ORAL ARGUMENT SCHEDULED ON MARCH 1, 2024

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 OF APPELLANTS

Team 15

Attorney for Appellants

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JURISDICTIONAL STATEMENT

This case arises under the Employee Retirement Income Security Act of 1974 ("ERISA") and subject-matter jurisdiction existed in the United States District Court for the District of Columbia pursuant to 28 U.S.C. §§ 1131, 1132(e). This Court has jurisdiction over this case under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the District Court erred in denying Appellants' motion to proceed under pseudonyms in a case that involves sensitive and highly personal stigmatized matters related to the history of mental illnesses and substance abuse disorder that occurred during adolescence.
2. Whether the District Court erred in prematurely dismissing Appellants Count II Parity Act claim on the grounds of duplicity at the motion to dismiss stage, and in determining that Count II was duplicative of Count I should the duplicity issue be determined at this early stage.

STATEMENT OF THE CASE

Appellant J.D. is a covered participant under the CIA Consulting LLC Health Plan (the "Plan"), and her daughter, Appellant K.D., is a covered beneficiary. R. at 3. Governed by ERISA, the Plan is insured and administered by Universal Health Insurance Co. ("Universal"), and covers medically necessary treatment of mental illness and substance use disorders. R. at 3–4. Universal has

developed its own internal guidelines to decide whether a claim for benefits is medically necessary. *Id*. For mental health and substance use treatment, Universal applied this guideline to require that patients fail first at lower levels of care before they can receive long-term residential care. R. at 4, 11. However, the Plan does not apply such a "fail first" policy with respect to long-term inpatient medical and surgical treatment. R. at 8.

K.D. has a complicated medical history of mental illness and substance use disorder. R. at 4. She began to suffer from depression as a sophomore in high school and was sexually assaulted in the summer between her sophomore and junior year. *Id.* The residual psychological and physical effects of the assault exacerbated her depression, triggered her anxiety, and caused her to start drinking and abusing drugs. *Id*. In early 2022, K.D. began receiving intensive outpatient treatment paid by the Plan. R. at 28–29. After an attempted suicide and an overdose on heroin, K.D. was admitted to Lifeline Inc., an inpatient treatment facility, for residential treatment to treat both her mental illness and substance use disorder. R. at 5. K.D. was diagnosed with major depressive disorder, generalized anxiety disorder and substance use disorder. *Id*.

After paying for three weeks of treatment, Universal determined that residential treatment was no longer medically necessary, and she could be treated at the lower level of care. R. at 6, 13. Both J.D. and the treatment team at Lifeline

disagreed with the decision, so Appellants appealed the adverse benefit determination. R. at 6. Universal affirmed its denial, but the denial letter is "unenlightening about the specific reason for the denial of benefits." *Id*. The letter notes that while the review typically involves a telephone conversation with the provider, Universal made its decision despite failing to reach K.D.'s provider. R. at 23. Following the denial, K.D. exhausted all administrative remedies required under ERISA. *Id*.

Because the director of Lifeline and K.D.'s treating psychiatrist cautioned that K.D. continued to be at high risk of relapse, J.D. paid out-of-pocket for the additional twelve months of residential treatment at Lifeline and had to take out a second mortgage on her home. R. at 6. K.D. is now enrolled in college and appears to do well from a psychiatrist standpoint. *Id*. However, K.D. continues to be at risk of relapse, as her treating psychiatrist, Dr. Smith, has noted that her recovery is precarious and she could "easily suffer a big set-back." R. at 26. Because K.D. is very sensitive and even ashamed of her past drug use and mental health treatment, she has expressed fears that "if anyone learns of the history, she will be shunned." *Id*. Because it is possible that K.D. could again become depressed and anxious and a recurrence of substance use disorder if the sensitive details of her treatment are revealed, Dr. Smith strongly recommended against K.D. being forced to proceed a litigation using her name. *Id*.

On August 2, 2023, Appellants J.D. and K.D. brought suit against Universal in the United States District Court for the District of Columbia, using only their initials, and the complaint asserts two counts. R. at 29. Appellants alleged Count I for improper denial of plan benefits under ERISA Section 502(a)(1)(B), and Count II for equitable relief under Section 502(a)(3), in the form of an injunction to remedy a violation of ERISA's mental health parity provision, 29 U.S.C § 1185a. R. at 7–8. In Count II, Appellants assert that the clinical criteria applied by Universal for coverage of mental health and substance abuse residential programs are more stringent than their criteria for analogous medical or surgical benefits because they acquire patients to "fail first" at lower levels of care. *Id*.

Because K.D. was 18 at the time of the treatment in question and 19 when the lawsuit was filed, the District Court directed Appellants to demonstrate why they should be permitted to proceed using initials. R. at 29. In response, Appellants filed a motion to proceed anonymously to protect the privacy interests of K.D.. R. at 30. Universal filed a response opposing Appellants' motion and filed its own motion to dismiss Count II. The District Court denied the "Motion of Appellants to Proceed Anonymously" and granted the "Motion of Defendant Universal Health Insurance Co. to Dismiss Count II." R. at 27. Because Appellants have indicated that they will not proceed if they must reveal their names and requested that judgment be entered against them so that they may

appeal this ruling if they lose on the issue of pseudonyms, the District Court dismissed the case. R. at 36–37.

