ORAL ARGUMENT SCHEDULED FOR 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.

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

No. 23-CV-499 (Hon. Jacob K. Javits)

BRIEF FOR DEFENDANT APPELLEE UNIVERSAL HEALTH INSURANCE CO.

Team 4

January 12, 2024 *Counsel for Defendant-Appellee*

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JURISDICTIONAL STATEMENT

The district court had jurisdiction of this civil action under 28 U.S.C. § 1331 because the claim alleges violations of the Employment Retirement Income Security Act and Mental Health Parity Act, 29 U.S.C. § 1185a. Appellants brought this action under 29 U.S.C. §§ 1132(a)(1)(B) and 1132(a)(3).

The district court granted Appellee's motion to dismiss Count II, denied Appellants' motion to proceed anonymously, and issued a final judgment per Appellants' request. Appellants timely filed a notice of appeal. *See* Fed. R. App. P. 4(a)(1)(A). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Proceeding anonymously in a suit is a "rare dispensation" for parties subject to severe injury and as weighed against the public interest in the openness of judicial proceedings. *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993). Does an adult fighting for ex post coverage of medical treatment have a right to such anonymity in front of the court?

2. Under the Employment Retirement Income Security Act, "where Congress elsewhere provided adequate relief for a beneficiary's injury," additional equitable relief is "not . . . appropriate." *Varity Corp. v. Howe*, 516 U.S. 489, 515 (1996). ERISA § 502(a)(1)(B) provides claimants the opportunity to "clarify [their] rights to future benefits under the terms of the plan." Can a claimant bring a second claim that seeks the same relief provided in § 502(a)(1)(B) as an equity claim under § 502(a)(3)?

STATEMENT OF THE CASE

J.D. and her daughter, K.D., (collectively "Appellants" or "Claimants") are participants in a health plan ("Plan") provided by Universal Health Insurance Company under J.D.'s employer, CIA Consulting LLC. Compl. ¶ 3. At all relevant times, Universal has administered and insured the Plan provided by CIA. *Id.* ¶ 4. Under the terms of the Plan, Universal provides coverage for medically necessary mental health and substance use disorder services, including residential treatment. *Id.* ¶ 8. J.D.'s now-nineteen-year-old daughter, K.D., has struggled with her own mental health. *Id.* ¶ 7. As a sophomore in high school, K.D. was sexually assaulted and began to experiment with drugs and alcohol. *Id.* She began using opioids, first oxycontin and then heroin. *Id.*

Following her assault, K.D. received treatment at a facility in the District of Columbia, Road to Recovery. *Id.* ¶ 9. At Road to Recovery, K.D. received three days of treatment per week for her depression and anxiety. *Id.* ¶ 10. Universal paid for this treatment under the terms of the Plan. *Id.* ¶ 11. Despite K.D.'s treatment at Road to Recovery, K.D. continued to suffer setbacks with her mental health by attempting suicide and overdosing on heroin that was laced with fentanyl. *Id.* After each setback, Universal paid for K.D.'s care, first at Road to Recovery then at an emergency room for three weeks. Compl. ¶¶ 11–12. To continue K.D.'s care, her physicians recommended residential treatment. *Id.* ¶ 12. K.D. and J.D.

identified Lifeline Inc. as a facility in Virginia that could provide adequate treatment. *Id.* K.D. and J.D. sought authorization from Universal to have the treatment covered by the Plan. *Id.* Universal approved three weeks of residential treatment. *Id.*

After three weeks of residential treatment, Universal determined it was no longer medically necessary for K.D. to receive residential treatment. Compl. ¶ 14. Dr. James Matzer, M.D., reviewed all of K.D.'s relevant medical information to conclude she no longer needed residential treatment, *Id.*, which Universal defines as:

> A 24-hour, 7-days a week facility-based program that provides assessment, diagnostic services, and active health treatment to members who do not require the intensity of nursing care, medical monitoring and physician availability offered in Inpatient hospitalization and for whom a less intense level of care would not result in significant improvement.

Ex. A. To determine if such treatment was necessary, Dr. Matzer followed the internal guidelines of Universal for residential care. Ex. B, at 1. To qualify, a claimant must meet the following conditions: (1) they cannot cooperate with treatment unless they have round-the-clock structured care; (2) they are a danger to themselves or others; and (3) they cannot be safely treated at a lower level of care. *Id.* For someone coming out of residential treatment, Universal also evaluates whether the claimant is willing to participate in the treatment, expected to improve with the continuation of the treatment, or kept from getting worse with this continued care. *Id.* Based on the available information, Dr. Matzer concluded K.D.

had "made progress and [was] no longer actively suicidal." *Id.* Therefore, she no longer needed the "supervision and structured care" of a residential facility. *Id.* at 1–2.

Universal recommended K.D. be treated at a level of "partial hospitalization." Compl. ¶ 12. Under this treatment plan, K.D. would receive care five days a week. *Id.* at 2. After K.D. and J.D. received the letter, they appealed Dr. Matzer's decision through the internal Universal appeals process. *Id.* at 4. Dr. Jennifer Lawrence, M.D., reviewed K.D.'s appeal and determined Dr. Matzer's assessment of K.D.'s condition was proper. *Id.* In making her assessment of K.D.'s condition, Dr. Lawrence attempted to contact Lifeline to discuss K.D.'s condition. *Id.* at 6; Ex. C, at 1. But no one at Lifeline responded to Dr. Lawrence's request for additional information. Ex. C, at 1. To help explain her decision, Dr. Lawrence provided how K.D. and J.D. could request any internal guidelines, protocols, or similar criteria that was used to make the decision. *Id.*

