No. 03-2024

In The United States Court of Appeals for the District of Columbia Circuit

J.D. and K.D.,

Plaintiffs-Appellants,

v.

UNIVERSAL HEALTH INSURANCE CO.,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

Team 2

Counsel for Appellee

CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record for the Appellee certifies that there are no other parties, entities, or attorneys who have an interest in the matter and have not been disclosed previously to the court.

/s/ Team 2 Counsel

TEAM 2 COUNSEL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

United States Supreme Court Cases

Federal Circuit Court Cases

Federal District Court Cases

JURISDICTIONAL STATEMENT

The District Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. § 1132(e)(1), as well as 28 U.S.C. § 1331, as this action involves a federal question.

This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 because this appeal is from a final order dismissing the Appellees' claims from the United States District Court for the District of Columbia.

J.D. and K.D. timely filed this appeal.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Is the constitutional presumption against allowing parties to proceed anonymously rebutted for an adult plaintiff and her mother when the plaintiff alleges (1) potential embarrassment and (2) a possible revisitation of her mental health symptoms from disclosure?

II. Is a motion to dismiss an equitable relief claim under ERISA § 502(a)(3) proper when it seeks to remedy the same injury as is

already claimed under a § 502(a)(1)(B) claim for improper denial of plan benefits?

STATEMENT OF THE CASE

Appellant, J.D., an adult, is a covered participant of her employer's ERISA-governed welfare benefit plan (the "Plan") that is both administered and insured by Appellee, Universal Health Insurance Co. ("Universal"). Compl. ¶ 3. Her daughter, K.D., who was 18 years of age at the time of the relevant treatment and 19 years of age at the time of filing suit, was at all relevant times a beneficiary of the Plan. Compl. ¶¶ 3, 7.

Following three weeks of inpatient treatment at a psychiatric hospital, K.D. was recommended to pursue partial hospitalization five days a week with Road to Recovery to continue her treatment successfully. Compl. ¶ 10.

Before the partial hospitalization could begin, K.D. was again admitted to the hospital and remained there for another three weeks.

Compl. ¶ 11. She followed this hospital stay with residential treatment at Lifeline Inc. Compl. ¶ 12. In addition to prior treatment covered by Universal, Universal paid for the three weeks of hospitalization related to her overdose and approved coverage for the additional three weeks of residential treatment at Lifeline, Inc. Compl. ¶¶ 11-12, 14.

After K.D. finished her approved three weeks of treatment with Lifeline, Inc., Universal's physician reviewed K.D.'s available medical documents in accordance with its Standard of Care Guidelines. Compl. ¶ 8. The guidelines state that it will only provide coverage for care that is medically necessary. *Id*. In other words, Universal will defer to the least invasive level of care for the patient's successful treatment before authorizing coverage for treatment of increasing severity. Compl. ¶ 15. The physician determined that continuing the intensive level of care offered at Lifeline was no longer medically necessary. Compl. Ex. B. Instead, Universal agreed to cover partial hospitalization with Road to Recovery as

she was initially prescribed after the first hospitalization. Compl. Ex. B; Compl. ¶ 10.

Lifeline, the recipient of K.D.'s treatment costs, disagreed with the Universal physician's assessment, preferring K.D. to continue intensive, inpatient treatment at their facility. J.D. appealed Universal's physician's decision. Compl. ¶ 15. Prompted by this appeal, a second Universal physician reviewed K.D.'s documentation and agreed with the first Universal physician that continuing care at Lifeline was not medically necessary. Compl. Ex. B. When rejecting the appeal, Universal reiterated the option of K.D. returning to Road to Recovery for treatment. *Id*.

Instead of accepting Universal's offer of covered partial hospitalization at Road to Recovery, J.D. opted to self-fund her daughter's treatment with Lifeline for an additional twelve months. Compl. ¶ 16.

J.D. and K.D. proceeded to file suit against Universal both under 29 ERISA § 502 (a)(1)(B), for denial of coverage and under ERISA § 502(a)(3),

alleging that Universal violated the Mental Health Parity and Addiction Equity Act of 2008. Compl. ¶ 19-29.

Appellants filed suit using their initials. Mem. Op. & Order 3. As K.D. is an adult and was 18 years of age at the time of the treatment at issue, the District Court ordered K.D. and J.D. to show cause as to why they should be permitted to proceed with litigation anonymously. *Id.* Consequently, K.D. and J.D. filed a motion to proceed anonymously. *Id.* at 3-4.