SUMMARY OF ARGUMENT

The District Court erred in denying the motion to proceed anonymously, because Appellants have demonstrated substantial privacy interests that outweigh the public's interests in open proceedings. Courts have relied on multi-factor tests that weigh litigant's privacy interest against the public interest in knowing who is using the court. Factors relevant to this case include whether the claim involves sensitive and personal matters, whether the plaintiff is vulnerable to the possible harms of disclosure in light of her age, whether the public's interest is furthered by the disclosure, and whether there are suitable alternatives. R. at 31. Each of these factors weighs in favor of allowing Appellants to proceed under pseudonyms.

First, K.D. began to suffer from mental health and drug abuse issues when she was a minor. R. at 4. While K.D. was 18 at the time of the alleged treatment and 19 when the suit was filed, courts have granted pseudonymity when adult plaintiffs sue over injuries that occurred when they were minors and when litigants are young adults, because their vulnerability to the issues mandates a greater level of protection. Second, the case involved sensitive and highly personal information related to K.D.'s mental illnesses and substance abuse disorder as well as her sexual assault. And these records are directly tied to the subject matter of the case

in addressing the wrongful denial of plan benefits. R. at 7. Moreover, K.D. and her treating physician have attested that disclosure of identity could create a set-back in her current recovery. R. at 26. Third, there is a substantial public interest to ensure the rights of plaintiffs with mental illnesses are fairly represented in the courtroom, which weighs in favor of pseudonymity to prevent fear of stigmatization. Finally, while the District Court argued that redaction and sealing records can serve as alternative mechanisms, these options are not adequate alternatives because they may create more of a burden on public access of records as compared to proceeding under pseudonymity.

Next, the District Court erred in prematurely dismissing Count II on the grounds of duplicity at the motion to dismiss stage. Count II (Parity Act claim) should advance through this stage because first, the fact records were limited for the lower court to determine whether the monetary benefits under Section 502(a)(1)(B) alone would be adequate for Appellants, and second, due to the nature of Parity Act claims, further discovery may be needed to discern whether Count II are indeed duplicative of, rather than alternative from Count I.

Even if the District Court might be appropriate in determining the duplicity issue at the motion to dismiss stage, the District Court erred in concluding Count II was duplicative of Count I on the grounds that the injunction and equitable surcharge relief under Count II was encompassed within Count I to recover

benefits due and clarify rights to future benefits. First, Count II is not duplicative because unlike Count I pleads liability *under the terms of the plan*, Count II represents an alternative theory of liability *out of the plan*, pleading as-applied Parity Act violation by the implementing a fail-first policy discriminately to mental health and use disorder treatment rather than other surgical and medical treatment. Second, Count II is not duplicative because it pleads distinct remedies including injunctive relief and equitable surcharge, which are traditionally equitable relief different from Count I's relief of recovering monetary benefits within the plan.

ARGUMENT

I. STANDARD OF REVIEW

The Court reviews *de novo* a district court's dismissal under Rule 12(b)(6). *See Cannon v. D.C.*, 717 F.3d 200, 204 (D.C. Cir. 2013).

II. THE DISTRICT COURT ERRED IN DENYING THE MOTION TO PROCEED ANONYMOUSLY BECAUSE APPELLANTS' PRIVACY INTERESTS OUTWEIGH THE PRESUMPTION OF OPEN COURT PROCEEDINGS.

Rule 10 of the Federal Rules of Civil Procedure requires that a complaint include the "names of all the parties." Fed. R. Civ. P. 10(a). However, the presumption of public access may be overcome "by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *J.W. v. District of Columbia*, 318 F.R.D. 196, 198 (D.D.C. 2016) (citation omitted). This Court has held that the appropriate way to determine

whether a party may proceed anonymously is to "balance the litigant's legitimate interest in anonymity against countervailing interests in full disclosure." *In re Sealed Case*, 931 F.3d 92, 96 (D.C. Cir. 2019); *see also Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2d Cir. 2008) (characterizing the relevant inquiry in the Fifth, Ninth, Tenth, and Eleventh Circuits as a balancing test that weighs plaintiff's need for anonymity against interests in disclosure). While courts have endorsed multi-factor tests, this Court has noted that these factors should not lead a court to engage in a "wooden exercise" of checking the boxes but must consider relevant factors to the particular case. *In re Sealed Case*, 931 F.3d at 97.

The factors relevant to this case include whether it involves matters of a "highly sensitive and personal nature," *Sealed Plaintiff*, 537 F.3d at 190, "whether identification poses a risk of retaliatory physical or mental harm to the requesting party," *id.*, "the ages of the persons whose privacy interests are sought to be protected," *In re Sealed Case*, 931 F.3d at 97, "whether the public's interest in the litigation is furthered" by the disclosure, *Sealed Plaintiff*, 537 F.3d at 190, and "whether there are any alternative mechanisms for protecting the confidentiality." *Id*. On balance, the intimate nature of information underlying this case, which involved mental health and substance abuse issues in conjunction with Appellant K.D.'s relative youth, establishes special circumstances to warrant authorization to

proceed anonymously, and such sensitive details could not be adequately protected through alternatives as redaction or filing under seal.

A. Appellant K.D.'s Young Age Warrants a Heightened Protection as a Persuasive Factor Justifying Anonymity.

"The ages of the persons whose privacy interests are sought to be protected" is an important factor that courts have considered when determining whether a litigant should be allowed to proceed anonymously. *In re Sealed Case*, 931 F.3d at 97; *see also Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981) (reasoning that youth of plaintiffs is a significant factor in the matrix of considerations arguing for anonymity). Federal Rule of Civil Procedure 5.2(a)(3) presumptively requires pseudonymizing minors as to all matters. Fed. R. Civ. P. 5.2(a)(3); *see also Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir. 1997) (explaining that "fictitious names are allowed when necessary to protect the privacy of children"); *M.P. v. Schwartz*, 853 F. Supp. 164, 168 (D. Md. 1994) (concluding that redaction of minors' names is consistent with the right of access to court records). Here, while the District Court recognized that K.D. is quite young, it improperly reasoned that she is not in need of special protection simply because she is no longer a minor when the suit was filed. R. at 31–32.

