ORAL ARGUMENT REQUESTED

**No. 03-2024**

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

J.D. AND K.D.,

*Plaintiffs-Appellants*,

v.

UNIVERSAL HEALTH INSURANCE CO.,

*Defendant-Appellee*.

**BRIEF FOR PLAINTIFFS-APPELLANTS J.D. AND K.D.**

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

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January 12, 2024

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## STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether a request for anonymity to protect an individual's privacy interests, where it substantially outweighs the public's interest in open proceedings and prejudice to the defendant, may be granted when the relevant factors surrounding the request satisfactorily balance the countervailing interests?

II. Under the Employee Retirement and Income Security Act of 1974 (ERISA), whether a plaintiff may simultaneously plead alternative theories of liability under ERISA's legal and equitable enforcement provisions. *See* 29 U.S.C. § 1132(a)(1)(B); 29 U.S.C. § 1132(a)(3).

## STATEMENT OF THE CASE

### I. Factual Background

Appellant K.D. is a 19-year-old woman with a tragic history of mental illness and substance use disorder. Complaint, 2. K.D.'s mental health struggles and substance use disorder started negatively impacting her life while she was a minor. *Id*. She suffered from depression as early as her sophomore year of high school, and in the summer following her sophomore year, K.D. was sexually assaulted. *Id*. Due to the psychological and physical trauma that arose from that horrific sexual assault, K.D.'s depression was exasperated, causing debilitating anxiety. *Id*. K.D. suffered physically while also managing crippling trauma, depression, and anxiety, thus drawing her away from social groups. *Id*. During this period, K.D. also began drinking and abusing drugs such as marijuana to cope with her overwhelming pain and shame. *Id*. Despite being a gifted student, K.D. lost her passion and interest in school, causing her grades to decline. *Id*. By K.D.'s senior year, she was using opioids such as oxytocin and heroin. *Id*.

Appellant J.D. is a covered participant under CIA Consulting, LLC Healthcare Plan (the "Plan"). *Id*. The Plan is a welfare benefit plan

sponsored by J.D.'s employer, CIA Consulting, LLC, and governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq*. Compl. at 1. Appellant K.D. is a covered beneficiary under her mother's Plan. *Id*. Appellee Universal Health Insurance Co. ("Universal") insures the Plan and administers claims for medical and mental health benefits under the Plan. Compl. at 2.

Due to the trauma from her assault, in early 2022, K.D. began receiving intensive outpatient treatment three days a week for her depression and anxiety at a facility called Road to Recovery. *Id*. The Plan paid for these treatments as it covers medically necessary mental health and substance use disorder services such as residential treatment. *Id*. However, Universal does not cover these services as a matter of right. Rather, Universal has developed internal guidelines to assist in administering claims for these benefits. *Id*. The guidelines cover five increasing levels of care spanning "outpatient," "intensive outpatient," "partial hospitalization," "residential treatment," and "inpatient hospitalization." Memorandum Opinion and Order, 1-2. One guideline states the requirements for residential treatment, including that "a less intense level of care would not result in significant

improvement." *See* Exhibit A. Universal, therefore, applies this guideline by requiring a beneficiary to fail at a lower level of care before receiving the higher level of long-term residential care necessary for recovery. Compl. at 2. Unfortunately, K.D.'s treatment was unsuccessful, and her condition declined. Compl. at 3.

On March 1, 2022, K.D. attempted suicide by cutting her wrists. *Id*. In response to her attempted suicide, K.D. was admitted to the emergency room before being admitted to a psychiatric hospital for three weeks. *Id*. The psychiatric hospital recommended that K.D. receive treatment at a "partial hospital" level of care five days a week through Road to Recovery. *Id*. However, after being released and before K.D.'s partial hospitalization treatment began, K.D. overdosed on heroin that was laced with fentanyl. *Id*. In response to her terrifying overdose, K.D. was again admitted to the emergency room and hospitalized for three weeks. *Id*. Universal paid for the treatment. *Id*.

On April 18, 2022, when K.D. was 18 years old, she was admitted to Lifeline, and a treatment team assessed and diagnosed K.D. with major depressive disorder, generalized anxiety disorder, and substance use disorder. *Id*. Universal paid for K.D.'s treatment for three pre-

approved weeks. *Id*. However, on May 9, 2022, Universal sent a letter to K.D.'s home address informing K.D. and her mother that Universal's reviewing physician determined that K.D.'s residential treatment was not medically necessary and that she could be treated at the lower level of "partial hospitalization." Compl. at 3-4; *See* Exhibit B. The arbitrariness of Universal's denial compelled it to masquerade behind the "expert" opinion of Universal's own reviewing physician. Never mind that every doctor, including a team of physicians charged with K.D.'s care, unanimously agreed that residential care was in fact medically necessary at the time Universal denied her that desperately needed level of care. Compl. at 4. In response, J.D. urgently requested an appeal to Universal, and the following day, May 10, 2022, Universal sent a second letter to K.D., signed by a different Universal physician. *Id*; *See* Exhibit C.

The second letter was equally unclear regarding the reason for denying K.D.'s benefits. Compl. at 4. For example, the letter stated simply that "review typically involves a telephone conversation with your provider" and that "Universal's attempts to reach your provider by phone were unsuccessful." *See* Ex. C. The second letter stated that "the

requested residential treatment ... is denied" because Universal's guidelines indicate that "residential treatment is no longer medically necessary because you could receive care at a lower partial hospitalization level of care." *Id.*

ERISA's remedial provisions entitle beneficiaries such as Appellant "to recover benefits due to [her] under the terms of [her] plan." 29 U.S.C. § 1132(a)(1)(B). Of course, the force and effect of that remedial mechanism would be rendered null if the meaning of "plan benefits" is a moving target, constantly shifting at the whim of plan administrators. Yet that cruel tactic was exactly Universal's approach—and its only alibi—to justify its unlawful denial of Appellant K.D.'s statutorily guaranteed healthcare benefits.

