No. 11-1234

United States Court of Appeals for the D.C. Circuit

J.D. and K.D.,

Plaintiff-Appellant,

v.

Universal Health Insurance Co.,

Defendant-Appellee.

BRIEF FOR DEFENDANT-APPELLEE
UNIVSERAL HEALTH INSURANCE CO.

On Appeal from the U.S. District Court for the District of Columbia, No. 23-CV-499
(Honorable Jacob K. Javits, District Judge)

(Team 16)

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STATEMENT OF JURISDICTION

The District Court for the District of Columbia had 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 is a matter concerning a federal question. This honorable court has jurisdiction pursuant to 28 U.S.C. § 1291, which grants the Court of Appeals jurisdiction of appeals from all final decisions from district courts. This matter is final, stemming from an opinion dismissing the complaint; thus this Court is eligible to review.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the District Court correctly deny the Plaintiff's Motion to Proceed Anonymously as the public interest in the litigation and its effects substantially outweigh the Plaintiffs privacy concerns?

Suggested answer: Yes.

2. Did the District Court correctly dismiss Count II as being unfair and a misuse of judicial resources as it requests the same relief available in Count I?

Suggested answer: Yes.

STATEMENT OF THE STANDARD OF REVIEW

When appellate courts review a district court's denials of motions for anonymity, they have stated it should only be reversed if the district court abused its discretion. *See M.M. v. Zacaras*, 139 F.3d 798, 802 (10th Cir. 1998); *Doe v. Frank*, 951 F.2d 320, 322 (11th Cir. 1992); *James v. Jacobson*, 6 F.3d 233, 236 (4th Cir. 1993); *Does I thru XXIII v. Advanced Textile Corp*, 214 F.3d 1058, 1068 (9th Cir. 2000). Specifically, if the district court made their decisions based on informed discretion, made an assessment in line with the evidence, or struck a reasonable balance of the relevant factors, their decisions should not be overturned. *See James v. Jacobson*, 6 F.3d 233, 237 (4th Cir. 1993); *K.V. Mart Co. v. United Food & Commer. Workers Int'l Union, Local 324*, 173 F.3d 1221, 1223 (9th Cir. 1999); *Creative Tech, Ltd. v. Aztech Sys. PTE, Ltd.,* 61 F.3d 696, 699 (9th Cir. 1995). Thus, an abuse of discretion only occurs when the district court fails to take relevant factors into account or acts on the basis of a misapprehension of law in respect to anonymity. *See Xingfei Luo v. Wang*, 71 F.4d 1289, 1297 (10th Cir. 2023).

Relevant to the dismissal of Count II, dismissal is appropriate under Rule 12(b)(6) of the Federal Rules of Civil Procedure when the complaint, standing alone, is legally insufficient to state a claim on which relief may be

granted. *IHC Health Servs., Inc. v. Tyco Integrated Sec., LLC*, No. 2:17-CV-00747-DN, 2018 WL 3429932, at *1 (D. Utah July 16, 2018) (citing *Sutton v. Utah State Sch. for Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999)). In addition, to withstand a Rule 12(b)(6) motion, a complaint "must contain sufficient factual matter to 'state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 547 (2007)). A complaint alleging a "possible" or "conceivable" claim is insufficient. *Iqbal*, 556 U.S. at 679–80 (quoting *Twombly*, 550 U.S. at 570); see also *Warnick v. Cooley*, 895 F.3d 746, 751 (10th Cir. 2018). Additionally, each Count in a complaint must allege their own separate offenses which entitle a plaintiff to relief. *Id*.

STATEMENT OF THE CASE

Factual Summary

K.D. is a young woman who pursued above-average interactions with members of the medical community due to her mental illness and substance use disorders. (Complaint, 7). Her medical journey started between her sophomore and junior year when she was sexually assaulted, which led to the development and diagnosis of several mental illnesses. (Complaint, 7). Universal Health Insurance ("Universal") covered all necessary appointments, procedures, and medical opinions associated with these diagnoses. (Complaint, 7)

Unfortunately, K.D. began to use controlled substances, such as alcohol and marijuana, to cope with the mental illnesses she was experiencing. (Complaint, 7). Similar to others who have issues with controlled substances, the types of drugs K.D. used grew more and more serious. During her senior year, K.D. began using opioids, including oxycontin and heroin. (Complaint, 7).