Even though K.D. was 18 at the time of treatment and turned 19 when the suit was filed, she began to suffer from depression as a sophomore in high school. R. at 4. After she was sexually assaulted as a rising junior in high school, her

mental health worsened, and she began to develop substance abuse issues. *Id*. Accordingly, the records at issue concern a plaintiff who was only 18 years old and younger. The balancing tests do not strictly limit protection to individuals under 18, and courts have allowed adults to proceed anonymously when they sue over injuries that occurred when they were minors. *See Doe v. Clark Cnty. Sch. Dist.*, No. 2:15-cv-00793-APG-GWF, 2016 WL 4432683, at *26 (D. Nev. Aug. 18, 2016) (granting anonymity even though plaintiff is over 18 because the alleged sexual assault occurred when he was a minor and revelation of identity may compound the damage done to him while he was a child); *Doe v. Boulder Valley Sch. Dist.* No. RE-2, No. 11-cv-02107-PAB, 2011 WL 3820781, at *5 (D. Colo. Aug. 30, 2011) (finding in a case involving sexual assaults against minors where release of identities may exacerbate the emotional hardship plaintiffs allegedly suffered, especially considering that one is still a minor and the other two just became adults). Some courts have recognized the need for pseudonymity for young adults, even though they were no longer minors. *See Doe v. De Amigos, LLC*, No. 11-cv-1755, 2012 WL 13047579, at *2–3 (D.D.C. Apr. 30, 2012) (concluding that while plaintiff was 18 at the time of the alleged sexual assault and at least 18 when the complaint was filed, she was and still is a young adult college student, who may be susceptible to scrutiny from peers than an older adult would be).

In *Plaintiff B v. Francis*, the district court similarly denied the motion to proceed anonymously because the plaintiffs were no longer minors at the time of the lawsuit and the events alleged occurred more than seven years ago, so "the fact that they were minors at the time was not to be given much weight." 631 F.3d 1310, 1314 (11th Cir. 2011). However, the Eleventh Circuit reversed and reasoned that, because the issues involve descriptions of the plaintiffs in various stages of nudity in explicit sexual conduct while they were minors, the matters are highly sensitive and personal. *See id*. at 1317. Moreover, the court in *Boulder Valley* found that "the fact that plaintiffs are or recently were minors and the fact that the incidents occurred within the past two to four years give added weight to plaintiffs' claims that they would suffer further psychological trauma if their names are revealed." 2011 WL 3820781, at *5. Similarly, K.D. only recently turned into a young adult, and the records involved information detailing the sexual assault, mental illnesses, drug addiction, and attempted suicide that she experienced as a minor or just a year out of minority, which all occurred within the past two to four years. R. at 28. Accordingly, considering her young age, this Court should not disregard K.D.'s need of special protection simply because she is no longer a minor.

In this case, K.D.'s mother also attempted to proceed under her initials. While parents over the age of majority have limited privacy interests, courts have

allowed parents suing on behalf of their children to proceed pseudonymously, reasoning that "since a parent must proceed on behalf of a minor child, the protection afforded to the minor would be eviscerated unless the parent was also permitted to proceed using initials." *P.M. v. Evans-Brant Cent. Sch. Dist.*, No. 08-CV-168A, 2008 WL 4379490, at *3 (W.D.N.Y. Sept. 22, 2008) (holding that both parent and child should be permitted to proceed using initials when a parent commenced on behalf of a minor child). The consideration is rooted in the protection of children, because parents and their children "share common privacy interests due to their intractably linked relationship," and the release of the parents' full names could permit the public to easily learn their children's identities. *J.W.*, 318 F.R.D. at 201 (concluding that the person who will be most affected by the lack of anonymity of the parents is the child plaintiff); *see also S.E.S. v. Galena Unified Sch. Dist. No. 499*, No. 18-2042-DDC, 2018 WL 3389878, at *4 (D. Kan. July 12, 2018) (finding that disclosure of parents' identities would place personally identifiable information about the alleged sexual harassment of a minor in public record). Here, even though K.D. is no longer a minor, her mother should still be granted the right to proceed with pseudonymity because of the unique circumstances concerning K.D.'s youth. Ordering disclosure of J.D.'s identity could easily place identifiable information about her daughter's mental health and drug abuse matters in the public record.

Under some circumstances, the current age of the plaintiff as compared to the age of the plaintiff at the time of the alleged incidents may argue in favor of denying a motion to proceed with pseudonyms, but this is not the case here.

B. Permitting Pseudonymity Prevents Disclosure of Highly Sensitive and Personal Mental Health and Substance Abuse Information to Protect Against the Reasonable Risks of Stigmatization and Further Mental Harm.