Lifeline's director and K.D.'s treating psychiatrist encouraged K.D. to continue around-the-clock care because she had a high risk of relapse and mortality. Compl. at 4. To ensure her daughter's safety and well-being, J.D. paid out of pocket for K.D.'s continued around-the-clock treatment at Lifeline. *Id.* J.D. even took out a second mortgage on her home to afford payment for her daughter's necessary treatment. *Id.*

For the next twelve months, K.D. required around-the-clock care to address her mental health issues and substance abuse, which were caused and exacerbated by her trauma. *Id*. The opinion of K.D.'s physicians proved to be accurate. After one year of residential care, K.D. showed signs of significant recovery. Declaration, 2. Her treatment team concluded that K.D. was in recovery from her substance use disorder and that her mental health had improved enough to permit her to receive continued mental health care on an outpatient basis. Compl. at 2.

However, despite her release from around-the-clock care, K.D. remains at risk of relapse. *Id*. Despite this ever-present risk, K.D. has bravely enrolled in college, and she continues to function following the sustained and intensive treatment that she required. *Id*.

## II. Procedural History

J.D. and K.D. filed suit in the United States District Court for the District of Columbia using only their initials to protect K.D.'s privacy. Compl. at 1; Mem. Op. at 3. Their complaint asserted two counts. *Id*. First, a claim for benefits under ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). *Id*. Second, a claim for equitable relief under ERISA

Section 502(a)(3), 29 U.S.C. § 1132(a), in the form of an injunction and equitable surcharge to remedy violations of ERISA's mental health parity provision. *See* 29 U.S.C. 1185a(a)(3)(A)(ii); *Id*. K.D. asserts in Count II that the clinical criteria applied by Universal for coverage of mental health and substance use disorder programs are stricter than their criteria for similar medical benefits because the guidelines require that a patient "fail first" at a lower level of care. *Id*.

J.D. and K.D. filed a "Motion of Plaintiffs to Proceed Anonymously." Also before the court is the "Motion of Defendant Universal Health Insurance Co. to Dismiss Count II." Mem. Op. at 1. The District Court denied J.D. and K.D.'s motion to proceed anonymously and granted Universal's motion to dismiss. *Id*. J.D. and K.D. timely filed their notice of appeal in this Court.

## SUMMARY OF ARGUMENT

Acknowledging the pendency of this appeal, the District Court's underdeveloped, eleven-page order dismissing Appellants' claims cries out for this Court's careful consideration of two unresolved federal procedural issues. Mem. Op. at 11.

First, federal law permits J.D. and K.D. to proceed anonymously through use of pseudonyms in order to protect K.D.'s medically significant privacy concerns. Federal courts ordinarily presume that civil proceedings should be open to the public. Thus, courts often adhere to the general rule that parties should proceed using their true identity. However, a necessary exception to this rule allows parties to proceed anonymously in order to protect significant privacy rights including, as here, privacy concerns affecting the health and safety of the plaintiff.

The Second Circuit's thorough factor test, encompassing the various approaches taken by the sister Circuits, sets forth the widest latitude of factors courts should consider to ensure an appropriate balancing between public and private interests. Applying this more complete and exhaustive approach, Appellant's substantial privacy interest in information of the most personal and intimate nature implores this Court to reverse the denial of Appellants' motion to proceed anonymously. Instead, this Court should allow plaintiffs like K.D. to protect themselves from severe physical and mental harm without depriving them of the protections and remedies afforded by federal law. A proper consideration of the relevant factors

overwhelmingly demonstrates that Appellant's privacy interest far outweighs, and in no way impairs the public's interest in open proceedings. Nor does it prejudice Universal.

Second, the District Court improperly granted Universal's motion to dismiss K.D.'s claim for equitable relief under 29 U.S.C. §1132(a)(3). Treating ERISA claims for legal and equitable relief as mutually exclusive at the pleading stage, the District Court embraced an overbroad reading of the Supreme Court's decision in *Varity Corp. v. Howe*, while ignoring the principles underlying that decision. 516 U.S. 489 (1996). The Supreme Court's decisions interpreting ERISA stand for the proposition that ERISA should be construed consistently with its stated purpose—as seeking to provide a greater breadth of relief for aggrieved beneficiaries. Those first principles went wholly ignored as the District Court fashioned an interpretive strait-jacket over ERISA's equitable enforcement provision, thereby sounding a death-knell for J.D. and K.D.'s well-pleaded claims. *See* 29 U.S.C. § 1132(a)(3).

For the reasons set forth below, the District Court's decision should be reversed, and the case remanded for further proceedings.

## ARGUMENT

**I. This Court should reverse the District Court's denial of Appellant's request for anonymity because an Appellant is permitted to proceed anonymously when there is a substantial privacy right that outweighs the presumption of openness in judicial proceedings and prejudice to the Appellee.**

The case before the Court includes a request for Appellants to proceed anonymously to protect the privacy interests of Appellant K.D. The District Court denied the Appellants' request because it found no extraordinary circumstances that outweighed the public interest in open court proceedings. Memorandum Opinion and Order, 7.

Federal courts generally maintain a presumption against the use of pseudonyms in civil proceedings to protect public access to judicial documents. *Doe v. Pub. Citizen*, 749 F.3d 246, 255 (4th Cir. 2014). Although there is a presumption that parties should proceed in their names, the rule is not absolute. *Plaintiff B v. Francis*, 631 F.3d 1310, 1315 (11th Cir. 2011). Under certain circumstances and as a matter of discretion, anonymity may be permitted. *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993). The Circuit courts have created a narrow exception to the presumption of openness by balancing a plaintiff's stated need for anonymity against the public's countervailing interests in open

proceedings. *See, e.g., Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 186 (2d Cir. 2008); *Roe v. Aware Woman Ctr. for Choice Inc.*, 253 F.3d at 678, 684 (11th Cir. 2001) (stating the ultimate test for anonymity is whether the plaintiff's privacy right outweighs the presumption of openness); *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000) (holding that a plaintiff may proceed anonymously under exceptional circumstances where the plaintiff's requirement for anonymity outweighs the prejudice to the opposing party and the public's interests in openness). Thus, when determining whether a plaintiff may proceed anonymously, a District Court must balance the plaintiff's interest in anonymity against both (a) the public's interest in disclosure and (b) the potential prejudice to defendants. *Sealed Plaintiff* 537 F.3d at 186.

