ORAL ARGUMENT SCHEDULED FOR MARCH 1-2, 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, No. 23-CV-499
Before the Honorable Jacob K. Javits

OPENING BRIEF FOR PLAINTIFFS-APPELLANTS

Team 7
Counsel for Appellants
J.D. and K.D.

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Plaintiffs-Appellants, J.D. and K.D., hereby certify as follows:

(A) Parties and *Amici*. J.D. and K.D. are plaintiffs in the district court and appellants in this Court.

Universal Health Insurance Co. ("Universal") is the defendant in the district court and appellee in this Court.

No *amici* appeared in the district court and no *amici* have yet appeared in this Court.

(B) Ruling Under Review. Plaintiffs-Appellants appeal the final order and judgment of the United States District Court for the District of Columbia (J. Javits) in Civil Action No. 23-CV-499, denying Plaintiffs-Appellants' motion to proceed anonymously and granting Defendant-Appellee's motion to dismiss Count II. No official or unofficial citation exists for the ruling.

(C) Related Cases. The ruling under review has not previously been before this Court or any other court. Plaintiffs-Appellants are not aware of any related cases pending before this court or any other court.

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GLOSSARY

ERISA .... Employee Retirement Income Security Act of 1974, as amended

JURISDICTIONAL STATEMENT

This is an appeal from a final judgment of the United States District Court for the District of Columbia. The district court exercised jurisdiction over the Employee Retirement Income Security Act of 1974 ("ERISA") claims pursuant to 28 U.S.C. § 1331. The United States Court of Appeals for the District of Columbia has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

I. Did the district court abuse its discretion in finding that no extraordinary circumstances supported Appellants' request for anonymity?

II. Did the district court err in finding that Appellants may not simultaneously plead valid ERISA claims for benefits under 29 U.S.C. § 1132(a)(1)(B) and equitable relief under 29 U.S.C. § 1132(a)(3)?

STATUTES AND REGULATIONS

Pertinent statutes, regulations, and other materials are set forth in the addendum to this brief.

STATEMENT OF THE CASE

Statement of Facts

Appellants J.D. and K.D. (together "Appellants") are residents of the District of Columbia. (Doc. 1, Complaint ("Compl.") ¶¶ 3, 4.) J.D., an employee at CIA Consulting, LLC, maintained a healthcare insurance policy under the CIA

Consulting LLC Healthcare Plan (the "Plan"), an ERISA-governed employee welfare benefit plan. (Compl. ¶ 3.) The Plan covered her daughter, K.D., as an eligible beneficiary. (*Id.* ¶ 4.) Appellee Universal Health Insurance Co. ("Universal") transacts business and operates in the District of Columbia. (*Id.* ¶ 5.) Universal insures the Plan and administers claims for medical and mental health benefits. (*Id.* ¶ 6.)

The Plan provides coverage for medically necessary mental health and substance use disorder services, including residential treatment.[1] (*Id.* ¶ 8.) Universal developed its own internal guidelines to assist in administering claims for such benefits. (*Id.*) Relevant here, is the guideline that specifies the requirements for residential treatment, including that "a less intense level of care would not result in significant improvement." (*Id.*; Exhibit ("Ex.") A.) Universal applied this guideline to require that patients "fail first" at lower levels of care before they can receive long-term residential care needed to recover. (*Id.*)

[1] Universal Health Insurance Company's Mental Health and Substance Use Disorder Guidelines define Residential Treatment 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.)

K.D. is a 19-year-old young girl with a complicated medical history of mental illness and substance use disorder. (Compl. ¶ 7.) In the summer between her sophomore and junior year of high school, K.D. was sexually assaulted. (*Id.*) Prior to the assault, K.D. was a gifted student living a normal high school life. (*Id.*) However, the residual psychological and physical effects of the assault exacerbated her depression and triggered her anxiety. (*Id.*) During this time K.D.'s grades declined, and she began to withdraw from her former social group. (*Id.*) By her senior year of high school, K.D. was using opioids, first, oxycontin and later, heroin. (*Id.*)

In early 2022, following her assault, K.D. began receiving intensive outpatient treatment three days a week for her depression and anxiety from a District of Columbia facility called Road to Recovery. (*Id.* ¶ 9.) This treatment was paid for by the Plan. (*Id.*) However, the treatment at Road to Recovery was not successful and K.D.'s condition worsened. (*Id.*) On March 1, 2022, K.D. attempted suicide by cutting her wrists, and was admitted to an emergency room and then to a psychiatric hospital for three weeks. (*Id.* ¶ 10.) The psychiatric hospital recommended that K.D. receive treatment at a "partial hospitalization" level of care five days a week through Road to Recovery. (*Id.*)

Immediately after her release, but before her partial hospitalization treatment began, K.D. overdosed on heroin laced with fentanyl. (*Id.* ¶ 11.) K.D. was again

admitted to the emergency room and then hospitalized for another three weeks. (Compl. ¶ 11.) Universal paid for this treatment. (*Id.*) K.D.'s doctor at the hospital and treatment team at Road to Recovery recommended that she receive residential treatment at Lifeline Inc. ("Lifeline"), a Virginia-based facility that could treat K.D.'s mental illness and substance use disorder. (*Id.* ¶ 12.) K.D. and her mother, J.D., sought authorization from Universal for K.D.'s treatment at Lifeline. (*Id.*) Universal approved three weeks of residential treatment. (*Id.*)

On April 18, 2022, K.D. was admitted to Lifeline, and a treatment team performed a complete assessment. (*Id.* ¶ 13.) The treatment team included a family nurse practitioner, a psychiatrist, and the Director of Lifeline, all of whom specialize in treating substance use disorders as well as related mental illness and precipitating trauma. (*Id.*) The treatment team diagnosed K.D. with major depressive disorder, generalized anxiety disorder, and substance use disorder. (*Id.*)

On May 9, 2022, Universal informed K.D. that a reviewing physician for Universal, Dr. James Matzer, determined that her residential treatment was no longer medically necessary and that she could be treated at the lower level of "partial hospitalization." (*Id.* ¶ 14.)

K.D.'s treatment team at Lifeline disagreed with Dr. James Matzer's determination and urgently requested an appeal. (*Id.* ¶ 15.) On May 10, 2022, Universal sent K.D. a denial of benefits letter signed by Jennifer Lawrence, M.D.,

providing few details about the specific reason for K.D.'s denial of benefits. (Compl. ¶ 15; Ex. C.) The letter noted that "review typically involves a telephone conversation with your provider," but also stated that "Universal's attempts to reach your provider by phone were unsuccessful." (*Id.*) The letter also stated that "the requested residential treatment . . . is denied" because "[u]nder Universal Standard of Care Guidelines, residential treatment is no longer medically necessary because you could receive care at a lower level partial hospitalization level of care." (*Id.* ¶ 15.)