In early 2022, Universal paid for K.D. to receive intensive outpatient treatment three days a week for her depression and anxiety. (Complaint, 2). In March of 2022, K.D. attempted suicide by cutting her wrists. (Complaint, 3). Again financially supported by Universal, K.D.'s received treatment focused on

her physical issues in the emergency room, then the focus shifted to treating her mental illness at a psychiatric hospital. (Complaint, 3) After K.D.'s release, she overdosed on heroin. (Complaint, 3). For the following three weeks, she was again admitted to the emergency room for treatment. (Complaint, 3) The doctor caring for K.D. at the hospital suggested further treatment to address both her mental illness and her substance use disorder. (Complaint, 3). Lifeline Inc., located in Virginia, was the facility identified to provide K.D. that treatment. (Complaint, 3) Universal approved three weeks of residential treatment, and such a program includes 24/7 care with assessments, diagnoses, and active health treatments for members who do not require a high level of inpatient hospitalization. (Complaint, 3; Exhibit A). After three weeks of K.D.'s involvement in the intense treatment and the numerous diagnoses and assessments, Dr. James Matzer, who is Universal's reviewing physician who has examined many similar cases, concluded that high intensity residential treatment was no longer medically necessary and K.D.'s needs could be better suited at the lower level of partial hospitalization. (Complaint, 3–4). Upon receiving this decision, Universal sent a letter to K.D., which J.D., K.D.'s mother, intercepted at K.D.'s home address. (Complaint, 4). The letter informed the family of this suggested downgrade to partial hospitalization

and to offer payment for all associated costs on behalf of Universal. (Exhibit B).

J.D. and staff members at Lifeline Inc., the treatment facility financially benefiting from K.D's continued residence, disagreed with Dr. Matzer's conclusion and requested an urgent appeal. (Complaint, 4). On May 10th, 2022, Universal sent another letter to K.D. stating an independent doctor, Jennifer Lawrence M.D., also concluded that K.D.'s continued residential treatment was not medically necessary. (Complaint, 4). Despite two doctors' medical conclusions, after reviewing the information finding residential treatment no longer necessary, J.D. insisted on its continued occurrence and personally chose to pay out of pocket for K.D.'s continued residential treatment. (Complaint, 4).

Universal provides insurance to millions of individuals, helping them receive proper treatment at a fraction of the actual cost. The plan Universal offers provides for medically necessary mental health and substance use disorder services, such as residential treatment. To best suit individual needs, the company developed internal guidelines to best care for all of its clients. (Complaint, 8). The guideline relevant to this litigation specifies that for residential treatment to be deemed medically necessary, a less intense level of

care would not result in significant improvement, thus ensuring the proper level of care is provided. (Complaint, 8). As two doctors determined continued residential treatment for K.D. was not medically necessary, and with Universal offering to pay for the medically necessary treatment, the continued residence at Lifeline was not covered under the plan. Under this plan, Universal would not be responsible for costs associated with non-medically necessary treatment, and medical expenses paid out of pocket.

Procedural History

On May 9th, 2022, Universal sent a letter to K.D. at her home address stating that the residential treatment was no longer medically necessary. (Complaint, 3–4). The Plaintiffs disagreed with that conclusion and requested an urgent appeal. (Complaint, 3–4). A different medical professional conducted the internal appeal and also determined that the residential treatment was no longer medically necessary. (Complaint, 4). The Plaintiffs decided to continue the medical treatment without support from medical-professionals and without financial support from Universal, and K.D. remained in residential treatment for an additional twelve months. (Complaint, 4).

On August 2nd, 2023, the Plaintiffs filed a complaint alleging that Universal improperly denied plan benefits and the Plaintiffs were entitled relief. (Complaint). Shortly thereafter, the Plaintiffs filed a motion to proceed anonymously. (Doc. 25). The United States District Court for the District of Columbia issued a Memorandum Opinion and Order denying the Plaintiff's Motion to Proceed Anonymously and granting the Defendants Motion to Dismiss Count 2. (Memorandum and Order, 11). At the Plaintiff's request, the court dismissed the entire case because the Plaintiffs do not wish to proceed non-anonymously. (Memorandum and Order, 10–11). The Plaintiffs have now appealed that decision arguing that the District Court wrongly denied the motion to proceed anonymously and wrongfully dismissed Count II.