Appellants filed the motion to proceed anonymously primarily to protect K.D.'s privacy interests because the underlying facts involved intimate details related to K.D.'s mental health and substance abuse issues. R. at 31–32. Courts have allowed pseudonymity in cases involving matters of sensitive and highly personal nature that creates a risk of social stigma. *See James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993); *In re Sealed Case*, 931 F.3d at 97. First, drug abuse or addiction is sensitive information, and pseudonymity aimed at preventing revelation of substance abuse history should be allowed. *See Smith v. United States Off. of Pers. Mgmt.*, No. 2:13-cv-5235, 2014 WL 12768838, at *2 (E.D. Pa. Jan. 21, 2014) (granting plaintiff's request to proceed anonymously and finding that his fear of embarrassment if identity is disclosed because of the societal stigma associated with drug and alcohol addiction is reasonable). Further, litigants with mental health issues have a significant interest in protecting this highly personal information as there are still stigmas associated with mental illness. *See Doe v. Provident Life & Accident Ins. Co.*, 176 F.R.D. 464, 468 (E.D. Pa. 1997) (finding

pseudonymity justified in an action related to plaintiff's bipolar disorder because there is a significant stigma associated with being identified as suffering from a mental illness); *Doe v. United Behav. Health*, No. CIV.A. 10-5192, 2010 WL 5173206, at *3 (E.D. Pa. Dec. 10, 2010) (finding plaintiff's concern that associated stigma will negatively affect her life to be a substantial factor in granting anonymity).

The District Court argued that K.D.'s mental illness and drug addiction history alone cannot justify a motion to proceed anonymously, because the "the same is true in all medical cases," particularly those involving these issues. R. at 31–32. However, it failed to adequately consider the extraordinary circumstances particular to K.D.'s medical records and social history that favors a motion with a pseudonymous proceeding. The determination on whether to grant anonymity should all be viewed because K.D. suffered from mental health and drug addiction issues when she was a minor or one year out of minority, where her vulnerability to the issues mandates a much higher level of protectiveness. *See Doe B.A. v. USD 102*, No. 182476-CM, 2019 WL 201741, at *2 (D. Kan. Jan. 15, 2019) (reasoning that plaintiff being a minor at all times material to the allegations is greatly significant, especially when allegations involve matters of a highly sensitive and personal nature). K.D. began to receive intensive outpatient treatment following her sexual assault, because the residual psychological effects of this assault

exacerbated her conditions. R. at 4. Accordingly, it is anticipated that the assault will be relevant to the records submitted to court. Courts have granted anonymity in cases "containing allegations of sexual assault because they concern highly sensitive and personal subjects." *Doe v. Cabrera*, 307 F.R.D. 1, 5 (D.D.C. 2014); *see also De Amigos*, 2012 WL 13047579, at *2. And the need for anonymity in this case is particularly strong because K.D. was still a minor when she was sexually assaulted.

Furthermore, K.D.'s mental condition and substance abuse disorder is the primary focus of the litigation, which weighs in favor of a pseudonymous filing. In *Doe v. Hartford Life & Accident Ins. Co.*, where an insured plaintiff filed a motion to proceed anonymously under Employee Retirement Income Security Act (ERISA) for wrongful denial of disability benefits, the court found that the public interest to the identity of litigants did not outweigh the interests of the plaintiff suffering from severe bipolar disorder to use a pseudonym. 237 F.R.D. 545, 547 (D.N.J. 2006). While any litigant may run the risk of public embarrassment by bringing in a case with sensitive facts, the court argued that the situation in *Hartford Life* is vastly different because the plaintiff's bipolar condition is "directly tied to the subject matter of the litigation-his mental illness and the disability benefits he allegedly is entitled to," so the case "is analogous to a woman seeking an abortion or a homosexual fired from his job because of his sexual

orientation." 237 F.R.D. at 550. Similarly, Appellants sued Universal for the improper denial of mental health and substance use plan benefits that K.D. is entitled to, so the details of her treatment are directly tied to the issues before this Court. R. at 7. Accordingly, because the core of this lawsuit focuses on such matters, the motion to proceed with pseudonymous filing should be granted.

The District Court also overlooked the reasonable risk that disclosure of K.D.'s identity could exacerbate her current mental health conditions. Courts have allowed pseudonymity if there is a reasonable fear of "retaliatory physical or mental harm to the requesting party," *In re Sealed Case*, 931 F.3d at 97, which may be considered in light of "the anonymous party's vulnerability to such retaliation." *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). And the cases that say pseudonymity can be justified if naming a party risks physical harm usually apply the same as to "mental harm." *Sealed Plaintiff*, 537 F.3d at 190. Here, K.D. has expressed her fears that "if anyone learns of this, she will be shunned" due to the sensitivity of her past drug use and residential treatment, and a declaration from her treating physician was submitted to support the contention that disclosures would result in needless risk of mental harm. R. at 26. Dr. Smith strongly recommends against K.D. proceeding the case under her name, because she could "easily suffer a big set-back" in recovery as once again becoming depressed and anxious and suffering a recurrence of

substance use disorder. *Id*. However, the District Court failed to adequately consider this potential harm and improperly concluded that the declaration is of limited value based on the equivocal nature of the writing and the fact that Dr. Smith may benefit if Universal is determined to be liable. R. at 32.