The director of Lifeline and K.D.'s treating psychiatrist cautioned that K.D. continued to be at high risk of relapse and mortality if she did not have round-the-clock monitoring and care. (*Id.* ¶ 16.) Based on this assessment, J.D. paid out-of-pocket for K.D.'s continued treatment at Lifeline by taking out a second mortgage on her home to pay for K.D.'s treatment. (*Id.*)

K.D. remained in residential treatment for an additional twelve months, where she received intensive round-the-clock treatment addressing her trauma, substance abuse, and mental health issues. (*Id.* ¶ 17.) K.D.'s treatment team determined that she improved to the point that she could receive continued mental health treatment on an outpatient basis. (*Id.*) K.D. continues to be at risk of relapse, but is now enrolled in college and continues to do well after finally receiving the sustained and intensive treatment she needed. (*Id.* ¶ 18.)

Procedural History

On August 2, 2023, Appellants filed a complaint against Universal in the United States District Court for the District of Columbia. (Doc. 1, Complaint.) Appellants' complaint alleges two causes of action. First, Appellants seek monetary relief under ERISA, 29 U.S.C. § 1132(a)(1)(B), for Universal's alleged improper denial of benefits. (*Id.* ¶ 20.) Appellants contend that Universal violated the terms of the Plan in denying coverage for K.D.'s complete course of residential treatment at Lifeline. (*Id.* ¶¶ 20-22.) Second, Appellants seek other equitable relief under ERISA, 29 U.S.C. § 1132(a)(3), including reformation of the Plan, for Universal's alleged violation of the Mental Health Parity and Addiction Equity Act of 2008 ("Parity Act"), 29 U.S.C. § 1185a. (*Id.* ¶¶ 26, 27.) Appellants contend that Universal violated the Parity Act by imposing more coverage restriction on mental health or substance use disorder benefits than medical and surgical benefits. (*Id.* ¶¶ 26-28.) Appellants allege that Universal employed a "fail first" policy that required K.D. to receive treatment and fail at a lower level of care before she could receive treatment to recover at a residential level of care. (*Id.* ¶ 27.) Appellants allege that Universal did not apply such a "fail first" policy with respect to long-term medical and surgical treatment. (*Id.* ¶ 28.)

Universal filed a motion to dismiss Appellants' § 1132(a)(3) cause of action seeking to enforce the Parity Act. (Doc. 27.) Universal argued that Appellants'

§ 1132(a)(3) cause of action should be dismissed because Appellants' claim for equitable relief under § 1132(a)(3) is duplicative of their claim for benefits under § 1132(a)(1)(B). (Memorandum Opinion and Order ("Memo.") 9.) The district court granted Universal's motion to dismiss Appellants' § 1132(a)(3) cause of action. (*Id.* at 11.) The district court concluded that Appellants' § 1132(a)(3) claim for equitable relief, "could have been brought as part of their § 1132(a)(1)(B) claim for benefits, and their injury, if proven, [could] be adequately redressed through the benefits claim[.]" (*Id.* at 10.)

Appellants also filed a motion to proceed anonymously to protect K.D.'s privacy interest. (Doc. 25.) K.D.'s medical records reflect hospitalizations for mental health issues, a substance use disorder, and a suicide attempt. (Compl. ¶¶ 7-10.) Universal opposed Appellants' motion, arguing that Appellants "should not be allowed to proceed anonymously because of the strong public interest in open court proceedings." (Memo. 4.) The district court denied Appellants' motion to proceed anonymously, reasoning that no extraordinary circumstances support Appellants' request to proceed anonymously under their initials. (*Id.* at 7.) Appellants declined to file an amended complaint with their full names and requested that if their motion to proceed anonymously were denied, that judgment be entered against them so they may appeal the ruling. (*Id.* at 10-11.) Subsequently, the court dismissed the entire case. (*Id.* at 11.) Thereafter,

Appellants filed an appeal to the United States Court of Appeals for the District of Columbia Circuit, seeking to reverse the district court's decisions.

SUMMARY OF ARGUMENT

The district court erred in denying Appellants' motion to proceed anonymously by finding that no extraordinary circumstances support allowing Appellants to proceed anonymously under their initials. Federal Rule of Civil Procedure 10(a) ("Rule 10(a)") serves to protect the public's legitimate interest in knowing all the facts in a case. However, exceptions to this rule arise when parties raise compelling concerns related to their privacy or confidentiality. Under the appropriate circumstances, judges permit parties to proceed anonymously, as a matter of discretion, by applying a balancing test that weighs the plaintiff's need for anonymity against the public interest in open judicial proceedings.

Here, the district court misapplied the balancing test to Appellants' motion to proceed anonymously, by improperly applying its chosen judicially created factors set forth by previous courts to the highly sensitive and extraordinary facts of Appellants' case. The unfortunate consequence of this ruling is to incentivize bad faith denials of otherwise valid mental health benefits claims. Thus, the district court abused its discretion in balancing the relevant factors for Appellants' request for anonymity.

The district court also erred in granting Universal's motion to dismiss Count II by finding that Appellants were not permitted to simultaneously plead claims under both § 1132(a)(1)(B) and § 1132(a)(3). First, Appellants may pursue alternative theories of relief under simultaneous § 1132(a)(1)(B) and § 1132(a)(3) claims. The Federal Rules of Civil Procedure allow all plaintiffs to plead in the alternative. ERISA claims do not present a special exception to the Federal Rules of Civil Procedure that bar Appellants from pleading simultaneous claims under § 1132(a)(1)(B) and § 1132(a)(3).

Second, Appellants' § 1132(a)(3) claim for equitable relief is not duplicative of their § 1132(a)(1)(B) claim. It is not clear at the motion to dismiss stage of litigation that Appellants' § 1132(a)(1)(B) claim alone will provide adequate relief for Appellants' injury. Additionally, the equitable relief sought by Appellants to remedy their injury caused by Universal's alleged violation of the Parity Act, cannot be brought under § 1132(a)(1)(B).

Third, allowing Appellants to seek equitable relief under § 1132(a)(3) while pleading a simultaneous claim for benefits under § 1132(a)(1)(B) is consistent with ERISA's intended purpose of protecting participants' and beneficiaries' interests and the common law of trusts. When enacting ERISA, Congress invoked and incorporated the common law of trusts to broadly define the general scope of an ERISA administrator's fiduciary duties. Since, traditional trust law provides for

broad and flexible equitable remedies in cases involving breaches of fiduciary duty, Appellants' § 1132(a)(3) claim for equitable relief should not be dismissed when pleaded simultaneously with a claim for benefits under § 1132(a)(1)(B).