J.D. argued that she needed anonymity to preserve K.D.'s privacy. *Id.* K.D. supported her need for anonymity through Dr. Evelyn Smith's affidavit. *See generally*, Decl. of Dr. Evelyn Smith (hereinafter "Decl. of Smith"). Dr. Smith's affidavit provides that K.D. has seen significant improvement in her recovery process: she has enrolled in college and developed a social life. *Id*. at ¶ 6. Dr. Smith follows by saying K.D. continues to face the same risk of revisitation of her symptoms "all patients suffering from substance use disorder and mental illnesses." *Id.* at ¶ 7. Dr. Smith also forwards that she believes "it is possible" that K.D. "could become

depressed and anxious and suffer a recurrence of substance abuse disorder," if she were to disclose her name for the duration of litigation. *Id*. at ¶¶ 8-9.

Universal filed a response in opposition to J.D. and K.D.'s motion to proceed anonymously. *Id*. Universal subsequently filed a Motion to Dismiss Count II (the "Parity Act claim"). *Id*.

The District Court denied Appellants' motion to proceed anonymously and granted Appellee's motion to dismiss the Parity Act claim. Mem. Op. & Order 7, 10. Because the Appellants told the District Court that they would be unwilling to proceed with litigation using their names, the case was dismissed in its entirety. *Id*. at 10-11.

SUMMARY OF ARGUMENT

This Court should affirm the District Court's denial Appellants' motion to proceed anonymously and grant of Appellee's motion to dismiss Count II for duplicity.

As for the question of anonymity, J.D. and K.D. have failed to meet their burden of proving their circumstances are so critical and unusual as to warrant proceeding under pseudonyms. *Qualls v. Rumsfeld*, 228 F.R.D. 8, 10-11 (D.D.C. 2005). J.D. has alleged no privacy interests of her own to warrant anonymity; this appeal should be denied as to her accordingly without need for further deliberation. As to K.D., she has alleged nothing more than an apprehension of embarrassment and speculative harm as a result of disclosure. A litigant's fear of the embarrassment attendant with litigation is insufficient to warrant anonymity. *Id*. at 12. K.D. has failed to suggest that proceeding under pseudonym would avoid the harm she alleges would result from disclosure, and she has failed to consider less drastic mechanisms this Court can employ to protect her privacy.

Additionally, Universal faces prejudice as a result of Appellants' anonymity in the form of reputational harm and a biased jury. Lastly, the public's constitutionally protected right to access judicial proceedings is reinforced with a stake in the outcome of this litigation due to ERISA's expansive coverage. Therefore, K.D.'s speculative interests do not outweigh those of Universal nor the public at large to release her name, and the District Court did not abuse its discretion in its denial of appellants' motion to proceed anonymously.

As for the question of Count II's duplicity, the most reasonable interpretation of the Supreme Court's precedent is that a plaintiff is barred from asserting a claim under § 502(a)(3) if adequate relief can be sought under a more specific statute such as § 502(a)(1)(B). *See Varity v. Howe*, 516 U.S. 489, 515 (1996); *see also CIGNA Corp. v. Amara*. 563 U.S. 421, 448 (2011). This prevents plaintiffs like J.D. and K.D. from dressing up a denial of benefits claim as a breach of fiduciary duty claim, thereby holding Universal to a less deferential standard of review. *Varity*, 516 U.S. at 513.

Because Claim I seeks a remedy under § 502(a)(1)(B), it provides K.D. and J.D. the opportunity "to clarify [their] rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). This can easily provide the remedy K.D. and J.D. seek under Claim II, namely an injunction under § 502(a)(3) requiring Universal to cover the cost of K.D.'s treatment without applying what they allege to be a "fail first" policy. Compl. ¶ 29. As such, the remedy sought under Count II can be achieved under the provision in Count I, and Count II should be dismissed for duplicity.

ARGUMENT

I. THIS COURT SHOULD UPHOLD THE DISTRICT COURT'S DENIAL OF APPELLANTS' MOTION TO PROCEED ANONYMOUSLY BECAUSE J.D. AND K.D. CANNOT REBUT THE CONSTITUTIONAL PRESUMPTION OF JUDICIAL OPENNESS.

A. Standard of Review

This Court reviews the district court's decision to deny J.D. and K.D.'s motion to proceed anonymously for abuse of discretion. The abuse of discretion standard is used because a district court exercises its discretion

when weighing the competing interests implicated in a question of anonymity. *See Sealed Plaintiff v. Sealed Defendant # 1*, 537 F.3d 185, 190 (2nd Cir. 2008). Similarly, the deferential standard of abuse of discretion is appropriate for a district court's anonymity decision because it is considered to be one of many decisions regarding case management properly decided in the first instance. *See, e.g.*, *Does I thru XXII v. Advanced Textile Corp.*, 214 F.3d 1058, 1069 (9th Cir. 2000).

This Court has found "abuse of discretion occurs when the court applies the wrong legal standard or relies on clearly erroneous facts." *Linder v. DOD*, 133 F.3d 17, 24 (D.C. Cir. 1998).