Even though Universal determined continued residential treatment was no longer medically necessary, K.D. continued in residential treatment for twelve months. Compl. ¶ 16. J.D. paid for this treatment without Universal's assistance. *Id.* After twelve months, K.D. ended her residential treatment and began to receive care on an outpatient basis. *Id.* ¶ 18. K.D. is now in college and continues to do well. *Id.*

J.D. filed suit as the representative and parent of K.D. in the District of the District of Columbia against Universal, alleging two counts: (1) Universal improperly denied benefits that Appellants were entitled to under the terms of their Plan, and (2) Universal violated the Mental Health Parity Act. Compl. ¶¶ 19–29. K.D. and J.D. filed a motion to proceed pseudonymously, and Universal filed a motion to dismiss the second count of the complaint as duplicative. Mem. Op. at 4. Judge Javits denied K.D.'s and J.D.'s motion to proceed under their initials and granted Universal's motion to dismiss the second claim as duplicative. Mem. Op. at 8–10. Following the request of K.D. and J.D., Judge Javits dismissed the case as K.D. and J.D. elected not to bring the case unless they could do so anonymously. Mem. Op. at 10–11. K.D. and J.D. appealed the decision to this Court.

SUMMARY OF THE ARGUMENT

This Court should affirm the district court's order because the lower court properly selected the legal standard and applied it without an abuse of the court's discretion in reviewing the motion for anonymity. Additionally, the district court below properly found that Appellants cannot file a duplicative claim under § 502(a)(3).

To begin, Appellants' motion for anonymity was properly reviewed and dismissed. Though anonymity can be allowed in rare circumstances, the reviewing court must weigh the movant's private interest against the public interest in judicial openness through a multi-factor, non-exhaustive test. In review, this Court applies a *de novo* standard for selection of factors and an abuse of discretion standard for the application of those factors.

Here, Appellants' claims were tested by the district court below when it found, with proper selection of factors and reasonable application of those factors, that public interest in judicial openness outweighed the private interest in anonymity. First, the district court below selected relevant factors to apply to the issue at hand. Subsequently, the district court did not make an extreme error of law in the application of those relevant factors. Without a mistaken selection of factors and no abuse of discretion by the district court below, this Court would have neither need nor grounds to overrule the lower court's decision.

Furthermore, the anonymity request is unnecessary as there are reasonable alternatives to alleviate the concerns of Appellants without any affront to the standards well accepted and long affirmed in this judicial system. Redacting particular pieces of information deemed sensitive and unnecessary can keep K.D.'s information private while maintaining the openness of judicial proceedings. Such an approach would successfully avoid the issue of anonymity while supplying the very goal of the Appellants' motion for anonymity.

As for the claims brought under ERISA, the district court properly denied the Claimants' attempt to bring a duplicative claim under § 502(a)(3). Section 502(a)(1)(b) provides for recovered benefits, enforcement of rights, and clarification of rights to future benefits. Section 502(a)(3), on the other hand, provides a catchall provision for equitable relief. However, it is impermissible to pursue separate relief under the latter when remedies under the former are adequate. Moreover, pleading a valid claim under the Parity Act requires sufficient factual matter to state a claim to relief that is plausible on its face.

Here, Claimants have improperly repackaged one claim with suitable relief under § 502(a)(1)(b) into a second, unnecessary claim. Through this action, Claimants attempt to recover benefits under the terms of their plan, enforce their rights under the terms of their plan, and seek to clarify their future rights to benefits under the terms of their plan. These actions are exactly those enumerated

in § 502(a)(1)(b) and were subsequently and improperly repackaged by Claimants in an additional claim under § 502(a)(3). As adequate remedies for the action exist under § 502(a)(1)(b), it was proper for the district court below to dismiss the second, duplicative claim.

Finally, Claimants would not have a valid claim under § 502(a)(3) if they were able to plead it. By failing to express anything more than conclusory statements repeating the law, Claimants fail to fulfill the needs of a valid Parity Act claim. Accordingly, the catchall provision would fail to provide the remedies they seek even if the duplicative claim was allowed.

Despite an adequate claim under § 502(a)(1)(b), the finding and order of the district court below should be affirmed on the matters of anonymity and the duplicative claim for the reasoning below.

ARGUMENT

I. The District Court properly dismissed Appellants' motion to proceed anonymously.

An approval of the proceedings under the guise of anonymity would be improper as the district court found.

Under the Federal Rule of Civil Procedure 10(a), pleadings in federal court "must name all parties." Fed. R. Civ. P. 10(a). However, "rare dispensation[s]" in which party anonymity may be maintained at the "trial court['s] discretion" are possible. *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993). In seeking the exception, the movant "bears the weighty burden of both demonstrating a need for such secrecy, and identifying the consequences that would likely befall it if forced to proceed in its own name." *In re Sealed Case*, 971 F.3d 324, 326 (D.C. Cir. 2020). Further, the court must 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). In its review, this Court reviews "*de novo* the criteria used by [the] district court to decide whether to grant a motion to proceed anonymously." *Id.* Then, it "review[s the district court's] application of those criteria only for an abuse of discretion." *Id.*

First, the lower court was correct in its selection of factors and reasonable in its application of relevant criteria. Second, there are simple alternatives to the "rare

dispensation" of anonymity that can preserve the public's interest in judicial openness. *James*, 6 F.3d at 238. Accordingly, the district court's denial of anonymity should be affirmed.

A. The district court below selected the correct legal standard and did not abuse its discretion in its application.

The district court below properly dismissed Appellants' motion for anonymity through reasonable selection of the legal standard and without an abuse of discretion in the application of that standard.