In *Doe v. MacFarland*, the court explained that "one does not need to be a mental health provider to accept the general proposition that a person who is sexually abused as a child may suffer emotional or psychological harm." 117 N.Y.S.3d 476, 492 (Sup. Ct. 2019) (reasoning that the court may consider whether a plaintiff's self-serving statement that she may suffer emotional harm should her identity be revealed when justifying anonymity without requiring mental professionals attesting to such harm). And courts in this district have granted anonymity to plaintiffs who claimed a reasonable risk of harm based solely on their own assertions. *See Doe v. Sessions*, No. 18-cv-0004-RC, 2018 WL 4637014, at *6 (D.D.C. Sept. 27, 2018) (agreeing with plaintiff with severe emotional trauma that public identification will cause him to be traumatized again knowing that his information will remain public); *Cabrera*, 307 F.R.D. at 7 (concluding that to have plaintiff's name be public where she was a victim of rape could subject her to trauma exacerbating any psychological issues she is experiencing); *De Amigos*, 2012 WL 13047579 at *2 (finding that even without indication that identification poses a risk of retaliatory harm, publicity could exacerbate the psychological harm

that plaintiff has already experienced). In *Clark County*, where the plaintiff submitted an opinion from his treating psychiatrist asserting that the disclosure will exacerbate his anxiety disorder, the court found it to be a substantial factor in granting anonymity without questioning the potential conflict of interest of the psychiatrist in providing such a declaration. *See* 2016 WL 4432683 at *15. This Court should adequately consider the corroborative arguments attesting to the reasonable risk that disclosure of identity could negatively affect K.D.'s rehabilitative process.

C. Public Has a Strong Interest to Protect Plaintiffs' Privacy so that Plaintiffs with Mental Illnesses are Not Discouraged from Pursuing Their Claims, And Sealing or Redaction are Imperfect Alternatives to Anonymous Proceeding.

While the District Court asserted that the public's interest in open court proceedings is furthered by knowing the identity of the plaintiffs in the case, R. at 32–33, it failed to consider that there is a "substantial public interest" in ensuring that the "rights of mental illness sufferers are represented fairly and without the risk of stigmatization," weighing in favor of pseudonymous filing in actions involving such illnesses. *Hartford Life & Accident Ins. Co.*, 237 F.R.D. at 550; *see also United States Off. of Pers. Mgmt.*, 2014 WL 12768838, at *2 (finding that the public has an interest in allowing those with a stigmatizing illness to sue). These courts reasoned that public disclosure would likely deter civil litigants with mental illnesses from vindicating their rights in the courtroom for "fear that they will be

stigmatized in their community if they are forced to bring suit under their true identity," particularly where the litigants have sought to keep the matters confidential. *Provident Life & Accident Ins. Co.*, 176 F.R.D. at 468.

In response, the District Court argued that by redacting private information or sealing the medical and court records, the possibility of a chilling effect can be ameliorated, and privacy interests can be protected without having to proceed anonymously. R. at 33. However, it failed to consider that pseudonymity can be less of a burden on public access of court records than is sealing or redaction. First, pseudonymity is sometimes offered as a less restrictive alternative on public access alternative to outright sealing. *See Whistleblower 14106-10W v. C.I.R.*, 137 T.C. 183, 191–92 (2011) (finding that it is appropriate to consider the less drastic option of permitting to proceed anonymously rather than granting a request to seal the record); *In re Application of N.Y. Times Co. for Access to Certain Sealed Ct. Documents*, 585 F. Supp. 2d 83, 91 (D.D.C. 2008) (concluding that protecting an informant's identity did not require sealing of documents but could be accomplished through the redaction of the informant's name). Compared to sealing the records, permitting a party to proceed anonymously "preserves in large measure the public's ability judicial functioning since party anonymity does not obstruct the public's view of the issues joined or the court's performance in

resolving them." *Whistleblower 14106-10W*, 137 T.C. at 192 (quoting *Doe v. Stegall,* 653 F. 2d 180, 185 (5th Cir. 1981)).

Furthermore, whether a plaintiff is named Dow or DuPont should not make it more difficult for lawyers to advise their clients but removing certain material facts can make it harder for lawyers to help their clients understand what conduct is impermissible. *See* Lior J. Strahilevitz, *Pseudonymous Litigation*, 77 U. CHI. L. REV. 1239, 1246 (2010) (arguing that sealing or fuzzing over the facts makes it harder for litigants to understand what exactly is permitted by a precedent, while pseudonymity doesn't have that effect). "There is a plethora of facts far more relevant to the public than the litigants' names," but when courts choose to redact facts from statements of the case, "the public typically will not have access to the fruits of the parties' civil discovery requests." *Id*. at 1246–47. More importantly, when the core of the lawsuit is about such matters, redaction may make it impossible for judges, attorneys, and the public to understand the substance of the legal arguments. Here, Appellants are alleging wrongful denial of benefits, so the question rests on whether the determination that residential treatment was no longer medically necessary was proper as the basis for the denial. Accordingly, treatment plans and medical records involving sensitive details thus become critical pieces of evidence. R. at 5. The District Court's order to redact this information can potentially hinder a clear comprehension of the material facts and

the legal arguments. Accordingly, sealing records and redacting information are imperfect substitutes to proceeding this case under pseudonyms.

III. THE DISTRICT COURT ERRED IN PREMATURELY DISMISSING COUNT II DUE TO DUPLICITY AND IN DETERMINING THAT COUNT II WAS DUPLICATIVE OF COUNT I SHOULD THE ISSUE BE DETERMINED AT THIS EARLY STAGE

When reviewing simultaneous claims under Sections 502(a)(1)(B) and 502(a)(3), sister circuits have followed the Supreme Court precedents in allowing both claims to advance through the motion to dismiss stage, because the factual records are limited to determine whether the relief under Section 502(a)(1)(B) would be adequate. *See, e.g.*, *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 727 (8th Cir. 2014). To analyze whether a Parity Act claim is duplicative of a benefits claim, courts have developed two types of analyses: pleading alternative theories of liability, *Silva*, 872 F.3d at 726–27, and distinct remedies, *Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 374–75 (6th Cir. 2015).