B. Argument

The common law tradition of public access to courts has been embedded in the Constitution and honored for centuries. *E.g.*, *Advanced Textile Corp.*, 214 F.3d at 106. The constitutional foundation for named parties manifests into a strong presumption against granting a litigant anonymity. *E.g.*, *Plaintiff B v. Francis*, 631 F.3d 1210, 1315 (11th Cir. 2011).

Courts have even gone so far as to say that "[f]irst amendment guarantees are implicated when a court decides to" allow a party to proceed anonymously. *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981).

Allowing a litigant to proceed pseudonymously is an exception to the constitutional presumption of judicial transparency that is granted sparingly, in exceedingly rare circumstances. *See Doe v. United States Dep't of State*, 2015 U.S. Dist. LEXIS 173937 at * 4 (D.D.C. Nov. 3, 2015); *See also Doe v. UNUM Life Ins. Co. of Am.*, 164 F. Supp. 3d, 1140, 1142 (N.D. Cal 2016). This jurisdiction articulates anonymity is only justified under critical or unusual circumstances. *Qualls*, 228 F.R.D. at 10 (quoting *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993) and *Advanced Textile*, 214 F.3d at 106.). Not only is the constitutional presumption of named litigants difficult to overcome, but the burden of proving the sufficiently critical or unusual circumstances to do so lies with the party seeking anonymity. *See Qualls,* 228 F.R.D. at 10; *See also Co. Doe v. Pub. Citizen*, 749 F.3d 246, 272 (4th Cir. 2014).

In determining whether to allow a party to proceed under a pseudonym, courts use a balancing inquiry designed to weigh the interests of the litigant requesting anonymity, the potential for it to prejudice the opposing party, and the public interest of access to the courts. *Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d at 186; *Advanced Textile*, 214 F.3d at 1068; *M.M. v. Zavaras*, 139 F.3d 798, 800 (10th Cir. 1998); *Doe v. United States Dep't of State*, 2015 U.S. Dist. LEXIS 173937 at *3; *Doe v. United States DOJ*, 2023 U.S. Dist. LEXIS 101825 at *3 (D.D.C. June 1, 2023) (quoting *In re Sealed Case*, 971 F.3d 324, 326 (D.C. Cir. 2020)).

There are several factors that courts consider when balancing the competing interests. This jurisdiction and the Fourth Circuit consider the following: (1) whether the litigant seeks anonymity to avoid the embarrassment and criticism attendant with litigation rather than to protect their "highly personal" privacy; (2) whether there is a risk of physical or mental harm from disclosure; (3) the age of the litigant seeking anonymity; (4) whether the litigant is suing the government; and (5)

whether the anonymity will prejudice the opposing party. *See James*, 6 F.3d at 238*; See also Doe v. United States DOJ*, 2023 U.S. Dist. LEXIS 101825 at *3. These factors must be assigned the appropriate weight at the court's discretion. *See Doe v. Cabrera*, 307 F.R.D. 1, 4-5 (D.D.C. 2014); *See also Francis*, 631 F.3d at 1316.

Attention to factors (1), (2), and (3) are needed for this Court to assess the extent of any sort of privacy interest both J.D. and K.D. may have. Factors (4) and (5) are necessary to determine the weight of Universal's interests against disclosing J.D. and K.D.'s identity. Lastly, as the District Court held, precedent requires this Court to determine "whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose her identity." Mem. Op. & Order 5 (citing *Advanced Textile Corp.* 214 F.3d at 1068).

J.D. and K.D. have failed to meet their burden of proving extraordinary circumstances for this Court to allow them to proceed under their pseudonyms.

As to J.D., the record on appeal is wanting of any evidence that suggests she has any sort of privacy interest at stake in this litigation. The only argument she has advanced "to proceed anonymously is to protect the privacy interests of K.D." Mem. Op. & Order 4. A parent's interest in maintaining their privacy for the sake of her child has only been recognized to warrant anonymity when considering a minor child. *James*, 6 F.3d at 241. By contrast, because J.D. is a mother of an adult woman, she must advance her own privacy interests. Unfortunately, she has failed to do so. Mem. Op. & Order 3. Furthermore, she cannot rely on K.D.'s privacy interests because K.D.'s are insufficient to stand on their own, nonetheless support J.D.'s claim to proceed anonymously. Therefore, this appeal should be denied as to J.D. without need for further deliberation.

Factors (1), (2) and (3) weigh against granting K.D. anonymity because she is an adult using a pseudonym primarily to avoid public embarrassment and criticism while alleging no concrete risk of harm to either of them should their identities be disclosed. Additionally, because

her anonymity would inherently convince a jury to be more sympathetic to her cause, and because disclosed litigation would inform the public about ERISA-governed coverage, factors (4), (5) and the extent of implicated public interest similarly weigh that much more against K.D.'s request to proceed under a pseudonym.