"Once a legitimate showing of need has been made, the court must then 'balance the litigant's legitimate interest in anonymity against countervailing interests in full disclosure.'" *In re Sealed Case*, 971 F.3d 324, 326 (D.C. Cir. 2020) (quoting *In re Sealed Case*, 931 F.3d 92, 96 (D.C. Cir. 2019)). Though this Court has utilized various tests in its analyses, the "five non-exhaustive factors" weighed by the Fourth Circuit have "serve[d] well as guideposts from which a court ought to begin its analysis." *In re Sealed Case*, 971 F.3d at 326; *see also In re Sealed Case*, 931 F.3d at 96; *United States v. Microsoft Corp.*, 56 F.3d 1448, 1464 (D.C. Cir. 1995). In particular, the factors are:

> (1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly person nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; (3) the ages of the persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private party; and (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

In re Sealed, 971 F.3d at 326. This Court should not, however, "engage in a wooden exercise of ticking the five boxes." *In re Sealed Case*, 931 F.3d at 96. Finally, this Court's review of a ruling on a motion for anonymity is two steps—first, a *de novo* review of the relevant factors and second, a review of the application of those relevant factors for an abuse of discretion by the lower court.

First, the district court below adequately chose relevant factors. *See* Mem. Op. 4–7. Second, the application of those factors was not to the level of error that would require or even allow this Court to overturn the previous ruling. *See id.* Accordingly, the ruling of the district court below should be affirmed.

1. The district court below utilized relevant factors in its balancing test.

The district court below utilized relevant factors that should be affirmed under this Court's *de novo* standard of review.

The first step in reviewing an anonymity ruling is a *de novo* review of "whether the district court applied the correct legal standard." *Price v. District of Columbia*, 792 F.3d 112, 114 (D.C. Cir. 2015) (citing *Conservation Force v. Salazar*, 699 F.3d 538, 542 (D.C. Cir. 2012)); *see also In re Sealed*, 931 F.3d at 96. Furthermore, a court's selection of factors relating to anonymity in front of the court is sufficient "as long as it has considered the factors relevant to the case before it." *In re Sealed*, 931 F.3d at 97.

The district court below applied three of five factors drawn from the test first laid out in *James* and largely embraced by this Court. Mem. Op. at 4–7; *see In re Sealed Case*, 971 F.3d at 326; *see also In re Sealed Case*, 931 F.3d at 96; *Microsoft Corp.*, 56 F.3d at 1464; *James*, 6 F.3d at 238. The lower court relied specifically on factors (1), (2), and (3) while also raising two other possible considerations. Mem. Op. at 4–7. While it did not consider factors (4) and (5), they were not raised by either party and the results of the two factors would have led to the same outcome—dismissal of the motion for anonymity. *See* Dr. Smith Decl. ¶¶ 8–9; Memo. Op. 3–7.

The first three factors of the balancing test encapsulate the issues Appellants raised and more—information of a sensitive and highly personal nature, risk of retaliatory mental harm, and age. In particular, Appellants' arguments for anonymity rest on the highly personal nature and the risk of relapse. Dr. Smith Decl. ¶¶ 8–9; Memo. Op. at 4–7. Even more, consideration of age by the district court below shows the wide breadth of this analysis and the "flexible and fact driven" nature with which courts must approach the anonymity issue. *In re Sealed Case*, 971 F.3d at 326.

Of course, the record indicates that two factors were not raised that would have inquired as to whether Appellants were suing the government and the fairness to the defendant if Appellants proceeded in anonymity. *See* Mem. Op. at 4–7. Had

they been raised and subsequently considered, however, it is unlikely they would have changed the result. When plaintiffs "su[e] private individuals rather than a government agency, [there is] *more* reason *not* to grant the plaintiffs' request for anonymity." *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992) (internal citation omitted). Accordingly, consideration of the fourth factor would cut against Appellants as Universal is a private insurer. Compl. ¶¶ 5–6.

As for the "threat of fundamental unfairness to the defendant," "basic fairness dictates that those among defendants' accusers who wish to participate . . . must do so under their real name." *In re Chiquita Brands Int'l, Inc. Alien Tort Statute & S'holder Derivative Litig.*, 965 F.3d 1238, 1247 (11th Cir. 2020); *Microsoft Corp.*, 56 F.3d at 1463–64 (internal citations omitted). However, the "assurance of fairness preserved by public presence at trial is not lost" when anonymity is maintained. *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981). Nevertheless, even if the consideration of this factor weighed in favor of Appellants, it would likely balance against factor (4) as discussed above. Though they were not raised by either party, neither factor (4) nor factor (5) would affect the lower court's ruling.

Accordingly, the district court below applied the correct legal standard and selected all relevant factors from the accepted test in this Court.

2. The district court below did not abuse its discretion in the application of the relevant criteria.

This Court should affirm the lower court's decision as the district court did not abuse its discretion in the application of the relevant factors.

On appellate review, this Court must "review [the lower] court's application of those criteria [used by the lower court] *only* for an abuse of discretion." *In re Sealed*, 931 F.3d at 96 (emphasis added). "An abuse of discretion occurs by definition when the district court [did] not apply the correct legal standard or misapprehend[ed] the underlying substantive law." *Price*, 792 F.3d at 114 (citing *Conservation Force*, 699 F.3d at 542). In fact, failing to consider one of the factors from a list "does not automatically abuse [the court's] discretion, as long as it has considered the factors relevant to the case before it." *In re Sealed Case*, 931 F.3d at 96. Finally, when an order by the lower court is found in error and highly prejudicial, "the appellate court will hold that the district court has abused its discretion." *Kickapoo Tribe of Indians of Kickapoo Reservation in Kansas v. Babbitt*, 43 F.3d 1491, 1497 (D.C. Cir. 1995).

