

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

	)	
MARKET SYNERGY GROUP, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 5:16-cv-04083
	)	
UNITED STATES DEPARTMENT OF LABOR,	)	
THOMAS E. PEREZ, in his official capacity	)	
As Secretary of the United States Department of	)	
Labor, and PHYLLIS C. BORZI, in her official	)	
Capacity as Assistant Secretary of the United States	)	
Department of Labor,	)	
	)	
Defendants.	)	
	)	

**MOTION OF AARP AND AARP FOUNDATION  
FOR LEAVE TO FILE BRIEF AMICI CURIAE  
IN SUPPORT OF DEFENDANTS URGING DENIAL  
OF THE MOTION FOR PRELIMINARY INJUNCTION**

Amici curiae AARP and AARP Foundation hereby move the Court for leave to file a brief amici curiae in support of Defendants urging denial of Plaintiff’s motion for preliminary injunction. The proposed brief has been submitted for filing along with this Motion. Counsel for Defendants has consented to the filing of this brief, while Counsel for Plaintiff has not.

In support of this motion, amici AARP and AARP Foundation declare:

1. AARP is a nonpartisan, nonprofit organization with about 38 million members dedicated to fulfilling the needs and representing the interests of persons aged 50 and older. AARP fights to protect older people’s financial security, health, and well-being.

2. AARP Foundation, AARP's charitable affiliate, creates and advances effective solutions that help low-income individuals aged 50 and older to secure the essentials so that they do not fall into poverty during retirement.
3. Among other things, both AARP and AARP Foundation seek to increase the availability, security, equity, and adequacy of public and private pension, health, disability and other employee benefits that countless members and older individuals receive or may be eligible to receive, including through participation as amici curiae in state and federal courts.<sup>1</sup>
4. One of amici's main objectives is to ensure that participants receive those benefits that they have been promised in accordance with the protections of the Employee Retirement Income Security Act of 1974 (ERISA). 29 U.S.C. § 1001 et seq. The quality of these workers' lives in retirement depends substantially upon their ability to obtain those benefits that they have been promised. To achieve that goal, amici work to ensure that fiduciaries prudently and loyally manage and administer participants' plans.
5. Nearly half of AARP's 38 million members are employed full or part-time, with many of their employers providing retirement plans. A major priority for AARP and AARP Foundation is to assist Americans in accumulating and effectively managing adequate retirement assets to supplement Social Security.

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<sup>1</sup> *E.g.*, *Tibble v. Edison Int'l*, 135 S. Ct. 1823 (2015); *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014); *Cigna Corp. v. Amara*, 563 U.S. 421 (2011); *LaRue v. DeWolff, Boberg & Assocs.*, 552 U.S. 248 (2008); *Harris Tr. & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000); *Varity Corp v. Howe*, 516 U.S. 489 (1996).

6. AARP and AARP Foundation direct their advocacy through legislative, administrative and adjudicative channels, including participation in federal litigation when the court's decision may substantially affect the interests of older people. A substantial portion of amici's legal efforts is devoted to filing amicus briefs in federal cases presenting ERISA issues because of the paramount importance of fiduciaries' prudent management and administration of plan assets to the retirement security of older people.
7. In light of the significance of the issues presented by this case to the retirement security of older people, AARP and AARP Foundation respectfully submit this brief amici curiae.
8. The resolution of this request is within the "sound discretion" of the Court. *Hammond v. Junction City*, No. 2146-JWL, 2001 U.S. Dist. LEXIS 21319, at \*3-6 (D. Kan. Dec. 17, 2001) (citing *Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000)). This Court and others in this Circuit have permitted amicus briefs where they are able to provide "information [that] is useful or otherwise necessary to the administration of justice." *Id.*; *Kane Cty. v. United States*, 934 F. Supp. 2d 1344, 1347 (D. Utah 2013), *rev'd on other grounds*, 772 F.3d 1205 (10th Cir. 2014); *WildEarth Guardians v. Lane*, No. 12-118, 2012 U.S. Dist. LEXIS 189661, at \*4-8 (D.N.M. June 20, 2012) ("[A]micus briefs provide 'unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.'").
9. Amici submit that the proposed brief will assist the Court by providing unique insight into the beneficial impact of the challenged rule on the retirement savings

of our members and older people. Retirement savings often constitute the bulk of an individual's personal savings, and every day, individuals make investment decisions – including the rollover of employer-sponsored retirement accounts to IRAs – that can affect the adequacy and quality of their retirement savings. Indeed, the decision to rollover retirement monies may be the single largest financial transaction of an individual's life, making it particularly essential that they are covered by the Department's Rule.

10. Amici submit that a majority of individuals rely on an investment adviser when making critical decisions about their retirement savings, including the decision to rollover retirement monies or invest in annuity products. The larger shift from defined benefit plans to defined contribution plans has transferred significant responsibility to individuals for their own investment decisions. A large majority of consumers assume that investment advisers act in their best interests and already are held to a fiduciary standard.
11. Amici contend that the rule's beneficial impact in protecting older people's retirement savings from conflicted, imprudent, or disloyal investment advice is urgent and ongoing. Amici submit that a preliminary injunction would therefore harm the public interest.
12. The proposed brief is narrow in scope and avoids repetitive arguments. Amici do not seek to present an oral argument to the court. The proposed brief is limited solely to the public interest prong of the preliminary injunction analysis. The brief is less than fifteen pages.

Accordingly, Amici respectfully requests leave to file this brief amici curiae in support of Defendants to facilitate a full consideration by the Court on the legal and public policy issues presented in this case.

Dated: July 26, 2016

Respectfully submitted,

/s/ Talia Ravis

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**CERTIFICATE OF SERVICE**

I hereby certify on that July 26, 2016, the Motion of AARP And AARP Foundation For Leave To File Brief Amici Curiae were electronically filed the Clerk of the Court for the United States District Court for the District of Kansas by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: July 26, 2016

Respectfully submitted,

/s/Talia Ravis  
Talia Ravis