STANDARD OF REVIEW

The criteria used by the district court to deny Appellants' motion to proceed anonymously are reviewed *de novo*. *In re Sealed Case*, 931 F.3d 92, 96 (D.C. Cir. 2019) (citing *Price v. District of Columbia*, 792 F.3d 112, 114 (D.C. Cir. 2015)). The district court's application of those criteria is reviewed for abuse of discretion. *Id.* (citing *United States v. Microsoft Corp.*, 56 F.3d 1448, 1464 (D.C. Cir. 1995)).

The district court's decision to grant Universal's motion to dismiss is reviewed *de novo*. *See Cierco v. Mnuchin*, 857 F.3d 407, 414 (D.C. Cir. 2017). Allegations in the complaint are "taken as true for purposes of a motion to dismiss." *Hughes v. Rowe*, 449 U.S. 5, 10 (1980).

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY RULING THAT THERE WERE NO EXTRAORDINARY CIRCUMSTANCES TO SUPPORT APPELLANTS' REQUEST FOR ANONYMITY.

The district court abused its discretion by ruling that no extraordinary circumstances existed to support Appellants' request for anonymity. The Federal Rule of Civil Procedure 10(a) ("Rule 10(a)") states that all pleadings in federal court "must have a caption with the court's name, a title, a file number, and a Rule

7(a) designation. The title of the complaint must name all the parties[.]" Fed. R. Civ. P. 10(a). This rule serves to protect the public's legitimate interest in knowing all the facts in a case. *Doe v. Rostker*, 89 F.R.D. 158, 160 (N.D. Cal. 1981); *see also Craig v. Harney*, 331 U.S. 367, 374 (1947) (stating that "[a] trial is a public event. What transpires in the court room is public property."). At times, this can include knowing the parties' identities. *Rostker*, 89 F.R.D. at 160. However, exceptions to Rule 10(a) may arise when "extraordinary circumstances support [the party's] request" for anonymity. *Doe v. Public Citizen*, 749 F.3d 246, 273 (4th Cir. 2014) (recognizing "that in exceptional circumstances, compelling concerns relating to personal privacy or confidentiality may warrant some degree of anonymity in judicial proceedings, including use of a pseudonym").

To determine whether a party may proceed anonymously, courts apply "a balancing test that weighs the plaintiff's needs for anonymity against countervailing interests in full disclosure." *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2d Cir. 2008). Courts apply the balancing test using judicially created factors. *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993) (applying the following five factors relevant to the case: (1) "whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that nay attend any litigation or is to preserve privacy in a matter of sensitive and highly personal 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."). These factors "are not meant to compromise an inclusive list of factors to be exclusively considered when determining the propriety of pseudonymous litigation. Indeed, trial courts will always be required to consider those factors which the facts of the particular case implicate." *Doe v. Provident Life and Acc. Ins. Co.*, 176 F.R.D. 464, 468 (E.D. Pa. 1997).

On balance, the district court erroneously applied its chosen factors to Appellants' request for anonymity and failed to consider additional factors set forth by previous courts to the extraordinary facts of Appellants' case. The unfortunate result of this ruling incentivizes bad faith denials of legitimate drug and mental health claims for patients with highly sensitive and personal medical histories. Accordingly, this Court should reverse the district court's decision, because (1) it abused its discretion by improperly applying the balancing test; and (2) it failed to consider additional factors relevant to Appellants' case.

A. The District Court Abused its Discretion by Improperly Applying the Balancing Test to Appellants' Case.

The district court misapplied its chosen factors to Appellants' request for anonymity. Although Rule 10(a) states that all complaints must name all parties,

anonymity is permissible when the requesting parties' privacy interest outweighs the public's interest of openness during judicial proceedings. *Jacobson*, 6 F.3d at 238; *see also Rostker*, 89 F.R.D at 161 (quoting *Buxton v. Ullman*, 147 Conn. 48, 60 (Conn. 1959)) (holding that "plaintiffs should be permitted to use fictitious names 'only in the rare case where the nature of the issue litigated and the interest of the parties demand it and no harm can be done to the public interest.'").

As a preliminary matter, the district court failed to provide a sufficient legal analysis when applying the balancing test, which may require a reversal of the district court's decision. *See Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1069 (9th Cir. 2000) (stating "we may reverse the district court's decision if the district court relied on an erroneous view of the law . . . or struck an unreasonable balance of the relevant factors").

Here, the district court balanced the following factors: (1) whether the details of Appellants' case are highly sensitive and personal; (2) K.D.'s age; (3) whether the public interest is furthered by Appellants' request for anonymity; and (4) whether Appellants' privacy interest can be protected by redacting her private information. (Memo. 6-7.) The district court's improper application of these factors constitutes an abuse of discretion and requires a reversal.

1. *Appellants provided a legitimate and compelling account of K.D.'s highly sensitive and personal medical history and treatment.*

The district court failed to adequately consider the extraordinary circumstances related to K.D.'s highly sensitive and personal medical history. Generally, a plaintiff is permitted to proceed anonymously in "exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity." *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992); *see also Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981) (stating anonymity may be granted when plaintiffs disclose information "of the utmost intimacy[.]"). A plaintiff's demonstration of embarrassment and harassment is not enough to satisfy a showing of privacy and sensitivity. *Frank*, 951 F.2d at 324. The requesting party must provide a "legitimate basis for granting anonymity in the face of the public interest in full access to the courts." *Nat'l Ass'n of Waterfront Emps. v. Chao*, 587 F.Supp.2d 90, 100 (D.D.C. 2008).[2]

In *J.W. v. District of Columbia*, the court appropriately considered the highly sensitive and personal nature of the plaintiff's request for anonymity. 318 F.R.D. 196, 200 (D.D.C. 2016). There, plaintiffs filed a complaint against the District of

[2] Some criminal cases treat the right to public access as a First Amendment issue, but few courts apply this analysis to civil cases. *Nat'l Ass'n. of Waterfront Emps.*, 587 F.Supp.2d at 98.

Columbia for failing to provide free and appropriate public education to their nine-year-old autistic son ("J.W."). *J.W.*, 318 F.R.D. at 197. Plaintiffs alleged that the disclosure of their identities to the public would expose information regarding their son's medical diagnoses. *Id.* at 199. The court found that "[t]hrough the disclosure of [p]laintiffs' full names and address, the public could easily uncover J.W.'s confidential education records, mental records, and personally identifiable information." *Id.* at 200. Accordingly, the district court granted anonymity to the plaintiffs. *Id.*

Similarly, in *Stegall*, the Fifth Circuit held that the Does' public manifestations of their religious beliefs, "tip the balance against the customary practice of judicial openness" to proceed anonymously. 653 F.2d at 186. There, plaintiffs challenged the constitutionality of prayer and Bible reading in public schools in Mississippi. *Id.* at 182. There, the court granted plaintiffs anonymity due to their fear of "harassment and violence directed against the [plaintiff's] family generally and the Doe children particular should their names be publicly disclosed" during the lawsuit. *Id.*

In contrast, the district court, in *Qualls v. Rumsfeld*, denied the plaintiffs' request for anonymity. 228 F.R.D. 8, 12 (D.D.C. 2005). There, plaintiffs filed suit against the Secretary of Defense after their terms of military service were involuntarily extended. *Id.* at 9. The plaintiffs alleged that disclosing their

identities to the public would subject them to retaliatory physical harm and bias from their employer or the government. *Qualls*, 228 F.R.D. at 11. However, the plaintiffs were not granted anonymity because they did "not show the kind of risk of physical or other injury . . . that would be necessary to permit them to proceed under pseudonyms." *Id.* at 11. As such, the court denied the plaintiffs' request for anonymity. *Id.* at 13.