First, the district court below denied any uniqueness regarding the highly sensitive and personal nature of K.D.'s mental health and treatment. Mem. Op. at 5–6. Where plaintiffs have brought similar claims under this factor, courts have similarly separated the core allegation of the suit from the personal and highly sensitive nature of certain evidence to deny the motions. *See, e.g. L.L. v. Medcost*

Benefit Servs., No. 1:21-cv-00265-MR, 2023 WL 4393748, at *2–*3 (W.D.N.C. July 5, 2023) (holding that actions seeking coverage of treatment are focused on the denial of benefits and not specifically the treatment or diagnoses involved and "[c]ourts routinely deny requests to proceed anonymously when a plaintiff's purported reason for the request is to protect information about her mental health"); *LR v. Cigna Health and Life Ins. Co.*, No. 6:22-cv-1819, 2023 WL 4532672, at *2–*3 (M.D. Fl. July 13, 2023) (denying the motion for anonymity and holding that "[p]laintiff's denial of medical benefits claim is not necessarily a sensitive topic" while noting that "the fact that [p]laintiff's case relates to her medical history does not *per se* mean that anonymity is appropriate"). Moreover, denials of anonymity requests have extended into even more highly sensitive and personal spheres as lower courts in this circuit have held the importance of judicial openness. *See, e.g. Doe v. Cabrera*, 307 F.R.D. 1, 10 (D.D.C. 2014) (denying anonymity request in an alleged sexual assault by professional athlete).

Similarly, Appellants argue for anonymity as a secondary point in their attempt to recover benefits under their plan. Compl. ¶¶ 19–27; Mem. Op. 1–4. Regardless of the outcome of the ERISA claim, Plaintiffs' names and medical treatment are reasonably necessary to maintain openness in the proceeding before this Court and the lower court alike. Where cases involved similar recovery for medical benefits and even sexual assault, it was not unreasonable—and therefore

not an abuse of the court's discretion—to deny anonymity. *See, e.g. Cabrera*, 307 F.R.D. at 10; *L.L.*, No. 1:21-cv-00265-MR, 2023 WL 4393748, at *2–*3.

As to the second factor, the district court below accepted but limited the declaration provided by Dr. Smith. Mem. Op. at 6. There, K.D.'s treating physician noted the possibility of harm against K.D. if she was named in this suit. Dr. Smith Decl. ¶¶ 8–9. However, the D.C. Circuit has previously noted the insufficiency of "hypothesized harms" stated in "conclusory form." *In re Sealed*, 971 F.3d at 197. In doing so, this circuit evaluated the claims of danger raised by a corporation alleging that the use of its name would put it at economic risk in retaliation of its creditors while providing nothing except speculation. *Id.* at 196–97. More importantly, however, this circuit noted the consequences that the corporation repeatedly stated "*could*" occur. *Id.* at 196. Here, Dr. Smith raises a concern that is made in just that same vein. *See* Dr. Smith Decl. ¶¶ 8–9; Mem. Op. at 6. The risk alleged by Appellants is hypothesized, speculated, and only supported by Dr. Smith to the extent that she "believe[s] it is possible that [K.D.] *could* again become depressed and anxious. . . ." Dr. Smith Decl. ¶ 9 (emphasis added). Without further support, such language fails to show an extreme error or abuse in the discretion of the lower court in limiting the effect of this opinion and the risk of harm alleged by Appellants.

Finally, the lower court properly and reasonably denied any special protection on the basis of age as Appellants are both legal adults. Compl. ¶ 7; Mem. Op. at 3, 6.

As the district court below utilized relevant factors under the proper legal standard and applied them without extreme error as required for reversal under an abuse of discretion standard, the decision to deny the use of anonymity for its lack of weight against the public interest in judicial openness should be affirmed.

B. Other reasonable alternatives may be implemented to protect Appellants' concerns while maintaining openness with the public.

Appellants' interests in secrecy and anonymity could be better served through other measures that maintain a level of openness required by the public.

Cases involving the denial of medical coverage inherently involve matters that can be deemed personal and sensitive. However, "the fact that a case involves a medical issue is not a sufficient reason for allowing the use of a fictitious name, even though many people are secretive about their medical problems." *Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir. 1997); *see also Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 690 (11th Cir. 2001) ("[A] medical issue which, although sensitive and private, 'is not such a badge of infamy or humiliation in the modern world that its presence should be an automatic ground for concealing the identity of a party to a federal suit.'") (quoting *Doe*, 112

F.3d at 872.) Instead, when information is "highly embarrassing to the average person" but still "pertinent to th[e] suit and so an appropriate part of the judicial record, the judge could require that this material be placed under seal." *Doe*, 112 F.3d at 872; *see also L.L. v. Medcost Benefit Servs.*, No. 1:21-cv-00265-MR, 2023 WL 4393748, at *3 (W.D.N.C. July 5, 2023) (stating "that personal information can be redacted and records detailing sensitive information can be filed under seal if appropriate"); *Doe v. City of Univ. of N.Y.*, 2021 WL 5644642, at *6 (S.D.N.Y. Dec. 1, 2021).

