IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FEDERATION OF AMERICANS FOR CONSUMER CHOICE, INC.; JOHN LOWN d/b/a LOWN RETIREMENT PLANNING; DAVID MESSING; MILES FINANCIAL SERVICES, INC.; JON BELLMAN d/b/a BELLMAN FINANCIAL; GOLDEN AGE INSURANCE GROUP, LLC; PROVISION BROKERAGE, LLC; and V. ERIC COUCH, *Plaintiffs,* v. UNITED STATES DEPARTMENT OF LABOR and KEITH E. SONDERLING, in his official capacity as ACTING SECRETARY OF LABOR, *Defendants.*	§ § § § § § § § § § § § § § § § § § § §	C.A. No. 3:22-cv-243-K

JOINT STIPULATION OF DISMISSAL
WITHOUT PREJUDICE

Plaintiffs Federation of Americans for Consumer Choice, Inc., John Lown d/b/a Lown Retirement Planning, David Messing, Miles Financial Services, Inc., Jon Bellman d/b/a Bellman Financial, Golden Age Insurance Group, LLC, Provision Brokerage, LLC, and V. Eric Couch (collectively, "Plaintiffs"), and Defendants United States Department of Labor ("DOL") and Keith E. Sonderling, in his Official Capacity as Acting Secretary of Labor (together with the DOL, "Defendants"), hereby stipulate to the dismissal of this case

without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), and further stipulate and agree as follows:

1. Plaintiffs filed this action under the Administrative Procedures Act ("APA") to vacate the DOL's then recently adopted interpretation of its 1975 regulation that established a five-part test for determining who is an investment advice fiduciary for purposes of the Employee Retirement Income Security Act of 1974 ("ERISA"). On December 18, 2020, the DOL promulgated a new prohibited transaction exemption ("PTE 2020-02"), which was accompanied by a preamble setting forth the DOL's new interpretation (the "New Interpretation") of how the five-part test for investment advice fiduciaries was to be applied, and reversing the DOL's position that recommendations pertaining to rollovers from Title I plans to IRAs were generally not considered fiduciary investment advice under ERISA. *See Prohibited Transaction Exemption 2020-02, Improving Investment Advice for Workers & Retirees*, 85 Fed. Reg. 82798 (Dec. 18, 2020). As part of the New Interpretation, the DOL also withdrew the prior guidance provided in its Advisory Opinion 2005-23A (the "Deseret Letter") "that advice to roll assets out of a Title I plan [by a person who is not otherwise a fiduciary to the plan], even when combined with a recommendation as to how the distribution should be invested, did not constitute investment advice with respect to the Title I plan." *Id*. at 82803.

2. Plaintiffs alleged the New Interpretation was irreconcilable with ERISA based on the Fifth Circuit decision in the *Chamber* case[1] because, among other things, it

[1] *Chamber of Commerce of United States of Am. v. United States Dep't of Labor*, 885 F.3d 360, 363 (5th Cir. 2018).

undermined critical elements of the historical five-part test used to determine who is a fiduciary for ERISA purposes, treated all compensation as fees for investment advice even though agent commissions often are merely compensation for product sales and not fees for investment advice under ERISA, and operated to impose Title I fiduciary duties on agents selling IRAs under Title II in a manner contrary to ERISA.

3. The Court issued an Order Accepting Findings and Recommendations of the United States Magistrate Judge (the "Order") [Doc. 86] on July 9, 2025. The Order denied various objections raised by the Plaintiffs with respect to the Findings, Conclusions, and Recommendations of the United States Magistrate Judge [Doc. 69], which recommended that the Court grant in part and deny in part the parties' cross-motions for summary judgment and vacate certain portions of the New Interpretation.[2] Plaintiffs timely filed a motion for reconsideration [Doc. 88], asking the Court to vacate the New Interpretation in its entirety.

4. On March 20, 2026, the DOL published a notice (the "Notice") in the *Federal Register*. *See Retirement Security Rule: Definition of an Investment Advice Fiduciary: Notice of Court Vacatur*, 91 Fed. Reg. 13503 (Mar. 20, 2026). The preamble to the Notice explained, among other things, that the New Interpretation set out in the preamble to PTE 2020-02 no longer provides "reliable guidance" for stakeholders after portions of the New Interpretation were vacated in this case and the *ASA* case, and that it is therefore DOL's

[2] The Recommendation to vacate certain parts of the New Interpretation mirrored a decision by another federal district court in *American Securities Ass'n v. United States Department of Labor* ("*ASA*"), Case No. 8:22-cv-330-VMC-CPT, 2023 WL 1967573 (M.D. Fla. Feb. 13, 2023).

view that "the entire preamble of PTE 2020-02 is effectively vacated." *See id.* at 13504–05. The Notice also "republishes in full the operative text of PTE 2020-02 as originally published in the Federal Register on December 18, 2020," "without the amendments adopted on April 25, 2024." *See id.* The Notice became effective on April 20, 2026. *See id.* at 13503.

5. Consequently, this action is moot, as the New Interpretation is no longer operative and the Deseret Letter has been reinstated. Plaintiffs are therefore no longer at risk of the DOL deeming them to be investment advice fiduciaries under the terms of the New Interpretation, and the DOL no longer intends to use the New Interpretation in any way for purposes of determining who is an investment advice fiduciary. *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 374 (5th Cir. 2022) ("When a challenged rule is replaced with a new rule, the case is moot so long as the change gives 'the precise relief that petitioners requested.'") (quoting *New York State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525, 1526 (2020)). A case that is moot presents no Article III case or controversy, and thus the Court no longer has jurisdiction over this case. *Adair v. Dretke*, 150 F. App'x 329, 331 (5th Cir. 2005). The proper remedy, therefore, is to dismiss this case without prejudice. *Salcido v. Wilson*, No. 21-11029, 2022 WL 1564188, at *1 (5th Cir. May 18, 2022).

6. Accordingly, the parties stipulate to the dismissal of this action without prejudice, with all costs of court to be borne by the party incurring same.

Dated: April 24, 2026

Respectfully submitted,

/s/ Don Colleluori
Andrew G. Jubinsky
Texas Bar No. 11043000
andy.jubinsky@figdav.com
Don Colleluori
Lead Attorney
Texas Bar No. 04581950
don.colleluori@figdav.com

FIGARI + DAVENPORT, LLP
901 Main Street, Suite 3400
Dallas, Texas 75202
(214) 939-2000
(214) 939-2090 (Fax)

Attorneys for Plaintiffs

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

JACQUELINE COLEMAN SNEAD
Assistant Branch Director

/s/ Jody D. Lowenstein
JODY D. LOWENSTEIN
Mont. Bar No. 55816869
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Phone: (202) 598-9280
Email: jody.d.lowenstein@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2026, this document was served, via email, on all attorneys deemed to accept electronic service in this matter through the Court's electronic filing system.

/s/ Don Colleluori
Don Colleluori