Here, the district court erred in ruling that Appellants failed to sufficiently demonstrate the sensitive and personal nature of K.D.'s medical history. In their Complaint, Appellants attached a detailed record of K.D.'s medical history and treatment. (Compl. ¶¶ 7-18.) Unlike the plaintiffs in *Qualls*, this detailed record provided the court with clear, articulable facts describing the sensitive nature of K.D.'s medical history.

As described in the Complaint, K.D. suffers from a history of trauma induced mental health and substance abuse disorders. (*Id.* ¶ 7.) The summer after her sophomore year of high school, K.D. was sexually assaulted. (*Id.*) Prior to the assault, K.D. was a gifted student living a normal high school life. (*Id.*) However, due to the assault, K.D.'s mental health deteriorated, and she began to withdraw from her social groups, lose interest in school, and abuse alcohol and drugs. (*Id.*) By the time K.D. was a senior in high school, she suffered from severe depression and anxiety, and began using opioids, such as oxycontin and heroin. (*Id.*) In early

2022, K.D. attempted suicide by cutting her wrists, and a month later overdosed on heroin that was laced with fentanyl. (Compl. ¶ 10.) This detailed and painful history is highly sensitive and private to both Appellants.

Additionally, Appellants provided a Declaration from Dr. Evelyn Smith, stating her official medical opinion that publicizing K.D.'s medical history and treatment could be injurious. (Declaration of Dr. Evelyn Smith ("Smith Decl.") ¶ 9.) In the Declaration, Dr. Smith stated, "I believe it is possible that she could again become depressed and anxious and suffer a recurrence of substance use disorder if she were forced to proceed in this matter under her name. I strongly recommend against this." (*Id.*)

The district court determined that by allowing plaintiffs such as K.D. and J.D. to proceed anonymously, "there would essentially be a presumption in favor [of using] pseudonyms in all cases involving mental health or drug addiction treatment[.]" (Memo. 6.) This determination is overbroad and incorrect. The district court failed to provide an individualized assessment of the specific facts and circumstances concerning K.D.'s personal medical history. Instead, the district court simply generalized all mental health and drug addiction cases, completely discounting the specific facts of K.D.'s medical history. (*Id.* at 5-6.)

Further, the internet provides an almost unlimited public access to court filings and judicial proceedings. Sarah Orme, *Justice or Mental Health . . . Should*

Litigants Have to Choose? Mental Health as a Reason to Proceed Anonymously, 44 Ind. L. Rev. 605, 613 (2011). Privacy implications are exacerbated by this increased online accessibility. *Id.* The general public need only open up a web browser and search function to access their court filings and judicial proceedings, revealing all of K.D.'s personal medical history.

Requiring a young girl with such severe trauma, mental health, and addiction issues to proceed under her true name would needlessly expose her to public scrutiny of her private medical history and unreasonably increase her chances of relapse or future harm. As such, the district court erred in their application of this factor, and abused their discretion in ruling that there was not a sufficient demonstration of the sensitive and personal nature of K.D.'s medical history.

2. *The district court improperly applied age as a factor to Appellants' case.*

The district court erred in its application of age as a factor to Appellants' request for anonymity.[3] Generally, where the requesting party is not a minor, courts are less inclined to grant anonymity. *Doe v. Cabrera*, 307 F.R.D. 1, 7 (D.D.C. 2014). However, in cases involving highly sensitive matters, courts consider the requesting party's age as a factor not only at the time of filing, but also at the time the relevant facts of the case occurred. *Id.*

[3] The requesting party's age is one of several factors that courts consider in the balancing test for anonymity. *See Jacobson*, 6 F.3d at 238.

In *Cabrera*, the district court applied the plaintiff's age as a factor in balancing her request for anonymity. 307 F.R.D. at 7. There, the plaintiff was sexually assaulted by the defendant. *Id.* In balancing this factor, the court considered the plaintiff's age, not when she filed the complaint, but when the incident occurred. *Id.* at 2-3. The court found that the plaintiff's age weighed against her request for anonymity, because she was twenty-seven years old at the time the sexual assault occurred. *Id.* at 8-9. Despite this finding, the district court ultimately granted anonymity to the plaintiff after a full balancing of the other relevant factors. *Id.* at 10.

Unlike the plaintiff in *Cabrera*, K.D. was a minor when she was sexually assaulted. (Compl. ¶ 7.) Following the assault, K.D. attempted suicide, overdosed on heroin, and subsequently required in-patient treatment, all while she was a minor. (*Id.* ¶¶ 10-11.)

The district court reasoned that because K.D. is not currently a minor, she is not afforded any special protections under Rule 10(a). (Memo. 6.) This holding is inconsistent with the reasoning in *Cabrera*. Every detail of K.D.'s medical history that will be exposed and discussed in open court occurred while she was a minor. While as a matter of law, K.D. is currently an "adult," K.D. remains a vulnerable teenage girl who has suffered from severe trauma induced mental health and

addiction issues for a majority of her teenage years. As such, the district court erred in their application of age as a factor to Appellants' case.

3. *The district court failed to perform a complete analysis of the public interest factor to Appellants' case.*

The district court failed to perform a proper analysis of the public interest factor to Appellants' case. Although Rule 10 emphasizes the fundamental principle "that judicial proceedings, civil as well as criminal, are to be conducted in public," courts are required to perform a proper analysis of the public interest factor in deciding a request for anonymity. *Doe v. Megless*, 654 F.3d 404, 408 (3rd Cir. 2011) (quoting *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir. 1997)); *Provident Life and Acc. Ins. Co.*, 176 F.R.D. at 467.

The court in *Provident Life and Accident Insurance Co.*, developed a list of factors that "weigh the private and public interests favoring pseudonymous litigation against the public interest in knowing the true identity of the parties." 176 F.R.D. at 467. There, the court held that, while the factors are not exclusive to every case, trial courts are required to apply the relevant factors to the requesting party's case when performing the balancing test. *Id.* at 468.