Medical information should not be taken as so shameful as to require or provide for the "automatic ground for concealing the identity of a party to a federal suit." *Doe*, 112 F.3d at 872. Where a plaintiff was denied medical coverage for psychiatric care undergone for the treatment of obsessive compulsive disorder and entered into the suit against his insurer under the fictitious name of "John Doe," the Seventh Circuit rebuked his justification of anonymity in his "fear that the litigation might result in the disclosure of his psychiatric records." *Id.* Citing this circuit, the Seventh Circuit held tight to the notion that the "rare dispensation" of anonymity is disfavored in this circuit and many sister circuits. *Id.* (citing *United States v. Microsoft Corp.*, 56 F.3d 1448, 1463–64 (D.C. Cir. 1995)); *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993). Even more, to warrant such extreme exceptions would "propagate the view that mental illness is shameful" and be

contrary to the "fact that a case involves a medical issue is not a sufficient reason for allowing the use of a fictitious name." *Doe*, 112 F.3d at 872. Instead, placing information that was "highly embarrassing" but necessary to the suit under seal could alleviate the very concerns of the plaintiff. *Id.*

Here, Appellants seek a similar solution. Appellants and Dr. Smith allege that the information contained in K.D.'s medical diagnoses, treatment, and other relevant information is personal, highly sensitive, and puts K.D. at risk of harm, thereby justifying anonymity. Dr. Smith Decl. ¶¶ 4, 6–9; Mem. Op at 4–7. However, much like the plaintiff in *Doe*, the fact that this is medical information alone does not automatically make anonymity allowable under the exceptions. Mem. Op. at 5–7; *see Doe*, 112 F.3d at 872. In fact, the argument in its entirety could be avoided through already available means of redaction and seal as noted by the district court below and widely accepted throughout the judicial system. *See, e.g. L.L.*, No. 1:21-cv-00265-MR, 2023 WL 4393748, at *3; *City of Univ. of N.Y.*, 2021 WL 5644642, at *6; *Doe*, 112 F.3d at 872; *see also* Mem. Op. at 7.

As there are reasonable alternatives to anonymity that would maintain the public's interest in judicial openness while also providing Appellants with the solutions to their concerns, the decision of the district court below in denying the use of initials in this proceeding should be affirmed.

II. Claimants cannot make a duplicative second claim under § 502(a)(3).

When "ERISA specifically provides a remedy for breaches of fiduciary duty with respect to the interpretation of plan documents and the payment of claims" through § 502(a)(1)(B), *Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996), a claim under § 502(a)(3) is not appropriate. *See, e.g., Frommert v. Cronkright*, 433 F.3d 254, 270 (2d Cir. 2006). Section 502(a)(1)(B) allows a beneficiary of a plan to bring a claim "[1] to recover benefits due to him under the terms of his plan, [2] to enforce his rights under the terms of the plan, or [3] to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Here, Claimants attempt to plead equitable claims under the "catchall" provision of § 502(a)(3), *Varity*, 516 U.S. at 511, but Claimants' claims for denial of benefits and a change in the interpretation of their health plan squarely fit within the relief provided by § 502(a)(1)(B). Despite the Claimants' desired remedies' foundation in § 502(a)(1)(B), Claimants repackage these claims to allege a breach of fiduciary duty without demonstrating a separate or distinct injury that could support a second claim. When an adequate remedy exists under § 502(a)(1)(B), claimants cannot pursue additional relief under § 502(a)(3). *See Korotynska v. Metro. Life Ins. Co.*, 474 F.3d 101, 102–03 (4th Cir. 2006). Claimants have such an adequate remedy in their first count under § 502(a)(1)(B).

Even if this Court decides Claimants can plead two separate claims, Claimants fail to adequately plead a violation of the Parity Act to survive a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 672, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Claimants' second claim, therefore, was properly dismissed for two distinct reasons: (1) it is duplicative of their first claim as the district court found, Mem. Op. at 10, or (2) Claimants fail to make a valid claim under the Parity Act even though the district court did not broach the issue. *Cf. Process and Indus. Devs. Ltd. v. Fed. Republic of Nigeria*, 27 F.4th 771, 775 (D.C. Cir. 2022) ("Because as an appellate court, we can affirm the District Court on any valid ground, and need not follow the same mode of analysis, we take a different approach." (cleaned up)).

On review of granting a motion to dismiss, this Court reviews the district court's decision *de novo*. *W. Org. of Res. Councils v. Zinke*, 892 F.3d 1234, 1240 (D.C. Cir. 2018).

A. Section 502(a)(1)(B) provides the remedies sought by Claimants.

The remedies created by Congress in § 502(a)(1)(B) can completely remedy the injury alleged by Claimants. Here, Claimants seek three primary remedies under the terms of the Plan: (1) to recover benefits they claim were wrongfully denied, (2) to enforce their rights, and (3) to clarify their future rights. *See* Compl. ¶¶ 19–24, 29. While Claimants try to "couch[] [their claims] to allow relief under §

502(a)(3)," *Frommert*, 433 F.3d at 270, § 502(a)(1)(B) provides the proper basis of relief to "recover benefits," "enforce their rights," and "clarify their future rights" "under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). To evaluate the remedies sought, courts must look past the plain claims made by Claimants to evaluate the remedies that Claimants seek. *Gerosa v. Savasta & Co.*, 329 F.3d 317, 321 (2d Cir. 2003) ("[The court] must look to the real nature of the relief sought, not its label."). When § 502(a)(1)(B) provides adequate relief, any other claims for equitable relief are unnecessary and should be dismissed for failure to state a claim. *See, e.g., Fenwick v. Hartford Life & Accident Ins. Co.*, 841 F. App'x 847, 859–60 (6th Cir. 2021); *Korotnyska.*, 474 F.3d at 102–03; *Antolik v. Saks, Inc.*, 463 F.3d 796, 803 (8th Cir. 2006); *Nechis v. Oxford Health Plans, Inc.*, 421 F.3d 96, 103 (2d Cir. 2005); *L.L v. Medcost Benefit Servs.*, 1:21-cv-00265, 2023 WL 362391, at *4–5 (W.D.N.C. Jan. 23, 2023) (dismissing Parity Act claim under § 502(a)(3) when § 502(a)(1)(B) provided an adequate remedy).