SUMMARY OF THE ARGUMENT

The actions of the district court should be affirmed because K.D.'s circumstances do not rise to the high level required for anonymity and Count II is duplicative of Count I. The district court's denial and dismissal were proper. Relevant to the anonymity issue, an appellate court should only overturn a district court's finding if it abused its discretion in a wrongful balancing of factors. *See Zacaras* at 802; *Frank* at 322, and *Jacobson* at 233. Here, this is not the case. When we look at the factors discussed by the District Court and how similar courts have balanced the privacy versus public interests in cases concerning the Employee Retirement Income Security Act of 1974 ("ERISA"), anonymity is not applicable. The District Court did not abuse its discretion when it denied the Motion for Anonymity because the only articulable threat to K.D. would be embarrassment and there is high societal value in the interpretation of ERISA benefits.

Relatedly, the dismissal of Count II by the lower court was proper because the equitable relief sought under 29 U.S.C. § 1132(a)(3) by the Plaintiffs is duplicative of the claim for benefits presented in Count I under 29 U.S.C. §1132(a)(1)(B). Count II fails as a matter of law since it does not identify any injury that is not already adequately remedied under Count I.

Essentially, the district court properly recognized the Plaintiffs' redundancy and remedied it. With all duplicative and redundant claims, there would be grave consequences on judicial resources and establish a precedent allowing such claims to burden the legal process, and thus they must be dismissed.

ARGUMENT

I. The District Court Correctly Denied The Plaintiffs' Motion To Proceed Anonymously

The public has a vast interest in who is using the courts, why the courts are being used, and how the courts' decisions affect the public. This vast interest is exemplified and codified in Federal Rule of Civil Procedure 10(a), which provides that every pleading in federal court name all parties. See Fed.R.Civ.P. 10(a). Courts across the country continue to find that pseudonyms should only be used in extraordinary circumstances. *Doe v. Pub. Citizen*, 749 F.3d 246, 274 (4th Cir. 2014). The public has an extensive interest in this case because the pending decision and interpretation of ERISA provisions affects millions of people. The District Court correctly ruled anonymity improper in this case based upon consideration of all relevant factors. Under a totality of the circumstances, the District Court did not abuse its discretion in finding that K.D.'s situation does not arise to the high standard of extraordinary circumstances needed to proceed under pseudonyms.

A. The District Court Considered The Relevant Factors And Correctly Determined Anonymity Was Not Justified

While there is no binding case law on the standard for review in the D.C. Circuit, the majority of other Circuits hold that a trial court's decision related to anonymity should only be overturned for an abuse of discretion. *See Zacaras* at 802; *Frank* at 322, and *Jacobson* at 233. Specifically, the Ninth Circuit held that an appellate court may overturn a decision only when there is an erroneous view of the law, a clear erroneous assessment of the evidence, or an unreasonable balance of the relevant factors. *See K.V. Mart Co. v. United Food & Commer. Workers Int'l Union, Local 324*, 173 F.3d 1221, 1223 (9th Cir. 1999); *Creative Tech., Ltd. v. Aztech Sys. PTE, Ltd.*, 61 F.3d 696, 699 (9th Cir. 1995).

Since there is no evidence of an erroneous view of the law or an erroneous assessment of the evidence in this case, this Court should only overturn the District Court's ruling if the decision was based upon an unreasonable balance of the relevant factors. *James v. Jacobson,* 6 F.3d 233, 237 (4th Cir. 1993). When evaluating the four factors laid out by the District Court, each had rational justifications to find that the public interest outweighed the need for secrecy. Thus, there was no abuse of discretion by the District Court.