This balancing of interests necessarily requires the exercise of discretion. *Sealed Plaintiff* 537 F.3d at 187. The District of Columbia Circuit Court of Appeals reviews a District Court's decision to grant or deny a request to proceed anonymously for abuse of discretion. *Aware Woman Ctr.* 253 F.3d at 684; *M.M. v. Zavaras*, 139 F.3d 789, 802 (10th Cir. 1998). A District Court abuses its discretion when (1) it fails or

refuses to exercise discretion, deciding instead as if by general rule, arbitrarily, or as if neither by rule nor discretion; or (2) it fails in attempting to exercise discretion, to adequately take into account judicially recognized factors constraining its exercise; or (3) it exercises flawed or erroneous factual or legal premises. *Jacobson*, 6 F.3d at 239. The relevant consideration here is whether the lower court failed to adequately consider all judicially recognized factors informing its exercise of discretion.

While the initial determination of whether the circumstances warrant anonymity in a particular case is determined by the trial court, to prevent an abuse of discretion, the trial court must grant or deny the anonymity request based on *informed* discretion. *Jacobson*, 6 F.3d at 242. Failure to consider all relevant factors makes an exercise of discretion not informed and, hence, potentially an abuse of discretion. *Id.*

The Circuit courts have created differing factor tests to ensure that lower courts can act with informed discretion and adequately weigh the countervailing interests when examining requests for anonymity. *See, e.g.*, *L.R. v. Cigna Health and Life Ins. Co.*, No. 6:22-cv-

1819-RBD-DCI, 2023 WL 4532672, at *4 (M.D. Fla. July 11, 2023) (examining three factors while emphasizing that along with the factors, the court should examine all the given circumstances of a particular case); *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981) (stating that the Fifth Circuit examines three factors). The Second Circuit established a thorough factor test encompassing the factors from the sister Circuits. Thus, utilizing the Second Circuit's factor test ensures that all relevant circumstances are considered to properly balance the countervailing interests.

When properly considering all the relevant factors of this case, the Appellant's privacy interest far outweighs the public's desire for openness in judicial proceedings and prejudice against the Appellee.

First, the Court should apply the Second Circuit's ten-factor test because it thoroughly encompasses the factors examined throughout the sister Circuit courts and adequately balances the countervailing interests. Second, the circumstances surrounding Appellants' request for anonymity satisfy the factor test established by the Second Circuit, thus permitting Appellant to access the narrow exception for anonymity in judicial proceedings. Finally, the public's interest in this case can be

satisfied without revealing the identity of the Appellants. By granting Appellants' request for anonymity, the Court protects Appellants' constitutional privacy rights.

### A. Despite inconsistencies between the factor tests of the Circuit courts, the Second Circuit's thorough factor test satisfactorily weighs the Appellants' privacy interests against both (a) the public's interest in openness and (b) prejudice against the Appellee.

Pursuant to Rule 10(a) of the Federal Rules of Civil Procedure, a complaint must name all the parties. Nevertheless, courts have created limited exceptions to the general presumption of openness, allowing a plaintiff to proceed anonymously. *Aware Woman Ctr.,* 253 F.3d at 685. This exception simply recognizes that occasionally, privacy concerns are sufficiently critical to allow parties to proceed without divulging their true identities. *Jacobson*, 6 F.3d at 238. The ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right that outweighs the constitutionally-imbedded presumption of openness in judicial proceedings. *Aware Woman Ctr.,* 253 F.3d at 685.

To properly balance these interests, District Courts across the United States have identified various factors for consideration. The

Second Circuit draws on the rules adopted by the other Circuits and the experience of the District Courts within their Circuit to set a thorough standard for determining whether to allow anonymity in civil litigation. *Sealed Plaintiff*, 537 F.3d at 189.

The Second Circuit's factor test, which encompasses the tests utilized in the sister Circuits, approves the following factors when balancing the countervailing interests of the plaintiff's privacy, the public's desire for openness, and prejudice to the defendant: (1) whether the litigation involves matters that are highly sensitive and of personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the party requesting anonymity or even more critically, to innocent non-parties; (3) whether identification presents other harms and the likely severity of those harms, including whether the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity; (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure, particularly in light of her age; (5) whether the suit is challenging the actions of the government or that of private parties; (6) whether the defendant is prejudiced by allowing the plaintiff to press his claims anonymously, whether the nature of that

prejudice differs at any stage of the litigation, and whether any prejudice can be mitigated by the District Court; (7) whether the plaintiff's identity has thus far been kept confidential; (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identify; (9) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypical weak public interest in knowing the litigants' identities; and (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff. *Id*. at 189-90. The Second Circuit further emphasizes that the list is non-exhaustive and encourages the District Courts to consider other factors relevant to the particular case. *Id*. at 189.

**1. The circumstances surrounding Appellants' request for anonymity satisfy the Second Circuit's ten-factor test portraying a scenario in which a party may proceed anonymously.**

As set forth above, a District Court abuses its discretion when, in attempting to exercise its discretion, it fails to consider and take into account all the relevant factors constraining its exercise. *Jacobson*, 6 F.3d at 239. Thus, to properly exercise its discretion, a court should examine all relevant factors, such as those provided by the Second Circuit.

The first factor examines whether the litigation involves matters that are highly sensitive and of a personal nature. *Sealed Plaintiff*, 537 F.3d at 190. Some Circuit courts have established an "information of the utmost intimacy standard," which applies to cases involving prayer, personal religion, and abortion. *See Aware Woman Ctr.*, 253 F.3d at 685; *Stegall*, 653 F.2d at 186. The Ninth Circuit allows anonymity when it is required to protect a party from harassment, injury, ridicule, and personal embarrassment. *Advanced Textile Corp.*, 214 F.3d at 1068.

