponsored health benefit plans, many of which are sponsored by small business owners across the country. JA18 (Compl. ¶ 2 n.1). While SAS and PIC also provide services to the health benefit plans sponsored by Movants, the Secretary's claims and requests for relief concern excessive fees that Defendants charge to employer-sponsored health benefit plans where ERISA coverage is not in question. *See id.* Neither Movants' proposed claims nor Movants' asserted interest in Defendants' ability to service Movants' plans has any bearing on whether Defendants violated ERISA with respect to the more than 1,900 ERISA-covered, employer-sponsored health benefit plans serviced by SAS and PIC.

A. Defendants

Defendants SAS and PIC are companies headquartered in Puerto Rico that provide services, including plan design and reinsurance, to health benefit plans, including more than 1,900 employer-sponsored health benefit plans governed by

ERISA ("Employer Plans"). JA17–JA24 (Compl. ¶¶ 1–7, 12–14, 26). Defendants Alexander Renfro, William Bryan, and Arjan Zieger are officers and indirect owners of SAS and PIC. JA20–JA23 (Compl. ¶¶ 10–20). On November 5, 2024, the Secretary filed a complaint alleging that Defendants "use [Employer Plans] as vehicles to collect and divert to themselves massive fees through self-dealing in violation of ERISA." JA17–JA18 (Compl. ¶¶ 1–2). Those fees are taken from the premiums paid by thousands of businesses and their employees who participate in the Employer Plans to access healthcare for themselves and their families. The Department of Labor ("Department") investigated Defendants prior to filing suit,[2] and this investigation provided the basis for the allegations in the Secretary's complaint. *See* JA930–JA1105 (investigative subpoenas issued in 2019 and 2020).

B. Movants

DMP and LPMS (DMP's general partner), the putative intervenors, are plaintiffs in the *Data Marketing* case. JA823–JA824 (Compl. Intervention ¶ 1). The *Data Marketing* case—filed in 2019 in the Northern District of Texas—relates to LPMS's request for an advisory opinion from the Department addressing whether ERISA applies to "Partnership Plans," which (according to the request) are health benefit plans sponsored by a type of "limited partnership" that recruits

[2] Movants refer to this investigation as the "Anjo Investigation." Br. 3. Anjo, LLC is a holding company that owned part of SAS and indirectly owned part of PIC. JA20–JA21 (Compl. ¶¶ 12–14).

"limited partners" to install software to collect electronic data from their personal devices as they utilize the Internet. JA853–JA854 (advisory opinion request). The advisory opinion request contends that the "primary business purpose and main source of revenue" of the limited partnership is the "sale to third-party marketing firms of electronic data generated by [limited partners]." JA854.

The Department issued an advisory opinion in 2020, concluding that the Partnership Plans described in the advisory opinion request are not covered by ERISA because there is no "genuine employment relationship" between the limited partnerships that sponsor the health plans and the limited partners that participate in the health plans. JA867 (advisory opinion).

That advisory opinion was subsequently vacated in the *Data Marketing* case. *Data Mktg. P'ship, LP v. U.S. Dep't of Labor*, 490 F. Supp. 3d 1048 (N.D. Tex. 2020). The district court concluded that, based on the description of the activities of the general partner (LPMS), the limited partnership (DMP), and the limited partners set forth in LPMS's advisory opinion request, the limited partners "are working owners and bona-fide partners, [such that] they may participate in a single employer welfare benefit plan." *Id.* at 1068. The terms "working owner" and "bona fide partner" relate to whether an individual constitutes an "employee" of a limited partnership (as opposed to a passive owner who may receive profit distributions but is not otherwise involved in business activities) and thus a "participant" under

ERISA. *Id.* at 1063–66. The district court vacated the advisory opinion as "arbitrary and capricious under the [Administrative Procedure Act ("APA")] and contrary to law under ERISA," and enjoined the Department "from refusing to acknowledge the ERISA-status" of the DMP plan. *Id.*

The Secretary appealed the district court's decision to the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit affirmed the district court's vacatur of the Department's advisory opinion, but it nevertheless found that the district court did not perform the correct analysis to conclude that the limited partners were indeed "working owners" or "bona fide partners" such that DMP's health plan qualified as an employee welfare benefit plan under ERISA. *Data Mktg. P'ship, LP v. U.S. Dep't of Labor*, 45 F.4th 846, 858–59 (5th Cir. 2022). The Fifth Circuit vacated the district court's injunction prohibiting the Department "from refusing to acknowledge the ERISA-status" of DMP's health plan, *id.* at 860, and remanded the case, asking the district court to address interpretative questions about the terms "working owner" and "bona fide partners." *Id.* at 858–59. Fact discovery relating to these issues is ongoing in the Northern District of Texas. *See* Order at 1, *Data Mktg.*, No. 4:19-CV-00800-O (N.D. Tex. Dec. 25, 2025), ECF No. 87; Order at 1, *Data Mktg.*, No. 4:19-CV-00800-O (N.D. Tex. Apr. 27, 2026), ECF No. 101.