The District Court erred in dismissing Count II prematurely at this early stage because factual records are not sufficient enough to determine whether the relief under Count I is adequate and whether Count II and Count I are indeed duplicative. Even if the District Court had to decide the duplicity at this stage, Count II is not duplicative of Count I because first, it pleads alternative theory of liability for the statutory rights under the Parity Act, rather than the denial of benefits under the terms of the Plan, and second, it also pleads injunctive and other

equitable relief, which are distinct remedies from the mere recovery of benefits due under Count I.

A. It Was Premature to Decide on Duplicity at the Motion to Dismiss Stage Because Records Are Not Sufficient to Discern the Adequacy of Relief under Count I and the Intricacies of Claims.

The District Court erred in dismissing Count II prematurely at the motion to dismiss stage because records are not sufficient to discern the adequacy of relief under count i and the intricacies of Count II and Count I on alternative pleadings. ERISA's enforcement provisions empower plan participants or beneficiaries to pursue two types of relief: one for monetary relief seeking to recover benefits due, enforce their rights, or clarify their rights to future benefits "under the terms of the plan," 29 U.S.C. § 1132(a)(1)(B); another for other appropriate equitable relief based on violations of the plan or other ERISA statutory rights. 29 U.S.C. § 1132(a)(3). In 2008, Congress passed the Mental Health Parity and Addiction Equity Act ("Parity Act") as an amendment to ERISA and provided that ERISA plan participants and beneficiaries have statutory rights requiring insurers to treat mental health benefits and substantially all medical and surgical benefits equally. *See* 29 U.S.C. § 1185a. The Parity Act is designed to end discrimination in the provision for mental health and substance use disorders as compared to medical and surgical conditions in employer-sponsored group health plans. *See Coalition for Parity, Inc. v. Sebelius*, 709 F. Supp. 2d 10, 13 (D.D.C. 2010). Specifically, the

Parity Act requires that plan administrators may not apply "financial requirements" and "treatment limitations" to mental health benefits that are more restrictive than those applied to substantially all medical and surgical benefits. 29 U.S.C. § 1185a(a)(3)(A). Accordingly, a plaintiff can allege a Parity Act violation through a facial challenge to a benefits plan's written requirements, *i.e.*, terms of the plan, or through an as-applied challenge to the provider's implementation of the plan in practice. *See Theo M. v. Beacon Health Options*, No. 2:19-cv-364-JNP, 2020 WL 5500529, at *4 (D. Utah Sept. 11, 2020); 29 C.F.R. § 2590.712(c)(4)(i) (stating that "processes, strategies, evidentiary standards, or other factors" may not be applied in a discriminatory manner). An as-applied challenge is normally pled when a plan imposes more stringent requirements on mental health and substance abuse facilities than analogous medical and surgical treatment facilities. *See Theo M.*, 2020 WL 5500529, at *4 (an as-applied challenge alleging the imposition of additional medical necessity criteria to deny coverage of treatment at mental health facilities only); *Christine S. v. Blue Cross Blue Shield of New Mexico*, 428 F. Supp. 3d 1209, 1231 (D. Utah 2019).

In *Varity Corp. v. Howe*, the Supreme Court suggests that simultaneous causes of action are not inherently barred, as Section 502 (a)(3) is a "safety net" authorizing appropriate equitable relief caused by violations that Congress elsewhere did not "provide adequate relief for a beneficiary's injury." 516 U.S.

489, 512, 515 (1996). *Cigna Corp. v. Amara* further held that Section 502(a)(3) does authorize the equitable remedy of plan reformation when Section 502(a)(1)(B) did not give plaintiffs adequate relief. 563 U.S. 421, 438 (2011). *Varity* and *Amara* did not set an absolute bar to simultaneous Section 502(a)(1)(B) and 502(a)(3) claims, which is consistent with Rule 8 of the Federal Rules of Civil Procedure in permitting parties to include "relief in the alternative or different types of relief." Fed. R. Civ. P. 8(a)(3).

In light of *Varity* and *Amara*, many circuits have considered whether a plaintiff may advance their Sections 502(a)(1)(B) and 502(a)(3) claims through the motion to dismiss stage. These circuits generally allow plaintiffs to advance simultaneous claims through the motion to dismiss stage because unlike summary judgment, the factual records at this stage are too limited for courts to assess the likelihood of duplicate recovery, the potential overlap between claims, and the adequacy of relief under Section 502(a)(1)(B) claim. *See Silva*, 762 F.3d at 727; *New York State Psychiatric Ass'n, Inc.* (*NYSPA) v. UnitedHealth Grp.*, 798 F.3d 125, 134–35 (2d Cir. 2015); *Moyle v. Liberty Mut. Ret. Benefit Plan*, 823 F.3d 948 (9th Cir. 2016). Although the Sixth Circuit in *Rochow* prohibited the plaintiff from pursuing his Section (a)(3) claim, the case is distinguishable from other circuits because the plaintiff had already received his remedy under Section 502(a)(1)(B). 780 F.3d at 374–75.

The D.C. Circuit has not addressed whether a plaintiff may proceed with simultaneous claims. Courts within this district ruled that a plaintiff may proceed under Section 502(a)(3) if the remedies pursuant to Section 502(a)(1)(B) are not adequate and the Section 502(a)(3) claim is not a repackaged denial of benefit claim. *See Lewis v. Pension Benefit Guar. Corp.*, 197 F. Supp. 3d 16, 22–23 (D.D.C. 2016) (collecting cases), *rev'd on other grounds*, 912 F.3d 605 (D.C. Cir. 2018); *see also Crummett v. Metro. Life Ins. Co.*, No. 06-cv-01450, 2007 WL 2071704, at *2 (D.D.C. 2007). In *White v. Hilton Hotels Retire Plan,* the district court has allowed plaintiffs to proceed simultaneous claims because it would be premature to conclude that "[p]laintiffs will necessarily receive and complete relief" under § 1132(a)(1)(B) and dismiss the § 1132(a)(3) claim. 263 F. Supp. 3d 8, 13 (D.D.C. 2017).