1. *Appellants should not proceed anonymously because they did not meet their burden of proving their privacy interests are anything more than a fear of embarrassment and speculative harm.*

K.D., and by default J.D. by relying on K.D.'s privacy interests to justify her own, cannot rebut the constitutional presumption against anonymous litigation. *See, e.g.*, *Francis*, 631 F.3d at 1315. Anonymity is not warranted to simply to avoid "the risk that a plaintiff may suffer some embarrassment." *Zavaras*, 139 F.3d at 803. Similarly, "speculative assertions of harm will not suffice" to allow a party to proceed under pseudonym. *In re Sealed Case*, 971 F.3d at 326. Additionally, "the fact that Plaintiff's case relates to her medical history does not *per se* mean the

anonymity is appropriate." *L.R. v. CIGNA Health & Life Ins. Co.*, 2023 U.S. Dist. LEXIS 120861 at *7-8 (M.D. Fla. July 11, 2023).

As to a litigant's apprehension of embarrassment resulting from disclosed litigation, it has only been recognized to warrant anonymity when the case involves information that rises to the level of being "of [a] sensitive and highly personal nature," *Advanced Textile*, 214 F.3d at 1068, such as litigation arising from abortions, *Roe v. Aware Woman Ctr. for Choice*, 253 F.3d 678, 685 (11th Cir. 2001), fraudulent insemination, *James*, 6 F.3d at 242, and sexual assault involving minors, *Francis*, 631 F.3d at 1316-17.

As to an allegation of retaliatory harm, the litigant must support it with "additional evidence" or "aggravating factors" in order to "determine whether a risk of harm ***truly*** exists." *Doe v. Doe*, 85 F.4th 206, 213 (4th Cir. 2023) (emphasis added). Aggravating factors must be presented to corroborate a litigant's claim of harm, as courts generally look "for evidence of a risk beyond Appellant's bare assertion." *Id*. In other words,

the litigant bears the burden of demonstrating the alleged fear of harm is more than just speculation. *See, e.g.*, *Id*.

K.D. has alleged nothing but an apprehension of embarrassment and speculative, retaliatory harm in the form of a possible revisitation of her symptoms as a result of disclosed litigation. Decl. of Smith ¶ 9. These concerns are not only unsupported with concrete evidence but are speculative, and thus insufficient to warrant anonymity for neither K.D. nor her mother.

i. K.D.'s fear of embarrassment if her name is disclosed is insufficient to warrant anonymity.

K.D.'s fear of embarrassment from the disclosure of her name is a concern that has "historically yielded a confined application," of the already-stringent anonymity exception. *Doe v. Austin*, 2022 U.S. Dist. LEXIS 105229 at *3 (M.D. Fla. June 10, 2022). While courts have recognized that ERISA claims "often involve sensitive medical information that could be embarrassing if known generally," they nonetheless observe, "[a]s a rule,

[ERISA claims] do not proceed anonymously." *Id*. at 1142. K.D. claims she may face public scrutiny if her medical history were to be revealed under her name, but this, without more, does not meet the standard of critical or unusual circumstances that warrant a court to allow a litigant to pursue pseudonymously. *See Roe v. City of Milwaukee*, 37 F.Supp.2d 1127, 1129 (E.D. Wis. 1999); *See also UNUM Life Ins.*, 164 F.Supp.3d at 1145.

K.D. expresses an apprehension of her mental health history being disclosed, but "[c]ourts routinely deny requests to proceed anonymously when a plaintiff's purported reason for the request is to protect information about mental health." *L.L. v. Medcost Ben. Servs.*, 2023 U.S. Dist LEXIS 115172 at *2-3 (W.D.N.C. July 5, 2023). Under this concern, K.D. seeks anonymity simply "to avoid the annoyance and criticism that may attend any litigation," which is insufficient to rebut the constitutional presumption of judicial openness. *E.g.*, *James*, 6 F.3d at 238.

Not only is her allegation of embarrassment insufficient, but it is also speculative, and can be avoided by less drastic measures. Because she is

pursuing claims under ERISA, this litigation is, "at its foundation simply a coverage and healthcare plan issue generally subject to public access." *Cigna Health Ins.*, 2023 U.S. Dist. LEXIS 120861 at *8. Moreso, her "denial of medical benefits claims is not necessarily a sensitive topic." *Id*. Therefore, sensitive information, apart from the information and exhibits she chose to include in her Complaint, may not be required to be disclosed at all. *See id*. at *9. Ultimately, "[t]he alleged inevitability of such disclosure is speculative," and her argument "is based on an event that may not occur," making it insufficient to rebut the presumption of judicial openness. *Id*. at *9-10.