Here, in discussing the public interest factor, the entire extent of the district court's analysis consisted of the following seventeen words: "The public's interest in open court proceedings is always furthered by knowing the identity of the

litigants." (Memo. 6-7.) The district court failed to consider any factor relevant to this case as required by *Provident Life and Accident Insurance Co.*.

The district court's analysis of the public interest factor is insufficient, and contrary to the holding in *Provident Life and Accident Insurance Co.* that "trial courts will always be required to consider those factors which the facts of the particular case implicate." 176 F.R.D at 468. As such, the district court's failure to provide sufficient analysis of the public interest factor is an abuse of discretion.

4. *Sealing and redacting K.D.'s medical history and treatment does not further the public interest of open judicial proceedings.*

The district court misinterpreted the purpose of Rule 10(a) in considering alternative mechanisms for protecting Appellants' privacy interests. Generally, Rule 10(a) "serves to … protect[] the public's legitimate interest in knowing all the facts and events surrounding court proceedings." *Rostker*, 89 F.R.D. at 160; *see also Jacobson*, 6 F.3d at 238 (stating that the purpose of Rule 10(a) is to promote openness in court). While, in some cases, this interest is served in knowing the identities of the parties, the general intention of Rule 10(a) can still be satisfied while maintaining the requesting party's anonymity.

In *Provident Life and Accident Insurance Co.*, the court found that the plaintiff's use of a pseudonym would not interfere with the public's ability to follow the proceeding. 176 F.R.D. at 468. There, the district court intended to keep

the proceeding open to the public, while maintaining the plaintiff's anonymity on the record. *Provident Life and Acc. Ins. Co.*, 176 F.R.D. at 468. Additionally, the defendants did not demonstrate that the plaintiff's anonymity hampered their right to conduct discovery. *Id.* at 470. As such, the district court held that the privacy interests of the plaintiff did not interfere with the public interest of public access in courts. *Id.*

Here, the district court misinterpreted the purpose of Rule 10(a). Appellants alleged that Universal improperly denied their benefits under § 1132(a)(1)(B) and violated the Parity Act under § 1132(a)(3). (Compl. ¶¶ 19-28.) All the relevant facts and events in pursuant to Appellants' claims lie in K.D.'s medical history and treatment. There is no public interest in knowing Appellants' identities, as it is not relevant to Appellants' claims or the facts of their case. Sealing and redacting these facts from the court does more harm to the public interest than preserving Appellants' anonymity.

By contrast, the public does have a strong interest in knowing that insurance companies are denying "valid claims with the expectation that these individuals will not pursue their rights in court" if their identities are made public. *Provident Life and Acc. Ins. Co.*, 176 F.R.D. at 468.

The district court argued that Appellants could have protected the private and sensitive details of K.D.'s medical history by redacting her information and

sealing her medical records from the court. (Memo. 7.) The district court's argument is an erroneous and illogical interpretation of Rule 10(a). The purpose of Rule 10(a) seeks to promote openness in court by preserving the public's "legitimate interest in knowing all the facts and events surrounding court proceedings." *Rostker*, 89 F.R.D. at 160. By redacting and sealing K.D.'s medical history and treatment from the court, the purpose of Rule 10(a) would not at all be satisfied. Accordingly, the district court's improper interpretation of Rule 10(a) constitutes an abuse of discretion.

B. The District Court Failed to Apply Additional Relevant Factors in Balancing Appellants' Request for Anonymity.

The district court failed to consider additional relevant factors in applying the balancing test to Appellants' request for anonymity. While there are no required factors for the balancing test, courts must consider factors "which the facts of the particular case implicate." *Megless*, 654 F.3d at 409 (quoting *Provident Life and Acc. Ins. Co.*, 176 F.R.D. at 468). On a case-by-case basis courts apply different factors to the balancing test. *See Provident Life and Acc. Ins. Co.*, 176 F.R.D. at 468 (stating "the factors . . . are not meant to compromise an inclusive list of factors to be exclusively considered when determining the propriety of pseudonymous litigation. Indeed, trial courts will always be required to consider those factors which the facts of the particular case implicate.").

Here, the district court failed to consider two additional factors that are relevant to Appellants' case: (1) whether identification poses a risk of retaliatory physical or mental harm from the public; and (2) the extent to which Appellants have kept their identities confidential. *Provident Life and Acc. Ins. Co.*, 176 F.R.D. at 467-68; *Jacobson*, 6 F.3d at 238; *Nat'l Ass'n of Waterfront Emps.*, 587 F.Supp.2d at 99.

First, the district court failed to consider whether releasing Appellants' identities poses a risk of retaliatory physical or mental harm from the public. Courts commonly consider the severity and personal nature of the requesting party's claim and consider "whether identification poses a risk of retaliatory physical or mental harm to the . . . [requesting] party." *Sealed Plaintiff*, 537 F.3d at 190 (quoting *Jacobsen*, 9 F.3d at 238).

Here, releasing Appellants' identities to the public puts them at high risk of retaliatory harm and discrimination from the public. *See Stegall*, 653 F.2d at 186 (holding that the "possible threatened harm and serious social ostracization based on militant religious attitudes" is enough to grant plaintiffs' anonymity). Society's continued stigmatization of individuals with mental illness often result in individuals experiencing "decreased life opportunities" and "loss of independent functioning." Orme, *supra*, at 610. Additionally, the stigmatization of the label

"mentally ill" makes it more difficult for these individuals to obtain jobs, housing, and acceptance from their peers and co-workers. Orme, *supra*, at 608.

Thus, forcing an individual to attach their identity to their highly sensitive and personal medical history to the public in open court, can lead to serious consequences in their personal or professional lives. The district court was required to consider whether releasing Appellants' identities to the public posed a risk of harm and discrimination in its balancing test of Appellants' request for anonymity. *See Stegall*, 653 F.2d at 186. It failed to do so.

Second, the district court failed to consider the extent to which Appellants maintained their confidentiality. *Provident Life and Acc. Ins. Co.*, 176 F.R.D. at 468. Courts often consider this factor in cases involving stigmatized medical issues, such as abortion and mental health. *See Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 687 (11th Cir. 2001) (granting anonymity to woman plaintiff seeking relief for injuries sustained in faulty abortion procedure); *see Doe v. Colautti*, 592 F.2d 704, 705-06 (3d Cir. 1979) (allowing plaintiff to proceed using pseudonym "John Doe" in pursuit of his claim against defendant for discriminating against him as an individual who struggles with mental health).