SAS and PIC service the Partnership Plans sponsored by Movants, just as they service the more than 1,900 Employer Plans at issue in the Secretary's

complaint below in the District of Puerto Rico. Br. 2; JA18 (Compl. ¶ 2 n.1). The Secretary's suit does not allege any claims against Defendants with respect to the Partnership Plans. JA18 (Compl. ¶ 2 n.1).

C. Settlement Negotiations Involving Defendants and Movants

The Secretary engaged in more than two years of settlement negotiations with Defendants before filing the action below; with the exception of "global settlement discussions" which took place between February and June of 2024 and are described *infra*, these negotiations involved only Defendants. *See, e.g.*, JA1119–JA1124 (Secretary's July 21, 2022 findings letter initiating negotiations).[3]

In January 2024, while settlement negotiations with Defendants were ongoing, counsel for Movants (who was among the counsel representing Defendants in settlement negotiations with the Secretary) made an opening pitch to the Department's counsel in the *Data Marketing* case (an attorney with the U.S. Department of Justice) "to explore the possibility of settlement discussions." JA1130. Counsel for the Department responded in February 2024 with a request "to have a broader conversation" about the *Data Marketing* case and the Department's claims against Defendants. JA1134. Defendants, Movants, and the Secretary subsequently engaged in joint negotiations, during which time the

[3] Movants filed these confidential settlement communications as exhibits to their proposed complaint in intervention. *See* JA852–JA1150.

Secretary offered to reduce his monetary demand of Defendants and to close a separate investigation relating to another Partnership Plan, if Defendants agreed to significant injunctive relief and Movants dismissed the *Data Marketing* case. *See* JA1136–JA1141. These negotiations failed, the *Data Marketing* case continued on, and the Secretary resumed negotiations with Defendants alone after June 2024. *E.g.*, JA1163–JA1164 (noting that negotiations would resume with the Secretary's January 2024 demand, which was sent prior to the commencement of the joint settlement discussions). Those negotiations also fell through and the Secretary brought suit in November 2024. JA17.

D. Efforts to Connect the Action Below to the *Data Marketing* Case

Movants and Defendants alike have previously—and unsuccessfully—attempted to connect the action below to the *Data Marketing* case, even though the two lawsuits involve different claims and different parties.

Four days before the Secretary filed the action below (and more than five years after the *Data Marketing* complaint was filed), Movants sought leave to file a supplemental complaint in the *Data Marketing* case to bring claims against the Secretary under the APA and First Amendment, relating to the investigation that led to the action below. Mot. File Compl., *Data Mktg.*, No. 4:19-CV-00800-O (N.D. Tex. Nov. 1, 2024), ECF No. 66; Am. Mot. File Compl. at 3, *Data Mktg.*, No. 4:19-CV-00800-O (N.D. Tex. Nov. 25, 2024), ECF No. 69. The motion was

denied; the district court held that "the scope of [the *Data Marketing* case] is limited to the issues on remand from the Fifth Circuit." Order at 1, *Data Mktg.*, No. 4:19-CV-00800-O (N.D. Tex. Apr. 8, 2025), ECF No. 75.

Before that motion was decided, Defendants filed a motion to transfer the action below to the Northern District of Texas, where the *Data Marketing* case was pending. JA83. The district court below denied the transfer motion, noting that "the Data Marketing case involves wholly different claims, parties, and defenses than the ones raised in the case at bar." JA1171.

Defendants also filed amended counterclaims in the action below that were substantially similar to Movants' claims in the rejected supplemental complaint in the *Data Marketing* case (and Movants' proposed complaint in intervention below). Defendants asserted APA and First Amendment claims and alleged that the Secretary filed suit against Defendants in retaliation for their relationship with Movants. JA480–JA486. The district court dismissed the amended counterclaims, finding that Defendants asserted no valid APA or First Amendment claims.[4] JA1380–JA1407.

[4] Defendants also asserted their APA counterclaims as affirmative defenses. *See* JA54–JA55 (Affirmative Defenses of Renfro ¶¶ 7–10); JA67–JA68 (Affirmative Defenses of SAS and PIC ¶¶ 3–6); and JA80–JA81 (Affirmative Defenses of Bryan and Zieger ¶¶ 3–6). This is discussed further in the argument section below, I.A.2. n.8.

After the *Data Marketing* court denied Movants' motion for leave to file a supplemental complaint, Movants moved to intervene below. JA808. Movants proposed to bring "claims of retaliation against the DOL under the First Amendment . . . and [APA]" based on the settlement negotiations involving both Defendants and Movants. JA812.

The district court below denied Movants' motion to intervene, reasoning "[t]he 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," *i.e.*, not violations by Movants, the plaintiffs in *Data Marketing*. JA13. Movants appealed.[5] JA1341.

SUMMARY OF THE ARGUMENT

The district court did not abuse its discretion in denying Movants' motion to intervene. Movants do not identify an interest in the subject matter of this case: whether Defendants violate ERISA by engaging in self-dealing and by charging excessive fees taken from the premiums paid by businesses and employees who participate in the ERISA-covered Employer Plans.