Here, the District Court erred in determining whether Appellants' Count I offers adequate relief and Count II is duplicative of Count I at the motion to dismiss stage because records are not sufficient to discern the adequacy of relief under Count I and the intricacies of simultaneous claims. Instead, the District Court should allow Plaintiffs to advance Count I and II through this early stage of litigation.

At the motion to dismiss stage, it is unclear that "monetary benefits under [Section 502(a)(1)(B)] alone will provide [plaintiffs] a sufficient remedy."

NYSPA, 798 F.3d at 134–35; *White*, 263 F. Supp. 3d at 13 ("at this procedural juncture, the Court cannot conclude that plaintiffs will necessarily receive adequate and complete relief" under Section 502(a)(1)(B)). At this early stage, courts may not have the opportunity to sufficiently develop factual records to determine the adequacy of plaintiffs' potential remedy under Section 502(a)(1)(B). *See Silva*, 726 F.3d at 727 (citation omitted). For example, plaintiffs may fail to demonstrate that defendants improperly denied plaintiffs' request for benefits, which renders no recovery under Section 502(a)(1)(B), but finding no recovery would not prevent the court from finding a Parity Act violation warranting equitable relief under Section 502(a)(3). However, at the motion to dismiss stage, it would be impossible for courts to know whether plaintiffs will be entitled to relief under Section 502(a)(1)(B).

Moreover, the dismissal is inappropriate because a court would find it difficult to "discern the intricacies of the plaintiff's claims to determine if the claims are indeed duplicative, rather than alternative." *Silva*, 762 F.3d at 727. At the pleading stage, a plaintiff may plead multiple, alternative, even contradictory theories of liability, which is adherent to Federal Civil Procedure Rule 8 and Supreme Court precedents on allowing It would be difficult to determine whether the relief sought under different theories of liability is indeed owed and a strict standard may "foreclose the plaintiff from bringing a better case pursuant to

[Section 502(a)(1)(B)]." *See id.* (citation omitted). This is especially the case for Parity Act claims under Section 502(a)(3) because these claims involve the interpretation of the terms and processes of implementing the plan, which generally requires further discovery to "evaluate whether there is a disparity between the availability of treatments for mental health and substance abuse disorders and treatment for medical/surgical conditions." *Michael W. v. United Behav. Health,* 420 F. Supp. 3d 1207, 1235 (D. Utah 2019) (citations omitted). As a result, allowing plaintiffs to advance benefits claims and Parity Act claims through the motion to dismiss stage also helps the congressional goal of parity in mental health benefits as necessary "because of the huge societal impact that mental illness and substance abuse has on [the] society." *See Christine S.*, 428 F. Supp. 3d at 1234 (quoting H.R. REF. No. 110-374, pt. 3, at 12 (2008); S. REF. No. 110-53, at 2 (2007)).

B. Count II is Not Duplicative of Count I Because Plaintiffs Allege Alternative Theories of Liability and Plead Distinct Remedies to Justify Pursuing Simultaneous Causes of Action.

The D.C. Circuit has not developed a categorical rule to determine whether a plaintiff's Section 502(a)(3) claims merely repackage, or are duplicative of, Section 502(a)(1)(B) claims as described above. Although courts within the district have concluded that plaintiffs may proceed with their Section 502(a)(3) claims if the remedies under Section 502(a)(1)(B) are inadequate, the decisions

neither explained under what circumstances the relief would be inadequate, nor were directly related to the Parity Act. *See, e.g.*, *Crummett*, 2007 WL 2071704, at *2. Courts have concluded a Section 502(a)(3) claim ("Parity Act claim") is not duplicative of a Section 502(a)(1)(B) claim if a plaintiff has pleaded alternative theories of liability and identified distinct remedies. *See Theo M.*, 2020 WL 5500529, at *8–9.

When a plaintiff pleads a facial or as-applied Parity Act violation under Section 502(a)(3), the Parity Act claim represents an alternative theory of liability from a Section 502(a)(1)(B), rendering Parity Act claim non-duplicative. *See Christine S.*, 428 F. Supp. 3d at 1227–29 (concluding that the Parity Act claim was not duplicative, alleging that defendants applied higher-level criteria to evaluate subacute-level care at mental health facilities than analogous care at surgical and medical facilities, because this Parity Act claim represented an alternative theory of liability out of the terms of plan) (citing *Silva*, 762 F.3d at 726–27; *Moyle*, 823 F.3d at 961). This is because either a facial or as-applied Parity Act violation claim seeks relief through a "provision of [ERISA] subchapter" (the Parity Act) that is not included in terms of plan, 29 U.S.C. § 1132(a)(3), whereas Section 502(a)(1)(B) allows a plaintiff to seek relief only "under terms of plan," 29 U.S.C. § 1132(a)(1)(B). *See Joseph F. v. Sinclair Servs. Co.*, 158 F. Supp. 3d 1239, 1259 n.118; *NYSPA*, 798 F.3d at 133 (noting that a plan administrator's Parity Act

obligation is imposed by Section 502(a)(3)). Specifically, under an as-applied Parity Act violation, the challenged internal criteria and guidelines for the implementation of plans are not part of the terms of plans. *See Alexander v. United Behav. Health*, 2015 WL 1843830, at *8 (N.D. Cal. Apr. 7, 2015) (concluding that more restrictive internal guidelines developed by a plan administrator were not terms of a plan because the open references to guidelines were not expressly incorporated in plans and might change from time to time). In this way, an as-applied Parity Act claim challenged some internal criteria out of terms of plan, which could not be remedied under Section 502(a)(1)(B). *See Christine S.*, 428 F. Supp. 3d at 1233.