1. Whether The Case Involves Highly Sensitive and Personal Matters.

While K.D.'s case involves sensitive matters related to medical documents and treatment, the types of discussions and evidence present here are also present in millions of cases not requiring anonymity. When the District Court discussed this factor, they relied primarily on the *Zavaras* case, which recognized that proceeding under a pseudonym in federal court is an "unusual procedure" to be used sparingly. *M.M. v. Zavaras*, 139 F.3d 798, 800 (10th Cir. 1998). The *Zavaras* court ruled that a plaintiff should only be permitted to proceed anonymously in exceptional cases. *Id.* at 803. These exceptional cases include matters of highly sensitive and personal nature, a real danger of physical harm, where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity, and widespread social stigmatization. *Id.*; *Doe v. Rostker*, 89 F.R.D. 158, 162 (N.D. Cal. 1981). A plaintiff suffering some embarrassment or economic harm is not enough. *Rostker*, 89 F.R.D. at 162. Ultimately when the court is to determine whether there is an important privacy interest, that determination "is subject to a decision by the judge as to the need for the cloak of anonymity". *Zavaras,* 139 F.3d at 802.

In this case, the District Court understood the Plaintiffs argument that K.D.'s mental health struggles and medical treatments are sensitive and

personal, however the same sensitivities are true for all medical cases and those facts alone do not justify the use of pseudonyms. (Memorandum Opinion and Order, 5–6). While K.D.'s case does involve sensitive information and potentially embarrassing information, this information does not meet the standard for anonymity as suggested by other courts. Even though K.D. may be slightly embarrassed by the information in this case, the disclosure of K.D.'s name presents no fear or danger of physical harm nor potential for widespread social stigmatization. With the increased understanding and empathy for mental illness, this case favors disclosure.

2. Determining Whether In Light Of The Plaintiff's Age Or Other Circumstances, They Are Particularly Vulnerable To The Possible Harms Of Disclosure.

Another factor considered by the District Court was whether K.D.'s age or other circumstances made her particularly vulnerable to the possible harms of disclosure. The District Court correctly noted that K.D. is young, but she is not a minor in need of the special protections typically provided to children. (Memorandum Opinion and Order, 6). Aside from her age, no threats exist that could create or justify a need for anonymity. The Plaintiffs make very general statements related to the possible harms, such as a relapse or other potential mental issues, but these harms could be related to the stress of litigation rather than the simple release of her name.

An example of a particularly vulnerable plaintiff is one with a reasonably articulated threat from the disclosure of their name. To determine if such a threat exists, a district court should consider (1) the severity of the threatened harm (*See Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979)), (2) the reasonableness of the anonymous party's fears (*Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981)), and (3) the anonymous party's vulnerability to such retaliation (*United States v. Doe II*, 655 F.2d 920, 922 (9th Cir. 1980)). In *Does I thru XXIII v. Advanced Textile Corp*, the court found a threat can be seen with evidence of specific threats related to terminations of employment, deportation, arrest, and imprisonment. *Does I thru XXIII Advanced Textile Corp*, 214 F.3d 1058, 1068 (9th Cir. 2000). Courts consistently hold that threats related to embarrassment are not enough. *Doe v. Frank*, 951 F.2d 320 (11th Cir. 1992). Universal likely knows or easily could determine K.D.'s identity because Universal is aware of the dates and medical needs specific to her case. The only threat that could be articulated against K.D. is the public's awareness of this case and K.D.'s association with it, which could simply cause some potential embarrassment. Thus, as K.D. is not particularly vulnerable to a direct threat of disclosure, this case does not favor anonymity.

3. Whether The Public's Interest In This Litigation Is Furthered By Requiring The Plaintiff To Disclose Her Identity.

As stated prior, the public has an interest in litigations and who is using the courts. Here, there is an additional interest in the outcome of this case because it affects the millions of Americans who are provided healthcare coverage or who are eligible to sue under ERISA. It is essential for the public to know the details associated with this litigation to determine how it affects them and their rights. The District Court correctly concluded that the public's interest in open court proceedings is always furthered by knowing the identity of the litigants, which is a fundamental principle embedded in the United States Constitution. (Memorandum Opinion and Order, 6). Thus, the public has a vast interest in this litigation for which does not favor anonymity.

4. Whether There Are Any Alternative Mechanisms For Protecting Privacy Interests.

When evaluating this factor, the District Court noted several alternative mechanisms that could protect the Plaintiffs privacy interest, such as redacting private information or sealing the medical records containing personal information. (Memorandum Opinion and Order, 7). Additionally, the District Court allowed the Plaintiffs to refile the complaint under seal to redact any sensitive information. *Id.* Rather than resorting to the extreme of anonymity, there are several alternative mechanisms available to protect

K.D.'s personal information, while not hindering the public's interest in knowing the details of the litigation.