Here, Appellants maintained anonymity from the beginning of the proceeding. In the Complaint, Appellants identified themselves using only their initials, J.D. and K.D.. (Doc. 1, Complaint.) K.D. expressed shame about her past

drug use and time spent in a residential treatment facility, fearing that if people found out about her illness, she would be shunned. (Smith Decl. ¶ 8.) Without this guaranteed anonymity, Appellants will not file an amended Complaint, thus abandoning their claims, and sacrificing any possibility to recover payment for K.D.'s residential treatment. (Memo. 10-11.)

For individuals who struggle with mental health issues, the ability to proceed anonymously in court provides them with the only means to pursue a valid claim that they would otherwise abandon. Orme, *supra*, at 610. Today, individuals who struggle with mental health are often faced with the impossible choice of having to choose between sacrificing their privacy to pursue a meritorious claim or divulging their identity with their highly sensitive and personal mental health history. *Id.* With the increased stigmatization of mental illness in society, insurance companies rely on mere legal technicalities to perpetuate bad faith coverage denials of drug and mental health cases.

As such, the district court must consider the extent to which Appellants maintained anonymity throughout the proceeding.

II. THE DISTRICT COURT ERRED BY PRECLUDING APPELLANTS FROM PLEADING SIMULTANEOUS ERISA CLAIMS UNDER 29 U.S.C. § 1132(a)(1)(B) AND 29 U.S.C. § 1132(a)(3).

The district court erred in holding that Appellants were not permitted to plead simultaneous ERISA claims under 29 U.S.C. § 1132(a)(1)(B) and 29 U.S.C.

§ 1132(a)(3). "ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefits plans." *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 137 (1990) (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983)). Title 29 U.S.C. § 1132(a) prescribes ERISA's civil enforcement scheme that consists of remedial provisions, including § 1132(a)(1)(B) and § 1132(a)(3). Section 1132(a)(1)(B) authorizes a plan "participant or beneficiary" to bring suit "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B).

In contrast, § 1132(a)(3) authorizes a plan beneficiary "(A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." 29 U.S.C. § 1132(a)(3). ERISA's civil remedial provisions empower Appellants to pursue two types of remedies: money relief seeking to "recover benefits due" under the terms of their Plan, and "to obtain other appropriate equitable relief" for breaches of fiduciary duties or for violations of the terms of the Plan. 29 U.S.C. §§ 1132(a)(1)(B), 1132(a)(3).

Accordingly, this Court should reverse the district court's decision for at least three reasons: (1) Appellants may plead alternative theories of relief under

§ 1132(a)(1)(B) and § 1132(a)(3); (2) Appellants' claims are not duplicative as they seek distinct remedies; and (3) allowing Appellants to plead simultaneous claims for relief under § 1132(a)(1)(B) and § 1132(a)(3) is consistent with Congress' intent and the common law of trusts.

A. A Majority of Circuits Held that Appellants May Simultaneously Plead § 1132(a)(1)(B) and § 1132(a)(3) Claims Under Alternative Theories of Relief.

Appellants may simultaneously plead § 1132(a)(1)(B) and § 1132(a)(3) claims under alternative theories of relief, because the Federal Rules of Civil Procedure permit pleading in the alternative. Under the Federal Rule of Civil Procedure 8 ("Rule 8"), every plaintiff may plead alternative and inconsistent theories of relief. *See* Fed. R. Civ. P. 8(a)(3) ("A pleading that states a claim for relief must contain . . . a demand for the relief sought, which may include relief in the alternative or different types of relief."); Fed. R. Civ. P. 8(d)(2) ("A party may set out [two] or more statements of a claim or defense alternatively or hypothetically, either in a single court or defense or in separate ones."). Additionally, Rule 18 states that "[a] party asserting a claim . . . may join, as independent or alternative claims, as many claims as it has against an opposing party." Fed. R. Civ. P. 18. Generally, courts permit ERISA plaintiffs to plead simultaneous § 1132(a)(1)(B) and § 1132(a)(3) claims in the alternative. *See, e.g.*, *CIGNA Corp. v. Amara*, 563 U.S. 421, 437-39 (2011).

In *Metropolitan Life Insurance Co. v. Glenn*, the Court held that there are no special procedural rules for ERISA cases, and noted that ERISA claims "arise in too many contexts, concern too many circumstances, and can relate in too many different ways to conflict . . . for [the Court] to come up with a one-size-fits-all procedural system that is likely to promote fair and accurate review." 554 U.S. 105, 116 (2008). Creating special procedural rules for ERISA benefits suits "would create further complexity, adding time and expense to a process that may already be too costly for many [seeking] redress." *Id.* at 117.

Likewise, in *Amara*, the Supreme Court permitted ERISA plaintiffs to simultaneously plead alternative theories of relief under both § 1132(a)(1)(B) and § 1132(a)(3). 563 U.S. at 435. There, the Court analyzed the available recovery under § 1132(a)(1)(B) and determined that plaintiffs could not obtain the relief of contract reformation under that ERISA section. *Id.* at 437. However, the Court found that plaintiffs could obtain equitable reformation under § 1132(a)(3)'s "catchall" provision. *Id.* at 442. As such, the *Amara* Court permitted plaintiffs to plead an alternative claim for relief under § 1132(a)(3), despite previously pleading a § 1132(a)(1)(B) claim. *Id.* at 445.

Following *Amara*, the Second, Eighth, Ninth, and Eleventh Circuits permitted plaintiffs to pursue both § 1132(a)(1)(B) and § 1132(a)(3) claims simultaneously, finding that the two causes of action were not mutually exclusive.

See New York State Psychiatric Ass'n, Inc. v. UnitedHealth Grp., 798 F.3d 125, 133-35 (2d Cir. 2015); *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 726 (8th Cir. 2014); *Moyle v. Liberty Mut. Ret. Benefit Plan*, 823 F.3d 948, 961 (9th Cir. 2016); *Gimeno v. NCHMD, Inc.*, 38 F.4th 910, 915 (11th Cir. 2022). Additionally, districts courts within the Third Circuit allowed claims under both § 1132(a)(1)(B) and § 1132(a)(3) to proceed simultaneously in the early stages of litigation. *See Desue v. Aetna Life Ins. Co.*, No. 16-CV-1646, 2017 WL 528241, at *3 (W.D. Pa. Feb. 9, 2017); *Parente v. Bell Atl. Pennsylvania*, No. 99-5478, 2000 WL 419981, at *3 (E.D. Pa. Apr. 18, 2000); *Trechak v. Seton Co. Supplemental Exec. Ret. Plan*, No. 10-0227, 2010 WL 5071273, *3 (E.D. Pa. Nov. 24, 2010).