The case before the Court involves a matter that is highly sensitive and of personal nature because while it may not rise to the same level of intimacy as personal religion and abortion, it does subject the Appellant to risk of harassment, injury, and personal embarrassment. By forcing Appellant to reveal her name, she would be subject to stigma, scrutiny, and potential isolation in social groups and from specific careers or academic institutions.

The information is also highly sensitive because the risk of suicide in young adults is, unfortunately, an ever-present and highly sensitive threat. Forcing a young woman to disclose information regarding her

suicide attempts and mental health struggles is arguably one of the most personal and intimate topics in our modern society.

The second factor considers whether identification risks retaliatory mental or physical harm to the Appellant or an innocent non-party. *Sealed Plaintiff*, 537 F.3d at 190; *Jacobson*, 6 F.3d at 238; *See Zavaras*, 139 F.3d at 803. This consideration highlights the importance of safety and recognizes that mental and physical harm are factors to be weighed to protect a party's privacy interest.

While direct retaliation, such as being fired from current employment, is not present in this case, retaliatory harm may occur. Appellant likely could be denied a job or approval of housing applications due to her history of substance use disorder. Additionally, Appellant's history of mental health issues and substance use problems indicates the delicacy of the issue. The potential for embarrassment and ridicule that would arise if the Appellant were forced to identify herself could have detrimental and life-threatening mental and physical consequences beyond the threat of third-party retaliation. Further, Appellant's treating psychiatrist at Lifeline stated that K.D. could again become depressed and anxious and suffer a relapse in her substance use

disorder if she were forced to proceed in this matter under her name. Decl. at 2. Thus, the litigation not only involves highly sensitive and personal matters as required by the first factor but forcing disclosure of those intimate and personal matters could have life-threatening consequences.

The third factor considers whether identification presents other harms and the likely severity of those harms, including whether the injury litigated against would be incurred due to the disclosure of the plaintiff's identity. *Sealed Plaintiff*, 537 F.3d at 190. Identifying the Appellant has the strong potential to impact her mental health negatively. *See* Dr. Evelyn Smith Declaration, 2. Such identification could lead to a relapse in the progress that has been made in Appellant's mental health and drug addiction. These severe harms have the potential to alter the trajectory of Appellant's life permanently. Further, the injury litigated against can and will still be adequately addressed if the Court allows the Appellant to proceed anonymously. The non-disclosure in no way bars the productivity of the Court. However, the disclosure of the party may have lasting severe harms to

Appellant's health and well-being, a factor that courts should not take lightly.

The fourth factor considers whether the plaintiff is particularly vulnerable to the harms of disclosure in light of her age. *Sealed Plaintiff*, 537 F.3d at 190; *See Advanced Textile Corp.*, 214 F.3d at 1068; *See Jacobson*, 6 F.3d at 238.

Appellant, while an adult at the time of filing this case, has struggled with mental health issues such as depression and substance use disorder since she was a sophomore in high school. Compl. at 2. This case also concerns a personal history of sexual assault, which also occurred while Appellant was a minor. *Id.* Thus, disclosing the identity of Appellant forces her to reveal intimate traumatic experiences that occurred while she was a minor. The disclosure of such tragedies and traumas demonstrates that in light of Appellant's young age, she is highly susceptible to reputational and mental harm. Dr. Evelyn Smith Declaration, 2 ("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.").[1] Further, because Appellant is only a few short years removed from those tragedies, the harms of disclosure become more palpable and relevant to the Court's consideration. In light of her young age, Appellant is particularly vulnerable to the harms of disclosure.

The fifth factor examines whether the suit challenges the actions of the government or those of private actors. *Sealed Plaintiff*, 537 F.3d at 190; *Jacobson*, 6 F.3d at 238. The Appellee in the case before the Court is not a government actor. Thus, this case deals with a private actor whom Appellant's anonymity will not prejudice. Appellee is aware of the complete identity of Appellant due to interactions before this

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[1] In assessing the weight of Dr. Smith's declaration, this Court should also exercise its discretion under Fed. R. Evid. 201 to take judicial notice of the deleterious effects of sexual assault on mental health. "A court may take judicial notice at any stage in a case. Further, a court may take judicial notice of a matter of public record without converting a motion to dismiss into a motion for summary judgment." *Herron v. Fannie Mae*, 2012 WL 13042852, at *1 (D.D.C. 2012) (citing *Abhe & Svoboda, Inc. v. Chao*, 508 F.3d 1052, 1059 (D.C. Cir. 2007).

Appellants encourage the Court to consider the following exemplary sources: Mason, Fiona, and Zoe Lodrick. "Psychological Consequences of Sexual Assault." Clinical Obstetrics & Gynecology 27, no. 1 (2013): 27-37; Morrison, Zoe. "Caring About Sexual Assault: The Effects of Sexual Assault on Families, and the Effects on Victim/Survivors of Family Responses to Sexual Assault." Family Matters, no. 70 (2007): 55-63.

litigation and thus cannot successfully argue that the anonymity prejudices it.

The sixth factor weighs if the Appellee is prejudiced by allowing the Appellant to press his claims anonymously, whether the nature of that prejudice differs at any stage of the litigation, and whether the District Court can mitigate any prejudice. *Sealed Plaintiff*, 537 F.3d at 190; *Advanced Textile Corp.*, 214 F.3d at 1068. Specifically, some defendants have argued against anonymity to avoid (a) conveying a message to the fact-finder that the court thought there was merit to the plaintiff's claim of harm and (b) unfairly impeding the defendant's ability to impeach the plaintiff's credibility. *Jacobson*, 6 F.3d at 240. However, the court in *Jacobson* combats these arguments by stating that regarding the merits of the claim, evidentiary rulings and jury instructions, along with general instructions explaining that the plaintiff was proceeding anonymously to protect themselves from harm, effectively avoids any prejudice to the defendant that could arise from the grant of anonymity. *Id*. at 242. Also, the defendant could cross-examine the plaintiff about any aspect of their life, thus opening the defendant to every opportunity to impeach the plaintiff's credibility. *Id*.