In addition, when a plaintiff seeks distinct remedies under simultaneous Parity Act claim and 502(a)(1)(B) claim, the Parity Act claim is not duplicative. *See Theo M.*, 2020 WL 5500529, at *9; *Christine S.*, 428 F. Supp. 3d at 1231 (concluding that plaintiffs' Parity Act is not duplicative when plaintiffs requested a declaration, an injunction, a surcharge, and other relief for Parity Act claim, because injunctive and other equitable relief under Parity Act claim were distinct from the recovery of benefits from the plan under Section 502(a)(1)(B)). This is because under a Section 502(a)(1)(B) claim, a plaintiff can only seek to "recover wrongful denial of benefits and information." *Varity Corp.*, 516 U.S. at 512. While under a Section 502(a)(3) claim, a plaintiff may seek to rectify past injury

and prevent future recurrence by obtaining an injunction and equitable surcharge, which are identified as equitable remedies by the Supreme Court. *Amara*, 563 U.S. at 440–41("injunctive relief [] closely resembles . . . traditional equitable remedies," and the fact that the injunctive relief "takes the form of a money payment does not remove it from the category of traditionally equitable relief"). Particularly, "clarify[ing] rights to future benefits under the terms of the plan" is limited to clarify the information of how the express guidelines and terms would apply, 29 U.S.C. § 1132(a)(1)(B), but does not have any injunctive power to forbid applying some discriminatory internal criteria out of the terms in the future. Although some courts within the Fourth Circuit have concluded that an as-applied Parity Act violation could proceed under Section 502(a)(1)(B), they are distinguishable because plaintiffs failed to identify any equitable relief beyond recovery of benefits due and left it "to the [c]ourt's imagination to fashion a relief." *See, e.g.*, *L.L. v. Medcost Benefits Servs.*, No. 1:21-cv-000265-MR, 2023 WL 4375663, at *3 n.5 (W.D.N.C. July 5, 2023).

Here, the District Court erred in dismissing Count II and concluding that Plaintiffs' Parity Act claim Count II was duplicative of Count I because Appellants plead alternative theories of liability under claims. First, the fail-first policy at issue is not part of the terms of the Plan. In *Alexander*, the court concluded that more restrictive internal guidelines developed by a plan administrator were not

terms of a plan because the open references to guidelines were not expressly incorporated in plans and might change from time to time, 2015 WL 1843830, at *8. Here, the alleged fail-first policy is not likely to be part of the terms of the Plan because it is a more stringent application of the Universal's Mental Health and Substance Use Disorder Guidelines, which is more remote than the guidelines' relationship to the plan. R. at 11. Second, Count II is not duplicative because Appellants plead the fail-first policy as an as-applied Parity Act claim, representing alternative theories of liability out of terms of the Plan. In *Christine S.*, plaintiffs' Parity Act claim was not duplicative when plaintiffs alleged that defendants used a higher-level criteria to evaluate the subacute-level care at mental health facilities than analogous care at surgical and medical facilities, because the claim pleads an alternative theory of liability for statutory rights under the Parity Act, which was out of terms of a plan. 428 F. Supp. 3d at 1229. Similarly, here Count II was not duplicative when it alleges that the more restrictive fail-first policy applies only to the residential mental health and substance use disorder treatment, but not to other long-term inpatient medical and surgical treatment, because such an as-applied Parity Act challenge represents an alternative theory of liability out of the terms of the plan. R. at 8, 11.

In addition, Count II is not duplicative because Appellants seek distinct remedies under simultaneous claims: injunctive and equitable relief under Count II,

and recovery of benefits due and future benefits under Count I. The District Court erred in considering that"clarifying rights to future benefits under the terms of the plan" under Section 502(a)(1)(B) encompasses the power to refrain Universal from applying fail-first policy inconsistent with the Parity Act. Such power is only available from the injunctive relief under Section 502(a)(3). Unlike *Medcost Benefit Services*, where plaintiffs' Parity Act was duplicative because plaintiffs failed to identify any equitable relief beyond recovery of benefits due and left it to court's imagination to fashion an equitable relief, 2023 WL 4375663, at *3 n.5, here Count II is not duplicative because Appellants expressly plead injunction prohibiting Universal to apply the alleged fail first policy in the future beyond the recovery of benefits due, R. at 9, and the injunction relief closely resembles traditional equitable remedies, as the Supreme Court pointed out in *Amara*, 563 U.S. at 440–41.

CONCLUSION

For the reasons stated herein, the Court should vacate the District Court's dismissal of Count II and the case.

Respectfully submitted,

/s/ Team 15

Team 15

DATED: January 12, 2024 Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

We hereby certify that

(1) the brief of Team 15 is the work product solely of the members of the team and the team has not received any unauthorized assistance, except as provided by the Rules of the Competition, in connection with the preparation of this brief,

(2) we have complied fully with the honor code of our law school,

(3) we have read, understood, complied with the terms under the Rules of the Competition, and

(4) this brief complies with the word limitations because this brief contains 8902 words.

Team 15

DATED: January 12, 2024

Attorneys for Appellants