Even if her medical history is required to be disclosed to the court, there are less drastic measures to protect her privacy. *See id*. at *10-11. The information she would like to preserve can be redacted, sealed or subject to a protective order limiting access of the administrative record to the parties and legal counsel involved. *See id*. When there are "less extraordinary measures available" to protect the litigant's concerned information,

anonymity is no longer warranted. *See, e.g.*, *UNUM Life Ins. Co.*, 164 F.Supp. 3d at 1147.

ii. K.D. has not offered aggravating circumstances that would arise from litigating under her name that prove a risk of harm from disclosure.

K.D. suggests disclosure will cause retaliatory harm in the form of a relapse. Decl. of Smith ¶ 9 ("I believe it is possible she could again become depressed and anxious and suffer a recurrence of substance use disorder."). However, if K.D.'s recovery is as Dr. Smith details, she suffers from the same risk of relapse faced by every patient similarly situated. Decl. of Smith ¶ 7. Dr. Smith does not proffer, nor do the appellants suggest, that there are any "aggravating circumstances" unique to her individual recovery or her involvement in this litigation that aggravate her likelihood of relapse. *Doe v. Doe*, 85 F.4th at 213. In short, K.D. has not met her "weighty burden of…identifying the consequences that would likely befall [her]," because she has not proven that her potential to relapse would increase as a result of proceeding with her own name. *In re Sealed Case*, 971 F.3d at 326. She has

also not suggested that proceeding pseudonymously would *prevent* this enhanced risk of relapse.

At most, Dr. Smith offers her conclusory belief that "*it is possible*" that K.D.'s symptoms could worsen if she proceeds under her name. Decl. of Smith ¶ 9 (emphasis added). Without providing the aggravating circumstances or additional evidence to warrant Dr. Smith's belief, this assertion is nothing more than speculation. Assuming it is K.D.'s potential embarrassment that leads Dr. Smith to believe she can face a revisitation of her symptoms, her assertion is that much more speculative when considering the less drastic measures that could be taken to protect K.D.'s information. Perhaps the foregoing reasons are exactly why courts hold that "[l]itigation-related stress and a general desire for privacy would not justify the grant of a request to proceed under a pseudonym even if disclosure would likely cause mental health concerns." *Doe v. Std. Ins. Co.*, 2015 U.S. Dist. LEXIS 134474 at * 7 (D. Me. Oct. 2, 2015).

2. *Universal, as a private entity, faces a significant risk of a biased jury should J.D. and K.D. be allowed to proceed anonymously.*

The prejudice against Universal caused by J.D. and K.D. remaining under their pseudonyms weighs against granting their appeal.

As a private actor, Universal faces a significant risk to its reputation as a consequence of the appellants' allegations of wrongdoing. Courts repeatedly hold that a defendant being a private actor weighs against granting the opposing party anonymity. *See Doe v. United States* DOJ, 2023 U.S. Dist. LEXIS 101825 at *9; *See also Doe v. Doe*, 85 F.4th at 215; *See also Cabrera*, 307 F.R.D. at 8. A private actor has a valid interest in maintaining their reputation, especially when the plaintiff can effectively hide from accountability from false allegations behind a shield of anonymity. *E.g.*, *Doe v. Smith*, 429 F.3d 706, 710 (7th Cir 2005). Accordingly, courts have found that, "it is [the defendant] and not the plaintiff who faces disgrace if the complaint's allegations can be substantiated…then anonymity provides a shield [for] defamatory charges…without shame or liability." *Id*. Both

parties bear the same risk in the court of public opinion when both parties are fully disclosed, hence the tradition of public proceedings dating back to common law. *E.g.*, *Advanced Textile Corp.*, 214 F.3d at 106.

Given that K.D. and J.D. advance charges of wrongful denial of coverage and acting against federal law, their allegations go directly to the heart of Universal's professional reputation. Compl. ¶¶ 20, 27. Allowing K.D. and J.D. to proceed anonymously would pose a substantial burden on Universal to defend itself against claims pertaining to the core of their business against parties that are shielded from scrutiny in the public eye. The party's name is a "personal and public stamp of approval upon their cause of action," and allowing K.D. and J.D. to proceed without their personal endorsement would subject Universal to potentially frivolous allegations leading to permanent reputational harm. *Qualls*, 228 F.R.D. at 13.

Additionally, this jurisdiction has recognized that allowing the litigant to proceed with pseudonyms will likely prejudice the defendant

with a false sense of assumed guilt from the jury. *See Cabrera*, 307 F.R.D. at 10. As this jurisdiction has held, "the jurors may construe the Court's permission for the plaintiff to conceal her true identity as a subliminal comment on the harm…the defendant has caused the plaintiff." *Id*. This assumption is logical: if the court has deviated from judicial transparency, then the allegations posed by the litigant must be substantial. In *Cabrera*, the District Court found this concern to be so prejudicial to the defendant that it required a sexual assault victim to proceed with her name at trial, despite observing sexual assault victims are generally afforded anonymity because of the intimacy of their case's information. *Id*.