Therefore, despite arguments from the defendant regarding prejudice, the court in *Jacobson* held that the court abused its discretion in denying a request for anonymity because it failed to exercise actual discretion and instead ruled on a misguided blanket approach.

Similar to the parties in *Jacobson*, the Appellee, in the case before the court, can request an instruction that informs the fact-finder as to the purpose of the anonymity for the Appellant. Further, the Appellee may still use all methods to argue against the merits of the Appellant's claims and the credibility of the Appellant. Additionally, Universal knows the identity of J.D. and K.D. and thus does not have a personal prejudice against it in the form of lacking information. Therefore, there is no prejudice by allowing the Appellant to press her claims anonymously, and there is prejudice that the District Court can mitigate through an instruction for the fact-finder regarding the grant of anonymity.

The seventh factor addresses whether the plaintiff's identity has thus far been kept confidential. *Sealed Plaintiff*, 537 F.3d at 190. While sensitive and personal medical information has been revealed to Universal, the true identity of the Appellant and her mother have not

been revealed in the District Court proceedings. The Appellee knows the true identity of the Appellants due to their involvement with the Appellants prior to litigation. However, the Appellants' identity has never been disclosed in any filings before the District Court. Thus, continuing with a grant of anonymity is consistent with the seventh factor.

The eighth factor considers whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity. *Sealed Plaintiff*, 537 F.3d at 190; *Advanced Textile Corp*., 214 F.3d at 1068. The public's interest in the litigation is based on the constitutionally-recognized right to open judicial proceedings. *Aware Woman Ctr.,* 253 F.3d at 685. The court in *Stegall* recognizes that party anonymity does not obstruct the public's open view of the issues under dispute or the court's performance in resolving them. *Stegall*, 653 F.2d at 185.

Therefore, obstructing the case through redaction, omission, or filing under seal is more detrimental to the public's interest in openness in judicial proceedings than a simple anonymity request. By allowing Appellant to proceed anonymously, the court protects the Appellant's

intimate and compelling privacy interest without impeding the public's ability to access the proceeding openly.

The ninth factor from the Second Circuit's thorough test examines whether there is an atypically weak public interest in knowing the litigants' identities because of the purely legal nature of the issues presented or otherwise. *Sealed Plaintiff*, 537 F.3d at 190. The case at hand involves an examination of particular facts and circumstances to determine the outcome. Thus, it is not a purely legal issue. However, as previously mentioned, the Appellants' anonymity does not obstruct the public's interest in the litigation. The case before the court is unlike a case in which the public benefits from knowing the exact identity of the parties, such as a case involving corporate fraud. Instead, the public benefits to the same degree by knowing the outcome of this case regardless of whether the Appellants' actual name is disclosed because the exact holding of the case is not impacted by the identity of the Appellant.

The tenth factor considers if there are alternative mechanisms for protecting the confidentiality of the plaintiff. *Sealed Plaintiff*, 537 F.3d at 190; *See also Aware Woman Ctr.,* 253 F.3d at 687. The typical

alternative mechanisms for protecting the Appellant's anonymity include filing the case under seal, requesting omissions, and requesting redactions. However, when balancing the Appellant's compelling privacy interest against the public's interest in disclosure and open proceedings, it is desirable to find a solution that benefits each side of the scale. Methods such as redaction, omissions, and filing under seal prevent the public from gaining necessary information regarding the proceeding.

However, allowing Appellant to proceed anonymously allows Appellant to protect her privacy interest while also creating a scenario in which she feels safe to include all the relevant information from the case to prevent a request for redactions and omissions. This feeling of safety benefits the public because it helps them fully access the proceedings. Instead, the only fact missing is the exact name of the Appellant and her mother. Thus, while there are alternative mechanisms for protecting the privacy of the Appellant, they fail to adequately serve the public's interest in openness in the same way anonymity fulfills the interest.

#### 2. Failing to consider the ten factors presented by the Second Circuit demonstrates an abuse of discretion by the court below because it did not adequately take into account judicially recognized factors constraining its exercise.

Considering all ten factors from the Second Circuit allows this Court to weigh the countervailing interests thoughtfully and prudently. After considering all ten factors and the circumstances surrounding Appellant's request, Appellant should be permitted to proceed anonymously.

The lower court's failure to consider all factors constraining its exercise of discretion demonstrates an abuse of discretion. *Jacobson*, 6 F.3d at 239. Failing to consider all ten factors reflects an abuse of discretion because the circumstances surrounding Appellant's request for anonymity satisfy the ten Second Circuit factors, thus establishing a compelling privacy interest that outweighs both (a) the public's interest in open proceedings and (b) prejudice to the defendant.

### B. Reversing the judgment below protects Appellant's privacy interest, a long-standing constitutional right in our country that should be protected.

The public's interest in open judicial proceedings is more than a mere formality. *Stegall*, 653 F.2d at 185. The First Amendment is

implicated when a court decides to restrict public access to a proceeding. *Id*. However, the public's interest in accessing open trials is not the same right as knowing the identity of the parties. *Id*. Thus, while there remains a strong First Amendment interest in permitting the public to examine what transpires in the courtroom, party anonymity does not obstruct the public's view or the court's performance in resolution. *Id*. Further, the public's interest in the case can be satisfied without revealing the plaintiffs' identities. *Advanced Textile Corp.*, 214 F.3d at 1069.

Thus, once a court carefully reviews all the circumstances of a given case, it can determine whether disclosing the Appellant's identity should yield to the Appellant's privacy concerns. *See Cigna*, WL 4532672, at *4. The factors demonstrate that the Appellant's privacy right is substantial. By denying Appellant's request for anonymity, the District Court wrongly declined to protect the life and well-being of a young woman who cannot otherwise seek relief without seriously endangering her health and safety.

Further, the case before the Court presents the perfect circumstance to protect constitutional privacy rights due to the

relatively minor impact on the public's access to the case and the lack of prejudice to the Appellee. The Appellant is not pursuing a blanket rule to allow all mental health or ERISA claims to proceed anonymously. Instead, Appellant requests anonymity based on the facts and circumstances of the present case. This is a protection that this Court can afford to extend because the Appellant's privacy interest does outweigh both (a) the public's interest in open proceedings and (b) prejudice against the Appellee. Thus, Appellant's request falls within the generally-recognized exception permitting a party to proceed anonymously. *Sealed Plaintiff* 537 F.3d at 186; *Aware Woman Ctr.* 253 F.3d at 684.

## II. The District Court Erred in Dismissing Appellants' Second Claim for Relief.

Fundamentally misconstruing the theories of liability set forth in Appellants' complaint, the District Court improperly characterized J.D. and K.D.'s claims as seeking "duplicative or redundant remed[ies] to redress the same injury." Mem. Op. at 9 (*quoting Rochow v. Life Ins. Co of N. Am.*, 780 F.3d 364, 373 (6th Cir. 2015)). Adopting the Sixth Circuit's "separate-and-distinct injury" requirement, the District Court declined to reach the merits of Appellants' two separate claims for

relief. *See Id.* Instead, the District Court wrongly construed K.D.'s request for equitable relief as a mere "repackaging" of her claim for compensatory damages, and wrongfully mandated dismissal under *Varity Corp. v. Howe*, 516 U.S. 489 (1996); Mem. Op. at 9.

At bottom, the District Court's approach amounts to a single, bright-line rule: When a plaintiff proceeds with a claim for denial of benefits under § 1132(a)(1)(B), that same plaintiff has no recourse whatever to pursue *any form* of equitable relief under § 1132(a)(3). That backward approach unfairly shuts the courthouse door on a wide swathe of ERISA claimants who might otherwise bring meritorious claims for clear violations of federal law. Only by misconstruing the plain language of § 1132(a)(3), and by ignoring ERISA's scope and purpose, can the District Court's blanket rule be allowed to become the law of this Circuit. For the reasons set forth below, this Court should reverse District Court's decision granting Universal's Motion to Dismiss and remand the case for consideration on the merits.

### A. ERISA's text, history, and purpose favor allowing beneficiaries to plead alternative theories of liability.

ERISA's civil enforcement provisions are intended to "provide both the Secretary and participants and beneficiaries with broad remedies

for redressing or preventing violations of ERISA." *Varity Corp.*, 516 U.S. at 511 (1996) (*quoting* S. Rep. No. 93-127 at 35 (1973)). ERISA's own declaration of purpose sets forth the policy of the Act "to protect [] the interests of participants in employee benefit plans and their beneficiaries" as well as to provide for "ready access to the Federal courts." 29 U.S.C. § 1001(b). For that reason, the Supreme Court has flatly rejected constructions of the statute proposed by administrators seeking to bar individual claimants from invoking ERISA's civil enforcement provisions. *See Varity Corp.*, 516 U.S. at 489 (individual claim for breach of fiduciary duty); *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011) (class action to recover plan benefits).

Although federal courts routinely refer to § 1132(a)(3) as ERISA's "catch-all" enforcement provision, that provision makes available a remedy that is fundamentally different in nature than the remedies made available under § 1132(a)(1)(B). While the former makes available equitable relief for any ERISA violation, the latter provides for compensatory damages and declaratory relief for a wrongful denial of plan benefits. *See Varity Corp.*, 516 U.S. at 512 (distinguishing subsections 1132(a)(3) and (a)(1)(B)).

The distinction is not merely a semantic one. The relief which Congress made available to "beneficiaries" such as K.D. in § 1132(a)(3) necessarily invokes a differing standard of proof depending on the form of equitable relief permitted by the trial court's exercise of discretion, sitting as a court of equity.[2] Yet despite the inherent differences in the nature of relief sought—and the respective burden on the plaintiff to prove either theory—the District Court adopted the most constrained possible reading of ERISA's remedial grant. In the District Court's view, § 1132(a)(1)(B) and § 1132(a)(3) are mutually exclusive—not only at the recovery stage, but at the pleading stage. Mem. Op. at 10. That reading unduly deprives Appellants of their federal procedural rights to plead alternative forms of relief, rendering ERISA a statutory outlier. In light of its broad statutory purpose and the Supreme Court's well-settled construction of its enforcement provisions, ERISA should not be so narrowly construed.

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[2] Once an equitable remedy is sought pursuant to 29 U.S.C. § 1132(a)(3), the District Court may exercise discretion to fashion appropriate relief spanning equitable surcharge, estoppel, reformation, and other equitable remedies available at common law. *CIGNA Corp.*, 563 U.S. at 131 (discussing "forms of traditional equitable relief" available under subsection (a)(3) including surcharge, injunction, and reformation of plan terms).

### 1. The District Court's erroneous interpretation of ERISA contravenes fundamental federal procedural norms.

The District Court improperly extended the Sixth Circuit's interpretation of ERISA as prohibiting duplicative *remedies* to a prohibition on duplicative *claims* for *relief* at the pleading stage. Mem. Op. at 10. However, as a fundamental procedural principle, the federal pleading rules make it clear that a plaintiff may plead alternative (even contradictory) theories of liability. *See* Fed. R. Civ. P. 8(a)(2) ("Relief in the alternative or of several different types may be demanded); Fed R. Civ. P. 8(d)(3) ("A party may state as many separate claims or defenses as it has, regardless of consistency.").