The First Circuit has yet to directly address the issue of simultaneous pleading under § 1132(a)(1)(B) and § 1132(a)(3). However, the First Circuit reversed summary judgment for defendants on a breach of fiduciary duty claim under § 1132(a)(3) even after upholding summary judgment on a § 1132(a)(1)(B) claim, thus allowing simultaneously pleading under § 1132(a)(1)(B) and § 1132(a)(3). *See Shields v. United of Omaha Life Ins. Co.*, 50 F.4th 236, 250 n.12 (1st Cir. 2022) (noting that the view that a § 1132(a)(3) claim is unavailable if the

plaintiff can bring any other claim under ERISA represents a "restrictive" interpretation of Supreme Court precedent).[4]

By contrast, the holding in *Korotynska v. Metropolitan Life Insurance Co.* is applied by districts courts within the Fourth Circuit to categorically disallow simultaneous § 1132(a)(1)(B) and § 1132(a)(3) ERISA claims. 474 F.3d 101, 107 (4th Cir. 2006) (holding that plaintiff may not plead a § 1132(a)(3) claim where relief was potentially available to them under § 1132(a)(1)(B)). More recent post-*Amara* Fourth Circuit Courts permitted ERISA plaintiffs to plead simultaneous § 1132(a)(1)(B) and § 1132(a)(3) claims. *See Peters v. Aetna Inc.*, 2 F.4th 199, 216 (4th Cir. 2021); *Hayes v. Prudential Ins. Co. of Am.*, 60 F.4th 848, 855 (4th Cir. 2023); *Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 505 (4th Cir. 2023).

Here, Appellants properly asserted two alternative ERISA claims under § 1132(a)(1)(B) and § 1132(a)(3). The § 1132(a)(1)(B) claim is based entirely on the language of the ERISA Plan at issue and Universal's improper denial of Appellants' plan benefits. *See* 29 U.S.C. § 1132(a)(1)(B) (permitting an ERISA plaintiff to seek "benefits due . . . under the plan"). Alternatively, the § 1132(a)(3)

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[4] District courts within the First Circuit allowed plaintiffs to plead simultaneous § 1132(a)(1)(B) and § 1132(a)(3) claims. *See Steve C. v. Blue Cross & Blue Shield of Massachusetts, Inc.*, 450 F.Supp.3d 48, 61 (D. Mass. 2020); *Est. of Smith v. Raytheon Co.*, 573 F.Supp.3d 487, 502 (D. Mass. 2021); *Turner v. Liberty Mut. Ret. Benefit Plan*, No. 20-11530, 2023 WL 5179194, at *7 (D. Mass. Aug. 11, 2023).

claim is based on Universal's violation of the Parity Act, and alleged breach of fiduciary duty. *See* 29 U.S.C. § 1132(a)(3)(B) (permitting an ERISA plaintiff to seek "other appropriate equitable relief").

Contrary to *Amara*, Rule 8, Rule 18, and the majority of the circuit courts, the district court held that an ERISA claim presents a special exception to the federal pleading rules that categorically precludes Appellants from raising simultaneous claims under § 1132(a)(1)(B) and § 1132(a)(3). (Memo. 9.) The district court's holding is inconsistent with the Supreme Court's holding in *Glenn*, stating that there are no special procedural rules for ERISA cases. 554 U.S. at 116.

The Federal Rules of Civil Procedure allow every plaintiff to plead alternative claims for relief, and ERISA claims do not present a special exception that nullifies federal pleading rules. Accordingly, this Court should reverse the district court's decision because Appellants may plead simultaneous § 1132(a)(1)(B) and § 1132(a)(3) claims under alternative theories of relief.

B. The District Court Erred in Holding that Appellants' Simultaneous Claims are Duplicative.

The district court erred in dismissing Appellants' § 1132(a)(3) claim as duplicative of their § 1132(a)(1)(B) claim. Under § 1132(a)(3), a participant or beneficiary may bring a claim "to obtain other appropriate equitable relief" for violations of the Plan or breaches of ERISA's fiduciary duties. 29 U.S.C.

§ 1132(a)(3). Section 1132(a)(3) is 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." *Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996). So "where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief[.]" *Id.* at 515.

Thus, an ERISA plaintiff is only precluded from seeking equitable relief under § 1132(a)(3) when a court determines that the plaintiff can obtain adequate relief for their injuries under § 1132(a)(1)(B) or another ERISA section. *See Silva*, 762 F.3d at 726 (holding that *Varity Corp.* prohibit[s] duplicate recoveries when § 1132(a)(1)(B) provides a remedy similar to what the plaintiff seeks under § 1132(a)(3)). It is not clear at the pleading stage of litigation that Appellants' § 1132(a)(1)(B) claim alone will provide a sufficient remedy and Appellants' § 1132(a)(1)(B) and § 1132(a)(3) claims provide for different forms of relief. Accordingly, this Court should reverse the district court's decision.

1. *At the pleading stage of litigation, the district court cannot determine that the § 1132(a)(1)(B) claim alone will provide a sufficient remedy for Appellants' injury.*

The district court erred in dismissing Appellants' § 1132(a)(3) claim as duplicative of their § 1132(a)(1)(B) claim, because it is not clear at the pleading

stage of litigation that Appellants' § 1132(a)(1)(B) claim alone will provide a sufficient remedy for their injury.

To survive a motion to dismiss, plaintiffs need merely allege "enough facts to state a claim for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). At this stage of litigation, a court cannot discern the intricacies of the plaintiff's claims to determine if one or both claims can provide adequate relief. *See New York State Psychiatric Ass'n, Inc.*, 798 F.3d at 134 (holding "it is not clear at the [motion to dismiss] stage of the litigation that monetary benefits under [§ 1132(a)(1)(B)] alone will provide [plaintiff] a sufficient remedy"). Thus, a determination that the plaintiff will receive adequate relief for an injury cannot be made on a motion to dismiss involving potentially viable claims under both § 1132(a)(1)(B) and § 1132(a)(3).

Here, Appellants are still in the pleading stage of litigation and have not yet had the benefit of discovery to determine whether they can recover on their § 1132(a)(1)(B) claim. Accordingly, this court should reverse the district court's decision, because it is too early to determine that Appellants' § 1132(a)(1)(B) claim alone will provide a sufficient remedy for their injuries.

2. *Appellants' § 1132(a)(1)(B) and § 1132(a)(3) claims provide different forms of relief, and redress distinct injuries.*

The district court erred in dismissing Appellants' § 1132(a)(3) claim as duplicative of their § 1132(a)(1)(B) claim, because the claims seek different forms

of relief and redress distinct injuries. The sole focus of a § 1132(a)(1)(B) claim is to enforce the "terms of the plan," which is why courts refer to § 1132(a)(1)(B) claim as the equivalent of a breach of contract claim. 29 U.S.C. § 1132(a)(1)(B); *see Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985) (stating a § 1132(a)(1)(B) is a claim "to protect contractually defined benefits"). In contrast, a plaintiff may seek "appropriate equitable relief" under § 1132(a)(3), which embraces "'those categories of relief' that, before the merger of law and equity, 'were typically available in equity.'" *Amara*, 563 U.S. at 439 (citing *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 361 (2006)). Those categories of relief include surcharge, reformation, and estoppel. *Id.* at 440-42.