The weight of prejudice Universal faces in the form of permanent damage to their professional reputation by appellants that are not exposed to equal scrutiny and an inevitably bias jury poses a significant weight against appellants' desire to remain under a pseudonym.

3. *The public interest in open judicial proceedings and understanding the nuances of ERISA-governed coverage is too strong to allow appellants to proceed under a cloak of anonymity.*

` J.D. and K.D. have a heavy burden to defeat the public's interest in open judicial proceedings. *See, e.g.*, *In re Sealed Case*, 971 F.3d at 326. Courts are "public institutions which exist for the public to serve the public interest." *Zavaras*, 139 F.3d at 800. As such, "[f]ederal courts are courts of public access," and "the strong presumption is that the public has a right to know who is seeking what in court." *UNUM Life Ins. Co. of Am.*, 164 F. Supp. 3d at 1142; *Cabrera*, 307 F.R.D. at 4.

Because it derives from the First Amendment, this interest has been articulated as a guaranteed public right, with the purpose of "protect[ing] the public's ability to oversee and monitor the workings of the Judicial Branch," and "promot[ing] the institutional integrity of the Judicial Branch." *Pub. Citizen*, 749 F.3d at 263. Anonymous litigation frustrates the public right of judicial access as does "any part of litigation conducted in

secret." *Doe v. Smith*, 429 F.3d at 710. Therefore, the District Court properly concluded "the public's interest in open court proceedings is *always* furthered by knowing the identity of the litigants." Mem. Op. & Order 6 (emphasis added).

Given K.D. and J.D.'s allegations arise from ERISA-governed coverage, this litigation is "a healthcare plan issue generally subject to public access." *CIGNA Health,* 2023 U.S. Dist. LEXIS 120861 at *8. ERISA governs all employment-sponsored health and benefit plans, impacting a massive number of American citizens. 29 U.S.C. § 1003(a). The only plans ERISA cannot govern are those sponsored by government or church employers. 29 U.S.C. § 1003(b)(1-2). Therefore, the public has a direct stake in this litigation as it will define the boundaries of employee-sponsored coverage required, if any, for medically unnecessary treatment. The public also has a stake in this litigation because it requires the clarification of 29 U.S.C. § 1132(a). The members of the public whose plans are governed by the exact issues discussed in K.D. and J.D.'s allegations will feel the

outcome of this case, and their constitutionally protected right to access this litigation and the parties' identities is that much more solidified.

II. THIS COURT SHOULD UPHOLD THE DISTRICT COURT'S DISMISSAL OF COUNT II FOR EQUITABLE RELIEF UNDER ERISA SECTION 502(a)(3) BECAUSE IT IS DUPLICATIVE OF THE CLAIM FOR BENEFITS ASSERTED UNDER ERISA SECTION 502(a)(1)(B) IN COUNT I.

A. Standard of Review

This Court reviews the district court's decision to dismiss Count II of Appellants' complaint *de novo*. *Farrar v. Nelson*, 2 F.4th 986, 988 (D.C. Cir. 2021). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (internal citation omitted).

B. Argument

The Supreme Court in *Varity v. Howe* addressed an Amici's concern that a plaintiff could "repackage his or her 'denial of benefits' claim" under

§ 502(a)(1)(B) "as a claim for 'breach of fiduciary duty'" under § 502(a)(3). 516 U.S. 489, 513, 515 (1996). The justification for the Amici's concern is that by repackaging the pleading as a claim under § 502(a)(3), a plaintiff is able to avail him or herself of the less deferential standard of review. *Id*. While the standard for review of an insurance administrator's coverage decisions under § 502(a)(1)(B) gives "the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan," *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989), the standard for review of an insurance administrator's coverage decisions under § 502(a)(3) "forgo[es] deference and hold[s] the administrator to the "rigid level of conduct" expected of fiduciaries." *Varity*, 516 U.S. at 513. In response to this concern, the Court held that equitable relief under § 502(a)(3) is normally not "appropriate" in cases where "Congress elsewhere provided adequate relief for a beneficiary's injury." *Id*. at 514. The Court found that certain provisions of ERISA, such as § 502(a)(1)(B), are "focus[ed] upon specific areas," while others, such as §

502(a)(3), are "'catchall' provisions." *Id.* at 512. They reasoned that these "'catchall' provisions" are meant to function "as a safety net, offering appropriate equitable relief for injuries caused by violations that § 502 *does not elsewhere adequately remedy*." *Id.* (emphasis added.)

The Court again addressed the interaction between § 502(a)(1)(B) and § 502(a)(3) in *CIGNA Corp. v. Amara*. 563 U.S. 421, 448 (2011). In *Amara*, the Court held that the plaintiff's desired relief under § 502(a)(1)(B) was not available, but that they could seek relief under § 502(a)(3) on remand. 563 U.S. at 448. It is important to note that this is a case in which a § 502(a)(1)(B) claim was already found to be futile, reinforcing the fact that the plaintiff would nonetheless be unable to seek relief under both claims. *Id.*

Courts, including the Sixth Circuit and the District Court for the District of Columbia in this case, have interpreted the Supreme Court's precedent to mean that plaintiffs may not plead a § 502(a)(3) claim where a § 502(a)(1)(B) claim would provide an adequate remedy to address the

alleged injury. *Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 373 (6th Cir. 2015) (en banc); Mem. Op. & Order 9. Other courts, such as the Eighth Circuit, have allowed plaintiffs to plead both a § 502(a)(1)(B) and a § 502(a)(3) claim but acknowledge that a plaintiff may only receive a remedy under one provision. *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711 (8th Cir. 2014). In summary, dismissing a § 502(a)(3) claim where a § 502(a)(1)(B) claim adequately remedies the injury properly follows Supreme Court precedent and congressional intent.

This Court should uphold the district court's ruling dismissing Count II of the plaintiff's complaint because Supreme Court precedent and congressional intent indicate that J.D. and K.D. can obtain both recovery for denial of benefits and clarification on rights to future benefits under § 502(a)(1)(B) if their allegations are substantiated. Therefore, upholding their claim under § 502(a)(3) is unnecessary, duplicative, and contrary to the available ERISA interpretation developed to date.

1. *Supreme Court precedent and congressional intent favor the dismissal of a § 502(a)(3) where a § 502(a)(1)(B) claim adequately remedies the injury.*

The most loyal interpretation of the Supreme Court's *Varity* holding that it is not "appropriate" to allow for a § 502(a)(3) claim in cases where "Congress elsewhere provided adequate relief for a beneficiary's injury" is that a plaintiff is prohibited from making a § 502(a)(3) claim when a § 502(a)(1)(B) claim can provide adequate relief. 516 U.S. at 515. The Supreme Court held this in response to an *Amici* concern that a plaintiff would simultaneously plead both a § 502(a)(1)(B) claim, reviewed "with a degree of deference to the administrator," and a § 502(a)(3) claim, which instead "hold[s] the administrator to the 'rigid level of conduct' expected of fiduciaries," for the same injuries. *Id.* at 513. Bringing an action under both provisions for the same injury would allow a plaintiff to hold the administrator to a higher standard of care than Congress intended for the same injury. *Id.* By contrast, if the Supreme Court's holding was interpreted to allow for simultaneous pleading under both § 502(a)(1)(B) and §

502(a)(3), the issue that the Supreme Court was addressing would not be resolved. *Id*. Therefore, the Supreme Court must have intended to disallow simultaneous pleading for identical disputes. *Id*.

The Supreme Court's subsequent opinion in *Amara* is consistent with this interpretation. 563 U.S. at 448. *Amara* held that a plaintiff who could not obtain relief under § 502(a)(1)(B) may be able to obtain relief under § 502(a)(3). *Id*. This is unlike J.D. and K.D.'s case because the Supreme Court knew at the time that they held that the plaintiffs might be able to recover under § 502(a)(3) that recovery under § 502(a)(1)(B) was foreclosed. *Id*. In summation, the *Amara* opinion's failure to state explicitly that "plaintiffs would be barred from initially bringing a claim under the § 1132(a)(3) catchall provision simply because they had already brought a claim under the more specific portion of the statute, § 1132(a)(1)(B)" does not preclude it from being what the Supreme Court intended, as the Court in *Silva* seems to suggest. *Silva*, 762 F.3d at 726-27.

In *Silva*, the Eight Circuit split from its precedent by determining that the plaintiff could plead simultaneous claims under § 502(a)(1)(B) and § 502(a)(3). *Id*. at 727. The court acknowledged as much, yet distinguished *Silva* from its earlier cases "based on the stage of litigation the court was reviewing." *Id*. It reasoned that the § 502(a)(3) claims in the earlier cases were correctly dismissed because they were on appeal from a motion for summary judgment, and "[a]t summary judgment, a court is better equipped to assess the likelihood for duplicate recovery, analyze the overlap between claims, and determine whether one claim alone will provide the plaintiff with 'adequate relief.'" *Id*. It distinguished *Silva* as being at the motion to dismiss stage, and therefore held that "it [would be] difficult for a court to discern the intricacies of the plaintiff's claims to determine if the claims are indeed duplicative, rather than alternative, and determine if one or both could provide adequate relief." *Id*. The Eight Circuit distinction between determining the duplicity of a claim at the motion to dismiss stage as opposed to the motion for summary judgment

stage is not binding and is not supported in the Supreme Court precedent. *Id*. J.D. and K.D. have alleged all sufficient facts for this Court to determine the duplicative nature of Claim II, and it is therefore, since it is not "difficult for a court to discern" the duplicability, it must be properly dismissed. *Id*.

For the foregoing reasons, the proper standard to apply to the allegations in J.D. and K.D.'s complaint is that if § 502(a)(1)(B) can provide adequate remedy for a litigant's allegations asserted under §502(a)(3), the §502(a)(3) claim is duplicative and must be dismissed.

2. *Count II of the appellants' complaint under § 502(a)(3) is duplicative because § 502(a)(1)(B) adequately remedies the injury; therefore, the district court was correct to dismiss it.*

Count II of the appellants' complaint alleges that Universal violated ERISA's parity requirements by applying a "'fail first'" policy for K.D.'s mental health and substance use disorder treatment that it does not apply to medical and surgical treatment. Compl. ¶¶ 26-29. The complaint seeks relief of "a. An injunction requiring Universal to follow the terms of the

Plan in making future benefit determinations and to refrain from applying internal guidelines inconsistent with the parity provisions of ERISA; and b. Such other appropriate equitable relief as the Court deems necessary and proper to protect the interests of Plaintiff under the Plan." *Id.* ¶ 29.

A threshold issue to address, so that a *Hill v. Blue Cross & Blue Shield of Mich.* exception argument can be properly disposed of, is that Count II seeks relief for K.D. as an individual claimant as opposed to seeking relief for all of the program's claims. *See generally*, 409 F.3d 710, 717 (6th Cir. 2005). This is an important distinction as the Sixth Circuit in *Hill* "distinguished between the denial of individual claims and plan-wide mishandling of claims as two distinct injuries." *Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 373 (6th Cir. 2015) (en banc). As a result of this distinction, the *Hill* court held that a § 502(a)(3) injunction seeking to remedy a "plan-wide problem that posed a potential for future injury" could be maintained in addition a § 502(a)(1)(B) claim, creating an exception to the general rule. *Id*.

The *Hill* exception is not at issue in this case as Claim II is directed at seeking an injunction with respect to K.D., not all plan participants. The individualistic nature of the desired remedy is evident throughout the complaint's language. For example, Claim II reads, "[a]s a direct and proximate result of these actions, and the resulting injuries and damages *sustained by Plaintiff K.D.* as alleged herein, *K.D.* is entitled to and hereby requests that this Court grant *Plaintiff* the following relief pursuant to 29 U.S.C. § 1132(a)(3)." Compl. ¶ 29. (emphasis added). Additionally, after requesting the injunction, Plaintiff requests "[s]uch other appropriate equitable relief as the Court deems necessary and proper *to protect the interests of Plaintiff* under the Plan." Compl. ¶ 29. (emphasis added). When considering the word choice of Claim II, it is evident that the Claim seeks to address K.D.'s injuries only.

This reading of Count II's prayer for relief is consistent with the district court's understanding of the remedy sought by appellants. The district court found that the plaintiffs "seek an injunction requiring

Universal to "["pay the cost [of] K.D.'s treatment at Lifeline without application of the asserted 'fail first' policy"] in the future should K.D. have a relapse and again require residential care." Mem. Op. & Order 10. In saying "should K.D. have a relapse and again require residential care," the district court makes clear that it understood Claim II to be focused specifically on K.D.'s future treatment, not all plan participants' future treatments. *Id.*

As Claim II does not fall under the *Hill* exception, it is easy to see Claim I and Claim II as duplicative. Both Count I and Count II arise from Universal's alleged failure to properly adhere to ERISA's parity requirement. Compl. ¶¶ 19-29. The difference between Count I and Count II is in the remedy sought: Count I is retrospective, seeking "benefits due to Plaintiff under the Plan" as a result of Universal's alleged failure to properly adhere to ERISA's parity requirement, while Count II is prospective, seeking an injunction requiring Universal to properly adhere to ERISA's

parity requirement when making decisions regarding K.D.'s coverage determinations in the future. *Id*.

As the district court properly noted, § 502(a)(1)(B), under which Claim I was filed, allows a plaintiff to "to clarify [a claimant's] rights to future benefits under the terms of the plan." Mem. Op. & Order 10. (quoting 29 U.S.C. § 1132(a)(1)(B)). As K.D. can adequately address her future benefits under the plan as part of her § 502(a)(1)(B) claim, Count II, which seeks an injunction requiring that Universal to properly provide benefits under the plan going forward, fails to seek relief other than what can already be obtained in Claim I, if successful, and therefore was correctly dismissed.

CONCLUSION

For the foregoing reasons, this Court should affirm the District Court's denial of Appellants' motion to proceed anonymously and grant of Appellee's motion to dismiss Count II.