B. Courts Who Have Considered The Complexities Of ERISA Denial Claims Have Held That Anonymity Is Not Proper

Several courts considered the complex privacy implications associated with ERISA claims by examining factors similar to those applied by the District Court in this case. Anonymity is improper when applying those findings to this case. A district court in the Tenth Circuit, after conducting an analysis of the factors employed by its binding courts, found no facts permitting the use of a pseudonym because of a discussion around one party's health-related information, mental or otherwise. *Doe v. Atchinson Hosp. Assn.*, 2018 U.S. Dist. LEXIS 2842, 14 (D. Kan. Jan. 8, 2018). The court concluded, "the fact that a case involves a plaintiff's medical condition, which arguably is personal in nature, is not in-and-of itself sufficient to grant plaintiff's request to proceed under a pseudonym." *Id.* at 15. Further, the court stated that "disclosure of medical records is part and parcel of judicial proceedings in many types of litigation, for example Social Security Administrative reviews, medical malpractice litigation, and ERISA benefits claims". *Id.* at 16. If simply raising a medical claim were the standard for anonymity, then it would become the rule, not the exception. *Id.* at 17. Similar findings are held in related ERISA

cases dealing with anonymity. *See L.R. v. Cigna Health & Life Ins. Co.,* No. 6:22-cv-1819-RBD-DCI, 2023 WL 4532672, at *1 (M.D. Fla. July 11, 2023); *L.L. v. MedCost Benefit Servs.*, No 1:21-cv-00265-MR, 2023 WL 362391, at *1 (W.D.N.C. Jan. 23, 2023); *Doe v. UNUM Life Ins. Co.*, 164 F. Supp. 3d 1140, 1145 (N.D. Cal. 2016).

Additionally in *A.G. v. Unum Life Ins. Co. of Am.*, a district court held that without evidence of any fear of actual harm and with a vast public interest in the court's interpretation of ERISA benefits, anonymity is not proper. *A.G. v. Unum Life Ins. Co. of Am.* 2018 U.S. Dist. LEXIS 24752, at *4 (D. Or. Feb. 14, 2018). When applying the same principles in other ERISA cases, with the deprivation of insurance rights, courts have stated that a party cannot proceed anonymously because the harm from which the party complains already occurred. *See Doe v. Bd. Of Regents of the Univ. of Colo.,* 2022 U.S. Dist. LEXIS 2050 (D. Colo. Jan. 5. 2020); *Doe v. Berkshire Life Ins. Co. of Am.*, 2020 U.S. Dist. LEXIS 110039 (D. Colo., June 23, 2020).

All in all, the District Court did not abuse its discretion in determining that anonymity is not proper. Anonymity is not necessary after evaluating the relevant factors for this case and deciding whether the facts meet the standard required for the high level of extraordinary circumstances. Similar ERISA

interpretation cases demonstrate how the public has an intense interest in litigations that interpret personal benefits, and thus, anonymity should only be used in cases in which there is an articulable threat against a plaintiff. Here, the only potential threat is embarrassment to K.D., and there are mechanisms to lessen this embarrassment. Therefore, this Court should give discretion to the District Court's determination after balancing the factors that no extraordinary circumstances support allowing K.D. or J.D. to proceed in this matter only using their initials.

II. The District Court Correctly Dismissed Count II Because It Duplicated The Claim For Benefits Already Asserted In Count I And Would Be A Waste Of Judicial Resources.

Plaintiffs have not presented an injury separate from the denial of benefits, thus, the claim in Count II is duplicative. Both Count I and Count II allege identical injuries and seek the same remedy. Failing to reaffirm the District Court's decision poses a significant risk by establishing a precedent allowing redundant claims to proceed and burden this Court's legal process. As the Plaintiffs simply repackaged the harm in Count I into Count II in an attempt to receive additional benefits, the District Court correctly dismissed Count II.

A. The Plaintiffs Seek To Repackage A Claim Under 29 U.S.C. §1132(a)(1)(B) For The Denial Of Benefits As A 29 U.S.C. §1132(a)(3) Claim, Asserting The Same Injury Without Any Distinction Beyond The Denial Of Benefits.