Here, Universal argues that Appellants § 1132(a)(3) claim must be dismissed because the § 1132(a)(1)(B) benefits claim provides a similar remedy to the § 1132(a)(3) equitable relief claim. (Memo. 10.) This is incorrect. Under the § 1132(a)(3) claim, Appellants seek equitable remedies for violation of the Parity Act, including an equitable surcharge,[5] an injunction, and reformation of the Plan – all remedies unavailable under § 1132(a)(1)(B). (Compl. ¶ 29.) Equitable surcharge is a typical equitable remedy and thus falls within the scope of "appropriate equitable relief" in § 1132(a)(3). *Amara*, 563 U.S. at 440-42. The fact that

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[5] Equitable surcharge provides "relief in the form of monetary 'compensation' for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment." *Amara*, 563 U.S. at 1880.

Appellants § 1132(a)(3) claim for relief takes the "form of a money payment does not remove it from the category of . . . equitable relief." *Amara*, 563 U.S. at 441.

Under their § 1132(a)(3) claim, Appellants request monetary compensation for any losses resulting from Universal's violations of the Parity Act, and declaratory and injunctive relief prohibiting Universal from violating the Parity Act in the future. These forms of relief are traditional equitable remedies and can only be brought under a § 1132(a)(3) claim, not a § 1132(a)(1)(B) claim. Accordingly, this Court should reverse the district court's decision, because Appellants' claims seek distinct, nonduplicative remedies.

C. Allowing Appellants to Plead Simultaneous Claims for Relief Under § 1132(a)(1)(B) and § 1132(a)(3) is Consistent with Congress' Intent and the Common Law of Trusts.

Allowing Appellants to seek equitable relief under § 1132(a)(3) while pleading a simultaneous claim for benefits under § 1132(a)(1)(B) is consistent with Congress' intended purpose of protecting participants' and beneficiaries' interests and the common law of trusts.

Congress enacted ERISA "to promote the interests of employees and their beneficiaries in employee benefit plans." *Ingersoll-Rand Co.*, 498 U.S. at 137. ERISA seeks to promote employees' interests by incorporating the terminology of the common law of trusts. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989). Therefore, courts must construe ERISA claims consistently with

the common law of trusts. *See Conkright v. Frommert*, 559 U.S. 506, 512 (2010) (stating that, when "ERISA's text does not directly resolve the matter," the Court has "looked to 'principles of trust law' for guidance").

Under the common law of trusts, "[t]he trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary." Restatement (Second) of Trusts § 170 (1959); *see also* 29 U.S.C. § 1104(a)(1)(A)(i) (ERISA states that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries"). Courts may "provide relief in the form of monetary 'compensation' for loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment." *Amara*, 563 U.S. at 441 (citing Restatement (Third) of Trusts § 95 (2012)). This includes providing "for broad and flexible equitable remedies in cases involving breaches of fiduciary duty." *Eaves v. Penn*, 587 F.2d 453, 462 (10th Cir. 1978) (citing Restatement (Second) of Trusts § 205 (1959)). The Supreme Court recognized that "trust law does not tell the entire story." *Varity Corp.*, 516 U.S. at 497. In *Varity Corp.*, the Court stated that "ERISA's standards and procedural protections partly reflect a congressional determination that the common law of trusts did not offer completely satisfactory protection." *Varity Corp.*, 516 U.S. at 497.

Here, Universal has a fiduciary duty to administer the Plan in the interest of the Appellants. *See* 29 U.S.C. § 1104(a)(1)(A)(i). Moreover, the district court must provide broad and flexible equitable remedies to compensate Appellants for loss resulting from Universal's alleged violation of the Parity Act. *See* Restatement (Second) of Trusts § 170 (1959). Dismissing Appellants' § 1132(a)(3) claim because it was simultaneously pled with a § 1132(a)(1)(B) claim eviscerates Appellants' ability to seek an equitable remedy for their injury. *See Varity Corp.*, 516 U.S. at 513 (stating that "[g]iven [ERISA's] objectives, it is hard to imagine why Congress would want to immunize breaches of fiduciary obligation that harm individuals by denying injured beneficiaries a remedy.").

Additionally, the district court prioritized Universal's cost concerns over Congress' desire to protect Appellants' benefits. The district court's dismissal of Appellants' § 1132(a)(3) claim invoked Congress' alleged "desire not to create a system that is so complex that administrative costs, or litigation expenses, unduly discourage employers from offering . . . benefit plans in the first place" while paying no heed to ERISA's goal of protecting Appellants' employee benefits. *See* Peter J. Wiedenbeck, *Untrustworthy: ERISA's Eroded Fiduciary Law*, 59 Wm. & Mary L. Rev. 1007, 1057 (2018) (observing that "prioritization of (or obsession with) cost concerns generally aligns with . . . the employer[ ] . . . because reducing

indirect compensation costs (plan administration and litigation expenses) increases profits”).

Accordingly, this Court should reverse the district court’s decision. Dismissing Appellants’ § 1132(a)(3) because it was simultaneously plead with a § 1132(a)(1)(B) claim prioritizes Universal’s cost concerns over Congress’ desire to protect Appellants’ benefits required under the common law of trusts.

CONCLUSION

For the foregoing reasons, Appellants respectfully requests this Court REVERSE the district court’s decision.

Dated: January 12, 2024

Respectfully Submitted,

/s/ Team 7

Counsel for Appellants
J.D. and K.D.

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this document contains 8,906 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f).

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Dated: January 12, 2024

Respectfully Submitted,

/s/ Team 7

Counsel for Appellants
J.D. and K.D.

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(c) and Cir. R. 25(c), that on January 12, 2024, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: January 12, 2024

Respectfully Submitted,

/s/ Team 7

Counsel for Appellants
J.D. and K.D.

ADDENDUM

STATUTES AND REGULATIONS

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29 U.S.C. § 1104(a)(1)(A)(i)

§ 1104. Fiduciary duties

(a) Prudent man standard of care

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries

29 U.S.C. § 1132(a)(1)(B)

§ 1132. Civil Enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought –

(1) by a participant or beneficiary –

. . .

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan

29 U.S.C. § 1132(a)(3)

§ 1132. Civil Enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought –

. . .

> (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.

29 U.S.C. § 1185a(a)(3)(A)(ii)

§ 1185a. Parity in mental health and substance use disorder benefits.

(a) In general

. . .

(3) Financial requirements and treatment limitations

(A) In general

In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health or substance use disorder benefits, such plan or coverage shall ensure that –

. . .

(ii) the treatment limitations applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan (or coverage) and there are no separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits.