

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORTH WORTH DIVISION**

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DATA MARKETING PARTNERSHIP, LP,  
et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
LABOR, et al.,

Defendants.

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) Civil Action No. 4:19-cv-00800-O  
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**JOINT STATUS REPORT**

Pursuant to the Court's November 2, 2022 Order, ECF No. 45, the parties submit this joint status report regarding the remaining issues in this case. The parties conferred on November 9, 15, and 16, and have agreed on a proposed schedule.

**JOINT PROPOSAL**

The advisory opinion issued by the U.S. Department of Labor (Department) has been vacated. Defendants intend to file a Motion for Remand to Agency seeking an opportunity for the Department to issue a new advisory opinion in light of the Fifth Circuit's holdings in *Data Marketing P'ship v. U.S. Dep't of Labor*, 45 F.4th 846 (5th Cir. 2022). While Plaintiffs will oppose Defendants' motion for reasons to be set forth in their response brief, the parties agree that Defendants' motion implicates threshold questions that should be addressed through substantive briefing.

The parties jointly propose that the Court set the following schedule for briefing Defendants' Motion for Remand to Agency:

- On or before December 30, 2022, Defendants shall file their Motion for Remand to Agency (not to exceed 15 pages);
- On or before January 31, 2023, Plaintiffs shall file their response in opposition to Defendants' motion (not to exceed 15 pages);
- On or before February 17, 2023, Defendants shall file their reply in support of their motion (not to exceed 10 pages);
- Within 14 days of the Court's ruling on Defendants' Motion for Remand to Agency, the parties shall confer and propose a schedule for further proceedings.

There is good reason to grant this proposed schedule. Due to the press of other litigation matters and the end of year holidays, the parties negotiated a schedule that serves the parties' interests. Among the considerations are the fact that undersigned counsel for Plaintiffs is in the process of transitioning to a new firm and requires some time to organize materials for his representation in this matter, and undersigned counsel for Defendants has substantial obligations in other cases through the end of the year.

The Court's ruling on Defendants' Motion for Remand to Agency will best position the parties to propose a path for complete resolution of this case, such as renewed motions for summary judgment on the interpretive and relief issues remanded by the Fifth Circuit.

### **CONCLUSION**

For the foregoing reasons, the parties respectfully submit their proposed briefing schedule for the Court's consideration. A proposed order in Word format will be submitted by email to the Court's "orders" email address.

Dated: November 16, 2022

/s/ Jonathan Crumly (by permission)  
Jonathan Crumly (Pro Hac Vice)  
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Respectfully submitted,

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/s/ Galen N. Thorp  
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CERTIFICATE OF SERVICE

On November 16, 2022, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Galen N. Thorp  
GALEN N. THORP