1. Claimants seek to recover benefits to them under the terms of the Plan.

Claimants make clear they seek to recover "all of the medical bills incurred for treatment" after the alleged wrongful denial of coverage for continued residential treatment under the terms of the Plan. Compl. ¶ 22. ERISA allows Claimants to seek these remedies under § 502(a)(1)(B), and recovery of these funds would help make Claimants whole. Offering claimants the opportunity to

become whole through legal relief is the entire objective of ERISA. *See Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 373 (6th Cir. 2015) ("[T]he primary purpose of ERISA was given effect–ensuring availability of an adequate remedy to make the plaintiffs whole."). Courts agree the proper vehicle for recovering under the terms of a health plan is § 502(a)(1)(B). *See, e.g., Fenwick*, 841 F. App'x at 859–60. Especially when claimants seek recovery as individuals under the terms of their own health plan, § 502(a)(1)(B) provides the appropriate remedy. *See Krauss v. Oxford Health Plans, Inc.*, 517 F.3d 614, 622 (2d Cir. 2008) (quoting 29 U.S.C. § 1132(a)(1)(B)). The text of the statute confirms such an interpretation. As the Sixth Circuit articulated in *Rochow v. Life Insurance Company of North America*, the wrongful denial of benefits offers an opportunity to recover for "an injury adequately remedied under § 502(a)(1)(B)" when properly pled. 780 F.3d at 374–75. Claimants agree. When receiving monetary benefits for a violation of the terms of the plan, § 502(a)(1)(B) provides the cause of action. Congress explicitly gave litigants this remedy. *See* 29 U.S.C. § 1132(a)(1)(B).

The relief Claimants seek is available under the terms of the Plan and enforceable through § 502(a)(1)(B). The relevant portions of the Plan provide coverage for all "medically necessary mental health and substance use disorder services." Compl. ¶ 8. Claimants agree § 502(a)(1)(B) provides the appropriate cause of action to recover any monetary damages that would arise from the alleged

wrongdoing of Universal. *See id.* ¶¶ 19–24. Even though § 502(a)(1)(B) offers Claimants the opportunity to sufficiently recover any benefits they could be entitled to, Claimants still request "any other equitable relief as the Court deems necessary and proper to protect the interests of Plaintiff[s] under the Plan." *Id.* ¶ 29. In their request for relief, Claimants recognize that any claim to relief ultimately lies "under the [terms of] the Plan." *Id.* Such a request squarely puts the relief under § 502(a)(1)(B).

2. Claimants seek to enforce their rights under the terms of the Plan.

The text of § 502(a)(1)(B) allows Claimants to enforce their rights under the terms of the Plan. Both Claimants and Universal agree that Claimants have a right to bring an action to enforce the terms of the plan against the insurer if a disagreement over the meaning of the Plan arises. As such, Claimants properly brought a claim under § 502(a)(1)(B) to "enforce their rights under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Claimants, therefore, can receive an adequate remedy to the alleged injury they claim under § 502(a)(1)(B) as this Court can interpret and enforce the rights available to Claimants under the terms of the Plan. *See, e.g., Chapman v. Cigna Behav. Health*, No. 20-7094, 2021 WL 5537709, at *2 (D.C. Nov. 23, 2021); *Cyr v. Reliance Standard Ins. Co.*, 642 F.3d 1202, 1205 (9th Cir. 2011) ("As a participant in the Plan, [the claimant] is authorized under this

provision to bring a civil action to recover benefits and to enforce and clarify her rights under the Plan.").

Succeeding on such a claim would provide Claimants with an adequate remedy to the injury they allege. When such an adequate remedy is explicitly enumerated in an ERISA statute, claimants should seek relief under § 502(a)(1)(B) as Congress provided the remedy at law. *See Varity*, 516 U.S. at 515 ("[W]here Congress . . . provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be appropriate."). As both parties agree and the text of the statute supports the argument, Claimants can seek adequate relief under § 502(a)(1)(B) to remedy the injury Claimants allege.

3. Claimants seek to clarify their future rights to future benefits under the terms of the Plan.

Under § 502(a)(1)(B), claimants may force insurance companies to interpret the terms of their plan in a specific manner. Although the remedy seems to resemble an injunction that would require equitable relief, such a remedy fits squarely within the text of § 502(a)(1)(B). *See Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147 (1985); *Nechis*, 421 F.3d at 103 ("[I]njunctive relief is generally appropriate only when there is an inadequate remedy at law and irreparable harm will result if the relief is not granted."). The remedy Claimants seek, therefore, is available at law. *See Nechis*, 421 F.3d at 103.

When applied to a claimant's individual plan, the clarification of future rights may resemble an injunction, but Congress specifically enumerated this remedy for individual claimants to become whole without needing equitable relief. *See Mass. Mut.*, 473 U.S. at 146–147 ("The . . . carefully integrated civil enforcement provisions found in § 502(a) of the statute as finally enacted . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly." (emphasis in original)). Clarifying the terms of an individual plan is a remedy most appropriate under § 502(a)(1)(B) as the courts look past the simple claims made by plaintiffs to ascertain the exact relief sought. *Gerosa*, 329 F.3d at 321.