Universal should not provide equitable relief to K.D. under § 1132(a)(3) because the injury can be adequately addressed under § 1132(a)(1)(B). Such a claim is duplicative because K.D. does not allege any other injury that is distinct from the denial of benefits. Equitable relief under § 1132(a)(3) is inappropriate where a plaintiff's injury can be adequately addressed elsewhere because a plaintiff may not "repackage [a] 'denial of benefits' claim as a claim for 'breach of fiduciary duty.'" *Varity v. Howe*, 516 U.S. 489, 512–14 (1996). ERISA plaintiffs may not seek "a duplicative or redundant remedy ... to redress the same injury." *Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 373 (6th Cir. 2015) (en banc). Specifically, plaintiffs may not seek "duplicate recoveries when a more specific section of the statute, such as § 1132(a)(1)(B), provides a remedy similar to what the plaintiff seeks under the equitable catchall provision, § 1132(a)(3)." *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 726 (8th Cir. 2014).

In *Varity Corp. v. Howe*, the Supreme Court described § 1132(a)(3) as a "'catchall' provision [that] act[s] as a safety net, offering appropriate equitable relief for injuries caused by violations that [§ 1132] does not elsewhere

adequately remedy." 516 U.S. at 512. Courts following this decision interpreted *Varity* to mean that equitable relief under § 1132(a)(3) is not available if § 1132(a)(1)(B) provides an adequate remedy. In *Rochow v. Life Ins. Co. Of N. Am.,* the Sixth Circuit prohibited the plaintiff from pursuing his § 1132(a)(3) claim because he had a remedy available under § 1132(a)(1)(B). 780 F.3d at 364. [The plaintiff's] injury was remedied when he was awarded the wrongfully denied benefits and attorney's fees." *Id.* at 375. The plaintiff received a remedy under § 1132(a)(1)(B), thus the court enjoined his § 1132(a)(3) claim, because, if successful, it would result in a double recovery for the same injury. *Id.* at 376.

In the initial cause of action, Count I of the complaint centers around the improper denial of plan benefits as outlined in 29 U.S.C. § 1132(a)(1)(B). Within this context, the relief being pursued is the entitlement, as specified by Universal's plan, to coverage for the entire course of residential treatment. (Complaint, 5). The Plaintiffs allege that the denial of medical benefits caused monetary damage, with the exact amount of medical bills incurred during treatment that is to be determined at trial. *Id.* This monetary relief extends to attorneys' fees and costs. (Complaint, 6). The final aspect of relief sought, though not explicitly mentioned, is injunctive in nature, where the Plaintiffs seek enforcement of their rights to benefits as defined by Universal's plan.

(Complaint, 5). Additionally, they aim to clarify their entitlement to future benefits under Universal's plan. *Id.*

In the subsequent cause of action (Count II), the sole form of relief articulated is an injunction. This injunction seeks to force Universal to adhere to the provisions stipulated in Universal's plan when making future benefit determinations. (Complaint, 7). Additionally, the request includes a broad provision for "such other appropriate relief as the Court deems necessary and proper to protect the interest of the Plaintiff under [Universal's plan]." *Id.*

It is imperative to note that all the relief sought in the complaint, including the injunctive measures, falls directly within the scope of the claims asserted in Count I. The redundancy in the relief requested should leave the court to believe that the issues raised in Count II will be effectively addressed and resolved through the assertions and reliefs pursued in Count I.

Here, it is apparent that the Plaintiffs seek to repackage Count II as a Count I charge, to obtain double recovery. The remedies sought by the Plaintiffs amount to determining and paying benefits. This Court should adhere to the *E.M.* case, which asserted that "although plaintiffs listed various forms of equitable remedies… these amounted to a determination and payment of benefits…thus only one [count] is necessary" *E.M. v. Humana & Humana & Northside Hosp. Inc. Flexible Benefit Plan*, No. 2:18-cv-00789-CMR,

2019 U.S. Dist. LEXIS 167121, 13 (D. Utah, Sep. 26, 2019). As such, the court emphasized that the plaintiff failed to point to any injury that would not be adequately remedied by the payment of benefits. *Id.*

Additionally, the rule adopted by *Varity*—that only bars plaintiffs from maintaining duplicative ERISA claims where monetary relief is adequate to remedy the plaintiff's injury or injuries—best serves this interest and harmonizes the statute to fit the Parity Act into the "symmetrical and coherent regulatory scheme" established in ERISA. *Christine S. v. Blue Cross Blue Shield of New Mexico*, 428 F. Supp. 3d 1209, 1234 (D. Utah 2019) (quoting *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)).