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[5] Movants' motions to stay the proceedings below pending appeal were denied by both the district court and this Court, and the case has entered discovery. *See* Order Denying Mot. to Stay, *Sonderling v. Suffolk Admin. Servs.*, No. 3:24-CV-01512 (D.P.R. Sept. 29, 2025), ECF No. 75; Order of Court, *Sonderling v. Suffolk Admin. Servs.*, No. 25-1886 (1st Cir. Jan. 12, 2026), Doc. No. 00118389540; Case Management Order, *Sonderling v. Suffolk Admin. Servs.*, No. 3:24-CV-01512 (D.P.R. Feb. 13, 2026), ECF No. 87.

Movants assert that they have an interest in Defendants' continued ability to service their Partnership Plans because Defendants are the only vendors willing to do so. But this interest is not direct or protectable; Movants' appeals to their contractual relationship with Defendants bear no relationship to the Secretary's claims against Defendants for violating ERISA, and in any event, Movants make no arguments as to why Defendants cannot adequately defend against the alleged ERISA violations themselves.

Instead, Movants seek to bring entirely separate claims—similar to the dismissed counterclaims that Defendants already sought to add—alleging that the Secretary's suit against Defendants is in retaliation for the *Data Marketing* case brought by Movants. Courts routinely reject attempts by putative intervenors to unnecessarily widen the scope of pending litigation with unrelated claims. Moreover, the *Data Marketing* case and the litigation below are two separate lawsuits addressing different issues, and this reality is not changed by the fact that these cases were briefly the subject of a joint settlement negotiation with the Secretary.

Movants fail to meet their burden of establishing that each of the four requirements for intervention as of right are met. Thus, the district court correctly held that Movants did not make the necessary showing for intervention as of right

or permissive intervention where "the cases involve different parties, wholly different claims, and harms." JA13.

ARGUMENT

A district court's denial of a motion to intervene is reviewed for abuse of discretion. *See, e.g.*, *SEC v. LBRY, Inc.*, 26 F.4th 96, 98 (1st Cir. 2022); *T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 38 (1st Cir. 2020); *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 172 F.3d 104, 109 (1st Cir. 1999). Here, the district court did not abuse its discretion in denying Movants' motion for intervention as of right and permissive intervention.

I. The District Court Did Not Abuse Its Discretion in Denying Intervention as of Right.

Federal Rule of Civil Procedure 24(a)(2) provides that a court must permit anyone to intervene who, on timely motion, "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Accordingly, the First Circuit requires a putative intervenor to demonstrate "(1) the timeliness of [the] motion; (2) a concrete interest in the pending action; (3) 'a realistic threat' that resolution of the pending action will hinder . . . [the] ability to effectuate that interest; and (4) the absence of adequate representation by any existing party." *T-Mobile*, 969 F.3d at 39 (citing

R & G Mortg. Corp., 584 F.3d at 7). "It is black letter law that a failure to satisfy any one of these four requirements sounds the death knell for a motion to intervene as of right." *Id.*

When evaluating a district court's denial of a motion to intervene as of right, this Court must consider whether the district court "follow[ed] the general recipe provided in Rule 24(a)(2)." *Ungar v. Arafat*, 634 F.3d 46, 51 (1st Cir. 2011). 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.'" *Pub. Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 204 (1st Cir. 1998) (quoting *Int'l Paper Co. v. Inhabitants of Town of Jay, Me.*, 887 F.2d 338, 344 (1st Cir. 1989)).

Movants argue at the outset that the district court abused its discretion because it denied their motion in a text order. Br. 21–24. But courts are not required to issue verbose orders after evaluating motions to intervene. *See, e.g.*, *LBRY, Inc.*, 26 F.4th at 98 (affirming the one-sentence denial of a motion to intervene where the order simply stated that the motion was denied "for the reasons set forth in the [plaintiff's] response"); *Cotter v. Mass. Ass'n of Minority Law Enf't Officers*, 219 F.3d 31, 34 (1st Cir. 2000) (noting that it is not an abuse of discretion

to deny a Rule 24(a)(2) motion without making findings or giving reasons where the "findings or reasons can be reasonably inferred" from the record).

Moreover, though this Court has repeatedly affirmed summary denials of intervention, *T-Mobile*, 969 F.3d at 38, the district court here provided more than an unreasoned, conclusory disposition. Indeed, the district court provided explicit reasons for denying Movants' motion to intervene. The district court found that Movants' proposed claims are not directly related to the Secretary's allegations of "violations to fiduciary duties of ERISA plans" by Defendants. JA13. It further explained that the "Court has already ruled that besides the Secretary, the [*Data Marketing* case and this case] involve different parties, wholly different claims, and harms" and "are not the type of actions that would merit a finding in favor of intervention." *Id.* This ruling plainly sets forth the court's rationale for denying the motion beyond the mere one-sentence orders this Court has previously affirmed, and this ruling is clearly supported by the record. *See LBRY, Inc.*, 26 F.4th at 98; *Cotter*, 219 F.3d at 34. Moreover, Movants fail to establish that they satisfy any of the four factors necessary for intervention as of right, as discussed below. Accordingly, the district court did not abuse its discretion by issuing a succinct denial of Movants' motion to intervene.