Appellant should not be punished for pleading inconsistent theories of recovery, a routine practice in federal pleading, including in the context of ERISA. *See, e.g.*, *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 726 (8th Cir. 2014) ("At the pleading stage, a plaintiff may advance multiple, alternative, even contradictory theories of liability under ERISA.") (collecting cases and quoting *Allbaugh v. Cal. Field Ironworkers Pension Trust*, 2014 WL 2112934 (D. Nev. 2014)). There, as here, both the § 1132 (a)(1)(B) claim and the § 1132(a)(3) claim should

be permitted at the pleading stage. *Id.* Even if K.D. is unable to prove that she was wrongfully deprived benefits under § 1132(a)(1)(B), she may still seek to prove that Universal unlawfully administered the Plan in violation of 29 U.S.C. § 1185a. That is exactly what Count II of the Complaint alleged. Compl. at 6. Such a showing would entitle K.D., like any other Plan beneficiary, to invoke the equitable remedies Congress made expressly available to her pursuant to § 1132(a)(3) ("A civil action may be brought by a participant, *beneficiary*, or fiduciary to obtain other appropriate equitable relief to redress such violations or *to enforce any provisions of this subchapter*.") (emphasis added).

The District Court unwisely departed from this easily administrable rule. In support of its reasoning, the District Court offered only a conclusory suggestion that the equitable remedies sought were "encompassed within" section (a)(1)(B). Mem. Op. at 10. This Court should reverse that faulty analysis for several reasons.

First, the District Court's suggestion of an equivalency in equitable and legal remedies is patently flawed because the particular remedies Appellants seek in equity would not provide relief substantially similar to a successful § 1132(a)(1)(B) action. The

prospective relief of a preliminary injunction is more expansive than a mere "clarification of rights" available under the legal enforcement provision. *See* § 1132(a)(1)(B). That remedy amounting to declaratory relief does not allow the Court, for instance, to exercise discretion to fashion a company-wide injunction that would protect the Plan itself, not just K.D.'s individual right to benefits. Compared to a declaration of rights, injunctive relief is also a more complete remedy because it is compulsory, has a greater issue-preclusive effect to the benefit of all Plan beneficiaries, and is enforceable via contempt proceedings.[3]

Second, the District Court's analysis prematurely assumes that a merits determination on the two Claims will necessarily result in the same adequate relief whether the action is brought in law under § 1132(a)(1)(B), or in equity under § 1132(a)(3). However, the Sixth Circuit, citing *Varity Corp.*, has stressed that an alternative pleading for (a)(3) relief may be made available on a showing that (a)(1)(B) remedies are inadequate. *See, e.g.*, *Rochow v. Life Ins. Co. of N. Am.*,

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[3] *See generally,* Samuel L. Bray, *The Myth of the Mild Declaratory Judgment*, 63 Duke L. J. 1091 (2014) (citing *Steffel v. Thompson*, 415 U.S. 452, 471 (1974) ("[N]oncompliance with [a declaratory judgment] may be inappropriate, but it is not contempt.")).

780 F.3d 364, 372-73 (6th Cir. 2015) ("availability of relief under § 502(a)(3) is contingent on a showing that the claimant could not avail himself or herself of an adequate remedy pursuant to § 502(a)(1)(B).").
Here, how could the District Court determine the adequacy of relief under (a)(1)(B) if it failed to reach the merits, and therefore has not had occasion to determine the scope of relief permitted under the statute?
*Cf. Rochow*, 780 F.3d at 367 (analyzing duplication argument at the summary judgment, not the pleading stage). This is exactly why the Eighth Circuit has championed the wiser practice of allowing beneficiaries to advance alternative theories of liability, at least at the pleading stage. "At summary judgment, a court is better equipped to assess the likelihood for duplicate recovery, analyze the overlap between claims, and determine whether one claim alone will provide the plaintiff with adequate relief." *Silva,* 762 F.3d at 726.

Finally, the very notion that courts should adhere to a general rule that equitable remedies cannot even be *pled* where they appear in conjunction with an § 1132(a)(1)(B) claim is highly unusual. No special rule for evaluating the availability of equitable relief should govern simply by virtue of the fact that ERISA is a unique and comprehensive

statutory scheme. *See* Mem. Op. at 9 ("ERISA presents a special case."). To the contrary, the Supreme Court has expressly rejected attempts by federal courts to flout traditional standards for evaluating the availability equitable relief under the guise of special or unique statutory circumstances. *See, e.g.*, *eBay v. MercExchange, LLC*, 547 U.S. 388 (2006) (rejecting the Federal Circuit's adoption of a standard for evaluating availability of injunctive relief in patent cases that contravened the Supreme Court's four-part test set forth in *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982)).

This Court should not embrace the District Court's narrow and unusual construction of ERISA's enforcement provisions, effectively carving out a novel exception to federal pleading standards, while leaving in its wake a host of plaintiffs deprived of just compensation for medically necessary care.

**2. Disallowing alternative theories of liability frustrates ERISA's purpose by deterring bona fide claimants from seeking timely relief.**

In addition to rendering ERISA a statutory anomaly that would escape Rule 8 and traditional precepts of the common law of trusts, the District Court's opinion also escapes common sense.

When the Sixth Circuit fashioned the separate-and-distinct injury requirement, it acknowledged that individual claimants may pursue exclusive, individualized relief under § 1132(a)(3). *Rochow*, 780 F.3d at 388. Indeed, the Sixth Circuit has gone so far as to recognize that claims challenging "systemic, plan-wide claims-handling procedures [allege] an injury *different* from the denial of claims for individual benefits brought under § 1132(a)(1)(B)." *Id.* (citing *Hill v. Blue Cross & Blue Shield of Michigan*, 409 F.3d 710, 718 (6th Cir. 2005) (emphasis added)). But if *any* plan beneficiary may bring an § 1132(a)(3) action for injunctive relief to remedy unlawful administration of the Plan, why should an *aggrieved* plaintiff be prohibited from doing so on account of the fact that she has alleged additional harm flowing from the acute denial of her particular benefits? This crabbed outcome is exactly what the decision below would require. *See* Mem. Op. at 9.