When the interpretation of a single plan is at issue, the proper remedy is a clarification of future rights of the individual's plan and not an equitable remedy in the form of an injunction. Section 502(a)(1)(B) allows for a claimant "to clarify [their] future rights under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). In other words, a claimant could "enjoin the plan administrator from improperly refusing to pay benefits in the future" under § 502(a)(1)(B). *Mass. Mut.*, 473 U.S. at 147. In *New York State Psychiatric Association v. UnitedHealth Group*, the Second Circuit overlooked the text of § 502(a)(1)(B) because that panel decided "that monetary benefits under § 502(a)(1)(B) alone" would not provide the claimant with a sufficient remedy and allowed for a duplicative § 502(a)(3) claim

to proceed. 798 F.3d 125, 134 (2d Cir. 2015). But the text of § 502(a)(1)(B) provides more than just monetary benefits. It provides a clarification of "future rights under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). The district court properly recognized the availability of this remedy under the text of the statute. *See* Mem. Op. at 10. A clarification of the future rights of Claimants would adequately remedy the injury Claimants allege to have suffered or could suffer in the future.

B. Claimants simply repackage their claim under § 502(a)(1)(B) into a claim under § 502(a)(3).

"[T]he availability of relief under § [502(a)(3)] is narrow," *Davis v. Hartford Life & Accident Ins. Co.*, 980 F.3d 541, 550 (6th Cir. 2020), and simply stating a claim for equitable relief is insufficient to raise a cause of action under § 502(a)(3). "The critical question" for a claimant to plead two claims under § 502(a)(1)(B) and § 502(a)(3) is they must "make a showing that the benefits recovered . . . plus attorney's fees awarded, plus the prejudgment interest that may be awarded on remand are inadequate to make the plaintiff whole." *Fenwick*, 841 F. App'x at 859. The simplest way for a claimant to make this showing is to demonstrate "separate and distinct injuries" that require different remedies. *See Gore v. El Paso Energy Corp. Long Term Disability Plan*, 477 F.3d 833, 839–40 (6th Cir. 2007). To evaluate the claim, courts "must look to the real nature of the relief sought, not its label." *Gerosa*, 329 F.3d at 321. Claimants fail to allege both separate, distinct injuries and how § 502(a)(1)(B) would fail to make Claimants whole.

The inability of remedies provided by law to make a claimant or a class of claimants whole can support dual claims under §§ 502(a)(1)(B) and 502(a)(3) because they are separate injuries. Two Sixth Circuit cases illustrate the distinction. In *Hill v. Blue Cross & Blue Shield of Michigan*, claimants brought a class-action lawsuit to require the insurance company to change the way it interpreted a plan across the entire insurance network. 409 F.3d 710, 715–16 (6th Cir. 2005). While in *Fenwick v. Hartford Life & Accident Ins. Co.*, the claimant brought the suit individually but alleged the insurance company's interpretation injured both the individual and "other participants" of the plan. 841 F. App'x at 860. The Sixth Circuit allowed the class action to proceed in *Hill* because § 502(a)(1)(B) would not provide the necessary relief to make *the class* whole, 409 F.3d at 718, but the Sixth Circuit reached a different conclusion in *Fenwick* and affirmed the dismissal of the equity claims. *Fenwick*, 841 F. App'x at 859–60. The key difference in the two cases is "injunctive relief of the type available under § 502(a)(3) would provide the complete relief sought by Plaintiffs [in *Hill*] by requiring [the company] to alter the manner in which it administers all of the Program's claims" but would not help the claimant in *Fenwick*. *Id.* at 860 (quoting *Rochow*, 780 F.3d at 373) (cleaned up)). The claimant's § 502(a)(3) claim in *Fenwick*, therefore, was dismissed.

In Claimants' complaint, the terms of the Plan provide sufficient grounds to remedy their alleged injury as no other equitable remedies—reformation, surcharge, or an injunction—would make the Claimants whole. Claimants do not request a change in the terms of the Plan. *Cigna Corporation v. Amara*, therefore, does not apply because reformation, an equitable remedy, is not required. *See Cigna Corp. v. Amara*, 563 U.S. 421, 442–43 (2011) (holding reformation of a plan is an equitable remedy outside the scope of § 502(a)(1)(B) and available under § 502(a)(3)). Similarly, the possibility of surcharge discussed in *New York Psychiatric Association* does not apply because Claimants identify terms of the Plan that would allow them to recover. *See N.Y. Psychiatric*, 798 F.3d at 135. As currently written, the Plan offers Claimants coverage for residential treatment for mental health and substance-use disorders. A clarification of the terms of the Plan and not an injunction would remedy the alleged injury under § 502(a)(1)(B). *See* 29 U.S.C. § 1132(a)(1)(B). Imposing any additional equitable remedy would undercut the statutory scheme that Congress created to ensure an efficient resolution of insurance claims. *See Transamerica Mortg. Advisors, Inc. v. Lewis*, 44 U.S. 11, 19 (1979) ("[W]here a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it.").

Claimants' § 502(a)(3) claim, therefore, should meet the same fate as the claim in *Fenwick*—dismissal. Upon a close examination of the relief sought by

Claimants, they merely couch a proper claim under § 502(a)(1)(B) as an equitable claim under § 502(a)(3). Claimants bring this suit as individuals and support their claims with only their own experiences but seek a remedy that closely resembles a class-action lawsuit. *See* Compl. ¶ 29. Claimants ask the Court for "[a]n 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." Compl. ¶ 29. But receiving this relief as an injunction would not help make the Claimants whole. The Claimants can receive their desired remedy completely under § 502(a)(1)(B) through the combination of monetary damages and a clarification of future rights under the terms of the Plan. Claimants' desired relief simply requests Universal "follow the terms of the Plan in making future benefit determinations." Compl. ¶ 29. That remedy is available at law and is therefore inappropriate to fashion as an equitable remedy. *See Nechis*, 421 F.3d at 103. Because of § 502(a)(1)(B)'s ability to completely remedy the alleged injury to Claimants, the district court properly dismissed Claimants' second count, and this Court should affirm.