A. Movants Do Not Establish a Direct, Protectable Interest.

"[A]n aspiring intervenor's claim 'must bear a sufficiently close relationship to the dispute between the original litigants.'" *Ungar*, 634 F.3d at 51 (quoting *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 638 (1st Cir. 1989)). "[T]he interest must be direct and 'significantly protectable.'" *Id.* (quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971)). "[A]n interest that is too contingent or speculative . . . cannot furnish a basis for intervention as of right." *Id.* Here, Movants' asserted interest in protecting their contractual agreements with Defendants is not sufficiently related to the subject of the litigation (whether Defendants have engaged in self-dealing and charged excessive fees to their ERISA plan clients). Likewise, the interests that Movants seek to assert in their proposed complaint in intervention are entirely distinct from the claims at issue in the action below.

1. Movants Assert Contractual Interests that Are Not Sufficiently Related to Any Issue in the Litigation.

Movants claim to have a sufficient interest in the subject of the litigation below by virtue of their contractual agreements with Defendants to service Movants' Partnership Plans. Specifically, Movants argue that their contractual agreements may be affected by the Secretary's proposed remedy seeking injunctive relief against Defendants. Br. 29. Movants' asserted interest falls short for many reasons.

To start, Movants primarily cite *B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541 (1st Cir. 2006), for the broad proposition that the potential impairment of contractual rights provides sufficient interest to support intervention. Br. 27. Critically, though, the court in that case found that the putative intervenor's contractual agreements were directly at issue in deciding the question of liability. *See B. Fernandez*, 440 F.3d at 545–46 (allowing intervention because the putative intervenor—not the defendant—was the actual party to the contracts at issue based on the record presented). Not so here. The Secretary has asserted no claims below that are contractual in nature, and no agreements with Movants are at issue. Instead, the Secretary's claims against Defendants arise out of ERISA. In that sense, no contractual rights of any party (let alone Movants) play any meaningful role in deciding the claims at issue. And to the extent any contractual agreements are relevant to the merits of the Secretary's claims, it is Defendants' agreements with the Employer Plans, not the Partnership Plans sponsored by Movants.[6]

[6] The irrelevance of Movants' contractual agreements to the Secretary's claims also distinguishes Movants' reliance on *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Allis-Chalmers Corp.*, 447 F. Supp. 766 (E.D. Wis. 1978). There, the putative intervenor was a party to an agreement with one of the defendants, several provisions of which plaintiffs argued violated ERISA, among other statutes. The district court allowed intervention so that the putative intervenor could protect its interest in the agreement. Here, none

Unable to establish any interest in the questions of ERISA liability at issue in the Secretary's lawsuit, Movants instead attempt to evade this shortcoming by centering their interest on the proposed injunctive relief the Secretary seeks below, which, by Movants' telling, could infringe on their contractual agreements with Defendants. Br. 29. At a high level, this, too, misses the mark. By its very nature, this interest is too contingent to support intervention because it does not "bear a sufficiently close relationship to the dispute between the original litigants." *Ungar*, 634 F.3d at 51 (quotation omitted). Movants' interest in preventing injunctive relief is not an interest in the subject of the action below—it is completely divorced from the legal questions at issue in the Secretary's claims. *See, e.g.*, *Patch*, 136 F.3d at 205 (a "generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right."). This Court has long distinguished between liability and ramifications of that liability. For example, in *Travelers*, an insurer appealed the district court's denial of intervention as of right. The district court had entered a consent judgment about tort liability and the insurer had sought to assert coverage defenses. 884 F.2d at 638–41. In affirming the district court's denial of intervention as of right, the Court noted the difference between "the apportionment of tort liability" and "the respective rights

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of Defendants' agreements to service Movants' Partnership Plans are related to the Secretary's claims against Defendants.

and obligations of an insured and his insurers under their insurance policy." *Id.* at 640. It held that "[t]he impact of the consent judgment . . . cannot obscure the essential nature of the indemnification action, and cannot convert that action into a free-for-all on insurance issues." *Id.* Here, similarly, the action below is about ERISA violations, not potential ramifications that may occur if the district court finds Defendants liable.[7]

Moreover, Movants' asserted interest is speculative in nature, in that it depends on Movants' success in other litigation. Movants state that they have contracted with Defendants to service their Partnership Plans. The Secretary's proposed injunctive relief, Movants explain, includes permanently enjoining Defendants from servicing "*any plan* covered by Title I of ERISA." Br. 29 (quoting JA41 ¶ 97). If this relief came to pass, Movants argue, "Defendants would

[7] This also distinguishes *Cabot LNG Corp. v. Puerto Rico Electrical Power Authority*, 162 F.R.D. 427 (D.P.R. 1995), which Movants argue supports their contention that contractual rights provide sufficient support for intervention even if the putative intervenors' contractual interests are not the main subject of the underlying litigation. Br. 28. Although the putative intervenors' contracts were not directly at issue in that case, the legality of the procedures used to award those contracts was at issue. *Cabot*, 162 F.R.D. at 430. The district court held that that intervention was appropriate because the plaintiff sought an injunction that would have specifically prohibited the defendant from performing under its contracts with the putative intervenors. *Id.* The district court did so in the context of arguments related to the *merits* of the actions below. *See id.* at 431 (finding government agency cannot adequately represent private interests even if agency and putative intervenors "have convergent interests *in supporting the legality of the selection process employed*" (emphasis added)).