Some courts decided to allow for recovery under both § 1132(a)(3) and § 1132(a)(1)(B) in certain situations, however, these rulings are inapplicable in this case as it would be a misread of the facts. For example, in *CIGNA Corp. v. Amara,* the Supreme Court held that § 1132(a)(3) authorized equitable relief in the form of plan reformation, even though plaintiffs also claimed relief under § 1132(a)(1)(B). 563 U.S. 421, 131 (2011). The Supreme Court found that although the employer did violate its disclosure obligations, § 1132(a)(1)(B) could not authorize relief for the employees in the form of plan reformation. *Id.* at 1876–78. The *Amara* court held that § 1132(a)(1)(B) could only authorize the enforcement of the terms of the plan, it could not change

the terms of the plan. *Id.* at 1876–77. The Court, nonetheless, held that plan reformation was available under § 1132(a)(3) as an equitable remedy, stating that the power to reform contracts is a traditional power of an equity court. *Id.* at 1879–80. Therefore, once the plan was reformed under § 1132(a)(3) to reflect the terms of the old plan, it could be enforced under § 1132(a)(1)(B). *Id.* Additionally, in *Silva v. Metro. Life Ins. Co.,* the Eighth Circuit held that a plaintiff may seek relief under § 1132(a)(1)(B) and § 1132(a)(3) because "[the *Amara* court] did not say 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)." 762 F.3d at 727. The Eighth Circuit explained, "[The court] do[es] not read *Varity* ... to stand for the proposition that [a plaintiff] may only plead one cause of action to seek recovery [for an ERISA violation]. *Id.* at 726. The *Silva* court concluded such cases prohibit duplicate *recoveries* when a more specific section of the statute, such as § 1132(a)(1)(B), provides a remedy similar to what the plaintiff seeks under the equitable catchall provision, § 1132(a)(3)." *Id.* (Emphasis added). The court's reading permits plaintiffs to present § 1132(a)(1)(B) and § 1132(a)(3) as alternative—rather than duplicative—theories of liability. *Id.*

While some courts have allowed for recovery under both, and plaintiffs may attempt to make such arguments, this argument would be misguided. The courts permitting duplicative recovery limited these cases to circumstances not applicable to our current case. This Court should be guided by the finding of the Eighth Circuit, which allows plaintiffs to present alternative theories of liability rather than duplicative theories. *Silva*, 762 F.3d at 726. Here, as Count II is a duplicate of Count I, as opposed to being an alternative theory, it is not proper. Therefore, Plaintiffs' Count II was properly dismissed because the relief sought under both Counts is duplicative.

B. In Asserting A Fail First Argument, The Plaintiff Attempts To Introduce A Misleading Narrative That Does Not Contribute To The Central Claims Before This Court On Count II.

The "fail first" argument, central to Count II, does not align with its provisions because it primarily addresses the denial of benefits rather than seeking equitable remedies. Rather, the Plaintiffs' argument aligns with the provisions of Count I. The Plaintiffs argue that they were required to "fail first" at lower levels of care. (Complaint, 6). The Plaintiffs are essentially challenging the denial of benefits, making § 1132(a)(1)(B) more fitting and relevant for addressing this issue. Thus, the entirety of Count II is based on arguments and claims already articulated in Count I, rendering it redundant. Allowing the Plaintiffs to pursue a claim encompassing this "fail first"

argument will dilute the primary concerns of litigating ERISA benefits and complicate the judicial process. As the District Court emphasized, this "fail first" argument is a merit argument and is inappropriate on a motion to dismiss. (Memorandum and Order, 9). Thus, the District Court acted properly in dismissing Count II because the Plaintiffs' fail-first argument does not provide applicable justification otherwise.

CONCLUSION

For the foregoing reasons, the decision of the United States District Court of the District of Colombia denying the Plaintiff's Motion to Proceed Anonymously and dismissing Count II should be affirmed, and this case should be dismissed.

Respectfully submitted,

Council for Universal Health Insurance (Team 16)