C. Even if Claimants can plead a separate § 502(a)(3) claim, Claimants fail to state a valid claim under § 502(a)(3).

Even though Claimants plead a duplicative claim under § 502(a)(3), Claimants still insufficiently plead a violation of 29 U.S.C. § 1185a, the Mental Health Parity Act ("Parity Act") to survive a motion to dismiss. While no circuit

court has definitively given a test for a Parity Act violation, parties before the Tenth Circuit agreed to apply a four-part test that combined various factors district court opinions derived from the text of the Parity Act. *E.W. v. Health Net Life Ins. Co.*, 86 F.4th 1265, 1283 (10th Cir. 2023). The court determined the appropriate test for a party to plead a valid Parity Act claim is

> a plaintiff must: (1) plausibly allege that the relevant group health plan is subject to the [Parity Act]; (2) identify a specific treatment limitation on mental health or substance-use disorder benefits covered by the plan; (3) identify medical or surgical care covered by the plan that is analogous to the mental health or substance-use disorder care for which the plaintiffs seek benefits; and (4) plausibly allege a disparity between the treatment limitation on mental health or substance-use disorder benefits as compared to the limitations that defendants would apply to the medical or surgical analog.

Id. Universal does not dispute the first, second, and third elements of a Parity Act claim. But Claimants fail to plead the fourth element. Universal does not treat claims for mental health treatment differently than its medical or surgical analog. Claimants fail to adequately allege such a violation.

Claimants can bring either an as-applied or facial challenge to an insurer's practices under the Parity Act. While Claimants do not explicitly state whether they challenge the terms of the Plan themselves or Universal's application of the Plan, it appears from the complaint that Claimants raise an as-applied challenge. *See* Compl. ¶ 27 ("Upon information and belief, Universal violated this requirement by applying a 'fail first' policy that required that K.D. be treated at and fail at a lower level of care before she could receive treatment to recover[] at a

residential level of care, despite Plan terms that provided for residential treatment of her mental health and substance use disorder if medically necessary.").

To successfully plead a violation of the Parity Act, claimants must offer more than conclusory statements that repeat the governing law, "a disparity between the treatment limitations applied to benefits for care at a residential center compared to benefits for analogous medical or surgical care." *See E.W.*, 86 F.4th at 1292. Effectively, Parity Act claims are still subject to the pleading requirements of *Ashcroft* and *Iqbal*. *Id.* at 1289 (discussing the factual allegations of *Ashcroft*). In *E.W. v. Health Net Life Insurance Company*, the Tenth Circuit decided the claimants presented sufficient factual allegations to meet the *Ashcroft* pleading requirements. *Id.* Particularly, claimants alleged the defendant insurance company applied different criteria to medical or surgical treatment facilities and mental-health facilities. *Id.* The Tenth Circuit relied on the fact that claimants asked for documents from the insurance company to evaluate how the insurance company treated medical treatment facilities. *Id.* The insurance company's decision not to provide the documents allowed the court to draw adverse inferences against it. *Id.* at 1290–91.

But when an insurance company provides the relevant information and a claimant fails to provide more than "conclusory and formulaic recitations of the law lacking factual support," the claimants fail to state a valid claim. *Jeff N. v.*

United HealthCare Ins. Co., No. 2:18-cv-00710, 2019 WL 4736920, at *4 (D. Utah Sept. 17, 2019). In *Margaret v. Oxford Health Plans (NJ), Inc.*, the claimant merely "alleged facts regarding their own experience" and "made only conclusory allegations about any medical or surgical analogue and the as-applied discrimination involving any analogue." No. 2:20-cv-00211, 2021 WL 391432, at *3 (D. Utah Feb. 4, 2021). Because of the "general assertions of disparate treatment," the claims were "insufficient to survive a motion to dismiss." *Id.* (cleaned up). Many other district courts across circuits have reached a similar decision when conclusory language is the only support offered by claimants. *See, e.g., H.H. v. Aetna Ins. Co.*, 342 F. Supp. 3d 1311, 1320–21 (S.D. Fla. 2018); *Jeff N.*, No. 2:18-cv-00710, 2019 WL 4736920, at *4.

Claimants' complaint suffers from the same defects as it offers only conclusory statements and vague allegations. In the complaint, Claimants offer that "[Universal] does not apply such a 'fail first' policy with respect to long-term inpatient medical and surgical treatment, such as skilled nursing care. Accordingly, Universal's application of a 'fail first' requirement for residential mental health and substance use disorder treatment violates ERISA's parity requirements." Compl. ¶ 28. Claimants offer no explanation for "*how* a disparity arises between criteria" used for surgical treatment and mental health treatment, *Jeff N.*, No. 2:18-cv-00710, 2019 WL 4736920, at *4, or experiences outside of their own,

Margaret, No. 2:20-cv-00211, 2021 WL 391432, at *3. Without any kind of factual allegations that are not conclusory or an attempt to acquire policy documents that could show a disparity, Claimants fail to plead a claim under the Parity Act. This Court, therefore, should dismiss the second claim for a failure to sufficiently plead a claim if this Court decides Claimants may seek equitable relief under § 502(a)(3).

CONCLUSION

For the foregoing reasons, Universal requests this Court affirm the judgment of the district court.

Respectfully submitted,

/s/ *Team 4 Counsel*

Team 4 Counsel