be permanently enjoined from servicing [Movants'] Partnership Plans." Br. 29. But this causal chain is spurious. The Secretary's position in this and other litigation has consistently been that Movants' Partnership Plans are not covered by ERISA. And whether Movants' Partnership Plans are covered by ERISA is directly at issue in the *Data Marketing* case. As the district court below recognized, that is a completely separate issue to be resolved in the *Data Marketing* case, not in this litigation. JA13. Movants cannot assert a "direct and significantly protectible interest" where that interest depends on a successful outcome in other litigation. *Ungar*, 634 F.3d at 51 (quotation omitted); *see Eddystone Rail Co. v. Jamex Transfer Servs.*, 289 F. Supp. 3d 582, 590 (S.D.N.Y. 2018) ("[I]t is 'just not possible for a litigant to prove in advance that the judicial system will lead to any particular result in his case.'" (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 160 (1990))).

The Partnership Plans and whether or not they are covered by ERISA plays no role in the Secretary's lawsuit below, which asserts claims only as to the Employer Plans. JA18 (Compl. ¶ 2 n.1). Movants' insistence on the Partnership Plans' ERISA coverage, then, is too remote and speculative to serve as a basis for an interest in the litigation below.[8]

[8] More broadly, Movants may contend that they have an interest in SAS and PIC's continued operations as a whole. But in addition to being too thin an interest, *see Patch*, 136 F.3d at 209 (expressing "serious doubt" that a city had an interest in the

In sum, Movants fail to advance any case or cogent theory to support their contention that the effect potential injunctive relief in this case may have on their contractual interests is sufficiently direct and related to the litigation below.

2. Movants' Proposed Claims Are Not Related to Any Issue in the Litigation.

Movants' proposed complaint in intervention also does not assert a direct or protectable interest in the subject of the action below. Movants do not seek to intervene with respect to any of the Secretary's claims and instead seek to assert entirely different claims against the Department under the APA and First Amendment. JA845–JA850 (Compl. Intervention ¶¶ 103–124); *see also* Br. 3 (stating Movants' intention to "assert claims of retaliation against the DOL under the First Amendment.").

These proposed claims have no overlap with the litigation. Though Defendants also sought to pursue First Amendment and APA claims against the Department in the Secretary's lawsuit below, JA448–JA489, those claims were

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economic survival of a company that was "one of its largest employers and taxpayers," who in any event could adequately represent its own interest), this makes little sense in the context of Movants' briefing, which focuses Movants' interest on their desire to protect their contracts with Defendants specifically. *See* Br. 33 (arguing that settlement between the Secretary and Defendants "may not serve the interests of [Movants] needed to preserve the ability to continue their business relationships with PIC and SAS"); *id.* (contrasting Defendants' interest in keeping "control of the Providence MEWA" and "servic[ing] all kinds of employee benefit plans" with Movants' "only . . . interest in Defendants' ability to continue servicing [Movants'] Partnership Plans.").

dismissed in their entirety, JA1392–JA1407, and were brought on behalf of Defendants, not Movants. Nevertheless, Movants point to Defendants' "[a]ffirmative [d]efenses" relating to the APA as a continuing area of overlap. Br. 4. However, these "affirmative defenses" are the same as the counterclaims that the district court already dismissed. *Compare* JA54–JA55, JA67–JA68, JA80–JA81 (describing APA affirmative defenses) *with* JA1400–JA1407 (dismissing APA counterclaims). And casting a counterclaim as an affirmative defense does not give it a second life after being dismissed. *See* Fed. R. Civ. P. 8(c)(2).[9]

Because Movants have not established any direct or protectable interest in the action below, the district court did not abuse its discretion when it concluded that "[t]he claims" Movants "want to bring . . . are . . . not [related] to the ones before this Court, where the Secretary alleges violations to fiduciary duties of ERISA plans by different plaintiffs." JA13. On this basis alone, the district court correctly denied Movants' motion to intervene.

[9] Defendants recently amended their pleadings to add a First Amendment retaliation "affirmative defense." First Am. Answer of SAS & PIC, *Suffolk Admin. Servs.*, No. 3:24-CV-01512 (D.P.R. Apr. 13, 2026), ECF No. 102; First Am. Answer of Renfro, *Suffolk Admin. Servs.*, No. 3:24-CV-01512 (D.P.R. Apr. 13, 2026), ECF No. 103; First Am. Answer of Bryan & Zieger, *Suffolk Admin. Servs.*, No. 3:24-CV-01512 (Apr. 13, 2026), ECF No. 104. The Secretary intends to move pursuant to Federal Rule of Civil Procedure 12(f) to strike both the APA and First Amendment "affirmative defenses" given the district court's dismissal of Defendants' identical counterclaims.

B. Movants Do Not Demonstrate Impairment.

Movants similarly argue that they will be unable to adequately protect their interests if they are not permitted to intervene, because they could "los[e] the *only* vendor willing to service their Partnership Plans." Br. 31. But as explained above, this does not amount to a direct or protectable interest in this particular lawsuit, and therefore this "interest" is not impaired if Movants are not permitted to intervene.