The District Court's construction of ERISA's remedial provisions contravenes the statute's express purpose to provide broad remedies for wronged beneficiaries. More importantly, it also invites a cruel paradox where claimants who have suffered more injuries (i.e., denial of plan benefits) are in a worse position to assert their rights than those who

have suffered no injury at all. In this particular case, it means that the non-suicidal, non-characterologically debilitated are at liberty to pursue their § 1132(a)(3) actions freely, while plaintiffs like Appellant must languish or be pigeonholed into an § 1132(a)(1)(B) right of action. That cannot be the outcome Congress intended in passing the Mental Health Parity and Addiction Equality Act, and it should not become the prevailing rule of this Circuit.

Reversing the District Court's decision allows this court to avoid creating such an unduly harsh landscape for ERISA claimants. Instead of condemning patients in need to a procedurally-defunct claim-election purgatory, this Court should steadfastly refuse to castrate section 1185a's extended protections for recipients of mental health benefits across the United States.

**B. Appellants asserted two distinct and independently justiciable claims for relief.**

Even if this Court were to accept the approach of the Sixth Circuit set out in *Rochow*, the decision below incorrectly determined that J.D. and K.D. did not plead two separate and distinct injuries sufficient to satisfy a separate-and-distinct injury requirement. *Rochow,* 780 F.3d at 372.

Citing wholly unanalyzed concerns of "repackaging," the District Court failed to recognize the distinct nature of relief sought by the two Counts in Appellants' Complaint. Mem. Op. at 7. A brief consideration of the claims is warranted:

First, Count I alleged that *both* K.D. and her mother, J.D. were harmed by Universal's wrongful denial of benefits under the Plan. Compl. at 5. ("*Plaintiffs* K.D. *and* J.D. have been damaged in the amount of all of the medical bills incurred for the treatment.") (emphasis added). Second, Count II alleged that Universal administered its benefits plan in violation of the parity provision of the Mental Health Parity and Addiction Equity Act of 2008, 29 U.S.C. § 1185a(a)(3)(A).

Count I, brought by both J.D. and K.D., seeks legal damages in the form of compensation for the denial of Plan benefits, as well as a declaration of rights under the Plan. 29 U.S.C. 1132(a)(1)(B). Count II, brought by K.D. only, seeks equitable remedies in the form of injunctive relief to remedy the violation of 29 U.S.C. § 1185a(a)(3)(A). The civil enforcement mechanism invoked in Count II is 29 U.S.C. § 1132(a)(3). That enforcement provision provides in full:

> A civil action may be brought 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.

By its terms, the very nature of the injury giving rise to an § 1132(a)(3) claim is distinct from a claim for injury resulting from a denial of plan benefits. The Supreme Court has made clear that a fiduciary may be surcharged under § 1132(a)(3), an equitable remedy, if the plaintiff proves actual harm and causation. Importantly, that actual harm may arise "from the loss of a right protected by ERISA or its trust-law antecedents." *CIGNA Corp.*, 563 U.S. at 444. In this way, § 1132(a)(3) relief is unique to ERISA's statutory scheme—the invasion of a statutorily-created legal right is sufficient to confer standing upon the beneficiary to bring an action on behalf of the plan. *See TransUnion, LLC v. Ramirez*, 594 U.S. 413, 447 (2021) (Thomas, J., dissenting) (distinguishing private rights asserted by individuals from statutory rights asserted on behalf of the community).

In simple terms, consistent with the plain language of the enforcement provision, *any* plan beneficiary may seek to hold

administrators accountable for their lawless behavior. If this were not the case, Congressional amendments to ERISA such as the Mental Health Parity and Addiction Equality Act at issue in this case would have no force or effect. Instead, this important protection would ring hollow—a statement of law without accountability. "[W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty… the individual who considers himself injured has a right to resort to the laws of his country for a remedy." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 166 (1803) (citing 3 William Blackstone, *Commentaries* *23).

Since K.D. also alleges that Universal violated ERISA's mental health parity provision, it follows, therefore, that K.D. could have asserted the § 1132(a)(3) claim, even absent the claim asserted in Count I for the denial of benefits. K.D. should not be punished for seeking alternative procedural mechanisms to establish liability—especially not at the pleading stage, where she has yet to prove the adequacy of one remedy or the other.

Finally, two additional considerations confirm that J.D. and K.D. have sufficiently pled two distinct injuries. First, ERISA contemplates

injuries to individuals as well as to the plan. *See Varity Corp.*, 516 U.S. at 489. Indeed, the very dispute dividing the majority from the minority in *Varity Corp.* was whether §1132 (a)(3) provided for individualized relief, or permitted only relief for the Plan. Since both J.D. and K.D. were Plan beneficiaries, either is permitted to assert an injury to the Plan under § 1132(a)(3). *Id.*

Second, the Complaint alleges that two individual claimants were injured. Universal both (a) improperly denied Plan benefits to K.D., thereby causing injury to *J.D.* in the form of out-of-pocket payment for K.D.'s treatment; and (b) engaged in unlawful administrative practices in violation of Section 1185a—which, if proven, would also constitute a breach of Universal's fiduciary duty to the Plan and its individual beneficiaries, J.D. *and* K.D. *See Id.* (permitting individual claimants to recover against administrator for breach of fiduciary duty).

The District Court wholly ignored the Complaint's invocation of: (a) separate remedial provisions; for (b) two separate claimants; (c) alleging two separate injuries; (d) premised on two separate theories of liability. In light of these realities, the District Court's "repackaging" concerns ring hollow. Mem. Op. at 9.

Acknowledging the severe harms Appellant endured, the court below improperly tied its own hands with procedural fetters. In the interest of justice and doctrinal clarity, this Court should unreservedly indulge Appellants' invitation to unbind them.

## CONCLUSION

For the foregoing reasons, Appellants request that this Court enter judgement as follows: 1) the District Court's order denying Appellants' motion to proceed anonymously (Doc. 25) should be reversed; 2) the District Court's order granting Universal's Motion to Dismiss Count II of the complaint (Doc. 27) should be reversed; and 3) the case remanded for further proceedings.