Because Movants' interests are not at issue in this litigation, they cannot demonstrate "a realistic threat that resolution of the pending action will hinder [their] . . . ability to effectuate that interest." *T-Mobile*, 969 F.3d at 39 (internal quotation omitted). The litigation below is unlike *B. Fernandez*, where the Court found that the putative intervenor's rights would be impaired without intervention because the putative intervenor was a party to the contract at issue and the plaintiffs "[sought] an injunction requiring specific performance" of a contract "that could bind" the putative intervenor. 440 F.3d at 545–46. Here, again, no contracts involving Movants are at issue in the litigation. Similarly, no contracts or property interests involving Movants are relevant to the ERISA violations alleged against Defendants below, and Movants therefore have *no direct and protectable*

stake in the outcome of whether Defendants' actions violated the law.[10] *See Ungar*, 634 F.3d at 51–52.

Even if it turned out that Movants' "contractual rights" were indeed harmed because the Secretary prevailed and Defendants were enjoined from or incapable of servicing Movants' Partnership Plans, Movants are only impacted insofar as they will be unable to contract with two specific vendors who were found to have violated ERISA by engaging in self-dealing and charging excessive fees.[11] Additionally, Movants retain recourse against Defendants should Defendants become unable to fulfill any contractual obligations to Movants. *See R & G Mortg. Corp.*, 584 F.3d at 10 (noting "denial of intervention [would] not cause . . . significant prejudice" because "adequate remedy" of "money damages" remained

[10] This also further distinguishes *Cabot*, where the putative intervenors' contracts would have been directly affected by a determination on the legality of the bidding procedures used to award them. 162 F.R.D. at 430. Similarly, in *Allco Renewable Energy, Ltd. v. Haaland*, No. 1:21-CV-11171-IT, 2022 WL 18033002 (D. Mass. Jan. 7, 2022), *aff'd sub nom.*, *Melone v. Coit*, 100 F.4th 21, 28–29 (1st Cir. 2024), intervention was allowed because plaintiffs sought to vacate certain regulatory approvals that had been issued to the putative intervenor in connection with a multi-billion-dollar development project and the lawsuit could cause an "indefinite[] . . . hold" on the project. *Id.* at *4.

[11] To the extent the outcome of the litigation below leads to Defendants being unable to service any health benefit plans because they can no longer receive excessive fees from ERISA-covered plans, Movants do not have a protectable interest by virtue of the benefits they received from Defendants' illegal activities. *Cf. Donnelly v. Glickman*, 159 F.3d 405, 411 (9th Cir. 1998) (citing *Dilks v. Aloha Airlines, Inc.*, 642 F.2d 1155, 1157 (9th Cir. 1981) (per curiam)).

available). And while Movants argue that "'[n]o other vendor to date has been willing to provide the services for the unique employee benefit plan structures'" that Movants manage and sponsor, Br. 29 (quoting JA815), this does not change the fact that Movants retain the ability to contract with another vendor irrespective of the outcome of this suit.

Movants have not established that they have a vested interest in the legality of Defendants' behavior; instead, Movants' asserted interest is in the *outcome* of the suit, as Movants seek to do business with Defendants, irrespective of the merits of the Secretary's claims. This asserted interest, and the corresponding harm, is completely separate from the interests of the parties to this litigation (asserting and defending against ERISA claims). Accordingly, the district court did not abuse its discretion when it found that the claims Movants assert involve "wholly different . . . harms" that do not "merit a finding in favor of intervention." JA13.

C. Movants Do Not Establish the Absence of Adequate Representation.

A party seeking to intervene must demonstrate that "no existing party adequately represents its interest." *Ungar*, 634 F.3d at 50. The putative intervenor "must produce something more than speculation as to the purported inadequacy" of representation. *Moosehead Sanitary Dist. v. S.G. Phillips Corp.*, 610 F.2d 49, 54 (1st Cir. 1979); *see also Patch*, 136 F.3d at 207–08 ("A party that seeks to

intervene as of right must produce some tangible basis to support a claim of purported inadequacy [of representation]").

Put differently, a putative intervenor must identify a "legal argument that [Defendants] are unable or unwilling to make, or that subverts [Defendants'] institutional goals." *Patch*, 136 F.3d at 208. But even then, "[a] proposed intervenor's desire to present an additional argument or a variation on an argument does not establish inadequate representation." *LBRY, Inc.*, 26 F.4th at 99–100 (finding that while intervenors sought to assert alternative defenses against the SEC's claims, they had not shown that defendants would not adequately represent their interests). Further, "tests of 'inadequacy' tend to vary depending on the strength of the interests. Courts might require very little 'inadequacy' if the would-be intervenor's home were at stake and a great deal if the interest were thin and widely shared." *Daggett*, 172 F.3d at 113 (finding that putative intervenors who sought to intervene to defend the legality of the Maine Clean Election Act and would receive public election financing if the law was upheld "fall somewhere in the middle" of the scale of interests and finding that in such a circumstance, the district court would be unlikely to abuse its discretion no matter its decision on intervention).

Movants acknowledge that "'a rebuttable presumption of adequate representation applies'" here, because "'the intervenor's ultimate objective

matches that of the named party[.]'" Br. at 32 (quoting *B. Fernandez*, 440 F.3d at 545–46). They nevertheless posit that Defendants will not adequately represent their position, because "while Defendants have an interest in continuing to service all kinds of employee benefit plans," Movants "only have an interest in Defendants' ability to continue servicing the Partnership Plans." Br. 33. Putting aside the fact that injunctive relief is only available if the Secretary successfully proves that Defendants charged excessive fees to other clients, Movants have not identified any arguments or legal positions that they are uniquely positioned to make, or that Defendants will not make. *See B. Fernandez*, 440 F.3d at 546 (allowing intervention where putative intervenor sought to dispute plaintiff's allegations of wrongdoing and defendant's only argument was that it was not party to the agreement at issue). They have not articulated any reason why Defendants are not "ready, willing, and able to vigorously defend" against the Secretary's claims on their own. *United Nuclear Corp. v. Cannon*, 696 F.2d 141, 144 (1st Cir. 1982).

Movants argue that intervention is warranted because Defendants may settle the action which "may not serve [Movants'] interests." Br. 33. But the possibility of settlement is not a basis for allowing intervention. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 807 F.3d 472, 477 (1st Cir. 2015) ("[W]hen a party cites a fear of settlement as a reason to intervene, it is

not an abuse of discretion to find that reason insufficient if the intervention will not reduce the likelihood of settlement."). That is particularly true here, where Movants have "provided little basis" to demonstrate that settlement is "a real possibility," much less any reason to demonstrate that settlement would harm their interests. *Moosehead*, 610 F.2d at 54.

Defendants plainly have "the singularly greatest interest" in defending against the Secretary's claims and preventing the relief the Secretary seeks. *Patch*, 136 F.3d at 209. And even if this Court were to determine that there was a chance that Defendants' representation could be inadequate, that does not amount to an abuse of discretion here, where the threat to Movants' contractual interests and proposed claims in intervention is entirely remote, speculative, and inapposite. Movants have wholly failed to rebut the presumption that Defendants are unable to adequately represent their interests.[12]

D. Timing Shows That Movants' Proposed Claims Are Not Related to Any Issue in the Litigation.

Movants' explanation of when they knew their interests were at risk does not satisfy the timeliness factor. In the First Circuit, four factors inform the timeliness inquiry:

[12] *See also Arrow Petrol. Co. v. Texaco, Inc.*, 500 F. Supp. 684, 688 (S.D. Ohio 1980) (holding that putative intervenor failed to establish inadequate representation where, among other factors, plaintiff and putative intervenor were represented by the same counsel).

> (i) the length of time that the putative intervenor knew or reasonably should have known that his interests were at risk before he moved to intervene; (ii) the prejudice to existing parties should intervention be allowed; (iii) the prejudice to the putative intervenor should intervention be denied; and (iv) any special circumstances militating for or against intervention.

R & G Mortg. Corp., 584 F.3d at 7. Courts must "examin[e] the totality of the relevant circumstances." *Banco Popular de P.R. v. Greenblatt*, 964 F.2d 1227, 1230 (1st Cir. 1992).

Here, Movants assert that they "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 . . . in the [*Data Marketing* case]." Br. 26 (citing JA814). But Movants did not move to intervene in the case below first; indeed, they saw no need to intervene until their motion to file supplemental claims in the *Data Marketing* case was denied, demonstrating that there is nothing fundamental to the action below that warrants their participation as of right.

This also implicates the "balance of harms" represented by the second and third factors. *See R & G Mortg. Corp.*, 584 F.3d at 9. The "prejudice an applicant will suffer if intervention is denied" requires the Court to "determine whether the movant, had intervention been allowed, would have 'enjoy[ed] a significant probability of success on the merits.'" *Banco Popular de P.R.*, 964 F.2d at 1232. Here, Movants do not seek to get involved in the merits of the claims below. Instead, they seek to assert their own claims of retaliation under the First

Amendment and APA, which are unlikely to succeed, as they are substantially similar to Defendants' counterclaims that the district court has already dismissed. *See* JA1392–JA1407. Because the legal merit of the claims below (whether Defendants have violated ERISA) has no bearing on Movants' proposed claims (whether the Secretary has violated the First Amendment and APA in exercising her statutory authority to enforce ERISA and remedy violations), Movants will suffer little prejudice if intervention is denied. *See supra* section I.A.2; *see also Travelers*, 884 F.2d at 638–41 (distinguishing between the "impact" of an action and its "essential nature"). On the other hand, prejudice to the existing parties is high if Movants intervene, as Movants seek to expand the scope of this suit into unrelated issues. *See Los Cangris v. UMG Recordings, Inc.*, No. 10-1349, 2012 WL 1952824, at *5 (D.P.R. May 30, 2012) ("[T]he amount of complexity and time that applicants' claims would add to this action would in fact compromise efficiency and due process for the present parties. Accordingly, Rule 24(a)'s goal would not be served by their intervention."); *see also Smuck v. Hobson*, 408 F.2d 175, 179 (D.C. Cir. 1969) (weighing intervention against the goal of "prevent[ing] the single lawsuit from becoming fruitlessly complex or unending"); 7C Wright & Miller's Federal Practice & Procedure § 1904 (3d ed., Apr. 2026 update) ("The original parties have an interest in the prompt disposition of their controversy and the public also has an interest in efficient disposition of court business.").

The fact that Movants' claims are unrelated to the subject of the action below is a circumstance that "militat[es] . . . against intervention." *R & G Mortg. Corp.*, 584 F.3d at 7. Thus, that their motion precedes the start of discovery or substantive rulings, Br. 26, is beside the point. Movants "effectively seek[] to create a separate case within a case," *Santiago-Sepulveda v. Esso Standard Oil Co. (P.R.)*, 256 F.R.D. 39, 44 (D.P.R. 2009), such that the district court clearly did not abuse its discretion when it found that Movants were not entitled to intervention as of right.

II. The District Court Did Not Abuse Its Discretion in Denying Permissive Intervention.

Rule 24(b) gives the district court discretion to allow the intervention of any party with "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). This is a "threshold requirement," after which "the district court can consider almost any factor rationally relevant." *Daggett*, 172 F.3d at 112–13. "The discretion afforded to the district court under Rule 24, substantial in any event, is even broader when the issue is one of permissive intervention." *R & G Mortg. Corp.*, 584 F.3d at 11. "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

Here, the district court did not abuse its discretion in denying permissive intervention. Movants' proposed claims share no overlap with the Secretary's

claims—the district court found that "[t]he claims" Movants "want to bring" are not related "to the [claims] before this Court." JA13. This conclusion has strong support: Movants seek to bring claims of retaliation against the Secretary under the APA and the First Amendment, whereas the Secretary alleges that Defendants caused their ERISA plan clients to pay excessive fees that violated ERISA's fiduciary duty and prohibited transaction provisions. Movants' proposed claims thus involve different statutes, different facts, and different parties from the Secretary's claims.

While Movants assert that their proposed claims are "directly related to [the action below] because its resolution directly affects their protectable business interest in continuing to provide their Partnership Plans," Br. 34–35, this is merely a potential ramification that is many (speculative) steps removed from the subject of the action below. It does not meet the "threshold requirement" of "a claim or defense that shares with the main action a common question of law or fact." *Daggett*, 172 F.3d at 112–13; Fed. R. Civ. P. 24(b)(1)(B). Movants argue that that the Department "tied" Movants to Defendants by engaging in settlement negotiations involving both groups. Br. 35. But disparate topics do not become legally related simply because the Department engaged with both parties in the context of settlement negotiations. *Cf. Klauber v. VMware, Inc.*, 80 F.4th 1, 7–8 (1st Cir. 2023) (noting that settlement "'may well reflect a desire for peaceful

dispute resolution, rather than the litigants' perceptions of the strength or weakness of their relative positions'") (quoting *McInnis v. A.M.F., Inc.*, 765 F.2d 240, 247 (1st Cir. 1985))).

Moreover, because Movants' proposed claims would inject entirely separate facts and issues into the action below, allowing Movants' intervention would cause significant delays, impacting more than 1,900 ERISA-covered plans that continue to be charged excessive fees, as well as the thousands of businesses and employees whose healthcare premiums fund those fees. *See* Fed. R. Civ. P. 24(b)(3); *T-Mobile*, 969 F.3d at 41–42 (affirming denial of intervention where purported intervenors "do not appear poised to add anything of meaningful value" and "would unduly hinder the efficient resolution" of the case). "Reversal of a district court's denial of permissive intervention on grounds of abuse of discretion 'is so unusual as to be almost unique.'" *Travelers*, 884 F.2d at 641 (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipeline Co.*, 732 F.2d 452, 471 (5th Cir. 1984) (en banc)). And here, where the district court found that Movants' proposed claims were "not [related] to the ones before [it]," JA13—and where Movants have done nothing to show that the district court exceeded the bounds of its substantial discretion—it is clear that the district court's decision should be affirmed.

CONCLUSION

For the reasons above, the district court's decision denying Movants' motion to intervene should be affirmed.

Respectfully submitted,

Date: April 29, 2026

JONATHAN BERRY
Solicitor of Labor

WAYNE R. BERRY
Associate Solicitor
for Plan Benefits Security

ISIDRO MARISCAL
Counsel for Litigation

/s/ Blair L. Byrum
BLAIR L. BYRUM
First Cir. Bar No. 1180367

SARAH D. HOLZ
First Cir. Bar No. 1219868

JAMIE TROUTMAN
AUDREY KOONTZ
Attorneys

U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
200 Constitution Ave. NW, N4611
Washington, DC 20210
202.693.5600 (t) | 202.693.5610 (f)

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(a)(5)–(6) and 32(a)(7)(B), I certify that this brief uses a 14-point proportionally spaced typeface font (Times New Roman) and contains 6,767 words.

/s/ Blair L. Byrum
BLAIR L. BYRUM
Senior Trial Attorney

Date: April 29, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this day, April 29, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the First Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Blair L. Byrum
BLAIR L. BYRUM
Senior Trial Attorney